



WITH **JOURNAL**

Volume 78 ♦ No. 34 ♦ December 8, 2007

Ethics & Professional Responsibility

ALSO INSIDE

- Annual Meeting Highlights
- Bar Journal 2007 Index



Calendar of Events

OBA CLE Seminars

DEC. 12 – OKC

Where in the World is Atticus Finch in 2007?
2 hrs. of MCLE credit, including
2 hrs. of ethics
Oklahoma Bar Center, 1901 N. Lincoln Blvd.

DEC. 13 – OKC

Recent Developments 2007 - Day One
6 hrs. of MCLE credit, including
0 hrs. of ethics
Oklahoma Bar Center, 1901 N. Lincoln Blvd.

DEC. 13 – TULSA

Where in the World is Atticus Finch in 2007?
2 hrs. of MCLE credit, including
2 hrs. of ethics
Crowne Plaza Hotel, 100 E. 2nd St.

DEC. 14 – OKC

Recent Developments 2007 - Day Two
6 hrs. of MCLE credit, including
1 hr. of ethics
Oklahoma Bar Center, 1901 N. Lincoln Blvd.

DEC. 14 – TULSA

Litigation and Trials in the Digital Age
6 hrs. of MCLE credit, including
1 hr. of ethics
Crowne Plaza Hotel, 100 E. 2nd St.

DEC. 19 – OKC

The 5th Annual Legal Ethics Musical - A Singing Centennial Celebration
2 hrs. of MCLE credit, including
2 hrs. of ethics
Will Rogers Theater, 4322 N. Western Ave.

DEC. 20 – TULSA

The 5th Annual Legal Ethics Musical - A Singing Centennial Celebration
2 hrs. of MCLE credit, including
2 hrs. of ethics
Crowne Plaza Hotel, 100 E. 2nd St.

DEC. 20 – OKC

Darrow - Attorney for the Damned
7 hrs. of MCLE credit, including
1 hr. of ethics
Oklahoma Bar Center, 1901 N. Lincoln Blvd.

DEC. 21 – OKC

Litigation and Trials
6 hrs. of MCLE credit, including
1 hr. of ethics
Oklahoma Bar Center, 1901 N. Lincoln Blvd.

DEC. 21 – TULSA

Darrow - Attorney for the Damned
7 hrs. of MCLE credit, including
1 hr. of ethics
Crowne Plaza Hotel, 100 E. 2nd St.

Check registration
times at
www.okbar.org
You may register
online at
www.okbar.org
or call
405.416.7006

December

Calendar of Events

OBA CLE Webcasts & Telephone Seminars

DEC. 12

Phone Seminar - From Paper to PDF
1 Hr. MCLE, including 0 hour of ethics,
\$50

DEC. 13

Recent Developments 2007 - Day 1
6 Hrs. MCLE, including 0 hours of ethics,
\$200

DEC. 13

A Funny Thing Happened on the Way to
the Disciplinary Hearing
1 Hr. MCLE, including 1 hour of ethics,
\$50

DEC. 14

Recent Developments 2007 - Day 2
6 Hrs. MCLE, including 1 hour of ethics,
\$200

DEC. 14

High Profile Cases with Robert Shapiro
1 Hr. MCLE, including 0 hours of ethics,
\$50

DEC. 18

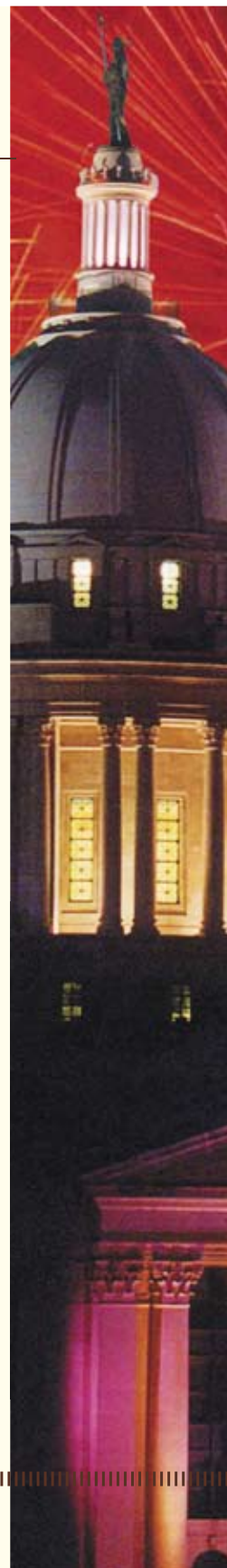
Phone Seminar - Negotiation Ethics:
Winning Without Selling Your Soul Part C
1 Hr. MCLE, including 1 hour of ethics,
\$50

DEC. 21

Lawghter is the Best Medicine
1 Hr. MCLE, including 0 hours of ethics,
\$50

Webcasts and telephone seminars are
considered live programming and do not
count toward the three MCLE hour online
limit. Register online at
<http://legalspan.com/okbar.webcasts.asp> or
<http://legalspan.com/okbar.telephone.asp>

December



RESOLUTION CONSULTANTS

Success.



Joseph H. Paulk

Our 90% settlement rate means you can turn to us with confidence.

When we began Dispute Resolution Consultants over 15 years ago, it has been our intention to offer Oklahoma attorneys and their clients the very best mediation firm possible. With the largest and most experienced panel of Attorney Mediators in Oklahoma, plus the finest facilities available, DRC stands alone as the premiere mediation/arbitration firm in Oklahoma. Our 90% success rate is the proof.

Settle It. Call DRC.

We'll handle all scheduling details for you. For information and scheduling contact our staff.

DRC

**DISPUTE RESOLUTION
CONSULTANTS, INC.**

Tulsa: 1602 S. Main • 918 382 0300

Oklahoma City: 119 N. Robinson • 405 228 0300

drc-ok.com

MEDIATORS

Joseph H. Paulk, President

Daniel J. Boudreau

Sam P. Daniel

J. Christopher Davis

John A. Gladd

Tony M. Graham

Kimberly Lambert-Love

Bob L. Latham, Jr.

James P. McCann

John F. McCormick, Jr.

Earl D. Mills

Larry D. Ottaway

Stephen R. Pazzo, Jr.

DRC FACILITIES AND EQUIPMENT

*16 total conference rooms in
Tulsa & OKC*

Multi media presentation options

Refreshments provided

Wireless internet

Laptops available

VGA plugins

HSA Health Savings Account

You are in charge of your health insurance!



With a qualified **High Deductible Health Plan (HDHP)** in place, anyone can set up a **Health Savings Account (HSA)**.

- An HSA is a tax-advantaged savings account to which you can contribute up to \$2,900 if you have single coverage or \$5,800 if you have family coverage in 2008 .
- Persons age 55 and over are also eligible to contribute a "catch-up" contribution of \$900 in 2008.
- HSA funds can be used for eligible health, dental or vision expenses, or long term care insurance premium.
- The entire eligible amount is tax deductible in the year for which it was contributed.
- The money you don't spend will roll over year to year.
- Interest earned on the account is tax-deferred.

OBA Insurance Plans are only available to Oklahoma residents. Beale Professional Services is not engaged to render legal or tax advice.



Beale Professional Services
405.521.1600 or 1.800.530.4863 • www.bealepro.com

Bob knows mediation.



From the football field – to the legal field – to the mediation field, **Bob Latham** knows challenges and succeeds at every endeavor he undertakes.

As DRC's newest mediator, Bob puts all of his *experience*, *patience* and *perseverance* to work for you in every mediation. Call today to set up a mediation session with Bob – and get your case closed.

“We are honored to have Bob working with us at DRC. His depth of experience in personal injury, medical malpractice and business adds a wonderful dimension to our core group of 12 mediation specialists.”

— Joe Paulk
President, DRC

DRC

DISPUTE RESOLUTION
CONSULTANTS, INC.

1602 S. Main, Tulsa 918.382.0300
119 N. Robinson, OKC 405.228.0300

16 Conference Rooms in Tulsa & OKC

- Laptops
- Wireless internet
- Presentation plug-ins
- Refreshments

That settles it. We're calling DRC.

THEME:
**ETHICS & PROFESSIONAL
RESPONSIBILITY**
EDITOR: MELISSA DeLACERDA

contents

December 8, 2007 • Vol. 78 • No. 34



FEATURES

- 3119 DISCIPLINE OF LAWYERS:
MACHINATIONS OF A
THREE-HEADED MONSTER
- 3125 CHANGES IN RULE 7 SUMMARY
DISCIPLINARY PROCEEDINGS
- 3131 ANOTHER TAKE ON 'CIVILITY'
- 3135 DISQUALIFICATION OF THE TRIAL
JUDGE: ZEALOUS ADVOCACY OR
UNETHICAL CONDUCT?
- 3141 THE DUTY TO NOTIFY: THE
ETHICAL USE OF METADATA IN
OKLAHOMA

DEPARTMENTS

- 3116 FROM THE PRESIDENT
- 3172 FROM THE EXECUTIVE DIRECTOR
- 3174 LAW PRACTICE TIPS
- 3177 ETHICS/PROFESSIONAL RESPONSIBILITY
- 3186 OBA BOARD OF GOVERNORS ACTIONS
- 3189 OKLAHOMA BAR FOUNDATION NEWS
- 3192 ACCESS TO JUSTICE
- 3194 YOUNG LAWYERS DIVISION
- 3196 CALENDAR
- 3197 FOR YOUR INFORMATION
- 3199 BENCH AND BAR BRIEFS
- 3202 IN MEMORIAM
- 3173 EDITORIAL CALENDAR
- 3208 THE BACK PAGE

pg. 3146

ANNUAL MEETING HIGHLIGHTS



PLUS

- 3146 ANNUAL MEETING HIGHLIGHTS
- 3154 HOLIDAY GIFT IDEA
- 3155 BAR JOURNAL 2007 INDEX



The Experience of a Lifetime

By Stephen Beam

This year has gone by so fast. It seems like only yesterday I was writing my first president's message. The OBA has accomplished a great deal this year. This is because of the leadership shown by our great Executive Director John Morris Williams, our wonderful bar staff and your hard-working Board of Governors.

The remodeling of the bar center is well underway and is on schedule. One of the reasons for the dues increase that went into effect several years ago was to remodel the bar center. A Long-Range Strategic Planning Committee was formed to study the association's long-range finances. The committee determined the total expenses of the remodeling could be handled from our current revenue stream without borrowing any additional funds or asking for any additional money from you. We have been good stewards of the money you have entrusted us with, and this association will be on sound financial footing for years to come.

Earlier this year I wrote we were killing ourselves at the rate of one lawyer per month. That is no longer the case. The OBA began providing, as a member service, some counseling to help deal with that problem. The Board of Governors implemented a program through Life Focus Counseling Services and began offering up to six hours of crisis intervention counseling for attorneys experiencing emotional or stress-related problems. This program is provided at no cost to OBA members. The service is being used by Oklahoma lawyers and is an overwhelming success.

In fact this service was so successful, we have asked Life Focus Counseling Services to help us with our Lawyers Helping Lawyers program. Committee Chair Tom Riesen has completely revitalized that program. It is now working the way we intended it to and is helping Oklahoma lawyers with mental health and addiction issues. Our counseling program was presented with the 2007 Mental Health Innovation Award from the Mental Health Association of Central Oklahoma as the outstanding program of its kind. The South Carolina Bar Association has implemented a program based on what we are doing. Other professional groups have shown an interest in our program, as well.

The American Bar Association presented us with an award for our outstanding Law School for Legislators program at the ABA Annual Meeting in San Francisco in August.



President Beam
practices in
Weatherford.
sbeam@ionet.net
(580) 772-2900

**The OBA is
in excellent
hands.**

Under the able leadership of Jon Parsley, we now have a mentoring program that actually works. The Mentoring Task Force developed a detailed mentoring manual and is in the process of making its initial 50 matches.

Last year, I asked the Young Lawyers Division to undertake a great public service project called Wills for Heroes. The program is designed to provide free of charge wills, powers of attorney and advance directives to firefighters and law enforcement personnel across the state. Will signings have taken place at the Yukon Fire Department, a Fraternal

Order of Police lodge in Oklahoma City and the Oklahoma County Jail. Partly through the efforts of our Young Lawyers Division, the ABA Young Lawyers Division has made the Wills for Heroes project its national public service project. This public service project was even the subject of a favorable editorial in The Daily Oklahoman last month praising Oklahoma lawyers for the good that we do.

All Oklahoma lawyers now have online access to a national legal research library through Fastcase that is absolutely free of charge. I am pleased to report many Oklahoma lawyers are using this service.

In August, the OBA hosted a leadership conference in Oklahoma City. We received more than 250 nominees for the conference and identified 50 new young leaders who received leadership training. This was a wonderful event and should infuse the OBA with new leadership talent for years to come. Even though the incoming class of governors this past

contd on page 3145

OFFICERS & BOARD OF GOVERNORS

Stephen D. Beam, *President*, Weatherford
J. William Conger, *President-Elect*, Oklahoma City
Jack S. Dawson, *Vice President*, Oklahoma City
William R. Grimm, *Immediate Past President*, Tulsa
Julie E. Bates, Oklahoma City
Dietmar K. Caudle, Lawton
Cathy M. Christensen, Oklahoma City
Donna L. Dirickson, Weatherford
Robert S. Farris, Tulsa
Brian T. Hermanson, Ponca City
Michael W. Hogan, McAlester
R. Victor Kennemer III, Wewoka
Deborah A. Reheard, Eufaula
Robert B. Sartin, Tulsa
Alan Souter, Bristow
Peggy Stockwell, Norman
Christopher L. Camp, *Tulsa, Chairperson*,
OBA/Young Lawyers Division

BAR CENTER STAFF

John Morris Williams, *Executive Director*;
Dan Murdock, *General Counsel*; Donita Bourns
Douglas, *Director of Educational Programs*;
Carol A. Manning, *Director of Communications*;
Craig D. Combs, *Director of Administration*;
Gina L. Hendryx, *Ethics Counsel*; Jim Calloway,
Director of Management Assistance Program; Rick
Loomis, *Director of Information Systems*; Beverly S.
Petry, *Administrator MCLE Commission*; Jane
McConnell, *Coordinator Law-related Education*;
Janis Hubbard, *First Assistant General Counsel*;
Mark Davidson, Loraine Dillinder Farabow and
Janna D. Hall, *Assistant General Counsels*; Robert
D. Hanks, *Senior Investigator*; Sharon Orth and
Dorothy Walos, *Investigators*

Nina Anderson, Manni Arzola, Jenn Barrett,
Debbie Brink, Melissa Brown, Brenda Card,
Sharon Dotson, Johnny Marie Floyd, Matt Gayle,
Susan Hall, Brandon Haynie, Suzi Hendrix, Misty
Hill, Debra Jenkins, Durrel Lattimore, Debora
Lowry, Heidi McComb, Renee Montgomery,
Wanda Reece-Murray, Tracy Sanders, Mark
Schneidewent, Robbin Watson, Laura Willis
& Roberta Yarbrough

EDITORIAL BOARD

Editor in Chief, John Morris Williams
News & Layout Editor, Carol A. Manning
Editor, Melissa DeLacerda, Stillwater
Associate Editors: Steve Barnes, Poteau; Martha
Rupp Carter, Tulsa; Mark Curnutte, Vinita;
Luke Gaither, Henryetta; D. Renee Hildebrant,
Oklahoma City; John Munkacsy, Lawton; Julia
Rieman, Enid; James Stuart, Shawnee and Judge
Lori M. Walkley, Norman

NOTICE of change of address (which must be in
writing and signed by the OBA member), unde-
liverable copies, orders for subscriptions or ads,
news stories, articles and all mail items should be
sent to the Oklahoma Bar Association, P.O. Box
53036, Oklahoma City, OK 73152-3036.

Oklahoma Bar Association (405) 416-7000
Toll Free (800) 522-8065 FAX (405) 416-7001
Continuing Legal Education (405) 416-7006
Ethics Counsel (405) 416-7083
General Counsel (405) 416-7007
Law-related Education (405) 416-7005
Lawyers Helping Lawyers (800) 364-7886
Mgmt. Assistance Program (405) 416-7008
Mandatory CLE (405) 416-7009
OBJ & Public Information (405) 416-7004
Board of Bar Examiners (405) 416-7075
Oklahoma Bar Foundation (405) 416-7070

EVENTS CALENDAR

DECEMBER

- 14 **OBA Family Law Section Meeting**; 3 p.m.; Oklahoma Bar Center,
Oklahoma City and OSU Tulsa; Contact: Donelle Ratheal (405) 842-6342
OBA Board of Governors Meeting; Oklahoma Bar Center, Oklahoma
City; Contact: John Morris Williams (405) 416-7000
Mentorship Task Force Meeting; 2 p.m.; Oklahoma Bar Center,
Oklahoma City; Contact: Jon Parsley (580)-338-8764
18 **Mock Trial Committee Meeting**; 5:45 p.m.; Oklahoma Bar Center,
Oklahoma City; Contact: Judy Spencer (405) 755-1066
24-25 **Christmas Holiday** (State Holiday)
31 **New Year's Eve** (State Holiday)

JANUARY

- 1 **New Year's Day** (State Holiday)
11 **Law Day Contest Judging**; 11 a.m.; Oklahoma Bar Center, Oklahoma
City; Contact: Melissa Brown (405) 416-7017
OBA Family Law Section Meeting; 3 p.m.; Oklahoma Bar Center,
Oklahoma City and OSU Tulsa; Contact: Donelle Ratheal (405) 842-6342
16 **Ginsburg Inn of Court**; 5 p.m.; Oklahoma Bar Center, Oklahoma City;
Contact: Julie Bates (405) 691-5080
18 **OBA Board of Governors Swearing In**; 8:30 a.m.; Supreme Court
Courtroom, State Capitol; Contact: John Morris Williams (405) 416-7000
OBA Board of Governors Meeting; Oklahoma Bar Center, Oklahoma
City; Contact: John Morris Williams (405) 416-7000
21 **Martin Luther King Jr. Day** (State Holiday)
24 **Paralegal Committee Meeting**; 3 p.m.; Oklahoma Bar Center,
Oklahoma City; Contact: Joseph H. Bocock (405) 235-9621

FEBRUARY

- 8 **OBA Family Law Section Meeting**; 3 p.m.; Oklahoma Bar Center,
Oklahoma City and OSU Tulsa; Contact: Donelle Ratheal (405) 842-6342
18 **President's Day** (State Holiday)
22 **OBA Board of Governors Meeting**; Oklahoma Bar Center, Oklahoma
City; Contact: John Morris Williams (405) 416-7000
26-29 **OBA Bar Examinations**; 8 a.m.; Oklahoma Bar Center, Oklahoma City;
Contact: Board of Bar Examiners (405) 416-7075

For more events go to www.okbar.org/news/calendar.htm

The Oklahoma Bar Association's official Web site: **www.okbar.org**

THE OKLAHOMA BAR JOURNAL is a publication of the Oklahoma Bar Association. All rights reserved. Copyright© 2007 Oklahoma Bar Association. The design of the scales and the "Oklahoma Bar Association" encircling the scales are trademarks of the Oklahoma Bar Association. Legal articles carried in THE OKLAHOMA BAR JOURNAL are selected by the Board of Editors.

THE OKLAHOMA BAR JOURNAL (ISSN 0030-1655) IS PUBLISHED FOUR TIMES A MONTH IN JANUARY, THREE TIMES A MONTH IN FEBRUARY, MARCH, APRIL, MAY, AUGUST, SEPTEMBER, OCTOBER, NOVEMBER AND DECEMBER AND BI-MONTHLY IN JUNE AND JULY EFFECTIVE JAN. 1, 2003. BY THE OKLAHOMA BAR ASSOCIATION, 1901 N. LINCOLN BOULEVARD, OKLAHOMA CITY, OKLAHOMA 73105. PERIODICALS POSTAGE PAID AT OKLAHOMA CITY, OK. POSTMASTER: SEND ADDRESS CHANGES TO THE OKLAHOMA BAR ASSOCIATION, P.O. BOX 53036, OKLAHOMA CITY, OK 73152-3036. SUBSCRIPTIONS ARE \$55 PER YEAR EXCEPT FOR LAW STUDENTS REGISTERED WITH THE OKLAHOMA BAR ASSOCIATION, WHO MAY SUBSCRIBE FOR \$25. ACTIVE MEMBER SUBSCRIPTIONS ARE INCLUDED AS A PORTION OF ANNUAL DUES. ANY OPINION EXPRESSED HEREIN IS THAT OF THE AUTHOR AND NOT NECESSARILY THAT OF THE OKLAHOMA BAR ASSOCIATION, OR THE OKLAHOMA BAR JOURNAL BOARD OF EDITORS.



Discipline of Lawyers

Machinations of a Three-Headed Monster

By Mark W. Dixon

Bad conduct soils the finest ornament more than filth.

Titus Maccius Plautus, a Roman poet

As Chair of the Professional Responsibility Commission, I have been requested to provide a glimpse into the inner workings of the PRC and its overall role in the disciplinary process. In my opinion, the disciplinary process works as a triad. One part of the triad (or the three headed monster as it is affectionately referred to by a colleague) is the PRC.

The PRC investigates alleged lawyer misconduct and upon deliberation makes a determination whether formal charges should be filed. In the event formal charges are filed, then the second part of the triad, the Professional Responsibility Tribunal (PRT), holds hearings and determines what, if any, recommendations are to be made to the Oklahoma Supreme Court regarding discipline. The last and most important component of the triad is the Oklahoma Supreme Court. The court, upon *de novo* review, determines if lawyer misconduct occurred and what discipline, if any, is warranted.¹

The court “... possesses original and exclusive jurisdiction in all matters ... and to discipline for cause, any and all persons licensed to practice law in Oklahoma, hereinafter referred to as lawyers ...”.² In furtherance of, and to achieve this objective, the court has adopted and implemented certain rules governing disciplinary proceedings.³

The PRC plays a very critical role in achieving this objective regarding disciplinary pro-

ceedings. Its decision will determine if there is merit to allegations of lawyer misconduct thereby engaging the next part of the triad, the PRT. One could perceive this initial aspect of the PRC as the “gatekeeper” over lawyer conduct.

By way of background, the PRC is composed of seven members, of whom five are lawyers who are “active members” in good standing and two non-lawyers who reside in different congressional districts. The president of the Oklahoma Bar Association with the concurrence of the Board of Governors appoints the lawyer members. The speaker of the Oklahoma House of Representatives and the President Pro Tempore of the Oklahoma State Senate each appoint one non-lawyer member. The term for each PRC member is three years with a limit of two full terms.⁴ The PRC operates on a calendar basis. Each December, the PRC meets and elects from its members a chair, who is a lawyer and a vice chair, who is a non-lawyer. The terms of the chair and vice chair are for one year.⁵

“The rules simply provide a framework for the ethical practice of law.”

The PRC meets monthly in the board room of the Oklahoma Bar Association. The meetings are typically the last Friday of the month. Four commissioners make a quorum. Assuming a quorum is present, a simple majority of those members present is sufficient to carry out any action of the PRC.⁶ The members who make up the PRC are all dedicated hardworking individuals. Each member brings a diverse background to the monthly meetings. The members all take their task seriously in listening to each of the investigative reports and applying the Rules of Professional Conduct⁷ to the allegations before reaching a decision. As I recall my first meeting and being exposed to the investigative reports, I had a recurring thought while listening to each report, but for the grace of God, there go I. In my discussion with other members of the PRC I found my thought was shared by each lawyer member. One of the investigators for the General Counsel overheard my conversation and he stated that my facial expression exhibited my concern. The investigator continued by stating that he had witnessed this same thoughtful expression being exhibited over the course of time by members of the PRC. This comment just reinforces my own ideals on how lawyers strive hard daily to adhere to the principles of the rules and the ethical practice of law.

“Compliance with the rules, as with all law in an open society, depends primarily upon an understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings.”⁸ “The rules simply provide a framework for the ethical practice of law.”⁹ The triggering event that engages the disciplinary process occurs when a lawyers actions are “... contrary to prescribed standards of conduct, whether in the course of his professional capacity, or otherwise, which act[s] would reasonably be found to bring discredit upon the legal profession, shall be grounds for disciplinary action ...”.¹⁰ The act complained of does not have to rise to the level of a felony or misdemeanor. The act does not have to be a crime at all.¹¹

Matters that come before the PRC run the gamut from lack of communication, client neglect, criminal convictions to embezzlement.

Even though this article explores the practical workings of the PRC, I would be remiss if I failed to address an issue that causes me concern. The issue concerns the actions of a lawyer who, for lack of a better term, is off duty. I draw your attention to the words, “or otherwise” set forth in the triggering event. What is the meaning of “or otherwise”? I submit the words were imparted to give notice to practitioners that the rules apply to conduct away from the office as well. In other words, conduct that may be deemed to be prejudicial to the administration of justice. That is not to say conduct that is prejudicial to the administration of justice is limited to just off duty actions. No, my comments are directed to those lawyers who perceive their profession as a 9 to 5 job. That is not how our rules work. The bottom line is, the rules apply 24/7, 365 days a year (leap year, too!)

Unfortunately, there are an increasing number of reports of misconduct by lawyers when off duty. I direct your attention to the seminal case of *State v. Hine*, 1997 OK 52, 937 P.2d 996. This case was one of first impression for the court. The issue was, “whether a licensed practitioner *who is not an advocate for any parties* in a pending case may nonetheless communicate *ex parte* with the trial judge about issues in the matter which the court has under consideration?”¹² The court held amongst other things, “[b]ecause of her license to practice law, Hine is obligated as an officer of the court not to engage in conduct that is prejudicial to the administration of justice. Rule 8.4 (d), ORPC.”¹³ The court further stated that “[i]f Hine knew or should have known that there was a reasonable likelihood her actions would materially prejudice the pending adjudicative proceeding, discipline is appropriate.”¹⁴ The court interpreted the intent of Rule 8.4 (d) to mandate the lawyer’s conduct be examined against the “reasonable-likelihood-of-material-prejudice standard.”¹⁵

The gist of Hine's defense was predicated upon the fact she sent the correspondence to the trial judge not in her capacity as a lawyer but as a private citizen.¹⁶ Hine was not a party to the litigation (pending child custody suit). The court agreed that "... [t]he Rules regarding *ex parte communications by advocates* do not apply to her."¹⁷ Nevertheless, the court concluded as an officer of the court she owed a special duty to the judicial system which was greater than other participants in the legal process.¹⁸ In my view, the plain meaning of the phrase "officer of the court" imparts that one has knowledge of the rules and responsibilities in how one conducts himself or herself 24/7. Of course there are other cases that I could allude to in order to stress the importance of adhering to the rules 24/7, but that is not the purpose of this article.

An allegation of lawyer misconduct or unauthorized practice of law is required to be in writing and signed by the aggrieved individual, addressed to the office of the General Counsel of the Oklahoma Bar Association before the first phase of the triad is initiated.¹⁹ The lawyer or person will be immediately notified and provided a copy thereof.²⁰ The complainant can be a client, former client, member of the judiciary or member of the OBA. The General Counsel brings all matters of a disciplinary nature to the attention of the PRC.

As a practical matter, notwithstanding the duties and powers conferred upon the PRC by the court, the members do not personally "... investigate the alleged ground for discipline, or alleged incapacity, of any lawyer or instance of unauthorized practice of law..."²¹ Rather,

“An allegation of lawyer misconduct or unauthorized practice of law is required to be in writing and signed by the aggrieved individual...”



this primary function is provided by the assistance of the staff of the office of the General Counsel of the OBA.²² The General Counsel's staff is composed of five lawyers: Dan Muddock, General Counsel; Janis Hubbard, First Assistant General Counsel; Loraine Dillinder Farabow, Janna D. Hall, and Mark Davidson, Assistant General Counsels. In addition, there are three investigators: Robert D. Hanks, Senior Investigator; Sharon Orth and Dorothy Walos, investigators. The General Counsel is further supported by a great administrative staff.

The General Counsel, upon appropriate investigation of the alleged grievance, makes an initial determination whether the alleged grievance merits further investigation or not.²³ In such capacity, the General Counsel "... shall either (1) notify the person filing the grievance and the lawyer that the allegations ... are inadequate, incomplete, or insufficient to warrant the further attention of the PRC ..., or (2) file and serve a copy of the grievance ... upon the lawyer, who shall thereafter make a written response ...".²⁴

“ The monthly meetings consist of the General Counsel making its report and recommendation on each grievance. ”



It is important to remember that deliberate misrepresentation in a lawyer's response or failure to respond to the grievance within 20 days after service or additional time as granted by the General Counsel, in and of itself constitute grounds for discipline.²⁵ It has not been uncommon for the General Counsel during the monthly meetings to bring to the attention of the PRC, a lawyer's failure to respond to a grievance. In those instances, after full disclosure and discussion, the PRC has recommended to the General Counsel adding the failure to respond as an additional count of lawyer misconduct in the complaint. The Court has imposed discipline for such inaction.²⁶

The monthly meetings consist of the General Counsel making its report and recommendation on each grievance.²⁷ When the General Counsel has completed each report, the PRC acts after consideration of the report and recommendations. "The sole discretion whether or not to file a formal complaint against a law-

yer lies with the prosecutor, the PRC." *Doyle v Okla. Bar Ass'n*, 998 F.2d 1559, 1566 (10th Cir. 1993).

The PRC at completion of each investigation and report has at its disposal several options to exercise. It may:

(a) [d]irect that no formal disciplinary proceedings be commenced, in which event the General Counsel shall advise the person filing the grievance that the factual circumstances do not warrant further investigation or disciplinary action;

(b) [i]f, after a disciplinary action has been commenced, the [PRC] finds the grievance is wholly frivolous or without merit, it shall direct the immediate expungement of any grievance, and upon such expungement, respondent against whom such frivolous grievance has been filed and expungement has been ordered by the [PRC], may treat the grievance as if it was never asserted;

(c) [d]irect that a letter of admonishment be written to the respondent by the General Counsel;

(d) [d]irect that no formal proceedings be instituted against the respondent, conditioned upon the respondent's acceptance of a private reprimand before the [PRC].... If the respondent does not appear at the time and place so fixed in such notice, the [PRC] may give further consideration to the advisability of filing a formal complaint;

(e) [d]irect the filing of a formal written complaint with the Supreme Court by the General Counsel within thirty (30) days of the vote of the [PRC], ... ;

(f) [i]n matters involving the unauthorized practice of law, the [PRC] shall either dismiss the grievance or direct the General Counsel to initiate any action permitted by law through the appropriate court.

In addition to, or in lieu of, one of the foregoing actions the [PRC] may direct the General Counsel to refer the name of the respondent to the Lawyers Helping Lawyers Committee²⁸

It is important to note matters contained in any submitted grievance are deemed to be privileged.²⁹ It is also important to note that an additional ground for discipline is the threat of litigation by the respondent lawyer against an individual who submitted a grievance.³⁰

In addition, “[t]he files and records in disciplinary investigations shall be kept private and confidential ...”.³¹ There are few exceptions to the foregoing. One is in the instance of a request to the PRC, PRT or General Counsel by any court (State or Federal) or bar association that oversees lawyer discipline, relevant information in those circumstances are permitted.³² Finally, the investigations themselves are confidential and kept private unless authorized by the court or as set forth in Rule 6.1.³³

Once the PRC has authorized the General Counsel to file formal charges a complaint is drafted for review and execution by the chair or vice chair. Thereafter, the complaint is filed with the Chief Justice of the Supreme Court.³⁴ If there is prior conduct resulting in discipline, or the investigation produces evidence that could be used to enhance discipline, these facts are pled in addition to the facts giving rise to the alleged misconduct.³⁵ At this juncture the disciplinary process of the three headed monster shifts to the second part of the triad, the PRT. The PRT will hear the matter and issue its decision that is reviewed by the Oklahoma Supreme Court, the final part of the disciplinary triad.

The full impact of the disciplinary process begins or ends with the prosecutor, the PRC. Its evaluation and conclusion of the facts giving rise to the grievance(s) submitted to the office of the General Counsel will determine if the remaining segments of the three headed monster are triggered.

1. Rule 1.7, Rules Governing Disciplinary Proceedings, 5 O.S. 2001 ch. 1, app. 1-A.

2. Rule 1.1, Rules Governing Disciplinary Proceedings, 5 O.S. 2001 ch. 1, app. 1-A.

3. *Id.*

4. Rule 2.1, Rules Governing Disciplinary Proceedings, 5 O.S. 2001 ch. 1, app. 1-A.

5. Rule 2.2, Rules Governing Disciplinary Proceedings, 5 O.S. 2001 ch. 1, app. 1-A.

6. Rule 2.6, Rules Governing Disciplinary Proceedings, 5 O.S. 2001 ch. 1, app. 1-A.

7. 5 O.S. 2001 ch. 1, app. 3-A.

8. Scope, Rules of Professional Conduct, 5 O.S. 2001 ch. 1, app. 3-A at page 231.

9. *Id.*

10. Rule 1.3, Rules Governing Disciplinary Proceedings, 5 O.S. 2001 ch. 1, app. 1-A.

11. *Id.*

12. *State v. Hine*, 1997 OK 52, 937 P.2d 996, 997.

13. *Id.* at 999.

14. *Id.* at 1000.

15. *Id.*

16. *Id.*

17. *Id.* at 999.

18. *Id.*

19. Rule 5.3, Rules Governing Disciplinary Proceedings, 5 O.S. 2001 ch. 1, app. 1-A.

20. *Id.*

21. Rule 2.8(a), Rules Governing Disciplinary Proceedings, 5 O.S. 2001 ch. 1, app. 1-A.

22. Rule 5.2, Rules Governing Disciplinary Proceedings, 5 O.S. 2001 ch. 1, app. 1-A.

23. *Id.*

24. *Id.*

25. *Id.*

26. Rule 5.2, Rules Governing Disciplinary Proceedings, 5 O.S. 2001 ch. 1, app. 1-A; *See State ex rel. Oklahoma Bar Ass'n. v. Robb*, 1997 OK 84, 942 P.2d 196.

27. Rule 5.3, Rules Governing Disciplinary Proceedings, 5 O.S. 2001 ch. 1, app. 1-A.

28. *Id.*

29. Rule 5.4, Rules Governing Disciplinary Proceedings, 5 O.S. 2001 ch. 1, app. 1-A.

30. *Id.*

31. Rule 5.8, Rules Governing Disciplinary Proceedings, 5 O.S. 2001 ch. 1, app. 1-A.

32. *Id.*

33. Rule 5.7, Rules Governing Disciplinary Proceedings, 5 O.S. 2001 ch. 1, app. 1-A.

34. Rule 6.1, Rules Governing Disciplinary Proceedings, 5 O.S. 2001 ch. 1, app. 1-A.

35. Rule 6.2, Rules Governing Disciplinary Proceedings, 5 O.S. 2001 ch. 1, app. 1-A.

ABOUT THE AUTHOR



Mark W. Dixon is a shareholder with the firm of Works & Lentz, Inc. He is the current PRC chairperson. He previously served on the Professional Responsibility Tribunal for six years. In addition, he is a committee member of the OBA Rules of Professional Conduct; and OBA Code of Judicial Conduct. Mark is a past president of the Tulsa County Bar Association and Tulsa County Bar Foundation.



Changes in Rule 7 Summary Disciplinary Proceedings

By Gary A. Rife

On Jan. 9, 2007, the Oklahoma Supreme Court amended Rule 7, Rules Governing Disciplinary Proceedings, 5 Okla. Stat. 2001, Ch. 1, App. 1-A, dealing with summary disciplinary proceedings.¹ Amended Rule 7 has an expanded scope involving criminal conduct by lawyers. Rule 7 is no longer limited to situations where a lawyer has been “convicted” of a crime, as had been the case since the time the rule was originally adopted more than 25 years ago.

Summary disciplinary proceedings are just what the name implies, abbreviated proceedings, summary in nature, only permitting the exploration of a limited number of issues with a limited opportunity to develop a complete record. Summary proceedings stand in contrast to Rule 6 proceedings that offer additional features such as a pretrial stage similar to civil actions followed by a full hearing on the merits.² Rule 6 proceedings permit the development of a complete record. Amended Rule 7 provides that hereafter, summary disciplinary proceedings will be commenced when a lawyer enters a plea of guilty or *nolo contendere* pursuant to a deferred sentence agreement, even though no conviction results.

The order amending Rule 7 did not provide an explanation or give particular reasons for the amendments, other than to state the amendments were, “[t]o correct an oversight in the disciplinary system.” The full text of the portion of the order amending Rule 7.1 simply says:

To correct an oversight in the disciplinary system, Rule 7.1 of the Rules Governing Disciplinary Proceedings, 5 O.S. 2001, Ch.

1, App. 1-A, is hereby amended to provide in pertinent part:

A lawyer who has been convicted or has tendered a plea of guilty or *nolo contendere* pursuant to a deferred sentence plea agreement in any jurisdiction of a crime which demonstrates such lawyer’s unfitness to practice law, regardless of whether the conviction resulted from a plea of guilty or *nolo contendere* or from a verdict after trial, shall be subject to discipline as herein provided, regardless of the pendency of an appeal.³

Rule 7.2, dealing with the duties of any clerk of court to transmit documents to the Supreme Court, was similarly amended to reflect the need in the future for court clerks to transmit documents regarding deferred sentences. The full text of the portion of the order amending Rule 7.2 provides:

The clerk of any court within this State in which a lawyer is convicted or as to whom proceedings are deferred shall transmit certified copies of the Judgment and Sentence on a plea of guilty, order deferring judgment and sentence, indictment or information and judgment and sentence of conviction to the Chief



“Upon good cause shown, the Court may set aside its order of suspension when it appears to be in the interest of justice to do so...”

Justice of the Supreme Court and to the General Counsel of the Oklahoma Bar Association within (5) days after said conviction. The documents may also be furnished to the Chief Justice by the General Counsel. Such documents, whether from this jurisdiction or any other jurisdiction shall constitute the charge and be conclusive evidence of the commission of the crime upon which the judgment and sentence is based and shall suffice as the basis for discipline in accordance with these rules.⁴

Rule 7.2 still says, as it did before the amendments, “such documents” regarding the criminal proceedings constitute the charge and seems to suggest this will be true for deferred sentence plea agreements as well. It is less clear if deferred sentence plea agreements will be considered conclusive evidence of the commission of the crime and will suffice as a basis for discipline, the same as in the case of a judgment and sentence. The last sentence of Rule 7.2 only refers to “judgment and sentence” and does not refer to deferred sentence plea agreements. Nevertheless, while adding deferred sentence plea agreements to their reach, the amendments do not make it clear what effect they will be given when there is no judgment and sentence.

Rule 7.3, dealing with immediate orders of suspension, appearances to show cause and the corresponding procedures, was likewise amended to show its application to deferred sentences. The full text of the portion of the order amending Rule 7.3 provides:

Upon receipt of the certified copies of *Judgment and Sentence on a plea of guilty, order deferring judgment and sentence, indictment or information and the judgment and sentence*, the Supreme Court shall by order immedi-

ately suspend the lawyer from the practice of law until further order of the Court. In its order of suspension the Court shall direct the lawyer to appear at a time certain, to show cause, if any he has, why the order of suspension should be set aside. Upon good cause shown, the Court may set aside its order of suspension when it appears to be in the interest of justice to do so, due regard being had to maintaining the integrity of and confidence in the profession.⁵

It is not clear whether interim suspensions will be entered in every deferred sentence plea agreement without regard to the seriousness of the offence. It is uncertain if there will be a pre-suspension determination of the threshold question regarding whether the crime demonstrates such lawyer’s unfitness to practice law. Also unclear is the nature and scope of the post-suspension show cause hearing. There is no indication whether for purposes of a show cause hearing, a judgment and sentence of conviction will be treated the same as or differently than a deferred sentence plea agreement.

The amendments came just three weeks after the decision in *State ex rel. Oklahoma Bar Ass’n v. Maddox*⁶ was rendered on Dec. 19, 2006, which discusses the need for Rule 7 to be amended. *Maddox* was a disciplinary proceeding involving a lawyer who entered a guilty plea to a charge of embezzlement by a public official under a plea agreement and received a deferred sentence. Maddox entered into the plea agreement, pled guilty on March 22, 2000, and received a deferred sentence. He was placed on unsupervised probation for two years, and was disqualified from holding public office in the state of Oklahoma.⁷

On Aug. 27, 2001, more than one year after Maddox pled guilty to the embezzlement

charge, a complaint was filed with the chief justice of the Oklahoma Supreme Court. The respondent promptly answered the complaint on Sept. 14, 2001, and both pleadings were filed with the clerk of the Supreme Court on Sept. 17, 2001. By May 15, 2002, the two-year deferred sentence had expired, Maddox had fully complied with all the imposed conditions and the record was expunged by order of the court.⁸

Five years and five months after Maddox was indicted, the matter came before the Professional Tribunal Panel on Jan. 17, 2006. On Feb. 8, 2006, the trial panel, apparently without considering the delay in these proceedings, recommended that Maddox be suspended for two years and one day and that he be assessed the costs of this proceeding. The court noted it was receiving the case for assignment almost seven years after the indictment was filed.⁹

Maddox discussed former Rule 7.1, 7.2 and 7.3 in considerable detail before concluding:

The integrity of and confidence in the profession — therein lies the problem. *This Court is faced with a dilemma. The system has not worked. Rule 7 needs to be amended.* Because the respondent pled guilty and received a deferred sentence on a plea agreement, *he apparently escaped Rule 7 because he was not "technically" convicted for the same acts of which had he been convicted would have resulted in an immediate suspension.* This Court was not advised within 5 days of the guilty plea nor within 5 weeks or 5 months apparently because he wasn't "convicted" of the crime, even though he admitted his guilt.¹⁰

The decision in *Maddox* seems to rest in large part upon the court's recognition of an unsatisfactory delay in the proceedings and the consequences that followed. Additionally, this decision seems to rest upon the concern that Maddox escaped the provisions of Rule 7 merely because there was no "technical" conviction, even though there had been a guilty plea. It is not clear if one or the other, or both, of these concerns form the basis of the reference in the order to correcting an oversight in the disciplinary system. In any event, the finding in *Maddox* that Rule 7 needs to be amended was followed only three weeks later with the current amendments. Ordinarily, the Oklahoma Bar Association participates in studying and formulating recommendations regarding the adoption or amendment of rules effecting lawyers' conduct

or professional discipline. That did not occur here.

While adding deferred sentence plea agreements to the reach of summary proceedings, there was no change in the nature of the crimes for which summary proceedings may be invoked. The rule still describes the predicate crime as one which "demonstrates such lawyer's unfitness to practice law." The amendments do not address the issue of which crimes demonstrate a lawyer's unfitness to practice law, and which crimes do not, which is an interesting subject requiring considerably more discussion than the present topic allows.¹¹

Lawyers engaged in criminal conduct have long been subject to discipline in Rule 6 proceedings for any act contrary to standards of conduct without regard to what type of crime may have been committed, or if a crime was committed at all. Lawyers have never been immune from disciplinary process simply because they entered into a deferred plea agreement. Rule 1.3, Rules Governing Disciplinary Proceedings provides:

The commission by any lawyer of any act contrary to prescribed standards of conduct, whether in the course of his professional capacity, or otherwise, which act would reasonably be found to bring discredit upon the legal profession, shall be grounds for disciplinary action, whether or not the act is a felony or misdemeanor, or a crime at all. *Conviction* in a criminal proceeding is *not a condition precedent* to the imposition of discipline.¹²

Rule 7.6, Rules Governing Disciplinary Proceedings provides:

Nothing contained herein shall prevent the Professional Responsibility Commission from initiating and conducting disciplinary proceedings upon charges identical to those set forth in a criminal complaint, indictment, or information, notwithstanding the pendency or final disposition of the criminal action. In such event, certified or authenticated copies of the record and transcripts of testimony and evidence from the criminal action will be admissible in the disciplinary proceeding whether for or against the lawyer.¹³

The prosecution of disciplinary proceedings against lawyers charged with crimes was clearly contemplated by the rules as originally adopted. Disciplinary proceedings are not lim-

ited by the nature of the alleged criminal offense and may be commenced while the criminal charges remain pending before final disposition. The rules have since their adoption permitted the separate and simultaneous initiation of disciplinary proceedings against lawyers charged with crimes.

The practical effect of the amendments will be to extend summary disciplinary proceedings to all plea agreements for deferred sentences. The amended Rule 7 and its presumed application to any plea agreements will pose additional considerations for a lawyer charged with any criminal conduct. This will be true for the lawyer's criminal defense counsel, for the criminal prosecutors, for the judges, for the disciplinary prosecutors and for disciplinary defense counsel. While it is clear summary proceedings will be initiated upon the entering of a plea agreement for a deferred sentence, it is not at all clear how plea agreements for deferred sentences will be treated. While the amendments do not directly address this issue, one possible interpretation is that plea agreements for deferred sentences will be treated the same as though there actually was a judgment and sentence. If so, plea agreements for deferred sentences would themselves not only constitute the charge, but would become conclusive evidence of the commission of the crime upon which the plea agreement is based. They would serve as the basis for discipline, without more. This may deter lawyers from entering into deferred sentence plea agreements.

Before the amendments to Rule 7, lawyers charged with crimes were free to fully explore plea agreements involving a deferred sentence, as any other citizen, without fear of also being exposed to summary professional disciplinary proceedings. Previously, lawyers could do so knowing they would be entitled to a full hearing on the merits under Rule 6 as contemplated by Rule 1.3 and Rule 7.6. Now, entering a plea to a deferred sentence will no longer be a safe harbor guaranteeing a lawyer a full hearing on the merits provided by Rule 6 proceedings. Rule 6 proceedings provides a framework far more friendly to due process considerations and notions of fairness than Rule 7 summary proceedings. The most important difference between the two rules is the opportunity, or lack of it, for development of a complete record in the disciplinary proceeding. This factor alone may discourage pleas by lawyers altogether in criminal cases. By entering into a plea agree-

ment the lawyer becomes immediately subject to suspension in a summary disciplinary proceeding without the benefit of a full hearing on the merits or an opportunity to develop the record. Without any other satisfactory alternatives for disposition, more lawyers may be forced to stand trial if charged with any crime, even less serious crimes, in order to avoid the risk of being severely disciplined in a summary proceeding.

1. *In Re: Amendment To The Rules Governing Disciplinary Proceedings*, 2007 OK 1, __ P.3d __.
2. Rule 6, Rules Governing Disciplinary Proceedings, 5 Okla. Stat. 2001 Ch. 1, App. 1-A.
3. *In Re: Amendment To The Rules Governing Disciplinary Proceedings*, 2007 OK 1, ¶2, __ P.3d __, (Emphasis in original).
4. *In Re: Amendment To The Rules Governing Disciplinary Proceedings*, 2007 OK 1, ¶4, __ P.3d __, (Emphasis in original).
5. *In Re: Amendment To The Rules Governing Disciplinary Proceedings*, 2007 OK 1, ¶6, __ P.3d __, (Emphasis in original).
6. 2006 OK 95, 152 P.3d 204.
7. *Id.* at ¶2, 152 P.3d at 206-207.
8. *Id.* at ¶4, 152 P.3d at 207.
9. *Id.* at ¶5.
10. *Id.* at ¶10, 152 P.3d at 208 (Emphasis supplied).
11. In 1981 the "moral turpitude" predicate characteristic of criminal convictions was abandoned in favor of "unfitness to practice law" now applied in summary proceedings. See *State ex rel. Oklahoma Bar Ass'n v Armstrong*, 1990 OK 9, ¶ 4-8, 791 P.2d 815, 816-817. (Discussing the history and evolution of rules governing summary disciplinary proceedings involving criminal conduct). In 1988 Oklahoma's current version of the American Bar Association Model Rules of Professional Conduct became effective, which incorporated a professional/private dichotomy limiting professional discipline to crimes involving violence, dishonesty or breach of trust, or serious interference with the administration of justice. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Comment, Rule 8.4, Oklahoma Rules of Professional Conduct, 5 OKLA. STAT. 2001, Ch. 1, App. 3-A. Oklahoma has now adopted its version of the 2002 Amendments to the American Bar Association Model Rules of Professional Conduct, which will become effective January 1, 2008. *In Re: Application to Amend The Oklahoma Rules Of Professional Conduct*, 2007 OK 22, __ P.3d __.
12. Rule 1.3, Rules Governing Disciplinary Proceedings, 5 OKLA. STAT. 2001, Ch. 1, App. 1-A. (Emphasis supplied).
13. Rule 7.6, Rules Governing Disciplinary Proceedings, 5 OKLA. STAT. 2001, Ch. 1, App. 1-A. (Emphasis supplied).

ABOUT THE AUTHOR



Gary A. Rife is a partner in the firm of Rife & Walters LLP and regularly represents lawyers in matters of professional responsibility and discipline. He formerly served as OBA general counsel and as a member of the OBA Board of Governors. He received the 1997 OBA Award for Legal Ethics and a President's Award for service as co-chair of Rules of Professional Conduct Committee in 2006.

OBA/CLE PRESENTS

The 5th Annual Legal Ethics Musical - A Singing Centennial Celebration

**DATES:
& LOCATIONS:**

Oklahoma City
December 19, 2007
Will Rogers Theater
4322 N. Western Ave.

Tulsa
December 20, 2007
Crowne Plaza Hotel
100 E. 2nd St.

CLE CREDIT:

This course has been approved by the Oklahoma Bar Association Mandatory Continuing Legal Education Commission for 2 hours of mandatory CLE credit, including 2 hours of ethics.

TUITION:

\$100 for early-bird registrations received with payment at least four full business days prior to the seminar date; \$125 for registrations received with payment within four full business days of the seminar date; \$50 for non-OBA member guests. Register online at www.okbar.org/cle. No discounts.

**CANCELLATION
POLICY:**

Cancellations will be accepted at any time prior to the seminar date; however, a \$25 fee will be charged for cancellations made within four full business days of the seminar date. Cancellations, refunds, or transfers will not be accepted on or after the seminar date.

Program Planner

Randy Grau, Deputy County Commissioner for Ray Vaughn,
Oklahoma County Commissioner District 3, Oklahoma City

Program Moderator

Dan Murdock, OBA General Counsel, Oklahoma City

Come catch the newest installment of Oklahoma's most entertaining and unorthodox CLE. From the same folks who brought you the musical presentations of "Once Upon a CLE," "Cowboy Court," and "Ethics Cabaret," comes a salute to Oklahoma's singers, songwriters, and music celebrating our great state.

You will enjoy creative, humorous, and maybe even familiar selections performed by **Jay Buxton**, Edmond Law Center, Edmond; **Randy Grau**, Deputy County Commissioner for Ray Vaughn, Oklahoma County Commissioner District 3, Oklahoma City; **Michelle Campney**, Walls, Walker, Harris, & Wolfe, P.L.L.C., Oklahoma City; **Jackie Short**, Attorney at Law, Oklahoma City; **Jennifer A. White**, Eldridge Cooper Steichen & Leach, P.L.L.C., Tulsa; **Rees Evans**, Attorney at Law, Oklahoma City; **Sarah Glick**, Attorney at Law, Oklahoma City; and members of the OBA staff, including General Counsel **Dan Murdock**, and **Carol Manning**, **Melissa Brown**, and **Brandon Haynie** from the Communications Department.

5:30 p.m. Registration and Dinner
6:00 p.m. Program
7:50 p.m. Adjourn

In spirit of the Oklahoma Centennial this year, the musical will feature songs originally written and/or sung by famous Oklahomans. The familiar tunes rewritten OBA/CLE style are as follows:

Dopey in Muskogee
Over Bloated Bills
Improper Pleadings
Help Me Make it Through the Trial
This Bar is Your Bar
Take Me Back to Law School
Back in the Courtroom Again
By the Time I Get to Trial
You Can't Go to Court if You Ain't Got a Tie
Bar Complaints Keep Falling on My Head
Oklahoma Bar is in a Double Wide
Long Black Robe
Pro Bono
Montage
I Love This Bar
Gina Take the Wheel
Dan's the Reason I Left Oklahoma
Ambulance Chaser
Friends in Low Places

Don't believe you'll get CLE credit AND have a good time? Here's what people are saying about the previous musical ethics CLEs:

"I came to get last-minute CLE credits, but had so much fun I plan to make it a yearly event!"

"An excellent format and presentation. Entertaining and refreshing. I'll be back next year."

"I really loved the program! I wish we could have more CLEs like this one!"

"Most excellent! Informative and entertaining. Impressed with the quality of the presentation."

Full Name _____

Firm _____

Address _____

City _____ State _____ Zip _____

Phone () _____ E-Mail _____

Are you a Member of OBA? ☐ Yes ☐ No OBA Bar# _____

Make Check payable to the Oklahoma Bar Association and mail entire page to: CLE REGISTRAR, P.O. Box 960063 Oklahoma City, OK 73196-0063

For ☐ Visa or ☐ Master Card Fax (405) 416-7092, Phone (405) 416-7006

or Mail

Credit Card# _____ Exp. date _____

Authorized Signature _____

☐ Oklahoma City
December 19, 2007

☐ Tulsa
December 20, 2007

Register online at www.okbar.org/cle



Another Take on ‘Civility’

By Judge Michael Stano

[P]eople can disagree without being disagreeable....¹

I am fortunate to serve as a judge in a county where lawyers and judges get along really well. Angry outbursts and rude and unfriendly acts are rare in my courtroom. Such acts, however, do occur. Nothing upsets or distresses me more than people not treating others with courtesy and respect.

For eight years as a high school and college student, I participated in competitive debate. For eight years as a graduate student and university faculty member, I coached debate. My experience in debate shaped me. As a judge, I would be lost without that experience. My coaches taught me that one could be a winner without being a jerk and that being liked as a winner is considerably harder than being liked as a loser. My debate teams did very well competitively, but I am more proud of how the teams won. Certainly, to win, debaters had to vigorously argue their point, but in doing so they didn't ruin relationships by resorting to fabrication of evidence or personal attacks. From a relationship perspective, whatever happened in a round of debate was left in the room. Outside of rounds, there were no grudges or hard feelings, and these teams made and preserved relationships by being open and honest and friendly, and by helping others develop their skills. Outside of rounds, judges were consulted to learn what the debaters might have done differently or better, and decisions weren't disparaged or disputed.

I find nothing wrong with expecting adult professionals to behave as I expected my debaters to behave. Being nasty in or out of court isn't going to make one more successful. Being nasty to others will only destroy relationships and add to the stress that is already too prevalent in this profession.

And, being nasty runs contrary to every tenet we have established for our profession. The mission of the Oklahoma Bar Association is, in part, "to foster the highest ideals of integrity and competence and to maintain the highest standards of conduct and civility."² The Lawyer's Creed, adopted by the OBA Board of Governors in 1989, demands that in our dealings with members of the bar, we "uphold the dignity and respect of each," and that we be "guided by a fundamental sense of integrity and fair play."³ This creed further requires that we recognize our conduct is governed "by standards of fundamental decency and courtesy," that our "desire to prevail must be tempered with civility" and that "[r]ude behavior hinders effective advocacy...."⁴ The preamble to the Oklahoma Rules of Professional Conduct obligates us to be "honest dealing with others,"⁵ to "demonstrate respect for the legal system and for those who serve it....,"⁶ and to maintain "a professional, courteous and civil attitude toward all persons involved in the legal system."⁷

The Standards of Professionalism,⁸ approved by the Oklahoma Bar Association Board of Governors and the Oklahoma Judicial Conference, are meant to apply to both judges and lawyers. These Standards suggest that "[p]rofessionalism...requires...civility,"⁹ and dictate that "conduct with clients, opposing counsel, parties, witnesses and the public...be

Lawyer's Creed

Adopted by the OBA Board of Governors on Nov. 17, 1989.

I revere the Law, the System and the Profession, and I pledge that in my private and professional life, and in my dealings with member of the Bar, I will uphold the dignity and respect of each in my behavior toward others.

In all dealings with members of the Bar, I will be guided by a fundamental sense of integrity and fair play.

I will not abuse the System or the Profession by pursuing or opposing discovery through arbitrariness or for the purpose of harassment or undue delay.

I will not seek accommodation for the rescheduling of any Court setting or discovery unless a legitimate need exists. I will not misrepresent conflicts, nor will I ask for accommodation for the purpose of tactical advantage or undue delay.

In my dealings with the Court and with counsel, as well as others, my word is my bond.

I will readily stipulate to undisputed facts in order to avoid needless costs or inconvenience for any party.

I recognize that my conduct is not governed solely by the Code of Professional Responsibility, but also by standards of fundamental decency and courtesy. Accordingly, I will endeavor to conduct myself in a manner consistent with the Oklahoma Bar Association Guidelines for Professional Courtesy.

I will strive to be punctual in communications with others and in honoring scheduled appearances, and I recognize that neglect and tardiness are demeaning to me and to the Profession.

If a member of the Bar makes a just request for cooperation, or seeks scheduling accommodation, I will not arbitrarily or unreasonably withhold consent.

If a member of the Bar makes a just request for cooperation, or seeks scheduling accommodation, I will not arbitrarily or unreasonably withhold consent.

I recognize that a desire to prevail must be tempered with civility. Rude behavior hinders effective advocacy, and, as a member of the Bar, I pledge to adhere to a high standard of conduct which clients, attorneys, the judiciary and the public will admire and respect.

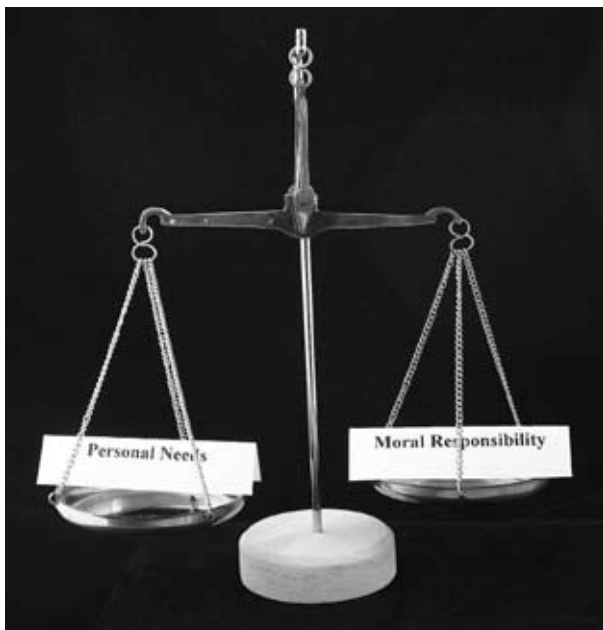
civil.”¹⁰ Further, the Standards recognize that “effective representation...is impaired by[] conduct which [is]...uncivil, rude, abrasive, vulgar, antagonistic, obstructive or obnoxious.”¹¹

The Standards of Professionalism specifically directs judges to “be courteous, respectful and civil to lawyers, parties and witnesses,”¹² and to “tactfully” call attention to uncivil behavior.¹³ Judges are additionally guided by Canon 3 of the Code of Judicial Conduct, which requires that “[a] judge...be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom...the judge deals in official capacity....”¹⁴ Judges can’t expect others to be courteous and respectful if they aren’t courteous and respectful themselves.

That attorneys and judges should behave civilly has been often discussed in the *Oklahoma Bar Journal* and other legal publications.¹⁵ The consistent theme of these writings is that bad behavior exists, and it should stop. But, despite the attention it receives, bad behavior continues, perhaps because the individuals who need to hear the message most are deaf to it. Reduction of incivility may require informal interventions by colleagues and/or counseling by the bench. Alternately, judges might take the radical step of citing offenders with contempt¹⁶ and punishing them accordingly.¹⁷

Rudeness seems more predominate among attorneys who have been practicing longer. Consequently, young members of the bar who haven’t yet developed bad habits need especially to be mentored, coached and encouraged to better assure the next generation of professionals is better behaved than some in the current generation.

Occasionally, in-court advocacy may become heated, and tempers may flare. We should all be mature enough to walk away from these disputes as friends. A handshake with opposing counsel should end it, and emotion, drama and righteous indignation should be left in the room. An attorney I know advises that at the end of every day, one should “flush” all the tensions and stressors away, and this is remarkably good advice. Representing one’s client and engaging in legal arguments should not jeopardize friendships or professional associations. If court proceedings damage relationships, something is very, very wrong.



Attorneys and judges must work together to make the courthouse a less hostile place. The mandates of our profession do not rule out competitiveness, but they do rule out uncivil and unfriendly behavior, and we should all take personal responsibility to enforce those mandates. Whether we do so because of a personal credo, or the dictates of professional ethical standards, we should be fair, play nice and “leave it in the room.”

1. Okla. Bar Assoc. Standards of Professionalism, §2.7 (2002, 2007), www.okbar.org/ethics/standards.htm.

2. Okla. Bar Assoc. Mission Statement (2007), www.okbar.org/public/about/mission.htm.

3. Okla. Bar Assoc. Lawyer’s Creed (1989), www.okbar.org/ethics/creed.htm.

4. *Id.*

5. Okla. Rules of Professional Conduct Preamble, ¶ [2] (2008).

6. *Id.* at ¶ [5].

7. *Id.* at ¶ [9].

8. Okla. Bar Assoc. Standards of Professionalism (2002, 2007).

9. *Id.* at Definition.

10. *Id.* at §1.6.

“Attorneys and judges must work together to make the courthouse a less hostile place.”

11. *Id.* at §2.7.

12. Okla. Bar Assoc. Standards of Professionalism, §5.1 (2002, 2007).

13. *Id.* at §5.2.

14. Okla. Code of Judicial Conduct Canon 3 B (3) (2006).

15. See, e.g., Gifford, *Very Appealing Ethics*, 77 Okla. B.J. 3471 (2006); Harris, *The Effect of Overzealous Advocacy on Professionalism—What is a Lawyer’s Duty Under Rule 1.3?*, 71 Okla. B.J. 1472 (2000); O’Carroll, *Partiality, Public Comment, Incivility and Disqualification: Protecting Due Process in the Wake of a Changing Judiciary*, 76 Okla. B.J. 2821 (2005).

16. See, Okla. Stat. Ann. tit. 21, § 565 (West 2002): “Direct contempts shall consist of disorderly or insolent behavior committed during the session of the court and in its immediate view....”

17. See, Okla. Stat. Ann. tit. 21, § 566 (West 2002): “[P]unishment for direct...contempt shall be by the imposition of a fine in a sum not exceeding Five Hundred Dollars (\$500.00) or by imprisonment in the county jail not exceeding six (6) months, or by both....”

ABOUT THE AUTHOR



Michael Stano is a Special District Court Judge for Payne County, serving on the bench since 2004. Before going on the bench, he was an OSU faculty member for 22 years and an assistant district attorney for Payne County for five years. He earned a B.A. from the University of Nevada, Reno (1969), an M.A. from the University of Colorado, Boulder (1970), a Ph.D. from the University of Minnesota, Minneapolis (1977) and a J.D. from OCU (1990).



L
A
W
Y
E
R
S
H
E
L
P
I
N
G
R
L
A
W
Y
E
R
S

**Not all problems
are black and white...**

**If you need help coping with
emotional or psychological stress,
please call**

1 (800) 364-7886

Confidential. Responsive. 24/7



Disqualification of the Trial Judge: Zealous Advocacy or Unethical Conduct?

By Julia C. Rieman

The title of this article would seem to pose a question that most practitioners would seldom face. Unfortunately, this author has had three cases in the last three years where the opposition sought and obtained the disqualification of the trial judge.¹ In each case disqualification of the judge was sought following entry of summary judgment or an interlocutory summary adjudication.² The party who sought the disqualification of the judge then presented the issues previously ruled upon to the newly assigned judge via a motion to reconsider. When for the third time this author had to bill a client for a second round of briefing of issues that had previously been decided by the originally assigned judge, the question posed by the title of this article came to mind.

Our Supreme Court has stated, and rightly so, that: "A neutral and detached judiciary is imperative to ensure procedural fairness to individual litigants and to preserve public confidence in the integrity of the judicial process. Every litigant is entitled to nothing less than the cold neutrality of an impartial judge."³ However, a trial judge's compliance with the Code of Judicial Conduct⁴ should ensure every litigant an impartial judge. For judges must personally observe very high standards of conduct "so that the integrity and independence of the judiciary will be preserved."⁵

Under the code, a judge must avoid even the *appearance* of impropriety; must act "in a manner that promotes public confidence in the integrity of the judiciary;" and must "not allow family, social, political or other relationships to

influence the judge's judicial conduct or judgment."⁶ If those admonitions were not enough to ensure each litigant an impartial judge, the code also prescribes that "A judge should not be swayed by partisan interests, public clamor or fear of criticism."⁷ "A judge should perform judicial duties without bias or prejudice."⁸ And, finally, a judge must "*disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned.*"⁹

The argument can then be made that if a trial judge has followed the code there need never be a reason for a litigant to seek disqualification. Anyone who practices in litigation long enough will be involved in at least one case where the judge, in accordance with the strictures of the code, will recuse him or herself. Fundamentally, this means any request for dis-

qualification presumes that the judge *has not* complied with the code.¹⁰ Furthermore, because the request for disqualification reflects counsel's belief (or that of the client) that the judge may be incapable of impartiality in the matter, the mere request itself "poisons the well" so to speak. Based on the mandates of the code, a judge may feel compelled to recuse from the case simply because his impartiality has been questioned in order to avoid the appearance of impropriety.

But even if a request for disqualification did not carry with it the implicit assertion that the judge has failed to comply with the code it nonetheless would seem to be a challenge to the integrity of the judge because the premise of such a request is that the judge may not be fair and impartial.

As such, before making any request for disqualification an attorney must consider Rule 8.2 of the Oklahoma Rules of Professional Conduct.¹¹ While Rule 8.2 clearly applies in the context of the consideration of a candidate for election or appointment to judicial office it also contains the flat admonition that: "A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge...."¹²

Certainly some may disagree with the position espoused above regarding the implications of a request for disqualification. However, no one can disagree that a request for disqualification is going to increase the expense of the suit, for both sides, and that it will cause delay. If a request for disqualification is made at the outset of the litigation and immediately granted the increased expense and delay will be minimal. But if the request is made at some later point in the litigation, after the parties have educated the originally assigned judge as to the facts and issues through briefing and

motions and/or after significant rulings have been made in the case the increase in expense and the delay can be considerable. If the initial request for disqualification, whether made early in the case or not, is denied then the delay occasioned by the request can again be considerable.

Rule 15 of the Rules for District Courts of Oklahoma¹³ provides the procedure for seeking the disqualification of the trial judge. First, one must make an *in camera* request to the judge to disqualify or to transfer the case to another judge.¹⁴ If that request is not "satisfactorily resolved," then one must file an actual motion, before the same judge, for disqualification.¹⁵ If the motion is denied, then the party seeking disqualification must re-present the motion to

the chief judge of the county, or if it is the chief judge's disqualification that is sought, then to the presiding judge of the administrative district, through a written request for rehearing.¹⁶ If that second request is denied then one has the option of filing an original jurisdiction action in the Supreme Court or the Court of Criminal Appeals¹⁷ for a *writ of mandamus*.¹⁸ While Rule 15 does provide that the party seeking dis-

qualification must file each successive request within five days of the denial of the prior request, there is nothing in the rule that limits the amount of time between the filing of the formal motion and the setting of a hearing on the motion or that imposes a time limit on the applicable appellate court for resolution of the original jurisdiction proceeding.¹⁹

The Oklahoma Supreme Court made it perfectly clear this year that it is a violation of a litigant's due process rights for a judge, whose disqualification has been sought by that litigant, to continue to preside over the case pending the ultimate resolution of the request for disqualification. In *Miller Dollarhide, P.C. v. Tal*,²⁰

“The Oklahoma Supreme Court made it perfectly clear this year that it is a violation of a litigant's due process rights for a judge, whose disqualification has been sought by that litigant, to continue to preside over the case pending the ultimate resolution of the request for disqualification.”

the court held: "When a Rule 15 proceeding to seek disqualification of a trial judge is initiated, the trial court *must refrain from presiding over the case* until the disqualification ruling is memorialized and the movant has, at the movant's option, exhausted the Rule 15 procedure." (Emphasis added). Indeed, it seems the court in *Miller Dollarhide, P.C.* believed, and probably justly so, that it had made this point clear in an opinion several years earlier when it stated:

A challenge to an assigned judge for want of impartiality presents an issue of constitutional dimension which must be resolved and the rule memorialized of record after a meaningful evidentiary hearing. The quest for recusal may not be ignored, nor is a judge free to proceed with the case until the challenge stands overruled of record following a judicial inquiry into the issue...²¹

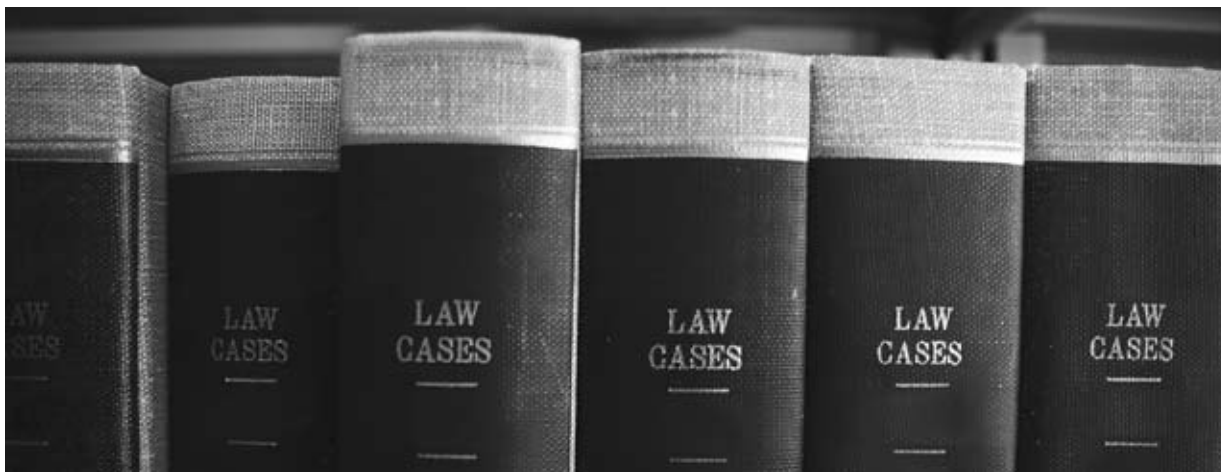
Accordingly, it is possible for a litigant to bring the case to a screeching halt for a significant period of time with the mere request for disqualification. Of course the case presumably can be reassigned pending the ultimate outcome of the request but then the disqualification has essentially become a *fait accompli*.²² While the request for disqualification wends its way through the three-step process that includes two tiers of review, available hearing

or trial dates may be lost, thus further delaying the case.

The inevitable delay that will result from any request for disqualification and the potential increase in the expense of the litigation for all concerned implicates Rule 3.2 of the Rules of Conduct that states: "A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client." Therefore, the practitioner must ask herself whether seeking the disqualification of the judge is truly in the best interest of the client. In our legal system, a trial judge's error in application of the law is properly addressed by an appeal and not by disqualification of the judge.

It is misconduct for a lawyer to engage in conduct that is "prejudicial to the administration of justice."²³ The Discovery Code²⁴ and the Pleading Code²⁵ each contain a section directing they be construed to secure not only a "just" determination of the action but a "speedy and inexpensive" one as well.²⁶ Likewise, the Evidence Code²⁷ provides that it is to be construed to eliminate "unjustifiable expense and delay."²⁸ Under the Pleading Code, when you, the practitioner, sign your motion to disqualify the trial judge, you are certifying to the court that it is not "presented for any improper or frivolous purpose, such as to harass or to cause *unnecessary delay or needless increase in the cost of litigation.*"²⁹

“ It is misconduct for a lawyer to engage in conduct that is ‘prejudicial to the administration of justice.’ ”



These three codes — the Discovery Code, the Pleading Code and the Evidence Code — provide the essential rules that govern all civil litigation. In each, the Legislature has clearly expressed its intent that litigation should be resolved as quickly and inexpensively as possible. Thus an action, such as seeking the disqualification of the trial judge, which will necessarily increase the cost of the litigation and which may result in substantial delay, is “prejudicial to the administration of justice,”³⁰ and, accordingly a violation of the Rules of Conduct unless, of course, there are truly sound reasons for questioning the impartiality of the judge.³¹

The preamble to the Rules of Conduct provides that: “A lawyer should demonstrate respect for the legal system and for those who serve it, including judges.”³² Seeking the disqualification of the trial judge simply because he has ruled against your client demonstrates a lack of respect for the judge and a lack of respect for the legal system. Thus, after much consideration, it is this author’s opinion that seeking the disqualification of the trial judge, in the absence of truly extraordinary circumstances, is not merely zealous advocacy; it is unethical conduct.

1. One of these cases involved a *pro se* litigant and, therefore, should probably not be considered in determining whether there is a trend toward seeking disqualification of the trial judge.

2. In common courthouse parlance an “interlocutory summary adjudication” is referred to as a “partial summary judgment.” However our Supreme Court has stated: “The proper term to be applied to the ruling actually sought [under Okla. Stat. Ann. tit. 12, Ch. 2, App. 1, Rules for the District Courts of Oklahoma Rule 13(e)] would be an interlocutory summary adjudication or determination.” *Mann v. State Farm Mutual Auto Insurance Company*, 1985 OK 27, 698 P.2d 925, 927, f.2.

3. *Clark v. Board of Education of Independent School District No. 89*, 2001 OK 56, ¶6, 32 P.3d 851.

4. OKLA. STAT. ANN. TIT. 5, Ch.1, App.4.

5. Code of Judicial Conduct, Canon 1.

6. Code of Judicial Conduct, Canon 2.

7. Code of Judicial Conduct, Canon 3(B)(1).

8. *Id.* at ¶(B)(4).

9. *Id.* at ¶(E)(1) (emphasis added).

10. Admittedly, a counter-argument might be that the litigant has simply brought to the judge’s attention an issue or fact that might impact the judge’s impartiality that had not occurred to the judge. But it hardly seems likely that an issue of which she was not cognizant could impact a judge’s neutrality.

11. OKLA. STAT. ANN. TIT. 5, Ch.1, App. 3-A, Oklahoma Rules of Professional Conduct (hereinafter: “Rules of Conduct”). Rule 8.2 provides in its entirety:

Rule 8.2 Judicial And Legal Officials

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

12. *Id.*, (emphasis added).

13. OKLA. STAT. ANN. TIT. 12, Ch.2, App., Rules for District Courts of Oklahoma.

14. Rule 15(a). “*In camera*” which is defined in part by BLACK’S LAW DICTIONARY 387 (Abridged 5th ed. 1983) as “In chambers; in private” does not mean the same thing as “*ex parte*” which is defined as: “On one side only; by or for one party; done for, in behalf of, or on the application of one party only.” Black’s Law Dictionary 297 (Abridged 5th ed. 1983). If you request disqualification of the trial judge you should give notice to opposing counsel of even your first, in camera, request.

15. Rule 15(a).

16. Rule 15(b).

17. The action is filed with the Supreme Court in civil cases and with the Court of Criminal Appeals in criminal cases. Rule 15(c).

18. Rule 15(b).

19. From this author’s experience it appears the Oklahoma Supreme Court promptly determines original jurisdiction proceedings; ruling, on average, within one month from the time the application to assume original jurisdiction is filed.

20. 2007 OK 58, ¶ 21, 163 P.3d. 58

21. *Miller Dollarhide, P.C. v. Tal*, 2007 OK 58, ¶ 9, 163 P.3d. 58, quoting from *Clark*, 2001 OK 56, at ¶7.

22. “An accomplished fact; a thing already done: *The enemy’s defeat was a fait accompli long before the formal surrender.*” “Fait accompli.” *Dictionary.com Unabridged* (v 1.1). Random House, Inc. 21 Sep. 2007. <Dictionary.com http://dictionary.reference.com/browse/fait accompli>.

23. Rule of Conduct 8.4(d). This rule will be superseded Jan. 1, 2008, but the new version contains identical language.

24. OKLA. STAT. ANN. TIT. 12 §3224, et. seq.

25. OKLA. STAT. ANN. TIT. 12 §2001, et. seq.

26. OKLA. STAT. ANN. TIT. 12 §§ 2001 and 3225.

27. OKLA. STAT. ANN. TIT. 12 §2101, et. seq.

28. OKLA. STAT. ANN. TIT. 12 §2102.

29. OKLA. STAT. ANN. TIT. 12 §2011(B)(1) (emphasis added).

30. Rule of Conduct 8.4(d). This rule will be superseded Jan. 1, 2008, but the new version contains identical language.

31. In one of the cases that inspired this article counsel’s basis for seeking the disqualification of the judge was that the judge, following a hearing on a motion, commented to counsel that with the price of a certain commodity what it was today, he didn’t understand why the parties didn’t get together and settle the case. Counsel for the defendant argued that this indicated the judge’s bias in favor of the plaintiff because the statement suggested the defendant should pay something. Following that line of “logic” a party could challenge the impartiality of a judge any time the parties were ordered to a settlement conference.

32. Although the current preamble will be superseded on Jan. 1, 2008, the new version contains identical language.

ABOUT THE AUTHOR



Julia C. Rieman is a shareholder in the Enid firm of Gungoll, Jackson, Collins, Box & Devoll PC. She practices mainly in the areas of commercial litigation and appeals. She usually assists on the firm’s most complex litigations. Ms. Rieman also regularly assists other lawyers across the state with interlocutory and final appeals as well as original jurisdiction proceedings. She is counsel of record on 15 published opinions.

DNA Paternity Testing

Refer your patients to the DNA Laboratory more Doctors trust:

Absolute DNA

An affiliate of Genetica DNA Laboratories, Inc.

405-680-0681

- **Results >99.9%**
- **48-hour standard results**
- **NEXT DAY RESULTS Available**
- **Laboratory is accredited by NAABB, CAP, NYSDOH, NFSTC, and (FQS-I, ISO/IEC 17025).**
- **AABB TESTING FOR IMMIGRATION**

The most accurate DNA test available...anywhere.

Laboratory is accredited by the American Association of Blood Banks (AABB), College of American Pathologists (CAP), New York State Department of Health (NYSDOH), National Forensic Science Technology Center (NFSTC), and Forensic Quality Service-International (FQS-I, ISO/IEC 17025).

THE EDMOND SUN

The Edmond Sun, can be your source for legal publishing in Oklahoma County.

We offer fast, accurate, dependable service and competitive pricing. Affidavits will be issued to each lawyer as well as the copy(s) we file with the courthouse or Corporation Commission.

- E-mail documents preferred.
- We accept: pdf, tiff, JPEG, Word, WordPerfect, Rich Text, Adobe, or copy and paste documents.
- Published Sunday through Friday.

Call or email for more information.



LEGAL PUBLICATIONS

Patricia Wheat

E-mail: legals@edmondsun.com

405.341.2121 Ext. 203 • Fax 405.340.7363

123 South Broadway • PO Box 2470

Edmond, Oklahoma 73083

THE TRUST COMPANY OF OKLAHOMA

With Us, It's Personal



Joe Womack, senior vice president and manager of the Oklahoma City office, seated left. Alysa Kaiser, assistant vice president, and vice presidents Cameron Turner and John Austin.

- 6307 Waterford Blvd., Suite 215, Oklahoma City, OK 73118 405/840-8401
- Two Warren Place, 6120 South Yale, Suite 1900, Tulsa, OK 74136 918/744-0553
- 1924 South Utica, Suite 500, Tulsa, OK 74104 918/745-2400
- 215 State Street, Muskogee, OK 74401 918/683-6761 • www.trustok.com

At The Trust Company of Oklahoma, our relationship with our clients is always personal.

We offer investment management, trust services, estate planning and employee benefit plans.



Building financial strength for your family



The Duty to Notify: The Ethical Use of Metadata in Oklahoma

By Drew T. Palmer and Cherish K. Ralls

After months of heated negotiations, your client, the buyer in a real estate transaction, finally agreed to give in to the seller's demands. Last night, the seller's attorney e-mailed the latest version of the purchase agreement. While reviewing it, you wonder if the seller's attorney has left "metadata" in this version of the agreement. In your last CLE, you remember the instructor droning on about how a sophisticated attorney can uncover various pieces of information, such as comments, prior versions, dates and other authorship information, by viewing the metadata associated with a particular electronic document.

You consider searching the metadata in the purchase agreement in hopes of retrieving a hidden comment indicating if the seller would accept a lower offer. This is an ethical dilemma. This article discusses the issues surrounding the ethical use of metadata and ultimately concludes that, in Oklahoma, attorneys who receive inadvertently disclosed metadata have a duty to notify the sending party.

Dealing with metadata is a reality of practicing law in today's legal environment. Attorneys continually create and receive electronic documents. Each of these documents may contain hidden "metadata." Metadata, when accessed, can reveal information that was never intended to be disclosed by the author of the document.¹ For example, metadata could identify the date an electronic document was created, authored, as well as disclose previous versions and edits to the electronic document. Notably, metadata may be found in virtually any type of electronic file including pictures,

video clips, documents or other types of digital files. The effective use of metadata can give one side a distinct advantage.

Much has been written regarding the role of electronically stored information and metadata in the discovery process; but recently there has been less focus on the role of metadata in an attorney's everyday correspondence and negotiations.² The Rules of Professional Conduct likewise place ethical restraints on a lawyer's use of metadata in the normal course of electronic document exchange, such as contract negotiations, advisory opinions and other electronic communications.

Very few jurisdictions have analyzed the ethical use of metadata outside the discovery process. Specific questions not yet addressed are whether the receipt of metadata outside the course of discovery is considered an inadvertent disclosure of confidential information, and if so, how may the receiving attorney ethically

use such disclosed metadata? Oklahoma has not made an authoritative ruling regarding the ethical use of metadata and this article will look to other jurisdictions' rulings for their analyses.

AUTHORITIES ADDRESS THE PROBLEM OF METADATA

Several authorities have issued written opinions discussing an attorney's ethical obligation when receiving metadata in an electronic document. Unfortunately, these opinions have not utilized the same analysis or reached the same conclusion. For example, the ABA's Standing Committee on Ethics and Professional Responsibility and the Florida Bar Professional Ethics Committee found that an attorney who receives metadata may use that metadata in some instances but likely has an obligation to notify the disclosing attorney.³ The relevant authorities in New York and Alabama, on the other hand, have discussed metadata in conjunction with the general prohibition on "conduct involving dishonesty, fraud, deceit or misrepresentation."⁴ Ultimately, these authorities found that an attorney who receives metadata may only use such metadata if it does not contain confidential client information. The Maryland State Bar Association's Committee on Ethics has taken perhaps the most liberal view of the issue, stating that an attorney has no ethical duty or obligation upon receiving inadvertently disclosed metadata.⁵ As the Oklahoma authorities have not explicitly addressed this issue, a more in-depth review of the different authorities' reasoning is helpful.

EARLY OPINIONS

The New York State Bar Association's Committee on Professional Ethics delivered the first opinion regarding the ethical duties and obligations when an attorney receives metadata.⁶ The analysis underlying the New York opinion relies on the assumption that metadata is disclosed "unknowing[ly] and unwilling[ly]." In 2001, the New York committee believed that attorneys were unlikely to know of the existence of metadata in electronic messages. Thus, the New York opinion treated metadata as "confidential" attorney-client communication and noted that such communications are to be scrupulously protected under the auspices of sound public policy. The New York opinion went on to find that an attorney's use of metadata ran afoul of the prohibition on conduct "involving dishonesty, fraud, deceit or misrep-

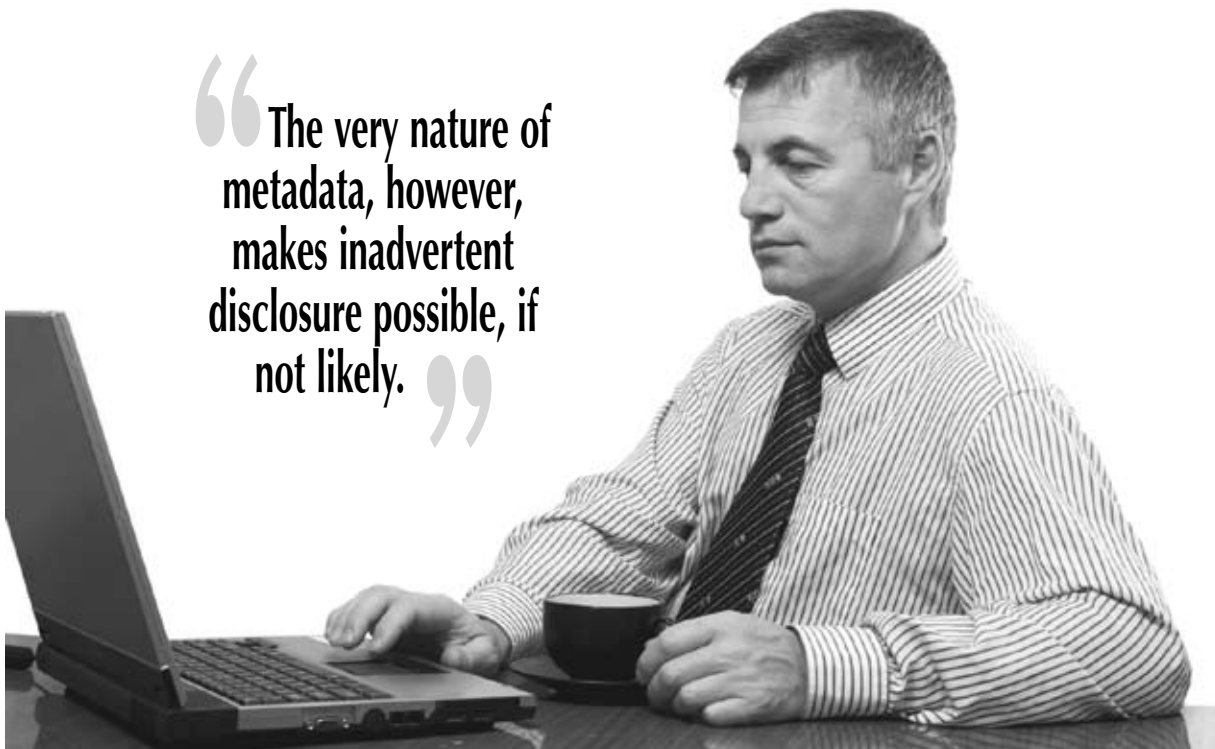
resentation," as it necessarily invaded the attorney-client relationship.⁷ It concluded that attorneys are prohibited from utilizing metadata without the knowledge of the disclosing party. This is the first indication from any authority that an attorney may have a duty to notify a party of inadvertently disclosed metadata.⁸

RULE 4.4

Under the Model Rules of Professional Conduct, the treatment of inadvertently disclosed information is generally addressed in Rule 4.4, which provides in part: "[a] lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender." The language of Rule 4.4 does not address the issue of metadata directly. The very nature of metadata, however, makes inadvertent disclosure possible, if not likely. Specifically, metadata is rarely visible when editing a document, and since metadata is often unknowingly incorporated into subsequent copies of the document, it is easy to envision how metadata could be "inadvertently sent." In fact, the ABA Ethics Committee recently analyzed the issue of metadata under Rule 4.4 in ABA Formal Op. 06-442. In its analysis, the ABA Ethics Committee indicated that an attorney who receives inadvertently disclosed metadata may use such metadata but must notify the sending party of its receipt.⁹ The determination of whether metadata is disclosed "advertently" or "inadvertently" depends upon the facts and circumstances of the disclosure.¹⁰ The ABA opinion does not prohibit an attorney's use of metadata, even if the disclosure is inadvertent, but does impose a duty to notify the sending attorney of such inadvertent disclosures.

The ABA opinion was published in August 2006. Since that time, at least two states, Maryland and Florida, have acknowledged the analysis set forth in the ABA opinion, namely that Model Rule 4.4 requires notification to the disclosing party. The two states, however, have differed in their ultimate conclusions.¹¹ While imposing a duty of notification, Florida requires that an attorney not attempt "to obtain [] metadata information relating to the representation of [the sending attorney's] client" where the receiving attorney knows or should know that the metadata was inadvertently disclosed.¹² The Maryland State Bar Association's Committee on Ethics, while acknowledging Rule 4.4 imposes a duty to notify, observes that Mary-

“The very nature of metadata, however, makes inadvertent disclosure possible, if not likely.”



land has not adopted sub-part (b) of Model Rule 4.4.¹³ As a result, the Maryland committee found that an attorney is not required to “notify the sending attorney that there may have been an inadvertent transmittal of privileged materials,” including metadata.¹⁴ Maryland is the only jurisdiction to explicitly find that attorneys who receive metadata are not required to notify the sending party.

RULE 8.4

Two authorities, New York and Alabama, have found a duty to notify under their version of Model Rule 8.4,¹⁵ which provides in part:

It is professional misconduct for a lawyer to...

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another...

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice...

In finding a duty to notify, the New York and Alabama authorities both treat metadata as “information that may be protected by the attorney-client privilege, the work product

doctrine or that may otherwise constitute a ‘secret’ of another lawyer’s client.”¹⁶ Under this analysis, the use of metadata runs afoul of Rule 8.4’s prohibition on conduct “involving dishonesty, fraud, deceit or misrepresentation” as it “constitutes a knowing and deliberate attempt by the [receiving] attorney to acquire confidential and privileged information in order to obtain an unfair advantage against an opposing party.”¹⁷ In contrast to the New York and Alabama authorities, the Maryland committee, in considering Rule 8.4, found that an attorney’s duty to notify only exists in the “arena of federal litigation” as provided for in the Federal Rules of Civil Procedure.¹⁸

OKLAHOMA AND THE DUTY TO NOTIFY

In Oklahoma, the ethical treatment of inadvertently disclosed metadata should be analyzed under both Rule 4.4 and Rule 8.4. The current version of the Oklahoma Rules of Professional Conduct can be found at Okla. Stat. tit. 5, Appendix 3-A of the Oklahoma Statutes.

Interestingly, the current version of ORPC 4.4 will be superseded on Jan. 1, 2008 by a newer version. The sole difference between the current version and the new version of ORPC 4.4 is the addition of subpart (b):

(b) A lawyer who receives a document relating to the representation of the lawyer's client and knows or reasonably should know that the document was inadvertently sent shall promptly notify the sender.

As previously discussed, jurisdictions that have adopted subpart (b) to Model Rule 4.4 have universally found a duty to notify.¹⁹ Assuming that Oklahoma follows the prevailing trend, after Jan. 1, 2008, attorneys practicing law in Oklahoma will have a duty to notify those whom they know, or reasonably should know, have inadvertently sent the metadata.

Prior to Jan. 1, 2008, attorneys practicing in Oklahoma may also have a duty to notify pursuant to Rule 8.4. As previously discussed, several authorities have indicated that metadata often takes the form of confidential communications protected from disclosure on the basis of a public policy supporting the sanctity of the attorney-client relationship.²⁰ Therefore, prior to the effective date of subpart (b) of Rule 4.4, attorneys who receive inadvertently disclosed metadata should be wary of New York and Alabama authorities' interpretation that Rule 8.4 imposes a duty to notify in such situations. And while Maryland has independently found that Rule 8.4 imposes no such duty, the prudent attorney would air on the side of caution and chose to notify those from whom she receives metadata.

The next time you receive an electronic document be cautious. Your treatment of the metadata contained in that document may result in a violation of the Oklahoma Rules of Professional Conduct. In any event, the majority view suggests that any use of metadata be conditioned on your notification to the sending party.

1. ABA Standing Comm. on Ethics & Prof'l Responsibility, Formal Op. No. 06-422 (2006).

2. For more information on metadata as it relates to the discovery process, the authors recommend starting with Elliott Paul Anderson, *What Lies Beneath: Native Format Production and Discovery of Metadata in Federal Court*, 78 OKLA. B.J. 999 (2007).

3. ABA Standing Comm. on Ethics & Prof'l Responsibility, Formal Op. No. 06-422 (2006); Prof'l Ethics Comm. of the Fl. B., Op. No. 06-2 (2006).

4. N.Y. State B. Ass'n Comm. on Prof'l Ethics, Formal Op. 749 (2001); Ala. St. B. Disciplinary Commission, Op. RO-2007-02 (2007).

5. Md. St. B. Ass'n Ethics Comm., Op. 2007-09 (2007).

6. N.Y. State B. Ass'n Comm. on Prof'l Ethics, Formal Op. 749 (2001).

7. DR 1-102(A)(4) (analogous to Model Rule 8.4)

8. The New York Opinion relied in part on ABA Formal Op. 92-368, which concluded that a lawyer who receives confidential information and clearly understands that he is not the intended recipient, should notify the disclosing lawyer, stop examining the disclosed information, and abide by the instructions of the disclosing lawyer regarding the disposition of such disclosed information. Notably, the ABA later withdrew this opinion in ABA Formal Op. 05-437. ABA Standing Comm. on Ethics & Prof'l Responsibility, Formal Op. No. 05-437 (2005).

9. ABA Standing Comm. on Ethics & Prof'l Responsibility, Formal Op. No. 06-422 (2006).

10. *Id.* at n. 12 (noting that "one of the facts that might be relevant is whether the metadata is a privileged communication").

11. Prof'l Ethics of the Fl. B., Op. 06-02 (2006); Md. St. B. Ass'n Ethics Comm., Op. 2007-09 (2007).

12. Prof'l Ethics of the Fl. B., Op. 06-02 (2006).

13. Md. St. B. Ass'n Ethics Comm., Op. 2007-09 (2007).

14. *Id.*

15. N.Y. State B. Ass'n Comm. on Prof'l Ethics, Formal Op. 749 (2001); Ala. St. B. Disciplinary Commission, Op.

RO-2007-02 (2007).

16. Ala. St. B. Disciplinary Commission, Op. RO-2007-02 (2007) citing N.Y. State B. Ass'n Comm. on Prof'l Ethics, Formal Op. 749 (2001).

17. Ala. St. B. Disciplinary Commission, Op. RO-2007-02 (2007).

18. Md. St. B. Ass'n Ethics Comm., Op. 2007-09 (2007) (citing Fed. R. Civ. Proc. 16(b), 26(b)).

19. See *supra* text accompanying notes 8-13.

20. See *supra* text accompanying notes 14-17.

ABOUT THE AUTHORS



Drew Palmer serves as an associate in Crowe & Dunlevy's Oklahoma City office. His practice emphasizes patent, copyright, trademark and software licensing matters. He received his bachelor of arts degree in 1996 from Brown University and graduated from the OU College of Law in 2006.

Prior to attending law school, he spent several years in management positions for an enterprise software company and has experience as a programmer and consultant as well.



Cherish K. Ralls is an associate at Crowe & Dunlevy's Oklahoma City office. Her practice centers on business and commercial litigation. She received her degree from the OU College of Law in 2006 with honors. In 2003, she received a B.S. in political science and a B.A. in economics from OSU, where she graduated magna cum laude and was named the Outstanding Senior in the Arts and Sciences College and a Top Ten Senior Graduate.

contd from page 3116

year was made up entirely of women, we still need more women and persons of color in leadership positions.

I am proud to say your Board of Governors took a historic step at its April meeting and unanimously authorized me to send a letter to Gov. Henry asking him to veto the so-called tort reform bill. In the past, the association was hesitant to take a position on such matters as it might place the association in a difficult political position. Your Board of Governors felt certain provisions of the tort reform bill went beyond bad public policy and jeopardized the personal rights guaranteed by our state and federal constitutions. If the bill had passed, the citizens of this state would have lost constitutional control over the jury system and the legal system as a whole. The easy thing to do would have been for your Board of Governors to do nothing. That was not the right thing to do. The right thing to do was to stand up for the rights of the citizens of this state, the administration of justice and the independence of the judiciary.

When I became OBA president in January, I wanted to have a successful Solo and Small Firm Conference and Annual Meeting. I am pleased to report both events were very successful and enjoyed record-breaking attendance. Wasn't Ben Stein great!

The state of the Oklahoma Bar Association is very good. The OBA is in excellent hands. I know Bill Conger and Jon Parsley will be excellent presidents the next two years.

I want to express my sincere gratitude and thanks for being allowed to serve as your president this past year. I will be forever grateful for this opportunity and experience. It has truly been the experience of a lifetime.



President Beam practices in
Weatherford. sbeam@ionet.net
(580) 772-2900



**To get your free
listing on the
OBA's lawyer
listing service!**

Just go to
www.okbar.org
and log into your
myokbar account.

Then, click on the
"Find a Lawyer" Link.

House of Delegates Actions

Actions of the OBA House of Delegates on matters submitted for a vote at the 103rd Annual Meeting on Friday, Nov. 9, 2007, are as follows:

RESOLUTION NO. ONE

BE IT RESOLVED by the House of Delegates of the Oklahoma Bar Association that the Association adopt, as part of its Legislative Program, proposed legislation creating new law to be codified as 74 O.S. Section 9100 et seq. and amending existing laws to create a State Administrative Tax Tribunal to have jurisdiction over Oklahoma tax controversies and to implement an independent Oklahoma Tax Commission internal review and settlement program. (Requires 60% affirmative vote for passage. OBA Bylaws Art. VIII Sec. 5) (Submitted by the OBA Taxation Law Section.)

Action: Withdrawn

WITHDRAWN

RESOLUTION NO. TWO

BE IT RESOLVED by the House of Delegates of the Oklahoma Bar Association that the Association adopt, as part of its Legislative Program, as published in the Oklahoma Bar Journal and posted on the OBA Web site at www.okbar.org, proposed legislation amending Title 12 Oklahoma Statutes Section 1101.1 to clarify that an offer of judgment is applicable to condemnation proceedings. (Requires 60% affirmative vote for passage. OBA Bylaws Art. VIII Sec. 5) (Submitted by the OBA member Ray Vaughn. Adoption not recommended by the OBA Board of Governors.)

Action: Failed

FAILED

FLOOR RESOLUTION NO. ONE

(Submitted by the OBA members D. Gregory Bledsoe and Micheal C. Salem.)

WHEREAS, the Magna Carta (*Magna Carta Libertatum* or "Great Charter of Freedoms"), originally issued in 1215, was the most significant early influence that led to the rule of constitutional law today; and

WHEREAS, the Magna Carta influenced many common law and other documents, such as the constitutions of several countries, including the Republic of Pakistan, the United States Declaration of Independence, the Constitution, and the Bill of Rights, and is considered one of the most important legal documents in the history of democracy; and

WHEREAS, the Magna Carta required the executive to renounce certain rights, respect certain legal procedures, and accept that his will could be bound by the law; and

WHEREAS, the Magna Carta explicitly protected certain basic human rights, including the right of Habeas Corpus; and

WHEREAS, the United States Declaration of Independence noted that a tyrannical executive that had a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny, and identified as evidence of such tyranny:

The unlawful imprisonment without due process of law;

The deprivation of the benefit of Trial by Jury;

the obstruction of the administration of Justice by refusing Assent to Laws for establishing Judiciary Powers;

The suspension of [the] Legislatures, and declaring [himself] invested with power to legislate in all cases whatsoever; and

Whereas, the signers of this Declaration, pledged to each other their lives, fortunes, and sacred Honor, and

Whereas, our brother and sister lawyers and judges in Pakistan have been imprisoned and intimidated for upholding their oath of office, their Constitution, the rule of law, and the independence of the constitutional judiciary.

Therefore, We, as the House of Delegates of the Oklahoma Bar Association, do hereby resolve and declare support and solidarity with those judges and lawyers in the Constitutional democracy of Pakistan in their protest and call upon the President of Pakistan to reinstate the Constitution of Pakistan, reinstate the Chief Justice of Pakistan, release those judges and lawyers detained including the Presidents of the Supreme Court Bar Association and the Lahore High Court Bar Association, make public the status of the numerous lawyers who have been detained, restore each such judge and lawyer

to their respective offices, and further to respect the rule of law.

Dated this 9th day of November, 2007.

Action: Adopted

ADOPTED

TITLE EXAMINATION STANDARDS

Action: The Oklahoma Title Examination Standards revisions and additions published in the Oklahoma Bar Journal 78 2683 (Oct. 13, 2007) and posted to the Web site at www.okbar.org were approved in the proposed form. The revisions and additions are effective immediately.

ADOPTED

All resolutions are available in their entirety at www.okbar.org



Custom Designed Binders for your *Oklahoma Bar Journal*

Attractive, durable binder will keep your Bar Journals accessible and provide easy storage for 12 issues. They cost \$15.95 each prepaid.

Please send: _____ binders for the *Oklahoma Bar Journal* at \$15.95. Make check payable to Oklahoma Bar Association.

TOTAL ENCLOSED \$ _____

NAME (PRINT)

STREET ADDRESS

CITY

ZIP

PHONE

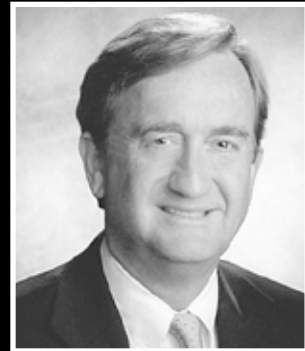
Mail to:
Public Information Dept.
Oklahoma Bar Association
P.O. Box 53036
Oklahoma City, OK 73152



J. WILLIAM CONGER
Oklahoma City
President



JON K. PARSLEY
Guymon
President-Elect



MICHAEL C. MORDY
Ardmore
Vice President



JACK L. BROWN
Tulsa



W. MARK HIXSON
Yukon

2008

OBA

OFFICERS & NEW BOARD MEMBERS



JERRY L. MCCOMBS
Idabel



JAMES T. STUART
Shawnee



KIMBERLY WARREN
Tecumseh
OBA YLD Chairperson

OBA 103rd Annual Meeting

Nov. 7-9, 2007 • Sheraton Hotel, OKC



Jon Ford at Annual Meeting Registration



Susan Rogers, Lou Ann Moudy, Kim Spady



Mike Mordy, Judge Rick Bozarth



Peggy Stockwell, Richard Stevens



Faye Rodgers, LeAnne McGill



Luke Adams, Juan Garcia, Tim Dowd, Doug Jacobson



Myra Kaufman, Debra Charles, Luke Gaither, Bill Charles, Renee Hildebrant and Tara LaClair.



MC Randy Grau and Rees Evans facing the Idol judges



OBA Idol winner Chanda Graham



OBA Idol Judges Dolly Parton, The "Church Lady" and Elvis, otherwise known as Deborah Reheard, Renee Hildebrant and Luke Gaither



Stephen Fabian and Vic Kennemer



Annual Luncheon Speaker Ben Stein



President-Elect J. William Conger



Board of Governors voting held at the House of Delegates Meeting



OBA Fun Walk participants Linda Birch, Rhonda Reynolds, Mary Ewing and Janice Yeary



Renee Anderson and Todd Clark croon a song by "Old Blue Eyes," Frank Sinatra



OSU wrestling coach John Smith at the President's Breakfast.



Plenary Session panelists David Prater, Chris Ross, William Peterson and moderator Judge Edward Cunningham



Barbara Burton of "The Burton Band" entertains the crowd during President Beam's Passport to Wine Country.



Joe Stamper Distinguished Service Award winner Winfrey Houston



Elizabeth and Stephen Beam

2007 Attorney Art Show

The 2007 OBA Art Show was another great success. Twenty-eight artists entered 73 pieces of art in six different categories. A panel of three judges scored the art and awards were presented to the attorney artists listed below.

Best of Show/Artist of the Year—The acrylic titled “Central Park Lady” was chosen best in show, and its creator Don Holladay of Oklahoma City was named OBA artist of the year. The inspiration for the piece came from a trip Mr. Holladay took to New York to see a Yankees game over Memorial Day weekend. After watching people in Central Park one afternoon, the image played out perfectly onto the canvas.

OIL PAINTING

1st Place
Don A. Schooler
“Spring Thaw”

2nd Place
Don Holladay
“Seasons”

3rd Place
Paula Davidson Wood
“Adam”

COLOR DRAWING

1st Place
Dorothy Alexander
“Bamboo Breeze”

2nd Place
Dorothy Alexander
“Mt. Torrent”

3rd Place
Paula Davidson Wood
“Cow”

BLACK AND WHITE DRAWING

3rd Place
Bryan L. Dupler
“Temple Houston”

BLACK AND WHITE PHOTOGRAPHY

1st Place
Kenni B. Merritt
“Powerline”

2nd Place
Melissa DeLacerda
“Cost of War”

3rd Place
Kenni B. Merritt
“Whatcom”

COLOR PHOTOGRAPH

1st Place
Jim Loepp
“Holiness”

2nd Place
Kenni B. Merritt
“Squalicum Harbor at Sunset”

3rd Place
Audrey Huffman
“Spider Web”



OBA President Stephen Beam presents the OBA 2007 Artist of the Year Award to Don Holladay at the Annual Luncheon.

ACRYLIC

1st Place
Francis Courbois
“Girl”

2nd Place
Don Holladay
“Central Park Lady”

3rd Place
Judge John Blake
“French Bouquet”

WATERCOLOR

1st Place
David Beal
“Senior Partner”

2nd Place
Billy Coyle
“My Soul”

2007 Attorney Art Show

THREE-DIMENSIONAL

1st Place
Cam Cherry
"Mesquite Burl Form"
- small mouth bowl

2nd Place
Cam Cherry
"Mesquite Burl Form"
- large mouth bowl

3rd Place
Gisele Perryman
"Inti-Sun God"

MIXED MEDIA

1st Place
Francis Courbois
"Shaman"

2nd Place
Don A. Schooler
"Autumn"

3rd Place
Judge Michael Stano
"State Capitol"

CRAFT

1st Place
Amanda Proctor
"Bead Crown"

2nd Place
Amanda Proctor
"Bead Choker"

CODE OF JUDICIAL CONDUCT

The OBA Bench and Bar Committee has drafted proposed revisions to the Oklahoma Model Code of Judicial Conduct.

***Your comments
are requested.
Deadline:
Jan. 31, 2008.***

For complete details, go to **www.okbar.org** and click on the Proposed Code of Judicial Conduct link under the Other News heading.

Your Mom Always Said
Nothing In Life Is Free...



Sorry Mom.

Get your FREE listing on the
OBA's lawyer listing service!



Go to **www.okbar.org** and
log into your myokbar account.
Then, click on the "Find a Lawyer" Link.



OBA Exclusive

GREG BURNS

color lithograph

- each hand signed by Greg
- available now
- 11" x 15" color lithograph, 17" x 21" framed size, black solid wood frame with double mats
- taupe top mat with black liner mat
- to view in color see www.okbar.org
- \$215; \$20 shipping & handling for each print
(no shipping charges if picked up at Oklahoma Bar Center)

*Holiday
Gift Ideas*

Name _____

OBA # _____

Street Address* _____

City _____ State _____ Zip _____

*no P. O. boxes, shipping via UPS

_____ color lithograph(s) @ \$215 each \$ _____

_____ shipping & handling @ \$20 each \$ _____

(no shipping charges if picked at Oklahoma Bar Center) Total \$ _____

Make check payable to the OBA and mail entire page to:

**OBA, P.O. Box 53036
Oklahoma City, OK 73152-3036**

For ☐ Visa or ☐ Master Card

Fax: (405) 416-7003

Credit Card # _____

Exp. Date _____

Authorized Signature _____

Questions: call Dan Murdock, (405) 416-7055
or E-mail danm@okbar.org

Oklahoma Bar Journal Index for 2007, Volume 78

AUTHOR-ARTICLE INDEX	VOL.	NO.	PAGE	DATE
<i>Anderson, Elliot Paul</i> What Lies Beneath — Native Format Production and Discovery of Metadata in Federal Court	78	12	999	04/14/07
<i>Armagh, Daniel</i> Search and Seizure of Electronic Evidence in Computer-Facilitated Crimes Against Children	78	9	697	03/10/07
<i>Bacharach, Judge Robert</i> FBA Chapter Provides Needed Legal Assistance	78	9	731	03/10/07
<i>Barnett, Judge David</i> Frog Fiasco	78	12	1048	04/14/07
The Wrong Man	78	34	3208	12/08/07
<i>Beam, Stephen</i> We Have A Problem	78	2	100	01/13/07
The Traditional January President's Message	78	6	396	02/10/07
Guess Who's a Lifetime Member of the American Bar Association	78	9	668	03/10/07
One of the Best Things the OBA Does	78	12	956	04/14/07
Sometimes You Just Have to Do the Right Thing	78	15	1268	05/12/07
So Much to Do and So Little Time to Do It	78	21	1916	08/04/07
Something All of Us Can Do	78	24	2172	09/01/07
Mentoring: A New Beginning	78	27	2468	10/06/07
The Good that Lawyers Do	78	30	2804	11/03/07
The Experience of a Lifetime	78	34	3116	12/08/07

<i>Blau, Edward M.</i> Mental Health Courts	78	30	2823	11/03/07
<i>Bowling, Michael W.</i> <i>Saint v. Data Exchange: A Sea Change or Business as Usual for the Public Policy Tort Exception to Employment At-Will?</i>	78	2	137	01/13/07
<i>Brockett, B.J.</i> Where's the Courthouse?	78	2	192	01/13/07
<i>Burk, Jana</i> <i>Hagen v. Watts Public Schools: Abuse and Discretion under the Teacher Due Process Act</i>	78	27	2493	10/06/07
<i>Burkett, Teresa Meinders</i> HIPAA Rules All Lawyers Should Know	78	21	1943	08/04/07
<i>Calloway, Jim</i> OBA Launches Fastcase Benefit	78	2	133	01/13/07
The Effective Tightwad Lawyer	78	2	163	01/13/07
Bless This Messy Desk	78	6	468	02/10/07
The Rise and Fall of the Dictation Tape	78	12	1021	04/14/07
Subscribe to CoreVault Online Backup at a Discount	78	15	1325	05/12/07
Closing Files, Destroying Files and Making Money	78	21	1979	08/04/07
Closing Files, Destroying Files and Making Money (Part 2)	78	24	2211	09/01/07
Voice-Activated Technology for Lawyers	78	27	2550	10/06/07
Test Your Legal Technology IQ	78	30	2884	11/03/07
Year's Best in Law Office Management and Technology	78	34	3174	12/08/07
<i>Carter, Martha Rupp</i> The Paradox of 'Emergency Preparedness': Can We Be Prepared for a Public Health Emergency?	78	21	1931	08/04/07
<i>Caudle, Dietmar K.</i> A State Legal Referral Service — Does Oklahoma Need It?	78	2	174	01/13/07

<i>Clark, Gary C.</i> The Charitable IRA Rollover — A Few Things You Ought to Know	78	15	1291	05/12/07
<i>Cobb, Jane Ann</i> AAP: Procedural View from a Defense Attorney	78	30	2833	11/03/07
<i>Coffman, W. Thomas</i> Advance Planning for End-of-Life Care in Oklahoma	78	15	1285	05/12/07
<i>Cole, Steven P. and Gary F. Fuller</i> Fixing Oklahoma's Insurable Interest Laws	78	15	1271	05/12/07
<i>Cornell, Melissa F.</i> Termination of Joint Custody — Is the Law in Oklahoma Disjointed?	78	6	411	02/10/07
<i>Crunkleton, Daniel W. and John M. Dunn</i> Blanket Medical Releases and Client Privacy: The Dangers of Releasing HIPAA into the Wild	78	21	1951	08/04/07
<i>Curnutte, Mark W.</i> Probate Avoidance with POD and TOD	78	15	1297	05/12/07
<i>DeLacerda, Melissa</i> Visitation Schedules and Standards	78	6	417	02/10/07
<i>Derryberry, Barry</i> In the Shadow of the Fourth Amendment	78	9	671	03/10/07
<i>DeShong, Tery</i> The Few, the Proud, the Undervalued — Oklahoma's Child Support Attorneys	78	6	504	02/10/07
<i>Dixon, Mark W.</i> Discipline of Lawyers	78	34	3119	12/08/07
<i>Dreiling, Retired Judge Janice P.</i> The Hydration and Nutrition for Incompetent Patients Act: Oklahoma's 'Feeding Tube Forever' Law	78	21	1925	08/04/07

<i>Drummond, LeAnn P. and Hal Wm. Ellis</i> Asset Protection Planning	78	15	1279	05/12/07
<i>Dunn, John M.</i> <i>Georgia v. Randolph</i> : Beginning of the End for Third-Party Waivers	78	9	677	03/10/07
<i>Dunn, John M. and Daniel W. Crunkleton</i> Blanket Medical Releases and Client Privacy: The Dangers of Releasing HIPAA into the Wild	78	21	1951	08/04/07
<i>Ellis, Hal Wm. and LeAnn P. Drummond</i> Asset Protection Planning	78	15	1279	05/12/07
<i>Evans, Rees T.</i> Emergency Orders and Victim Protective Orders	78	6	453	02/10/07
<i>Foss, Judge Janet</i> Juvenile Court Diversion Programs — Cleveland County District Court	78	30	2894	11/03/07
<i>Fugitt, F. Andrew and Heather N. Hendricks</i> The Constitution in the Classroom: Recent Supreme Court Decisions May Spell Big Changes for Public Schools	78	27	2497	10/06/07
<i>Fuller, Gary F. and Steven P. Cole</i> Fixing Oklahoma's Insurable Interest Laws	78	15	1271	05/12/07
<i>Funk, Robyn and Mary Lohrke</i> U.S. Supreme Court Narrows Time Period to File Title VII Pay Discrimination Lawsuits	78	24	2191	09/01/07
<i>Gifford, Robert Don</i> Planes, Trains & Automobiles: The Fourth Amendment and Your Vehicle	78	9	691	03/10/07
<i>Gilbert, Barbara Snow</i> An Architectural Icon — The Oklahoma Western District's Federal Courthouse	78	2	151	01/13/07

<i>Hammons, Mark Edgar Sr.</i> <i>Saint v. Data Exchange Inc.</i> : Discrimination Claims Return to State Court	78	2	140	01/13/07
<i>Helmstetter Ph.D., Shad</i> The Gift	78	9	719	03/10/07
<i>Hendricks, Heather N. and F. Andrew Fugitt</i> The Constitution in the Classroom: Recent Supreme Court Decisions May Spell Big Changes for Public Schools	78	27	2497	10/06/07
<i>Hendryx, Gina</i> The Basics of Fee Agreements	78	6	471	02/10/07
Interest on Unpaid Legal Fees	78	12	1024	04/14/07
ORPC Changes at a Glance	78	21	1982	08/04/07
Changes at a Glance (Part 2)	78	27	2553	10/06/07
Changes at a Glance (Part 3)	78	34	3177	12/08/07
<i>Hicks, Judge Edward J.</i> Family Drug Courts	78	30	2815	11/03/07
<i>Hoch, William H.</i> Using Our Legal Skills to End Homelessness	78	6	481	02/10/07
<i>Jester, Melanie</i> Fun Is Not a Four-Letter Word	78	15	1352	05/12/07
<i>Koss, Catheryn</i> Long-term Care Insurance — Whether, When and What Kind?	78	15	1335	05/12/07
Walking Your Client through an Advance Directive for Health Care	78	21	1919	08/04/07
<i>Leitch, Deborah Ludi</i> A Prosecutor's Viewpoint on Community Sentencing: Public Safety Comes First	78	30	2829	11/03/07
<i>Lohrke, Mary and Robyn Funk</i> U.S. Supreme Court Narrows Time Period to File Title VII Pay Discrimination Lawsuits	78	24	2191	09/01/07

<i>Lowery, Margaret J.</i> When Silence is Deadly: The Importance of the Credentialing Process	78	21	1967	08/04/07
<i>Maldonado, Juan J. and Teresa Rendon</i> Immigration and Education	78	27	2485	10/06/07
<i>Marshall, Adam K.</i> Don't Forget about Magnuson-Moss	78	12	1006	04/14/07
<i>Mattson, Lynn P.</i> Employment Alert — Ensuring Re-employment Rights for Returning Military	78	12	994	04/14/07
<i>Maute, Judith and Kade McClure</i> Access Makes All the Difference	78	12	1032	04/14/07
<i>McCarty, Lisbeth L.</i> A Funny Story	78	24	2248	09/01/07
<i>McClure, Kade and Judith Maute</i> Access Makes All the Difference	78	12	1032	04/14/07
<i>McCoy, Gloyd L.</i> Case Comments: <i>Seabolt v. State</i>	78	9	685	03/10/07
<i>Miers, Sheppard F. Jr.</i> 2007 Oklahoma Tax Legislation	78	27	2511	10/06/07
<i>Murdock, Dan</i> The Scout Law and the Road to Doing it Right	78	2	166	01/13/07
Heroes: Who Are They?	78	9	723	03/10/07
Law Day: An Epilogue	78	15	1328	05/12/07
Back to School	78	24	2218	09/01/07
The Content of our Character	78	30	2887	11/03/07
<i>Murphy, Judge Robert M. Jr.</i> How to Present a Child Custody Case: A Judge's Point of View	78	6	445	02/10/07
<i>Ort-Presley, Laura</i> Disabled Children Need Volunteer Representation	78	21	1990	08/04/07

<i>Otey, Judge Millie</i> Community Sentencing: A Judicial Perspective	78	30	2837	11/03/07
<i>Palmer, Drew T. and Cherish K. Ralls</i> The Duty to Notify: The Ethical Use of Metadata in Oklahoma	78	34	3141	12/08/07
<i>Parsley, Jon K.</i> Providing Pro Bono Services and Making a Living	78	34	3192	12/08/07
<i>Perkins, Shelly A.</i> Standards of Liability for Teacher-Student and Peer Sexual Harassment Claims in the 10th Circuit	78	27	2471	10/06/07
<i>Perry, Giovanni</i> OBA Annual Celebration to Focus on Youth	78	12	959	04/14/07
<i>Pickens, Travis</i> Resolve to Decide	78	2	159	01/13/07
<i>Ralls, Cherish K. and Drew T. Palmer</i> The Duty to Notify: The Ethical Use of Metadata in Oklahoma	78	34	3141	12/08/07
<i>Ratheal, Donelle H.</i> The Relocation Case in Oklahoma: A Guardian <i>ad Litem</i> 's Perspective	78	6	399	02/10/07
<i>Rendon, Teresa and Juan J. Maldonado</i> Immigration and Education	78	27	2485	10/06/07
<i>Richardson, Jerry A.</i> A Primer on Sexual Harassment Claims Under Title IX	78	27	2503	10/06/07
<i>Rieman, Julia</i> Disqualification of the Trial Judge: Zealous Advocacy or Unethical Conduct?	78	34	3135	12/08/07
<i>Rife, Gary A.</i> Changes in Rule 7 Summary Disciplinary Proceedings	78	34	3125	12/08/07
<i>Rivers, Julie S., Noel K. Tucker and Phillip J. Tucker</i> Do No Harm — Guardian <i>ad Litem</i> Representation	78	6	433	02/10/07

<i>Rogers, Patricia A.</i> Stark for Beginners: An Introduction to the Federal Physician Self-Referral Law	78	21	1957	08/04/07
<i>Sokolosky, Jerry</i> A Brown Paper Bag	78	9	752	03/10/07
<i>Stano, Judge Michael</i> Another Take on 'Civility'	78	34	3131	12/08/07
<i>Travis, Margaret</i> Do You Hear That Sucking Sound?	78	21	2016	08/04/07
Banned Book Week	78	27	2592	10/06/07
<i>Tucker, Noel K., Julie S. Rivers and Phillip J. Tucker</i> Do No Harm — Guardian <i>ad Litem</i> Representation	78	6	433	02/10/07
<i>Tucker, Phillip J., Julie S. Rivers and Noel K. Tucker</i> Do No Harm — Guardian <i>ad Litem</i> Representation	78	6	433	02/10/07
<i>Tucker, Noel K. and Phillip J. Tucker</i> Leaving on a Jet Plane? Maybe...Passport Issues Relating to Children	78	6	423	02/10/07
<i>Tucker, Phillip J. and Noel K. Tucker</i> Leaving on a Jet Plane? Maybe...Passport Issues Relating to Children	78	6	423	02/10/07
<i>Tupper, Michael</i> Oklahoma Drug Courts: Fighting Addictions & Changing Behaviors	78	30	2807	11/03/07
<i>Walkley, Judge Lori</i> Business and Commercial Litigation in Federal Courts	78	6	464	02/10/07
<i>Werneke, Vicki Ruth Adams</i> A Gift from Mr. Alverson	78	30	2912	11/03/07

<i>Williams, John Morris</i>				
Another Good Year	78	2	161	01/13/07
A Good Day to You	78	9	722	03/10/07
Two Reasons to Celebrate	78	12	1020	04/14/07
Leave Now If You Want a Place to Park	78	15	1323	05/12/07
Time Flies — Even When You're in a Modular Office	78	21	1977	08/04/07
Change is in the Air	78	24	2210	09/01/07
Change is in the Air (But there is time to catch up)	78	27	2549	10/06/07
It's as Simple as www.okbar.org	78	30	2882	11/03/07
From Guymon to Idabel, I Loved Hearing from You	78	34	3172	12/08/07
<hr/>				
<i>Youngblood, Karen</i>				
Oklahoma's Material Witness Law: Time for Change	78	12	1012	04/14/07
<hr/>				
<i>Zacharias, C. Michael</i>				
Why Volunteer?	78	27	2563	10/06/07
<hr/>				

www.okbar.org

Your source for OBA news.



At Home



At Work



And on the Go

Oklahoma Bar Journal Index for 2007, Volume 78

SUBJECT INDEX	VOL.	NO.	PAGE	DATE
ACCESS TO JUSTICE				
<i>Bacharach, Judge Robert</i> FBA Chapter Provides Needed Legal Assistance	78	9	731	03/10/07
<i>Caudle, Dietmar K.</i> A State Legal Referral Service — Does Oklahoma Need It?	78	2	174	01/13/07
<i>Foss, Judge Janet</i> Juvenile Court Diversion Programs — Cleveland County District Court	78	30	2894	11/03/07
<i>Hoch, William H.</i> Using Our Legal Skills to End Homelessness	78	6	481	02/10/07
<i>Koss, Catheryn</i> Long-term Care Insurance — Whether, When and What Kind?	78	15	1335	05/12/07
<i>McClure, Kade and Judith Maute</i> Access Makes All the Difference	78	12	1032	04/14/07
<i>Ort-Presley, Laura</i> Disabled Children Need Volunteer Representation	78	21	1990	08/04/07
<i>Parsley, Jon K.</i> Providing Pro Bono Services and Making a Living	78	34	3192	12/08/07
<i>Zacharias, C. Michael</i> Why Volunteer?	78	27	2563	10/06/07

BACK PAGE

<i>Barnett, Judge David</i> Frog Fiasco	78	12	1048	04/14/07
The Wrong Man	78	34	3208	12/08/07
<i>Brockett, B.J.</i> Where's the Courthouse?	78	2	192	01/13/07
<i>DeShong, Tery</i> The Few, the Proud, the Undervalued — Oklahoma's Child Support Attorneys	78	6	504	02/10/07
<i>Jester, Melanie</i> Fun Is Not a Four-Letter Word	78	15	1352	05/12/07
<i>McCarty, Lisbeth L.</i> A Funny Story	78	24	2248	09/01/07
<i>Sokolosky, Jerry</i> A Brown Paper Bag	78	9	752	03/10/07
<i>Travis, Margaret</i> Do You Hear That Sucking Sound?	78	21	2016	08/04/07
Banned Book Week	78	27	2592	10/06/07
<i>Werneke, Vicki Ruth Adams</i> A Gift from Mr. Alverson	78	30	2912	11/03/07

BOOK REVIEW

<i>Helmstetter Ph.D., Shad</i> The Gift	78	9	719	03/10/07
<i>Walkley, Judge Lori</i> Business and Commercial Litigation in Federal Courts	78	6	464	02/10/07

CONSUMER LAW

<i>Marshall, Adam K.</i> Don't Forget about Magnuson-Moss	78	12	1006	04/14/07
--	----	----	------	----------

CRIMINAL LAW

<i>Youngblood, Karen</i> Oklahoma's Material Witness Law: Time for Change	78	12	1012	04/14/07
--	----	----	------	----------

DIVERSION PROGRAMS

<i>Blau, Edward M.</i> Mental Health Courts	78	30	2823	11/03/07
<i>Cobb, Jane Ann</i> AAP: Procedural View from a Defense Attorney	78	30	2833	11/03/07
<i>Hicks, Judge Edward J.</i> Family Drug Courts	78	30	2815	11/03/07
<i>Leitch, Deborah Ludi</i> A Prosecutor's Viewpoint on Community Sentencing: Public Safety Comes First	78	30	2829	11/03/07
<i>Otey, Judge Millie</i> Community Sentencing: A Judicial Perspective	78	30	2837	11/03/07
<i>Tupper, Michael</i> Oklahoma Drug Courts: Fighting Addictions & Changing Behaviors	78	30	2807	11/03/07

EDUCATION LAW

<i>Burk, Jana</i> <i>Hagen v. Watts Public Schools</i> : Abuse and Discretion under the Teacher Due Process Act	78	27	2493	10/06/07
<i>Fugitt, F. Andrew and Heather N. Hendricks</i> The Constitution in the Classroom: Recent Supreme Court Decisions May Spell Big Changes for Public Schools	78	27	2497	10/06/07
<i>Perkins, Shelly A.</i> Standards of Liability for Teacher-Student and Peer Sexual Harassment Claims in the 10th Circuit	78	27	2471	10/06/07
<i>Rendon, Teresa and Juan J. Maldonado</i> Immigration and Education	78	27	2485	10/06/07
<i>Richardson, Jerry A.</i> A Primer on Sexual Harassment Claims Under Title IX	78	27	2503	10/06/07

EMPLOYMENT LAW

Bowling, Michael W.

Saint v. Data Exchange: A Sea Change or Business as Usual for the Public Policy Tort Exception to Employment At-Will?

78 2 137 01/13/07

Hammons, Mark Edgar Sr.

Saint v. Data Exchange Inc.: Discrimination Claims Return to State Court

78 2 140 01/13/07

Lohrke, Mary and Robyn Funk

U.S. Supreme Court Narrows Time Period to File Title VII Pay Discrimination Lawsuits

78 24 2191 09/01/07

Mattson, Lynn P.

Employment Alert — Ensuring Re-employment Rights for Returning Military

78 12 994 04/14/07

ESTATE PLANNING

Clark, Gary C.

The Charitable IRA Rollover — A Few Things You Ought to Know

78 15 1291 05/12/07

Coffman, W. Thomas

Advance Planning for End-of-Life Care in Oklahoma

78 15 1285 05/12/07

Curnutte, Mark W.

Probate Avoidance with POD and TOD

78 15 1297 05/12/07

Ellis, Hal Wm. and LeAnn P. Drummond

Asset Protection Planning

78 15 1279 05/12/07

Fuller, Gary F. and Steven P. Cole

Fixing Oklahoma's Insurable Interest Laws

78 15 1271 05/12/07

ETHICS AND PROFESSIONAL RESPONSIBILITY

Dixon, Mark W.

Discipline of Lawyers

78 34 3119 12/08/07

Hendryx, Gina

The Basics of Fee Agreements

78 6 471 02/10/07

Interest on Unpaid Legal Fees

78 12 1024 04/14/07

ORPC Changes at a Glance

78 21 1982 08/04/07

Changes at a Glance (Part 2)

78 27 2553 10/06/07

Changes at a Glance (Part 3)

78 34 3177 12/08/07

<i>Murdock, Dan</i>				
The Scout Law and the Road to Doing it Right	78	2	166	01/13/07
Heroes: Who Are They?	78	9	723	03/10/07
Law Day: An Epilogue	78	15	1328	05/12/07
Back to School	78	24	2218	09/01/07
The Content of our Character	78	30	2887	11/03/07
<hr/>				
<i>Palmer, Drew T. and Cherish K. Ralls</i>				
The Duty to Notify: The Ethical Use of Metadata in Oklahoma	78	34	3141	12/08/07
<hr/>				
<i>Rieman, Julia</i>				
Disqualification of the Trial Judge: Zealous Advocacy or Unethical Conduct?	78	34	3135	12/08/07
<hr/>				
<i>Rife, Gary A.</i>				
Changes in Rule 7 Summary Disciplinary Proceedings	78	34	3125	12/08/07
<hr/>				
<i>Stano, Judge Michael</i>				
Another Take on 'Civility'	78	34	3131	12/08/07
<hr/>				
FAMILY LAW				
<i>Cornell, Melissa F.</i>				
Termination of Joint Custody — Is the Law in Oklahoma Disjointed?	78	6	411	02/10/07
<hr/>				
<i>DeLacerda, Melissa</i>				
Visitation Schedules and Standards	78	6	417	02/10/07
<hr/>				
<i>Evans, Rees T.</i>				
Emergency Orders and Victim Protective Orders	78	6	453	02/10/07
<hr/>				
<i>Murphy, Judge Robert M. Jr.</i>				
How to Present a Child Custody Case: A Judge's Point of View	78	6	445	02/10/07
<hr/>				
<i>Ratheal, Donelle H.</i>				
The Relocation Case in Oklahoma: A Guardian <i>ad Litem's</i> Perspective	78	6	399	02/10/07
<hr/>				
<i>Rivers, Julie S., Noel K. Tucker and Phillip J. Tucker</i>				
Do No Harm — Guardian <i>ad Litem</i> Representation	78	6	433	02/10/07
<hr/>				
<i>Tucker, Noel K. and Phillip J. Tucker</i>				
Leaving on a Jet Plane? Maybe... Passport Issues Relating to Children	78	6	423	02/10/07
<hr/>				

FOURTH AMENDMENT – SEARCH & SEIZURE

<i>Armagh, Daniel</i> Search and Seizure of Electronic Evidence in Computer-Facilitated Crimes Against Children	78	9	697	03/10/07
<i>Derryberry, Barry</i> In the Shadow of the Fourth Amendment	78	9	671	03/10/07
<i>Dunn, John M.</i> <i>Georgia v. Randolph</i> : Beginning of the End for Third-Party Waivers	78	9	677	03/10/07
<i>Gifford, Robert Don</i> Planes, Trains & Automobiles: The Fourth Amendment and Your Vehicle	78	9	691	03/10/07
<i>McCoy, Gloyd L.</i> Case Comments: <i>Seabolt v. State</i>	78	9	685	03/10/07

FROM THE EXECUTIVE DIRECTOR

<i>Williams, John Morris</i> Another Good Year	78	2	161	01/13/07
A Good Day to You	78	9	722	03/10/07
Two Reasons to Celebrate	78	12	1020	04/14/07
Leave Now If You Want a Place to Park	78	15	1323	05/12/07
Time Flies — Even When You're in a Modular Office	78	21	1977	08/04/07
Change is in the Air	78	24	2210	09/01/07
Change is in the Air (But there is time to catch up)	78	27	2549	10/06/07
It's as Simple as www.okbar.org	78	30	2882	11/03/07
From Guymon to Idabel, I Loved Hearing from You	78	34	3172	12/08/07

FROM THE PRESIDENT

<i>Beam, Stephen</i> We Have A Problem	78	2	100	01/13/07
The Traditional January President's Message	78	6	396	02/10/07
Guess Who's a Lifetime Member of the American Bar Association	78	9	668	03/10/07
One of the Best Things the OBA Does	78	12	956	04/14/07
Sometimes You Just Have to Do the Right Thing	78	15	1268	05/12/07
So Much to Do and So Little Time to Do It	78	21	1916	08/04/07
Something All of Us Can Do	78	24	2172	09/01/07

Mentoring: A New Beginning	78	27	2468	10/06/07
The Good that Lawyers Do	78	30	2804	11/03/07
The Experience of a Lifetime	78	34	3116	12/08/07

HEALTH LAW

Burkett, Teresa Meinders

HIPAA Rules — All Lawyers Should Know	78	21	1943	08/04/07
---------------------------------------	----	----	------	----------

Carter, Martha Rupp

The Paradox of 'Emergency Preparedness': Can We Be Prepared for a Public Health Emergency?	78	21	1931	08/04/07
--	----	----	------	----------

Dreiling, Retired Judge Janice P.

The Hydration and Nutrition for Incompetent Patients Act: Oklahoma's 'Feeding Tube Forever' Law	78	21	1925	08/04/07
---	----	----	------	----------

Dunn, John M. and Daniel W. Crunkleton

Blanket Medical Releases and Client Privacy: The Dangers of Releasing HIPAA into the Wild	78	21	1951	08/04/07
---	----	----	------	----------

Koss, Catheryn

Walking Your Client through an Advance Directive for Health Care	78	21	1919	08/04/07
--	----	----	------	----------

Lowery, Margaret J.

When Silence is Deadly: The Importance of the Credentialing Process	78	21	1967	08/04/07
---	----	----	------	----------

Rogers, Patricia A.

Stark for Beginners: An Introduction to the Federal Physician Self-Referral Law	78	21	1957	08/04/07
---	----	----	------	----------

HISTORICAL

Gilbert, Barbara Snow

An Architectural Icon — The Oklahoma Western District's Federal Courthouse	78	2	151	01/13/07
--	----	---	-----	----------

LAW DAY

Perry, Giovanni

OBA Annual Celebration to Focus on Youth	78	12	959	04/14/07
--	----	----	-----	----------

LAW PRACTICE TIPS

Calloway, Jim

The Effective Tightwad Lawyer	78	2	163	01/13/07
Bless This Messy Desk	78	6	468	02/10/07
The Rise and Fall of the Dictation Tape	78	12	1021	04/14/07

Subscribe to CoreVault Online Backup at a Discount	78	15	1325	05/12/07
Closing Files, Destroying Files and Making Money	78	21	1979	08/04/07
Closing Files, Destroying Files and Making Money (Part 2)	78	24	2211	09/01/07
Voice-Activated Technology for Lawyers	78	27	2550	10/06/07
Test Your Legal Technology IQ	78	30	2884	11/03/07
Year's Best in Law Office Management and Technology	78	34	3174	12/08/07

TAXATION LAW

Miers, Sheppard F. Jr.

2007 Oklahoma Tax Legislation	78	27	2511	10/06/07
-------------------------------	----	----	------	----------

TECHNOLOGY AND PRACTICE MANAGEMENT

Anderson, Elliot Paul

What Lies Beneath — Native Format Production and Discovery of Metadata in Federal Court	78	12	999	04/14/07
--	----	----	-----	----------

Calloway, Jim

OBA Launches Fastcase Benefit	78	2	133	01/13/07
-------------------------------	----	---	-----	----------

WORK/LIFE BALANCE

Pickens, Travis

Resolve to Decide	78	2	159	01/13/07
-------------------	----	---	-----	----------

Feel like you've painted yourself into a corner?

If you need help coping with emotional
or psychological stress, please call

1 (800) 364 - 7886

Lawyers Helping Lawyers

Before it's too late. • Confidential. • Responsive. • 24/7



From Guymon to Idabel, I Loved Hearing from You

By John Morris Williams

One of the great parts of my job is to be able to travel across the state and meet with lawyers and local bar leaders. I do not get to do as much of this as I would like, but I get to do enough of it to gain some insights. While I am on the road, I try to listen and hear what our members need from our association. I also try and communicate what we are doing at the OBA.

This year I have been from Guymon to Idabel. (I actually was in Idabel twice.) I gathered that you like what we have done with MCLE reporting and heard that you like online CLE. We are working hard on both of these areas to give you more of what you like. Thank you for letting me know your wishes. It is very important to the OBA that we communicate to our members information that is relevant to them. For me, hearing from our members directly is always a good thing.

This year the Communications Task Force submitted its report. Part of the task force's work included a member survey. We got a pretty good response. The surveys that were returned

indicated that many of you still like getting 35 bar journals a year. The survey also revealed that fewer of you are reading the entire publication from cover to cover. I suspected this since on a regular basis I have members learn of a program or a member service from a staff person or another member and contact me and ask why we did not advertise it. The truth is that we do advertise just about everything we do in the bar journal and on our Web site. The other truth is that busy lawyers sometimes just don't get around to reading everything available.

nors recently adopted publication guidelines and placed editorial control in the hands of the Board of Editors. The world is moving toward more electronic messaging, and we are striving to put forth a good product in this area as well. The OBA has consistently avoided the urge to send out too many messages. We don't want to "spam" our members. On the other hand, we want to make sure that we are sending information in the best format for you.

It is a brave new world in communications. The irony is that if you are reading this

“ It is my job to listen to our members and to communicate relevant and timely information. ”

Our Communications Department does a very good job of continually getting the OBA story out. The difficult part is promoting the message in a world where we compete with so many other messages. Our e-news is perhaps our best-read publication at this point. The Board of Gover-

column, you are the easiest target for our message. You pick up our printed material and read all of it, even the part as mundane as my column. Technology has tremendously changed the practice of law, and it has also changed much about the way people communicate. It also has changed what peo-

ple are reading and how they are reading it.

Even though technology has supplied some new communication tools, none of them is as effective for me as hearing from you directly. It is my job to listen to our members and to communicate relevant and timely information. If you have ideas or need information, we have a number of ways to communicate. I will be glad to come to your local association meeting, meet with you in person, take your call or answer your e-mail to discuss issues regarding the OBA.

I hope next year somewhere between Guymon and Idabel that I get to hear from you. In the meantime, I wish you a joyous and safe holiday season.



To contact Executive Director Williams, e-mail him at johnw@okbar.org

Oklahoma Bar Journal Editorial Calendar

2008

If you would like to write an article on these topics, contact the editor.

- January
Meet Your OBA
Editor: Carol Manning
- February
Real Estate Law
Editor: John Munkacsy
johnmunk@sbcglobal.net
Deadline: Oct. 1, 2007
- March
Pretrial Litigation
Editor: Julia Rieman
rieman@enidlaw.com
Deadline: Jan. 1, 2008
- April
Law Day
Editor: Carol Manning
- May
Work/Life Balance
Editor: Jim Stuart
jtstuart@swbell.net
Deadline: Jan. 1, 2008
- August
Insurance Law
Editor: Judge Lori Walkley
lori.walkley@oscn.net
Deadline: May 1, 2008
- September
Bar Convention
Editor: Carol Manning
- October
Guardianship
Editor: Stephen Barnes
barneslaw@alltel.net
Deadline: May 1, 2008
- November
Technology/Practice Management
Editor: Melissa DeLacerda
melissde@aol.com
Deadline: Aug. 1, 2008
- December
Ethics & Professional Responsibility
Editor: Martha Rupp Carter
mcarter@tulsa-health.org
Deadline: Aug. 1, 2008

Year's Best in Law Office Management and Technology

By Jim Calloway, Director, OBA Management Assistance Program

I know that all of you have traditions. Some traditions are handed down from our parents. Others we do regularly even though we may not be sure how we started the tradition in the first place. Obviously, the year-end holiday season has lots of traditions.

One of my annual traditions is to moderate day two of the December Recent Developments OBA CLE seminar and present Recent Developments in Law Office Management and Technology there. I know how I got into this one, though. OBA CLE Director Donita Douglas talked me into it several years ago. The reason why I consider this a tradition is that I now see a lot of the same OBA members at this seminar year after year.

So each year I do a "year in review" of law office management and technology for my presentation. Some years there are many developments; other years there are not so many. This year I decided to give *Oklahoma Bar Journal* readers a little sample of the topics that I am covering with this presentation. The CLE paper is about 18 pages long, and OBA members who are interested in the full version of these materials will be able to download them from the OBA-NET, free of charge, starting in January 2008.

So what were the big developments in 2007?

Well, for OBA members, three member benefits were unveiled during 2007, all of which related to law office management and technology: Fastcase, CoreVault and the OBA Law Firm Merchant Account™.

Effective on the first day of 2007, OBA members could utilize the Fastcase free legal research service as a member benefit. If you haven't tried Fastcase yet, you can get more information at www.okbar.org/news/fastcasefaq.htm and download the Fastcase user manual at www.okbar.org/news/FastcaseUserGuide2007.pdf.

CoreVault was endorsed by the OBA as its official backup and data recovery service. For those of you who are not sure you're doing a good job of data backup, it may make sense to abandon the "do-it-yourself" approach and sign up with CoreVault. More information is available at www.corevault.net/oba.

The problem of how to accept retainers on a credit card without difficult accounting or ethical issues related to the service charges was resolved by the adoption of the OBA Law Firm Merchant Account™. Funds received via

credit card can be directed to either the office operating account or the trust account under this program, but all service charges or charge backs come only from the law firm operating account and never the trust account. You can learn more about this program at www.affiniscap.com/oklahomabar.

(It's really no wonder that the OBA Member Services committee, which vets all of these proposals, won the Golden Gavel Award at the recent OBA Annual Meeting.)

Vista

Vista was released on an unsuspecting world in early 2007. To say it has had mixed reviews would be overly kind by tenfold. Without a doubt the most difficult question I received repeatedly from our members this entire year is, "I'm buying a new computer. Should I get it with Vista installed?"

The answer at the end of a long year is, "I don't really know for sure."

The answer depends on way too many factors. But the most significant factor is how many older software packages or older pieces of hardware are you using that won't work with Vista.

This is probably appropriate for those at the extreme ends of the technology spectrum. Early adopters of technology who like tinkering with their computer systems will find plenty to play with after they "upgrade" to this. At the other end of the spectrum, those who only use their computers for Web browsing and word processing can probably safely purchase a new computer with the Vista operating system with little risk.

Many of you who want to purchase a computer right now will decide that you are likely better off to get it with Windows XP installed and worry about the issue again in a few years.

I had viewed upgrading to Vista as inevitable. But recently, noted technology columnist John C. Dvorak suggested that perhaps Vista is not inevitable in his column in *PC Magazine*. With a headline of "The Vista Death Watch," he says, "We have to begin to ask ourselves if we are really looking at Windows Me/2007, destined to be a disdained flop. By all estimates the number of Vista installations hovers around the number of Macs in use." Read the rest of his column at <http://tinyurl.com/2sby78>.

Electronic Data Discovery

With the adoption of changes to the Federal Rules in December 2006 relating to electronic discovery, electronic data discovery (EDD) became an even more significant topic for litigators.

At a fall meeting of the Hudson-Hall-Wheaton chapter meeting of the American Inns of Court in Tulsa, Honorable Sam A. Joyner, magistrate judge of the U.S. District Court for the Northern District of Oklahoma, made me aware of an EDD resource that I had not

seen before -- the Guidelines for Discovery of Electronically Stored Information from the U.S. District Court for the District of Kansas. This three-page PDF file is a truly great summary of counsel's obligations with regard to EDD. Since it is only three pages, I suggest it is worth everyone's time to download and read, even if you are still trying to convince yourself that you can avoid EDD and ESI for the remainder of your career. You'll find it at www.ksd.uscourts.gov/guidelines/electronicdiscoveryguidelines.pdf.

“What could be more equitable than basing a fee on how long and hard a litigator worked to resolve a matter.”

My Podcast — The Digital Edge: Lawyers and Technology

The ABA E-zine *Law Technology Today* launched a new feature in 2007 near and dear to my heart, my podcast, *The Digital Edge: Lawyers and Technology*. My teammate is Sharon Nelson, Sensei Enterprises Inc. president and ABA TECHSHOW 2006 chair (the year after me). So far, we have had a lot of fun with this podcast covering in our first six editions everything from technology-related legal ethics to our favorite utilities to technology toys that might make good holiday purchases. You can find the archives of the podcasts at www.abanet.org/lpm/lit/archives/podcasts.shtml. You do not need to have an iPod or MP3 player to listen to

the podcast. You can listen to them online via your computer.

WordPerfect X3 is Now Dirt Cheap for OBA Members

It's just \$99 for the complete WordPerfect X3 suite! You can only find this price at the following web address - www.corel.com/barassociation.

ABA TECHSHOW 2008 Date Set

Mark your calendars now for ABA TECHSHOW 2008. March 13-15, 2008, is the date at its new hotel, the Chicago Hilton. More information is online at www.techshow.com.

The early bird deadline for cheaper registration is before Feb. 1, 2008.

Since the Oklahoma Bar is a program promoter, you can use the OBA program promoter discount code PP814 when you register online to get an additional discount.

Billable Hour Re-Re-Re-Examined

An important topic that is not exactly recent received a lot of coverage in magazines and blogs this year.

The August 2007 ABA Journal cover story was "The Billable Hour Must Die" by famed lawyer-novelist Scott Turow. Read it at www.abajournal.com/magazine/the_billable_hour_must_die or <http://tinyurl.com/e5hu>.

No one who has read any of Mr. Turow's books would be surprised that it is a well written and persuasive piece. He repeats a phrase that I find very significant: "dollars times hours."

Turow writes, "Dollars times hours sounds like a formula for fairness. What could be more equitable than basing a fee on how long and hard a lit-

igator worked to resolve a matter? But as a system, it's a prison. When you are selling your time, there are only three ways to make more money — higher rates, longer hours and more leverage. As the years have gone on, the push has continued on all three fronts."

This may sound like it applies to large firm lawyers, but the math applies equally to lawyers in every size of practice who bill only by the hour. This issue may represent one of the greatest future challenges to our profession. But, of course, I've thought that for a few years now. Mark Robertson and I published "Winning Alternatives to the Billable Hour: Strategies That Work," Second Edition through the ABA in 2002.

If I were to quibble with Mr. Turow's piece, it would be that he, like so many, mixes together what I view as two distinct aspects of the billable hour crisis.

The first is the dollar times hours aspect. Is a mechanical formula really the best and most fair method to determine a legal fee? Is it the best for the law firm? Is it the best for the client? The case against hourly billing is pretty easy to make; it can reward inefficiency and the total cost is unknown to the client until a matter is concluded. While I would not state the ethical challenges as strongly as Turow, there is the inescapable fact that, for the most part, the one who makes the decision as to whether those eight depositions are needed is the same person who makes more money from those eight depositions.

But the ethical challenges would not disappear by changing to all flat or alternative fee arrangements. If an hourly payment arrangement

presents an ethical challenge to do too much, then surely a flat fee for an entire matter presents the opposite challenge to do too little. Public perceptions notwithstanding, all but a very few lawyers take their ethical responsibilities very, very seriously in all circumstances.

The second aspect of "the problem" can be said to be even more critical than the first, however. For it involves people's lives rather than just dollars. The billable hour discussion is also a code phrase for the fact that too many lawyers are working themselves to death, both physically and spiritually. This lawyer may be the new associate at a major law firm struggling to ethically bill 2,200 hours a year or the small town well-established solo who finds himself having to step up his work schedule when he should be enjoying the rewards of a fine career. Maybe this is caused by greater family needs, such as a child going off to college, or maybe it is caused by more time devoted to business that cannot be billed such as marketing or untangling the mysteries of e-discovery.

As Turow says in the essay, "Worst of all, however, is that when somebody is working 2,200 hours a year, he or she has less chance to pursue the professional experiences that nourish a lawyer's soul."

I completely agree that a large part of the problem with the largest law firms is the fact that they publish earnings per partner and deem themselves winners and losers on that basis. But considering what these large firm lawyers are earning, is that extra several thousand dollars worth adding the 10 p.m. to midnight shift an average of three days a week? Perhaps the more enlightened view someday

will be factoring in average billable hours per partner and quality of life issues.

We are living in a time of great change. We see the successful businesses. We know that they embrace the efficiencies of technology, they adapt to changing consumer needs and demands, they provide good customer service and they continue to improve and evolve. The question Turow brings us face to face with is how lawyers can plan for their future success in an environment where productivity improvements amount to an income reduction and a personal success story is getting a full night's sleep or just one time seeing all of the child's little league games that week.

If it were easy, all the smart lawyers would have already done it. But there are smart lawyers and smart clients who are using alternative billing methods. How do you start? Let me suggest modest steps. You recall the old saying "How do you eat an elephant? Answer: One bite at a time." So litigators, are there some routine tasks that should be billed on a task completed basis rather than an hourly basis? What about filing documents with government clerks? Hourly or fixed? Consider this and revise your policies accordingly. Read Scott Turow's essay. Think about improving your future and serving your clients better at the same time.

“ If it were easy,
all the smart lawyers
would have already
done it. ”

ORPC Changes at a Glance (Part 3)

By Gina Hendryx, OBA Ethics Counsel

This is the third and final installment highlighting changes coming to the Oklahoma Rules of Professional Conduct. On Jan. 1, 2008, amendments to the Oklahoma Rules of Professional Conduct as approved by the Oklahoma Supreme Court will become effective. These changes may be viewed at www.okbar.org/ethics/ORPC.htm. In the August and October editions of the *Oklahoma Bar Journal*, several of the modifications to the Oklahoma Rules of Professional Conduct were summarized. The following includes guidance with conflicts when assisting a pro bono legal service and changes to the advertising rules.

Rule 6.5 Nonprofit and Court-Annexed Limited Legal Services Programs

Rule 6.5 is a new rule and as such there was no previous Oklahoma version. This rule recognizes that lawyers may provide short term, limited legal services on behalf of a nonprofit or court-annexed program where there is no expectation that the lawyer will provide continuing legal services. Examples include hotline advice, pro se counseling and advice-only clinics. A lawyer who provides such short-term representation must

obtain the client's informed consent to the limited scope representation. Because of the nature of the consultation, lawyers providing such services may not be able to check for conflicts of interest. Therefore, paragraph (a) requires compliance with Rules 1.7 (Conflict of Interest) and 1.9(a) (Conflict with Former Client) only if the lawyer knows that the representation presents a conflict of interest for the lawyer. The American Bar Association adopted Model Rule 6.5 in 2002 due to concerns that strict interpretation of conflict rules "may be deterring lawyer from serving as volunteers in programs [providing] short-term limited legal services under the auspices of a nonprofit organization or a court-annexed program."¹

Rule 7.1 Communication Concerning a Lawyer's Services

Rule 7.1 states that a "lawyer shall not make a false or misleading communication about the lawyer's services." It goes on to define false and misleading statements that create "unjustified expectations" and/or imply "achieving results" that have been removed from the body of the rule and moved to Comments [3] where these concepts are better defined.

Rule 7.2 Advertising

This rule has had significant changes including the addition of "electronic communication" as a form of regulated advertising. Paragraph (b) clarifies the exception to the reciprocal referral rule in that a lawyer is permitted to refer clients to another lawyer or non-lawyer professional pursuant to a reciprocal referral agreement in that if the agreement is not exclusive, the client is informed of the existence and nature of the agreement, and the lawyer does not pay anything solely for the referral.

Rule 7.2 no longer requires that copies of advertising or communications be kept for three years. Communications made pursuant to this rule must include the name and office address of at least one lawyer or law firm responsible for its content. Direct mail solicitation no longer needs to carry the "report to the OBA" language.

Rule 7.3 Direct Contact With Prospective Clients

Language was added to paragraph (a) that prohibits the in-person contact of prospective clients to include "real-time" electronic contact. Paragraph (c) proscribes that every communi-

cation from a lawyer soliciting professional employment from a prospective client known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside of the envelope and at the beginning and ending of any recorded or electronic communication.

Rule 7.4 Communication of Fields of Practice and Certification

Rule 7.5 Firm Names and Letterheads

These rules remain basically unchanged. Rule 7.4 permits lawyers to communicate the fact that the lawyer does or does not practice in particular fields of law.

However, there are narrow exceptions to the rule that a lawyer shall not state or imply that the lawyer is certified as a specialist in a particular field of law. Comment [1] to Rule 7.5 recognizes that lawyers or law firms may be designated by a distinctive Web site address or comparable professional designation. Use of trade names for law practices is acceptable as long as the name is not misleading.

Rule 8.5 Disciplinary Authority; Choice of Law

A lawyer admitted to practice in Oklahoma is subject to the disciplinary authority of this jurisdiction regardless of where the lawyer's conduct occurs. The newly

adopted language also subjects a lawyer not admitted in Oklahoma to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. The rule additions also incorporate a Choice of Law provision.

The changes to the Oklahoma Rules of Professional Conduct become effective on Jan. 1. If you have any questions as to the applicability of any rule to your specific practice, please contact Gina Hendryx, ethics counsel for the OBA, at ginah@okbar.org or (405) 416-7083.

1. ABA Legislative History on Model Rules of Professional Conduct.



OBA/CLE Presents

Darrow - Attorney for the Damned

DATES & LOCATIONS:

Oklahoma City
December 20, 2007
Oklahoma Bar Center
1901 N. Lincoln Blvd.

Tulsa
December 21, 2007
Crowne Plaza Hotel
100 E. 2nd St.

CLE CREDIT:

This course has been approved by the Oklahoma Bar Association Mandatory Continuing Legal Education Commission for 7 hours of mandatory CLE Credit, including 1 hour of ethics.

TUITION:

\$225 for early-bird registrations with payment received at least four full business days prior to the seminar date; \$250 for registrations with payment received within four full business days of the seminar date. Register online at www.okbar.org/cle. No discounts.

CANCELLATION POLICY:

Cancellations will be accepted at any time prior to the seminar date; however, a \$25 fee will be charged for cancellations made within four full business days of the seminar date. Cancellations, refunds, or transfers will not be accepted on or after the seminar date.

Todd Winegar is one of America's top-rated CLE speakers. He has presented CLE courses in most major cities in the United States and Canada, and also in Europe and the Caribbean. He also presents a leadership seminar to business that was developed for and first presented at Wharton Business School.

Todd is a dynamic speaker and practicing attorney who emphasizes civil trial litigation. He has been involved in some of the larger cases in his home state. His experience includes professional malpractice on both the plaintiff and defense side, product liability actions involving para and quadriplegia, and a Minuteman missile accident.

PROGRAM:

8:30 a.m. **Registration and Continental Breakfast**

9:00

The Massie Case

- **The Story** - A framework for argument.
- **Effective Arguments** - A survey of jury studies. What makes an argument effective?
- Fifteen Rules to create great arguments

Leopold and Loeb: The Scopes Case - Classic arguments and structures used by Demosthenes, Plato, Cicero, Shakespeare, Lincoln & Daniel Webster.

- Categories of arguments
 - The Greeks - Logos, ethos, pathos
 - The three most powerful arguments
 - Implicit arguments
- The importance of counter arguments
- Organizing arguments
- Great closings

10:50

Break

11:00

The Sweet Case - Overcoming bias and prejudice.

- Ethics and discrimination
- Untenable tactics

12:00

Networking lunch (included in registration)

12:30 p.m.

Writing Arguments

- From pen to paper to perfection
- The felonies and misdemeanors of writing
- The Brandeis brief - steps to an "A" brief

1:50

Break

2:00

The Ethics of Arguments

- The law of closing and opening
- Unethical arguments
- Borderline arguments
- Sympathy and jury nullification

3:30

Adjourn



Full Name _____

Firm _____

Address _____

City _____ State _____ Zip _____

Phone () _____ E-Mail _____

Are you a Member of OBA? ☐ Yes ☐ No OBA Bar# _____

Make Check payable to the Oklahoma Bar Association and mail entire page to: CLE REGISTRAR, P.O. Box 960063 Oklahoma City, OK 73196-0063
For ☐ Visa or ☐ Master Card Fax (405) 416-7092, Phone (405) 416-7006 or Mail

Credit Card# _____ Exp. date _____

Authorized Signature _____

☐ Oklahoma City
December 20, 2007

☐ Tulsa
December 21, 2007

Register online at www.okbar.org/cle

2007 Campaign For Justice Tops \$600,000

Thank you, Mike and Burns
For Making Justice for All a Reality



*2007 Campaign Co-Chairs
Mike Turpen and Burns
Hargis*

Legal Aid commends Mike Turpen & Burns Hargis, for their successful leadership of our campaign and their work with the Oklahoma City and Tulsa Teams. Thank you for your commitment to Legal Aid.

Oklahoma City Team

Co-Chairs

John A. Kenney & Laura McConnell-Corbyn

Team Members

Stephen L. Barghols • Peter Bradford • Kevin R. Donelson • Bryan G. Garrett • D. Sharon Gentry • Sally B. Gilbert • Jimmy Goodman • Gerald P. Green • Michael L. Mullins • Brooke Smith Murphy • William G. Paul • Robert N. Sheets

Tulsa Team

Co-Chairs

Doug Dodd & Dwight Smith

Team Members

Judge Thomas R. Brett • W. Thomas Coffman • Nancy G. Feldman • Dallas Ferguson • James E. Green, Jr. • J. Kevin Hayes • Gerald Hilsher • James M. Love • J. Douglas Mann • John F. McCormick • M. David Riggs • Robert Sartin • Eric W. Stall • James M. Sturdivant

LEGAL AID SERVICES
OF OKLAHOMA, INC. 

LEGAL AID SERVICES OF OKLAHOMA, INC.



Legal Aid Services of Oklahoma would like to thank the following individuals, law firms, corporations, foundations and civic groups for their support and for their commitment to justice.

LEADERSHIP COUNCIL

Those Firms Meeting the \$250 Per Attorney Giving Standard

Abel Law Firm	Johnson Jones Dornblaser Coffman & Shorb
Abowitz Timberlake & Dahnke	Jones Gotcher & Bogan
Ash Law Firm	Patrick Layden Law Offices
Barrow & Grimm	Theresa B. Lewis, PC
Stephen D. Beam, PC	Mahaffey & Gore
Concordia Benefits Group	Mock Schwabe Waldo Elder Reeves & Bryant
Crowe & Dunlevy	Mullins Hirsch & Jones
Doerner Saunders Daniel & Anderson	Phillips McFall McCaffrey McVay & Murrah
Fenton Fenton Smith Reneau & Moon	Pierce Couch Hendrickson Baysinger & Green
Gable Gotwals	Rife & Walters
Garrett Law Firm	Rogers & Bell
John N. Goodman, PC	Seymour Law Firm
Hall Estill Hardwick Gable Golden & Nelson	Shallcross Law Firm
Hartzog Conger Cason & Neville	Sloan Law Office
Jeff L. Hirzel, PC	Dwight L. Smith, PLLC
Holloway Dobson & Bachman	Tawwater Law Firm
Horton & Neighbors	Whitten Nelson McGuire Terry & Roselius
Irish Law Firm	Clifford A. Wright, PC
Garvin A. Isaacs, Inc.	

SIGNIFICANT GIFTS TO THE CAMPAIGN

TOTAL GIFT OF \$1,000 OR MORE

Corporations

BancFirst
Bank of Oklahoma, NA
ConocoPhillips
Devon Energy Corporation
Dolese Bros. Co.
Mutual of America
New Dominion, LLC
Oklahoma Attorneys Mutual Insurance
ONEOK, Inc.
Pre-Paid Legal Services, Inc.
Public Service Company of Oklahoma
Samson Companies
The Williams Companies, Inc.

Foundations

Grace/Franklin Bernsen Fndtn
Mervin Bovaird Foundation
Geffen Family Fund at TCF
Pearl M/Julia J Harmon Fndtn
Harris Foundation

Inasmuch Foundation
George Kaiser Family Fndtn
Frank/Julia Ladner Family Foundation
John W/Jerry E Marshall Foundation
Meinders Foundation
The *Oklahoman* Foundation
Oklahoma City Community Foundation
Oxley Foundation
Linda Mitchell Price Charitable Trust
Puterbaugh Foundation
John Steele Zink Foundation

Individuals

James J. Bender
Jack L. Brown
Gerald E. Durbin II
Carl Edwards
Christy & Jim Everest
Nancy & Raymond Feldman

James E. Green
Leslie & Clifford Hudson
Laura McConnell-Corbyn
Greg & Beth Nellis
Ruth K. Nelson
John W. Norman
William G. Paul
M. David Riggs

Legal Community

Conner & Winters
Derryberry & Naifeh
Fellers Snider Blankenship Bailey & Tippens
Harris McMahan Peters
Thompson & Stall
William J. Holloway Jr.
America Inn of Court (OKC)
McAfee & Taft
Moyers Martin Santee Imel & Tetrick
Oklahoma Bar Association

Oklahoma Bar Foundation
Oklahoma County Bar Association
Oklahoma County Bar Auxiliary
Pray Walker Jackman
Williamson & Marlar
Riggs Abney Neal Turpen
Orbison & Lewis
Rosenstein Fist & Ringold
Taylor Burrage Foster Mallett
Downs & Ramsey
Smith Rhodes Stewart & Elder

Other

AIDS Walk of Oklahoma City
All Souls Unitarian Church
Oklahoma AIDS Care Fund



As of December 1, 2007

Litigation and Trials in the Digital Age

DATES & LOCATIONS:	Tulsa December 14, 2007 Crowne Plaza Hotel 100 E. 2nd St.	Oklahoma City December 21, 2007 Oklahoma Bar Association 1901 N. Lincoln Blvd.
-------------------------------	---	---

CLE CREDIT: This course has been approved by the Oklahoma Bar Association Mandatory Continuing Legal Education Commission for 6 hours of mandatory CLE credit, including 1 hour of ethics. For course approval in other states, contact the CLE Registrar.

TUITION: \$150 for early-bird registrations received, with payment, at least four full business days prior to the seminar date; \$175 for registrations received within four full business days of the seminar date.

CANCELLATION POLICY: Cancellations will be accepted at any time prior to the seminar date; however, a \$25 fee will be charged for cancellations made within four full business days of the seminar date. No requests for refunds or cancellations will be accepted on or after the seminar date.

Program Planners/Moderators

Eric Eissenstat, Fellers, Snider, Blankenship, Bailey & Tippens, P.C., Oklahoma City
Jim Calloway, Director, OBA Management Assistance Program, Oklahoma City

Program outline:

- | | | |
|------------------|--|--|
| 8:30 a.m. | Registration and Continental Breakfast | <ul style="list-style-type: none"> • Litigation holds • Trends and agreements • Spoliation issues/sanctions |
| 9:00 | "I Still Haven't Found What I'm Looking For"¹: Location and Preservation of Electronic Evidence <ul style="list-style-type: none"> • Sources and types of ESI • Creation of ESI • Storage and retrieval • Searching, filtering, and collecting • Extraction and conversion • E-mails, e-messaging and voice mail • Data and video • Internet and web pages • Accessing "deleted" data • Electronic discovery software tools • How to select and use data and forensic experts - request for admission and request for proposal • Metadata • Review of ESI Heidi Maher , Renew Data, Austin | <ul style="list-style-type: none"> • Duties of attorney and client • Rule 37 safe harbor • Preservation orders • On-site inspections of computer system or other electronic sources • Third party electronic data Thomas M. Jones , Cozen O'Connor, Seattle |
| 9:50 | Break | 10:50 |
| 10:00 | "New Rules"²: Electronic Discovery Issues (Part 1) <ul style="list-style-type: none"> • New federal e-discovery rules • Meet and confer conferences • Initial disclosures • Preservation notices | "You Can't Always Get What You Want"³: Electronic Discovery Issues (Part II) (ethics) <ul style="list-style-type: none"> • Propounding requests for production • Format requests- what and why • Responding to ESI requests for production • Search duties • Determining production format • "Not reasonably accessible" data • Sampling issues: legacy and back-up systems • Interrogatories and responses • Requests for admission responses • Rule 30(b)(6) and 12 O.S. § 3230 (C)(5) notices on electronic information • Cost shifting • Motion to compel • Clawback and quick peek agreements • Ethical issues and client confidentiality • Attorney-client privilege issues • E-mail strings |

Brooks A. Richardson, Fellers, Snider,
Blankenship, Bailey & Tippens

11:40 Networking lunch (included in registration)

12:10 "Puzzling Evidence"⁴: Use and Admission of Electronic Evidence in Pretrial and Trial Proceedings

- Evidentiary issues
- Federal Rules of Evidence and Oklahoma Evidence Code
- Chain of Custody
- Authenticity
- Reliability
- Use before court
- Use before jury
- ESI and pretrial motions
- Experts/lay witnesses
- Best Evidence
- Internet material
- Web pages
- E-mails
- Business records
- Digital photos, video, etc
- Best practices in strategic use re ESI

Eric S. Eissenstat

Mary Coulson James, Senior Attorney,
AT&T Services, Oklahoma City

1:00 "I Was Meant for the Stage"⁵: Effective Use and Presentation of Electronic Evidence

- Depositions
- Admissions
- E-mails

1:50 Break

2:00 "I Fought the Law"⁶: Views from the Bench Moderator

Eric Eissenstat

Tulsa Program

Judge Greg Frizzell, U.S. District Court for
Northern District of Oklahoma, Tulsa

Magistrate Judge Samuel Joyner, U.S.
District Court for the Northern District of
Oklahoma Tulsa

Judge Rebecca Nightingale, District Court of
Tulsa County, Tulsa

Oklahoma City Program

Judge Stephen Friot, U.S. District Court for
the Western District of Oklahoma, Oklahoma
City

Judge Tim DeGiusti, U.S. District Court for
the Western District of Oklahoma, Oklahoma
City

Judge Bryan Dixon, District Court of
Oklahoma, Oklahoma City

2:50 Adjourn

Litigation and Trials in the Digital Age

☐ **Tulsa**

December 14, 2007
Crowne Plaza Hotel

☐ **Oklahoma City**

December 21, 2007
Oklahoma Bar Center

☐ **Materials only Pub. #309 \$80**

Register online at www.okbar.org/cle

1. U2, 1987
2. Bill Maher
3. Rolling Stones, 1969
4. Talking Heads, 1986
5. Decemberists, 2003
6. Bobby Fuller Four, 1966

Full Name _____

Firm _____

Address _____

City _____ State _____ Zip _____

Phone () _____ E-Mail _____

Are you a Member of OBA? ☐ Yes ☐ No OBA Bar# _____

Make Check payable to the Oklahoma Bar Association and mail entire page
to: CLE REGISTRAR, P.O. Box 960063 Oklahoma City, OK 73196-0063

For ☐ Visa or ☐ Master Card Fax (405) 416-7092, Phone (405) 416-7006
or Mail

Credit Card# _____ Exp.date _____

Authorized Signature _____

WHERE IN THE WORLD IS ATTICUS FINCH IN 2007?

ETHICS, PROFESSIONALISM, AND CIVILITY IN THE PRACTICE OF LAW

DATES & LOCATIONS	<u>Oklahoma City</u>	<u>Tulsa</u>
	December 12, 2007 Oklahoma Bar Center 1901 N. Lincoln Blvd.	December 13, 2007 Crowne Plaza Hotel 100 E. 2nd St.
CLE CREDIT:	This course has been approved by the Oklahoma Bar Association Mandatory Continuing Legal Education Commission for 2.0 hours of mandatory CLE Credit, including 2.0 hours of ethics.	
TUITION:	\$75 for early-bird registrations with payment received at least four full business days prior to the seminar date; \$100 for registrations received within four full business days of the seminar date. Register online at www.okbar.org .	
CANCELLATION POLICY:	Cancellations will be accepted at any time prior to the seminar date; however, a \$25 fee will be charged for cancellations made within four full business days of the seminar date. Cancellations, refunds, or transfers will not be accepted on or after the seminar date.	

PROGRAM:

Program Planner
Allen K. Harris, Oklahoma City

5:15 p.m. Registration

5:30 Dinner Buffet and Discussion

6:20 Break

6:30 Program

7:45 Adjourn

Oklahoma City Program

Welcome and Introductions, **Allen K. Harris**
Moderator, Dan Murdock, OBA General Counsel, Oklahoma City

Discussion of Ethical & Professional Dilemmas by Participants

Judge David B. Lewis
Judge, Oklahoma Court of Criminal Appeals
Former District Judge, Comanche County
Oklahoma City

David A. Poarch
Assistant Dean and Adjunct Professor
University of Oklahoma College of Law
Norman

Judge Barbara Swinton
District Judge, Seventh Judicial District,
Oklahoma County
Oklahoma City

Terry W. West
The West Law Firm
Past President, Oklahoma Trial Lawyers
Association
Shawnee

Judge Allen J. Welch
Special Judge, Seventh Judicial District,
Oklahoma County
Oklahoma City

Harry A. Woods, Jr.
Crowe & Dunlevy
Past President, Oklahoma Bar Association
Past Chairperson, OBA Legal Ethics Committee
OBA Neil Bogan Professionalism Award
Oklahoma City

Allen K. Harris
Past Chairperson, OBA Legal Ethics Committee
Past Co-Chair, OBA Professionalism & Civility
Task Force
OBA Golden Gavel Award
Oklahoma City

Tulsa Program
Welcome and Introductions, **Allen K. Harris**
Moderator, Dan Murdock, Oklahoma City

Discussion of Ethical & Professional Dilemmas by Participants

Judge Deborah Shallcross
District Judge, Fourteenth Judicial District,
Tulsa County
Tulsa

Judge P. Thomas Thornbrugh
District Judge, Fourteenth Judicial District,
Tulsa County
Tulsa

Ron Main
Former President, Tulsa County Bar Association
Member, OBA Professional Responsibility Tribunal
TCBA Golden Rule Award
Tulsa

James E. Poe
Covington & Poe
TCBA Neil E. Bogan Award for
Professionalism
TU College of Law Lifetime Achievement in
Law
Award
Tulsa

Terry W. West
Shawnee

Allen K. Harris
Oklahoma City

Harry A. Woods, Jr.
Oklahoma City

WHERE IN THE WORLD IS ATTICUS FINCH IN 2007?

ETHICS, PROFESSIONALISM, AND CIVILITY IN THE PRACTICE OF LAW

- ☐ **Oklahoma City**
December 12, 2007
Oklahoma Bar Center

- ☐ **Tulsa**
December 13, 2007
Crowne Plaza Hotel

Full Name _____

Firm _____

Address _____

City _____ State _____ Zip _____

Phone () _____ E - Mail _____

Are you a Member of OBA? ☐ Yes ☐ No OBA Bar# _____

Make Check Check payable to the Oklahoma Bar Association
and mail entire page to: CLE REGISTRAR, P.O. Box 960063 Oklahoma
City, OK 73196-0063

For ☐ Visa or ☐ Master Card Fax (405) 416-7092 Phone •(405) 416-7006
or Mail

Credit Card _____ Expire _____

Materials not available for purchase

Register online at www.okbar.org/cle

Signature _____

November Meeting Summary

The Oklahoma Bar Association Board of Governors met at the Sheraton Hotel in Oklahoma City in conjunction with the Annual Meeting on Wednesday, Nov. 7, 2007.

REPORT OF THE PRESIDENT

President Beam reported 726 bar members registered for the meeting, which is the second highest total in recorded OBA history. Luncheon ticket sales are a sell-out at more than 400, the highest ever. The CLE plenary session has also attracted a large number planning to attend. Annual Meeting Task Force members and staff members asked to be present at the board meeting were thanked for their efforts to make this year's bar convention a success of epic proportion. Board members applauded to show their appreciation.

President Beam reported he attended the Custer County Bar Association meeting, October Board meeting and scheduled events in Custer County, Unauthorized Practice of Law Committee meeting, final OBA Annual Meeting Task Force meeting, Oklahoma City Association of Black Lawyers scholarship reception, YLD "Wills for Heroes" training and the YLD "Wills for Heroes" signing event in Oklahoma City. He reported that he spent all of his additional time working on Annual Meeting preparation for numerous events.

REPORT OF THE PRESIDENT-ELECT

President-Elect Conger reported he participated in a conference call with Leadership Conference Task Force Co-Chairs Linda Thomas and Laura McConnell to discuss the task force's mission and other details, worked on committee appointments and served as a judge for the Oklahoma County Bar Association Chili Cook Off, tasting 17 different varieties of chili.

REPORT OF THE PAST PRESIDENT

Past President Grimm reported details of the "has been" party planned for January in Tulsa.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the board meeting and related social events in Custer County, Oklahoma City Association of Black Lawyers reception, meeting with President Beam and others regarding the unauthorized practice of law, staff meeting on Web design, Annual Meeting planning meeting and Annual Meeting staff meeting. He met with OBA Governor-Elect Jerry McCombs in Idabel to plan a

March 2008 board meeting and met with the architect, decorator and furniture builder to discuss the new board room table. He also met with the builder and architect regarding the start date of remodeling, in addition to meeting with the abatement contractor regarding completion of the abatement project. He spoke on resolutions at an Oklahoma County Bar Association meeting. He reported 90 bar members had signed up for 2008 committee service by using the online registration on the Web site. At the OBA, Adobe 8 Professional software is being installed on most staff member computers as a first step toward less paper and better file organization. A preliminary training was held in October and more in-depth training held in November.

BOARD MEMBER REPORTS

Governor Caudle reported he attended the October board meeting in Custer County, Custer County Bar Association golf tournament and dinner, in addition to the Comanche County Bar Association monthly luncheon. **Governor Christensen** reported she attended the October board meeting and social events in

Custer County, Oklahoma County Bar Association meeting, OBA Bench and Bar Committee meeting, and a subcommittee meeting on the Code of Judicial Conduct. **Governor Dirickson** reported she attended the Custer County Bar Association fall party and the October board meeting in Custer County. **Governor Farris** reported he attended the Custer County Bar Association golf tournament and dinner, Board of Governors breakfast at Stephen and Elizabeth Beam's home and October board meeting in Custer County. He continued to teach the new elder law course at the University of Tulsa College of Law, and he ate lunch with his sixth grade "lunch buddy" at Hamilton Middle School as part of the Tulsa County Bar Association "Lunch Buddy" program. **Governor Hermanson** reported he attended the Custer County Bar Association dinner, breakfast at the Beams prior to the October board meeting and the October board meeting in Custer County. He worked on the meeting plans for the General Practice, Solo and Small Firm Section meeting at the OBA Annual Meeting. **Governor Hogan** reported he attended the October board meeting and luncheon in Custer County and Pittsburg County Bar Association meeting that featured CLE presented by OBA General Counsel Murdock. He assisted the Pittsburg County Bar Association president with the planning and coordination of the CLE and upcoming Christmas party, and he began work on the annual Christmas project for rural

Pittsburg County schools. **Governor Kenemer** reported he attended the social events and golf tournament hosted by the Custer County Bar Association, breakfast hosted by Stephen and Elizabeth Beam and Donna Dirickson, October board meeting in Custer County at the General P. Thomas Stafford Space Museum, and the Seminole/Hughes counties bar luncheon honoring special guest Judge Gary Snow, who attended for the first time since his serious auto accident in April. **Governor Reheard** reported she attended the McIntosh County Bar Association meeting. **Governor Souter** reported he attended the Leadership Conference Task Force post-conference meeting, September board meeting and October Creek County Bar Association meeting with speaker Janis Hubbard, OBA first assistant general counsel. **Governor Stockwell** reported she attended the October Board meeting in Custer County and Cleveland County Bar Association Executive Committee meeting.

YOUNG LAWYERS DIVISION REPORT

Governor Camp reported Wills for Heroes will-signing events are occurring more frequently. President Beam said he attended one, and people were indeed grateful. President Beam announced the YLD has received an ABA grant to help fund the project in Oklahoma. Governor Camp reported he attended the Custer County Bar Association dinner and reception, October board meeting in Custer County and the Wills for Heroes

will-signing event in downtown Oklahoma City at the FOP Lodge. In addition, he reported that the YLD CAP/Wills for Heroes Committee hosted its third will-signing ceremony at the Oklahoma County Jail.

SUPREME COURT LIAISON REPORT

Justice Taylor reported new Justice John Rief will attend his first Supreme Court conference next week. He said the new justice comes to the court with much experience. No date has been set yet for the formal swearing-in ceremony. Justice Taylor gave credit to President Beam for the outstanding Annual Meeting attendance.

LAW STUDENT DIVISION LIAISON REPORT

LSD Chair Pappy reported the division will hold a dinner tomorrow, and all board members are invited. A record high of 60 law school students have signed up to attend the Annual Meeting.

GENERAL COUNSEL REPORT

General Counsel Murdock shared a status report of the Professional Responsibility Commission and OBA disciplinary matters.

BAR CENTER RENOVATIONS

As Bar Center Facilities Committee chairperson, President-Elect Conger reported not much has changed since his report at the previous board meeting. Executive Director Williams reported the abatement was estimated to take one more week. He said that prompt completion is needed

because the negative air flow used in the abatement process has disabled the heating system in the main building. Oil-filled radiant heaters for space heating were acquired, but they are not sufficient should the weather turn cold for any length of time. The construction company has assured him they can make up the time loss by and still meet the May 1, 2008, completion deadline.

COMMUNICATIONS TASK FORCE RECOMMENDATION

Communications Director Manning reviewed the E-News policies and distribution schedule proposed by the Communications Task Force. The board voted to make minor amendments to the proposed policies, then approved the amended policy and the distribution schedule.

STATE LEGAL REFERRAL SERVICE TASK FORCE REPORT

As task force chairperson, Governor Caudle reviewed the task force proposal to create a state legal referral service operated by the Tulsa County Bar Association, which was presented at the October board meeting. Financial aspects of the proposal were reviewed. TCBA Executive Director Sandra Cousins spoke. A motion was made to approve the

concept of a state referral service and to move forward to determine details. The vote resulted in a tie, and the motion failed.

LEGAL INTERN COMMITTEE RULE CHANGE - RULE 7.6 CIVIL REPRESENTATION LIMITATIONS

Governor Farris, committee board liaison, reviewed the change proposed. Following discussion, Governor Farris withdrew the proposal and will ask the committee to consider a suggested change.

LEGAL INTERN COMMITTEE RULE CHANGE - RULE 10.1 FEES

The board approved changes recommended by the Legal Intern Committee to make application and change of supervisor fees nonrefundable.

REIMBURSEMENT POLICY OF PAST PRESIDENT ATTENDING ABA HOUSE OF DELEGATES

Executive Director John Morris Williams reported a reimbursement policy already exists for the past president. The board approved an amendment to the policy to include attending the House of Delegates meeting at the ABA annual and midyear meetings.

LEGAL INTERN COMMITTEE

Governor Farris explained the committee in a new rule interpretation has expanded the definition of supervising attorney. He also reviewed the changes the committee proposed to Regulation No. 3 regarding the written licensed legal internship examination.

AUDIT COMMITTEE APPOINTMENT

President-Elect Conger reported he has reappointed Governor Robert Farris, Tulsa as the Audit Committee chairperson to serve a one-year term expiring Dec. 31, 2008.

STAFF APPRECIATION LUNCHEON

President Beam announced OBA staff members will be treated to a catered lunch at the Oklahoma Bar Center on Wednesday, Dec. 12, in appreciation for their hard work during the year.

NEXT MEETING

The board will meet in Oklahoma City at the Oklahoma Bar Center on Friday, Dec. 14, 2007, at 9:30 a.m.

Spotlight on Charitable Good Works

Oklahoma Bar Foundation President's Message

Dear Friend and Colleague:

The phrase "*All the world's a stage*" begins a famous soliloquy spoken by the melancholy Jaques and is one of Shakespeare's most frequently quoted passages. The phrase was already clichéd when Shakespeare wrote *As You Like It* around 1599.

The Oklahoma Bar Foundation entered the stage in 1946, and this year celebrates a 61-year run of continued growth thanks to the generosity and support of many lawyers and the efforts of a dedicated staff. Actors with leading roles include the OBF Fellows, supported by members of the OBF Board of Trustees, our producer and director, Nancy Norsworthy, and her



Mark W. Curnutte, Vinita
OBF President

ALL THE WORLD'S A STAGE,
AND ALL THE MEN AND WOMEN MERELY PLAYERS;
THEY HAVE THEIR EXITS AND THEIR ENTRANCES,
AND ONE MAN IN HIS TIME PLAYS MANY PARTS,
HIS ACTS BEING SEVEN AGES.

AS YOU LIKE IT, ACT 2, SCENE 7

backstage crew, Marie Golloway and Tommie Lemaster. Everyone in this group deserves your applause.

OBF's box office revenues have risen dramatically over the past few years, from \$330,500 in 2000, to \$1.24 million projected for 2007. Much of this revenue increase is attributable to the success of the IOLTA (Interest On Lawyers' Trust Accounts) program. This year's income from IOLTA should exceed \$1 million. These funds enable the OBF to continue its mission and serve its charitable clients in

ways that should make all Oklahoma lawyers proud.

Over the past year, the OBF has been fortunate to receive some very significant cy pres awards. Cy pres award are final surplus funds in class action cases, and sometime other types of court proceedings, that for any number of reasons cannot be distributed to all intended recipients. These awards enable OBF to expand its charitable mission, increase its overall grant awards and dramatically improve its capacity for new initiatives. Although the parties

responsible for these cy pres awards wish to remain out of the limelight, they deserve Oscars for outstanding performances supportive of the OBF. Cy pres awards make a tremendous difference in the OBF's ability to promote law-related causes and programs throughout Oklahoma, and we are very grateful to those who have helped to facilitate these awards.

So what happens to the money? I am pleased to report that OBF has exceeded the \$7 million grant award level with a total of \$7,471,074 awarded to date. The \$7.5 million level will likely be topped by the close of the year. Looking back, in 2002 OBF celebrated the crossing of the \$5 million award level. It took over 50 years to cross this threshold. Five years later that amount has grown to nearly \$7.5 million (a 50 percent increase) thanks to the success of the IOLTA program and the generosity

of attorneys from across Oklahoma. While it is impossible to estimate the number of people who have benefitted from the various programs supported by the OBF, it is fair to say that OBF supporters and contributors have helped make an important difference in the lives of many.

Even though the OBF already has a Fellows cast of over a thousand (1,451 to be exact), we are always looking for more talented new players. We want your support. If you are not already a Fellow, please join our troupe. A ticket to the Fellows program costs only \$100 per year, paid over a 10-year period. Upon completion of the initial \$1,000 pledge, you can move ahead as a Sustaining Fellow with an annual contribution of \$100, or get a front row seat as a distinguished Benefactor Fellow for \$300 per year. The OBF also has a special reduced payment plan for those newly

admitted to the lawyer's guild. The sign-up process is easy and all contributions are tax-deductible. You won't break a leg. I hope you will continue to support the mission of the OBF if you are already a part of the supporting cast as a Fellow. If you are not yet a Fellow, please accept this invitation to join a special community of lawyers by becoming a Fellow today!

I am deeply appreciative of the support and encouragement I received this year from the officers and trustees of the OBF. In addition, I owe a personal debt of gratitude to our producer/director Nancy Norsworthy. Her commendable service keeps the OBF show on the road and the show running smoothly.



Mark W. Curnutte

LET YOUR VOICE BE HEARD!

“Become an OBF Fellow and your single voice becomes over \$7 million strong.”

OBF

FELLOW ENROLLMENT FORM

☐ Attorney ☐ Non-Attorney

Name: _____
(name, as it should appear on your OBF Fellow Plaque) County _____

Firm or other affiliation: _____

Mailing & Delivery Address: _____

City/State/Zip: _____

Phone: _____ Fax: _____ E-Mail Address: _____

☐ I want to be an OBF Fellow **now** – Bill Me Later!

☐ Total amount enclosed, \$1,000

☐ \$100 enclosed & bill annually

☐ *New Lawyer 1st Year*, \$25 enclosed & bill as stated

☐ *New Lawyer within 3 Years*, \$50 enclosed & bill as stated

☐ I want to be recognized as a **Sustaining Fellow** & will continue my annual gift of **at least \$100** – (initial pledge should be complete)

☐ I want to be recognized at the leadership level of **Benefactor Fellow** & will annually contribute **at least \$300** – (initial pledge should be complete)

**YES –
I support charitable good works
& agree to become a member of
the OBF Fellow Program.**

Signature & Date: _____ OBA Bar #: _____

Make checks payable to:
Oklahoma Bar Foundation • P O Box 53036 • Oklahoma City OK 73152-3036 • (405) 416-7070

OBF SPONSOR: _____

☐ *I/we wish to arrange a time to discuss possible cy pres distribution to the Oklahoma Bar Foundation and my contact information is listed above.*

Many thanks for your support & generosity!

Providing Pro Bono Services and Making a Living

By Jon K. Parsley

Providing pro bono legal services to those less fortunate is our professional duty. All of us deep down want to help other people, but we are sometimes constrained by the necessity of making a living. I am a sole practitioner. If I can find the time to provide pro bono services, anyone can.

We hear a great deal about the concept of work/life balance. Another major concern in the majority of law practices is pro bono/paid work balance. Attorneys in larger firms are fighting to make billable hours and usually have more structured pro bono time. There are numerous ways that even solo and small firm lawyers can afford to provide pro bono services without going broke in the process.

With the Oklahoma Indigent Defense System, most pro bono cases are not in the area of criminal law. The biggest need seen in rural Oklahoma is in the family law and juvenile law areas. It is very common in the Panhandle for attorneys to be appointed by the court to represent children or parents in juvenile cases. It is very common to be appointed to act as guardian *ad litem* in family law matters.

Attorneys take these appointments willingly with the knowledge they will only be paid a small amount per hour from the court fund. I know several attorneys who do not even file court fund claims on these cases, but handle them without cost to the client or the system.



Pro bono services don't have to be provided to strangers. I have a local restaurant where I eat the majority of my meals. The staff at the restaurant is largely college students and other persons of limited resources. My pro bono service began with answering a few legal questions, and then moved on to providing representation to several of the employees for various legal problems.

Instead of being annoyed by these people asking legal questions, I embraced it. I now provide legal services to many of the employees on a regular basis with the realization that these people can't afford to pay. The point is, we can provide pro bono services to people we know and like.

Sometimes it is even more fulfilling to help people of limited resources who are not total strangers.

We should all support Legal Aid Services of Oklahoma. There are many ways to help that program. Legal Aid has a contract program for attorneys to handle matters for a reduced hourly amount. There is a process for donating money to Legal Aid in the amount of hourly rates. Legal Aid Services is always under funded. Helping the Legal Aid process directly or indirectly is of utmost importance for ensuring that justice is not only available for the rich and powerful.

Pro bono legal services is a much broader concept than providing direct representation to litigants. Working for the Oklahoma Bar Association is a form of pro bono service that can have a profound effect on access to jus-

tice and the underprivileged in Oklahoma. I would encourage everyone to volunteer for committees or sections. Getting active in the bar association is a great way to meet other people and help the practice of law. Getting involved in other community volunteer organizations is also of utmost importance.

Pro bono services can lead to great dividends. You never know when that person that you are representing for free in that custody battle will have a family member involved in a car wreck or an insurance dispute. Those people will remember your kindness and bring the case to you.

Pro bono clients I have helped in the past are very good about telling people what a great attorney you are. I am a firm believer in the concept of "what goes around comes around." Providing pro bono legal services may seem like

“ I am a firm believer in the concept of ‘what goes around comes around.’ ”

an overwhelming commitment of money and time, but it can lead to huge dividends.

I know billable hours and making enough for overhead are overriding concerns; however, carving out time and money for those who cannot afford it is the right thing to do. Just as work/life balance is a struggle, one must be careful to have the right mix of pro bono and paying clients. With a careful mix of providing legal services to those who cannot afford them, we can all do our share to ensure justice for all.

Mr. Parsley practices in Guymon and is 2008 OBA president-elect.

PUZZLED BY PROFESSIONAL LIABILITY INSURANCE?



LET US PROVIDE THE MISSING PIECE!



Additional Services: **Professional Office Package Policy:** (property/general liability)
Court Bonds: Fiduciary, Replevin, Notary, Appeal/Supersedeas, Injunction/TRO, Lost Instrument, Small Estate

405/236-8205

800/318-7505

www.oamic.com

YLD ELECTION RESULTS ANNOUNCED

The YLD Board of Directors convened for its regular monthly business meeting on Nov. 8, with Chairperson Christopher Camp presiding over the session. Immediate Past Chairperson of the division and current YLD Nominating Committee Chairperson Keri Williams announced the results of the election for the open YLD board positions, which was the most heavily-contested YLD election on record.



YLD Chairperson-Elect Kimberly Warren and Chairperson Chris Camp pause to chat with a Vegas showgirl at Casino Night at the OBA Annual Meeting.

The officers of the division for 2008 will be: Chairperson – Kimberly Warren (Tecumseh); Chairperson-Elect – Richard Rose (Oklahoma City); Treasurer – Molly Bircher (Tulsa); Secretary – Nathan Johnson (Lawton);

and Immediate Past Chairperson – Christopher Camp (Tulsa).

New to the Board of Directors in 2008 will be: Tina Izadi (Judicial District No. 3, Oklahoma City); Briana Ross (Judicial District No. 6, Tulsa); Kaleb Hennigh (At Large, Enid); Jennifer Kirkpatrick (At Large, Oklahoma City); and Gabriel Bass (At Large – Rural, El Reno). Those incumbents retaining their board seats were Shanda McKenney (Judicial District No. 3, Oklahoma City); Joe Vorndran (Judicial District No. 8, Shawnee); and John Truskett (At Large, Tulsa).

YLD PRESENTS AWARDS AT ANNUAL BREAKFAST

The YLD closed out the 2007 Oklahoma Bar Convention with its annual Friends and Fellows Breakfast. Fellows of the YLD are chosen annually from members of the OBA who are no longer young lawyers, but have served with distinction as a YLD officer, director or committee chairperson, or who have otherwise demonstrated their support of the Division and dedication to the objectives of the YLD. Similarly, Friends of the YLD are named each year to recognize those non-lawyers

who have contributed significantly to the division and its many community service projects.

After breakfast was served, Chris Camp called the group to order to recognize the 2007 YLD award recipients:

YLD Fellows:

Debra Charles
Mark Osby
Linda Thomas

YLD Friends:

S. Rachel Pappy
Dana Shelburne

Outstanding YLD Directors:

Doris Gruntmeir
Roy Tucker

Outstanding YLD Committee Chair:

Lindsey Andrews &
Richard Rose (co-chairs,
“Wills for Heroes”/C.A.P.
Committee)

In addition to the honorees and YLD officers and directors present, the YLD was pleased to welcome OBA Governor (Dist. 1) Brian Hermanson, incoming OBA Governor (At Large) Jack L. Brown, Tulsa County Bar Association Executive Director Sandra Cousins and OBA Family Law Section Budget Officer David Echols.

WILLS FOR HEROES HOLDS WILL-SIGNING CEREMONIES

YLD Directors Lindsay Andrews and Rick Rose, along with YLD Chair Christopher Camp and young lawyers Gabriel Bass, Tom Doty and Andrew Harrison, visited Fraternal Order of

Police Lodge 123 in downtown Oklahoma City on Oct. 23. There, in conjunction with the OBA/YLD “Wills for Heroes” program, they drafted wills for several Oklahoma City-area police and their spouses. In a show of appreciation, the lodge presented each young lawyer with a replica “Oklahoma Peace Officer” centennial badge – the same as the badge worn by police statewide throughout the year to commemorate a century of Oklahoma statehood. On Nov. 2, the Wills for Heroes Committee conducted its third will-signing event at the Oklahoma County Jail, with Andrews and Craig Carson preparing wills for participants. Special thanks to Maranda Miles, legal assistant with Miller Dollahide, for her continued time serving as a notary for the event.

YLD & OBA LAW STUDENT DIVISION TEAM UP TO REVAMP SENIOR CITIZENS HANDBOOK

The YLD, in conjunction with the OBA Law Student Division, is hard at work making necessary revisions and updates to the OBA Senior Citizens Handbook. The handbook, published by the YLD Seniors Committee, is full of helpful information to aid in understanding those agencies, laws and services available to senior citizens in Oklahoma.



Chris Camp, Andrew Harrison, Lindsey Andrews, F.O.P. President Larry Grant, Tim Doty and Gabe Bass.

“In addition to the substantive revisions, we are in the process of dramatically changing the format of the handbook in an effort to make the wealth of information contained within it more manageable and accessible to its readers,” said YLD Director John Truskett.

“This project has, as an added benefit, afforded many law students in Oklahoma the opportunity to work on a meaningful legal project while still in law school and to get involved in the bar association,” added OLSD Chair Rachel Pappy.

Truskett and Pappy have been working together closely since September, overseeing the approximately 30 volunteers responsible for making revisions to the

handbook and checking the accuracy of each sentence.

“Since the original publication of the Handbook some years back, several laws have been enacted, amended or repealed, and many of the Web sites and agencies mentioned in the handbook have dissolved or changed names,” said Truskett. “Our volunteers are working hard to see that the lengthy handbook is completed as soon as possible.”

Keep an eye out for the Senior Citizens Handbook, or contact John Truskett at (918) 388-5632 or jtruskett@ecslok.com.

Calendar

December



- 14 OBA Family Law Section Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Donelle Ratheal (405) 842-6342
- OBA Board of Governors Meeting;** Oklahoma Bar Center, Oklahoma City; Contact: John Morris Williams (405) 416-7000
- Mentorship Task Force Meeting;** 2 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jon Parsley (580)-338-8764
- 18 Mock Trial Committee Meeting;** 5:45 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Judy Spencer (405) 755-1066
- 24-25 Christmas Holiday** (State Holiday)
- 31 New Year's Eve** (State Holiday)

January

- 1 New Year's Day** (State Holiday)
- 11 Law Day Contest Judging;** 11 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Melissa Brown (405) 416-7017
- OBA Family Law Section Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Donelle Ratheal (405) 842-6342
- 16 Ginsburg Inn of Court;** 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Julie Bates (405) 691-5080
- 18 OBA Board of Governors Swearing In;** 8:30 a.m.; Supreme Court Courtroom, State Capitol; Contact: John Morris Williams (405) 416-7000
- OBA Board of Governors Meeting;** Oklahoma Bar Center, Oklahoma City; Contact: John Morris Williams (405) 416-7000
- 21 Martin Luther King Jr. Day** (State Holiday)
- 24 Paralegal Committee Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Joseph H. Bocock (405) 235-9621



February

- 8 OBA Family Law Section Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Donelle Ratheal (405) 842-6342
- 18 President's Day** (State Holiday)
- 22 OBA Board of Governors Meeting;** Oklahoma Bar Center, Oklahoma City; Contact: John Morris Williams (405) 416-7000
- 26-29 OBA Bar Examinations;** 8 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Board of Bar Examiners (405) 416-7075

This master calendar of events has been prepared by the Office of the Chief Justice in cooperation with the Oklahoma Bar Association to advise the judiciary and the bar of events of special importance. The calendar is readily accessible at www.oscn.net or www.okbar.org.



President Beam Presents Awards

Along with the annual OBA awards presented during last month's Annual Meeting, President Stephen Beam presented three President's Awards. Linda Thomas of Bartlesville received an award for chairing the Leadership Conference Task Force. Guymon attorney Jon Parsley was recognized for heading up the Mentoring Task Force, and Melissa DeLacerda of Stillwater was honored for her coordination of this year's Annual Meeting.

New OBA Board Members to be Sworn In

Eight new members of the OBA Board of Governors will be officially sworn in to their positions on Jan. 18, 2008, at 10 a.m. in the Supreme Court Courtroom at the State Capitol. The new officers are President J. William Conger, Oklahoma City; President-Elect Jon K. Parsley, Guymon; and Vice President Michael C. Mordy, Ardmore.

To be sworn in to the OBA Board of Governors to represent their judicial districts for three-year terms are James T. Stuart, Shawnee; Jerry L. McCombs, Idabel; W. Mark Hixson, Yukon; and Jack L. Brown, Tulsa.

To be sworn in to one-year terms on the board are Immediate Past President Stephen D. Beam, Weatherford; and Young Lawyers Division Chairperson Kimberly Warren, Tecumseh.



Bar Journal Photo Correction Notice

Longtime Tulsa County public defender Denny Johnson, who received the OBA Alma Wilson Award at this year's Annual Meeting, was misidentified in the Annual Meeting materials. The correct photo of Ms. Johnson is to the left.

Ms. Johnson began her service at the Tulsa County Public Defender's Office in 1981. In the early 1990s, the courts saw a need for independent representation of children based on the escalation of high conflict between divorcing parents. Ms. Johnson responded to this increased need and was granted the authority to limit her representation to children. This was a new and unknown area of law, and Ms. Johnson had to research and implement protocols for effectively representing children. The courts soon realized that in a divorce, the best interests of the child were paramount and should be the primary consideration in all litigation involving children.

"Ms. Johnson's reputation as a fierce advocate and extremely skilled trial lawyer helped pave the way and set the bar for the standards of child representation in Tulsa," her nominators said.

The *Oklahoma Bar Journal* regrets the error.



**Bar Member
Chosen as
OSU President**

Oklahoma City attorney V. Burns Hargis has been selected as Oklahoma State University's 18th president. The OSU alumnus was an OSU regent for five years before resigning in July to be considered for the presidency. He must wait until July to assume the post, however, because of a state statute that bars a person from being employed by a state board until a year after the person leaves the board.

Mr. Hargis will fill the vacancy created by David Schmidly, who resigned in March. The OSU president also serves as chief executive officer of the OSU system, overseeing campuses in Stillwater, Oklahoma City, Tulsa and Okmulgee that total 32,000 students.

OBA Member Resignations

The following OBA members have resigned as members of the association and notice is hereby given of such resignation:

John C. Booth
OBA No. 961
P.O. Box 15
Farmington, NM 87499

Wayne M. Copeland
OBA No. 13880
P.O. Box 155
Oglesby, TX 76561

Steven Clark Davis
OBA No. 20010
2874 NW Upshur St.
Portland, OR 97210

Nancy Christine Gase
OBA No. 16222
604 N. Main, Suite D
Wichita, KS 67203

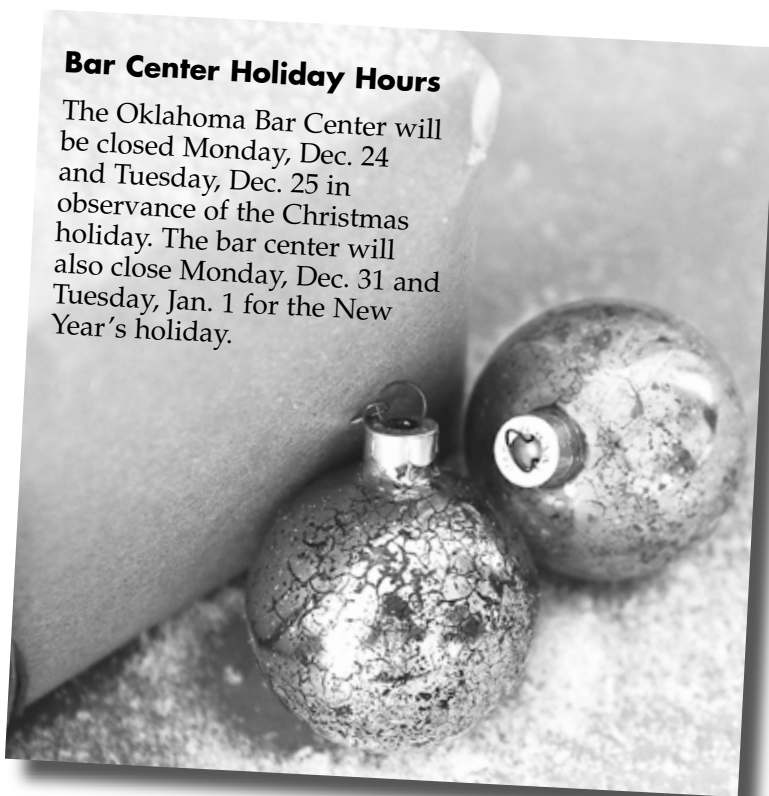
Nicholas Guy John Healey
OBA No. 18391
204 E. 22nd St.
Cheyenne, WY 82001-3799

Marvin Linn Smith
OBA No. 13006
2 N. Main, Suite 414
Miami, OK 74354

James Oliver Tate
OBA No. 16028
950 S. Garcia St., No. 656
Port Isabel, TX 78578

Bar Center Holiday Hours

The Oklahoma Bar Center will be closed Monday, Dec. 24 and Tuesday, Dec. 25 in observance of the Christmas holiday. The bar center will also close Monday, Dec. 31 and Tuesday, Jan. 1 for the New Year's holiday.



Kudos

Sharisse O'Carroll was named a 2007 Distinguished Fellow of the National Institute for Teaching Ethics and Professionalism. As the recipient of this honor, Ms. O'Carroll will participate in a three-day workshop in Atlanta. She will be joined by other educators, legal scholars, practitioners and judges from across the United States and Canada. She was selected based upon her efforts and ideas for promoting ethics and professionalism through local, state and national professionalism organizations.

Robert W. Nelson was recently inducted as a Fellow of the American College of Trial Lawyers at its 2007 Annual Meeting in Denver. Mr. Nelson is a partner in the firm of Whitten, Nelson, McGuire, Terry & Roselius and has been practicing in Oklahoma City for 27 years. Founded in 1950, the college is composed of trial lawyers from the United States and Canada.

The women's marketing initiative at Conner & Winters LLP hosted "Put Your Best Foot Forward" on Oct. 29 at J. Cole Shoes in Tulsa. The event was a benefit to raise funds and awareness for Tulsa Lawyers

for Children – a non-profit organization that recruits, trains and gives ongoing assistance to lawyers who volunteer to provide pro bono legal representation to abused, neglected and abandoned children in Tulsa County.

Mark Christiansen was honored at the Eugene Kuntz Conference on Natural Resources Law and Policy at the Cox Convention Center on Oct. 26. He received the Eugene Kuntz Award in recognition of his contributions to natural resources law and policy. Mr. Christiansen is a member of the executive committee for the Board of Trustees of the Dallas-based Center for American and International Law, and he has just completed a two-year term as a member of the executive committee for the Board of Trustees for the Denver-based Rocky Mountain Mineral Law Foundation.

Anton "Tony" Rupert was recently inducted as a Fellow of the American College of Trial Lawyers at its 2007 Annual Meeting in Denver. Mr. Rupert is a partner in the firm of Crowe & Dunlevy and has been practicing in Oklahoma City for 25 years. He has served as an adjunct professor of trial techniques at the OU and OCU law schools.

Annette Wisk Jacobi was recently elected to serve

as the vice president for the board of directors of the National Alliance of Children's Trust and Prevention Funds. The purpose of the alliance is to promote and support a system of services, laws, practices and attitudes that strengthen family capacities to provide their children with safe, healthy and nurturing childhoods. Ms. Jacobi is employed with the Oklahoma State Department of Health as the chief of the Family Support and Prevention Service.

David M. vonHartitzsch's article, "Don't Become a Hostage to Your Pipeline Construction Contractor: Avoiding the Pitfalls of Lien Law Abuse in Pipeline Construction Projects" was recently selected for publication by the Oil, Gas & Energy Intelligence Newsletter. Mr. vonHartitzsch is an attorney with the law firm of Joyce & Paul PLLC.

Oklahoma DUI attorneys **John Hunsucker** and **Bruce Edge** recently published "Oklahoma DUI Defense; The Law and Practice." The treatise is written to help lawyers understand the chemical, biological, technological concepts and issues underlying DUI prosecution and defense, with Oklahoma-specific advice.

Matthew A. Caves, environmental attorney for the Oklahoma Department of Environmental Quality

was recently elected to serve a one-year term as president of the OSU College of Arts & Sciences Alumni Board. The College of Arts & Sciences has 42,000 alumni and 24 departments ranging from art to zoology.

On The Move

Hester, Schem, Hester & Batson announces the relocation of their offices to 16311 Sonoma Park Drive, Oklahoma City, 73013. The firm also announces that **Tim McCoy** has been added to the firm in an of counsel capacity at the new location. With this addition, the firm will provide services in business litigation and transactions as well as banking law.

Maples & Associates announces that **Travis K. Siegel** has recently become an associate in the firm's Edmond office. He will concentrate his practice in the areas of catastrophic injuries and all aspects of personal injury law. Mr. Siegel holds a bachelor's degree from OCU and received his law degree from OU.

Hall, Estill, Hardwick, Gable, Golden & Nelson PC, announces the addition of **Seth A. Day** as an associate to its Oklahoma City office. He will practice in the areas of corporate/commercial litigation, labor and employment, products liability, and tort and insurance defense. Mr. Day received a

B.S. from OSU and his J.D. from OU with distinction.

Woska & Swim announces that **John D. Wadley** and **Tara T. Tabatabaie** have joined the firm as associates. Mr. Wadley received his J.D. from OCU School of Law in May 2007, and holds a bachelor of business administration from OU. He will assist the firm in their practice involving medical malpractice, catastrophic injuries to children, nursing home negligence and hospital negligence. Ms. Tabatabaie received her J.D. from OCU School of Law in May 2007, magna cum laude. Ms. Tabatabaie holds a Ph.D. in chemistry from OU and was a senior research scientist and assistant member in the Free Radical Biology and Aging Research Program at the Oklahoma Medical Research Foundation in Oklahoma City. She will assist the firm in their practice involving products liability, including defective dangerous drugs, and environmental and toxic tort litigation.

The Law Center of Oklahoma has recently added **Andrew K. Long** to the consumer advocacy practice. The center is a consumer advocacy firm that specializes in Fair Debt Collection Practices Act violations, defending consumers in litigation regarding debt, repossessions and home foreclosures. Mr. Long will assist the center in the area of bankruptcy.

Patrick T. Layden PC in McAlester announces that **Timothy E. Mills** has joined the firm as an asso-

ciate attorney. Mr. Mills is a graduate of Weber State University and earned his J.D. from OCU School of Law. He has practiced law in Oklahoma City for the past four years and will primarily practice in the areas of criminal and family law.

Atkinson, Haskins, Nellis, Brittingham, Gladd, & Carwile announces that **Michael R. Scoggins** has joined the firm as an associate. Mr. Scoggins graduated with a B.A. in history from Furman University in Greenville, S.C., and received his J.D. from the TU College of Law in 2007. While in law school, he received the CALI Award for Excellence in Legal Reasoning Authorities and Writing II, the Order of the Curule chair and was a member of the dean's honor roll. He focuses his practice in civil litigation and his cases involve medical malpractice defense, insurance defense, bad faith and general tort litigation.

Bryant Law Firm has joined GableGotwals, and professionals formerly with the firm started providing legal services at GableGotwals' Tulsa office on Dec. 1. The firm believes this move will allow them to complement the team of business litigators at GableGotwals and to serve clients' needs in complex business cases or in matters other than litigation.

Cynthia A. Viol announces she has opened her office for the practice of criminal defense law at 434 N.W. 11th St. in Oklahoma City, 73103. Ms.

Viol, formerly with the Oklahoma County Public Defender's Office, will focus on the defense of sex crime cases. She graduated from Texas Tech School of Law in 1986 and is licensed to practice in Texas and Oklahoma.

Trinity Legal Clinic of Oklahoma Inc. announces the selection of **Lynn Elliott** as its first executive director. Ms. Elliott is a May 2007 graduate of OCU School of Law. At her position, she will coordinate free legal clinics for the homeless and poor at City Rescue Mission and Cross and Crown Mission in Oklahoma City.

Selby, Connor, Maddux & Janer PLP announces that **N. Kyle McCallum** has joined the firm as an associate. Located in Bartlesville, Mr. McCallum will work in the firm's general civil practice of law. He graduated from OU College of Law in 2002 and has been in private practice in Hugo for five years.

Lester, Loving & Davies announces that **Brian S. Manning** has joined the firm. Mr. Manning received a B.A. in political science, magna cum laude, and a minor in Russian in 2000 from OSU. He earned his J.D. from the University of Minnesota where he was active in the school's international moot court program. He practices primarily in the areas of employment and family law.

At The Podium

Allen B. Pease was a featured speaker at the Corporate Counsel Construction Forum in Washington D.C. on Oct. 30. Mr. Pease's topic was "Drafting and Negotiation of Contract Clauses, Termination and Dispute Resolution." The forum provided counsel for the purpose of presenting the best practices for managing risks in the construction industry.

Keith Tracy of Keith Tracy PLLC spoke at the Wind Energy Public Forum in Taloga on Nov. 5. He explained the legal aspects associated with entering into a lease or easement with wind energy companies. Mr. Tracy represents landowners in negotiating wind energy leases and easements in Oklahoma.

Joseph H. Paulk will participate as a featured panelist at the 2008 American College of Civil Trial Mediators annual conference in Rockport, Maine. Mr. Paulk is nationally recognized in the field of mediation and dispute resolution. He is an avid writer on various topics in the field of dispute resolution and trial issues.

Sarah Jane Gillett spoke at a National Business Institute seminar in Oklahoma City on Nov. 27. She presented a seminar on applying

the new federal rules of civil procedure. Specifically, she addressed ensuring e-discovery compliance in court proceedings and producing documents and e-discovery protocols.

T. Douglas Stump was a featured speaker for the 2007 Oklahoma Judicial Conference in Oklahoma City Nov. 7. Mr. Stump's presentation analyzed and conducted a discussion on the rights of undocumented aliens to access the Oklahoma district courts. He has co-edited 21 books on immigration law and is one of the 21 elected directors of the 10,500 member American Immigration Lawyers Association.

Compiled by Jeff Kelton

How to place an announcement: If you are an OBA member and you've moved, become a partner, hired an associate, taken on a partner, received a promotion or an award or given a talk or speech with statewide or national stature, we'd like to hear from you. Information selected for publication is printed at no cost, subject to editing and printed as space permits. Submit news items (**e-mail strongly preferred**) in writing to:

Melissa Brown
Communications Dept.
Oklahoma Bar Association
P.O. Box 53036
Oklahoma City, OK 73152
(405) 416-7017
Fax: (405) 416-7001 or
E-mail: barbriefs@okbar.org

Articles for the Jan. 12 issue must be received by Dec. 26

Charles Nelson Berry Jr. of Oklahoma City died Oct. 26. He was born Aug. 20, 1918, in Ada. He attended the University of Oklahoma for two years and was a member of Beta Theta Pi but later transferred to Yale University and graduated from there in 1940. **His attendance at Harvard Law School in 1941 was interrupted by World War II. He served in the U.S. Navy from 1941-1945, during which he was assigned to the White House Map Room and served President Franklin D. Roosevelt. He served for 28 months in both the Atlantic and the Pacific.** After the war ended, he resumed law school at Harvard. Upon graduation in 1948, he began practicing law in Oklahoma City and never stopped. Memorial contributions may be made to the All Souls Episcopal Church Stephen Ministries Fund.

Charles C. Callaway of Mangum died Sept. 17. He was born June 24, 1924, in Prescott, Ariz. The family moved to Greer County in 1926. He began his college career at Mangum Junior College and later transferred to OU. **He postponed his education to serve in the U.S. Army, 99th Infantry, in World War II. His military honors include two Bronze Stars and a Purple Heart.** After returning to the states, he resumed college at OU. He and his wife moved to Washington, D.C., where he received his B.A. from George Washington University and his

J.D. from the American University Washington College of Law. Once he returned to Oklahoma, he served as an assistant district attorney for more than 35 years. He also farmed land south of Mangum he referred to as "Paradise Flats," which was originally farmed by his grandparents. Among his survivors are his son, Charles C. Callaway Jr., daughter Ellen Callaway Bonner, and daughter-in-law, Gene Callaway, all OBA members.

Kenneth Stephan Clark of Norman died Nov. 4. He was born Jan. 8, 1936, in Oklahoma City. **Prior to practicing law, he worked at Tinker Air Force Base for 27 years. He served in the U.S. Marine Corps and the Korean War from 1953-1956.** He received his J.D. in 1982 from OCU. He was in private practice from 1982-1989, and he worked for the office of Hearings and Appeals from 1989-1998. Memorial donations may be made to the Holy Trinity Lutheran Church in Edmond.

Russell William Dozier Jr. of Oklahoma City passed away in October. He was born Feb. 11, 1927, in Oklahoma City. **He graduated from North Carolina State while involved in the Army Specialized Training Program. He attended the Army Signal Corps Officers Candidate School at Ft. Monmouth, N.J., and was a 2nd Lieutenant. He served in the Philippine Islands. After his**

service, he attended the OU Law School, but soon joined the Oklahoma National Guard and was promoted to First Lieutenant in June 1949. He served in the 45th Signal Company in Japan and Korea and was awarded the Bronze Star. Once he returned to Oklahoma, he finished his LLB degree from OU in June 1953. He was admitted to the bar by motion shortly thereafter. He was a licensed life insurance agent with Massachusetts Mutual Life Insurance Company for 48 years and created the Dozier Company, a pension and Actuarial consultant company. During his career, he served as president of the Oklahoma City Association of Life Underwriters and of the Oklahoma City Chapter of Chartered Life Underwriters. He was also active in several other related organizations.

John Staples Estill Jr. of Tulsa died in his Texas retirement home in Fort Worth, Texas, on Oct. 24. He was born Jan. 20, 1919, in Grapevine, Texas. He graduated from Texas Christian University. He was a U.S. Navy veteran. In 1948, he received his J.D. from Southern Methodist University. He was co-founder of one of Tulsa's oldest law firms, Hall, Estill, Hardwick, Gable, Golden & Nelson PC. He was with the firm from 1967 until his retirement in the early 1990s. Estill was initially recruited for his expertise in oil and gas pipelines as a result of 14 years of employment with

Sinclair Oil & Gas Company and later Sinclair Pipeline Company. He will be remembered by colleagues for his dedicated service to the legal profession and his contribution to the growth and prosperity of two of Tulsa's most successful enterprises.

Sondra Houston of Tulsa died Oct. 26. She was born Oct. 2, 1939, in Wilkes Barre, Pa. She grew up in Scranton, Pa., but moved to Tulsa in 1957, where she graduated from Will Rogers High School. After high school, she worked as a secretary for the law firm of Tommy Frasier until she decided to further her own education. She received her bachelor of arts degree from TU in 1968 and became the only woman in her class when she graduated from the TU Law School in 1970. She also became the first female assistant attorney general. In 1972, she began work as an assistant district attorney in Idabel. She opened a private practice in Tulsa in 1975, which she operated until 2005. Her practice areas ranged everywhere from representing labor unions to acting as a guardian ad litem for children. In 2006, she was selected by the Women's Law Caucus at the TU College of Law to receive the Fern Holland Award for her courage and bravery in practicing law. Throughout her legal career, she was active in many legal organizations. Memorial contributions may be made to the Cancer Society of America.

Lisa McCalmont of Norman died Nov. 1. She was born Nov. 2, 1957. She was a national expert on lethal injection. She received a bachelor's degree in geology at Dickinson College

in 1979 and pursued graduate studies in geology at the University of Arizona. A 1996 graduate of the TU College of Law, she worked most recently as a consultant on lethal injection for the Death Penalty Clinic at the University of California's Berkeley School of Law. She served as a resource to attorneys across the country who were working on challenges to lethal injection cases as part of the school's Eighth Amendment Resource Council. She also worked for the federal public defender's office in Oklahoma City.

Albert Martin Morrison of Oklahoma City passed away in October. He was born Sept. 17, 1925. **He attended local area schools and one year of college at Oklahoma Military Academy before serving in the Navy as a pharmacist's mate.** Upon returning from military service, he enrolled at OU and completed his undergraduate and law school degrees in three years. He was admitted to the Oklahoma bar in 1949, in the tradition of his father, grandfather, brothers and uncles. His interests included travel, gourmet cooking, camping, boating, OU football games and spending time with his family. Memorial contributions may be made to the First Christian Church of Oklahoma City or Odyssey Healthcare of Oklahoma City.

George Donald (Don) Pearson of Muskogee died Nov. 5. He was born Oct. 22, 1934, in Webbers Falls. He had a great love for sports and played basketball on scholarship at Connors College and Sul Ross University in Alpine, Texas. He also played baseball at both

schools. He graduated with a bachelor's degree in history and English. He played one season of professional baseball and decided to attend law school. He attended the OU and TU law schools, where he received his J.D. His law practice was established in Muskogee and remained there for the duration of his career. He never gave up his love for sports and enjoyed golfing as much as he could. Memorial donations may be made to the American Cancer Society.

Richard Bates "Dick" Talley of Norman died Oct. 19. He was born March 19, 1947, in Norman. He attended OU, graduating with a B.A. in business administration in 1969 and a J.D. from OU in 1972. He was also a licensed CPA. Upon graduation, he immediately opened his law firm and became a local legend for his courtroom tactics. He was regularly voted by the people of Norman as one of the best attorneys in town, and was even voted as the best attorney for the 20th century for Norman. Outside of his law practice, he had an assorted collection of Cushman scooters, Harley-Davidson motorcycles, cars of every make and many clocks. In 1976, he, along with two life-long friends, opened The Mont and, later, The Vista—both longtime Norman establishments. He also recently opened Abner's Restaurant, which he worked very hard for. He loved his family and countless friends more than anything. Memorial donations may be made to the American Heart Association and the American Diabetes Association.

SERVICES

INTERESTED IN PURCHASING PRODUCING & Non-Producing Minerals; ORRI; O & G Interests. Please contact: Patrick Cowan, CPL, CSW Corporation, P.O. Box 21655, Oklahoma City, OK 73156-1655; (405) 755-7200; Fax (405) 755-5555; E-mail: pcowan@cox.net.

CIVIL APPEALS, RESEARCH PROJECTS, BRIEF WRITING, DISCOVERY ISSUES & LITIGATION SUPPORT. Experienced former federal law clerk will handle state and federal appeals, draft motions and briefs and assist in trial preparation. Amy H. Wellington (405) 641-5787, E-mail: avhw@mindspring.com.

ABRAHAM'S SINCE 1959 NATIONWIDE

BAIL BONDS

Attorney's EXPRESS Service
DISCOUNTED Bond Fees on Referrals
OFFICE OPEN & STAFFED 24/7
Toll Free 1-877-652-2245 OKC 528-8000

APPEALS and LITIGATION SUPPORT — Expert research and writing by a veteran generalist who thrives on wide variety of projects, big or small. **Cogent. Concise.** Nancy K. Anderson, (405) 682-9554, nkanderson@hotmail.com.

Experts in Economic Damages

Anderson Economic Group, LLC

Antitrust, Business & Asset Valuations, Fairness Opinions, Franchise Disputes. Economic and Feasibility Studies. Contact our experts at (214) 219-3939 or www.AndersonEconomicGroup.com

OF COUNSEL LEGAL RESOURCES — SINCE 1992 — Exclusive research & writing. Highest quality: trial and appellate, state and federal, admitted and practiced U.S. Supreme Court. Over 20 published opinions with numerous reversals on certiorari. **MaryGaye LeBoeuf** (405) 728-9925, marygay@cox.net.

**HANDWRITING IDENTIFICATION
POLYGRAPH EXAMINATION**

Board Certified	Court Qualified
Diplomate — ABFE	Former OSBI Agent
Life Fellow — ACFE	FBI National Academy

Arthur D. Linville (405) 636-1522

CONSULTING ARBORIST, tree valuations, diagnoses, forensics, hazardous tree assessments, expert witness, depositions, reports, tree inventories, DNA/soil testing, construction damage. Bill Long, ISA Certified Arborist, #SO-1123, OSU Horticulture Alumnus, All of Oklahoma and beyond, (405) 996-0411.

SERVICES

OKLAHOMA EMPLOYMENT LAWYERS ASSOCIATION: If you are a Plaintiff's attorney who occasionally files employment related lawsuit, join the OELA. Contact Lori Lanon at (405) 235-6100 for information and check out OELA's December 14, 2007, seminar: *Anatomy of a \$60,000,000 verdict*. Visit OELA.org.

MEDICAL MALPRACTICE

Board-certified doctor expert witnesses, all specialties: \$500 flat rate referral. In house case review by veteran MD specialists, \$750 flat rate, opinion letter, no extra charge. Fast, easy, safe since 1998. www.MedMalExperts.com (888) 521-3601

MEDICARE – MEDICAID – HEALTH LAW Mark S. Kennedy, P.C. Attorneys and Counselors at Law – A Health Law Boutique concentrating practice in Healthcare regulatory and payment matters and other Business Services to the healthcare provider and practitioner. Formerly Counsel to U.S. Department of Health and Human Services' Centers for Medicare & Medicaid Services and Office of the Inspector General. Voice (972) 479-8755; Fax (972) 479-8756; markskennedylaw@msn.com.

TRAFFIC ACCIDENT RECONSTRUCTION

INVESTIGATION • ANALYSIS • EVALUATION • TESTIMONY

25 Years in business with over 20,000 cases. Experienced in automobile, truck, railroad, motorcycle, and construction zone accidents for plaintiffs or defendants. OKC Police Dept. 22 years. Investigator or supervisor of more than 16,000 accidents. **Jim G. Jackson & Associates Edmond, OK (405) 348-7930**

OFFICE SPACE

LAWYER HAS TWO OFFICE SPACES AVAILABLE. Downtown OKC. Nice offices with large reception area in secure building. Free Parking and easy access for clients. Call Michelle at (405) 476-7102.

PRESTIGIOUS OKC OFFICE SPACE 4528 N. Classen Blvd. Reception, Fax, Copier, Telephone System, Conference Room, Kitchen, parking in front and rear. Frequent Referrals. Contact J.R. Homsey (405) 524-1011.

PREMIER LOCATION. Two Exclusive offices and 750 sq. ft. open space of A+++ Professional Suites now available within the Financial District of Oklahoma in Edmond. Furnished & Unfurnished, Board Room, Conference Center, Kitchen, Private Parking, Security, Park-like environment. By appointment only. Call (405) 348-0909. www.FinancialDistrictOK.com.

OFFICE SPACE

GREAT DOWNTOWN OKC LOCATION — TWO OFFICES AVAILABLE FOR SUBLEASE Receptionist, phone, copier, fax, law library, kitchen, conference room and DSL internet. Call Denise at (405) 236-3600 or come by 204 N. Robinson, Suite 2200.

JENKS LAW, P.L.L.C., will have two offices for rent beginning in the fall. Second floor of the Elm Street Market in Jenks, above the Elm Street Pub. New building, great location just off the Creek Turnpike. Monthly rent, includes phone, fax, internet, conference room, break room, reception area, and parking. Call Jasen Corns at (918) 298-1411.

GREAT DOWNTOWN OKC OFFICE BUILDING AVAILABLE FOR PURCHASE. 4400' historic office building. Mechanical and structurally renovated. Broadway address just south of downtown, blocks from courthouse. All new thermal pane windows, HVAC, and electrical. Material renovations complete and ready for build out. Can complete interior to suit occupant. Available immediately for \$425K. Call Dan at (405) 340-1900 for more info.

POSITIONS AVAILABLE

SMALL LITIGATION FIRM seeks an associate 0-3 years experience, must be willing to make court appearances. Send resume to Chris Harper, P.O. Box 5888, Edmond, OK 73083-5888.

GROWING OKC LITIGATION FIRM committed to highest quality legal services needs associate with 5 to 7 years experience to handle insurance defense matters. Must have excellent academic record and references. Please send resume and writing sample to Box "Z," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, Oklahoma 73152.

SMALL OKLAHOMA CITY FIRM seeks a self-motivated associate with 2-5 years litigation experience in insurance defense/personal injury cases to handle litigation, including trial work. Reasonable work load/hours and casual atmosphere. Salary dependent on experience. All replies confidential; send resume, writing sample, and transcript to Box "C", Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

DOWNTOWN OKLAHOMA CITY AV-RATED LAW FIRM seeks a self-motivated associate with 2 to 5 years experience in corporate/commercial litigation and banking/bankruptcy litigation to begin in January, 2008. The firm offers exceptional benefits. Salary commensurate with experience. Send salary requirements, resume and references to Box "J", Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

POSITIONS AVAILABLE

THE OKLAHOMA DEPARTMENT OF AGRICULTURE, FOOD, AND FORESTRY, an agency of the State of Oklahoma, is accepting applications for General Counsel, salary level to be based upon education and work experience. Applicants must be admitted to the Oklahoma Bar Association or eligible for admission without examination. Interested applicants must have strong research and writing skills, be familiar with rulemaking and have experience representing clients in state and federal court and before administrative law tribunals. Preference will be given to licensed attorneys who have an agricultural background or who have practiced agricultural law. Send resume and writing sample to Mr. David Leavitt, Administration, Oklahoma Department of Agriculture, Food, and Forestry, P.O. Box 528804, Oklahoma City, Oklahoma, 73105-1298, Telephone: (405) 522-1148, FAX: (405) 522-0909, E-mail david.leavitt@oda.state.ok.us. ODAFF is an equal opportunity employer.

OKLAHOMA CITY FIRM focusing mainly in personal injury and criminal law practice seeks associate. Competitive salary. Flexible hours. All contacts will be kept confidential. Send resume to Box "I," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

INSURANCE DEFENSE FIRM seeks an associate with 0-3 years experience. Applicant must possess outstanding research and writing skills. Send resume, writing sample, references and salary requirements to Box "Y", Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152. All resumes will be accepted in confidence.

ESTABLISHED AV RATED Northern Oklahoma firm seeks an attorney with 1-5 years experience to handle all phases of claimant's Workers' Compensation practice. Send replies to Box "X," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

RIGGS ABNEY NEAL TURPEN ORBISON & LEWIS, a full service law firm with more than 115 lawyers in Tulsa, Oklahoma City and Denver, seeks to add senior commercial real estate transactions/corporate M&A lawyers in the firm's Tulsa office. Candidates must have significant broad based experience and the desire to assume lead counsel and team responsibilities in diverse commercial real estate and business transactions. Please E-mail resume and salary requirements to rlowe@riggsabney.com. Only E-mail inquiries will be accepted.

OKC LAW FIRM has immediate opening for associate. Must have experience or interest in insurance defense litigation. Accepting resumes in confidence from attorneys with 0-3+ years of experience. Send resume, writing sample, references and salary requirements to Box "O", Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152."

POSITIONS AVAILABLE

FENTON FENTON SMITH RENEAU & MOON is an AV rated defense firm seeking an attorney with 0-3 years experience to assist in its civil litigation department. Please submit a resume, writing sample and transcript to the Recruiting Coordinator, 211 N. Robinson, Ste. 800N, Oklahoma City, OK 73102.

AV RATED DOWNTOWN OKC insurance defense litigation firm seeks associate with 2 - 4 years experience. Salary commensurate with experience. Please send resumes to McAtee & Woods, P.C., 410 NW 13th Street, Oklahoma City, OK 73103.

BOOKS

THE LAWBOOK EXCHANGE, LTD. Buys, sells and appraises all major law book sets. Also antiquarian, scholarly. Reprints of legal classics. Catalogues issued in print and online MasterCard, Visa and AmEx. (800) 422-6686; fax: (732) 382-1887; www.lawbookexchange.com.

CLASSIFIED INFORMATION

CLASSIFIED RATES: One dollar per word per insertion. Minimum charge \$35. Add \$15 surcharge per issue for blind box advertisements to cover forwarding of replies. Blind box word count must include "Box _____, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152." Display classified ads with bold headline and border are \$50 per inch. See www.okbar.org for issue dates and Display Ad sizes and rates.

DEADLINE: Tuesday noon before publication. Ads must be prepaid. Send ad (e-mail preferred) in writing stating number of times to be published to:

Brandon Haynie
Oklahoma Bar Association
P.O. Box 53036
Oklahoma City, OK 73152
E-mail: brandonh@okbar.org

Publication and contents of any advertisement is not to be deemed an endorsement of the views expressed therein, nor shall the publication of any advertisement be considered an endorsement of the procedure or service involved. All placement notices must be clearly non-discriminatory.

WANTED:

**Attorney volunteers
to help coach state
mock trial teams**

DESCRIPTION:

**The following schools still
need attorney advisers:**

Delaware County: Grove High School

Kingfisher County: Kingfisher High School,
Okarche High School

Logan County: Coyle High School

Oklahoma County: Bethany High School,
Deer Creek High School

Pottawatomie County: Shawnee High School

Washita County: Cordell High School

**Your assistance will be needed
only a couple of hours per week.**

REWARD:

**The satisfaction of being
a Good Samaritan.**

MORE INFO:

Contact Judy Spencer at
(405) 755-1066
or mtjudy02@aol.com

We want your referrals.

The Bank of Opportunity
P.O. Box 1234
Wedothework. USA

Date Call us today!

Pay to the
Order of YOUR FIRM \$ 300,000.00

Three hundred thousand dollars & $\frac{00}{100}$

Memo Referral for Smith v. ABC Company JOHN MERRITT

ATTORNEY AT LAW

"001243" :1034500809" : 0004568090

We pay all the costs. We do all the work.

- AV® Martindale-Hubbell Rating, highest rating for ethics and competency
- 38 years experience in handling only personal injury cases
- Practice limited to Catastrophic Injuries
- Many successful multi-million dollar verdicts and settlements
- Recognized on national television in the U.S. and Great Britain
- Recognized in Time, Star, TWA in Flight, and other magazines
- Recognized in newspapers in the U.S., Japan, and other countries
- Member Oklahoma and American Trial Lawyers associations

TRUCK ACCIDENTS
PRODUCTS
MED-MAL
EXPLOSIONS
CARBON MONOXIDE
ATV'S
CRASHWORTHY
AIRPLANE

1-800-2424-LAW
(405) 236-2222

JOHN MERRITT
ATTORNEY AT LAW

P.O. Box 1377
Oklahoma City, Oklahoma 73101



The Wrong Man

By Judge David Barnett

In my childhood

I generally behaved marginally well and rarely got into trouble, except for talking too much. As I advanced toward my teen years, I became more stubborn, and became a bit of a smart aleck. However, I am proud to say that in my entire life, the only time I was ever arrested was by mistake.

The story of my apprehension by law enforcement began on a hot summer afternoon in 1963 or 1964. I was employed for the summer by the Oklahoma State Soil Conservation Board as a roadman on a survey crew. The crew was working on a long-term project to plot out flood control lakes and ponds in the Jack Creek watershed and survey various sites along Jack Creek in the eastern part of Tillman County.

The crew was working at a site about 15 miles east of Frederick. We spent the entire day working in the field, only stopping for a sack lunch. The day was fairly uneventful, except that the occupants seemed to be studying us. At around 4:30 in the afternoon, we loaded up our 1961 International Travelall with survey equipment, including axes and machetes, used to cut

through the brush along the creeks.

Two high school friends, also employed for the summer, were the other two occupants of the Travelall as we left the worksite. One of them drove as we headed to Frederick. As we left the dirt county line road and pulled onto a gravel road to proceed toward the highway, we noticed a late model Plymouth car pulled in right behind us. The car had red lights hidden in the grill and was occupied by a man in a black suit, white shirt and a black tie. We slowed down so he could pass but he stayed the same distance behind. After we pulled onto the highway and headed to town, we drove very fast and he stayed the same distance.

After we had sped up, then slowed down, with no effect on the distance between us and the Plymouth, we discerned that he was following us. The reader must remember that we were country boys.

As we got closer to town, our alarm level rose because we had figured out that the guy in the Plymouth must be with the FBI. (At that time, they were the only law enforcement people we knew of who drove unmarked cars.) Then, as we approached the sale barn, just over a mile east of Frederick, we saw many OHP cruisers and other

police waving at us to stop, but our driver thought he should go on past the parked cars and pull over on the side of the road. By the time he got the car stopped, there were at least half a dozen officers surrounding us, all with drawn and cocked shotguns or pistols.

They were yelling at us and threatening to shoot us if we didn't get out and spread eagle against the car. As I got out of the car, I found myself looking down the barrel of a 12-gauge shotgun, piloted by Lyndon Lovett, an OHP trooper whom I had known much of my life. I said, "Mr. Lovett, it's David Barnett, Frank's boy." Mr. Lovett advised me to shut up and lean against the car, whereupon I was searched. Then, when the name on my driver's license matched the name I had given to Mr. Lovett, he finally recognized me and advised the other officers that we were local boys and were not the escapees. We were told that we could go. Great, I thought, "If only I can get my knees to quit knocking, maybe I can walk away from this nightmare."

Well, we left without demanding or receiving any explanation, and didn't find out until we got home that we had been mistaken for three convicts who had escaped from El Reno Federal Reformatory and had

been the subject of an intense manhunt all day long. Authorities had lost track of the three men in the Wichita Mountains, only 15 to 20 miles north of our worksite. Through the airplane's surveillance, they had seen us out in a pasture and assumed we had stolen the Travelall from a farm. We then began to understand the mysteries of only moments earlier.

It was with no regret that I laid to rest my short career as a wanted man. However, even though I have worked for many years as an attorney and many more as a district court judge, I still suffer from a mild panic every time a law enforcement vehicle summons me. It often brings me memories of the time when I was sought as a fugitive from justice.

Judge Barnett is associate district judge in Tillman County.

Editor's Note: Have a short funny, intriguing or inspiring story to share? E-mail submission to carolm@okbar.org.