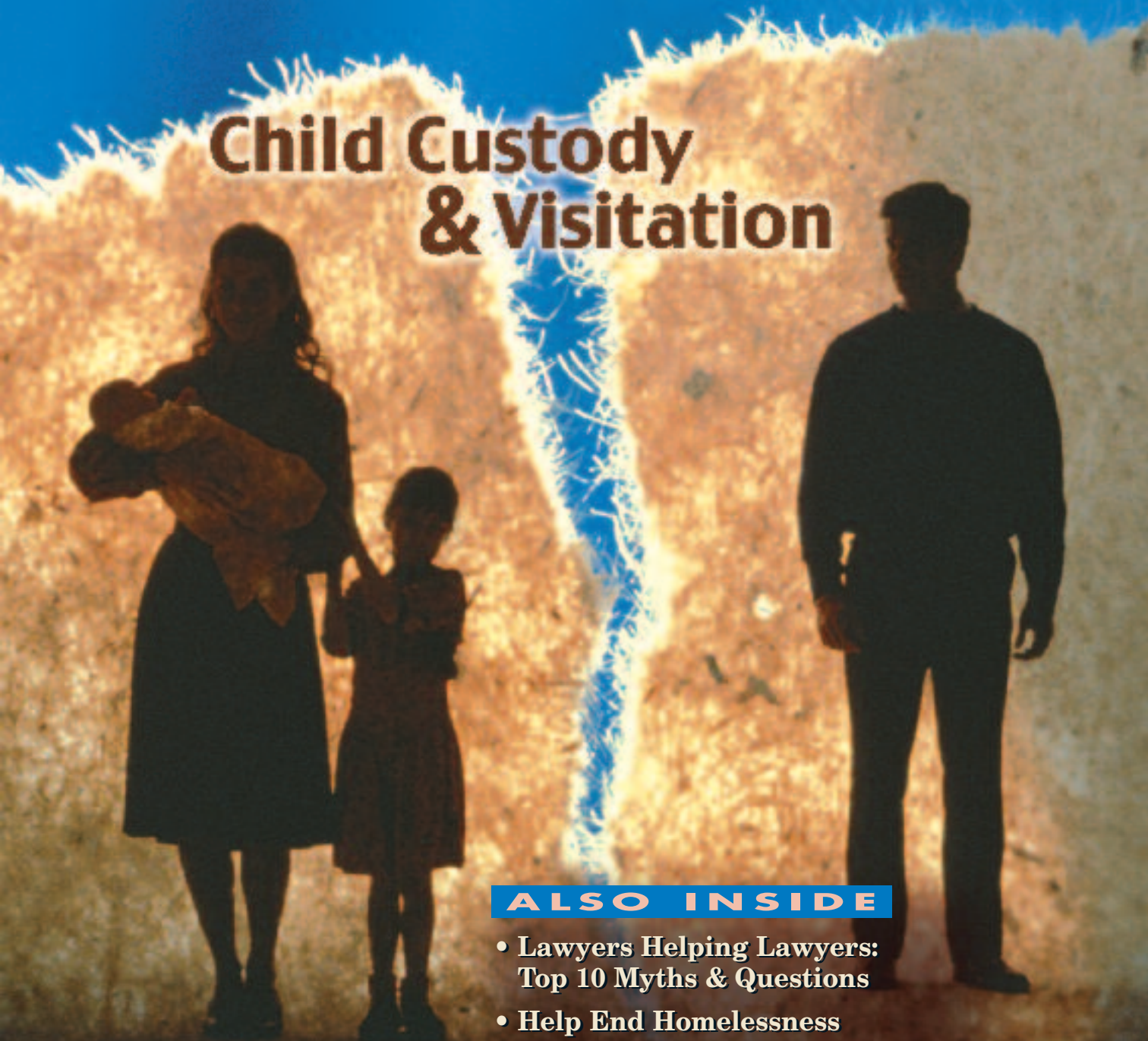
THE Oklahoma Bar JOURNAL
Volume 78 ◆ No. 6 ◆ February 10, 2007

Child Custody & Visitation



ALSO INSIDE

- Lawyers Helping Lawyers: Top 10 Myths & Questions
- Help End Homelessness in Your Community

Calendar of Events

OBA CLE February Video Fair

All videos will be at the Oklahoma Bar Center
(1901 N. Lincoln Blvd., Oklahoma City)

Feb. 13

2006 Ethics Cabaret
(Video Replay)
2 hrs. of MCLE credit, including 2 hrs. of ethics
Registration for morning program 8:30 a.m.
Registration for afternoon program 12:30 p.m.

Feb. 14

2006 Recent Developments Day 1
(Video Replay)
6 hrs. of MCLE credit, including 0 hrs. of ethics
Registration 8:30 a.m.

Feb. 15

2006 Recent Developments Day 2
(Video Replay)
6 hrs. of MCLE credit, including 1 hr. of ethics
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2007 OBA DAY AT THE CAPITOL

Tuesday, March 27

Mingle with members of the Oklahoma Legislature at the OBA Day at the Capitol – a full day of opportunities for bar members to visit with legislators about the OBA legislative agenda.

Meet at the Oklahoma Bar Center at 9 a.m. for the day's briefing.

Talk to your legislators over a barbecue lunch provided by the OBA at the Capitol. At 5 p.m., a legislative reception will be held at the bar center for both bar members and legislators.

HELP SHOW OUR LEGISLATORS HOW MUCH WE CARE!

2ND ANNUAL OKLAHOMA FORENSICS ACADEMY

Sponsored by the Criminal Law Section of the Oklahoma Bar Association
Friday, April 6, 2007 (OBA Approved for 8.5 hours CLE including 1 hour of Ethics)
Moore-Norman Tech Center, 13301 S. Pennsylvania, Oklahoma City, OK

Moderators: Ben Brown & Mike Wilds

8:00 to 8:30	Registration & Welcome • Trent Baggett, Chairman of the Criminal Law Section of the OBA	
8:30 to 10:20	Shaken Baby Syndrome: The Forensics and Pathology • Dr. Robert Block, OU Medical Center Tulsa, Oklahoma	
10:20-to 10:30	Break	
10:30 to 11:30	Alcohol and Flying: Post Mortem Alcohol Determination (1/2 hr. Ethics) • Dr. Kurt Dubowski, Ph.D.	
11:30 to 12:30	Juvenile Certification Studies: Ethical Considerations (1/2 hr. Ethics) • Bret Fitzgerald, Juvenile Justice Specialist II, Office of Juvenile Affairs	
12:10 to 12:40	Lunch - Buffet lunch included with registration fee	
12:40 to 1:30	Luncheon Address: The CSI Effect in Jury Selection and Trial • Prosecutor and Defense Attorney Perspectives	
1:30 to 1:40	Break	
	Afternoon Track 1:	**Afternoon Track 2:**
	Participants may attend either track and may switch between tracks	
1:40 to 2:30	Sexual Cyber Crimes • Dr. Mark McCoy City Fire UCO Forensic Institute	Arson and Fire Investigations • Chief Heirston , Oklahoma Department
2:30 to 4:00	Evidence for Litigators • Judge Ray Elliott	DNA Update • Dr. Dwight Adams, UCO Forensic Institute
4:00 to 4:10	Break	
4:10 to 5:00	Legislative Update/What's Being Proposed This Year •Trent Baggett & Craig Sutter	Cuts, Wounds and Bruises • Dr. Mike Ritze, Physician and Adjunct Professor Northeastern State University

Driving Directions: From I-35: Take Exit 117 at SW 4th St., Moore, then travel west approximately 3 miles to SW 134th & South Pennsylvania. The street name changes from SW 4th in Moore to SW 134th Street in Oklahoma City. SOUTHBOUND and NORTHBOUND from I-44: Take Exit 110 at SW 134th Street. Travel east 2.5 miles to SW 134th & South Pennsylvania.

Forensics Academy Registration

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Late Registration (*after March 20th*) $100 ___
Contact: Mike Wilds (918) 449-6532

THEME:

CHILD CUSTODY & VISITATION
EDITOR: LUKE GAITHER

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DAY AT THE CAPITOL

The Traditional January President's Message

By Stephen Beam

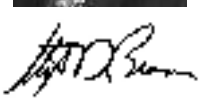
In my first column last month, I felt compelled to talk about the serious subject of our state's high rate of lawyer suicide, what the association is doing to help and what you can do to help. So, this month is the message you'd typically expect from your new bar president — information about the year ahead.

A few years ago when we told you we needed to increase dues, one promise we made was to remodel the east side of the Oklahoma Bar Center. I want you to know we are delivering on that promise this year.

For the first time ever, the OBA in 2006 had a Strategic Financial Planning Committee study the financing of the bar center improvements and plan the financial future of the OBA. It was determined the improvements could be completely paid for by existing dues revenue, if we spread the construction payments over more than one year. We will not need to borrow any money or ask for additional funds from you. The construction will begin this fall and be completed in 2008. This will involve a complete interior remodeling of the original part of the bar center built in 1962 and removal of all asbestos.

...this will be an exciting and eventful year. There is so much to do and so little time to do it.

I want you to know we have been good stewards of your money. We are now able to provide a new free member benefit. All Oklahoma lawyers now have online access to a national legal research library through Fastcase. Included in the online service are cases from all 50 states since 1950, all cases from the inception of the U.S. Supreme Court, all Federal Courts of Appeals cases since 1924, Federal District Courts from 1914, Federal Bankruptcy Courts from 1979 and all statutes, administrative regulations, court rules and the constitutions from all 50 states. Wow. This is the best member benefit since the *Oklahoma Bar Journal*.



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

I have asked Past President Melissa DeLacerda to head a task force to revitalize the Annual Meeting. I am meeting with Melissa and the other members of this task force, Debra Charles and Myra Kaufman, tomorrow to begin discussing ways to improve the Annual Meeting.

In April the Young Lawyers Division will host the South Central Regional Conference, a meeting of about 75 YLD leaders from a six-state region, in Oklahoma City. Our Board of Governors will meet during this time. We will do everything possible to ensure this meeting is a success and these young lawyer leaders leave with a positive feeling about our state and the Oklahoma Bar Association.

A long-neglected area of the Oklahoma Bar Association has been the Mentoring Committee. I have asked Jon Parsley of Guymon to head a task force to study what other states are doing and to decide what is best for Oklahoma. I firmly believe we need a strong mentoring program to help transition our new lawyers from law students to members of the Oklahoma Bar Association. I know Jon Parsley is the perfect choice to head this effort.

Linda Thomas from Bartlesville is planning a leadership conference to identify and nurture new leaders for this association with a special emphasis on minority and women leaders. We now have a Law Student Division that is very active under the leadership of Kendra Robben. We are hopeful these law student leaders will transition into our young lawyers program and on into the Oklahoma Bar Association. Since we have this framework in place, I think it is vitally important to identify and nurture new leaders for this association, and I intend to see that occur with Linda's help.

Our Young Lawyers Division has undertaken a huge new project this year. It is called the "Wills for Heroes" program. This is a free service to prepare wills, powers of attorney and advance medical directives for Oklahoma firefighters, police officers, sheriff's deputies, military personnel and other emergency personnel. The YLD will be asking for your help to make this statewide community service effort a success. A number of county bar associations have already asked to be included in this effort.

As you can see, this will be an exciting and eventful year. There is so much to do and so little time to do it. I had better get busy!

NOTICE of change of address (which must be in writing and signed by the OBA member), undeliverable 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.**

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Board of Bar Examiners (405) 416-7075
Oklahoma Bar Foundation (405) 416-7070

EVENTS CALENDAR

FEBRUARY

13 **OBA Solo & Small Firm Conference Planning Committee Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Roger Reneau (405) 732-5432

14 **State Legal Referral Service Task Force Meeting;** 1 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Dietmar Caudle (580) 248-0202

15 **OBA Work/Life Balance Committee Meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Melanie Jester (405) 609-5280

16 **OBA Board of Governors Meeting**; Oklahoma Bar Center, Oklahoma City; Contact: John Morris Williams (405) 416-7000

17 **OBA/YLD Board of Directors Meeting;** Oklahoma Bar Center, Oklahoma City; Contact: Chris Camp (918) 588-1313

19 **President's Day** (State Holiday) — Bar Center will be closed.

20 **OBA Professionalism Committee Meeting**; 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Steven Dobbs (405) 235-7600

21 **OBA Bar Center Facilities Committee Meeting;** 9 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Bill Conger (405) 521-5845

OBA Diversity Committee Meeting; 3 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Linda Samuel-Jaha (405) 290-7030

22 **OBA Women in Law Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Elizabeth Joyner (918) 573-1143

OBA Legal Intern Committee Meeting; 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: H. Terrell Monks (405) 733-8686

23 **OBA Member Services Committee Meeting**; 2 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Debra Charles (405) 286-6836

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 (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 BIMONTHLY 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.

The Relocation Case in Oklahoma: A Guardian *ad Litem's* Perspective

By Donelle H. Ratheal

A parent's right to the custody, care and management of his child is a fundamental right.[1] Laws abrogating this right are subject to the "strict scrutiny" standard.[2] But when parents involved in a divorce, original or post-decree, have conflicting interests, an Oklahoma domestic relations judge must follow the paramount directive: ensure the best interests of the child are served.[3]

Under current judicial policy, a judge may impose reasonable conditions on a parent's right to travel or move when it impacts the child's best interests, which includes the child's relationship with the other parent.[4]

Judicial policy has admittedly undergone a significant shift. Less than a decade ago, Oklahoma, aligned with the majority of jurisdictions, found that the custodial parent had a presumptive right to move with the child. The noncustodial parent generally bore the dual burdens of proof and persuasion to convince the judge to deny the move and/or to change custody.

Seeds of the judicial shift were sown in 1997 when the American Academy of Matrimonial Lawyers drafted and promulgated the Model Relocation Act.[5] The act offers three alternative burdens of proof for a relocation case: 1) A presumption against relocation; 2) a presumption for relocation; and 3) no presumption, due to a "split" or alternating burden of proof.[6]

Under the third alternative, the relocating parent must meet his burden of proof that the relocation is "in good faith." The non-relocating parent must then meet her burden of proof that the proposed relocation is "not in the best interest of the child."[7] Several jurisdictions subsequently adopted the act, either through a statutory scheme or by incorporating the principles into decisional law.

The American Law Institute also considered the relocation issue. It drafted the Principles of the Law of Family Dissolution in 2000.[8] Only a handful of jurisdictions have adopted or relied upon these principles.[9]

In 2002, the Oklahoma Legislature enacted its relocation statute. The statute utilizes the Model Relocation Act's third alternative. The statute's passage marked a significant change in Oklahoma relocation law.[10] Its passage, together with a recent appellate decision, also arguably changed the guardian *ad litem's* role in post-decree custody matters involving relocation of children.

HISTORICAL PERSPECTIVE OF RELOCATION LAW BEFORE THE STATUTE

Since before statehood, Oklahoma law granted a custodial parent the right to move with his

or her child. The statute provides:

> A parent entitled to the custody of a child has a right to change his residence, subject to the power of the district court to restrain a removal which would prejudice the rights or welfare of the child.[11]

The provision was adopted from the Dakota territorial statutes in 1887.

The statute was cited in a published case for the first time in 2001, in companion cases, *Kaiser v. Kaiser*[12] and *Abbott v. Abbott*.[13] The Oklahoma Supreme Court relied on the statute for its holding that a custodial parent should have the right to relocate without fear of losing custody of his child.[14] The *Abbott* and *Kaiser* rulings were consistent with decisions from Wyoming, Arkansas, Minnesota and other jurisdictions, which embodied the judicial trend of at that time.[15]

"A parent entitled to custody of a child has a right to change his residence..."

During the same term, the Supreme Court followed the same reasoning in a paternity case.[16] A year later, it reaffirmed *Abbott* and *Kaiser* in *Casey v. Casey*.[17] Neither the relocation itself nor the impact upon the visitation between the noncustodial parent and the child satisfied the *Gibbons*[18] test to justify a change of custody from the custodial to the noncustodial parent. The noncustodial parent had to show specific harm to the child as a result of the proposed relocation.[19]

However, the Supreme Court distinguished *Abbott* and *Kaiser* in *Daniel v. Daniel*.[20] It distinguished it on two grounds, but one common principle: joint custody. *Kaiser* and *Abbott* involved the relocation of a sole custodial parent. *Daniel* involved the relocation of a joint custodial parent.[21]

The *Daniel* court relied upon the joint custody statute for the distinction.[22] It held that the joint custody statute created a different standard for a "material change of circumstances."[23] In order to set aside a joint custody plan, the movant need satisfy only the first prong of the *Gibbons* test.[24] A finding that the joint custody plan is no longer working, and/or the parties cannot work together, satisfies the prong.[25]

Once the first prong is satisfied, the trial judge must award custody solely on the best interests of the child. All facts bearing upon the parties' fitness as parents and the child's best interests are admissible, including issues and events that occurred prior to the filing of the decree awarding joint custody.[26]

One of the factors that the trial judge must consider is which parent is more likely to provide frequent and continuing contact with the minor child to the other parent.[27] If there is a request to modify a joint custody plan, but not terminate it, the lower "best interests" standard applies, obviating the need to satisfy even the first prong of the *Gibbons* test.[28]

The distinction was clear: neither the relocation itself nor the resulting change in visitation satisfied the "material change of circumstances" requirement of the *Gibbons* test to modify custody for a sole custodial parent. In contrast, the relocation satisfied the first prong of the *Gibbons* test for a joint custodial parent.[29]

During the brief period between *Kaiser* and the enactment of the relocation statute, a sole custodial parent relocating in good faith no longer had to fear losing custody of his child. The non-relocating parent had a heavy burden: prove that the child would be "at risk for real and specific harm" and that the child would be significantly better off if custody were changed to the noncustodial parent.[30] Neither the relocation nor the loss of some visitation time was a "material change of circumstances" that would invoke the first prong of the *Gibbons* test.[31]

Under *Daniel*, the law was not as favorable to parents holding joint custody. Relocation satisfied the first prong of the *Gibbons* test because

it altered the provisions of a joint custody plan, physical and/or legal. Once the first prong of *Gibbons* was satisfied, the joint custody statute and case law construing it mandated re-litigating the custody issue, with the parents on equal footing.

The hoped-for hiatus in custody modification cases involving relocation was short-lived. The relocation statute became law on Nov. 1, 2002, approximately one year after the *Kaiser* decision was issued.

OVERVIEW OF THE STATUTE

The statute applies to all decrees, whether filed before or after the statute was enacted.[32] The statute includes specific notice requirements for the relocating parent, including the approximate relocation date, the prospective address, the reason for the move and a proposed visitation plan.[33]

The non-relocating parent has 30 days to object to the relocating parent's recommended visitation schedule.[34] If the non-relocating parent fails to file the objection within the statutory time frame, then the relocation is authorized.[35] The proposed visitation schedule becomes, as a practical matter, binding upon the parties.

The statute provides remedies and sanctions if a parent fails to give proper notice of relocation, including a modification of custody.[36] The trial judge may also award sanctions, including non-monetary sanctions, if he finds one of the parents' positions to be frivolous or filed for the purpose of delay or harassment.[37] The Oklahoma statute mirrors the Model Relocation Act in almost all of its provisions.[38]

POWERS AND AUTHORITIES OF THE TRIAL JUDGE

If the non-relocating parent timely files an objection, then the matter must be set for a hearing. The objecting parent must seek either a temporary or a permanent order to prevent the relocation.[39]

The trial judge is required to consider a veritable "laundry list" of factors at the relocation hearing, which are non-exclusive.[40] They include:

1) The nature, quality, extent of involvement and duration of the child's relationship with the person proposing to relocate and with the non-relocating person, siblings and other significant persons in the child's life.

2) The age, developmental stage and needs of the child, including whether the child has expressed a preference regarding relocation.

3) The effect that the relocation will have on the child's physical, educational and emotional development, including any special needs of the child.

4) The feasibility of preserving the relationship between the non-relocating person and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the parties.

5) The child's preference, taking into consideration the child's age and maturity.

6) Whether there is an established pattern of conduct of the person seeking the relocation, either to promote or thwart the relationship between the child and the non-relocating parent.

7) The reasons of each parent for requesting or opposing the relocation.

8) Whether the relocation of the child will enhance the general quality of life for both the parent seeking the relocation and the child. The "enhancement" factor may include a financial or emotional benefit, or an educational opportunity, as well as any other factor that affects the best interest of the child.

9) Any other factor affecting the minor child's best interest.[41]

LIMITATIONS IMPOSED ON THE TRIAL JUDGE

The trial judge has the discretion to grant a temporary relocation order.[42] However, the judge may not give undue weight to the fact that a temporary relocation order was entered.[43] The judge may not consider whether the relocating parent has declared that he or she will not relocate if the child's relocation is denied.[44]

STATUTORY BURDEN OF PROOF

Once the relocating parent meets the burden of proof that the proposed relocation is in good faith, the burden of proof shifts to the non-relocating parent.[45] The non-relocating parent must satisfy the judge that the proposed relocation is not in the minor child's best interests.[46]

Given the alternating burdens of proof, and a factually intensive hearing, it is not surprising that many parties, or the trial judge on its own initiative, secure the involvement of aguardian

ad litem to assist in providing a neutral perspective of the child's best interests.[47] Yet, given the relocation statute, together with a recently published decision, the question arises as to the parameters and scope of the guardian *ad litem's* investigation and recommendations within the context of a post-decree relocation case.

THE HISTORICAL ROLE OF THE GUARDIAN *AD LITEM*

The term "guardian *ad litem*" in Oklahoma encompasses numerous definitions, depending on the type of case in which the guardian *ad litem* represents the child. For purposes of this article, the role of the guardian *ad litem* is limited to post-decree relocation hearings in divorce and paternity cases.

The role of a guardian *ad litem* was first highlighted in divorce law in 1995, in *Kahre v. Kahre*.[48] The role of the guardian *ad litem* was later defined by statute in 2002.[49] Oklahoma adopted the "hybrid" model in its statute.

Nationally, there are two general models for the guardian *ad litem*: 1) the attorney for the child; and 2) the "best interests" attorney.[50] The attorney for the child is her advocate and enjoys the same role as a parent's attorney, including attorney-client privilege.[51]

The "best interests" attorney represents the child's best interests, notwithstanding that it may not be the same as the child's stated preference or position at trial.[52] While the attorney-client privilege exists, the "best interests" attorney is allowed to divulge certain information, if it is in the best interests of the child.[53]

In a perfect world, the child would have both models to represent the child's interests. If the child's position or stated preference is contrary to her best interests, then the trial judge would then appoint the second model. The judge would then be assured of a neutral investigation, an advocate for the child, and an attorney who would ensure that the child's best interests were served.

But this is not a perfect world. Most parties are unable to afford both an advocate and a "best interests" attorney for their child. Oklahoma, like many jurisdictions, has adopted the second model.

The "best interests" model is a practical alternative in most cases. The trial judge can rely upon an attorney, an officer of the court, who is entrusted with representing the child's best interests to conduct an independent, neutral investigation, with recommendations in the report that are free of the bias or "slant" of either parent.

In Oklahoma, the guardian *ad litem's* role is fairly well defined. Once appointed, the guardian *ad litem* is to objectively advocate on the child's behalf. She is to act as an officer of the court to investigate all matters concerning the child's best interests.[54]

The statute sets out the responsibilities and duties that the guardian *ad litem* bears in all cases, which include: 1) reviewing all pertinent documents; 2) interviewing the child, the parents and other relevant individuals; 3) advocating for the child's best interests within the case itself; 4) monitoring the child's interests throughout the case; 5) presenting a written report to the trial judge and the parties before trial that includes conclusions, recommendations and the facts upon which they are based.[55]

The trial judge may endow the guardian *ad litem* with other specific duties and obligations.[56] Within the context of all of her duties, she is mandated to maintain the confidentiality of the information that she obtains during the investigation to the best of her ability. She is not subject to discovery.[57]

THE ROLE OF THE GUARDIAN *AD LITEM* IN POST-DECREE RELOCATION CASES

The role of the guardian *ad litem* is significantly different in a post-decree relocation case than an ordinary custody modification case. It is different because the relocation statute imposes both specific directives and limitations upon the trial judge.

Just as the trial judge is bound by the statute's limitations and mandates, so is the guardian *ad litem* is also bound by them. The guardian *ad litem* cannot rely on certain facts or statements made by a parent or a child if the trial judge may not consider them or give them undue weight.

For example, the guardian *ad litem* cannot take into consideration a parent's statement that he will not move if the relocation is not granted, because the trial judge may not consider it. The guardian *ad litem* cannot rely heavily on the fact that the trial judge issued a temporary relocation order in the report,

because the judge may not give it undue weight.

From the outset of her appointment, the guardian *ad litem* must focus on the scope of the investigation, which is defined by the statute. The guardian *ad litem* cannot ignore the burden of proof that each parent must meet. Recommendations based simply on the basis of the "best interests" of the child may not pass muster in an appellate review.

The recommendations must be supported by the facts gleaned from the investigation, and may only be facts that the trial judge is allowed to consider. Otherwise, the resulting recommendations in the report may conflict with the statute's concise requirements. If the report fails to comply with the statute, the trial judge's reliance on the report's recommendations may place his relocation ruling at risk for reversal.

> "...to prove why the relocation is not in the child's best interests."

DIFFERENCES BETWEEN THE ACT AND THE STATUTE

Reviewing the provisions of the Model Relocation Act may give the guardian *ad litem* insight into the workings of the statute. For example, the comments in the act provide insight into the alternative provisions. The act's alternative burdens of proof make it clear that the legislative body must decide who will bear the burden of proof. They also assist in the construction of the provisions that prohibit the trial judge from hearing certain information.

Based upon the statute's use of the third alternative in the parents' respective burdens of proof, the heavier burden appears to fall upon the non-relocating parent. If the intent of the statute is that the non-relocating parent carries the burden of proof on the "best interests" issue, then he or she must provide the evidence, identified by the multi-factor test, to prove why the relocation is not in the child's best interests. The construction of the statute is the domain of the trial judge. For example, the judge may construe the statute to require the non-relocating parent to provide the evidence identified by the multi-factor test to satisfy the "best interests" burden. If so, then guardian *ad litem* should not require the relocating parent to provide it or consider a failure to provide it to be a negative factor in her report.

On the other hand, if the trial judge considers that providing the information of an enhanced quality of life for the child is part of the relocating parent's burden of "good faith," the guardian *ad litem* should then reasonably expect the information from the relocating parent. The guardian *ad litem* should discuss this issue (with counsel for the parties present) with the trial judge before starting the investigation. It will ensure that the trial judge will receive a report consistent with his construction of the statute.

DIFFERENCES BETWEEN PRIOR CASE LAW AND THE STATUTE

The guardian *ad litem* should be familiar with the differences between Oklahoma's prior relocation case law and the statute for several reasons. The non-relocating parent's burden of "specific harm" that *Kaiser* created and required no longer exists. The statute requires only the "best interests" standard.

The statute also changes how the trial judge may view relocation within the context of a joint custody order. The trial judge has the discretion to treat the proposed relocation of the child as one, but not the only, factor in considering a change in custody.[58]

Based upon the plain language of the statute, it modifies the *Daniel* holding and removes the distinction between joint and sole custodial parents in a relocation setting. The result: there is no longer a double standard for relocation within the statutory framework.

However, the trial judge may find, from the terms selected in the statute, terms that the Model Relocation Act leaves open for choice, that the relocation statute only applies to a sole custodial parent. The two critical definitions provide:

> B.1. Except as otherwise provided by this section, a person who has the right to establish the principal residence of the child shall notify every other person *entitled to visitation with the child* of a proposed relocation of the child's principal residence as required by this section.
>
> B.2.Except as otherwise provided by this section an adult entitled to *visitation* with a child shall notify every other person entitled to *custody of or visitation with the child* of an intended change in the primary residence address of the adult as required by this section.[59]

Given that the definition does not use the term "custodial parent" but rather the "person who has the right to establish the principal residence of the child," the issue is whether the relocation statute embraces sole and joint custodial arrangements, or simply sole custodial arrangements. It may be helpful to the trial judge for the guardian *ad litem* to provide the comment to the definitions section of the Model Relocation Act to determine whether the statute's definition encompasses joint custodial arrangements.[60]

THE GUARDIAN *AD LITEM'S* TASK

A guardian *ad litem* appointed in a relocation case is tasked to investigate and consider all of the facts surrounding the proposed relocation, so long as they qualify for the trial judge's consideration. The admissible evidence is identified by the multiple factor test set out in the statute. The facts not allowed for consideration are also set out by statute.

For example, the necessary facts include a comparison of the quality of the current and proposed communities, including but not limited to: 1) the school districts, 2) the emotional and financial environment, and 3) enhanced opportunities for the child, scholastic, artistic or athletic. The needs of the child must be ascertained, including any special needs and a comparison of the communities made to determine which will best serve those needs.

The guardian *ad litem* must investigate the level, nature and depth of the child's relationships with each of the parents, as well as other family members and integral adult figures. Finally, any other factor unique to the case must be investigated if it impacts the child's best interests, as well as any additional duties or obligations that the trial judge included in the appointment order.

If a child's preference is a part of the relocation case, the guardian *ad litem* must abide by the preference statute.[61] The child's preference should be weighed according to several factors: a) age, b) level of understanding and intelligence, and c) relationship to each parent. The issue of inter-parental hostility must be investigated; distance exacerbates the difficulty in maintaining a relationship, even when both parents cooperate.

As children grow older, their preferences should be weighed more heavily. They are generally more articulate, less likely to be swayed by one parent's point of view, and have other interpersonal or social relationships that should be considered. For high school students, there is often the issue of college enrollment eligibility, depending on the child's state of residence.

"As children grow older, their preference should be weighed more heavily."

If the parents have sufficient financial resources, the guardian *ad litem* should request a custodial evaluation that includes a relocation risk assessment. At the minimum, a mental health professional should interview the parents and the child and should administer tests specific to the issue of assessing relocation risks.

Several tests meet the standards of the American Psychological Association and provide helpful information of the potential effect of relocation upon a child, positive and negative.[62] The guardian *ad litem* can review the information gleaned by the mental health professional through the testing process, and present it to the trial judge in the report. The judge then has the information available to him; it allows him the discretion to incorporate the professional's recommendations into an order authorizing relocation, to minimize adverse effects of the relocation upon the child.

Because of the paucity of Oklahoma decisions construing the relocation statute, the guardian *ad litem* should review decisions from other jurisdictions that have adopted the Model Relocation Act's alternating burden of proof. The guardian *ad litem* should also consider cases construing or discussing the Principles of the Law of Family Dissolution as a resource. They may be helpful to frame an inquiry or define factual components of her investigation.

For example, the Supreme Court of Rhode Island discussed the Model Relocation Act's multiple factor test, adopted in large part by Oklahoma's statute. It also discussed what constitutes "good faith":

A parent's desire to relocate with his or her children ought not to be predicated upon a whim. On the other hand, as we previously have noted, a relocating parent need not establish a compelling reason for the move. The motivation for the relocation, however, will be a significant consideration. Clearly, a vindictive desire to interfere in the other parent's relationship with the child would weigh heavily against the parent seeking to relocate. The A.L.I. Principles identify the following nonexclusive list of purposes for a relocation as valid: 1) to be close to significant family or other sources of support, 2) to address significant health problems, 3) to protect the safety of the child or another member of the child's household from a significant risk of harm, 4) to pursue a significant employment or educational opportunity, 5) to be with one's spouse or domestic partner who lives in, or is pursuing a significant employment or educational opportunity in, the new location, 6) to significantly improve the family's quality of life. The relocating parent should have the burden of proving the validity of any other purpose.[63]

The quoted definition for "good faith" is derived from the Principles of the Law of Family Dissolution and is a fairly comprehensive list of factors.

The *Dupre* court then found that "a move for a valid purpose is reasonable unless 'its purpose is shown to be substantially achievable without moving, or by moving to a location that is substantially less disruptive of the other parent's relationship to the child.'"[64] Using the definitions as the framework for the issue of good faith, the guardian *ad litem's* investigation will reveal facts that either support or contradict a relocating parent's assertion that the relocation is in good faith.

RELOCATION AND CUSTODY MODIFICATION STANDARDS

As a practical matter, the trial judge will not only hear a relocation request but also a request to modify custody in a post-decree relocation hearing. The motion may seek a change in sole or joint custody.

If the guardian *ad litem* is faced with alternative or counter-motions regarding custody in a relocation case, she must be aware of the trial judge's procedural and substantive limitations created by the interweaving of relocation and custody modification standards and requirements, created by case law and statute. Due to holdings in a recently published case, additional limitations may now be in play.

In *Atkinson v. Atkinson*,[65] the appellate court recently ruled that if both a relocation request and a motion to modify custody are before the trial judge, he must first rule on the relocation request before ruling on the motion to modify. *Atkinson* involved two children; each parent had sole custody of one child under the terms of the original decree, with child support and visitation provisions involved.

The mother filed a notice of relocation, to which the father objected; he also filed a motion to modify custody. The trial judge granted the father's motion to modify custody but did not expressly rule on the father's relocation objection. The mother appealed.[66] The appellate court reversed.

It held that, as a matter of procedure, if the non-relocating parent requests a modification of custody, the trial judge may hear it only after granting the relocating parent's request to move with the child.[67] Once the order authorizing relocation is entered, the non-relocating parent may present the motion to modify custody but must satisfy all parts of the *Gibbons* test.[68]

By holding that the trial judge may only address a motion to modify custody after granting the relocation, the decision seems to require the trial judge to bifurcate the issues and applicable law, resulting in a two-part trial. The appellate court reasoned:

If Mother were permitted to relocate with the child, the court could proceed with Father's contingent motion to modify custody, in the event Father still wished to proceed. At this point, evidence would be presented from which the required findings under *Gibbons* would be made.[69]

Not all evidence relevant to a custody modification may be relevant, or even admissible, in the relocation portion of the hearing. Under the *Atkinson* analysis, the guardian *ad litem's* report and recommendations may then need to be drafted in a method consistent with the two-part process.

The *Atkinson* court further reasoned that only the relocation portion of the hearing should have been heard, because:

Assuming Father's objection to the relocation was valid, Mother would not be permitted to relocate with the child, *thus providing Father with the appropriate remedy and relief under the relocation statute*.[70]

The appellate court made two presumptions: 1) the trial judge could allow the relocating parent to "undo" the notice of relocation, contrary to the statute; and 2) if the relocating parent's request were denied, then the current order would remain in place and the non-relocating parent's access rights would not change. Its presumptions, however, are not necessarily accurate. They also ignore the reality of many professionals' lives, especially military personnel.

For example, if the relocating parent's request to relocate the child is denied, and he subsequently relocates, the relocating parent has no choice but to leave the child with the non-relocating parent, creating a need for a new visitation schedule and a child support order, and more importantly, a new custody order.[71]

The appellate court also failed to address or even consider the implications of the statutory prohibition of "undoing" the relocation notice. The *Atkinson* mother advised the trial judge that she would not move if she could not take the child with her.

The relocation statute specifically prohibits the trial judge from considering a relocating parent's statement that he will not relocate if the child is not allowed to relocate.[72] The statute prevents what occurred in *Kaiser*.[73] Yet, the *Atkinson* court appears to ignore the statutory prohibition. Its rationale is based upon the mother's statement to the trial judge that she would not move if the relocation request was not granted for its rationale.

Applying *Atkinson*'s narrow reasoning, unless the now *de facto* custodial parent filed a cross motion to modify custody with the relocation request, the trial judge does not have the authority under the relocation statute alone to modify custody, even if he granted the relocation request. The inference is troubling: the relocation statute itself is not sufficient notice to the relocating parent that either the granting or denial of the child's relocation may result in a change of custody.

Yet the statute provides that a parent's failure to comply with the notice requirements is grounds for a change of custody.[74] It also provides that the proposed relocation can be a factor in considering a change of custody.[75] Such a narrow construction should only apply to sole custody situations: the appellate court has previously ruled that the trial judge has the authority on his own motion to terminate a joint custody plan and issue a new custody order.[76]

If the trial judge does not have the authority to modify sole custody under the relocation statute alone, then any custody modification order entered within the context of a relocation request alone is error because the relocating parent's due process rights were violated. A parent must have constitutionally sufficient notice that custody can be modified or changed.[77]

If the statute is construed in such a narrow fashion, and the trial judge is restricted both procedurally and substantively in modifying custody in a relocation case, the guardian *ad litem* must endure the same restrictions. The

trial judge cannot adopt recommendations that exceed his authority, even if they fall within the rubric of the "best interests of the child."

Assuming that the parents properly preserve the issue through cross motions to modify custody, and the trial judge has the authority to address modification of custody, other questions arise from the new decision. For example, the appellate court reaffirms *Gibbons* as the necessary test to modify sole custody, even though a relocation request is before the court.[78]

The *Atkinson* court also cites to *Abbott* regarding a modification of custody, as well as the underlying statute that gave rise to these decisions.[79] The *Atkinson* decision makes it clear that *Kaiser* and its progeny are still good law as to qualifying events for custody modification. If so, then relocation itself within the context of a sole custody/visitation arrangement is not a "material change of circumstances" to justify a modification of sole custody.

If the relocation statute did not supersede *Kaiser* and its progeny, then the double standard for terminating custody returns. The joint custodial parent who requests a modification of custody in response to a relocation request has a lower threshold under *Daniel* and the joint custody statute than the noncustodial parent.

Based upon the new decision, the guardian *ad litem's* report, both in substance and format, depends upon what motions the parents have filed, what relief they are seeking and what burdens of proof they must satisfy. The guardian *ad litem* must carefully review the pleadings, and confine her recommendations within the mandatory procedural and substantive requirements. The guardian *ad litem* may also need to consider whether to file a motion regarding custody modification on the child's behalf to protect the child's best interests and to provide the trial judge with the necessary jurisdiction to issue a custody decision.

CONCLUSION

The guardian *ad litem* is faced with a daunting task in a post-decree relocation case, based upon the statute itself, together with the recent decision. She is tasked with investigating all of the facts that could or should be presented to the judge at the hearing. She must follow the statute's mandate as to whether a fact can be weighed heavily, weighed only as one factor, or not considered at all.

The guardian *ad litem* must be aware of the different standards of proof and governing tests, depending on the case's specific situations and circumstances. Finally, she must consider tailoring the report for a bifurcated trial if both relocation and custody modification requests are before the judge, to comply with the procedure recently established by case law.

The motions before the trial judge determine what standards and tests may or may not be applied. If the parties fail to protect their respective interests and/or fail to properly invoke the trial judge's authority through properly pled motions, then the guardian *ad litem* faces limitations in her recommendations to the judge, or she must file a motion to modify custody to serve the child's best interests and ensure the trial judge has the jurisdiction to make the ruling if it becomes necessary under the circumstances.

> "Ultimately, it is the trial judge who applies the law to the facts and makes a decision."

Ultimately, it is the trial judge who applies the law to the facts and makes a decision. The paramount consideration of the trial judge in any custody hearing is the child's best interests.[80] But, the ruling cannot exceed or be contrary to procedural, substantive and constitutional limits. It is critical that the guardian *ad litem* protect the child's best interests by filing the appropriate motions on the child's behalf and by preparing a report and recommendations that provide the judge with a solid foundation for the decision, whether

relocation alone or in conjunction with a request to modify custody.

1. *In re Adoption of Blevins*, 1984 OK CIV APP 41, ¶¶ 8-9, 695 P.2d 556.
2. *Id*.
3. *Daniel* v. *Daniel*, 2001 OK 117, ¶ 19, 42 P.3d 863.
4. Atkinson, Jeff, *Overview of law of Relocation in the 50 States, American Bar Association Section of Family Law* (2006).
5. 15 J. Am. Acad. Matrim. Law 1 (1998).
6. *Id*., § 407.
7. *Id*.
8. Principles of the Law of Family Dissolution, A.L.I. (LexisNexis 2002). The Principles recommend a presumption in favor of the custodial parent relocating the child, based upon a two-part test. The parent must show that: (1) there is a "valid purpose"; and, (2) the custodial parent's relocation is "in good faith."
9. *See, Hawkes v. Spence*, 878 A.2d 273 (Vt. 2005) (discussion and application of ALI standards); *see also, Dupre v. Dupre,* 857 A.2d 242 (R.I. 2004) (thoughtful and thorough discussion of national standards, recent trends, review of both the Act and the Principles, as well as social science and mental health perspectives on relocation).
10. 43 O.S. § 112.3 (2002).
11. 10 O.S. § 19 (2001).
12. 2001 OK 30, 23 P.3d 278.
13. 2001 OK 31, 25 P.3d 291.
14. *Kaiser*, ¶¶ 16-17; *Abbott*, ¶ 8.
15. *Blivin v. Weber,* 126 S.W.3d 351 (Ark. 2003); *Watt v . Watt,* 971 P.2d 608 (Wyo. 1999) (cited with approval by the *Kaiser* court); *Auge v. Auge,* 334 N.W.2d 393 (Minn. 1983); *see also*, other cases cited with approval by *Kaiser* court. *Kaiser*, ¶¶ 19-21.
16. *Griggs v. McKinney*, 2002 OK CIV APP 127, ¶ 16, 61 P.3d 907.
17. 2002 OK 70, ¶ 21, 58 P.3d 763.
18. *Gibbons* v. *Gibbons*, 1968 OK 77, 442 P.2d 482.
19. *Kaiser*, ¶ 33.
20. 2001 OK 117, 42 P.3d 863.
21. *Id*., fn. 22.
22. 43 O.S. § 109 (2001).
23. *Daniel*, ¶ 18.
24. *Id*., ¶ 20.
25. *Id*.
26. *Lyons v. Lyons,* 1998 OK CIV APP 153, ¶ 4, 970 P.2d 200; *Newell v. Nash*, 1994 OK CIV APP 143, ¶ 5, 889 P.2d 345.
27. 43 O.S. § 112(C)(3)(a).
28. *Eimen v. Eimen,* 2006 OK CIV APP 23,¶ 12, 131 P.3d 148.
29. *Daniel*, ¶ 20.
30. *Kaiser*, ¶ 33.
31. *Id*.
32. 43 O.S. § 112.3(N).
33. 43 O.S. § 112.3(C).
34. 43 O.S. § 112.3(G).
35. *Id*., § 112.3(D)(6).
36. *Id*., § 112.3 (F).
37. *Id*., § 112.3 (L).
38. The statute does not include the Act's requirement that the non-relocating parent's objections be supported by an affidavit. § 303. It does not include the Act's provision to make the relocation hearing a priority on the judge's docket. § 402. It does not include the Act's provision allowing the trial judge to require the relocating parent to give security to ensure the child's return for visitation. § 408. It does not include the Act's requirement that the multiple factors be applied to the initial relocation hearing. § 410.
39. *Id*., § 112.3(G)(2).
40. The statute is silent as to whether the factors are to be used at both the temporary or permanent hearing. *Id*., § 112.3(J)(1). However, it could be presumed that the multiple factors should be used with what information the relocating parent has at a temporary relocation hearing, given the trial court's guidance in the preceding statutory provision. *Id*., § 112.3(H)(2)(b).
41. *Id*., § 112.3(J)(1).
42. *Id*., § 112.3(H)(2).
43. *Id*., § 112.3(J)(2)(a). The Comment to the Act states that to allow the judge to consider the temporary relocation order as the status quo may not trample the non-relocating parent's due process rights. Comment to § 406.
44. *Id*., § 112.3(J)(2)(b). The *Kaiser* mother advised the trial court that she would not move if she were not allowed to relocate with the child. *Kaiser* at ¶ 6. The Comment to the Act states: "The issue of propriety of the question of whether the person proposing to relocate the child will move regardless of whether the child is permitted to relocate has bedeviled litigation on this subject from the first time it was asked. A negative answer to the question, e.g., "No, I won't move," is likely to be prejudicial to the proposed relocation as to warrant exclusion from evidence despite the fact that logically that particular answer only tends to prove the proposition that the child is more important to the custodian than any other aspect of his or her life. It says nothing about whether a denial of the proposed relocation will cause the lives of the custodian and the child to be less advantageous. Similarly an affirmative answer, e.g., "Yes, I will move in any event," is also highly prejudicial to reaching a considered decision regarding the child's best interest. The psychology involved is very complex; allowing the question to be asked does not provide guidance as to how the possible answers are to be analyzed." 15 J. Am. Acad. Matrim. Law 1, fn. 18.
45. The relocating parent initially has the burden of proof to show the trial court that the proposed relocation is made in good faith. 43 O.S. § 112.3(K).
46. *Id*.
47. 43 O.S. § 107.3(A)(1) (2001 & Supp. 2003).
48. 1995 OK 133, 916 P.2d 1355.
49. 43 O.S. § 107.3 (2001 & Supp. 2003).
50. American Bar Association Family Law Section, *Standards of Practice for Lawyers Representing Children in Custody Cases*, 37 Fam. Law Qtr. 131, 132 (Summer 2003).
51. *Id*., p. 133.
52. *Id*, pp. 148-149.
53. *Id*.
54. 43 O.S. § 107.3(A)(2).
55. *Id*., § 107.3(2).
56. *Id*.
57. *Id*., § 107.3(A)(2)(e).
58. 43 O.S. § 112.3(I).
59. *Id*., § 112.3(B)
60. *Supra* note 5, § 101.
61. 43 O.S. § 112.3(B)(1),(2)\(emphasis added).
62. Green, R. Keith, *Relocation Cases in Family Law: A Conflict of Interests.* Oklahoma Bar Association — Family Law Section Seminar (April, 2006).
63. *Dupre*, 857 A.2d 242, pp. 258-59 (citations omitted).
64. *Id*. at 258.
65. 2006 OK CIV APP 124, __ P.3d __, (Division II).
66. The mother appealed on several grounds, including that the relocation statute violated her constitutional right to travel. Unfortunately, she presented the constitutional argument for the first time on appeal; the appellate court declined to address it. *Atkinson*, fn.1.
67. *Atkinson*, ¶ 18.
68. *Gibbons*, 1968 OK 77, ¶ 12, 442 P.2d 482.
69. *Atkinson*, ¶ 19.
70. *Atkinson*, ¶ 18 (emphasis added).
71. The Act recognizes this difficult issue, but leaves it up to the individual jurisdictions to determine whether the relocation proceeding will also include the issue of custody modification. Comment to §404.
72. *Supra* note 44.
73. 43 O.S. § 112.3(J)(2).
74. *Id*., § 112.3(F).
75. *Id*., § 112.3(I).
76. *White v. Polson,* 2001 OK CIV APP 88, ¶ 7, 27 P.3d 488.
77. For example, the trial court does not have the authority to terminate joint custody if a motion to modify joint custody has been filed. Eimen at ¶ 11.
78. *Atkinson*, ¶ 19.
79. *Id*.
80. *Daniel* v. *Daniel*, 2001 OK 117, ¶ 19, 42 P.3d 863.

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Termination of Joint Custody

Is the Law in Oklahoma Disjointed?

By Melissa F. Cornell

The term "custody" is not defined by statute in Oklahoma, although a trial court must provide for the "custody" of a child when two parents cannot agree as to where the child will live and who will make the decisions concerning the child. The Oklahoma Supreme Court, however, has defined custody as a term of art, which "embraces the sum of parental rights with respect to the rearing of a child, including the child's care. It includes the right to a child's services and earnings... and the right to direct his activities and make decisions regarding his care and control, education, health, and religion."[1]

As early as 1977, Oklahoma courts sanctioned a "split custody" arrangement in which the children are under the control of one parent during the school year and the other parent during the summer. Courts at that time felt it difficult and unreasonable to divide legal custody between parents, finding instead that the right to make decisions concerning the child was inherently vested in the custodial parent.[2] Therefore, if the term "custody" were used in a decree, it was used to denote the legal rights inherent in the custodial status of the parent who had the child for the majority of the time. "Visitation" was used to refer to the other parent's rights.[3] This was done to help avoid conflicts between the parents and provide more stability for the child.[4]

Today however, joint custody, in one judge's opinion, has "arrived onto the beaches of child custody litigation with the subtlety of a tsunami wave."[5] A majority of the states now codify joint custody in some form or fashion, either as an option, as a preference, or as a presumption to guide the courts when determining the custody of the children.[6] Oklahoma is no exception; Title 43 § 109(B) codifies joint custody as an option and allows the court to grant "the care, custody, and control of the child to either parent or to the parents jointly."[7]

Although the court is given wide discretion in making determinations of custody, it must always be guided by what is in the best interests of the children.[8] Therefore, Oklahoma courts have held that joint custody decisions should only be considered when there is a likelihood of parental cooperation in decisions concerning the children; both home environments are equally beneficial; and other important aspects of the children's lives will not be disrupted by the arrangement.[9] Where there has been a pattern of acrimony and hostility, and a trial court awards joint custody, the deci-

> So what happens after a trial court has awarded joint custody and the parties become hostile...

sion may ultimately be determined to be against the clear weight of the evidence and an abuse of discretion.[10]

So what happens after a trial court has awarded joint custody and the parties become hostile and acrimonious toward one another, and one or both parents seek to terminate the joint child custody plan? While the statutory basis for both the granting and the termination of joint custody is outlined in Oklahoma Statute Title 43 § 109,[11] how does the court get past re-litigating the same claim or facts which allowed the court to grant joint custody in the first place?[12] While typically courts avert *res judicata* by requiring a substantial change in circumstances pertaining to the custody issue since the last decree was entered,[13] is the same standard required for termination of joint custody? What about when the only change in circumstances is that the parents can no longer cooperate with one another? Oklahoma courts seem to be divided in the answer to this question.

In the case *Hoedebeck v. Hoedebeck*,[14] each parent filed a motion to modify seeking to terminate the joint child custody plan and for an award of sole custody. The evidence showed that since the entry of the decree and joint child custody plan, the mother had remarried and moved to another school district, which made the joint custody arrangement no longer acceptable to her. In addition, there was evidence presented that the parties' differing religious beliefs were causing problems, that the mother refused to allow the children to see the paternal grandparents, and that the mother attempted to remove the children from the school district the parties had agreed the children would attend.[15]

At the close of evidence, the trial court terminated the joint child custody plan and granted custody to the father. The court found that the children were having difficulty adjusting to mother's new life and that they had become detached because they missed their extended family. In addition, the evidence showed that the mother had been using them as messengers because she did not want to communicate directly with the father.[16] Mother appealed the trial court's decision.[17]

The Oklahoma Court of Civil Appeals held that because joint custody cannot succeed without the cooperation of the parties, if it becomes apparent that the arrangement is no longer working, a material change of circumstances has occurred which justifies vacating joint custody and awarding custody to one parent.[18] The court further went on to hold that it does not matter what the reasons are for the failure of the arrangement, the best interests of the children should always be the primary consideration.[19]

In the recent case, *Eimen v. Eimen*,[20] mother and father were divorced by an agreed decree which provided for joint legal custody and a 50/50 share of physical custody. Although the parties had intended on a weekly rotation of the children, mother did not exercise this right after entry of the decree, and the children spent a majority of their time with father. Ultimately the children began spending more time with mother but they considered father's home

their permanent home.[21] Father eventually sought to modify the physical custody provisions of the joint child custody plan, and mother sought to reinforce those same provisions.[22]

At the close of evidence, the trial court applied the "change of circumstances" standard set forth in *Coget v. Coget*,[23] which requires a parent seeking to transfer sole custody from one parent to another parent to show a substantial change of circumstances since entry of the last custody order, and held that father failed to meet his burden justifying a modification of custody. The trial court granted mother's demurrer as to custody of the children.[24] Father appealed.[25]

The Oklahoma Court of Civil Appeals held that Oklahoma Statute Title 43 § 109 specifically sets forth the basis for an award of joint custody and by inference, termination of joint custody, therefore, "best interests of the children" govern the proceedings, and it was error to apply the "change of circumstances" test set forth in *Coget*.[26] Because father specifically met his burden of showing that the modification of physical custody was in the children's best interests by demonstrating the teenagers' preference to live with father, the trial court's order denying father's motion to modify physical custody was reversed.[27]

> "...if a practitioner can demonstrate that the joint custody arrangement is impacting the children's temporal, mental and moral welfare..."

In 2001, prior to *Eimen*, the Oklahoma Supreme Court tackled the issue of the termination of joint custody and the subsequent award of custody. In *Daniel v. Daniel*,[28] the father and mother both filed motions to terminate joint custody. The father alleged that the mother would not follow or abide by the joint child custody plan and refused to cooperate or communicate with the father regarding the child. The mother alleged that father would not cooperate with mother which resulted in a hostile environment between the two.[29]

At trial, the court terminated joint custody and awarded the father sole custody. The mother appealed and the Court of Civil Appeals reversed, holding that there should not have been a change of custody because no material change of circumstances was shown that would justify changing the custody arrangement.[30]

The Oklahoma Supreme Court held that generally custody modification is warranted when one of two situations arises: 1) since entry of the decree, the parties' circumstances have materially changed[31] or 2) material facts have been discovered since entry of the decree which were unknown at the time and could not have been discovered with reasonable diligence.[32] The court clarified, however, that where there has been a joint custody arrangement, there is no change of custody, *per se*, since both parties were awarded custody.[33] Therefore, when a court determines that joint custody is not working, the children's best interests are no longer being served, and a substantial and material change of circumstances has occurred which authorizes the court to terminate joint custody.[34]

Although these cases seem to set forth different standards, the decisions in *Hoedebeck, Eimen*, and *Daniel* are not as disjointed as they may appear at first blush. No matter which threshold a court requires to justify the termination

of joint custody, the best interests of the children are always of paramount concern to the court.[35] Therefore, if a practitioner can demonstrate that the joint custody arrangement is impacting the children's temporal, mental and moral welfare, either because it is no longer working or because a substantial change of circumstances has occurred since entry of the last custody determination, it is probably of little concern to a court as to why joint custody should be terminated, only that it should be terminated.

1. *Spencer v. Spencer*, 1977 OK CIV APP 23, ¶ 5, 567 P.2d 112 (citing *Burge v. City & County of San Francisco*, 41 Cal. 2d 608, 262 P.2d 6 (1953)).

2. *Id*. at ¶ 5. *E.g. Conrad v. Conrad*, 1968 OK 94, 443 P.2d 110; *Gilbert v. Gilbert*, 1969 OK 133, 460 P.2d 929.

3. *Id*.

4. Robert G. Spector, *The Oklahoma Law of Child Custody and Visitation: Present Positions and Future Trends*, 45 Okla. L. Rev. 389 (Fall 1992).

5. Gerald W. Hardcastle, *Joint Custody: A Family Court Judge's Perspective*, 32 Fam. L.Q. 201 (1998-1999).

6. *Id*. at 203.

7. *Id*. Oklahoma Statute Title 43 § 109 states in pertinent part

> A. In awarding the custody of a minor unmarried child or in appointing a general guardian for said child, the court shall consider what appears to be in the best interests of the physical and mental and moral welfare of the child.
>
> B. The court, pursuant to the provisions of subsection A of this section, may grant the care, custody, and control of a child to either parent or to the parents jointly. . . For the purposes of this section, the terms joint custody and joint care, custody and control mean the sharing by parents in all or some of the aspects of physical and legal care, custody, and control of their children.

8. *Harmon v. Harmon*, 1997 OK 91, ¶ 15, 943 P.2d 599.

9. *See e.g. Hornbeck v. Hornbeck*, 1985 OK 48, ¶ 19, 702 P.2d 42. Despite these best-interest criterion, the Oklahoma Supreme Court held in this case that a trial court has the power under12 O.S. § 1275.4 (1983) (renumbered 43 O.S. § 112), to order joint custody even if one parent does not agree.

10.*White v. Polson*, 2001 OK CIV APP 88, ¶ 10, 27 P.3d 488.

11. This statute provides that once a court terminates joint custody, "the court shall proceed and issue a modified decree for the care, custody, and control of the child as if no such joint custody decree had been made.

12. This principle is discussed in *Boatsman v. Boatsman*, 1984 OK 74, ¶ 15, 697 P.2d 516, and is akin to the doctrine of *res judicata*. It is needed to accord some degree of finality to custody decisions.

13. *Gibbons v. Gibbons*, 1968 OK 77, 442 P.2d 482. The Oklahoma Supreme Court held in this case that

> [T]he burden of proof is upon the parent asking that custody be changed from the other parent to make it appear: (a) that, since the making of the order sought to be modified, there has been a permanent, substantial and material change of conditions which directly affect the best interests of the minor child, and (b) that, as a result of such change in conditions, the minor child should be substantially better off, with respect to its temporal and its mental and moral welfare, if the requested change in custody be ordered.

Id. at ¶ 12.

14. 1997 OK CIV APP 69, 948 P.2d 1240.

15. *Id*. at ¶ 3.

16. *Id*. at ¶ 7.

17. *Id*. at ¶ 2.

18. *Id*.

19. *Id*. at ¶ 11.

20. 2006 OK CIV APP 23, 131 P.3d 148.

21. *Id*. at ¶ 2.

22. *Id*. at ¶ 3.

23. 1998 OK CIV APP 164, 966 P.2d 816.

24. *Id*. at ¶ 7.

25. *Id*. at ¶ 8.

26. *Id*. at ¶ 12.

27. *Id*. at ¶¶ 15-16. Father did not request that the joint custody plan be terminated at trial, only the physical custody provisions and child support.

28. 2001 OK 117, 42 P.3d 863.

29. *Id*. at ¶ 4.

30. *Id*. at ¶ 6.

31. *Id*. at ¶ 17.

32. *Id*.

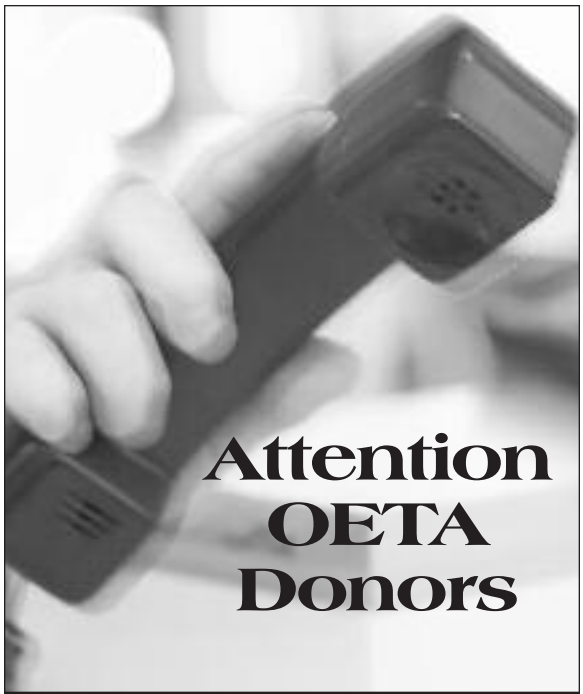
33. *Id*. at ¶ 20 (citing *Rice v. Rice*, 1979 OK 161, ¶ 8, 603 P.2d 1125).

34. *Daniel*, 2001 OK at ¶ 10. The most perplexing issue this standard brings forth is when a trial court orders joint custody between parents who demonstrated at trial that they do not get along in matters and decisions concerning their children and that there is a level of hostility between them. Seemingly under these circumstances, there can never be a change sufficient justifying termination of joint custody.

35. 43 O.S. § 109.

ABOUT THE AUTHOR

Melissa F. Cornell is engaged exclusively in the area of family law as a partner in the Tulsa law firm of Wagner & Cornell LLP. She is a member of the Inns of Court, Hudson-Hall-Wheaton Chapter, the ABA and the Tulsa County Bar Association. She attended law school at the TU College of Law where she graduated with honors in 2004.



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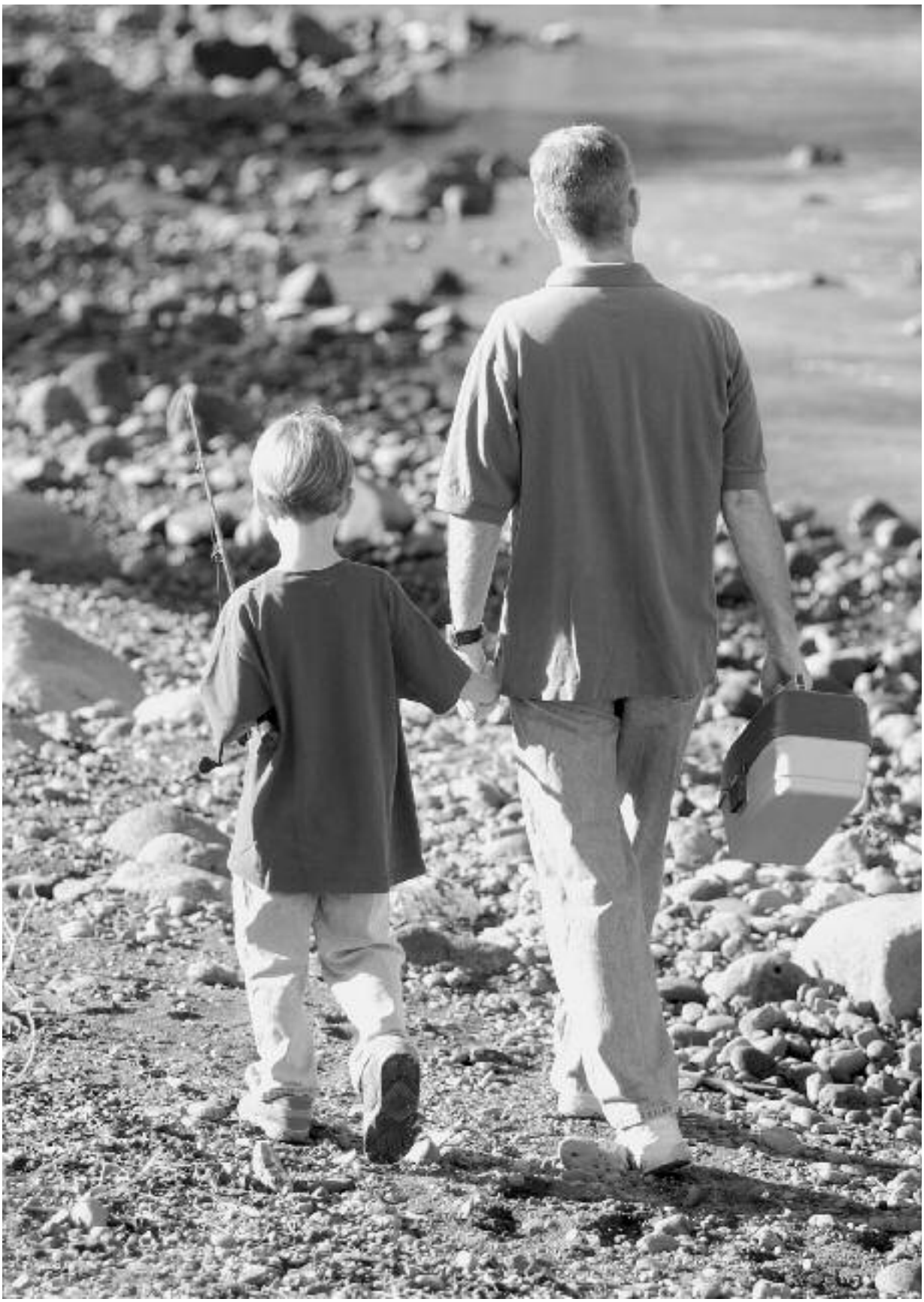

Visitation Schedules and Standards

By Melissa DeLacerda

In 2004, the Legislature mandated the administrative director of the courts to develop a standard visitation schedule and advisory guidelines to be used by the district courts.[1] As a result of the mandate, an ad hoc committee was created by the administrative director of the courts and guidelines and schedules were created.

The Legislature further suggested that visitation schedules for children under the age of five should be different and graduated in the amount of time the child spends with the non-custodial parent.

The statute lists areas each Standard Visitation Schedule should address including:

1. Midweek and weekend time sharing;
2. Differing geographical residences of the custodian and non-custodian of the child requesting visitation;
3. Holidays, including Friday and Monday holidays;
4. Summer vacation break;
5. Midterm school breaks;
6. Notice requirements and authorized reasons for cancellation of visitation;
7. Transportation and transportation costs, including pickup and return of the child;
8. Religious, school and extracurricular activities;
9. Grandparent or relative contact;
10. The birthday of the child;
11. Sibling visitation schedules;
12. Special circumstances including but not limited to emergencies; and,
13. Other standards deemed necessary by the Administrative Director of the Courts.

The statute further discusses family functions, including funerals, weddings, family reunions, religious holidays, important ceremonies, and other significant events in the life of the child or either parent. The statute also addresses electronic contact and mail contact.

The committee adopted certain principles which were the basis for the visitation schedules that they created. The principles are reprinted here. They are:

1. Children do best when both parents have a stable and meaningful involvement in their children's lives;
2. Each parent has different and valuable contributions to make to their children's development;
3. Absent of showing of harm, children should have structured, routine time as well as unstructured time with each parent;
4. Parents, who can mutually agree on visitation schedules and who can agree to be flexible, should be given a preference over court-imposed solutions;
5. Divorced and separated parents have inherent obligations toward their children including:

a. Avoiding open conflict with each other in the presence of their children;
b. Helping their children maintain positive existing relationships, routines and activities;

c. Communicating and cooperating with each other in arranging children's activities;
d. Maintaining and sharing full and complete access to all medical and school records and maintaining direct contact with personnel working with or caring for their children;
e. Maintaining consistent rules and values in both households to create a sense of security for children of any age;
f. Allowing children to bring personal items back and forth between homes no matter who purchased the items; and,
g. Adjusting visitation schedules over time as each family members needs, schedules and circumstances change.

CHILDREN UNDER THE AGE OF FIVE

When the practitioner is litigating the issue of visitation with regard to a child who is under the age of five, a review of the discussion accompanying the administrative director's standard visitation schedule should be an integral part of preparation and is reprinted below for convenience.

Standard Visitation Schedule for Children Under Age Five

Psychological research-based information about the general needs of children at various stages of early years development is hotly debated. It was previously believed that infants formed a singular and exclusive attachment to one primary caregiver during the first year of life. Mental health professionals cautioned parents that disruption of this exclusive caregiver-child bond could cause lifelong adjustment problems. With this in mind, the notion of infant overnights away from the primary caregiver was rejected, without considering individual situations.

> "Finally, fathers are just as capable of parenting infants as are mothers."

The most recent research now questions these notions. Now, it is believed that infants form multiple and simultaneous attachments between six and nine months of age. In situations where both parents have been regularly involved with all aspects of care giving and the child has formed an attachment to both parents, the previous restrictions on overnights should be reconsidered. After all, one objective to an infant parenting plan should be to help children forge a meaningful relationship with both parents. No research supports a given number of hours or days that children should spend with each parent.

Therefore, the key factor in creating an appropriate infant visitation schedule is to determine the ability and willingness of each parent (present and historical with this child) to learn basic care giving skills such as feeding, changing and bathing a young child; to diagnose and treat common infant illness; and to demonstrate the ability to maintain an infant's basic sleep, feeding and waking cycle.[2]

Further, other factors (besides parental responsibility and involvement) to consider include age of child, parent work schedules, and geographical distance between parent homes.

Finally, fathers are just as capable of parenting infants as are mothers. It is not the sex of the parent that is the issue, but rather a parent's desire to be (and history of actually being) responsibly involved in the care and development of their child.

OTHER STANDARDS

In our increasingly mobile society, the issue of the geographic distance between the custodial and non-custodial parents and its effect on

visitation has become one with which the court must deal on an increasing basis. In addition to the distance and how that affects the time the non-custodial parent is allowed to spend with the child, the costs and method of transportation must be a factor included by the court.

In the discussion that accompanies the standard visitation schedule adopted by the administrative director, the factors underlying these issues, as well as many additional issues in the area of visitation, are addressed. The guidelines also include a discussion on how the court should handle holidays, including Friday and Monday holidays, spring and fall breaks, and summer visitation.

There is a thorough discussion of what should constitute a weekend in the visitation schedule as well as whether midweek visitations should be awarded and the factors to be considered. Since midweek visitation is more controversial than alternating weekend visitation, the factors in discussion provide particular guidance to the practitioner.

At the conclusion of the discussion that accompanies the example visitation schedules, the committee sets out what it refers to as "other standards." These standards could well be adopted as a code of conduct for parents in dissolution cases and included in every decree. The "other standards" are reprinted here. They include:

1. Parents should always avoid speaking negatively about the other and should firmly discourage such conduct by relatives or friends. In fact, the parents should speak in positive terms about the other parent in the presence of their children.
2. Each parent should encourage the children to respect the other. Children should never be used to spy on the other parent.
3. Parents should establish the basic rules of conduct and discipline to be observed by both parents and step-parents, so that the children do not receive mixed signals.
4. Parents should keep each other advised of their home and work addresses and telephone numbers. As much as possible, all communication concerning the children should be conducted between the parents in person or by telephone at their residences and not at their places of employment.
5. Parents should communicate independently with the school(s) and with the children's doctors and other professionals regarding the children. Each parent should notify the other of any medical emergencies or serious illnesses of the children. The parent who has medical insurance coverage on the children should supply, as applicable, insurance forms and a list of insurer-approved or HMO-qualified health care providers in the area where the other parent is residing.
6. Telephone calls between parents and child should be liberally permitted at reasonable hours and at the expense of the calling parent. Telephone contact can be a constant point of contention, as "reasonable" is often viewed quite differently between parents. As a default position, reasonable telephone calls between a parent and child should be

"There is a thorough discussion of what should constitute a weekend in the visitation schedule..."

defined as twice a week between Monday and Friday and once during the weekend. If a parent uses an answering machine, messages left on the machine for the child should be returned within 24 hours. Parents should agree on a specified time for calls to the children so that the children will be made available.

7. Parents should have the unrestricted right to send cards, letters and packages to their children. The children also should have the same right with their parents. Neither parent should interfere with this right.
8. A parent should not enter the residence of the other expect by express invitation of the resident parent, regardless of whether a parent retains a property interest in the residence of the other. Accordingly, when children are picked up or returned to a parent's home, they should be picked up or returned to the front entrance of the appropriate residence. Parents should refrain from surprise visits to the other parent's home. A parent's time with the children is their own, and the children's time with that parent is equally private.

The remainder of the discussion, as well as the suggested visitation schedules, are available from the administrative director of the courts and are located on the Internet at www.oscn.net/forms/aoc_form/adobe/FORM.76.pdf.

CONCLUSION

Since most decrees of dissolution are going to include an order of visitation between the non-custodial parent and the minor child or children, each family law practitioner should be conversant about the issues involved in setting visitation. Many counties have adopted standard visitation schedules, including the schedule created by the administrative director of the courts or a variation thereof.

A working knowledge of the background and reasoning in the formulation of these standard visitation schedules gives each practitioner the tools needed to explain why adoption of one in his or her case is in the child's best interests. With appropriate education, our clients can be satisfied with an applicable standard schedule thereby avoiding additional litigation concerning visitation issues.

1. Title 43 O.S. § 111.1a(A)
2. In creating an infant visitation schedule, it is certainly appropriate to require a parent to attend and successfully complete a newborn/infant parenting class as a way to measure his/her commitment.

ABOUT THE AUTHOR

2003 OBA President Melissa DeLacerda has been engaged in the general practice of law with a heavy emphasis on family law in Stillwater for the past 27 years. She was a member of the ABA Standing Committee on Client Protection and was the recipient of the 2003 ABA General Practice, Solo and Small Firm Practice Section Bar Leader of the Year award. She also serves as chair for the OBA Board of Editors.

Leaving on a Jet Plane? Maybe... Passport Issues Relating to Children

By Noel K. Tucker and Phillip J. Tucker

International aspects of family law cases are on the rise in Oklahoma.[1] This may be attributable to several factors: 1) Love has always had an international fling about it. With an increase in foreign exchange students and the globalization of the world's economy, greater opportunities exist for U.S. citizens and foreign nationals to meet, fall in love and have children. 2) The expansion of U.S. military commitments has caused a significant increase in the deployment of military members to overseas duty stations, often being accompanied by dependent families (when in non-combat zones).

3) In a post-9/11 world, changes in U.S. passport policies have occurred, resulting in making possession of a valid passport almost essential for any international vacation travel — even to Canada and the "Deep South" — i.e. Mexico, Caribbean basin, etc. It should then come as no surprise that disputes over children's passports are also on the rise. However, children's passport issues are not so commonplace that everyone knows and remembers the rules, conditions and requirements. Instead, it occurs just enough to require the practitioner to continually re-educate the court and their clients in order to avoid the traps and snares.

PASSPORTS - GENERAL INFORMATION

A passport is a travel document issued by a competent authority showing the bearer's origin, identity and nationality, which is valid for the entry of the bearer into a foreign country (8 U.S.C. § 1101(3)). Under U.S. law, U.S. citizens must enter and depart the U.S. with valid U.S. passports (8 U.S.C. (1185(b)). This requirement, however, is waived until December 2006 for travel from countries within the Western Hemisphere, with the exception of Cuba (22 CFR 53.2).[2] However, each foreign country has its own entry requirements concerning citizenship, passports and visas. Information regarding those requirements may be obtained from the appropriate foreign embassy or consulate. The addresses and telephone numbers for the foreign embassy or consulate near you is best found on the U.S. Department of State Web site, located at: www.state.gov. This link is worth bookmarking in your Internet browser's favorites.

TYPES OF PASSPORTS

There are more types of passports than meet the eye: diplomatic, envoy, special, military, tourist, etc. Since most of us will never represent

a U.S. State Department employee, an ambassador or consular employee, the two most common types of passports we'll have contact with are: civilian/tourist passport and no-fee military passport. If you have a U.S. passport, chances are it is a civilian/tourist passport. It has a blue cover, containing your picture, particular personal information, signature page, visa pages, etc. You applied for it at one of some 7,000 passport offices, paid your fees and, in the normal course of things, waited some six to eight weeks to obtain.

The no-fee military passport is available to members of the "American military or Naval forces on active duty outside the United States" and their dependents. These passports look the same as civilian/tourist passports; however, they contain the following restrictive endorsement on the last page:

"This passport is valid only for use in connection with the bearer's residence abroad as a dependent of a member of the American Military or Naval Forces on active duty outside the United States."

The no-fee military passports are applied for and processed at the service member's base/post through the U.S. Department of State, Special Issuance Passport section. While they are better at expediting, passports also can take six to eight weeks to obtain. This restrictive endorsement can cause some confusion. The U.S. Department of Defense has a regulation titled "Passport and Passport Agent Services Regulation." In that regulation, it states "No-fee passports are used by eligible Defense Department personnel and their family members while on official travel to countries requiring passport." Additionally, the same paragraph goes on to state, "While outside the United States, no-fee passports may be used for incidental personal travel between foreign destinations providing the foreign government concerned accepts no-fee passports for personal travel." Can a military dependent (child) travel on a no-fee military passport without the U.S. service member traveling with him/her? Answer: Yes. According to Randall Bevins, supervisor for special issuance passports at the U.S. Department of State,[3] military passports have no travel limitations, contrary to statements from the Defense Department and even the Office of Children's Issues. "Incidental travel" is a term of art, and that all travel by a military dependent (child) that is without the military member, including court ordered travel, falls with this term.

If you represent the moving military member or his/her spouse, it may be beneficial to have dual passports, i.e. military and civilian. However, it is generally not recommended for military dependents. Generally, the military passport is necessary for military dependents to enter and exit the service members' duty county, i.e. Japan, Germany, etc. The United States Armed Forces have pacts with the various countries where military bases are located. To be in compliance with those pacts, military personnel and their dependents must use their military passports.

THE PRIVACY ACT AND PASSPORTS

Passport information is protected by the provisions of the Privacy Act (PL 93-579) passed by Congress in 1974. However, except for good cause shown, information regarding a minor's passport is available to either parent. Information regarding adults may be available to law enforcement officials or pursuant to a court order issued by a court of competent jurisdiction in accordance with (22 CFR 51.27). Therefore, if you have questions or concerns on whether or not the other parent has a valid passport in their possession or has applied for one, your client would be well served by obtaining a court order directing the U.S. Department of State to disclose the other parent's passport information.

PRACTICE TIP:

Be sure to include in any order to the U.S. Department of State specific findings regarding service on the other party, their presence at the hearing, etc. The U.S. Department of State often ignores or disregards default orders regarding passport matters.

APPLICATION FOR PASSPORTS - MINORS

Effective June 2, 2001, the Department of State Bureau of Consular Affairs adopted a rule (66 FR 29904) amending Part 51 of Title 22 of the Code of Federal Regulations (CFR). In enacting the rule, it sought to use the passport application process as a vehicle for deterring parental child abduction. As a consequence, passports are no longer issued for children who are the subject of

a custody dispute or where there is joint custody, without the consent of both parents.

Title 22 CFR 51.27 (b) requires both parents or each of the child's legal guardians, to execute the passport application on behalf of a minor under age 14 under penalty of perjury, whether applying for a passport for the first time or for a renewal. In addition, documentary evidence of parentage is required showing the minor's name, date and place of birth, and the names of the parent or parents. A person making false statements or providing fraudulent documents to procure a passport is subject to criminal penalties.

A passport application may be executed on behalf of a minor under age 14 by one parent or legal guardian only if that person provides documentary evidence that he or she is the sole parent or has sole custody of the child, or if a written statement of consent from the non-applying parent or guardian is provided.

When both parents have abandoned the minor or are deceased, and there has been no formal or legal determination of custody or guardianship (such as when a grandparent, aunt, uncle, brother or sister has assumed responsibility), documentation of legal custody or guardianship must be obtained and submitted. If exigent circumstances apply to a child in this situation, a passport will be issued without such documentation if failure to do so would cause grave danger to the child. Examples would include medical evacuation of a child from a foreign country to the United States, or an emergency evacuation of U.S. citizens from a foreign country during a period of civil unrest.

> "A passport application may be executed on behalf of a minor under age 14 by one parent or legal guardian..."

An individual may apply *in loco parentis* on behalf of a minor under age 14 by submitting a notarized written statement or a notarized affidavit from both parents specifically authorizing the application. However, if only one parent provides the notarized written statement or notarized affidavit, documentary evidence that such parent has sole custody of the child must be presented. Examples of documentary evidence include but are not limited to: a birth certificate providing the minor's name, date and place of birth and the name of the sole parent; a Consular Report of Birth Abroad of a Citizen of the United States of America (FS-240) or a Certification of Report of Birth of a United States Citizen (DS-1350) providing the minor's name, date and place of birth and the name of the sole custodial parent; an adoption decree showing only one adopting parent; an order granting sole custody to the applying parent or legal guardian and containing no travel restrictions inconsistent with issuance of the passport; a judicial determination of incompetence of the non-applying parent; a court order from a court of competent jurisdiction specifically permitting the applying parent's or guardian's travel with the child; a death certificate for the non-applying parent; or a copy of a commitment order or comparable document for an incarcerated parent.

EXIGENT OR SPECIAL CIRCUMSTANCES

In cases of exigent or special circumstances, the written consent requirements may be waived by a senior passport adjudicator or the Deputy Assistant Secretary for Passport Services. For applications filed abroad, written con-

sent requirements may be waived by the deputy assistant secretary for Overseas Citizens Services. Exigent circumstances are defined as "time-sensitive" circumstances in which the inability of the minor to obtain a passport would jeopardize the health and safety or welfare of the minor or would result in the child being separated from the rest of his or her traveling party. "Time-sensitive" generally means that there is not enough time before the minor's emergency travel to obtain either the required consent of both parents/guardians or documentation reflecting a sole parent's/guardian's custodial rights. Examples of exigent circumstances include a minor who needs to travel due to a serious illness in the minor's immediate family, a minor who must travel to receive emergency medical treatment, or a minor who has his or her passport lost or stolen while traveling abroad.

Special family circumstances are circumstances in which the minor's family situation makes it impossible for one or both of the parents to execute the passport application. Examples of special family circumstances include, but are not limited to: the non-applying parent has abandoned the family and his or her whereabouts are unknown; or the non-applying parent is unable to give written consent due to serious health problems. Inconvenience to the non-applying parent will not be considered. However, a non-applying parent who cannot personally appear at an acceptance facility passport agency, or U.S. embassy consulate or consular agency abroad to sign the minor's application may send the signed consent statement by overnight delivery if the minor's travel is urgent, or fax it to the applying parent or passport issuing office, if the minor's travel is imminent.

A parent applying for a passport for a child under age 14 who seeks an exception must submit with the application a written statement subscribed under penalty of perjury describing the exigent or special family circumstances the parent believes should be taken into consideration in applying an exception.

The Federal Regulations [22 CFR 51.27 (d)(1)(i)] also provide that when there is a dispute concerning the custody of a child under age 18, a passport may be denied if the State Department has on file a copy of a court order that either: a) grants sole custody to the objecting parent, b) establishes joint legal custody, c) prohibits the child's travel without the permission of both parents or the court or d) requires the permission of both parents or the court for important decisions, unless permission is granted in writing as provided therein.

A court order providing for joint legal custody will be interpreted as requiring the permission of both parents. The State Department may require that conflicts regarding custody orders, whether domestic or foreign, be settled by the appropriate court before a passport may be issued. However, notwithstanding the existence of any such court order, a passport may be issued when compelling humanitarian or emergency reasons relating to the welfare of the child exist.

PRACTICE TIP:

This is one area of the law where a "sole" custody determination is significant. With the trend towards joint custody arrangements, be sure you provide a provision in your Joint Custody Plans regarding who has the right, power and authority to obtain a passport on behalf of the minor child in order to avoid a future fight.

Either parent may obtain information regarding the issuance of a passport to a minor unless the inquiring parent's parental rights have been terminated by a court order and that order has been registered with the State Department. However, the State Department may deny such information to any parent, if it determines that the minor is of sufficient maturity to assert a privacy interest in his or her own right. In such case the minor's written consent to disclosure is required.

All children regardless of age (including newborns and infants) must have their own passport. Minor children must apply in person for their passport.

STEPS IN OBTAINING CHILD'S PASSPORT

1) Your client will have to completed an Application Form DS-11, have two appropriate passport photos and be able to pay the passport fee(s).[4] This form can be obtained from any passport agency, most travel agents or the internet.

2) For minors under age 14, your client will have to submit proof of U.S. citizenship **and**

> One parent appears, signs and submits second parent's notarized statement of consent authorizing passport issuance for the child...

proof of relationship. A previous U.S. passport is not acceptable as proof of relationship to the applying parent(s)/guardian(s). For **proof of citizenship**, your client will need to submit one of the following:

A) Certified U.S. birth certificate or

B) Previous fully valid U.S. passport or

C) Report of Birth Abroad (Form FS-240) or

D) Certification of Birth Abroad (Form DS-1350) or

E) Certificate of citizenship or naturalization from BCIS

Note: A certified birth certificate has a registrar's raised, embossed, impressed or multicolored seal, registrar's signature, and the date the certificate was filed with the registrar's office, which must be within one year of the child's birth.

3) Present evidence of the child's relationship to parent(s)/guardian(s). For proof of relationship, your client will need to submit one of the following:

A) Certified U.S. birth certificate (***with parents' names***) or

B) Certified foreign birth certificate (***with parents' names and translation, if necessary***) or

C) Report of Birth Abroad (Form FS-240) (***with parents' names***) or

D) Certification of Birth Abroad (Form DS-1350) (***with parents' names***) or

E) Certified copy of adoption decree (***with adopting parents' names)*** or

F) Certified copy of court order establishing custody or

G) Certified copy of court order establishing guardianship

Note: If the parent(s)'/guardian's name(s) is/are other than that on these documents, evidence of legal name change is required.

4.) **Provide Parental Identification.** Each parent or guardian must submit one of the following:

A) Valid drivers license or

B) Valid official U.S. military I.D. or

C) Valid U.S. government I.D. or

D) Valid U.S. or foreign passport with recognizable photo or

E) Naturalization/citizenship certificate from BCIS with recognizable photo or

F) Alien resident card from BCIS

Note: A Social Security card does not prove identity.

If none of these documents is available, it is still possible to meet the parental identification requirement. In this case, your client will need:

A) Some signature documents, not acceptable alone as I.D. (example: a combination of documents, such as a Social Security card, credit card, bank card, library card, etc.)

AND

B) A person who can vouch for your client. That person must have known the client for at least two years; be a U.S. citizen or permanent resident; have valid I.D.; and fill out a Form DS-71 in the presence of the passport agent.

5) **Present Parental Application Permission Documentation.** The preferred method is for both parents to appear together and execute the minor's passport application. However, one parent can appear and sign the passport application (**in front of the agent**) if:

A) One parent appears, signs and submits second parent's ***notarized*** statement of consent authorizing passport issuance for the child (a notarized Form DS-3053, Statement of Consent: Issuance of a Passport to a Minor Under Age 14, or a ***notarized*** written statement with the same information on a sheet of paper from the non-appearing parent that includes the child's name and date of birth, as well as parent's identification information or a copy of his/her ID may be used for this purpose);

B) One parent appears, signs and submits primary evidence of sole authority to apply (such as one of the following):

a) Child's certified U.S. or foreign birth certificate (with translation, if necessary) listing ***only*** applying parent or

b) ***Consular Report of Birth Abroad*** (Form FS-240) or ***Certification of Birth Abroad*** (Form DS-1350) listing only applying parent or

c) Court order granting sole custody to the applying parent (unless child's travel is restricted by that order) or

d) Adoption decree (if applying parent is sole adopting parent) or

e) Court order specifically permitting applying parent's or guardian's travel with the child or

f) Judicial declaration of incompetence of non-applying parent or

g) Death certificate of non-applying parent.

Note: A third-party *in loco parentis* applying on behalf of a minor child under the age of 14 must submit a notarized written statement or affidavit from both parents or guardians authorizing a third-party to apply for a passport. When the statement or affidavit is from only one parent parent/guardian, the third-party must present evidence of sole custody of the authorizing parent/guardian.

6.) **Social Security Number**. If your client does not provide his/her social security number, the Internal Revenue Service may impose a $500 penalty. So, what's the value of this point of trivia? In performing discovery, be sure to identify the party by full name and Social Security number.

PRACTICE TIPS:

There are many cases where international abduction is not an issue, but the parties have/do undertake overseas travel /vacations. If you do not want to receive a telephone call from an irate client who cannot obtain a passport for his/her child, just as you are leaving for your spring break, we suggest that you insist on a clause, such as the following, in settlement agreements and/or joint custody plans you negotiate on behalf of a parent who does not have sole custody of his/her child:

"The mother and father agree that either parent may apply for a passport on behalf of the child(ren), without the written consent of the other parent, provided that a copy of each child's passport application is sent to the other parent, by certified mail, return receipt requested, at the same time that it is submitted to the Department of State."

Lastly, encourage your client to make a copy of the child's passport and leave it with a family member, i.e. grandparent or other safe place.

DUAL NATIONALITY FOR CHILDREN

Many children, whether born in the United States or born abroad to a United States citizen parent, are citizens of both the United States and another country. This may occur through the child's birth abroad, through a parent who was born outside the United States, or a parent who has acquired a second nationality through naturalization in another country. There is no requirement that a United States citizen parent consent to the acquisition of another nationality.

The inability to obtain a United States passport through the Children's Passport Issuance Alert Program (*see* discussion, *supra)* does not automatically prevent a dual national child from obtaining and traveling on a foreign passport. There is no requirement that foreign embassies adhere to United States regulations regarding issuance and denial of their passports to United States citizen minors who have dual nationality. If there is a possibility that the child has another

nationality, you may contact the country's embassy or consulate directly to inquire about denial of that country's passport.

CHILDREN'S PASSPORT ISSUANCE ALERT PROGRAM

Parents who are concerned about international child abduction will be relieved to know that the State Department has a program that provides for parental notification and the denial of a passport to a minor of any age who is the subject of a child custody dispute. Parents who fear that their child may be abducted should make use of this program. The Children's Passport Issuance Alert Program enables the State Department Office of Children's Issues to notify a parent or legal guardian, when requested, before issuing a U.S. passport for his or her child. At the request of a custodial or non-custodial parent, legal guardian, legal representative or a court of competent jurisdiction, the department will enter the child's name into its passport name-check clearance system. This allows the department to alert the requesting parent if a passport application is received for the child.

To deny a passport application, the department must have on file a written request for denial from a parent, legal guardian or an officer of the court, and a complete copy of a temporary or permanent court order that provides for: 1) sole legal custody to the requesting parent, 2) joint custody to both parents (which the department treats as inherently requiring both parents to consent to passport issuance) or 3) a restriction on the child's travel or 4) a requirement that both parents or the appropriate court give permission to for the child to travel.

INTERNATIONAL ABDUCTION

Accordingly to their own statistics, since the late 1970s, the Bureau of Consular Affairs has taken action in over 8,000 cases of international parental child abduction. The bureau has also provided information in response to thousands of additional inquiries pertaining to international child abduction, enforcement of visitation rights and abduction prevention techniques. The Office of Children's Issues works closely with parents, attorneys, other government agencies and private organizations in the United States to prevent international child abductions.

Forty-four countries (including the United States) have joined the Hague Convention on the Civil Aspects of International Child Abduction. The convention discourages abduction as a means of resolving a custody matter, by requiring (with few exceptions) that the abducted child be returned to the country where he/she resided prior to the abduction. Again, accordingly to the bureau's statistics, it received approximately 700 applications under the Hague Convention, with about half of these applications involving children abducted from the United States to other countries. Most of the cases involved Mexico, Canada, the United Kingdom, Germany and France.

There are still many countries, however, where the Hague Convention has not been accepted. In the event of an abduction to a non-Hague country, one option for a left-behind parent is to obtain legal assistance in the country of the abduction and follow through a court action. Of non-Hague countries, the largest number of cases involved children abducted to Egypt, Japan, Jordan, the Philippines and Saudi Arabia.

Prevention is always the best cure in these situations. First, determine how vulnerable the child is to abduction. Obviously, if the relationship with the other parent is troubled or broken, your client will want to take precautions. Does the foreign national parent have close ties to another country? Does the foreign national parent have sufficient resources, or access to sufficient resources to finance an abduction? Does the foreign national parent come from a country that has traditions or laws that may be prejudicial against women, children or non-citizens in general? These questions must be asked and answered to determine how vulnerable your client's child(ren) may be to abduction.[5]

One preventive step to consider is asking the divorce court at the first available opportunity to prohibit either parent from obtaining a passport for the child.[6] It has been our experience that courts are very agreeable to granting the requested mutual prohibition. However, be prepared to present your evidence regarding your client's concerns about potential abduction. Generally, this type of mutual restraint relief is much easier to obtain in the beginning of the case, than the later stages. Orders of restraint might look something like these:

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that neither Petitioner/Mother nor Respondent/Father shall

apply for, nor have the authority to apply for either a passport or visa within the United States or through any Consulate or Embassy abroad for [full legal name of child] without an expressed order of this Court authorizing said act."

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that neither Petitioner/Mother nor Respondent/Father shall travel outside the United States with [full legal name of child] without an expressed order of this Court authorizing such foreign travel."

Another way to prevent the issuance of a passport for a minor child[7] is to control the necessary documents required to be presented with the child's passport application. Towards this end, have your client secure the exclusive control of all documents relating to the child's evidence of U.S. citizenship. (See above for a discussion of necessary documentation).

PRACTICE TIP:

Besides the prohibition language suggested above, one could also ask the court to limit the foreign national parent from obtaining any documents relating to the child's evidence of U.S. citizenship.

Once you get the court order setting forth custody and containing prohibitive language regarding the issuance of a child's passport and/or international travel, it would be wise to take several additional steps. First, obtain several *certified* copies of the restraining and/or custody order for your client. Instruct him/her to give a copy of the order to the child's school and advise the school personnel to whom the child may be released. **Most abductions start by the parent taking the child from school.** Second, place the child into the State Department's passport alert program. This is done by completing a request form and sending it by FEDEX, DHL, Express Mail, etc. to: U.S. Department of State, Office of Children's Issues, CA/OCS/CI, 1800 G St. N.W., Suite 2100, Washington, D.C. 20006 or by regular mail to: U.S. Department of State, Office of Children's Issues, CA/OCS/CI, 2201 C St. N.W., Washington, D.C. 20520-4818.

Note: As of February 2002, the State Department has experienced considerable delays of at least three to four weeks in the delivery of regular mail due to mandated irradiation against harmful substances.

Accordingly, we strongly recommend that important correspondence be initially faxed to (202) 312-9743, with hard copies sent by courier such as FEDEX, DHL, Express Mail, etc. to ensure prompt delivery.[8] A sample Children's Passport Issuance Alert Program request form is attached. In section 2 of the request form, you may also provide counsel's information so that the State Department can contact both the parent and counsel if an application for a U.S. Passport for the child is received anywhere in the United States at any U.S. Embassy or consulate abroad. As noted above, the Office of Children's Issues alert program also provides denial of passport issuance, if appropriate court orders are on file with the Office of Children's Issues. In the State Department's official policy, it notes:

"If you have a court order that either grants you sole custody, joint legal custody, or prohibits your child from traveling without your permission or the permission of the court, the Department may also refuse to issue a U.S. passport for your child. **The Department may not, however, revoke a passport that has already been issued to the child.**"

There is no way to track the use of a passport once it has been issued, since there are no exit controls on people leaving the United States. With the alert program, the State Department will make every effort to refuse the issuance of a child's passport — but there are no guarantees.

The Department of State's Office of Children's Issues is only part of the network of resources available to you or your client. For example, we certainly recommend contacting the National Center for Missing and Exploited Children for further assistance.[9]

What the State Department Can Do

In cases where the Hague Convention on the Civil Aspects of International Child Abduction applies, the State Department will assist parents in filing an application with foreign authorities for return of the child. In other cases, through U.S. Embassies and Consulates abroad, the department will attempt to locate, visit and report on the child's general welfare. Further, the State Department will provide the left-behind parent with information on the country

to which the child was abducted, including its legal system, family laws and a list of attorneys there willing to accept American clients. Lastly, if you do not feel your U.S. State Department has done enough for you, it will: 1) provide a point of contact for the left-behind parent at a difficult time, 2) monitor judicial or administrative proceedings overseas, 3) assist parents in contacting local officials in foreign countries or contact them on the parents behalf and (4) alert foreign authorities to any evidence of child abuse or neglect.

What the State Department Will Not Do

The things the U.S. State Department will not do in an international abduction case (and what you wish they would do if your child was stolen) include the following: 1) re-abduct the child, 2) Help a parent to violate host country laws, 3) pay legal expenses or court fees, 4) act as a lawyer or represent parents in court and/ or 5) give refuge to a parent involved in a re-abduction.

CONCLUSION

As with most of life, timing is everything. Regarding international matters, begin early, begin early, begin early. A case with passport issues will always take more time than you or your client will anticipate. We hope you can use this paper as a resource tool or to otherwise help you sleep during those restless nights.

Note: The authors have created three forms OBA members may download for use in dealing with children's passport issues. They are: 1) Entry into the Children's Passport Issuance Alert Program Request Form, 2) Passport Order and 3) Supplemental Travel and Passport Order. These forms have been posted to my.okbar.org and the OBA-NET.

1. Historically, for many clients an "international" trip encompassed going to Texas !!!

2. The Intelligence Reform and Terrorism Prevention Act of 2004 requires that by Jan. 1, 2008, travelers to and from the Caribbean, Bermuda, Panama, Mexico and Canada have a passport or other secure, accepted document to enter or re-enter the United States. In order to facilitate the implementation of this requirement, the administration has proposed it be completed in phases following a timeline, which will be published in the Federal Register in the near future.

In the proposed implementation plan, which is subject to a period of initial public comment and finalization, the proposed time line is as follows:

Dec. 31, 2006 - Passport is required for all air and sea travel to or from Canada, Mexico, Central and South America, the Caribbean and Bermuda.

Dec. 31, 2007 - Requirement extended to all land border crossings as well as air and sea travel.

3. Mr. Bevins is an extremely knowledgeable and competent government employee. His phone number is: (202) 955-0203. According to the U.S. State Department's Legal Division, his statements are "gospel."

4. An **application processing fee** is payable to the "U.S. Department of State" and the execution fee is payable to the facility where applying. If the child is 16 and older, the application fee is $67 for a 10-year passport. If the child is 15 and younger, the application fee is $52 for a five- year passport. The execution fee is $30 per person. Lastly, to expedite, there is an additional $60 fee per person. Expedited passport generally arrive within three weeks. When applying at a regional passport agency, both fees are combined into one payment to the "U.S. Department of State."

5. Many cases of international parental abduction are actually cases in which the child traveled to a foreign county **with the approval of both parents**, but was later prevented from returning to the United States. Sometimes the marriage is neither broken nor troubled, but the foreign parent upon returning to his/ her country or origin, decides not to return to the US or to allow the child to do so. This more sophisticated scheme is also outside the scope of this paper, and may be the subject of a future presentation.

6. You also, if appropriate, want to seek a custody order in favor of your client.

7. A minor child for passport purposes in under the age of 14. Different rules apply for a child older than the age of 14. The scope of this paper assumes the child is under the age of 14.

8. The Overseas Citizens Services in the Bureau of Consular Affairs (CA/OCS) has established a toll-free hotline for the general public **at (888) 407-4747.** This number is available from 8 a.m. to 8 p.m. Eastern Standard Time, Monday through Friday (except U.S. federal holidays). Callers who are **unable to use** toll-free numbers, such as those calling from overseas, may obtain information and assistance during these hours by calling (317) 472-2328. Persons seeking information or assistance, in case of emergency, **outside of these hours**, including weekends or holidays should call (202) 647-5225. The OCS hotline can answer general inquiries regarding international parental child abduction and will forward calls to the appropriate country officer. For specific information and other services available to the s earching parent, you should call the Office of Children's Issues public phone number at (202) 312-9700 during normal working hours.

9. The web page for National Center of Missing or Exploited Children is: www.ncmec.org.

ABOUT THE AUTHORS

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Do No Harm

Guardian ad Litem Representation

By Julie S. Rivers, Noel K. Tucker and Phillip J. Tucker

The use of the guardian *ad litem* in a divorce matter began before statehood. A guardian *ad litem* was appointed in the 1905 divorce action, *Bennett v. Bennett*, 1905 OK 27, 81 P. 632. In that case, the playing hide-the-assets game had already begun. There, in anticipation of divorce, husband had gifted valuable marital assets to his 11-year-old son from a prior marriage. A guardian *ad litem* ("GAL") was appointed for the property owning son in the divorce case. The GAL argued that the deed conveying the marital home should remain with the son.

The appellate court affirmed the trial court's ruling that such conveyance without proper consideration was fraudulent and the deed *void*. Clearly, the GAL's recommendation was not followed, and the use of GALs in family-law matters began in Oklahoma.

The two most common ways Oklahoma attorneys are introduced to trying on the role of *guardian ad litem* arises out of two common scenarios. In the first situation, you are sitting at your desk sipping mocha-flavored coffee and receive a phone call from either the court or counsel advising that you have just been appointed GAL in the *Smith v. Smith* case.[1]

The other scenario has you sitting in the courtroom waiting for your case to be called. You are wishing the pending matter (which you haven't particularly been paying much attention to and is now becoming quite heated) will conclude soon so you can present your case. All of a sudden you hear your name being mentioned. The court and the parties are now looking at you. As you now focus your full attention to the present, you discover the court was looking around the courtroom in search of a *guardian ad litem*, noticed you and has just appointed you in the present action! Both attorneys come up to you and say, "let's go to the hallway and talk!" A lawyer whose been positively rude to you before is now your new best friend. What do you do? You are now a GAL and have been placed in a "position of the highest trust."[2]

The scope of this material will review the use of the GAL in a family-law matter arising out of legal actions based primarily on Titles 10 and 43 as well as a Title 12 appointment as it relates to a Title 10 or 43 appointment.[3] While there will be a brief discussion about the use of the GAL for adults in a Title 43 action, the focus will be representation of children. There will be no discussion of representation of children (except as it relates to the GAL's role generally) in probate, in-need-of-treatment, real

property, criminal, tort, guardianship, adoption, workers' compensation or mental health matters. For the most part, there will be little discussion of the role as an attorney for the child.

THE POWER OF THE COURT AND ITS DUTY

In certain cases the appointment of the GAL is mandatory and in others, it is discretionary. Once a GAL is appointed, it is the job of the Court to assure that the GAL is adequately representing his/her charge.

Mandatory Appointment of a Child Representative or GAL

The trial court has no leeway concerning appointment of a GAL in a deprived action or in a parental-rights termination proceeding (AWOC adoption proceeding). Independent counsel must be appointed to represent children in proceedings where parental rights are being terminated whether it is a state or privately initiated petition.[4] The court in *SAW* reasoned the purpose for the rule is that:

> In a termination proceeding, if a child is not represented by independent counsel, the child is caught in the middle while each attorney argues from his client's viewpoint. Although each side phrases arguments in terms of the child's best interests, each attorney desires to prevail for his client, who is not the child. But when the court appoints an attorney for the child, testimony is presented and cross-examination is done by an advocate whose only interest is the welfare of the child.[5]

It is the duty of the trial court to raise the issue of child representation *sua sponte* in a parental-termination matter and to appoint a child representative.[6] Anything less is clear error.[7]

While a parent is charged with the duty of the maintenance, protection and education of a child, in a deprived action or a parental-rights-termination proceeding, it is the state's responsibility to assure a child is adequately represented pursuant to 10 O.S. §7003-3.7.[8] In the deprived action or parental-rights-termination proceeding, there is no requirement that there be a show of indigence for the child to be represented.[9]

Pursuant to 10 O.S. §§7003-3.7 and 7303-3.1, in a deprived or juvenile action an attorney-for-the child appointment is mandatory and if requested by the child's attorney, DHS, a licensed child-placing agency, a party to the action or the child him/herself, a *guardian ad litem shall* be appointed (unless a CASA10 volunteer is available).

The surprise in Oklahoma law (concerning mandatory appointments) is hidden in 10 O.S. §7002-1.2. If evidence in a juvenile action, or *an action for divorce, separate maintenance action, an annulment, a custody proceeding* or in a guardianship, indicates that a child has been subject to abuse or neglect, "the court *shall* appoint an attorney to represent the child for that proceeding and any related proceedings and as provided by (7003-3.7 ... shall appoint a guardian *ad litem* for the child." (Emphasis added.)

It seems that whenever there is an emergency application alleging irreparable harm of a child — that if such an application is successful, there is a good likelihood the court should appoint an attorney for the child or a GAL.

Another surprise is hidden in Oklahoma Statutes Title 63. Pursuant to 63 O.S. §1-740.3, if an unemancipated minor does not want her parents notified of her desire for an abortion, then she can confidentially seek a judge's approval for authorization to have the abortion performed. "If the judge determines that the pregnant unemancipated minor is mature and capable of giving informed consent to the proposed abortion" then the judge can authorize the procedure. If not, then the court must decide whether it would be in the pregnant minor's best interest. In this type of proceeding, the court can choose on its own to appoint a guardian *ad litem*. The court must advise the pregnant minor that she has a right to court-appointed counsel and *is required to appoint such counsel upon her request.* In a regular civil action, if a minor party is not (otherwise represented in the action, the court shall appoint a guardian *ad litem* and make any other necessary orders to protect the minor.[11] The "representative may sue or defend on behalf of the infant.... If an infant ... does not have a duly appointed representative he may sue by his next friend or by a guardian *ad litem*." If a minor is expected to be an adverse party in a civil matter and pre-filing depositions are to be taken, the court shall appoint a guardian *ad litem* for the deposition prior to filing an action.[12]

> When dealing with a divorce or paternity matter involving a minor party to the action...

Finally, pursuant to 43 O.S. §101 (Twelfth) if the ground for divorce is insanity for a period of five years, then the court shall appoint a guardian *ad litem* to represent the insane defendant, "at least ten (10) days before any decree is entered."

When the Party is a Minor in a Family-Law Matter

> "... it is the duty of a court of equity, under its general jurisdiction, to protect the interest of minors."[13]

When dealing with a divorce or paternity matter involving a minor party to the action, any action taken against such minor can be voidable if he or she is not represented by a guardian *ad litem*.[14] Just because there may be adult parties whose interests could be the same "as those of the infant" who are making the proper defense, this fact does not cure the need for a guardian *ad litem*.[15]

In *Stephenson v. Stephenson*,[16] a defendant in a divorce action appealed the divorce court's ruling because he was a minor who had not been provided a guardian *ad litem*. The court held that defendant was fully involved in the litigation and at most the orders entered were voidable because defendant filed a cross-petition when he filed his answer. The record showed that defendant was not prejudiced but instead his rights were "fully protected," hence the trial court's rulings would stand.

In *Harjo v. Johnston*,[17] the syllabus by the court provides in pertinent part:

1. It is the duty of courts to guard with jealous care the interests of minors in actions involving their rights. No presumption can be permitted against an infant, but, on the contrary, every presumption must be indulged in his favor, and a guardian *ad litem* or other person representing such minor must see to it that every question available is urged on behalf of said minor, and in case of failure to discharge this duty, it becomes the imperative duty of the court to see that the infant's rights are protected.
2. A guardian of a minor cannot, by commencing an action on behalf of his ward, thereafter enter into a compromise and settlement of such litigation and confess judgment against his ward, quieting title to the ward's lands in the defendants or waive any of the substantial rights of the minor and a judgment entered by confession by the guardian does not create an estoppel against the minor thereafter asserting the invalidity of such judgment.[18]

Does the Court Have to Follow the GAL's Recommendation?

The court does not have to follow the GAL's recommendation. After Oklahoma statehood, the first GAL to represent a child in a divorce action was in the matter, *Smith v. Williams*.[19] There, the parents of child take child from an orphanage at 2 to 3 months of age. At the end of six months, parents were either to adopt child or return her to the orphanage; however, that did not occur and instead parents kept child. Several years later, parents commenced divorce proceedings and mother requested custody of child. The orphanage intervened demanding the return of child to orphanage.

> "...whether the child will be placed at risk of specific and real harm by reason of living with the custodial parent in the new location."

The trial court appointed a guardian *ad litem*. After a merit's hearing, the trial court awarded custody of child to mother finding that arrangement to be in child's best interests. The guardian *ad litem* appealed the court's ruling. The guardian *ad litem* argued on appeal that mother's "legal and moral obligation" was to return child to orphanage. The Supreme Court noted that during the years after parents kept child, orphanage had only a passing interest in child's welfare and whereabouts. Mother was a good mother and not unfit. The court relied on the teaching that "the best interests of the child is always the paramount consideration." In affirming the trial court's custody decision, it further provided that to wrench a 6-year-old child from "the only mother she has ever known, and sending her back to the institution from whence she came, confused and heart-broken by the workings of a system she could never hope to understand, would be the height of inhumanity."

In *Kaiser v. Kaiser,*[20] the GAL (in this well-known relocation case) played an integral role and the trial court followed her recommendation that the child remain in Oklahoma due to the close ties with his father and that such a move 'significantly reduced' the amount of contact between father and son. Mother wanted to move to Washington, D.C., because she had a once-in-a-lifetime shot at a job with NASA. These parties had been through a lot of "protracted litigation" since their divorce in 1994. However, even in light of the guardian *ad litem* recommendation, the Oklahoma Supreme Court exacted a different legal standard than that known by the GAL when the investigation was performed. The standard for relocation was changed to the "fitness of the custodial parent and whether the child will be placed at risk of specific and real harm by reason of living with the custodial parent in the new location."[21]

The Court's Duty When the GAL Falls Down on the Job

The court has a duty to make sure that the guardian *ad litem* does his/her duty and when the trial court allows the guardian *ad litem* to shirk his/her responsibilities, then the trial court is failing its obligation to assure adequate representation.[22]

The court provides in pertinent part in *Hamilton By and Through Hamilton v. Vaden* the following:[23]

> It is the duty of the courts sedulously to guard the rights of minors. No presumption against an infant is permitted; rather every presumption is indulged in his/her favor. A *guardian ad litem* must present every issue available on behalf of the child. If the guardian fails properly to discharge the duties of guardianship, the responsibility devolves upon the courts acting on behalf of the state to protect the best interest of the child. Courts cannot assume that parents will act effectively to protect the rights of their children; and it is neither reasonable nor realistic to rely upon parents (who may themselves be minors, or who may be ignorant, lethargic, or unconcerned) to bring an action within the time provided. It is equally unreasonable to expect a minor, whose parents fail timely to vindicate his/her legal rights, independently to seek out another adult willing to serve as next friend. To do so would ignore

> the realities of the family unit and the limitations of children. (Footnotes omitted.)

In an annulment matter, a *guardian ad litem* was appointed to represent the minor husband. The guardian *ad litem* filed an answer but did not appear for trial and default judgment was taken against the minor. The court addressed the guardian *ad litem*'s duty opining that the:

> Defendant ... was a minor and entitled to the protection of guardian *ad litem*. The *guardian ad litem* appointed did not appear to be diligent in pursuing the duties of his trust, and when said cause was called for trial and nobody appeared to defend ... it was the duty of the trial judge on ascertaining that a *guardian ad litem* was appointed ... to ascertain what said *guardian ad litem* was doing and direct that he appear in court, and if said *guardian ad litem* was not properly representing the party for whom he was appointed, the court should then in the furtherance of justice appoint a *guardian ad litem* who would properly represent said minor.[24]

The court then asserted the rule of law that if a guardian *ad litem* fails to properly discharge his duty, then it is the duty of the court to protect the minor's rights.[25]

In *Posey v. State*,[26] the court recognized the need for a *guardian ad litem* to provide quality legal services. The court deemed there that the attorney acting on behalf of the guardian *ad litem* representing a defendant in a bastardy (paternity) proceeding must be given adequate time to prepare a defense; failure to allow such time is reversible error.[27]

In *American Inv. Co. v. Brewer*,[28] the Supreme Court reversed the trial court when the guardian *ad litem* sold improperly the minor's land in a probate action and the court held, "The guardian *ad litem* is the arm of the court extended to protect the minor ... and it is the duty of the court, whenever the necessity appears, to advise the guardian *ad litem* as to what steps to take and what pleadings to file."

YOUR ROLE AS GAL

What is a GAL?

So you've been pulled into the vortex of a family-law matter and now you're trying to figure out where you fit in the chaos. What is the definition of a GAL?[29]

Intertwined, undefined or confusing terms can lead to uncertainty regarding GAL representation. Statutes and legal dialogue across the country have not been uniform in describing child representatives, i.e. "attorney," "child advocate," "guardian *ad litem*," "friend of the court," "attorney *ad litem*," "law guardian," etc. This lack of precise definition can lead to **both role confusion and role diffusion in child representation.**

A GAL is not an attorney for the child or a CASA worker.[30] While the role of the GAL (we'll talk about that a little later) is outlined in several statutes, the GAL has one lonely definition in Oklahoma statutes and it is located in the Children's Code:

> "*Guardian ad litem*" means a person appointed by the court to protect the best interests of a child pursuant to the provisions of §7003-3.7 of this title in a particular case before the court...[31]

While 43 O.S. §107.3 doesn't provide a definition per se, the *guardian ad litem* is expected to "objectively advocate on behalf of the child and act as an officer of the court to investigate all matters concerning the best interests of the child."[32] The Supreme Court has defined the GAL as an "arm of the court ... and makes his own investigation as the trial court's agent."[33]

What Family-Law Matters Can Result in a GAL Appointment?

The types of family-law cases which involve appointment of GALs beside Title 43 proceedings[34] include consent to marriage; juvenile/deprived (status, delinquent and abuse/neglect proceedings); adoption,[35] rights of majority, guardianship and third party custody actions as well as abortion-permission matters. The type of action from which your appointment arises may affect the scope, role and duties of your GAL appointment. Further, the type of action may impact the resources available for your use.

As for when the appointment may be made and whether it is discretionary or mandatory, see the discussion in Section III, The Power of the Court (*supra*).

The appointment, whether mandatory or discretionary, carries on through the appeal

and an appointment can even be made during an appeal.[36] In the case of *In re Baby Girl L.*, the adoptive parents wanted to have new counsel appointed for the appeal. A GAL had been appointed at the trial level but the adoptive parents argued that the trial-court representation was "deficient." The Supreme Court opined that additional counsel did not need to be appointed "[b]ecause the trial court counsel for the child is familiar with the trial court proceedings, and because of the short duration of time to prosecute and defend appellate proceedings, the appointment of trial counsel for a child will ordinarily include authority, either express or implied, to represent the child on appeal ... unless allowed to withdraw and substitute counsel [is] appointed."

The All-Important Order

Understanding your role as a GAL under current Oklahoma law[37] is in part defined by the appointing court. This order should be a separate order which clearly details your rights, responsibilities and duties as GAL.[38]

Since the GAL operates as an arm of the court, the GAL may be specially appointed for some purpose or may have broad powers as outlined by the pertinent statute. The GAL should inquire with the court about the specific reasons for the appointment so there is clear direction and understanding of your purpose and mission.[39]

If the court has not prepared an appointing order, you should prepare and present an order for signature. Unless the court has appointed you for a narrow and specific task, the order should be broad enough to cover a wide range of investigate tools.[40] Some examples of what to put in issues to cover in an appointing order include:

- **Clarity of role**
  - officer of court/advocate for child
  - party in case i.e. provided copy of all pleadings, able to plead, perform discovery, etc.
  - when to report to court
  - attorney/client privilege - does it exist or not (maintaining confidentiality differs from attorney-client privilege)
  - payment of fees (how it is allocated between the parties)
- **Ability to interview child and obtain all records**,[41] i.e. school, medical, psychological, DHS, Court (juvenile), police, etc.
- **Powers of GAL**
  - hire professionals — mental health, doctors, PI, etc.
  - ability to perform discovery (although §107.3 doesn't allow discovery to be performed on the GAL)
  - ability to examine, cross examine, call witnesses
  - involvement in settlements
- **General catch-all powers**

THE BEST INTEREST STANDARD

In Oklahoma guardians *ad litem* are expected to represent the best interest of the children.[42] In fact, "the best interests of the child is always the paramount consideration."[43] What is considered the "best interest of the child?"

A few years ago in a guardianship case, the appellate court opined:

....A parent's fitness is a component of best interests. The best interests of the child test in Anglo-American legal systems considers a number of factors:

1) the desires of the child;
2) the emotional and physical need of the child now and in the future;
3) the emotional and physical danger to the child now and in the future;
4) the parental abilities of the individuals seeking custody;
5) the programs available to assist these individuals to promote the best interest of the child;
6) the plans for the child by these individuals or by the agency seeking custody;
7) the stability of the home or proposed placement;
8) the acts or omissions of the parent which may indicate that the existing parent-child relationship is not a proper one; and
9) any excuse for the acts or omissions of the parent.[44]

For the ethics of promoting the best-interest standard versus the wishes of the child, see ethics discussion below.

FEES

So, who pays the freight? If it is a §107.3 appointment, then the GAL's costs are allocated between the parties. However, what if it is a different type of action (such as an appointment under Title 12)? What if the child intervenes in a paternity case?

In *Rogers v. Rogers*,[45] daughter appealed the trial court's ruling denying her attorney fees on the basis that there is no statutory authority for awarding them. Daughter pursued her attorney-fee quest based upon 10 O.S. §89.3 (old paternity statute based upon prevailing party standard) and 43 O.S. §110. The matter arose out of daughter's intervening motion to terminate stepfather's parental rights in the parents' divorce case (mother and stepfather married a couple of months before daughter's birth but stepfather was not the father; the recital in the parties' divorce decree provided that stepfather was the father and after that time there was post-decree squabbling). Stepfather's rights were ultimately terminated and daughter sought attorney fees.

The appellate court affirmed the trial court's denial of fees, opining the American rule concerning fees applied (none unless specific statute providing for them) and there was no statutory basis for fees. Interestingly enough, the court did not cite or follow the Oklahoma Supreme Court decision, *Hoffman v. Morgan*,[46] which provides that although the expenses of a guardian *ad litem* may not be mentioned by statute, are allowable as equitable litigation expenses.[47]

In an equitable quiet-title action where a guardian *ad litem* had to be appointed for a minor the court provided: "The appointment of a guardian *ad litem* for the infant's protection is required by our statute.[48] The guardian *ad litem* becomes an officer of the court and is charged with the duty of protecting the rights of the infant for the state in its roll of *parens patriae*. The right of the court to award a reasonable fee to the guardian *ad litem* is implied from the right and duty to appoint, and from the necessity of insuring the ward adequate legal protection, and the fee may be properly taxed as costs, for it is an expenditure necessary to the performance of the judicial function."[49]

However, it should be noted that the fees sought in the first-cited case, *Rogers*, was not for a guardian *ad litem* appointment.

> "The guardian *ad litem* becomes an officer of the court and is charged with the duty of protecting the rights of the infant for the state in its roll of *parens patriae*."

In a parental-rights termination matter, the payment of fees is addressed in *Matter of Adoption of BRB*.[50] *Matter of Christopher W*.[51] is the seminal case addressing payment for a child's representation by a guardian *ad litem* fee in a parental rights termination matter or a deprived action. There, the court held that in deprived and parental-rights termination matters the state is ultimately saddled with burden of GAL fee payment. The court further noted that whenever there is an appointment pursuant to 10 O.S. §24 the state foots the bill.

In regards to §24, it was revamped as part of the "Investing in Stronger Oklahoma Families Act." Basically, it provides that the court shall appoint counsel for a minor *or a minor's parent or relative acting as custodian* (there are further criteria to be met for a nonparent custodian) if it is found that the minor or minor's parent is desirous of counsel and is indigent. There are no guidelines on when this provision is to be applied.

Section 24.A.2. provides that when it becomes clear that there is a "conflict of interest" between "a parent or legal guardian and a child so that one attorney could not properly represent both" the court *may* appoint counsel in addi-

tion to the lawyer already provided for the parent or legal guardian. The public defender takes on this role when the county has public defenders.

In juvenile and criminal actions involving minor defendants as well as juvenile mental health and in-need-of-supervision proceedings, the attorney representing the minor gets paid for his services either at the rate of $100 or $500, if it is trial. Don't spend it all in one place!

The Legislature implemented 10 O.S.Supp.1996 §24.1, which seems to provide that "volunteer attorneys" will provide representation for children in whatever legal situation they may find themselves in and submit their claims pursuant to the Indigent Defense Act (22 O.S. §1355.8(H)).

> "...because no one wants to put a child in harm's way..."

IMMUNITY

What keeps a good GAL up at night is making the right decision — not because he or she might be sued later but because no one wants to put a child in harm's way (except for the sadistic GAL in the *Smith* orphanage case earlier discussed). The reality is while most private GALs work for a substantially reduced hourly rate, no-charge for time and usually end up with a hefty accounts receivable, there is still the fear in the back of their mind: what if I make the wrong decision and I get sued later?

In this short discussion, remember what we were taught in law school an ethical violation is not necessarily malpractice and *vice versa*. In Oklahoma the Oklahoma Supreme Court promulgated a one paragraph opinion in 2000. The court opined:

> A court-appointed guardian *ad litem* in a custody matter is immune from suit by the ward or any other party for all acts arising out of or relating to the discharge of his duties as a guardian *ad litem. Kahre v. Kahre,* 1995 OK 133, 916 P.2d 1355; *Kirschstein v. Haynes*, 1990 OK 8, 788 P.2d 941.[52]

That simple statement says it all — at least for Oklahoma at this time. However, nationwide the cloak of immunity is being shredded one thread at a time.[53]

The case of *Collins v. Tabet*[54] would chill any privately-appointed GAL. An experienced medical malpractice attorney was appointed as a guardian ad litem for a child in a medical malpractice case to aid in managing the trust. The court approved the settlement based upon the guardian ad litem's approval that the settlement was fair. Eventually the parents sued the guardian *ad litem* along with the lawyer and a jury found that the GAL and lawyer had been negligent. The GAL and lawyer appealed; the appellate court deemed that there was substantial evidence to support the verdict. However, as to the GAL, the New Mexico Supreme Court addressing the certified question from the federal court, took a "functionary approach" holding that a GAL "is absolutely immune from liability for his or her actions taken" if working as an arm of the court. If the GAL isn't a functionary of the court but an advocate for the child, then ordinary principles of malpractice govern.[55]

In *Collins*, the New Mexico Supreme Court opined though that the GAL is "more than an adjunct to the court. He is the attorney for the children and their interests. He must perform his duties in accordance with the standards of professional responsibility adopted by this court. Nominal representation that fails to assure that children are treated as parties to the action is insufficient and constitutes a breach of the duties of professional responsibility." Ultimately, the court held that a privately retained GAL may not be "entitled to quasi-judicial immunity." The question of whether the GAL was only a GAL or whether he stepped out of that role into that of advocate when making recommendations to the court is one of fact. The matter was remanded to the trial court.

There are other cases that are more protective of the GAL. *For example, Kurzawa v. State of Michigan*,[56] where the court held that a GAL "must ... be able to function without the worry of possible later harassment and intimidation from dissatisfied parents. ... A failure to grant [absolute] immunity would hamper the duties of a guardian ad litem I his role as advocate for the child in judicial proceedings."

> "Innocent children may be pawns in the conflict."

In *Myers et al. v. Scott County et al*.[57], where the questioning by a GAL and other court-appointed professionals was "imperfect" in a child sexual abuse investigation but absolute immunity was held to be appropriate since the GAL was performing a quasi-judicial function. Another Minnesota case (from a different court), *Tindell v. Rogoshesk*e,[58] involved a GAL participating on behalf of the child in a settlement agreement with the state. Mother brought suit against the GAL alleging that he negligently failed to perform his GAL duties by conducting an appropriate investigation into whether the settlement was in the child's best interest. The court held that "guardians *ad litem* frequently must rely on incomplete facts and base their advice on a variety of legal and non-legal factors, some of which may conflict.[59] Removing immunity would impair the judicial process by discouraging guardians *ad litem* from advising settlement, and the energies of guardians *ad litem* would be diverted toward anticipating lawsuits rather than protecting the true interests of children.

In *Short v. Short*[60] the court noted the functional differences between the GAL and attorney for the child. The court deemed that the GAL was immune from suit, reasoning:

> ... the need for an independent guardian ad litem is particularly compelling in custody disputes. Often, parents are pitted against one another in an intensely personal and militant clash. Innocent children may be pawns in the conflict. To safeguard the best interests of the children, however, the guardian's judgment must remain impartial, unaltered by the intimidating wrath and litigious penchant of disgruntled parents. Fear of liability to one of the parents can warp judgment that is crucial to vigilant loyalty for what is best for the child; the guardian's focus must not be diverted to appeasement of antagonistic parents.

There is a countervailing public policy concern of preserving guardian ad litem accountability. However, there are judicial mechanisms in place to prevent abuse, misconduct and irresponsibility. First, the immunity attaches only to conduct within the scope of a guardian ad litem's duties. Second, the appointing court oversees the guardian ad litem's discharge of those duties, with the power of removal. Third, parents can move the court for termination of the guardian. Fourth; [sic] the court is not bound by and need not accept the recommendations of the guardian. The court can modify or reject the recommendations as it deems appropriate. Parents, of course, may be as involved in the process as they wish. Finally, determinations adopted by an appointing court are subject to judicial review. These procedural safeguards make threat of civil liability unnecessary.

In Oklahoma the standard for the GAL concerning settlement is murky. In *Lambert v. Hill*,[61] the court recognized that as long as the court examined the matter fully and it appears that the settlement is in the best interest of the child, then the settlement entered into on behalf of the minor by the GAL and the attorney appointed to represent the child's interests will be approved.

In *Hamilton by and through Hamilton v. Vaden*,[62] the federal court certified questions to the Oklahoma Supreme Court in a wrongful death action. The Oklahoma Supreme Court held that a "minor's rights belong to the minor and that barring a full determination on the merits approved by the court, the minor is entitled to bring his/her own cause of action upon reaching adulthood. In the interim, the guardian *ad litem* may not do anything to impair or to prejudice the minor rights without court approval." In regards to the actions a

GAL may take, the GAL has the right to sue and take action on behalf of the child after his/her appointment but does not have the obligation to sue.[63] Title 12 O.S. (2017 though does not undermine the court's authority "to dismiss an action if it is determined that an action is not being conducted in the child's best interest."[64]

CONCLUSION

The law and ethics swirling around the GAL is dynamic and changing. Most family lawyers love their GAL work and the daunting task of child representation adds texture to their practices. The key goal when you receive a GAL appointment: Be a trustworthy guardian and do no harm.

1. If you are requesting the GAL appointment, then your motion does not require an accompanying brief or list of authorities. Rule 4(c)(4), 12 O.S., Ch. 2, App. Incidentally, the person requesting a guardian *ad litem* on behalf of the child must have standing to be able to request the appointment. *In re Adoption of IDG*, 2002 OK CIV APP 22, 42 P.3d 303. Pursuant to 15 O.S. §13 children — who are nonparties in their parents' divorce action — do not have the right to contract and select their own representation; that is the court's purview. *Wallis v. Wallis*, 2003 OK CIV APP 77, 78 P.3d 562.

2. *Collins v. Tabet*, 111 NM 391, 400, 806 P.2d 40 (1991).

3. There will be a discussion of one particular type of appointment arising out of a Title 63 request by pregnant minor that will be briefly addressed.

4. *Matter of Adoption of BRB*, 1995 OK 121, 905 P.2d 807, *In re Adoption of FRF*, 1994 OK CIV APP 9, 870 P.2d 799, and *Matter of Guardianship of SAW*, 1993 OK 95, 856 P.2d 286.

5. *SAW*, 856 P.2d at 289, citing *Matter of TMH*, 1980 OK 92, 613 P.2d 468, 471

6. *In re Adoption of FRF*, 1994 OK CIV APP 9, 870 P.2d 799

7. *Id.*

8. *Matter of Christopher W.*, 1980 OK 186, 626 P.2d 1320, 1322; *see also, Wallis v. Wallis*, 2003 OK CIV APP 77, 78 P.3d 562 (pursuant to 15 O.S. §13 children — who are nonparties in their parents' divorce action — do not have the right to contract and select their own representation; that is the court's purview).

9. *Id.*

10. Court Appointed Special Advocate.

11. 12 O.S. §2017(C)

12. 12 O.S. §3227(A)(2)

13. *Wiley v. Lewis*, 1931 OK 611, 4 P.2d 7, 15

14. *Allen v. Hickman*, 1963 OK 156, 383 P.2d 676, 679. *But see, Connelly v. Connelly*, 1914 OK 401, 142 P. 1113, 1114 (failure to appoint a guardian *ad litem* for a minor party is not fundamentally fatal; error was addressed for the first time on appeal and the court found no error for failure to appoint a guardian *ad litem*.)

15. *Id. See also, Stephens v. Stephens*, 1957 OK 110, 311 P.2d 241 (a guardian *ad litem* must be appointed on behalf of minor defendant in divorce action); and *Woods v. State*, 1952 OK 143, 249 P.2d 99, *Cudd v. State*, 1932 OK 600, 14 P.2d 406, *Moore v. State*, 1927 OK 189, 257 P. 1100, *Jennings v. State*, 1927 OK 132, 256 P. 31, *Posey v. State*, 127 OK 128, 255 P. 697, and *Halton v. State*, 1924 OK 501, 225 P. 894, 895 (a guardian *ad litem* must be appointed on behalf of a minor defendant in a paternity action; in *Jenning*s and *Halton*, the court held that failure to do so makes such judgment against the minor defendant *void*.)

16. 1945 OK 159, 167 P.2d 63

17. 1940 OK 152, 104 P.2d 985

18. *See also, Tanner v. Schultz*, 1924 OK 119, 223 P. 174, 175, and *Bolling v. Campbell*, 1912 OK 581, 128 P. 1091, 1092.

19. 1938 OK 299, 78 P.2d 808

20. 2001 OK 30, 23 P.3d 278

21. Of course, we all know what happened here ... The Oklahoma Legislature in all of its wisdom enacted 43 O.S. §112.3. Which poses the question, does the GAL now demand in its *parens patria*e role clarification of the statute in conjunction with the *Kaiser/Abbott* cases and their progeny? If so, from whom, the court for whom it works as an arm pursuant to *Kahre*? Can the GAL argue the constitutionality issues from the child's perspective? What are those, if any?

22. *Mosier v. Aspinwall*, 1931 OK 345, 1 P.2d 633, 634. *See also, In re Sanders' Estate*, 1917 OK 468, 168 P. 197, 198

23. 1986 OK 36, 721 P.2d 412, 417

24. *Mosier v. Aspinwall*, 1931 OK 345, 1 P.2d 633, 634

25. *Mosier*, 1 P.2d at 635

26. 1927 OK 128, 255 P. 697, 699

27. *Id.*

28. 1918 OK 741, 181 P. 294, 296

29. Nowhere in Oklahoma law does it define the role and responsibility of a GAL. What may be outlined in one type of case is not necessarily applicable in another type of case. The GAL and the niche it fills in Oklahoma law is addressed in all types of matters *and the rules and imperatives rely on cases that spring out of mny different manner of legal proceedings.*

Another problem is whether the GAL is supposed to be an attorney or not. In some cases, the GAL referred to in the case is an attorney and in other cases, he/she is not.

It seems to be the premise that the teachings about the conduct of a GAL (whether attorney or not) in any type matter is the same no matter what the type of case is involved. However, in *Bradley v. Jacobsen*, 1937 OK 319, 68 P.2d 511, the court recognized the difference between an attorney *hired* by a *prochein ami* (*guardian ad litem*) acts as an attorney in the case and is *answerable to the minor*. The attorney in that matter "had a right to satisfy the judgment" in that matter. The court further held that "[t]o insure the orderly transaction of lawsuits for the benefit of minors, as in other cases, attorneys must be clothed with some discretion and power ...." In that case it was noted that the attorney acted on behalf of the *minor* not on behalf of the *guardian ad litem* who was supposed to be looking out for the minor's interests.

If there is a guardian who is protecting the minor in a legal matter, there is no need for a guardian *ad litem* too. *Johnson v. Thornburgh*, 1926 OK 886, 254 P. 53, 56.

30. A CASA worker means:

> a responsible adult who has been trained and is supervised by a court-appointed special advocate program recognized by the court, and who has volunteered to be available for appointment by the court to serve as an officer of the court as a guardian *ad litem*, pursuant to the provisions of §7003-3.7 of this title, to represent the best interests of any deprived child or child alleged to be deprived over whom the district court exercises jurisdiction, until discharged by the court ...
>
> 10 O.S. §7001-1.3(10).

31. 10 O.S. §7001-1.3(24)

32. 43 O.S. §107.3(A)(2)

33. *Kahre v. Kahre*, 1995 OK 133, ¶¶30 and 33, 916 P.2d 1355; s*ee also, American Inv. Co. v. Brewe*r, 1918 OK 741, 181 P. 294, 296

34. The phrase "Title 43 proceedings" means divorce, separate maintenance and child-contact proceedings (such as paternity, which originates out of Title 10 but by statute relies heavily on guidance in Title 43) an includes such things as initial custody determinations; post decree custody or visitation modifications; contempt proceedings (e.g. visitation denials); habeas corpus actions (e.g. abductions); and could include protective orders. The writers have not been involved in any VPO cases involving GALs; nevertheless, they certainly can imagine fact patterns where an appointment may be appropriate.

35. The trial court's failure to appoint a GAL in the adoption and related visitation action was not deemed to be fundamental error because it was not a parental-rights-termination proceeding, which commands appointment of an attorney for the child. *In re Adoption of MCD*, 2001 OK CIV APP 27, ¶34, 42 P.3d 873.

36. In re Baby Girl L., 2002 OK 9, ¶47, 51 P.3d 544, *Tisdale v. Wheeler Bros Grain Co., Inc.*, 1979 OK 94, 599 P.2d 1104, 1106, and Okl.Sup.Ct. Rule 1.37, 12 O.S., Ch. 15, App.

37. 43 O.S. §107.3(A) (1997) states: "In any proceeding for the disposition of children where custody of minor children is contested by any party, the court may appoint an attorney at law as guardian *ad litem* on the court's motion or upon application of any party to appear for and represent the minor children...."

38. An example of a GAL order is attached hereto as Exhibit "A".

39. For example, the court may simply want you to monitor whether or not a parent can properly tend to the needs of a child's specific medical condition or investigate allegations of alienation or visitation sabotage. Or, the court may need a full investigation as to which one is the best custody placement for the child, etc.

By understanding the judge's perspective and questions, a GAL is better equipped to complete the mission successfully and facilitate resolution of issues. In this regard, the GAL is similar to a mediator. When the GAL has had several years experience in domestic practice and understands the court's specific concerns and questions—that information and knowledge can be used to assist parents see where they

may be unreasonable in their actions and positions. Conversely, when a party is given specific direction from the GAL of what the judge is concerned about and chooses not to make a correction in behavior or conduct, it clearly defines attitudes and willingness of a party to act in the child's best interest. So, the GAL activities can either clarify lines of distinctions between the parties or cause them to find middle ground to resolve issues.

40 Examples of Orders Appointing Guardians Ad Litem are attached as Appendix A through D. Appendix C and D have been developed and used in practice.

41. Title 10 O.S. §7005-1.7 "declares" that "receipt of confidential information by persons authorized to receive" that information is (essential to the responsibility of the state to care for and protect its children. Pursuant to the federal Child Abuse Prevention and Treatment Act (42 USC (5101 et seq.), which provides for expanded disclosure and sharing of records and reports with persons who have a need to know in order to protect children from child abuse, this enactment gives power to the Commission for Human Services [DHS?] to promulgate rules which provide for disclosure of all information to persons and entities authorized by this provision (which includes "any other person ... specifically authorized by law in order to carry out their responsibilities under law to provides services to children to protect children from abuse and neglect."

Pursuant to 10 O.S.§7005-1.4(A)(1&2) DHS records may be inspected without benefit of court order by a GAL and if the court has ordered a DHS home study in a custody, divorce or guardianship proceeding, DHS "may limit disclosure in the home study to summaries or to information directly related to the purpose of such disclosure."

Pursuant to 10 O.S. §7005-1.3 without benefit of a court order a GAL may review juvenile records. In regards to other juvenile records, 10 O.S. §7303-3.1(D) provides that a GAL who represents an alleged delinquent is entitled to access to the court file and all records and reports "relevant to the case and to any records and reports of examination of the child's parent or other custodian ...." Title 10 O.S. §§7307-1.4 & 1.5 allow a GAL to review juvenile records and Juvenile Justice agency records of the child it represents without a court order.

42. *See Kahre*, generally

43. *Smith v. Williams*, 1938 OK 299, 78 P.2d 808

44. *In re Guardianship of HDB*, 2001 OK CIV APP 147, ¶15, 38 P.3d 252.

45. 1999 OK CIV APP 123, 994 P.2d 102

46. 1952 OK 199, 245 P.2d 67, 70

47. *See also, Fleet v. Sanguine, Ltd.*, 1993 OK 76, 854 P.2d 892, n. 63 ("In an equitable setting costs should not be so rigidly confined to specifically enumerated statutory allowances as to exclude any other necessary expenditures. Allowance of equitable costs rests in the discretion of the chancellor." (Emphases theirs. Footnotes omitted.); and *Holleyman v. Holleyman*, 2003 OK 48, ¶5 Supplemental Opinion, 78 P.3d 921, 942 ("Costs are not expenses."Emphasis theirs); see also, *Rand v. Nash*, 174 Okl. 525, 51 P.2d 296, 297-298 (1935).

48. 12 O.S. 1951 §228 (renumbered 12 O.S. §2017(C))

49. *Hoffman v. Morgan*, 1952 OK 199, 245 P.2d 67, 70

50. 1995 OK 121, 905 P.2d 807, 811

51. 1980 OK 186, 626 P.2d 1320

52. *Perigo v. Wiseman*, 2000 OK 67, 11 P.3d 217

53. The authors are grateful to the research of the countrywide trend and non-Oklahoma caselaw contributed by Donelle Ratheal concerning the discussion of GAL immunity.

54. 111 NM 391, 806 P.2d 40 (1991)

55. *See also, Harlow v. Fitzgerald,* 457 U.S. 800, 810-11 (1982)("Our cases have followed a 'functional' approach to immunity law. We have recognized that the judicial, prosecutorial and legislative functions require absolute immunity.")

56. 732 F.2d 1456, 1458 (6th Cir. 1984)

57. 810 F.2d 1437 (8th Cir. 1987)

58. 421 N.W.2d 340 (Minn.Ct.App. 1988)

59. *See* Minnesota Judges Ass'n, *Guidelines for Guardians Ad Litem* 2 (1986)

60. 730 F.Supp. 1037, 1039 (U.S.Dist.Ct. Colo. 1990)

61. 1937 OK 331, 73 P.2d 124, 127

62. 1986 OK 36, 721 P.2d 412, 414

63. *Hamilton*, 721 P.2d at 416

64. *Hamilton*, 721 P.2d at 416

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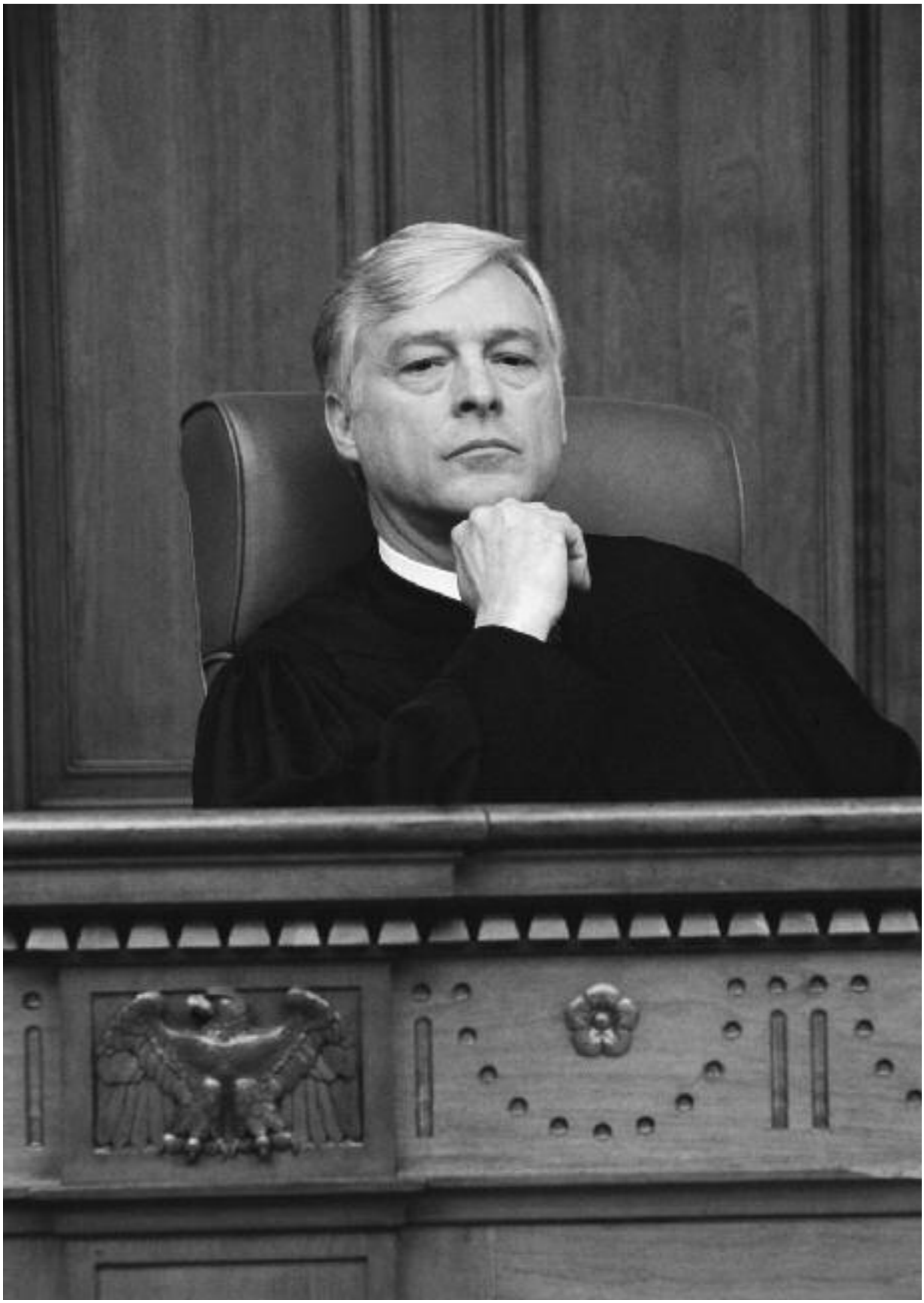

How to Present a Child Custody Case: A Judge's Point of View

By Judge Robert M. Murphy Jr.

Child custody litigation is a growing part of the courts' dockets, especially in non-metro areas. This is particularly so for the small firm or solo attorney, as many big firms do not handle these cases.

Divorce filings in Oklahoma are consistently high. Half of all marriages end in divorce. And to compound the problem, most divorcees will remarry. Marriage obviously produces children as a byproduct. Consequently, child custody litigation becomes a significant part of a judge's workload as well as a significant part of the small firm attorney's practice. It is no wonder that the Family Law Section is one of the largest and fastest growing sections of the Oklahoma Bar Association.

I have prepared this article with the small firm general practitioner in mind. Those of you who specialize in this area know much more about this subject than I will ever know.

Be aware at the outset that child custody disputes are probably the least favorite things that a trial judge does. Most would prefer to referee an acrimonious civil discovery dispute than preside over a child custody case. As a result, you are more likely to have a special or associate judge assigned to the case. Many district judges, especially those with any seniority, opt out of hearing these cases.

There are a number of reasons for this. First, few disputes are as litigious as child custody battles. One cannot overestimate the amount of spite that transcends this kind of proceeding. Second, no real middle ground exists. Deciding to split child custody through a joint custody arrangement may look good on paper but only avoids and puts off deciding the inevitable. Third, the law gives the trial judge very little guidance. The paramount concern in child custody litigation is the best interests of the child. This is a very vague, general and amorphous standard for the court to follow. Moreover, law school does not educate judges or lawyers as to how to evaluate parental fitness. It is easily one of the most difficult decisions that judges have to make.

PRETRIAL PREPARATION

With this in mind, how do you prepare and try a child custody case? As in any case, preparation begins before the client walks in the door. The lawyer should be familiar with titles 10 and 43, and significant appellate opinions in this area, including some of the unpublished opinions. The lawyer needs to have a good social history of the client and a history of the marriage.

At a minimum, the lawyer needs to know the answers to the following questions: When did the parties meet, when and where did they marry, when did they have children, what are their names and ages? Is this the first, second or third marriage of the parties? Do they have children from any other marriages, and have they had any other marital litigation? When did they separate? Where are the parties now living and, in particular, where do the children live?

Determine why the client came to see you and why are they seeking child custody. Specifically, is there any evidence of drug usage, domestic violence, sexual, physical or mental abuse or gross neglect of the children? And finally, have there been any problems in a visitation?

> **"The judge wants and needs to know which parent is closest to the children and which one truly knows them best."**

In addition, you should get other necessary background information concerning your clients, *i.e.*, employment history, educational background, medical history (including mental), as well as what sort of home they grew up in. It is helpful to have a working knowledge of their extended family. Also, get the same information from your client about the other spouse.

Other things to look for in the initial interview are who is the real party in interest – is it the client or is it the client's parents? Is this an initial child custody case, or is it a modification? How many other lawyers have they seen? Always be wary of clients that have gone through several lawyers.

Another sad, often overlooked factor is getting information about the children. Find out from your client their children's likes, dislikes, wants and needs. What kind of personality do they have — are they outgoing or shy? How much time does your client spend with the children compared to the other spouse? These are important facts that should be developed at trial. The judge wants and needs to know which parent is closest to the children and which one truly knows them best.

Too often, practitioners prepare for trial like it is a political campaign. They spend most of the time preparing to discredit the other spouse. Almost the entire focus is in negative-style campaigning. I understand the term "voter frustration" where voters feel that neither candidate is worthy of their vote. Often I feel that neither spouse is worthy of their children.

After this initial meeting, review the legal standard. In other words, what is the court going to look for in making a child custody decision? The obvious standard is the best interests of the child. (Consider that as a practical matter, child custody litigation is not in the child's best interest.) Determine the strengths of your client's position and the weaknesses of her spouse, and develop a trial strategy. Once this is done, it is time to confer with opposing counsel. Let your opponent know whom you represent, what your interest is and see if you can agree on what is in the best interests of the children. Most attorneys would much rather settle cases of this nature than litigate. Judges prefer this as well. If nothing else, remind counsel that it is in the best interest of the children not to litigate custody. See if the other side is willing to mediate. In some jurisdictions, it is mandatory.

If you cannot work things out with the other side and mediation fails, you are now ready to set a trial date. (Most judges are loath to set a case for trial when the parties have not conferred and have not mediated. The reason for this is that too many cases set for trial work themselves out on the day of trial. This often happens because this is the first time the parties have had a chance to get together to see if there is common ground. This is an obvious waste of precious courtroom time.)

Also before setting the case for trial, you should have a frank discussion with your client on what the costs are going to be. Litigation is expensive. Most divorcing couples have small

budgets. It is especially expensive if you're going to engage in discovery, hire investigators, etc. You should determine in the beginning what assets the client has and whether she can afford to spend these assets on expensive litigation.

Explain to your client that in child custody litigation, there is no prevailing party standard. The court does not look to who is at fault in awarding attorney fees. Most judges view attorney fees of both the husband and the wife to be a debt of the marriage and apportion that debt accordingly. Absent bad faith or abuse of process, the parties wind up equally sharing the costs of litigation.[1] Remind your clients that these monies could be used to pay for their children's college education.

NOT-SO-OBVIOUS PRETRIAL MATTERS

There are still some things the lawyer needs to prepare for in order to be fully ready for trial. The first thing is whether to set the matter for an immediate temporary hearing for contested child custody.[2] Be mindful that you do this at your own peril. Avoid this temptation at all costs. There are several reasons for this. First and foremost, the judge hearing the temporary hearing may never hear the case again. Temporary hearings by necessity must be heard almost immediately and as such, a judge has to squeeze this case into an already overcrowded docket in order to hear it. This means she hears evidence in a very compressed period of time when emotions are extremely high. Also, she knows that she will not make the final decision; thus, she may not take it as seriously as a judge that is the final decision maker. If you must have a temporary hearing, do everything you can to have it in front of the judge that the court system has assigned to hear the case.

Some mistakenly assume that who prevails at the temporary proceeding has an advantage at the trial. Conventional wisdom is that since they have more contact with the children, the trial judge will rule that it is in the best interests of the children to keep it that way. This is not always so.

First, the trial judge will hear much more evidence and will hear it in a more deliberate fashion. Moreover, the trial judge, based on past experiences with the temporary presiding judge, may look with a jaundiced eye at that particular judge's rulings. Secondly, you will not waste your evidence on a judge who will never hear the case again.

When you know who the assigned trial judge is and that the case is definitely going to trial, it is a good idea to get some background information on the judge. What did the judge do before she became a judge? Was she in private practice? Did she handle divorce litigation or did she work in a big firm and only do oil and gas? Was she an assistant district attorney who prosecuted criminals? In other words, what sort of database did the judge have before coming to the courtroom? If the judge as a lawyer represented parties in child custody matters, did she primarily represent husbands, wives or both? How long has she sat on a family docket? Is this her first year or 10th year? Is there a consistent pattern to her rulings? How does she treat evidentiary matters? The answers to these questions will let you know whether you need to file a trial brief.

Another matter to consider at this time is whether you wish to attempt to recuse the trial judge. Obviously, this is a very delicate matter. However, if you have some question as to how close the judge is to opposing counsel, you should investigate the judge's campaign filings with the Oklahoma Ethics Commission (assuming the judge had a contested election), which has the records of judges' campaign contributions. Here you can find out exactly how much opposing counsel (and anyone else for that matter) contributed to the judge's campaign. If this is a substantial contribution (for instance, in excess of $1,000), you may wish to seek the judge's recusal.[3] On the other hand, if the lawyer only made a $50 campaign contribution and put a sign in his yard, it would probably not be worth filing a motion to recuse.[4]

The lawyer also needs to know what the judge's philosophy is on the rules of evidence in these kinds of cases. Some judges are rather liberal in admitting almost anything into evidence in a non-jury matter because they know they are the deciders and can determine how much weight to give the evidence even if it is hearsay. Others strictly follow the rules of evidence even in non-jury matters. As a rule, a judge that also hears jury cases will probably not be as strict on admitting evidence as will be a judge that does not.

One reason for this is that the judge knows that the rules of evidence are primarily to protect jurors from hearing things that they should not hear because the jurors lack the sophistication to discount this sort of information. Such reasoning obviously does not apply to a judge. Therefore, the judge may admit otherwise

objectionable evidence. What's important for the lawyer to know is the judge's attitude in this area. Obviously, it will do nothing but annoy the trial judge if you object all the time, especially if the objections are primarily technical. On the other hand, if the judge strictly follows rules of evidence and you can keep out damaging evidence by objecting, by all means do so.

On a side note: if you're anticipating making a number of objections, request a court reporter to have a record. Otherwise, you are wasting a lot of time by making objections. And the trial judge will wonder why you are making all these objections if you didn't request a record. If you do request a record, follow the court rules and pay the court reporter fees to the court clerk well in advance of the hearing.[5] Also, as a courtesy directly contact the court reporter so that he knows that you have requested a record and his attendance will be necessary. Some judges don't have court reporters and it requires substantial advance notice in order to arrange to have one. It's up to the lawyer to know what the logistical concerns are.

When setting the case for trial, be realistic with the trial judge. No judge likes to hear half of a case during the first of the month and the other half of the case during the last part of the month. Set enough time aside on the judge's calendar so she can hear the case in one continuous setting. Be honest and let the judge know this may take several days. Insist that the judge give you several consecutive days to hear the case, if necessary. If this is a problem with the court's docket, you should ask the judge to limit the number of witnesses the parties may call so the case can be tried in a continuous single setting. Remind the judge that it is extremely difficult to assimilate information that occurs over a period of non-consecutive days, and the Supreme Court understandably frowns on such practice.[6]

If you believe the case in any way to be complicated, it would be a good idea to suggest a pretrial conference. The Court of Civil Appeals recently criticized a trial judge for failing to "recognize and apply the appropriate statute to the issues presented."[7] In fairness to the judge, the attorneys should make sure the issues are properly framed. This could best be done in a pretrial conference. If it is a lengthy case, it would be helpful to have a trial notebook that includes a brief, witness list with a summary of their testimony and any exhibits.

A week before the trial, it would be good idea to acclimate the client to what will happen during the proceeding. An excellent way to do it is to escort the client to the courthouse to watch another similar trial in front of the assigned judge. Sit with your client for at least an hour. Afterward, you can explain what the judge was looking for. There is no better way to educate your client as to what looks good and what does not.

The day before the trial, have your secretary call the court's bailiff to make sure the case is still set. Oftentimes, judges have jury matters that carry over longer than anticipated or have to set mental or juvenile matters for immediate hearings. These cases take priority over family law matters and all other matters. The bailiff may not have time to call you the day before.

THINGS TO DO AT TRIAL

On the day of trial, be sure to check in with the bailiff when you arrive, especially if you are from out of town. Offer your card and let her know that you are here. Be sure that you have your exhibits marked ahead of time. There is nothing that annoys the trial judge more than to have to wait for lawyers to mark exhibits. Make sure that you have a complete set of exhibits for opposing counsel as well as for the court.

Unless you have an understanding with opposing counsel, do not show the exhibits to the court until the court has admitted such into evidence. Some judges may not mind seeing evidence that has yet to be admitted. Others prefer not to see evidence until the other side has had a chance to object.

Once the parties announce they are ready for trial, I suggest counsel call for the rule of sequestration of witnesses. There are several reasons for this recommendation. First, if a number of the witnesses are family and friends, it will be next to impossible to keep them still during the trial. Nothing weakens the credibility of witnesses as much as having the judge watch them during the trial making all kinds of gestures and faces.

Ordinarily, counsel will have his back to the audience and will not be able to see the witnesses. Of course, the judge has a bird's eye view of everyone in attendance and cannot help but notice their body language. Second, witnesses that have not heard the other witnesses testify usually testify more candidly and their testimony appears more genuine. Finally, it is probably better for all concerned not to have all

the opposing witnesses hear what each other has to say. This usually does nothing but fester the hostility between the parties after the trial.

After clearing the courtroom of these witnesses, be prepared to make a five-minute opening statement. Too often, both counsel waive opening in the belief that the judge does not care or that it will save time. In my opinion, this is a mistake. A good opening statement will make it much easier for the judge to follow the testimony.

Start by giving the court some basic factual information. Let the judge know how the parties met and how long it was after they met that they got married. When was the first child born? What are the children's names and ages? How long has it been since the parties separated? Where have they, including the children, been living since? And why will it be in the best interests of the children to have custody awarded to your client?

> "It is imperative that you start the case with a credible witness."

Or if this is a modification proceeding, remind the trial judge that the burden of proof is on the movant and the movant must show a substantial, material and permanent change in the custodial parent. Too many times, the movant simply shows that there has been a substantial material change in the non-custodial parent.

ORDER OF WITNESSES

After opening statements, begin with non-relative witnesses. Whatever you do, do not begin with your client or friends and family members unless these are the only witness you have. Your client's friends and relatives are usually so one-sided as to have little if any believability. Call a teacher, co-worker, neighbor or someone along these lines. It is imperative that you start the case with a credible witness. Also, a non-relative witness is making a great sacrifice to testify in a child custody case. Do not abuse their sacrifice by making them wait for all the other witnesses to testify.

If you feel it is necessary, you may call relatives as witnesses. Sometimes you have no choice, as relatives are the ones that are most familiar with the children's situation and have the most knowledge as to how your client cares for them. Bear in mind that they are extremely difficult to control. They will exaggerate the strengths of your client and the weaknesses of their in-law. Unless they can testify objectively — in other words, say negative things about their own child or relative and good things about the other side — they will be extremely difficult to believe, particularly on cross-examination. Usually the other side is just as guilty of calling friends and relatives, and this testimony evens out. Quite frankly, this testimony ends up being a waste of the court's time.

If you have to call them because they are paying your fees and they absolutely have something they have to say, go ahead and call them as witnesses. But limit their testimony as much as possible. Warn them to testify as to the facts only, and caution them against giving their opinion. Let them know the judge will consider their testimony to be self-serving and of little value. If you have a non-relative witness that can testify to the same facts, be sure and use them instead.

Save your client as the last witness. At this point, the court is ready to hear from him. Have him articulate why it is in the children's best interest to have him made the custodial parent. Have him tell the court about each of his children. Have him describe each child in detail. Let him tell the court each child's likes and dislikes; what kind of personality they have; what needs they have.

In doing so, he will convince the court that he knows his children better than their mother, and that is why it is in the child's best interest for him to have custody. Ask open-ended questions. Avoid the temptation to lead him with

questions that he only answers yes or no. The court wants to hear from him, not from the attorney.

On cross-examination, be short and to the point. Don't argue needlessly about undisputed matters. Avoid asking tricky questions. Almost any attorney can show up the opposing party on cross-examination. While this undoubtedly impresses your client and her family, it rarely impresses the court. On cross-examination, demonstrate that your client knows much more about each child than they do.

SPECIAL ISSUES

If it can be proven that the other parent physically or sexually abuses the children, grossly neglects them, engages in domestic violence or criminal behavior, it will be a fairly easy case for you to win.[8] However, before making claims of this nature, make certain that you have corroborating evidence to support it. Your client and her family's testimony is rarely enough.

In addition to handling a family docket, I also handle the juvenile deprived docket. As a result, I regularly see cases of real abuse and real neglect. Many similar claims brought up in family court do not compare to the cases I hear in juvenile court. Consequently, unless the claims of abuse or neglect meet the statutory definitions and are supported by substantial evidence, do not make them. The reason is you lose much credibility by doing so. On the other hand, if they do, by all means make them. However, in such a case be prepared for it to be referred to the Child Protective Services division of the Department of Human Services.

CHILD TESTIMONY

Another piece of evidence the parties may wish to present to the court is the testimony of the children. By statute, there is no minimum age required for the child in order to testify.[9] Obviously, the child would have to be verbal. Usually, the child testifies in chambers. Ordinarily if there's more than one child, I talk to them separately. Rarely, if ever, would the children testify in open court with their parents present. Sometimes the attorneys request to attend. If so, this is allowed unless the court can articulate specific reasons why it is in the children's best interest for the attorneys not to attend. In any event, either party can request a record, and the court has no choice but to have the proceedings recorded.[10]

After some small talk and after I've assured them that I will keep what they have to say confidential, the first question I ask is, "Do you know why you are here?" They almost always say, "So I can tell you whom I want to live with." I then ask for them to tell me. If the only answer is mom or dad, I then ask them to give me some reasons. Sometimes I will ask for specifics. I usually talk to the oldest child first, and after I've talked all the children individually, I bring them in together to go over what they've had to say. Bear in mind that the older the children are the more weight the court gives to their testimony.

Ensure that no one on your client's behalf has coached the children on what to say. It is very obvious when the children have been well coached. For instance, a 10-year-old boy told me he did not wish to live with his mother because "she lacks the necessary skills to parent me and she has made poor value judgments during her lifetime." (Admittedly, I did have to give him credit for being so well-rehearsed and sadly, very accurate.)

VISITATION

One area where the statutes do provide some help for the court is in the area of visitation. Liberal standard visitation is the norm. In fact, the Legislature has directed the Administrative Office of the Courts to prepare standard visitation forms.[11] The statutes require the court to give strong consideration in awarding custody to the parent who is most amenable to being reasonable in visitation.[12] It certainly behooves a party to present evidence that they are that kind of parent. This is sometimes difficult to do when the vast majority of their evidence demonstrates unfitness on the part of the other parent.

CONCLUSION

By the end of the trial, the attorneys are tired and may not have enough energy for closing arguments. Many times I will hear attorneys say, "Your honor has heard all the evidence, and I don't need to repeat it for you." While this may be true, it is helpful to have the evidence summarized. Point out why it is in the children's best interest to have the court award custody to your client. Make reference to any cases or statutes that are relevant. I find that closing argument helps the court reframe and refocus on the issues and reminds the court of evidence it may have forgotten or overlooked.

After the parties have finished, it is a good idea for the court to retire to chambers and deliberate. I often review my notes and the exhibits. This process can take hours. I then

come back into court to announce the decision on the record. It is always a very difficult decision to pronounce. Many times there are two very good loving parents. Making a decision forces the court to choose between one or the other. This is an extremely hard decision to make.

> "...it is that for one reason or another the parents of these children are at war with each other."

I regularly remind the parties that I hear every action involving children in Payne County. This includes all the delinquent, deprived, abuse, neglect, in need of supervision and in need of mental health treatment cases. If there is one common denominator in all these cases, it is that for one reason or another the parents of these children are at war with each other. If they wish to keep their children off my juvenile dockets they need to find a way to get along with one another, at least as far as their children are concerned. If for no other reason, they should do so because it is in the best interest of the children.

In short, prepare the case accordingly. Focus on the children, not the parties. Stress to the court that your client knows the children best and is closest to them. Minimize the amount of negative information you have on the other spouse. Emphasize that the children will grow and develop better with your client as the primary custodian. Finally, remind the court that your client will see to it that the children have liberal visitation with the other parent. In doing so, you will convince the court that it will be in the best interest of the children to have your client as primary physical custodian.

1. *City Nat. Bank & Trust Co. of Oklahoma City v. Owens*, 565 P.2d 4, 1977 OK 86.
2. The legislature has clearly stated that it is the policy of this state for the court to order shared parenting at the temporary order hearing. 43 O.S. § 110.1.
3. *Pierce v. Pierce*, 2001 OK 97, 39 P.3d 791.
4. 2001 OK JUD ETH 5.
5. 28 O.S. § 152.1A.9.
6. *Flandermeyer v. Bonner*, 2006 OK 87. "Serialization of trial dates is an ineffective and unreliable method of docket management. It is not approved by this Court and piecemeal proceedings should be used by the trial court as an exception, not as the norm. We realize that balanced against the obligation of the trial court to afford the parties a speedy and certain remedy is its need to control the docket and to facilitate the orderly flow of business. A trial court has the power to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. However, a trial court is charged with the duty to schedule cases in such a manner as to expeditiously dispose of them. Implicit with this duty, is the necessity to hold trials in a nonserial manner. We would caution all trial courts that serialization of divorce proceedings should be avoided if at all possible. If necessary, presiding judges should review docket management procedures and assign judges from different divisions in order to achieve the orderly administration of justice. Although the trial judge court (*sic*), in the exercise of sound discretion controls the disposition of the cause on its docket, this discretion is not unfettered..... and we will not hesitate to provide remediation whenever docket management offends fundamental fairness, due process, and the right to a speedy and certain remedy."
7. *Atkinson v. Atkinson*, 2006 OK CIV APP 124.
8. 43 O.S. § 112.2.
9. 43 O.S. § 113.
10. 43 O.S. § 113 C. At the request of either party, a record shall be made of any such proceeding in chambers.
11. 43 O.S. § 111.1A.
12. 43 O.S. § 112C.3(a).

ABOUT THE AUTHOR

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Emergency Orders and Victim Protective Orders

By Rees T. Evans

For the family law practitioner needing quick, quick relief for a client, there are several options, depending on the nature of the transgression, the existing orders (if any) and the relief needed. This paper will address two of the most popular remedies, the temporary restraining order (often referred to as an emergency order) and the victim protective order.

TEMPORARY RESTRAINING ORDERS (EMERGENCY ORDERS)

Statutory Basis

The authority for a court to issue an *ex parte* temporary restraining order (hereafter "TRO") is found at 43 O.S. 2006 Supp. §110(B)(2), which says:

> If the court finds on the basis of a verified application and testimony of witnesses that irreparable harm will result to the moving party, or a child of a party if no order is issued before the adverse party or attorney for the adverse party can be heard in opposition, the court may issue a temporary restraining order which shall become immediately effective and enforceable without requiring notice and opportunity to be heard to the other party. If a temporary restraining order is issued pursuant to this paragraph, the motion for a temporary order shall be set within ten (10) days.

The previous subsection provides that a TRO may be issued even if notice of hearing a temporary order has also been issued. The advantage of the TRO is that it may be heard and issued *ex parte.*

Requirements for Obtaining a TRO

The requirements for obtaining a TRO are: 1) The filing of a petition for dissolution of marriage or legal separation; 2) A verified application which contains a factual basis for issuance of the order; 3) Testimony of witnesses; and 4) Evidence that irreparable harm will result to the movant or a child of the parties if no order is issued until notice can be given.

Some *pro se* litigants and even some lawyers make the mistake of filing an application for a TRO without an underlying case. If no petition for dissolution of marriage or for legal separation has been filed, the court is without authority to issue a TRO.

The requirement that the application contain a factual basis is found in 43 O.S. 2006 Supp. §110(B)(1). The significance of this requirement is that general allegations, such as "He said he'd hurt me," "She said that she'd get even," etc., will be found insufficient to support the issuance of an *ex parte* order. The application must also be verified. Practice tip: our statutes now permit verification using the following language, eliminating the need for a notary public:

VERIFICATION

"I state under penalty of perjury under the laws of Oklahoma that the foregoing is true and correct.

Signed at [name of city and state], on the _____ day of _____, 2007.

[name of applicant]"

Because the statute requires testimony, your client and any other necessary witnesses must be present at the hearing. The language of the statute is "witnesses," but the author's experience has been that only one witness need be present. After all, sometimes there is only one competent witness who can offer testimony. Some judges dispense with the need for testimony altogether, though this is not the recommended practice.

Opinions vary widely as to what constitutes "irreparable harm." Cases from the law of injunctions tell us that usually the mere loss of money is not irreparable harm and that an injunction will not issue if the applicant has an adequate remedy at law. TROs are generally sought, however, after some harm has been done or some act has been committed that fits the statute.

Some kinds of harm clearly fall into the irreparable harm category: intentional injury of a party or a child of the party, abuse of a child, severe neglect, and secreting or fleeing with a child.

Does a parent's missing his or her visitation constitute irreparable harm? Arguably not, since courts are permitted under 43 O.S. 2006 Supp. §111.3(D)(2) to order makeup time for visitation which has been improperly denied. The same reasoning would apply to missing Christmas visitation, spring break and all of the other possible visitation times. It has been argued that a child's missing a once-in-a-lifetime event, such as the remarriage of a parent, constitutes irreparable harm. Even then, how do we measure the harm? How real is it? And harm to whom? Much would depend on the age of the child, the nature of his or her relationship with the remarrying parent and other factors. The careful practitioner will consider the value of expert testimony in presenting such a case. Unfortunately, no appellate cases were found under this statute.

Notice

The main advantage of an *ex parte* proceeding is that a party need not give notice of the hearing to the opposing party. With respect to TROs, notice is not necessary if, and only if, the court finds that irreparable harm will result if the court requires notice and an opportunity for the opposing party to be heard.

Sometimes the practitioner will want the TRO badly enough that he or she will want to give notice. What notice is sufficient? This is an important question because the other party's due process rights under the federal and state constitutions are implicated. Due process includes both notice and opportunity to be heard, so calling opposing counsel or the unrepresented party two counties away advising them that you're at the courthouse about to seek an TRO won't get you there. Certainly, actual notice with a reasonable time to appear and defend would comport with due process.

"Some kinds of harm clearly fall into the irreparable harm category: intentional injury of a party..."

Order

The applicant's attorney should have prepared an order for the judge to sign at the conclusion of the hearing. It should be promptly filed or issued and a copy served on opposing counsel, if any, or upon the opposing party. The order should contain, or accompany, a notice of the 10-day hearing. The best practice for service of the order on the

opposing party is to have a private process server do it. You then have a return of service showing that the party received notice of the order. Do not let your client serve it. That's not good service and may lead to unnecessary confrontations. It is proper, however, for your client to advise the other party that an order has been issued.

Do furnish your client a certified or issued copy of the order and advise him or her to keep a copy on their person at all times until the 10-day hearing. First, it will remind the client of the date and time of the 10-day hearing (which you, of course, will tell them they must attend). Second, if there is a violation, or an attempted violation, your client will need to be able to show their copy to any law enforcement officers who respond to their call.

10-Day Hearing

If an *ex parte* order is issued, then the opposing party is entitled to a hearing within 10 days so that the court hears reasons why the order should not remain in full force and effect. This hearkens back to the practices of last century when it was standard practice to obtain, at the time of filing a divorce, an *ex parte* order booting the other party out of the house, awarding the plaintiff temporary custody of the children, and other helpful orders.

Though the statute is not specific, the most common practice at the 10-day hearing is for the party against whom the order was issued to have the burden of proof (i.e., to "show cause") why the order should not remain in full force and effect. Some judges, though, may require the applicant to go first, outlining for the other party the issues and highlighting the facts that may be in dispute.

Setting and hearing the 10-day hearing gets more complicated when there is already pending a hearing on temporary orders in the dissolution or the legal separation case. At the end of this article are a few notes about handling that issue in Oklahoma County. Also attached is a very helpful list of tips and procedures followed in Tulsa County furnished by Judge C. Michael Zacharias.

VICTIM PROTECTIVE ORDERS

Statutory Basis

The authority for a court to issue a victim protective order (hereafter "VPO") is found at 22 O.S. 2006 §60.1 et seq., the Protection from Domestic Abuse Act. Particularly, §60.2 provides that:

> A victim of domestic abuse, a victim of stalking, a victim of harassment, a victim of rape, any adult or emancipated minor household member on behalf of any other family or household member who is a minor or incompetent, or any minor age sixteen (16) or seventeen (17) years may seek relief....

Requirements for Obtaining a VPO

There are three categories of important terms for the practitioner to understand as to each type of conduct which will support an order: the conduct which will justify the issuance of an order; the categories of defendants against whom an order may be entered; and the categories of victims who are entitled to an order. In addition, one must be familiar with the definitions of "family or household member" and of "dating relationship" in order either to prosecute or to defend a VPO.

Grounds for Obtaining a VPO

1) *Domestic Abuse*

Prohibited Conduct: Section 60.2 contains the definitions of the conduct which will support the issuance of a VPO. "Domestic abuse" is defined thusly in subsection 1:

> 1) "Domestic abuse" means any act of physical harm, or the threat of imminent physical harm which is committed by an adult, emancipated minor, or minor child thirteen (13) years of age or older against another adult, emancipated minor or minor child who are family or household members or who are or were in a dating relationship;

We see that in order to state a case for domestic abuse we must allege and prove that the defendant has committed an act of physical harm or has threatened to do so.

Defendant: The defendant must be an adult, emancipated minor or minor child 13 years of age or older. If the defendant is a minor child, the petition shall be filed with the court having jurisdiction over juvenile matters.[1]

Victim: The victim must be 1) another adult; 2) an emancipated minor or a minor child who is a family or household member of the defendant; or 3) any of the above who are or were in a dating relationship with the defendant.

Who is a "family or household member"? That definition is found in §60.1, which says:

4) "Family or household members" means:

a. spouses,

b. ex spouses,

c. present spouses of ex spouses,

d. parents, including grandparents, stepparents, adoptive parents and foster parents,

e. children, including grandchildren, stepchildren, adopted children and foster children,

f. persons otherwise related by blood or marriage,

g. persons living in the same household or who formerly lived in the same household, and

h. persons who are the biological parents of the same child, regardless of their marital status, or whether they have lived together at any time. This shall include the elderly and handicapped;

What is a "dating relationship"? Again, the definition is found in §60.1:

5) "Dating relationship" means a courtship or engagement relationship. For purposes of this act, a casual acquaintance or ordinary fraternization between persons in a business or social context shall not constitute a dating relationship;

Being engaged is pretty easy to prove, but what, in the 21st century, is a "courtship"? More than one date? More than two? Giving flowers? Providing your IM address? It probably means that the victim and the defendant went out together several times, and probably not in a group. The author doesn't have any authority for that conclusion, but since the statute says that a casual acquaintanceship and ordinary fraternization, either for business or for pleasure, do not constitute a dating relationship, then it seems reasonable to conclude that there should be some evidence that the parties had focused on one another in some way. To put it another way, if they're not engaged, they have evidenced their intent to have an exclusive relationship with one another.

2) *Stalking*

Prohibited Conduct: The second type of conduct which will support a VPO is stalking, defined in subsection 2 as:

2) "Stalking" means the willful, malicious, and repeated following of a person by an adult, emancipated minor, or minor thirteen (13) years of age or older, with the intent of placing the person in reasonable fear of death or great bodily injury;

Here, the plaintiff must allege and prove that the victim was followed 1) intentionally, and 2) with malicious intent, and 3) more than once, and 4) by a person who intended to place the victim in reasonable fear of death or great bodily injury.

Moreover, if the person seeking relief is a victim of stalking but is not a family or household member or an individual who is or has been in a dating relationship with the defendant, the person seeking relief must file a complaint against the defendant with the proper law enforcement agency before filing a petition for a protective order with the district court.[2] Failure to have done so results in the VPO petition's being found to be frivolous and attorney fees and court costs being assessed against the plaintiff.

The only reported case under this subsection is *Troutman v. Marti*n.[3] The victim was the chief of police of Bethany, Okla., whose evidence included testimony that the defendant had on one date fired his pistols into the chief's car while it was sitting in his driveway and that on another day the defendant was found in front of Chief Troutman's residence wearing a "POLICE" ballcap, OCPD police jacket, handcuffs, police frequency scanner, and a small pocket knife and that the defendant stated he was "looking for auto burglars." It is not surprising that the defendant did not attend the hearing, as he had been committed to the mental ward at the Norman Regional Hospital. The evidence was found to be sufficient to support a VPO on the ground of stalking.

Judges hearing stalking cases consistently require proof of more than one incident, as they should. The standard is still more lenient than that of Auric Goldfinger, who admonished James Bond that "once is happenstance, twice is coincidence and three times is enemy action."

As in other cases, intent may be inferred from the circumstances.

Defendant: The defendant must be an adult, an emancipated minor or a minor 13 years of age or older. If the defendant is a minor child,

the petition shall be filed with the court having jurisdiction over juvenile matters.[4]

Victim: The victim may be any person, regardless of any prior relationship or lack thereof with the defendant. This differs from domestic abuse and harassment cases, both of which place some limitations on who may seek a VPO.

3) *Harassment*

Prohibited Conduct: The third category of conduct is harassment, defined in subsection 3 as:

> 3) "Harassment" means a knowing and willful course or pattern of conduct by a family or household member or an individual who is or has been involved in a dating relationship with the person, directed at a specific person which seriously alarms or annoys the person, and which serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial distress to the person. "Harassment" shall include, but not be limited to, harassing or obscene telephone calls in violation of Section 1172 of Title 21 of the Oklahoma Statutes and fear of death or bodily injury;

Here the plaintiff must allege and prove: 1) a knowing and willful course or pattern of conduct, which was 2) directed at a specific person, and which 3) seriously annoys or alarms the person and 4) would cause a reasonable person to suffer substantial emotional distress, and 5) it must actually cause substantial distress to the person. OR 1) obscene telephone calls.

Again, one bite of the dog is not enough. There must be a "course" or "pattern" of conduct, which generally is interpreted as at least two incidents.

From the wording of the statute, harassing telephone calls must be proven as are other acts of harassment, but it appears that two obscene phone calls would suffice to prove a case. Of course, the plaintiff has the burden of proof that the calls were obscene and reasonable minds might differ as to this interpretation. Here, a recording of the calls is a practical necessity.

Not only must the conduct be such that a reasonable person would suffer substantial emotional distress if exposed to it, the conduct must *both* seriously annoy and alarm the victim. This language protects the defendant from the "eggshell skull" victim, who might be distressed and either annoyed or alarmed by conduct which would not distress a reasonable person.

Too, the plaintiff must prove not only that he or she was annoyed and alarmed, but that he or she also suffered substantial distress.

Victim and Defendant: The victim must be a family or household member of, or a person in a dating relationship with, the defendant. If the defendant is a minor child, the petition shall be filed with the court having jurisdiction over juvenile matters.[5]

Filing with Court Clerk: A petition for a VPO may be filed with the court clerk of the district court in the county in which the victim resides, the county in which the defendant resides or the county in which the domestic violence (which apparently means any of the three kinds of prohibited conduct) occurred.

> "The victim may be any person, regardless of any prior relationship..."

If a petition has been filed in an action for divorce or separate maintenance and either party to the action files a petition for a protective order in the same county where the action for divorce or separate maintenance is filed, the petition for the protective order shall be heard by the court hearing the divorce or separate maintenance action.

If the defendant is a minor child, the petition shall be filed with the court having jurisdiction over juvenile matters.[6]

With Law Enforcement: If the courthouse is not open, a VPO petition may be filed with a law enforcement office.[7] See 22 O.S. 2006 §40.3, which provides that the peace officer shall provide the victim a petition, notify a judge of its completion, inform the plaintiff of the judge's decision as to whether an *ex parte* order is to be issued and file the petition immediately upon the opening of the court on the next day the court is open for business.

***Ex parte* hearing:** The first hearing on a VPO is most often conducted *ex parte* pursuant to §60.3 and the order sought is usually granted. Upon granting the order under such circumstances, the court then sets a 10 -day hearing, a copy of the *ex parte* order is given to the plaintiff and a copy of the order is given to the sheriff for service upon the defendant.

20-day hearing: This hearing is analogous to the 10-day hearing held after issuance of a TRO and its function is exactly the same: to protect the defendant's due process rights by providing notice of the petition and *ex parte* order and an opportunity to be heard. However, as provided by §60.4, the "show cause" hearing need only be held within 20 days of filing the petition for the VPO.

If the defendant, after having been served, does not appear at the hearing, the emergency *ex parte* order shall remain in effect until the defendant is served with the permanent order. If the terms of the permanent order are the same as those in the emergency order, or are less restrictive, then it is not necessary to serve the defendant with the permanent order.[8]

72-hour hearing: Two circumstances require a 72-hour hearing: when the defendant is a minor child who has been removed from the residence pursuant to Section 7303 1.1 of Title 10 of the Oklahoma statutes, the court shall schedule a full hearing on the petition within 72 hours, regardless of whether an emergency *ex parte* order has been previously issued, requested or denied.[9] And the court may schedule a full hearing on the petition for a protective order within seventy two hours when the court issues an emergency *ex parte* order suspending child visitation rights due to physical violence or threat of abuse.[10]

Orders which may be entered: The court may enter orders that the defendant not abuse, stalk or harass the plaintiff or any other person on whose behalf the petition was brought and may also impose any terms and conditions in the protective order that the court reasonably believes are necessary to bring about the cessation of domestic abuse against the victim or stalking or harassment of the victim or the victim's immediate family.[11] Additionally, the court may order the defendant to obtain domestic abuse counseling or treatment in a program certified by the attorney general at the defendant's expense pursuant to Section 644 of Title 21 of the Oklahoma statutes.[12] A victim of rape may also obtain an order barring the defendant from contacting her.

Duration of orders: An *ex parte* order lasts until the next hearing. Section 60.4 (B)(4) provides that if service has not been obtained, a new emergency order may be issued and successive orders, each of 20 days' duration, may likewise be obtained be issued until the defendant is saved.

Such an order does not expire in fewer than 20 days unless the plaintiff fails to appear at the hearing or fails to request a new order.

After a full hearing, the court may enter a protective order that lasts up to three years, unless extended, modified, vacated or rescinded upon motion by either party or if the court approves any consent agreement entered into by the plaintiff and defendant.[13]

Verbal VPOs: A judge may issue an emergency temporary *ex parte* order upon being notified by a law enforcement officer that a plaintiff has so requested and there is reasonable cause to believe that the order is necessary to protect the victim from immediate and present danger of domestic abuse.[14]

Fees, costs, and attorney fees: Ordinarily, the plaintiff is not responsible for paying any fees or costs in connection with obtaining a VPO.[15] The court may order the defendant to pay court costs, service of process fees, attorney fees, other fees and filing fees or may waive any such costs and fees.

Section §60.2(C)(2) provides that if the court makes a specific finding that the petition was filed frivolously and no victim exists, it may assess court costs and attorney fees against the plaintiff. Remember that filing a petition for stalking against a person who is neither a family or household member nor a person who has been in a dating relationship with the plaintiff, without having first filed a complaint

for relief with a law enforcement agency, constitutes a frivolous filing.[16]

Enforcement: Violation of a VPO is a misdemeanor punishable by imprisonment in the county jail for a period not exceeding one year or by a fine not to exceed $5,000, or by both such fine and imprisonment. A second or subsequent conviction is a felony punishable by imprisonment in the custody of the Department of Corrections for a period not to exceed two years or by a fine not to exceed $10,000 or by both such fine and imprisonment.[17]

Expungement: Provision is made at 22 O.S. 2006 §60.18 for expunging a VPO under four circumstances. This statute says that an expungement may be ordered if:

1) An *ex parte* order was issued to the plaintiff but later terminated due to dismissal of the petition before the full hearing, or denial of the petition upon full hearing, or failure of the plaintiff to appear for full hearing, and at least ninety (90) days have passed since the date set for full hearing;

2) The plaintiff filed an application for a victim protective order and failed to appear for the full hearing and at least ninety (90) days have passed since the date last set by the court for the full hearing, including the last date set for any continuance, postponement or rescheduling of the hearing;

3) The plaintiff or defendant has had the order vacated and three (3) years have passed since the order to vacate was entered; or

4) The plaintiff or defendant is deceased.

Note that in the following subsection, "expungement" is defined as sealing the records from public inspection but not from access by law enforcement agencies.[18] Moreover, the defendant must not have violated the VPO and there must not be pending any enforcement actions for such violations.

The party who obtained the VPO must be mailed by certified mail a copy of the petition for expungement within 10 days of its filing and has 30 days within which to file an objection or other response. He or she is also entitled to 30 days' notice of hearing the petition.[19]

In order to grant an order expunging a VPO, either there must be no objection to expungement or the court must make a finding that "the harm to the privacy of the person in interest or dangers of unwarranted adverse consequences outweigh the public and safety interests of the parties to the protective order in retaining the records."[20]

What follows are a few notes about issues that may arise when scheduling a 10-day hearing in Oklahoma County. Also included is a list of tips and procedures followed in Tulsa County furnished by Judge C. Michael Zacharias.

OKLAHOMA COUNTY NOTES

- VPOs cannot be stricken to be reset or continued by minute order. They are either granted, denied or dismissed.
- When temporary protective orders need to be continued, they MUST be done on the two-page temporary protective order forms; they are the only ones accepted by law enforcement.
- If there is a VPO filed in a case which has an FD number, if the VPO was filed first then the judge can grant a temporary protective order which will be good until the first hearing in the FD case so both can be heard.
- If the FD case (for example, a hearing on a temporary order) is to be heard first, then advise the judge's staff that there is also a VPO pending between the same parties before the temporary order hearing date.
- If the VPO date is set before the temporary order, let the clerk for the judge with the FD case know that there is an FD case between the some parties. The judge will then make any order on the VPO a temporary order, good until the next hearing, instead of a final (permanent) order. If there is already pending a temporary order hearing, both can be heard together.
- VPOs expire on the date that is on the bottom of the first page of the protective order.
- VPOs can be dismissed by agreement and court minute but the matter of costs must be addressed in the minute.

TULSA COUNTY NOTES

Emergency Protective Orders

1) Request all persons that have requested an EPO come forward and have a seat on the benches.

2) Ask all to stand when their name is called and remain standing.

3) After all names are called and confirm their presence, swear all plaintiffs in.

4) Advise will call each up individually to state why they need a protective order, after hearing the testimony if found to have grounds will grant a protective order. This PO will be an emergency protective order, which is a temporary protective order. This protective order will be in effect until the hearing date of _____ at 9 a.m.

5) Point out: between today and that hearing date you need to make arrangements, including time off work, so that you can leave home in enough time to come downtown, find a parking place, go through security check and be in this courtroom before 9 a.m.

The reason I stress the time is this docket is called promptly at 9 a.m., and if you are not present you run the risk of having this case dismissed. Also, if the case is dismissed that morning because you are not present, but the defendant is present and is released from the courtroom, and you (plaintiff) appear later, the order of dismissal will stand.

If you have an emergency that morning which causes you to be late to the courthouse, if you will call and let us know you are on your way, the court may hold the case on the docket until you arrive; but, that phone call must be before 9 a.m. because at that time the court is in session and the phone is not answered.

I want to stress to you that the only way to make sure this case proceeds forward on the date it is set for hearing is for you to be present in this courtroom before 9 a.m. on the hearing date; anything else, including a phone call, you run the risk of having this case dismissed.

6) If granted an EPO today make sure to keep a copy with you at all times; this is 24 hours a day, seven days a week. There are three reasons for this:

- tells you the date, time and courtroom number of your hearing;
- if the defendant has not been served and is coming around you, you can contact law enforcement and they can serve the defendant. You must be able to provide the officer with a copy of the EPO;
- if the defendant has been served and the defendant is violating the EPO and you contact law enforcement, the first thing the officer will request to see is a copy of your PO, if you cannot show the office a copy of your PO there's not much the officer can do on your behalf.

Again, keep a copy of the PO with you at all times, do not leave it in your car, do not leave it at your home; keep it with you.

7) If asking for a PO on behalf of a minor child and that request is granted, make sure and place a copy with that child's school or childcare so that they are aware of the situation.

Also, you must advise me of any pending court matters involving this minor child or children. This would include: dissolution of marriage, legal separation, paternity action, DHS action, juvenile court proceeding, guardianship action, any court action involving this minor child(ren).

8) If you are asking for a protective order against someone that you are not related to, have not dated, nor lived with; you must be alleging that this person has been and currently is stalking you. Allegations of physical abuse and harassment are not sufficient grounds for a protective order in this situation. Also, your allegation of stalking must be supported by a stalking complaint filed with the proper law enforcement agency and a copy of that complaint must be attached to this petition. If that has not happened, I cannot entertain your request for a protective order at this time.

9) Lastly, a protective order is not a tool to harass or get even with someone. If you want me to order someone to stay away from you, to have no contact with you and not to call you, I expect you to not call that person, go around that person and not to have contact with that person.

When you come back for your hearing if there is credible evidence that you voluntarily contacted the defendant, it's going to make it more difficult for you to convince the court that you are in need of a protective order.

Therefore, if you are granted a protective order today, do not go out and contact the defendant.

10) Call each person up to the front of the bench, ask if the allegations in their petition are true and accurate and why they feel they need a protective order.

Protective Docket Call

1) Introduce self and advise this is the 9 a.m. protective order docket.
2) When your name is called, please stand and announce your presence.
3) When the case is called, if you are the plaintiff and the defendant **has been served** and you still want a protective order, I will request that you come up to the front and have a seat on the bench. We will give you a new date and time.
4) When the case is called, if you are the plaintiff and the defendant has been served and he/she has failed to appear today and you still want a protective order, that request will be granted and I will also ask that you come up to the front and have a seat on the bench to receive your protective order.
5) In both cases, the paper work you receive must be taken to the second floor and filed with the clerk's office. If it is not filed with the clerk's office, this new protective order will not be in effect. Also, if any court personnel request that you bring back a copy of the paperwork please do so as soon as possible after it has been filed.
6) If both parties are present today, the plaintiff still wants a protective order and the defendant wants a hearing, that hearing will take place today after the docket call.
7) If there is a pending FD case, that is a legal separation, dissolution of marriage or paternity action, this protective order will be consolidated with that pending FD matter so that one judge will hear all the issues and one judge will issue all the orders.
8) Again, when you hear your name called please stand and make your presence known and please check to make sure all cell phones and pagers have been turned off.
9) Call the docket.
   A) If pending criminal matter and the defendant is in custody:
      - If the defendant wants a hearing, normally continue the hearing past the criminal setting and do not have him/her brought over.
      - If the defendant does not want a hearing, grant the final protective order.
   B) If pending criminal matter and the defendant is not in custody and appears: proceed the same as A.
   C) If the plaintiff wants to dismiss the action, normally have a representative from DVIS speak with the person to make sure he/she is not being forced to dismiss.

1. §60.2(A)(1).
2, §60.2 (1).
3. 2005 OK CIV APP 51, 118 P.3d 233.
4. §60.2(A)(1).
5. *Id.*
6. *Id.*
9. §60.2(A)(2).
10.§60.3.
11. §60.4(B)(1).
12. §60.4(B)(2).
13. §60.4 (C) (1).
14. *Id.*
15. §60.4 (G).
16. §60.3(C).
17. §60.2(C).
18. §60.2(A)(1).
19. §60.4(H)(2).
20. §60.18(B)(1).
21. §60.18(C)(1).
22. §60.18(C)(3).

ABOUT THE AUTHOR

Rees T. Evans practices family law in Oklahoma City. He received his B.A. in government from the University of Virginia and his J.D. from OU. He serves on the executive committee of the OBA Family Law Section. He has been the chair of the Family Law Sections of the Oklahoma Bar Association and of the Oklahoma County Bar Association, and he is a member of the Family Law and Litigation Sections of the American Bar Association.

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- Western District
  (405) 553-8700

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  (405) 521-3848
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  Appeals Presiding Judge
  (405) 521-2158
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  Oklahoma City (405) 521-3751
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  the Courts (405) 521-2450
- Office of the Governor
  (405) 521-2342
- Attorney General
  (405) 521-3921
- Council on Judicial
  Complaints (405) 522-4800
- Oklahoma State Bureau of
  Investigation (405) 848-6724

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- University of Tulsa
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- Oklahoma Board of Bar
  Examiners (405) 416-7075
- Oklahoma County Bar
  Association (405) 236-8421
- Oklahoma Criminal Defense
  Lawyers
  (405) 232-5959
- Oklahoma Trial Lawyers
  Association (405) 525-8044
- Tulsa County Bar Association
  (918) 584-5243

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  of Oklahoma
  Oklahoma City
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  Tulsa (918) 584-3211
- Oklahoma Indigent Defense
  System (405) 801-2601
- Oklahoma Indian Legal
  Services (405) 943-6457

OBA WEB SITES

What Information Do They Provide?

www.okbar.org

- The official Web site of the Oklahoma Bar Association and the place to access the newest free member benefit - Fastcase, a comprehensive national online law library. It's your one-click resource to all the information you need, including what's new at the OBA, ethics opinions, upcoming CLE seminars, staff contacts, and section and committee information.

my.okbar.org

- On this site, you can do everything from changing your official address, enrolling in a CLE course, checking your MCLE credits and listing your practice areas on the Internet so potential clients can find you. The PIN number required is printed on your dues statement and can be e-mailed to you if the OBA has your current e-mail address.

www.oba-net.org

- Members-only interactive service. Free basic service with premium services available to enhance the member benefit. Lawyers are empowered to help each other through online discussions and an online document repository. You must agree to certain terms and be issued a password to participate in OBA-NET.

www.oklahomafindalawyer.com

- People from across Oklahoma visit this Web site every day in search of an attorney. How can you get your name on this list for free? Signing up is easy – log into your account at my.okbar.org and click on the "find a lawyer" link.

www.okbar.org/research/links.htm

- A quick way to find the Oklahoma Supreme Court (OSCN) Web site to look up Oklahoma cases and statutes online. Also use it to find the online site of the Court of Criminal Appeals or any of Oklahoma's District Courts, hunt a state or federal agency, locate a federal court site, find a municipal ordinance or find the rules from local or federal courts. As a bonus there are many other links to assist in your legal and factual research.

Business and Commercial Litigation in Federal Courts

Eight volumes, 96 chapters with 191 authors; $960
Published by ABA Litigation Section and Thomson West

This review is written from the perspectives of knowledge and inexperience, from the point of view of a commercial law practitioner and one who has difficulty remembering what U.C.C. stands for. With that noted, the second edition of *Business and Commercial Litigation in Federal Courts*, was found to be scholarly, well written, but more importantly, *useful*.

For those who are business and commercial litigation practitioners in our federal court system, the treatise is an excellent reference. Those practitioners who find it advantageous to avoid the federal system can nonetheless benefit from a wealth of practice tips and techniques in areas of law not exclusive to the federal law. In fact, the non-commercial litigation specialist will find the books to be easy to navigate and understand. The smoothly crafted blend of the procedural, substantive and practical will give this work high marks in anyone's analysis.

This second edition of *Business and Commercial Litigation in Federal Courts* expands to eight volumes and 96 chapters from the first edition's six volumes and 80 chapters and is sponsored by the Litigation Section of the American Bar Association. It features the contributions of 191 different authors, including federal judges, law professors and lawyers who are highly qualified in their fields of practice. Oklahoma attorneys are well represented as contributing authors, to include: Gary Davis and Robert Stell, both of Crowe & Dunlevy, who authored Chapter 94 titled "Energy."

Each chapter is a self-contained topic, treated thoroughly and often heavy with footnotes; but overall in a style that is rather readable. It is organized through its summary of contents and table of contents to readily direct the attorney to the place or area of interest. Almost all chapters and topics have well-developed checklists and forms, including what appear to be briefs actually prepared by practicing lawyers for specific cases. Although some of the matters treated are quite basic, there is plenty for the seasoned practitioner. Case examples are often used to support the strategies suggested by the authors.

Volumes 1 through 4 deal with issues such as jurisdiction, case evaluation, arbitration v. litigation, remedies, discovery and evidence. Volumes 5 through 8 contain chapters devoted to appeals, litigation technology, litigation management, director and officer liability, mergers and acquisitions, contracts, insurance, banking, copyright, ERISA, RICO, theft or loss of business opportunity, franchising, environmental claims and E-commerce. The format for each chapter is generally the same: typically containing an overview section, followed with sections of substantive, procedural, strategic and practice materials. The latter variously include checklists, forms, briefs and jury instructions.

Volume 9 contains the index and a comprehensive collection of tables, to include table of jury instructions, table of forms, table of laws, and rules and table of cases. This volume is helpful to the busy attorney turning to a reference work of this size.

Oftentimes, we come across reference material that is well written and accurate. However, we don't always come across materials that are easy to use. *Business and Commercial Litigation in Federal Courts*, second edition, has successfully combined both categories. Whether you are an attorney with a general practice, a "specialist" in commercial law or even a general jurisdiction jurist, this series is an excellent resource.

Judge Lori Walkley, Norman
John Munkacsy, Lawton
Both are members of the
Oklahoma Bar Journal Board of Editors.

The Top Ten Myths & Questions
Concerning the OBA Lawyers Helping Lawyers Committee

1) Lawyers Helping Lawyers is only there to help alcoholics.

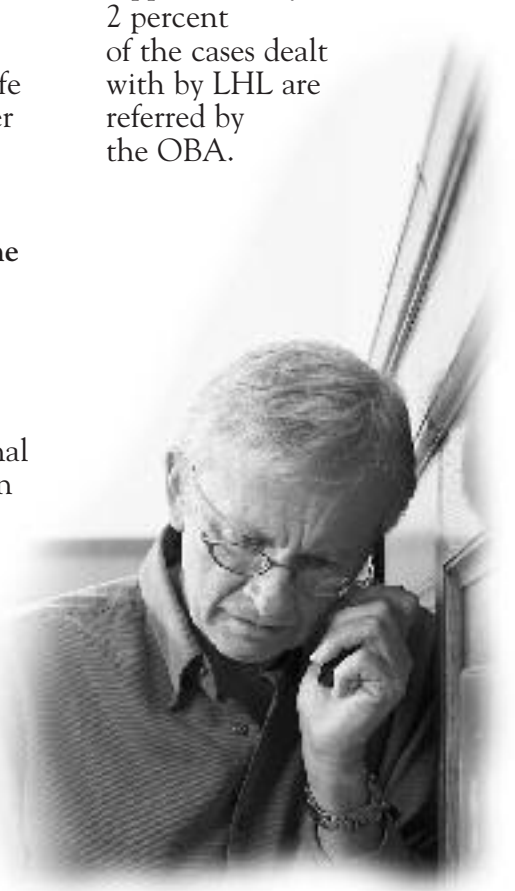
Not so! The LHL takes calls and will extend help to persons suffering from addiction to alcohol or drugs. However, LHL is there to also assist Oklahoma attorneys who are suffering from stress or dealing with quality of life issues, or those who suffer from depression or other mental conditions.

2) The LHL is a pipeline to the OBA General Counsel's Office.

That is absolutely false. Rule 8.3(d) of the Oklahoma Rules of Professional provides that information regarding any possible violation of the rules learned while assisting other lawyers through LHL is to be treated with the same confidentiality as information protected by the attorney-client privilege.

3) The LHL can only assist when there is a referral from the OBA.

Most of the situations called in to LHL are from the affected attorneys themselves, or from their law partners or families. Approximately 2 percent of the cases dealt with by LHL are referred by the OBA.



4) If I call, LHL will make me go to a 12-step program, and I don't think I want to do that.

LHL will not "make" a referred lawyer do anything. Help is offered but there is no requirement that anything be done. The lawyer must decide if he or she wants help, and if so, LHL will work with the lawyer to try to implement the most effective assistance which can be given.

5) If I call the LHL, the bar won't sell me malpractice insurance.

LHL has no formal or informal ties to the OBPLIC, the entity which provides malpractice insurance to many Oklahoma attorneys. Remember, all referrals or inquiries to LHL are, as a matter of law, confidential. In actual practice, a call to LHL could prevent a later malpractice claim being made against an impaired attorney.

6) The LHL can only assist if the attorney with a problem calls in.

Over 40 percent of the calls made to LHL come from third parties other than the attorney who may have a problem. In fact, there are more calls to LHL from such third parties than any other single source. The calls from third parties can lead to an intervention with the lawyer, or an informal contact by an LHL member with the lawyer.

7) If I went to LHL, there is always the risk that someone would discover the records on me, and that could create serious problems.

In the vast majority of cases, neither LHL as a committee nor its members keep records on the lawyers with whom they work. Records are kept only when someone is sent to LHL by the General Counsel's Office or Board of Bar Examiners as part of some type of structured arrangement to take the bar exam or to settle a grievance. So in most cases, there are no records to discover.

8) I don't want to talk to some clerk over the phone and discuss my problems.

All calls to LHL's toll-free number are answered by LHL staff members and treated with confidence. If no one is immediately available, you will be asked to leave a name and phone number, and a LHL member or the executive director (who is a lawyer) will return your call. All information will be kept confidential and treated with discretion.

9) If I go to LHL and get on a treatment plan and then don't keep up with the treatment, will I be reported to the OBA or malpractice carrier?

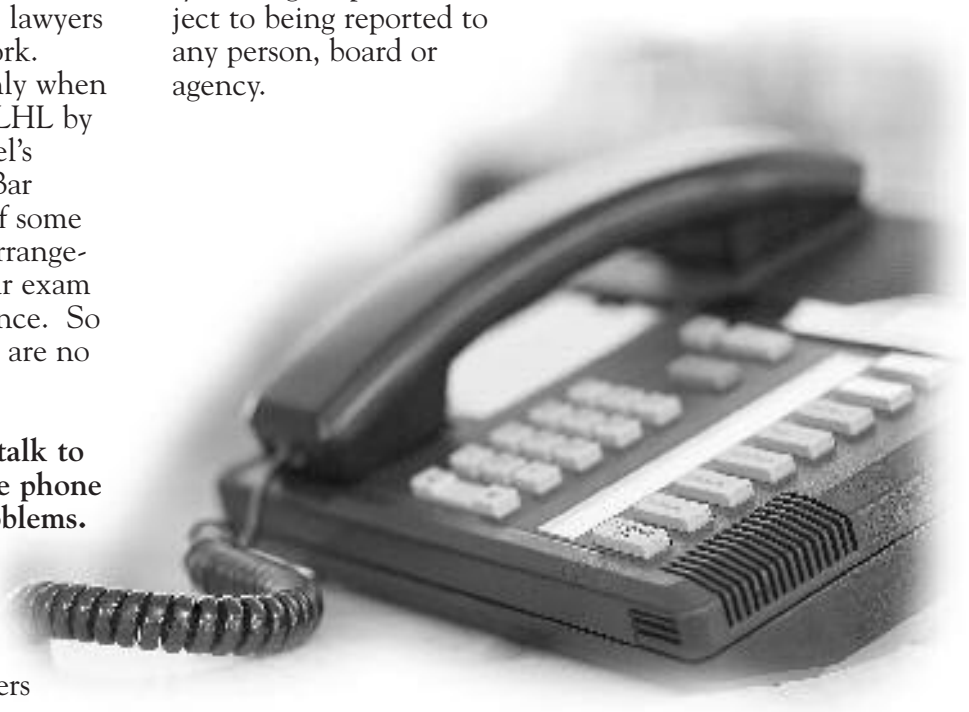
A lawyer who voluntarily agrees with LHL to undergo treatment is not reported to any source if the lawyer does not continue with the treatment regimen. While LHL members may encourage a lawyer to get treatment or remain in treatment, those voluntarily seeking help are not subject to being reported to any person, board or agency.

10) Do I need to go through LHL to use the OBA's counseling service?

No. The LifeFocus Counseling Service is a no-charge counseling service offered through the OBA. That counseling service is separate from LHL. LifeFocus may be contacted at (405) 840-5252 or toll-free (866) 726-5252

If you need help, or know someone who does, please contact Lawyers Helping Lawyers. It is strictly confidential, and could save a career or a life.

Lawyers Helping Lawyers
(800) 364-7886
Post Office Box 495
Oklahoma City, OK
73101



OBA Nominating Petitions

(See Article II and Article III of the OBA Bylaws)

OFFICERS

PRESIDENT-ELECT

JON K. PARSLEY, GUYMON

Petitions have been filed nominating Jon K. Parsley for election of President-Elect of the Board of Governors of the Oklahoma Bar Association for a one-year term beginning January 1, 2008. Fifty of the names thereon are set forth below:

David K. Petty, Melissa DeLacerda, Stephen D. Beam, Jack S. Dawson, J. William Conger, William R. Grimm, Gary C. Clark, Harry A. Woods Jr., William J. Baker, M. Joe Crosthwait Jr., Allen Smallwood, Robert S. Farris. R. Victor Kenemmer III, Dietmar K. Caudle, Alan Souter, Jimmy Goodman, Michael C. Mordy, Cathy Christensen, Deborah A. Reheard, Linda S. Thomas, Michael W. Hogan, Robert B. Sartin, Peggy Stockwell, Donna L. Dirickson, Julie E. Bates, Christopher L. Camp, Dwight L. Smith, Luke Gaither, Keri G. Williams, J. Stewart Arthurs, David Stockwell, James A. Drummond, J.W. Coyle, J. David Ogle, Molly A. Bircher, Mack Martin, Shanda McKenney, Richard L. Rose, Benjamin H. Odom, Kimberly Warren, Lou Ann Moudy, M. Courtney Briggs, Henry Herbst, Reid Robison, John D. Board, Glenn Devoll, W. Brett Willis, Katherine E. Thomas, James M. Sturdivant, Stanley Ed Manske.

A total of 253 signatures appear on the petitions.

County Bar Resolutions Endorsing Nominee: Beaver, Cimarron, Custer, Harper and Texas County

BOARD OF GOVERNORS

SUPREME COURT JUDICIAL DISTRICT NINE

W. MARK HIXSON, YUKON

Petitions have been filed nominating W. Mark Hixson for election of the Board of Governors representing Supreme Court Judicial District 9 of the Oklahoma Bar Association for a three-year term beginning January 1, 2008. Twenty-five of the names thereon are set forth below:

Tammy S. Boling, Lisa K. Cosentino, Robert E. Davis, Robert D. Everett, William S. Flanagan, Michael Sean Gahan, David Halley, Fletcher Handley, H. David Hanes, Lanita Henricksen, Rick J. Henthorn, Paul A. Hesse, Krista L. Hodges-Eckhoff, Bobby W. Hughey, William H. James, Richard T. Lewis, Jack D. McCurdy, Gregory K. Parker, Fenton R. Ramey, George H. Ramey, Dean Rinehart, Roger Rinehart, Khristan K. Strubhar, William D. Tharp, Shelley Thomas Tipps.

A total of 33 signatures appear on the petitions.

Bless This Messy Desk

By Jim Calloway, Director, OBA Management Assistance Program

In some ways, opinions about general tidiness or messiness of your desk can be as divisive as any of today's great political issues. Those who tend to keep a tidy desk have a difficult time restraining themselves from commenting when they see another lawyer's desk containing piles of paperwork. By the same token, many other lawyers see a lawyer's desk with all of the desktop wood exposed and tend to think there may be something a little bit wrong with that person.

Riding to the rescue of the messy desk crew is a recent book titled *A Perfect Mess* by Eric Abrahamson and David W. Friedman (2006). In this book, the authors deliver the counterpoints to all of the rules promulgated by the time management experts and the rapidly growing community of professional organizers. Messy workspaces, they argue, may not be all that bad.

Certainly our society tends to look down on people with messy desks. They are thought to be slovenly, disorganized and less productive than others. You really cannot imagine the president of the United States delivering a nationally-televised address behind a desk with an overflowing inbox, a stack of a dozen file folders, a few dozen strategically-placed Post-it notes and the leftovers from lunch. (Of course, many of you are probably thinking that if you had as many staff people working for you as the president does, your desk would be clean, too.)

A story in *USA Today* quoted an individual as saying that there were "uncountable hours lost each year" due to disorganization.[1] But, have you ever noticed that the individuals giving those quotes to the media are almost all professional organizers? These people make their living from convincing others that they need to pay these people to clean their desks, shelves and cabinets.

Does a messy desk really equate to disorganization? Not so, according to the authors of *A Perfect Mess.*

"A messy desk can be a highly effective prioritizing and accessing system…. In general, on the messy desk, the more important, more urgent work tends to stay close by and near the top of the clutter, while the safely ignorable stuff tends to get buried at the bottom or near the back, which makes perfect sense."[2]

So maybe the views of messy desks critics are not correct at all, but are merely the "neatnicks" way of stifling the impressive creative power of the "messies."

A survey from Ajilon Office says messiness increases with increasing education, increasing salary and increasing experience. In fact, survey results found

that "[t]he higher the salary, the messier the person: 66 percent of Americans making $35,000 or less per year are self-described 'neat freaks,' whereas only 11 percent of those earning above $75,000 claim the same."[3] The idea that people with messy desks make more money would certainly resonate with many of us.

You may recall that Alexander Fleming discovered penicillin accidentally when he returned to his cluttered office after being out for several days and found something unusual in a petri dish. Even the staunchest proponent of the messy desk would probably have to concede that when items on a lawyer's desk start growing mold, it is time for a reevaluation of your methods.

> "Unfortunately, it is not within my power to grant absolution to those of you with messy desks."

One of my personal challenges is dealing with the huge amount of new information that is available each month on technology and management. As I am preparing this article, a significant component of the mess on my desk is magazines open to half-read articles. A few bookmarks could obviously resolve that part of the mess. But what I would really like is to find time to finish the reading.

I think that's really the cause of most of the messy desks. If we had an unlimited amount of time, we would probably be happy to neatly file everything in its place. In real life, however, one sometimes tends to find themselves rushing from one filing deadline to one court appearance back to one client appointment. Most of the mess is actually things that are uncompleted items. Rather than filing them somewhere, we just want to finish the work.

(I have also noticed that those of us with messy desks may also have messy Windows Desktops. That may become a topic for an entirely different article.)

Unfortunately, it is not within my power to grant absolution to those of you with messy desks. First of all, disorganization within the law office is not a good thing. I am willing to concede that not all desks that appear to be messy are truly evidence of disorganization. But we have to be honest and admit that some messy desks are a symptom of greater problems.

Secondly, as lawyers we want to develop broad client bases, representing people from all walks of life. While potential clients belonging to the "messy" persuasion may be quite content to be represented by a "neatnik" lawyer, the reverse is often not true. You would really hate to lose the opportunity for the most lucrative case of the year just because the client happened to schedule the initial meeting during an extra messy period.

I am aware that some habitually messy lawyers have found an easy solution to this problem. They just maintain two offices. One is for work and can become extremely cluttered. The other is the "client interview office" where things are kept very neat and orderly. While this may seem to be a bit extreme, I guess it is better than losing the business altogether.

Since I am a frequent sufferer of Messy Desk Syndrome, I am perhaps not the best source of assistance on this topic. But since you've already invested close to half

of a billable hour in reading this far, here are a few ideas.

1 If you only have an inbox and outbox on your desk, perhaps you could appear a little better organized (and maybe even become so) by adding a couple of extra boxes for papers. One could be called "Pending" and the other "Urgent."

I know from experience that one of the primary reasons why we keep things on our desk is that we are fearful we will forget about the task that needs to be done if we move them out of sight. A pile of papers or files stacked in a box appears more organized, making us and our office visitors feel better. Prioritizing certain things as pending and others as urgent is actually a very effective and useful management technique.

2 Work from the lists, not from files. Keeping a list of all current projects and assignments is a key step toward organization and allowing you to move some of those file folders off of your desk and back into the file cabinets. Many readers right now have a file on their desk for no other reason than to remind them to make a telephone call. Write down the name, the number and the reason for the call on your to do list and let the file find its way back to the file cabinet.

3 Implement practice management software. I know that this may begin to sound like a broken record from me for some of you. But the more information that you keep on your computer system, the less physical bits of paper you will have cluttering up your desk. There are now many lawyers who scan all of the paper that comes into their office and largely worked from virtual files on their computer systems. While this is a great idea, the most important part of the idea is that it the information that is normally contained on calendars, Rolodexes, 3 x 5 cards, Post-it notes and other scraps of paper is all maintained within your practice management system. Do that as a first priority and make the final conversion to the paperless office a future goal.

Just remember the lessons from the book. The appearance of messiness may not be a bad thing. The issue is how organized you are and how well your office systems function. If everything is moving along smoothly, then feel free to tell the next person who comments on your messy desk, "By the way, did you know that we make more money than you do?"

1. USA Today, Jan. 22, 2006 Consequences of Messy Desks http://tinyurl.com/22u6tb
2. A Perfect Mess page 30
3. What Does Your Desk Say About You? Are You A "Neat Freak" Or A "Clutter Bug" At The Office? www.ajilonoffice.com http://tinyurl.com/2asxfp

Oklahoma Bar Journal Editorial Calendar

2007

- March
  Fourth Amendment/Search & Seizure
  Editor: Jim Stuart
  jtstuart@swbell.net
  Deadline: Oct. 1, 2006
- April
  Law Day
  Editor: Carol Manning
- May
  Estate Planning
  Editor: Mark Curnutte
  mcurnutte@loganlowry.com
  Deadline: Jan. 1, 2007
- August
  Health Law
  Editor: Martha Rupp Carter
  mcarter@tulsa-health.org
  Deadline: May 1, 2007
- September
  Bar Convention
  Editor: Carol Manning
- October
  Education Law
  Editor: D. Renée Hildebrant
  renee.hildebrant@oscn.net
  Deadline: May 1, 2007
- November
  Technology/Practice Management
  Editor: Jim Calloway
  jimc@okbar.org
  Deadline: Aug. 1, 2007
- December
  Ethics & Professional Responsibility
  Editors: Dan Murdock & Gina Hendryx
  danm@okbar.org
  ginah@okbar.org
  Deadline: Aug. 1, 2007

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

The Basics of Fee Agreements

By Gina Hendryx, OBA Ethics Counsel

The written fee agreement is the first and most practical opportunity to define not only what the cost of the legal representation will be but also to discern what services the lawyer will provide and what is expected from the client. Oklahoma Rule of Professional Conduct (ORPC) 1.5 governs fees and fee agreements. Oklahoma does not require all fee agreements to be in writing. Only the contingent fee agreement must be in writing.[1] However, it is always the better practice to memorialize all fee agreements in writing to reduce the possibility of misunderstandings and to clearly identify the scope of the representation.

The Contingent Fee

Rule 1.5 provides that a fee may be contingent on the outcome of the matter and that such a fee arrangement *shall* be in writing. The rule further provides that:

1) The agreement shall state the method by which the fee is to be determined. For example, the contract should spell out at what stages the fee percentage increases. Does it increase in event of settlement, trial or appeal? Is the attorney fee deducted from the "gross" or "net" recovery? How do you determine "net" recovery?
2) The agreement shall state whether the client will be responsible for litigation and other expenses.
3) The agreement shall also indicate if expenses will be deducted before or after the fee is calculated.
4) Upon conclusion of the matter, the client shall be provided a written statement indicating the outcome of the matter and detailing the distribution of the recovery between attorney and client.
5) The contingency fee agreement is improper for domestic relations matters other than actions to collect past due alimony or child support. It is also improper to have a contingent fee arrangement for representation of a defendant in a criminal case.

Rule 1.5 specifies the minimum requirements for a contingent fee agreement. Courts have held that an attorney must provide these details even if the lawyer regularly represents the client on similar matters and the client understands the process.[2]

The contingent fee, as with all fees, shall be reasonable. It is acceptable for a lawyer to charge a higher percentage as different stages of the representation is reached. For example, the fee will be 25 percent of the gross recovery if settled before trial and 33 percent of the gross recovery if settled during trial or by judgment.[3] The specific percentage and triggering event should be spelled out in the fee agreement, and it is also good practice to give the client notice when the increases go into effect.

> "...it is always the better practice to memorialize all fee agreements in writing to reduce the possibility of misunderstandings..."

> The lawyer should craft the agreement to meet the needs of the client and the subject of the representation.

Fee Agreements

Whether you are representing a client on an hourly basis, billing against a retainer or charging a flat fee, the written fee agreement affords your client the early opportunity to fully understand the fee structure and what she is getting for her money. This will help avoid differing memories about fee discussions and representation issues. Even in the most routine of legal representations, the written fee agreement can deter many common problems that arise between lawyer and client.

Areas that should be addressed in the fee agreement include the following:

1) The compensation agreement between the lawyer and the client. First and foremost, this is the primary reason for the fee agreement. The document should spell out what the charge is for the services and how it is to be paid. "At the outset of the representation the lawyer should make disclosure of the basis for the fee and any other charges to the client. This is a two-fold duty including not only an explanation at the beginning of engagement of the basis on which fees and other charges will be billed, but also a sufficient explanation in the statement so that the client may reasonably be expected to understand what fees and other charges the client is actually being billed."[4]

2) A clear identification of who is the client. This is especially important when the lawyer meets with more than one person about a representation. Problem areas include advising multiple shareholders of a corporation, giving advice to both employer and employee, and advising parents and their adult children especially in guardianship and family law matters.

3) What services will be performed by the lawyer. The fee agreement should indicate what services the lawyer will perform for the client. If you agree to only "negotiate" the claim but not file suit, then you should specify how far into the process you are agreeing to go. For example, do you agree to file and prosecute any appeal that may result from the representation? Do you agree to prosecute or defend the appeal for the fee that has been paid? This can become a contemptuous matter between lawyer and client when the appeal was not contemplated by the lawyer and the client believes otherwise.

4) What is expected of the client. The client should be made aware of what expectations that lawyer has of the client. The client should keep the lawyer informed of changes in address, telephone number, emergency contacts, etc. If the client is difficult to reach, you may include instructions in the agreement for routine contact from the client.

5) Intent to charge interest on unpaid bills. If you intend to assess interest charges on unpaid client balances, then you should include this information in the written fee agreement. The notice should include the amount of interest and how and when it accrues.

These are just a few of a myriad of issues that may be addressed in a written fee agreement. The lawyer should craft the agreement to meet the needs of the client and the subject of the representation. It is best to use clear and concise language. Avoid ambiguous terms and use specific dates, amounts and directions. Spell out a client's responsibilities regarding payment of fees, costs and expenses. Always, you and the client sign the agreement and provide the client with a copy of the signed document.

Have an ethics question? It's a member benefit, and all inquiries are confidential. Contact Ms. Hendryx at ginah@okbar.org or (405) 416-7083; (800) 522-8065.

1. ORPC 1.5(c).
2. *Statewide Grievance Comm. v. Dixon*, 772 A.2d 160 (Conn. App. Ct. 2001).
3. ABA Formal Ethics Opinion 94-389.
4. ABA Formal Ethics Op. 93-379 (1993).

January Meeting Summary

The Oklahoma Bar Association Board of Governors met at the Oklahoma Bar Center on Friday, Jan. 19, 2007.

REPORT OF THE PRESIDENT

President Beam reviewed events for the day. He reported he met with Governor Parsley about the Mentoring Task Force, worked on appointments, met with Jim Calloway and Donita Douglas about the Solo and Small Firm Conference and wrote letters to appointees. He attended the Communications Task Force meeting and swearing-in ceremony for Chief Justice Winchester. He spoke at the Garfield County Bar Association meeting and at the OBA Law School for Legislators in Oklahoma City.

REPORT OF THE VICE PRESIDENT

Vice President Conger reported he attended the swearing-in ceremony for new lawyers at the western district, Shipp Plaza dedication and Bar Center Facilities Committee meeting.

REPORT OF THE PRESIDENT-ELECT

President-Elect Conger reported he attended the swearing-in ceremony of Chief Justice Winchester and Vice Chief Justice Edmondson, chaired a meeting of the Bar Center Facilities Committee and taught at two OBA/CLE sessions.

REPORT OF THE PAST PRESIDENT

Past President Grimm reported he attended the Tulsa Title & Probate Lawyers Association meeting, OBA Bar Center Facilities Committee meeting and swearing-in ceremony for Chief Justice Winchester and Vice Chief Justice Edmondson.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the December board holiday party and meetings of the State Legal Referral Service Task Force, Communications Task Force, Technology Committee and Bar Center Facilities Committee. He participated in meetings with the architect and builder, in addition to Lawyers Helping Lawyers Committee Chair Tom Riesen regarding the LHL Foundation. He attended swearing-in ceremonies for Judge Rick Bozarth in Taloga and Supreme Court Chief Justice Winchester. He attended an abbreviated OBA Directors Retreat because of weather and a reception for Sen. Coffee.

BOARD MEMBER REPORTS

Governor Bates reported she attended the Oklahoma County Bar Association board meeting and Christmas party, Board of Governors Christmas party and December board meeting, two OBA State Legal Referral Service Task Force meetings, swearing-in of Chief Justice Winchester and Vice-Chief Justice Edmondson, Cleveland County Bar Association meeting and swearing in of Cleveland County's new district attorney and county commissioners and reception. **Governor Caudle** reported he attended the December board meeting and Christmas party, swearing-in ceremony for Chief Justice Winchester and Vice Chief Justice Edmondson and monthly Comanche County Bar Association luncheon meeting that featured OU Professor Spector. He also chaired the State Legal Referral Service Task Force Committee Meeting at the bar center. **Governor Christensen** reported she attended the Board of Governors December meeting and Christmas party, Bar Center Facilities Committee meeting at the bar center, Oklahoma County Bar Association Board Meeting and

Christmas function, two OBA/CLE functions at the Ford Center and the OCU law school alumni meeting. She also discussed plans for the 2007 Women in Law Conference with other committee members. **Governor Farris** reported he attended the December board meeting and Tulsa County Bar Foundation meeting. He made a presentation at the TCBA Annual Estate Planning CLE Seminar. **Governor Hermanson** reported he moderated and was a speaker for an OBA/CLE seminar. He attended the OBA staff appreciation luncheon, Kay County Bar Association meeting, Board of Governors Christmas party, Board of Governors December meeting, two State Legal Referral Service Task Force meetings and Kay County Bar Association Christmas Party held in conjunction with the Kay County Medical Association. He also prepared an article for the OBA Criminal Law Section's newsletter. **Governor Souter** reported he attended the board Christmas function and board meeting. He also attended the swearing-in ceremony for Okfuskee County District Court Judge Lawrence W. Parish, Okmulgee County District Court Judges H. Michael Claver and John Maley, Creek County District Court Judges Douglas W. Golden and Joe Sam Vassar, Creek County Associate District Court Judge April Sellers White and Creek County District Attorney D. Max Cook.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Camp reported the YLD sunsetted two committees this year, created a new Wills for Heroes Committee and changed the Volunteer Committee into a task force. He also spoke at an Inn of Court CLE program.

REPORT OF THE SUPREME COURT LIAISON

Justice Taylor reported he appreciated the appointment to the OBA as the Supreme Court liaison, and he said he looked forward to serving.

LAW STUDENT DIVISION LIAISON

LSD Chair Robben reported she attended the Board of Governors Christmas function and participated in a conference call with the OLSD Bylaw Committee to work on revisions to the division's bylaws. She attended several events at the OBA Annual Meeting, including the division's panel and board meeting.

REPORT OF THE GENERAL COUNSEL

General Counsel Murdock shared a status report of the Professional Responsibility Commission and OBA disciplinary matters. He reported he presented CLE programs for a Family Law Section seminar in Oklahoma City, Tulsa County Bar Association, Christian Legal Society and Oklahoma County Bar Association. He hosted the OBA employees' Christmas party in his home, attended a Saturday rehearsal for the OBA Ethics Cabaret, participated in the evening OBA Ethics Cabarets in Oklahoma City and Tulsa and attended the OBA directors retreat.

BAR CENTER RENOVATIONS

Executive Director Williams reported demolition is projected to begin in October. A more definite timeline is expected soon. The board will also receive in March more specific cost estimates for the renovation. The Bar Association Technology Committee will assist in making recommendations for technology needs. President-Elect Conger said there will be a period of discomfort; however, a state-of-the-art facility will be the result that will be a legacy of this Board of Governors.

BENCH AND BAR COMMITTEE FUNDING REQUEST

Governor Christensen, as Bench and Bar Committee co-chair, said the committee is asking for funding to send a committee member to the ABA subcommittee meetings in Miami, where revisions to the ABA Model Judicial Code will be discussed. The board approved up to $3,000 to send one committee member to the meetings.

NATIONAL HIGH SCHOOL MOCK TRIAL CHAMPIONSHIP FUNDS

Past President Grimm reported all expenses for the national mock trial event hosted by the OBA last year have been paid and an excess of about $99,000 from prior budgets remains. The board voted to consolidate the excess funds into the general reserve and to eliminate the separate line item from the budget.

APPOINTMENTS

The board approved the following recommendations made by President Beam:

Paralegal Committee — appoint David A. Poarch Jr., Norman, as vice chairperson

Professionalism Committee — appoint Steven Dobbs, Oklahoma City, as chairperson

Unauthorized Practice of Law Committee — appoint William R. Grimm, Tulsa, as Board of Governor liaison.

OBA DAY AT THE CAPITOL

Executive Director Williams asked board members to docket Tuesday, March 27, to participate in meetings with legislators during the day and for the evening reception at the bar center.

LAW DAY EVENTS

President Beam reported the Ask A Lawyer TV show will air on May 1 from 7 – 8 p.m. on OETA, and the statewide Ask A Lawyer community service project will also be held on that day.

CRISIS INTERVENTION MEMBER BENEFIT

Executive Director Williams reported the Mental Health Association of Central Oklahoma will be awarding the OBA an innovator award for the establishment of the crisis intervention program for bar members. He reported that sadly the program is out of funding, which increases the importance of setting up the Lawyers Helping Lawyers Foundation to assist in keeping the much needed program going.

WILLS FOR HEROES

President Beam reported the Young Lawyers Division has agreed to coordinate this new signature program for the OBA that will offer first response and law enforcement personnel free will preparation and health care proxy services. Governor Camp handed out information about the program, modeled after a program started in South Carolina. The OBA project will be chaired by Oklahoma City attorney Lindsey Andrews. Governor Camp said many attorneys have already contacted him to volunteer as a result of the initial story recently published in the *Oklahoma Bar Journal*.

NEXT MEETING

The board will meet at 9:30 a.m. in Oklahoma City on Friday, Feb. 16, 2007, at the Oklahoma Bar Center.

The Muscogee (Creek) Nation District Court

Presents

The Fifth Annual Continuing Legal Education Program:

Doing Business in Indian Country©

13 Hours of OBA Approved CLE Credit including 1 hour of Ethics

Thur. & Fri., March 8th-9th, 2007

Tribal Mound Building Great Auditorium
Okmulgee, Oklahoma

All New Facilities ◊ New & Timely Topics
Wireless Internet Access ◊ Superb Amenities

Co-Sponsored by the Muscogee (Creek) Nation Supreme Court ◊ Muscogee (Creek) Nation National Council ◊ ABA Judicial Division, Tribal Courts Council

Outline of Day One – Thur., Mar. 8th, 2007

8:30...Registration & Complimentary Continental Breakfast
8:40...Ceremonial Opening Exercise
8:50...Welcome, Introductions by Judge Patrick Moore
& Comments by Dean Robert Butkin, TU College of Law
9:00...Doing Business w/Tribes, Indians & Non-Indians - Karl Johnson, JD, Partner, Leubben, Johnson & Young, LLP, Past-Professor
10:00.....Break
10:10...Doing Business w/Tribes, Indians and Non-Indians (cont.)
11:00...Sports Entertainment in Tribal Casinos - Frank Marley, Jr, JD, Seminole Nation Attorney
11:50.....Complimentary Lunch – Culinary Arts Chefs, OSU
1:15...Ethical Components of Doing Business in Indian Country- Dan Murdock, JD, General Counsel, OBA
2:20.....Break
2:30...Financing Enterprises in Indian Country - Melissa Robertson, JD, Indian Law Specialist, Orrick Law firm
3:30...Economic Development on Tribal Property -- Stacy Leeds, Prof. of Law, KU
4:30...Question & Answer Period – Entire Panel
5:00...Muscogee (Creek) Nation Bar Swearing-In Ceremony
- Justices of the Muscogee (Creek) Nation Supreme Court
5:30...Complimentary Barbecue Dinner at the Okmulgee Casino

◊ Professionally Bound Editions of all CLE Materials will be provided upon registration.

◊ All sessions conducted in the Great Auditorium of the historic Tribal Mound Building, seat of the Muscogee (Creek) Nation National Council and Judiciary.

◊ Emergency message service available for registrants.

Outline of Day Two – Fri., Mar. 9th , 2007

8:30...Opening Remarks – Judge Patrick Moore
9:00...Rights of Way and Land Issues - Judith Royster, Prof. of Law, TU
10:00.....Break
10:05...Employment Issues & Workers Comp. on Tribal Lands
- Assoc. Dean Vicki J. Limas, Prof. of Law, TU
11:00...The Sac and Fox Case and It's Implications
- Bill Rice, Prof. of Law, TU
12:00...Complimentary Lunch – Culinary Arts Chefs, OSU
1:30....Tax Issues in Indian Country - Tai Helton, LL.M., Prof. of Law, OU
2:20.....Break
2:30...Federal Indian Gaming Regulations
- National Indian Gaming Commission Representative
3:20...Issues of Tribal Policy and Procedures
- John Williams, JD, Lead Counsel, The Williams Companies
4:30...Closing Comments and Evaluations

Adjourn

Regardless of your background, whether new to the field, or a seasoned practitioner of Indian Law, our previous attendees will tell you they were engaged, enthused and educated by leaders in this vital and rapidly growing practice area.

2007 *Doing Business In Indian Country*

March 8th-9th, 2007

***Tuition*: $100 for all attendees who pre-register on or before Feb. 23, 2007**
Walk-Ins: $150 (space avail.)
13 hours of CLE credit ◊ Includes 1 hour of Ethics

***Name*_____**

***Firm/Org.*_____**

***Address*_____**

***City*_____*State*_____**

***Zip*_____ *OBA Mbr? Yes □ No □ OBA#*_____**

***E-mail*_____**

Checks payable to **MCN District Court – CLE** & mail this form to:
MCN District Court, P.O. Box 652, Okmulgee OK 74447
Questions**: Call the MCN District Court** at **918.758.1400**

And the Winner Is...

Congratulations to the winners of the 2006 OBF Fellows contest laptop computer! *Oklahoma Bar Association Young Lawyers Division High School Mock Trial Chairperson Rachel McCombs, Immediate Past Chair Christine Cave and Coordinator Judy Spencer take a few moments from mock trial qualifying rounds held in the Oklahoma Court of Criminals Courtroom to celebrate winning the OBF Fellows laptop computer.*

Oklahoma Bar Foundation

Join the OBF Winners Circle

Congratulations go out to members of Oklahoma Bar Association Young Lawyers Division Oklahoma High School Mock Trial Committee for helping win a new Dell laptop computer. Mock Trial Coordinator Judy Spensor will use it for remote access as she journeys around the state visiting schools, trial sites and preparing for important meetings. Ms. Spencer works from home, when not on location, and the laptop will be a tremendous asset to the Mock Trial Program.

OBF Director Nancy Norsworthy sponsored the winning card for 2006 Mock Trial Chair Christine Cave as a new YLD Fellow of the foundation. When the winning card was selected at the Feb. 7 OBF Board of Trustees meeting, the Oklahoma Mock Trial Program was named to receive the prize. Ms. Norsworthy remarked that OBF has been sponsoring the High School Mock Trial program from its inception in 1980. The committee and Judy work diligently all year long to make the program a big hit with students and Trustees ferverently hope the laptop will help streamline administrative duties and free up time that can be utilized to promote more important learning and skill-building areas of the program. OBF is pleased to be of continuing assistance with this important program that educates Oklahoma students about the American system of justice and the rule of law.

How can you become a part of all this? It's simple, join the OBF Fellows Program today and get more out of being an Oklahoma lawyer. You become a Fellow through annual charitable contributions of only $100 over a 10-year period. **Pocket change of only $8.33 per month gets it done.** Newer lawyers can take advantage of reduced giving rates within the first three years of their admission to the bar. A Fellows enrollment form follows – please submit your enrollment today! **What else can you do?** Become a volunteer for the Oklahoma High School Mock Trial Program by contacting Judy Spencer at (405) 755-1066. You will be glad you became involved!

OBF

The Oklahoma Bar Foundation wishes to recognize and further honor the newest members of the Fellows Program.

Benefactor Fellows of the Oklahoma Bar Foundation

William R. Bandi – ***Oklahoma City***
Charles W. Chesnut Jr. – ***Miami***
Judge Jerome Holmes – ***Oklahoma City***
Michael E. Joseph – ***Oklahoma City***
David A. Poarch Jr. – ***Norman***
John M. Stuart – ***Duncan***

Sustaining Fellows of the Oklahoma Bar Foundation

Bill Warren – *Oklahoma City*

Welcome to the Newest Fellows of the Oklahoma Bar Foundation

Molly A. Bircher - *Tulsa*
Tadd Justin Pace Bogan - *Tulsa*
Brett D. Cable - *McAlester*
Dan Carsey - *Tulsa*
Christine Cave - *Oklahoma City*
Ben S. Chapman - *Wagoner*
Deresa Gray Clark - *Ada*
Terri R. Craig - *Wagoner*
Frederic Dorwart - *Tulsa*
William E. Farrior - *Tulsa*
Randy L. Goodman - *Nicoma Park*
Tynan Grayson - *Edmond*
Charles C. Green - *Oklahoma City*
Adam C. Hall - *Oklahoma City*
Carla Hart - *Bartlesville*
Mark B. Houts - *Midwest City*
Lowell Glenn Howe - *Muskogee*
Lee E. Jeffries - *Norman*
Eric W. Johnson - *Wagoner*
Michael D. Johnson - *Norman*
R. Sam Kerr IV - *Oklahoma City*
Jesse D. Kline - *Alva*
G. Nash Lamb - *Pryor*
David Joseph Looby - *Oklahoma City*
M. P. Ludlum - *Frederick*
Mark D. Lyons - *Tulsa*
Rachel Kathryn McCombs - *Oklahoma City*
Marty Meason - *Bartlesville*
Lynnwood R. Moore Jr. - *Tulsa*
David L. Mosburg - *Clinton*
Corrine Lynn O'Day - *Muskogee*
Rodney D Ramsey - *Bartlesville*
John F. Reif - *Tulsa*
Ryland L. Rivas II - *Chicasha*
Bruce E. Roach Jr. - *Tulsa*
Tom R. Russell - *Edmond*
F. Douglas Shirley - *Watonga*
Kent Siegrist - *Norman*
Lora Smart - *Tulsa*
Carol L. Swenson - *Tulsa*
Thomas Lee Tucker - *Oklahoma City*
Richard J. Vreeland - *Oklahoma City*
Merl Whitebook - *Tulsa*
Amy Elizabeth Wilson - *Tulsa*
Mickey D. Wilson - *Tulsa*

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

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

__ 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)*

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:_____

Many thanks for your support & generosity!

Using Our Legal Skills to End Homelessness

By William H. Hoch

This year, it is expected that more than 3.5 million Americans will experience homelessness. Of these 3.5 million homeless Americans, 1.35 million are children — the fastest growing homeless population. More than half of these children are under the age of 6. Many are women fleeing an abuser with children in tow. Of these homeless Americans who are working age, 44 percent have a steady job. Obviously, the face of homelessness is changing. And there is much that lawyers can do to assist in the fight against homelessness.

As a former member and chair of the ABA Commission on Homelessness and Poverty, I have become all too acquainted with these statistics and the causes of homelessness. I have also become all too familiar with the lack of legal assistance for individuals experiencing homelessness. Here are some simple ways in which lawyers can help end homelessness:

Volunteer

Visit a shelter in your hometown and inquire as to what its needs are. Let's face it — as lawyers, we are busy with billable hours, firm-related commitments and family obligations. It is hard to find the time. But I can tell you that it will change *your* life when you change another's life. Visit a shelter. Find out what the needs of your community are. Look into the face of a homeless child and his mother and after assisting them with a simple legal matter, try not to feel it. It will change you.

Start a Legal Clinic

People who are homeless have a host of legal problems. They include obtaining identification, accessing housing, securing VA or Social Security benefits, simple criminal matters, custody, divorce, protective orders and related services. As lawyers, we have a great ability to bring about change and are entrusted with a wealth of contacts and abilities — use them. Whether it is through your law firm or through a law school or other means, we have the ability to change a life. Get involved. Start a clinic. Get other lawyers or law students involved.

Start a Homeless Court in Your Community

In 2003, the ABA House of Delegates endorsed the innovative Homeless Court Program. The program is designed to assist a homeless individual's transition from the streets to self-sufficiency by removing legal barriers — such as outstanding warrants — to desperately needed services such as housing, treatment and public benefits. Despite what one might hear from politicians, I have never met anyone who *desires* to be on the streets. It is usually through a series of devastating setbacks that individuals or families find themselves without housing. Lack of affordable housing, financial difficulties, job loss, disabilities, domestic violence, mental illness and substance abuse cause homelessness —

> "...it will change *your* life when you change another's life."

it is not a personal choice of the individual or family to live on the streets. Additionally, many cities in our country are not only hostile to the homeless but also fail to provide the necessary and basic services to prevent and end homelessness.

Rather than addressing the root causes, such as failure to provide affordable housing or assistance to those with mental illness, some communities criminalize homelessness through ordinances. I continue to feel shame as a lawyer for the proceedings I observed in New Orleans. There, I witnessed firsthand homeless individuals being thrown in the city jail without a preliminary hearing for over 90 days for public intoxication, sharing a sandwich on the street corner (seriously!), jaywalking or sleeping on a park bench. The last three are things that anyone can do without concern for incarceration so long as we don't "look" homeless — but not in New Orleans. What about in our community? Do you know? If not, then find out what's going on in your community. If you can help an individual move from homelessness to self-sufficiency because of your efforts in establishing a homeless court, you will be rewarded many fold. I recall the personal testimony of one formerly homeless veteran who said he owed his *life* to Steve Binder (a public defender in San Diego and founder of the Homeless Court Program) and Al Pavich (president and C.E.O. of Veterans Village of San Diego) and that he would keep moving forward because of them. I doubt anyone reading this has received a similar testimony from a client. Why a homeless court? Because we are lawyers and we have the ability to assist the homeless to become self-sufficient.

Serve on a Board of a Shelter

Lawyers can contribute in many ways. One way is by serving on the board of directors at a local nonprofit, service provider or coalition that assist the homeless. Many shelters are run by overworked, well-intentioned individuals that either don't have time or are not adept at maintaining corporate minutes, bylaws, financial statements, regulations and related legal requirements. Lawyers can be a tremendous help in this regard. Lawyers also have clients that they can contact to "get involved." Let your clients know what you are doing and suggest that they join the fight to combat homelessness. It will improve the image of lawyers and, I bet, improve your relationship with your client.

Become an Advocate

No profession is better trained to advocate. Learn about the causes of homelessness. Investigate what is going on in your community. Discover why homelessness is such a pervasive problem in America today (and still growing). Inquire as to why the fastest growing homeless population is comprised of *children*. And then *advocate*. Represent a homeless individual in a simple divorce case or to obtain simple identification. Challenge community leaders to do better. Write letters to the editor of your local newspaper. Tell other lawyers, judges and anyone who will listen what your findings are and then have the courage to act. Do you have what it takes to be the catalyst of change in your community? You should because you can — like no one else can — because you're a lawyer.

If you are interested in assisting the homeless with their legal issues, please feel free to contact Will Hoch at (405) 239-6692 or will.hoch@crowedunlevy.com.

Mr. Hoch is a shareholder in Crowe & Dunlevy's Oklahoma City office. He is a board member for City Rescue Mission, an Oklahoma City homeless shelter.

YLD CHILDREN & THE LAW COMMITTEE SEEKS MENTORS

Oklahoma's youth is our most important asset. Indeed, our future is in their very hands. Yet many young people in Oklahoma face serious problems that greatly elevate their "risk," including teen violence, gangs, bad peer group choices and exposure to a culture that devalues the importance of an education and strong work ethic. A common thread running through all of these problems is the lack of positive role models.

"As young lawyers, just about every one of us can look back and pick out one or two individuals — a coach, a teacher, a family friend — who influenced our lives and helped to shape us into who we are today," said Carol King, co-chair of the YLD's Children & the Law Committee. "Unfortunately, as young professionals, there is also a tendency to get so caught up in our careers that we forget about the needs of children and making a difference in their lives. As a result, there have been fewer and fewer role models for children to look up to."

Last year, determined to do something about it, Ms. King, along with committee Co-Chair Lily Debrah, decided to set up "Mentoring for Success," a YLD project that matches lawyer and law student volunteers with elementary and high school students who have been identified as borderline cases, falling behind or just needing some extra help. Each mentor meets with his or her student once per week at that student's school. Though the sessions must take place during school hours, meeting times are otherwise flexible, thus allowing mentors to come and go as their schedule permits (such as over the lawyer's lunch break). During the mentoring sessions, the participants are free to engage in virtually limitless activities aimed building self-esteem, establishing positive and supportive relationships, helping children overcome negative behaviors, improving the student's classroom participation and developing the character necessary for each student to make the right choices and achieve his or her dreams.

In Oklahoma City, the YLD Children & the Law Committee has teamed up with Integris Health Inc., an Oklahoma not-for-profit corporation. Lawyers and OCU law student mentors are paired with students attending targeted Oklahoma City elementary schools, including Dunbar Elementary, Fillmore Elementary and Western Village Academy. In Tulsa, the YLD is continuing the partnership it forged with Hale High School in 2006, though King hopes to expand the YLD's involvement to other area high schools, including Street School, which is approximately five minutes from downtown Tulsa.

Though the time commitment is only one hour per week, the impact a mentor can have on a child's life during that one hour is profound. A recent study revealed that young teens who met regularly with a mentor for one year demonstrated an overall improved academic performance and were:

- 46 percent less likely to start using drugs;
- 27 percent less likely to start drinking;
- 52 percent less likely to skip a day of school;
- 37 percent less likely to skip a class; and
- 33 percent less likely to have engaged in violence against others

Additionally, children with mentors are less likely to get arrested, apply for welfare, start smoking or carry a weapon.

Mentoring is not difficult nor does it require formal training. It can be whatever a young person needs it to be. Often the mentor is guided by the young person's questions, responses and attitudes.

"The most important thing is that these young people have an adult take an interest in their lives," Ms. King said. "What surprised me, though, was the positive effect being a mentor had on my own life. It's only an hour out of my week, but I come back to work with a bounce in my step."

If you are an attorney in the Oklahoma City area and would like to volunteer as a mentor for an elementary school student, you can act today by contacting Lily Debrah at ldebrah @dmw-law.com. To mentor a high school student in the Tulsa area, contact Carol King at carol.king @sbcglobal.net. If you live in a rural community and would like help implementing the Mentoring for Success program locally, contact YLD Chair Chris Camp at chriscamp @h2law.net.

> "The most important thing is that these young people have an adult take an interest in their lives..."

10 REASONS TO BECOME A MENTOR:

1) You can help one student stay in school, stay free of drugs and prepare for a life of independence.
2) You can enrich your life by helping to build a child's character and self-esteem.
3) You have had help along the way. People believed in you. Now it's your turn.
4) The children waiting for mentors are the future of our nation.
5) You will have fun.
6) The values and behaviors of children are shaped by what they see. A mentor can provide a positive role model.
7) When children abandon their education, become teen parents or get involved in drugs or crime, it becomes everyone's problem.
8) Children who stay in school will have the skills to stay above the poverty level.
9) Mentoring works.
10) If not you, who?

NOTICE OF HEARING ON THE PETITION FOR REINSTATEMENT OF MARI SCOTT LATTING, SCBD 5254 TO MEMBERSHIP IN THE OKLAHOMA BAR ASSOCIATION

Notice is hereby given pursuant to Rule 11.3(b), Rules Governing Disciplinary Proceedings, 5 O.S., Ch. 1, App. 1-A, that a hearing will be held to determine if Mari Scott Latting should be reinstated to active membership in the Oklahoma Bar Association.

Any person desiring to be heard in opposition to or in support of the petition may appear before the Professional Responsibility Tribunal at the Oklahoma Bar Center at 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma, at 9:30 a.m. on **Thursday, April 5th, 2007**. Any person wishing to appear should contact Dan Murdock, General Counsel, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, Oklahoma 73152, telephone (405) 416-7007, no less than five (5) days prior to the hearing.

PROFESSIONAL RESPONSIBILITY TRIBUNAL

NOTICE OF INVITATION TO SUBMIT OFFERS TO CONTRACT

THE OKLAHOMA INDIGENT DEFENSE SYSTEM BOARD OF DIRECTORS gives notice that it will entertain sealed Offers to Contract ("Offers") to provide non-capital trial level defense representation during Fiscal Year 2008 pursuant to 22 O.S. 2001, §1355.8. The Board invites Offers from attorneys interested in providing such legal services to indigent persons during Fiscal Year 2008 (July 1, 2007 through June 30, 2008) in the following counties: **100% of the Indigent Defense System caseload in Adair, Beaver, Cherokee, Choctaw, Cimarron, Craig, Delaware, Harper, Latimer, LeFlore, Lincoln, Mayes, McCurtain, Nowata, Ottawa, Pittsburg, Pushmataha, Rogers, Texas and Wagoner Counties; and 25% of the Indigent Defense System caseload in Blaine, Canadian and Kingfisher Counties; and 33.33% of the Indigent Defense System caseload in Payne County.**

Offer-to-Contract packets will contain the forms and instructions for submitting Offers for the Board's consideration. Contracts awarded will cover the defense representation in the OIDS non-capital felony, juvenile, misdemeanor and traffic cases in the above counties during FY-2008 (July 1, 2007 through June 30, 2008). Offers may be submitted for partial or complete coverage of the open caseload in any one or more of the above counties. Sealed Offers will be accepted at the OIDS offices Monday through Friday, between 8:00 a.m. and 5:00 p.m. **The deadline for submitting sealed Offers is 5:00 p.m., Thursday, March 8, 2007.**

Each Offer must be submitted separately in a sealed envelope or box containing one (1) complete original Offer and two (2) complete copies. The sealed envelope or box must be clearly marked as follows:

FY-2008 OFFER TO CONTRACT TIME RECEIVED:

_____ COUNTY / COUNTIES DATE RECEIVED:

The Offeror shall clearly indicate the county or counties covered by the sealed Offer; however, the Offeror shall leave the areas for noting the time and date received blank. Sealed Offers may be delivered by hand, by mail or by courier. Offers sent via facsimile or in unmarked or unsealed envelopes will be rejected. Sealed Offers may be placed in a protective cover envelope (or box) and, if mailed, addressed to OIDS, FY-2008 OFFER TO CONTRACT, Box 926, Norman, OK 73070-0926. Sealed Offers delivered by hand or courier may likewise be placed in a protective cover envelope (or box) and delivered during the above-stated hours to OIDS, at 1070 Griffin Drive, Norman, OK 73071. **Please note that the Griffin Drive address is NOT a mailing address; it is a parcel delivery address only.** Protective cover envelopes (or boxes) are recommended for sealed Offers that are mailed to avoid damage to the sealed Offer envelope. **ALL OFFERS, INCLUDING THOSE SENT BY MAIL, MUST BE PHYSICALLY RECEIVED BY OIDS NO LATER THAN 5:00 P.M., THURSDAY, MARCH 8, 2007 TO BE CONSIDERED TIMELY SUBMITTED.**

Sealed Offers will be opened at the OIDS Norman Offices on Friday, March 9, 2007, beginning at 9:30 a.m., and reviewed by the Executive Director or his designee for conformity with the instructions and statutory qualifications set forth in this notice. Nonconforming Offers will be rejected on Friday, March 9, 2007, with notification forwarded to the Offeror. Each rejected Offer shall be maintained by OIDS with a copy of the rejection statement.

NOTICE OF INVITATION TO SUBMIT OFFERS TO CONTRACT

Copies of qualified Offers will be presented for the Board's consideration at its meeting on **Friday, March 30, 2007**, at Griffin Memorial Hospital, Patient Activity Center (Building 40), 900 East Main, Norman, Oklahoma 73071.

With each Offer, the attorney must include a résumé and affirm under oath his or her compliance with the following statutory qualifications: presently a member in good standing of the Oklahoma Bar Association; the existence of, or eligibility for, professional liability insurance during the term of the contract; and affirmation of the accuracy of the information provided regarding other factors to be considered by the Board. These factors, as addressed in the provided forms, will include an agreement to maintain or obtain professional liability insurance coverage; level of prior representation experience, including experience in criminal and juvenile delinquency proceedings; location of offices; staff size; number of independent and affiliated attorneys involved in the Offer; professional affiliations; familiarity with substantive and procedural law; willingness to pursue continuing legal education focused on criminal defense representation, including any training required by OIDS or state statute; willingness to place such restrictions on one's law practice outside the contract as are reasonable and necessary to perform the required contract services, and other relevant information provided by attorney in the Offer.

The Board may accept or reject any or all Offers submitted, make counter-offers, and/or provide for representation in any manner permitted by the Indigent Defense Act to meet the State's obligation to indigent criminal defendants entitled to the appointment of competent counsel.

FY-2008 Offer-to-Contract packets may be requested by facsimile, by mail, or in person, using the form below. Offer-to-Contract packets will include a copy of this Notice, required forms, a checklist, sample contract, and OIDS appointment statistics for FY-2003, FY-2004, FY-2005, FY-2006, and FY-2007, together with a 5-year contract history for each county listed above. The request form below may be mailed to OIDS OFFER-TO-CONTRACT PACKET REQUEST, Box 926, Norman, OK 73070-0926, or hand delivered to OIDS at 1070 Griffin Drive, Norman, OK 73071 or submitted by facsimile to OIDS at (405) 801-2661.

* * * * * * * * * * * *

REQUEST FOR OIDS FY-2008 OFFER-TO-CONTRACT PACKET

Name:_____ OBA #: _____

Street Address: _____ Phone: _____

City, State, Zip: _____ Fax: _____

County / Counties of Interest: _____

_____

_____

Calendar

February

13 **OBA Solo & Small Firm Conference Planning Committee Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Roger Reneau (405) 732-5432

14 **State Legal Referral Service Task Force Meeting;** 1 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Dietmar Caudle (580) 248-0202

15 **OBA Work/Life Balance Committee Meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Melanie Jester (405) 609-5280

16 **OBA Board of Governors Meeting**; Oklahoma Bar Center, Oklahoma City; Contact: John Morris Williams (405) 416-7000

17 **OBA/YLD Board of Directors Meeting;** Oklahoma Bar Center, Oklahoma City; Contact: Chris Camp (918) 588-1313

19 **President's Day** (State Holiday) — Bar Center will be closed.

20 **OBA Professionalism Committee Meeting**; 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Steven Dobbs (405) 235-7600

21 **OBA Bar Center Facilities Committee Meeting;** 9 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Bill Conger (405) 521-5845

OBA Diversity Committee Meeting; 3 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Linda Samuel-Jaha (405) 290-7030

22 **OBA Women in Law Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Elizabeth Joyner (918) 573-1143

OBA Legal Intern Committee Meeting; 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: H. Terrell Monks (405) 733-8686

23 **OBA Member Services Committee Meeting**; 2 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Debra Charles (405) 286-6836

feb. 27 - mar. 1

OBA Bar Examinations; 8 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Board of Bar Examiners (405) 416-7075

March

5 **Law Day Contest Judging;** 11 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Lori Rasmussen (405) 416-7018

8 **OBA Bench and Bar Committee Meeting;** 2 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jack Brown (918) 581-8211

9 **OBA Lawyers Helping Lawyers Committee Meeting;** 1 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Thomas Riesen (405) 843-8444

OBA Family Law Section Meeting; 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Donelle Ratheal (405) 842-6342

mar. cont'd

13 **OBA Bar Center Facilities Committee Meeting;** 9 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Bill Conger (405) 521-5845

14 **State Legal Referral Service Task Force Meeting;** 1 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Dietmar Caudle (580) 248-0202

15 **OBA Work/Life Balance Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Melanie Jester (405) 609-5280

OBA Volunteer Night at OETA; 5:45 p.m.; OETA Studio, Oklahoma City; Contact: Melissa Brown (405) 416-7017

17 **OBA Title Examination Standards Committee Meeting;** Oklahoma Bar Center, Oklahoma City; Contact: Kraettli Epperson (405) 840-2470

21 **OBA Diversity Committee Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Linda Samuel-Jaha (405) 290-7030

23 **OBA Lawyers Helping Lawyers Committee Meeting;** 2 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Thomas Riesen (405) 843-8444

27 **OBA Day at the Capitol;** State Capitol, Oklahoma City

29 **OBA Legal Intern Committee Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: H. Terrell Monks (405) 733-8686

30 **OBA Board of Governors Meeting**; Oklahoma Bar Center, Oklahoma City; Contact: John Morris Williams (405) 416-7000

April

10 **OBA Bar Center Facilities Committee Meeting;** 9 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Bill Conger (405) 521-5845

11 **State Legal Referral Service Task Force Meeting;** 1 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Dietmar Caudle (580) 248-0202

OBA Awards Committee Meeting; 3 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Gary Clark (405) 385-5146

12 **OBA Bench and Bar Committee Meeting**; 2 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Jack Brown (918) 581-8211

13 **OBA Family Law Section Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Donelle Ratheal (405) 842-6342

16 **OBA Diversity Committee Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Linda Samuel-Jaha (405) 290-7030

18 **OBA Clients' Security Fund Committee Meeting;** 2 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Micheal Salem (405) 366-1234

19 **OBA Work/Life Balance Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Melanie Jester (405) 609-5280

20 **OBA Board of Governors Meeting;** Oklahoma Bar Center, Oklahoma City; Contact: John Morris Williams (405) 416-7000

20-22 **YLD South Central Regional Conference;** Sheraton Hotel, Oklahoma City; Contact: Keri Williams (405) 385-5148

27 **OBF Trustees Meeting;** 1 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Nancy Norsworthy (405) 416-7070

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.

OBA/CLE and Oklahoma Trial Lawyers Association Present

Nursing Home Negligence in Oklahoma: Advanced Topics for Plaintiffs and Defendants

	Tulsa	Oklahoma City
DATES & LOCATIONS:	April 13, 2007 Crowne Plaza Hotel 100 E. 2nd Street	April 20, 2007 Oklahoma Bar Center 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.

TUITION: $150 for early-bird registrations with payment received at least four full business days prior to the seminar date; $175 for registrations with payment 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/Moderator
Mark A. Cox, Merritt and Associates, Oklahoma City

8:30 a.m. Registration & Continental Breakfast

9:00 **Proving the Pressure Ulcer Case**
Tulsa Program
Ted Sherwood, Ted Sherwood & Associates, Tulsa
Oklahoma City Program
Mark A. Cox

9:50 **Break**

10:00 **Defending the Pressure Ulcer Case**
Tulsa Program
George Gibs, Gibbs Armstrong Borochoff Mullican & Hart, P.C., Tulsa
Oklahoma City Program
Kyle Sweet, Heron, Sweet, Fox & Trout, P.C., Oklahoma City

10:50 **Proving the Falls Case**
Tulsa Program
Thomas Evans, Thomas S. Evans & Associates, Ponca City
Oklahoma City Program
David Kennedy, Attorney at Law, Sherman

11:40 **Networking lunch** (included in registration)

12:10 p.m. **Defending the Falls Case**
Tulsa Program
Timothy Harmon, Secrest, Hill, & Butler, A P.C., Tulsa
Oklahoma City Program
Denis Rischard, Rischard & Phipps, P.C., Oklahoma City

1:00 **Recent Developments and Assisted Living Cases**
Tulsa Program
Guy Thiessen, Carr & Carr, Tulsa
Oklahoma City Program
Jo Slama, Slama Legal Group, Oklahoma City

1:50 **Break**

2:00 **Ethics in Litigating Nursing Home Negligence Cases** (ethics)
Tulsa Program
Thomas LeBlanc, Best & Sharp, Inc., Tulsa
Oklahoma City Program
Glendell Nix, Nix & McIntyre, LLP, Oklahoma City

2:50 **Adjourn**

Nursing Home Negligence in Oklahoma: Advanced Topics for Plaintiffs and Defendants

☐ **Tulsa**
April 13, 2007

☐ **Oklahoma City**
April 20, 2007

☐ **Materials only**
$80

Register online at www.okbar.org/cle

Full Name _____

Firm _____

Address _____

City _____ State _____ Zip _____

Phone ( ) _____ E - Mail _____

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

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Palmer Appointed to Tulsa Bench

Wilma Palmer of Tulsa has been appointed special judge for the 14th Judicial District, encompassing Tulsa and Pawnee counties. She was hired by the district and associate district judges serving the district. Judge Palmer will be the first African-American woman to serve the district. She will fill the vacancy created in December when C. Michael Zacharias resigned.

Judge Palmer is a 1989 graduate of the TU College of Law. She is a general practitioner with experience in domestic, probate, civil and criminal matters. She also has served as general counsel for the Tulsa Housing Authority.

She is a graduate of Tulsa's Booker T. Washington High School and also has a bachelor's degree from TU.

OBA Members to Serve on Legal Ethics Advisory Panel

The Oklahoma Legal Ethics Advisory Panel serves in an advisory capacity for members of the OBA seeking written opinions concerning the compliance of an intended future course of conduct with the Oklahoma Rules of Professional Conduct. Currently serving on the panel are:

Roger Roy Scott, Panel Coordinator
525 S. Main St., Suite 1111
Tulsa, OK 74103
(918) 583-8201
Fax: (918) 582-8803
roger13@mindspring.com

Committee Members: 2007 – Steven Balman, Tulsa; Donna L. Dirickson, Weatherford; Jim Drummond, OKC; Andrew Karim, OKC; Jon Prather, Tulsa.

Committee Members: 2008 – Debra McCormick, Edmond; Allan Mitchell, McAlester; Lynnwood R. Moore Jr., Tulsa; Timila Rother, OKC; Micheal Salem, Norman; John Woodard III, Tulsa.

Committee Members: 2009 – B. Wayne Dabney, OKC; Robert S. Dobbs, OKC; Luke Gaither, Henryetta; Sharisse O'Carroll, Tulsa; Gary A. Rife, Norman; Roger Roy Scott, Tulsa.

Staff Liaison: Gina Hendryx

OBA LRE Helps Students Learn Citizenship

Enid High School outscored two other teams to be named state champion in the "We the People – The Citizen and the Constitution" competition held Jan. 27 at the state Capitol. The team will advance to the national competition in Washington, D.C. in April.

For the competition, the team studied the history and principles of the U.S. Constitution. They formed small groups to make six presentations on different topics during simulated congressional hearings. The six units were scored individually, with Enid winning three of the units and earning the highest overall score.

The OBA administers the We the People program locally through its Law-related Education Program. It is co-sponsored by the California-based Center for Civic Education and the U.S. Department of Education.

"The We the People competition showcases students demonstrating their knowledge and understanding of how democracy works in the United States," said OBA Law-related Education Coordinator Jane McConnell. "Our judging panels listened to their prepared opening statements and followed up with questions. Students then had to explain their positions on relevant historical and contemporary issues facing our society."

Norman High School took second place in the competition, and Tulsa Street School came in third.

Professional Responsibility Reports Now Available

The 2007 Annual Report of the Professional Responsibility Commission and the Professional Responsibility Tribunal is now available on the OBA Web site at www.okbar.org/members/gencounsel/2007AnnualReport.pdf. The report will also be published in the Feb. 24 *Oklahoma Bar Journal*.

Bar Center Holiday Hours

The Oklahoma Bar Center will be closed Monday, Feb. 19 in observance of President's Day.

OBA Member Reinstatements

The following members of the OBA suspended for noncompliance with the Rules for Mandatory Continuing Legal Education have complied with the requirements for reinstatement, and notice is hereby given of such reinstatement:

Clinton Noel Patterson
OBA No. 19689
23701 S. 655 Road
Grove, OK 74344

OBA Member Resignations

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

Kelli Lynn Carriger
OBA No. 11785
832 Deseret Lane
Chapel Hill, NC 27516

L. Royce Coleman
OBA No. 20920
1716 Stonegate Drive
Denton, TX 76205-5446

John E. Dickinson
OBA No. 2352
c/o Aberdden Seafield House
P.O. Box 6046
San Ramon, CA 94583-0746

Gerald Dwayne Ediger
OBA No. 10057
1627 Thistle Lane
Ft. Wayne, IN 46825

Linda Ann Hall
OBA No. 3727
1425 West Virgin St.
Tulsa, OK 74127-2713

Glenn Alton Harrison Jr.
OBA No. 11335
404 Sheffield
Richardson, TX 75081

Charlotte L. Hood-Wright
OBA No. 16848
1600 Ash
Sidney, NE 69162

Marilynn Cooper Rydlund
OBA No. 20441
3627 Bay View Drive
Allegan, MI 49010

Donald K. Switzer
OBA No. 8806
2739 White Oak Drive
Rogers, AR 72756

Wilson Theodore Trammell
OBA No. 10057
6759 Circle J Drive
Tallahassee, FL 32312

OBA/CLE Presents

Primer on Modern Payment Systems

DATES & LOCATIONS: **Oklahoma City**
April 19, 2007
Oklahoma Bar Center
1901 N. Lincoln Blvd.

CLE CREDIT: This course has been approved by the Oklahoma Bar Association Mandatory Continuing Legal Education Commission for 6.5 hours of mandatory CLE credit, including .5 hours of ethics.

TUITION: $150 for early-bird registrations with payment received at least four full business days prior to the seminar date; $175 for registrations with payment received within four full business days of the seminar date. Register online at www.okbar.org/cle

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/Moderator
Fred H. Miller, Phillips, McFall, McCaffrey, McVay & Murrah, Oklahoma City

8:30 a.m. Registration & Continental Breakfast

9:00 **Welcome and Introduction**
Fred Miller

9:15 **Recent Developments and Current Issues Under UCC Articles 3 & 4**
Robert Luttrell, McAfee & Taft, Oklahoma City
Alvin C. Harrell, Oklahoma City University School of Law, Oklahoma City

10:15 **Break**

10:30 **Recent Developments and Current Issues Under UCC Articles 3 & 4**
Robert Luttrell
Alvin Harrell

11:30 **Recent Developments Under UCC Article 4A**
Fred Miller

12:00p.m. Networking lunch (included in registration)

12:30 **Consumer Law Related to Payment Systems**
James A. McCaffrey, Phillips, McFall, McCaffrey, McVay & Murrah, Oklahoma City
Eric Johnson, Phillips, McFall, McCaffrey, McVay & Murrah, Oklahoma City

1:15 **Break**

1:30 **Insolvency Law Related to Payment Systems**
Fred Miller

2:00 **Break**

2:15 **Overview of Payment Systems Other Than the UCC**
Fred Miller
Alvin C. Harrell

3:15 **Ethics Issues in Commercial and Consumer Transaction** (ethics)
Laura Pringle, Pringle & Pringle, Oklahoma City

3:45 **Adjourn**

Primer on Modern Payment Systems

☐ **Oklahoma City**
April 19, 2007

☐ **Materials only**
$80

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Kudos

Tulsa lawyer **Ted Sherwood** has become a fellow of the American College of Trial Lawyers. The induction ceremony was held during the college's recent annual meeting in London. Fellowship in the college is extended by invitation only to those with a minimum of 15 years of trial experience and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality.

Tulsa attorney **D. Michael McBride III** has been named chair of the Federal Bar Association's Indian Law Section. Mr. McBride will lead the section, which is the largest Indian law organization in the U.S., and which also sponsors the largest Indian law conference in the country.

Lawdragon Magazine recently named **Lee Brown**, who practices in Dallas, as one of the 500 Leading Plaintiffs' Lawyers in America. This designation is awarded to less than one-half of one percent of America's 1.1 million lawyers. Mr. Brown practices exclusively in the area of products liability.

The American Law Institute has elected Oklahoma City lawyer **Richard D. Craig** for membership among its ranks. Elected membership is currently limited to 3,000 federal and state judges, lawyers and law professors, and members are selected on the basis of professional achievement and demonstrated interest in the improvement of the law.

The American Institute of Chemical Engineers has appointed environmental attorney **Mary Ellen Ternes** as technical section chair for legislation and regulation for its Environmental Division. In this new role, she is responsible for developing, organizing and chairing educational sessions for the institute's national seminars in the growing area of environmental legislation and regulation. Ms. Ternes' work in this area is complemented by her work as a member of the ABA's Section of Environment, Energy and Resources Council and its Education Service Group.

On The Move

Carol Iski has joined the Reheard Law Office in Eufaula. Ms. Iski spent the last 10 years in the Creek County District Attorney's Office and prior to that was in private practice in Tulsa and Sapulpa. Her practice will focus on litigation and the areas of criminal defense, civil litigation and family in domestic relations in addition to appellate practice. Ms. Iski may be reached at Reheard Law Office, 100 N. 2nd St, P.O. Box 636, Eufaula, 74432 and by phone at (918)689-9281.

Rosenstein, Fist & Ringold announces **Matthew P. Cyran** has been made a member of the firm. Mr. Cyran has been with the firm since 2000; prior to that he was a Tulsa County assistant district attorney. His primary areas of practice are domestic relations, education law and civil litigation. He received his B.A. from the University of Arizona in 1989 and his J.D. from TU in 1997.

Devon Energy Corporation announces the addition of **Carla J. Sharpe** as counsel and **Justin P. Byrne** as senior attorney to its Oklahoma City legal staff. Prior to joining Devon, Ms. Sharpe served as in-house counsel with Delhi Gas Pipeline Corporation, Marathon Oil Corporation and most recently Enogex Inc., all in Oklahoma City. Mr. Byrne most recently was staff counsel at Kerr-McGee Corporation in Oklahoma City.

Crowe & Dunlevy announced that **Douglas S. Tripp**, formerly with the nationwide law firm of Vorys, Sater, Seymour and Pease, has joined the firm as a director. In his new position, Mr. Tripp's practice areas will include outsourcing and technology licensing, bankruptcy law, business and commercial law, collections and

telecommunications. Mr. Tripp is a 1985 graduate of the TU College of Law and received his undergraduate education at Eastern Michigan University He is also a member of the bar in Ohio.

Crowe & Dunlevy also announced that **Elliot P. Anderson, Thomas Biolchini, Scott Freeny, Adam Hall, Nkem Housworth, Brett Liles, Nisha Moreau, Drew Palmer, Cherish K. Ralls, Tom Russell** and **Chris Stephens** have joined the firm as associates.

Mr. Anderson is a 2006 graduate of Pepperdine University School of Law where he graduated first in his class. He received his bachelor's degree from OU in 1998. He focuses his practice on business and commercial litigation.

Mr. Biolchini recently graduated with honors from the University of Notre Dame School of Law. He also received an M.B.A. in finance from the Notre Dame School of Business, where he also graduated with honors. Additionally, he earned his B.A. in economics from Notre Dame. Mr. Biolchini focuses his practice on corporate law.

Mr. Freeny is from Phelps Dunbar in Jackson, Miss., where he was a business/ transactional associate specializing in the gaming industry. Mr. Freeny is a 2003 graduate of Vanderbilt University Law School and also attended Dartmouth College. He focuses his practice on corporate and securities law, financial i nstitutions and finance law, and law pertaining to the hospitality, entertainment and gaming industries.

Mr. Hall is a 2006 graduate of OCU School of Law, and he earned a B.B.A. from OU in 1999. He focuses his practice on business and commercial litigation.

Mr. Housworth is a 2006 graduate of the OU College of Law and received his B.A. from Hendrix College in Conway, Ark., in 2001. He focuses his practice on general litigation.

Mr. Liles recently graduated from the University of Arizona's James E. Rogers College of Law. He received his B.B.A. from OU in 1997, graduating *summa cum laude*. He focuses his practice on business and commercial litigation.

Ms. Moreau recently graduated with honors from the Southern Methodist University Dedman School of Law. In 1993, she earned a baccalaureate in business studies from the College of Business Studies at University of Delhi in India. She focuses her practice on business and commercial litigation.

Mr. Palmer is a 2006 graduate of the OU College of Law. He received a B.A. from Brown University in 1996 and has received additional education at Washington University in St. Louis and OU. His practice focuses on patent, copyright, trademark and software licensing law.

Ms. Ralls is a 2006 graduate of the OU College of Law and received bachelor's degrees in political science and economics from OSU. She focuses her practice on general litigation.

Mr. Russell is a 2006 graduate of the OU College of Law. He earned an M.B.A. from OSU in 2001 and a B.B.A. from NSU in 1999. He will focus his practice on corporate law.

Mr. Stephens is a 2004 graduate of Yale Law School. After law school, he served as a law clerk for Judge Robert H. Henry of the 10th Circuit Court of Appeals. He received his B.S. degree in agricultural economics from OSU in 1998, a master of philosophy degree in land economy from the University of Cambridge in 2000 and an M.S. in comparative social policy from the University of Oxford in 2001. His practice focuses on business and commercial litigation.

James Drummond of Norman has been named to the position of assistant federal defender as supervisor of the Capital Habeas Corpus Unit in the Office of the Federal Defender in Oklahoma City. He will oversee five experienced attorneys in conducting federal litigation in capital cases from Oklahoma's three judicial districts. Previously, he served as chief of the Non-Capital Trial Division, Oklahoma Indigent defense System, for nine years. He is a past chair of the OBA Criminal Law Section.

Richard B. Talley, Douglas S. Crowder and **Samuel L. Talley** are pleased to announce the formation of Talley, Crowder & Talley, an association of professional corporations. Sam Talley has recently joined the offices and practices primarily in criminal defense, general civil litigation, and family and juvenile law. He received his undergraduate degree from OU in 2003 and his J.D. from the OU College

of Law in 2006. He also attended OCU Law School from 2003 – 2004. Talley, Crowder & Talley's offices are located at 219 E. Main St., Norman, 73069. They can be reached by phone at (405) 364-8300 and by fax at (405) 364-7059.

McAfee & Taft has named corporate attorneys **Cheryl Vinall Denney** and **Philip B. Sears** shareholders. Ms. Denney represents and counsels public and private companies in all phases of their business existence. Prior to joining McAfee & Taft in 2003, she was a corporate associate in the New York office of Paul, Weiss, Rifkind, Wharton and Garrison. She is a graduate of OBU and the Georgetown University Law Center. Mr. Sears is a veteran corporate attorney whose practice encompasses a broad range of business transactions and general representation of public and private business entities. He joined McAfee & Taft in 2006 and is a graduate of Penn State University and OCU School of Law.

The law firm of Joyce & Paul PLLC is pleased to announce that **Andrea Treiber Cutter** has joined the firm as its newest partner. She is a 1994 graduate of the Baylor School of Law and a civil litigator with experience in toxic tort, oil and gas, medical malpractice and commercial fraud cases. She is also admitted to practice in Texas.

The law firm of Arnett & Hallett announces that its office has relocated to 5801 E. 41st St., Suite 715, Tulsa, 74135. **Emma Arnett** and **Eric Hallett** can be reached at (918) 270-2604. The firm continues to provide services in the areas of domestic law, estate planning, criminal law and other general practice areas.

Federman & Sherwood announces that **Emily J. Seikel** has joined the firm. Ms. Seikel is a *cum laude* graduate of the University of Pennsylvania with a B.A. in American history. She received her J.D. from the University of Texas School of Law.

Toni D. Hennike announces that she has moved from a position as assistant chief attorney with the Exploration & Development Law Department of Exxon Mobil Corporation to an assistant chief attorney with ExxonMobil Production Company. She is a 1981 graduate of the TU College of Law. She may be reached at (713) 656-6716, 800 Bell St., Houston, TX 77002.

Tamara Schiffner Pullin has joined McAfee & Taft as an associate whose practice is concentrated on labor and employment and general commercial litigation in both state and federal courts. Prior to joining the firm, she worked as a litigation associate with the Dallas office of Gardere Wynne Sewell LLP for three years and with the Houston office of Fulbright & Jaworski LLP for two years. She graduated *magna cum laude* with a bachelor's degree in journalism from OU in 1997 and went on to earn her J.D. with honors from the OU College of Law in 2001.

Glass Law Firm in Tulsa is pleased to announce that **Kurston P. McMurray** has joined the firm in an of counsel capacity. Mr. McMurray is an honors graduate from the TU College of Law. He received his undergraduate degree in business administration and fnance from San Diego State University. He has experience in civil litigation, banking and commercial law, business transactions and contracts, real estate, foreclosure and construction law.

Phillips McFall McCaffrey McVay & Murrah PC announced that **Vickie J. Buchanan** has been named a director of the firm. Ms. Buchanan practices litigation, banking and commercial law with the firm. At 33, she is the youngest female to be named a director in the firm's 20-year history.

Social Security Administration's Office of Disability Adjudication and Review, formerly the Office of Hearings and Appeals, is pleased to announce the selection of **Deborah L. Rose** for the position of Hearing Office chief administrative law judge in its McAlester office. Ms. Rose has worked for the administration for 23 years, most recently in the Tulsa hearing office before being selected as a judge in Jackson, Miss. Ms. Rose graduated from the OU College of Law in 1982.

Jim Buxton and **Joe Carson** are pleased to announce the formation of their new law firm, Buxton Carson PLLC. While the firm will offer a range of legal services in a variety of practice areas, Mr. Buxton and Mr. Carson will continue to focus their practices in the areas of insurance and personal injury litigation. The firm is located at 950 Landmark Towers East, 3535 N.W. 58th St., Oklahoma City, 73112. The phone number is (405)

604-5577, and the firm can be located on the Internet at www.buxtoncarson.com.

At The Podium

Allen K. Harris of Oklahoma City recently presented a paper titled, "Increasing Ethics, Professionalism and Civility: Key to Preserving the American Common Law and Adversarial Systems" to the 2006 Family Practice Montage X seminar co-sponsored by Legal Aid Services of Oklahoma and Oklahoma Indian Legal Services Inc. The paper was published in the recent Symposium Issue of *The ABA Professional Lawyer*.

John W. Mee Jr. was a guest speaker at the recent Oklahoma Tax Institute sponsored by the Oklahoma Society of CPAs. His topic was "2006 Estate Planning Update: Selected Issues."

Joseph H. Paulk of Tulsa has been invited to speak to the membership of the American Society of Trial Consultants at their annual meeting in Long Beach, Calif. The topic of Mr. Paulk's presentation is, "Emerging Trends in ADR – The Trial Consultants Role."

Edmond attorney **Jami Fenner** spoke at the seminar sponsored by Lorman Education Services titled, "Employee Handbooks: Everything You Need to Know to Keep You out of Trouble in Oklahoma," held recently in Oklahoma City. Ms. Fenner addressed handbook provisions related to leaves of absence, compensation and drug and alcohol testing and use.

David A. Trissell of Falls Church, Va., recently spoke at the Second Annual Homeland Security Law Institute held in Washington, D.C., and sponsored by the American Bar Association Section of Administrative Law and Regulatory Practice. Mr. Trissell, chief counsel at FEMA, spoke as part of a panel, "State and Local Emergency Preparedness — Lessons Learned from Katrina" and discussed FEMA's role in Hurricane Katrina, as well as recently enacted legislation that impacts the agency.

T. Douglas Stump served as a featured speaker at the recent American Immigration Lawyers Association MidYear Conference in San Jose, Costa Rica. Mr. Stump spoke on employment-based immigration law and crisis case management.

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:

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Articles for the March 10, 2007 issue must be received by Feb. 19.

Malleck George (M.G.) Coury of Tulsa died Jan. 2. He was born April 7, 1919, in Scranton, Pa., and grew up in Bristow. **After college, he enlisted in the Army's 45th Division and later joined the 81st Wildcat Division.** He attended the TU Law School at night while working at Service Pipeline, graduating with honors. He later worked for Bank of Oklahoma and Big Heart Pipeline; after retiring he joined Coury Properties and was active there until his death. He was active in Tulsa politics and the Knights of Columbus, and he created the Knights of Columbus Foundation. He was also instrumental in the establishment of Center of Family Love, a living center for the adult mentally challenged.

B. Hayden Crawford of Tulsa died Dec. 18, 2006. He was born June 29, 1922, in Tulsa and attended the University of Michigan, graduating in 1944. **He served in the Pacific during World War II as torpedo and gunnery officer on the submarine U.S.S. Spot. He was wounded in battle and earned the Purple Heart and a commendation for his "courage, leadership and inspiration to his men."** He received his law degree from the University of Michigan in 1949. He was named U.S. District Attorney for the Northern District of Oklahoma in 1954; in 1958 he was chosen to serve as U.S. assistant deputy attorney general; two years later, he was named U.S. assistant attorney general. He continued his law practice in Tulsa from 1960 to 2005. He was a 2002 Oklahoma Military Hall of Fame inductee, and was involved with numerous civic, professional, military and university organizations. Memorial contributions may be made to War Memorial Park – U.S.S. Batfish, Muskogee, or to the Alzheimer's Association.

G. Russell Fletcher of Midwest City died Jan. 9. He was born Dec. 30, 1923, near Walters, and graduated from Walters High School in 1941. **During World War II, he served in the U.S. Maritime Services, assigned to various ships and locations throughout the world.** Following the war, he completed his studies at Oklahoma A&M College, graduating with a B.S. in commerce in 1949. He earned a J.D. from OCU in 1958. He worked for Oklahoma Farm Bureau Mutual Insurance Company for 45 years, retiring as personnel counselor and legal director in 1994. He was a member of several community and civic organizations, including the Oklahoma City Zoological Society, symphony and art museum, the Oklahoma City Elks Lodge and the Masonic Cotton County Lodge for more than 50 years. Memorial contributions may be made to the Walters Public School Foundation or to the United Methodist Church of Walters.

David W. Jacobus Jr. of Watauga, Texas, died Jan. 28. He was born Feb. 12, 1935. He was a 1959 graduate of the TU College of Law. He served on the OBA Board of Governors from 1993 – 1995. Mr. Jacobus was very active with the Tulsa County Bar Association, including serving as president for the 1989-1990 term. He won the outstanding TCBA Senior Lawyer award in August 1991. He helped raise more than $1 million for the complete renovation of the Tulsa County Bar facility and started the first monthly publication of *The Tulsa Lawyer*. He also started the TCBA's Community Outreach Committee, which has become one of the association's most active committees. He also helped established the Neil Bogan Professionalism Award, presented both by the OBA and the TCBA. Memorial donations can be made to the Tulsa County Bar Foundation.

Thomas N. (Buzz) Keltner of Oklahoma City died Jan. 11. He was born June 15, 1917, in Tishomingo and attended OU. **He withdrew from college to serve during World War II as a B-26 pilot with 69 missions over Europe, earning the Distinguished Flying Cross and the Croix de Guerre from Charles de Gaulle.** He completed his law degree at OU in 1947. He practiced privately in Albuquerque, N.M., for several years and returned to Oklahoma to become chief counsel to the Oklahoma State Highway Department. He served in several church and community organiza-

tions, including as a docent at the National Cowboy and Western Heritage Museum. He also enjoyed golf and coaching Little League. Memorial contributions may be made the St. Eugene's Catholic Church New Church Fund.

Retired associate district judge **Billy Lee Martin** of Okmulgee died Dec. 18, 2006. He was born April 15, 1925, in Wetumka and graduated from Morris High School in 1942. **He served in the Navy during World War II, serving in the Construction Battalion known as the Navy Seabees. He later served during the Korean conflict.** He received his J.D. from the Loyola University School of Law in New Orleans in 1967, and was also admitted to the bar in Louisiana and Texas. After working several years for the Exxon Oil Company, he returned to Oklahoma in 1978, practicing privately for 10 years, then serving for 12 years as associate district judge in Okmulgee. He was a long-time member and past president of the Okmulgee Chapter of Gideon's International. Memorial contributions may be made that organization.

Robert "Bob" Miles of Liberal, Kan., died Nov. 30, 2006. He was born Sept. 4, 1953, in Beaver. He graduated from Forgan High School in 1971, received his B.A. in government from N.W.O.S.U. in 1975, and graduated from OU College of Law in 1977. He moved to Marietta and became the assistant district attorney. In September 1978, he moved to Liberal and began practicing privately, also serving as a part-time county attorney. He was also a former municipal judge in Hooker and in Satanta, Kan. He was also a member of the Kansas Bar Association, the ABA and the Kansas Trial Association. He was active in Jaycees, Lions Club and other community service organizations, including service as past president of the Liberal Bee Jays Baseball Board. Memorial donations may be sent to Seward County (Kan.) Community College Saint baseball.

Maurice E. Stuart of Waco, Texas, died Dec. 29, 2006. He was born Jan. 2, 1915, in Lebanon, Ind., and grew up in Oklahoma, attending Central High School in Oklahoma City and earning a B.A. and LL.B. from OU in 1938. **During World War II, he served as an adjutant general of the 82nd Airborne Division in North Africa and Europe. He earned six battle stars and was awarded the Bronze Star Medal with Oak Leaf Cluster. He attained the rank of lieutenant colonel and was discharged in 1945.** He settled in Waco and was involved in investments and the oil and gas business. He was active in the Northwest Waco Rotary Club.

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THE OKLAHOMA CORPORATION COMMISSION has an opening in its Office of Administrative Proceedings, Oklahoma City, for an Administrative Law Judge to conduct hearings within the agency's oil and gas conservation jurisdiction, salary level to be determined based upon education and work experience. Applicants must be admitted to the Oklahoma Bar Association or eligible for admission without examination. Preference will be given to licensed attorneys with undergraduate or graduate degrees in petroleum engineering or geology. Send resume and writing sample to Ms. Patrica Walters, Human Resources Department, Oklahoma Corporation Commission, P.O. Box 52000, Oklahoma City, Oklahoma, 73152-2000, Telephone: (405) 522-2220, FAX: (405) 521-4983, E-mail: p.walters @occemail.com. Deadline: February 21, 2007.

OKLAHOMA CITY INSURANCE COMPANY seeks attorney with 0 to 2 years experience for assistant in-house counsel position. Strong academic record required. Ability to work independently. Submit cover letter, resume, transcript, and writing sample to Box "H," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

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AV RATED OKC/TULSA insurance defense firm seeks associate with 2 to 5 years experience for OKC office. Personal injury/insurance defense experience helpful. Must have strong academic record, writing skills and ability to work independently. Salary and benefits commensurate with experience. Send resume to Box "N," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

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POSITIONS AVAILABLE

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AV NORTHWEST OK FIRM seeking associate with at least 3 years experience in two or more of the following areas: Real estate, oil and gas, estates and trusts, business entities and contract law. Send resume to: Box "L," Oklahoma Bar Association P.O. Box 53036 Oklahoma City, OK 73152.

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The Few, the Proud, the Undervalued
Oklahoma's Child Support Attorneys

By Tery DeShong

Having worked as a state child support attorney for the past nine years, I can attest to the "undervalued" portion of this title. For all the blood, sweat and tears state attorneys put into obtaining and collecting child support, there are few people that we make truly happy. Custodial parents want their support faster, and more money would be nice too! Non-custodial parents hate the fact that their paychecks must be garnished, that the state garnishes bank accounts and intercepts income tax refunds. Attorneys for non-custodial parents are not happy with the powers afforded the DHS Child Support Enforcement Division by the Legislature.

Given that the vast majority of those we serve are so darn unhappy all the time, why in the world do we continue to work as child support attorneys? The money? The glory? The day-to-day "fun, fun, fun" environment? Not so much. We do what we do for the children.

There are 43 child support offices in Oklahoma, where approximately 60 attorneys handle in excess of 175,000 cases. Collections statewide range from $15 to $23 million dollars each month, and for this past year, collections were in excess of $186,544,000. While some of the money is retained by the state to reimburse state expenditures, the vast majority of the money goes directly into the homes of the child or children and custodial parent.

Given the volume of cases and amount of collections, you would think we would make more people happy. Oh, there is the occasional thank you note or letter (I last received a "thank you" note two years ago) from a happy custodial parent who is now getting monthly support, but those are the exception and not the rule.

It is difficult at times, not to become depressed and overwhelmed at the job that lies ever before us. We always have new cases coming in faster than we can obtain collections. We are never actually completed with our work, or finished at the end of any day. It is frustrating, time-consuming work that continues to be an on-going, daily struggle to keep our heads above water. And yet more than 60 attorneys "fight the good fight" each day in courtrooms, both district and administrative, across the state. We fight to put more revenue into the households of the children growing up with one or more parents absent from the home. We struggle to ensure that those the court has ordered to pay child support are made to comply with that order. We strive to do the best we can, collect as much as we can and not forget these are people's lives we are dealing with, not just another case file.

Many days we not only have to deal with frustrated and unhappy customers, but we also must face the slings and arrows of the private bar. When you find yourself angry with a child support attorney, I would ask that you try and remember the following: what we do is analogous to an emergency room where everyone needs help and is clamoring for personal attention RIGHT NOW. We must triage our cases to help thousands as best we can; do our utmost to obtain support for that family and then move on to the next person who desperately needs our help.

Child support attorneys do a thankless job. We do it well, continually and with professionalism. We are not the enemy, or the "evil empire;" we are highly trained attorneys who work tirelessly for children. We are your equals, we are your colleagues and we are doing the best we can given our limited resources. Child Support: It's not just a job; it's not *just* an adventure…. It's our calling.

Ms. DeShong is the managing attorney for the Tahlequah Child Support Enforcement Office.