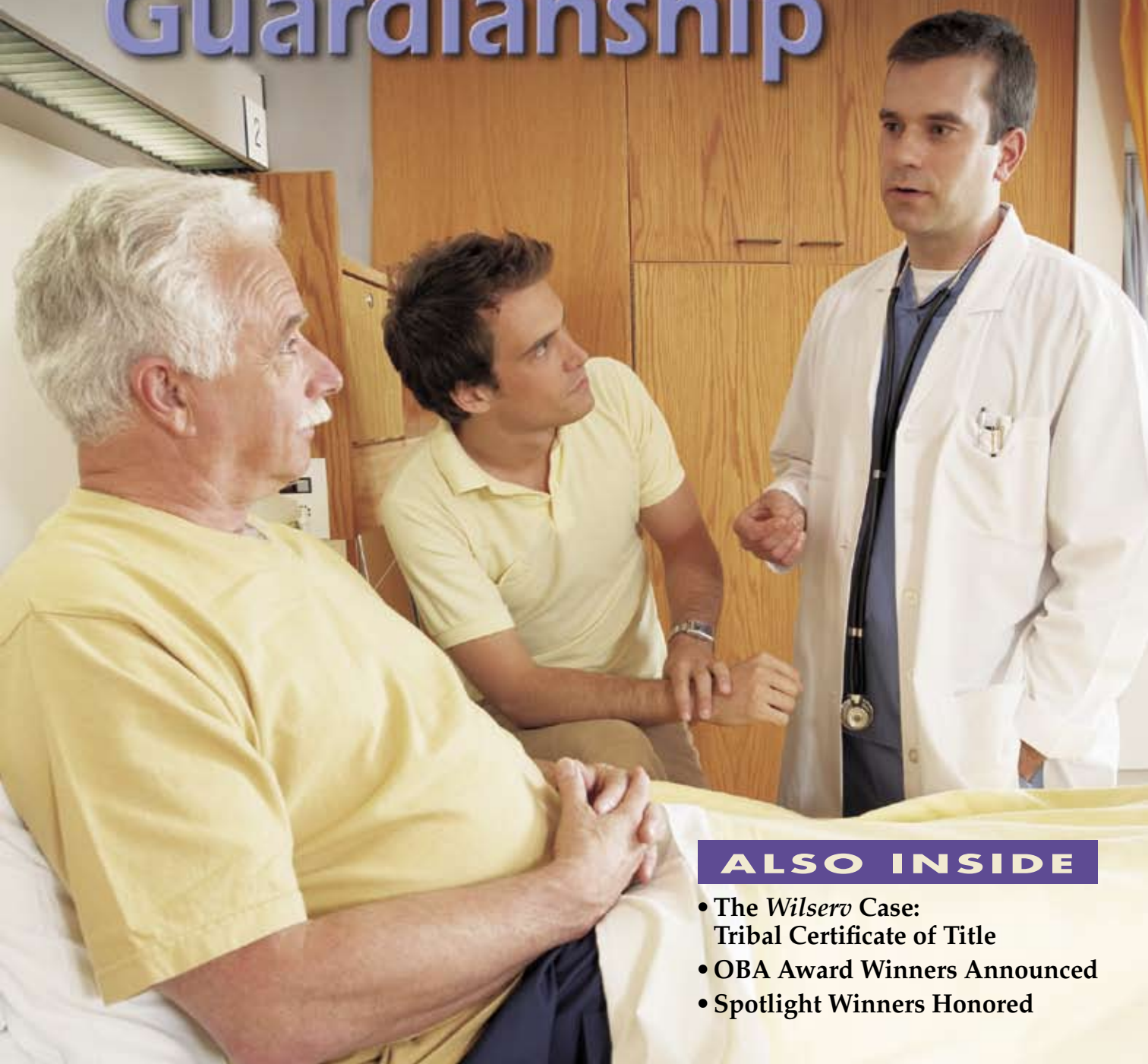


# WIT Oklahoma Bar JOURNAL

Volume 79 ♦ No. 26 ♦ October 11, 2008

## Guardianship



### ALSO INSIDE

- The Wilsero Case:  
Tribal Certificate of Title
- OBA Award Winners Announced
- Spotlight Winners Honored

# CALENDAR OF EVENTS SEPTEMBER & OCTOBER

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OCTOBER 24, 2008, RENAISSANCE HOTEL, TULSA

OCTOBER 31, 2008, OKLAHOMA BAR CENTER, OKC

#### 2008 LAW OF THE WORKPLACE: UPDATES, TRENDS, AND HOT TOPICS IN THE EMPLOYMENT LAW ARENA

OCTOBER 24, 2008, OKLAHOMA CITY, OKC

OCTOBER 31, 2008, RENAISSANCE HOTEL, TULSA

#### WRITING TO WIN: LEGAL WRITING THAT CREATIVELY, PERSUASIVELY, AND SUCCESSFULLY WINS CASES

OCTOBER 29, 2008, RENAISSANCE HOTEL, TULSA

OCTOBER 30, 2008, OKLAHOMA BAR CENTER, OKC

#### THE WINNER'S CIRCLE: AN EVENING OF ETHICS, FOOD, AND RACING FUN!

OCTOBER 31, 2008, REMINGTON PARK, OKC

#### INDIAN GAMING PRACTICE IN OKLAHOMA

NOVEMBER 6, 2008, OKLAHOMA BAR CENTER, OKC

NOVEMBER 13, 2008, RENAISSANCE HOTEL, TULSA

#### LCC TAXATION

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NOVEMBER 6, 2008, OKLAHOMA BAR CENTER, OKC

#### OKLAHOMA LCCs - AN INTENSIVE INTRODUCTION

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NOVEMBER 7, 2008, OKLAHOMA BAR CENTER, OKC

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OCTOBER 15 CIVIL AND CRIMINAL COURT RULES FOR  
THE U.S. DISTRICT COURT FOR THE  
EASTERN DISTRICT OF OKLAHOMA

OCTOBER 16 GOT ARRESTED?

OCTOBER 17 EARLY TO BED, EARLY TO RISE: AN  
ATTORNEY'S GUIDE TO STAYING HEALTHY,  
WEALTHY AND WISE

OCTOBER 22 CIVIL AND CRIMINAL COURT RULES FOR  
THE U.S. DISTRICT COURT FOR THE  
WESTERN DISTRICT OF OKLAHOMA

OCTOBER 24 2008 LAW OF THE WORKPLACE

OCTOBER 29 CIVIL AND CRIMINAL COURT  
RULES FOR THE U.S. DISTRICT  
COURT FOR THE NORTHERN  
DISTRICT OF OKLAHOMA

OCTOBER 31 A SURVEY OF ATTORNEY LIENS

NOVEMBER 6 INDIAN GAMING PRACTICE  
IN OKLAHOMA

NOVEMBER 7 HANDLING MONEY LAUNDERING  
AND STRUCTURING CASES

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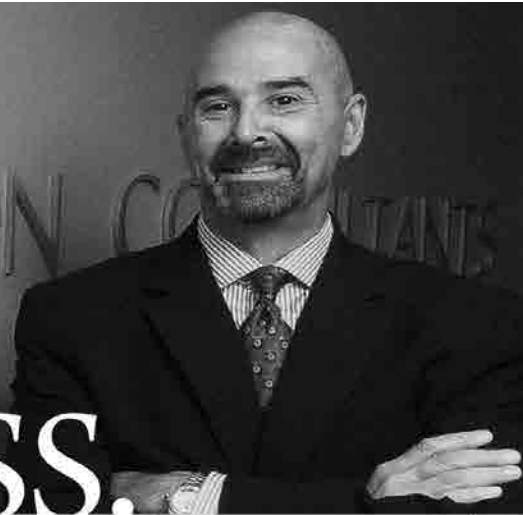


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**THEME:**  
**GUARDIANSHIP**  
EDITOR: STEPHEN BARNES

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# contents

October 11, 2008 • Vol. 79 • No. 26

pg. 2175



## FEATURES

- 2175 A PRIMER ON GUARDIANSHIP  
PROCEDURE: GETTING  
THE CASE STARTED  
*By L. Michele Nelson*
- 2181 A PRIMER ON GUARDIANSHIP  
PROCEDURE: RECORD KEEPING  
AND PAPERWORK  
*By L. Michele Nelson*
- 2189 TEMPORARY GUARDIANSHIP  
PROCEEDINGS UNDER THE  
PROTECTIVE SERVICES FOR  
VULNERABLE ADULTS ACTS  
*By Yvonne Fisher*
- 2199 THE ELDERLY CLIENT  
*By Phyllis Bryce and Cara Collinson Wells*



pg. 2213  
AWARD WINNERS

## DEPARTMENTS

- 2172 FROM THE PRESIDENT
- 2243 FROM THE EXECUTIVE DIRECTOR
- 2245 LAW PRACTICE TIPS
- 2247 ETHICS/PROFESSIONAL RESPONSIBILITY
- 2249 OBA BOARD OF GOVERNORS ACTIONS
- 2252 OKLAHOMA BAR FOUNDATION NEWS
- 2255 ACCESS TO JUSTICE
- 2257 YOUNG LAWYERS DIVISION
- 2262 OFFICIAL YLD ELECTION BALLOT
- 2264 CALENDAR
- 2267 FOR YOUR INFORMATION
- 2269 BENCH AND BAR BRIEFS
- 2273 IN MEMORIAM
- 2256 EDITORIAL CALENDAR
- 2280 THE BACK PAGE

pg. 2205  
WILSERV CASE



## PLUS

- 2205 CAN A BUYER AND SECURED PARTY  
RELY ON A CERTIFICATE OF TITLE?  
PART IV: THE WILSERV CASE  
*By Alvin C. Harrell and Fred H. Miller*
- 2213 WOMEN IN LAW COMMITTEE  
PRESENTS SPOTLIGHT AWARDS  
*By Deborah J. Bruce*
- 2215 ANNUAL MEETING
- 2237 PHOTO HIGHLIGHTS: CARTER COUNTY BAR  
HOSTS BOARD OF GOVERNORS
- 2239 GET INVOLVED — VOLUNTEER  
FOR AN OBA COMMITTEE
- 2240 STATEMENT OF OWNERSHIP

## Transforming Our Profession

By Bill Conger

I have been speaking a lot this past year about the state of our profession. Recently, I spoke at the opening banquet of the William J. Holloway American Inn of Court. My remarks began with the premise that we are a profession in crisis. Consider the following:

- the poor reputation of lawyers within our society
- high rate of dissatisfaction among young lawyers
- high departure rate for lawyers from the profession - especially women
- growing economic pressures on all law firms
- high levels of client dissatisfaction — formal complaints and malpractice action
- client dissatisfaction with hourly billing rates, increasingly large legal bills and insistence on alternative billing structures
- increasing lack of civility and professionalism among lawyers
- increasing delays in litigation
- high level of substance abuse and mental illness among lawyers.

I submit to you we have a profession in serious need of transformation — and it is incumbent upon all of us to take steps now to ensure public esteem for the rule of law and the legal profession.



*Bill Conger*

President Conger  
is general counsel  
at Oklahoma City  
University.  
bconger@okcu.edu  
(405) 208-5845

Why has the prestige of our profession continued to drop in polls? I, and others, believe it is because the profession of law has become the “big business of law.” We must go back to the basics of our profession. We speak in lofty terms that ours is an ancient and noble profession. But what does that really mean? Two things come to my mind. One, it is a learned profession. We are very educated and continue with our education. Second, our profession is noble because it implies service to others, especially those who are most vulnerable in our society — the infirmed, children, the elderly and, of course, those who cannot get access to the

justice system because they cannot afford it.

David Hall, a former dean at Northeastern University School of Law, gave the keynote address to the National Association of Public Interest Law Conference in 1998.

The conference theme that year was “Raising the Bar: A Campaign to Transform the Legal Profession.” Dean Hall made a number of important points in that address that I want to share with you. He began by suggesting that if we are to transform our profession we must begin by first transforming ourselves by raising the standard and bar in our own life. He counseled us that lawyers of the future must not be measured and rated by the type of work they do but by the values they possess and live by.

**“...lawyers of the future must not be measured and rated by the type of work they do but by the values they possess and live by.”**

I think the Hon. Judith Kaye, chief judge of the State of New York, said it best, “Success in the law is not measured by the biggest salary or the most prestigious firm. You must see success in terms of righting wrongs, ending discrimination, changing attitudes, helping people in trouble, confronting and overcoming injustice.”

*cont'd on page 2242*



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# EVENTS CALENDAR

## OCTOBER

- 14 **OBA Annual Meeting Task Force Meeting**; 3 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Bill Conger (405) 208-5845
- 15 **Ruth Bader Ginsburg American Inn of Court**; 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Julie Bates (405) 691-5080
- 17 **OBA Lawyers Helping Lawyers Assistance Program Meeting**; 11:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Tom C. Riesen (405) 843-8444
- OBA Access to Justice Committee Meeting**; 10:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Kade A. McClure (580) 248-4675
- 21 **OBA Civil Procedure Committee Meeting**; 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: James C. Milton (918) 591-5229
- Hudson Hall Wheaton Inn Pupilage Group Two**; 5:30 p.m.; Federal Building, 333 West Fourth St.; Contact Michael Taubman (918) 260-1041
- Death Oral Argument; John Fitzgerald Hanson -- D-06-126**; 10 a.m.; Court of Criminal Appeals Courtroom
- 22 **Oklahoma Hispanic Bar Network Meeting**; 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Saul Olivarez (405) 227-9700
- 23 **OBA Bench & Bar Committee Meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Jack Brown (918) 581-8211
- 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
- OBA Budget Committee Hearing**; 4 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jon Parsley (580) 338-8764
- 24 **OBA Board of Governors Meeting**; 9 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: John Morris Williams (405) 416-7000
- 25 **OBA Mock Trial Committee Meeting – Student Clinic**; 9 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Judy Spencer (405) 755-1066

For more events go to [www.okbar.org/news/calendar.htm](http://www.okbar.org/news/calendar.htm)

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# Guardianship

## A Primer on Guardianship Procedure Getting the Case Started

By L. Michele Nelson

### IDENTIFYING INCAPACITY AND TYPE OF GUARDIANSHIP NEEDED

*Is the Proposed Ward Incapacitated?*

**W**hen starting a guardianship case, first it must be decided whether the party needing assistance is incapacitated and what type of case and guardians are needed.

The petitioner who seeks to be appointed as guardian for another person must show that the person is incapacitated and in need of a guardian. The Oklahoma statutes<sup>1</sup> define an incapacitated person as a person 18 years of age or older:

1) who is impaired by reason of:

- mental illness as defined in the mental health code;<sup>2</sup>
- mental retardation or developmental disability as defined in the public health and safety code;<sup>3</sup>
- physical illness or disability;
- drug or alcohol dependency as defined under the mental health code;<sup>4</sup> or
- such similar cause, and

2) whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that said person:

- lacks the capacity to meet essential requirements for his physical health or safety, or
- is unable to manage his financial resources.

A showing of incapacity can be made by introduction of medical reports or opinion

letters from the alleged incapacitated person's physician, testimony of the treating physician, a determination by an administrative body (*i.e.*, a Social Security Administration or Veterans Administration ruling from an administrative determination), or testimony of the petitioner and witnesses. The court may also make inquiry of the alleged incapacitated person to make a judicial determination. Once the party has been determined to be incapacitated, the extent of the incapacity and needs of the incapacitated person, who is called the ward, need to be evaluated.

An evaluation can be performed by a geriatric physician, a neurologist or a geriatric psychiatrist, or an evaluation based upon an examination of a combination of these health care providers. The person seeking guardianship, or the appointed guardian, will want the evaluation to provide the guardian with a proposed care plan. The plan should include the physician's recommendations on living arrangements, care needs, what activities the proposed ward can do on their own and what activities they may need assistance in completing. The evaluation may have recommendations on whether the proposed ward has the abilities to assist in making decisions relating to their finances and medical care, and whether they can still drive and be left alone for any period of time. Some



physicians may even provide an opinion on whether the proposed ward is capable of voting and other activities that should only be restricted or limited at later stages of incapacity. If the physician is not able to provide a detailed analysis and care plan, there are home health care agencies who have experienced geriatric social workers and nurses on staff who will evaluate the proposed ward and provide a care plan. These employees can also tour the ward's home and make a list of renovations to make the home safer and easier to maneuver for the ward, if the ward is determined to be best cared for in their own home.

The social needs of the ward, especially in dementia patients, to keep their mind sharp as long as possible should also be addressed by including social activities, such as adult day centers.

#### *What Type of Guardianship is Needed?*

There are generally four types of guardianship cases. A special guardian is appointed for an emergency purpose, generally not to exceed 30 days.<sup>5</sup> Often, an emergency guardian is appointed to protect the ward or the ward's property until the hearing on the general guardianship can be held and notice given to the required parties, at which time a permanent guardian can be appointed. A limited guardian is a person authorized by the court to exercise limited powers over the ward or the ward's property.<sup>6</sup> Limited guardians are generally appointed when the ward maintains a certain level of competence but is not competent to manage all of his or her own affairs, or is limited in his or her ability to manage certain types of affairs. For example, a ward may be competent to pay routine bills and manage funds for buying groceries but may be unable to manage investments. Possibly, the ward may be susceptible

to undue influence from third parties but is otherwise able to manage minimal funds for their basic living needs. A general guardianship can be over the person, property or over both the person and the property.<sup>7</sup> A ward may be able to care for personal needs but unable to manage their finances and assets, or able to manage funds and assets but unable to care for their personal needs. A ward who is unable to manage any of his or her own needs or is unable to protect their health and safety is under a general guardianship of the person and property. There is also a distinction between

adult incapacity and the incapacity of minor children, in which the latter has different procedures which must be followed, including background checks for all adults in the household, and further distinctions between relative and non-relative guardians.

This article will focus on the procedures for adult guardianships. The Guardianship Handbook and the Relative Guardianship Handbook can be found online through the OSCN Web site under the Administrative Office of the Court Forms.<sup>8</sup> Attorneys should be familiar with the Guardianship Handbook and should always give a copy of the handbook to every guardian at or before the first hearing when the guardian is appointed. Guardians should be advised about all deadlines and record keeping procedures which they will be required to follow. Additionally, guardians should be advised that their job as guardian is a fiduciary duty and that they must treat the ward's care and finances with the utmost respect and vigilance. In my practice, I have seen too many guardians who have not been advised of their responsibilities and duties, and several years into their

“This article will focus on the procedures for adult guardianships.”



“In a petition for an emergency guardianship, the petitioner must show that the person in need of a guardian is in imminent danger and that the health or safety of the person will be seriously impaired...”



appointments have had to begin record keeping and try to reconstruct accountings back to the date of their appointments, which is an onerous task.

Once you have determined that the person is incompetent and what type of guardianship is needed, the procedure begins with the petition for guardianship. If a special guardian is needed to protect the incapacitated person or their assets, the petition should plead for the appointment of a special guardian, as well as requesting a hearing for the appointment of a general guardian. In a petition for an emergency guardianship, the petitioner must show that the person in need of a guardian is in imminent danger and that the health or safety of the person will be seriously impaired or the financial resources of the person will be seriously damaged or dissipated unless immediate action is taken; and there is no person that appears to have authority to act under the circumstances or a guardian previously appointed refuses to take action.<sup>9</sup> The petition for special guardianship must be verified by the petitioner.<sup>10</sup>

#### **FILING THE PETITION AND GIVING NOTICE**

The petition for appointment of special guardian may be issued without notice to the proposed ward, or a hearing may be set within 72 hours and notice of the hearing must be served on the proposed ward.<sup>11</sup> Regardless of whether a special guardian is appointed without notice, a notice of the hearing on the general guardianship must be given to all persons required under the statute. Those persons are 1) the proposed ward, 2) the

proposed ward's attorney, 3) the spouse of the proposed ward, and 4) at least one other adult relative of the proposed ward who is not the petitioner for an emergency proceeding hearing.<sup>12</sup>

For the hearing on the general guardianship, in addition to the ward, the ward's attorney and the ward's spouse, notice must also be given to 1) all adult children of the proposed ward, and 2) if there are no children, the living parents of the proposed ward, and 3) if there are no living parents of the proposed ward, then to all adult brothers and sisters of the proposed ward and all adult grandchildren of the proposed ward. If none of the above are known or can be ascertained with reasonably diligent efforts, then notice shall be given to at least one and not more than three of the proposed ward's nearest adult relatives.<sup>13</sup> Notice must also be given to any person other than the petitioner who is requested in the petition to be appointed as guardian, the administrator of any facility having custody of the proposed ward (*i.e.*, a hospital, assisted living facility or a nursing home), and the Department of Human Services or the Department of Mental Health and Substance Abuse Services, and the Veteran's Administration, if any of those agencies are providing services to the proposed ward.

The notice of the hearing shall be mailed by regular first-class mail at least 10 days prior to the hearing,<sup>15</sup> and the hearing must be set within 30 days after the filing of the petition.<sup>16</sup> The notice given to the ward with a copy of the petition must be in a form substantially the same as the form provided in the statutes.<sup>17</sup> The

notice advises the proposed ward of the ward's right to attend the hearing, to call witnesses and put on evidence and the proposed ward's right to have his own attorney and that the court will appoint an attorney for the proposed ward, to be paid from the ward's funds, if sufficient. The proposed ward shall be given the petition and notice by personal service, at least 10 days prior to the hearing to appoint the guardian.<sup>18</sup>

#### WHO CAN SERVE AS GUARDIAN?

When the court is determining who can serve as guardian of the ward, the court first looks at the nomination of guardian in the ward's will or other estate planning document or any nomination made by the parent of an unmarried incapacitated person, the spouse of the incapacitated person or an adult child of a incapacitated parent who has previously served as the guardian.<sup>19</sup> If no nomination has previously been made, the statutes contain a list of persons who have priority to serve as guardian.<sup>20</sup> The order of priority include the person nominated by the proposed ward, a previously appointed guardian in another jurisdiction, a person nominated by a deceased spouse, parent or child who was serving as the ward's guardian, the spouse, the adult child, the parent of the ward, a sibling of the ward or any person with whom the proposed ward has been living for more than six months prior to filing the petition.<sup>21</sup> However, the owner or employee of nursing home, group home or residential home shall

“The statutes contain eligibility requirements and disqualifications for persons petitioning for appointment as guardian.”



not be appointed unless they are related to the proposed ward.

The statutes contain eligibility requirements and disqualifications for persons petitioning for appointment as guardian. The proposed guardian shall not serve as guardian for more than five persons at any time.<sup>22</sup> The court shall conduct an inquiry into whether the proposed guardian is suitable to serve as guardian.<sup>23</sup> The inquiry includes a criminal background check to determine if there are prior convictions, pending charges or protective orders filed. A background check is also run on any adult members of the guardian's household. An inquiry is made to determine if the proposed guardian has filed for bankruptcy within five years of filing the petition or is insolvent. The proposed guardian should not be under any financial obligation to the ward and should not have a conflict of interest that would be substantially detrimental to the best interest of the ward. If any of these inquiries identifies conditions which may disqualify

the proposed guardian from serving, the court may make additional inquiry to determine if the potential disqualifications would adversely affect the ability of the proposed guardian to serve the best interests of the ward.<sup>24</sup> The court may waive the posting of a bond by the guardian, if the assets and yearly income of the ward is less than \$40,000 or if the guardian is the ward's spouse, parent, brother, sister, grandparent, child or grandchild of the ward.<sup>25</sup>



## WHAT POWERS DOES THE GUARDIAN HAVE?

The powers of the guardian over the person are limited to those granted in the statutes and authorized by the court. The limitations on the guardian's powers are not limited to the following: the guardian shall not have the power to withhold or withdraw life support, except with the specific authorization of the court, or as authorized by the ward's prior advanced directive or do-not-resuscitate order.<sup>26</sup> The ward may not consent to the termination or relinquishment of the ward's parental rights.<sup>27</sup> The guardian may not consent to certain specified surgical or medical procedures except with court authorization.<sup>28</sup> The guardian may not prohibit the ward from marrying,<sup>29</sup> and the guardian may not consent to the placement of the ward in a facility for commitment without a formal commitment proceeding wherein the ward has independent counsel.<sup>30</sup>

The powers of and restrictions on the guardian over the property of the ward are outlined in the statutes.<sup>31</sup> The guardian is responsible for payment of the debts of the ward,<sup>32</sup> collection of the debts owed to the ward,<sup>33</sup> and settlement of claims or law suits requires approval of the court.<sup>34</sup> The guardian must obtain an order from the court before selling any real property of the ward or making investments for the ward.<sup>35</sup> Other investment guidelines under the statutes restrict investments to federal, Oklahoma and municipal bonds, annuities authorized under the statutes not to exceed \$300,000, banking accounts in Oklahoma banks and credit unions, and time deposits and certificates of deposit issued by Oklahoma banks not to exceed the amount insured by the U.S. government.<sup>36</sup>

When a loved one reaches a point where they can no longer care for themselves, it is a stressful time for their family. Therefore, the attorney must guide their clients through this difficult time and assist them with making decisions regarding the care of their loved ones. Because of the statutory requirements to ensure the due process rights of the ward and notice to all of the family members, guardianship procedure may be a difficult maze for your clients to navigate, at a time when the clients are already in a stressful situation. Therefore, it is imperative that the attorney provide the guardian with the Guardian's Handbook, which outlines the basic requirements of serving as guardian, and the

attorney should also counsel their clients with the alternatives for the ward's residential living arrangements, care needs, social need, as well as financial management of the ward's resources. The attorney should also advise the client of social services available to assist them with the care of their loved ones, as well as assisting them with maintaining their own health, while taking care of the ward.

1. 30 Okla. Stat. 1-111(A)(12).
2. 43A Okla. Stat. § 1-103.
3. 63 Okla. Stat. § 1-818.2.
4. 43A Okla. Stat. § 3-403.
5. 30 Okla. Stat. § 3-115.
6. 30 Okla. Stat. § 1-109.
7. *Id.*
8. See, [www.oscn.net/static/forms/AOCforms.asp](http://www.oscn.net/static/forms/AOCforms.asp) - Forms 82 and 83.
9. 30 Okla. Stat. § 3-115(A).
10. 30 Okla. Stat. § 3-115(B).
11. 30 Okla. Stat. § 3-115(C), (D).
12. *Id.*
13. 30 Okla. Stat. § 3-110(A).
14. 30 Okla. Stat. § 3-110(A). See also, 72 Okla. Stat. § 126.8 regarding Veterans Administration.
15. 30 Okla. Stat. § 3-110(C).
16. 30 Okla. Stat. § 3-109.
17. 30 Okla. Stat. § 3-110(D).
18. 30 Okla. Stat. § 3-110(C)(1).
19. 30 Okla. Stat. § 3-103.
20. 30 Okla. Stat. § 3-104.
21. 30 Okla. Stat. § 3-104(A).
22. 30 Okla. Stat. § 4-101.
23. 30 Okla. Stat. § 4-104(A).
24. 30 Okla. Stat. § 4-104(B)-(F).
25. 30 Okla. Stat. § 4-201 et seq.
26. 30 Okla. Stat. § 3-119(1).
27. 30 Okla. Stat. § 3-119(2).
28. 30 Okla. Stat. § 3-119(3).
29. 30 Okla. Stat. § 3-119(4).
30. 30 Okla. Stat. § 3-119(5).
31. 30 Okla. Stat. § 4-701 et seq.
32. 30 Okla. Stat. § 4-701.
33. 30 Okla. Stat. § 4-702.
34. 30 Okla. Stat. § 4-703.
35. 30 Okla. Stat. §§ 4-705, 4-708.
36. 30 Okla. Stat. § 4-709.

### ABOUT THE AUTHOR



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# Guardianship

## A Primer on Guardianship Procedure Record Keeping and Paperwork

By *L. Michele Nelson*

### PLAN FOR CARE AND TREATMENT OF WARD

**T**he statutes require that the guardian shall:

- 1) Become or remain sufficiently acquainted with the ward to maintain contact and to know capacities, limitations, needs, opportunities and health of the ward;
- 2) Assure that the ward has a place to live which is least restrictive and most normal for his or her health and safety; and
- 3) Provide required consents or approvals as authorized by the court.<sup>1</sup>

The most important goal of the plan is to provide for the health and safety of the ward in the least restrictive environment for the ward. Therefore, if assisted living is less restrictive than a nursing home, it is preferred. If the ward's finances will allow for home health care services rather than services provided in a residential living facility, then home health care services are preferable in many cases.

The proposed plan for the care and treatment of the ward may be filed with the petition, submitted to the court at the time of the hearing, or the plan filed within 10 days after the guardian's appointment.<sup>2</sup> The court may extend the time for filing the plan not more than 30 days. The guardian may want to have an evaluation of the ward done by a physician, psychiatrist, neurologist or geriatric physician to assist with determining the abilities of the ward and the services required under the plan. The evaluation conducted and presented to the court to determine the capacity of the ward should

reflect the abilities of the ward and any restrictions on activities that are recommended for the ward.<sup>3</sup> The evaluation report may be attached to the guardian's plan.<sup>4</sup> A sample of the statutory format for the plan for the care of the person of the ward is located in the Guardianship Handbook.

The contents of the plan include:

- 1) The services necessary for the protection of the physical and mental health and safety of the ward;
- 2) How those services will be provided to the ward;
- 3) That the guardian of the person and the guardian of the property plan to cooperate and share decision-making authority with regard to the ward within the provisions of the guardianship order; and
- 4) Identification of the services that will assist in fulfilling the needs of the ward.<sup>5</sup>

Any changes to the plan should be submitted to the court for approval prior to changes in residential arrangements and care. The only deviations from the plan that the guardians should make are for emergency treatment and care. However, it is wise for the guardian to involve the family members in emergency treatment decisions and required deviations from the plan.



## PLAN FOR MANAGEMENT OF WARD'S FINANCIAL RESOURCES

The proposed plan for the management of the financial resources of the ward may be filed with the petition, submitted to the court at the time of the hearing or may be filed within 60 days after the guardian's appointment.<sup>6</sup>

The initial and subsequent plans for the management of the ward's financial resources shall state:

- 1) The services that are necessary to manage the property of the ward, which is placed under the control of the guardian;
- 2) The means for obtaining those services;
- 3) The manner in which the guardian of the property, the ward and the guardian of the person will exercise and share decision-making authority;
- 4) Such other services necessary to assist in the management of the property placed under the guardian's management in fulfilling the needs of the ward and the duties of the guardian, and the terms of the most recent order regarding the guardianship.<sup>7</sup>

A sample of the statutory format for the form of the plan for the management of the ward's financial resources is located in the Guardian's Handbook.

The restrictions on the types of assets that the guardian may invest on behalf of the ward are referenced in the previous article and are more fully outlined in the statutes.<sup>8</sup> It is important for the guardian of the person and the guardian of the property, if they are not the same person, to coordinate to ensure there are adequate assets and cash flow for the payment of the care proposed under the care plan so that the expenses and cash flow of the ward can be properly managed.

The attorney should zealously stress to their client that acting as the guardian of the property is a fiduciary duty that should not be taken lightly. The guardian is absolutely responsible for acting with the utmost care in managing the ward's assets and finances. Care should be taken to make sure that the assets are insured and safely maintained, and records should be kept relating to all transactions taken for and on behalf of the ward. If a guardian has

any question about whether a particular expenditure is authorized, the guardian should consult with their attorney and seek guidance from the court if the expenditure is not specifically authorized or a routine expenditure contemplated under the approved plan for the care of the ward.

Special care must be taken when a ward is married in order to protect the ward's spouse if a Medicaid spend-down is required to qualify the ward for Medicaid nursing home services or Veteran's Administration residential services. The guardian will need to coordinate and obtain approval for the Medicaid spend-down since spending resources of the ward for purposes other than for the ward's care is contrary to the guardianship statutes, even though they may be necessary to protect the ward's spouse who is not in need of nursing home services. It is important for the ward's counsel, the guardian, the guardian's counsel and the Oklahoma Department of Human Services Medicaid counselor to coordinate the spend-down plan and present the plan for approval of the court, prior to any expenditures being made in the spend-down.

## INVENTORY OF THE WARD'S ASSETS

The inventory of the assets of the ward can be filed with the petition at the time of the hearing on the guardianship or filed with court within 60 days after the guardian's appointment.<sup>9</sup> The deadline may be extended by the court for good cause.<sup>10</sup> The inventory, as well as the accountings submitted by the guardian, must be sworn. In the inventory, the guardian states his or her opinion of the value of the assets. The assets do not necessarily have to be appraised, but the court may order appraisals if there is a dispute as to the value of the assets.<sup>11</sup> The inventory may not be waived by the court and should be updated by the guardian any time new assets come into the estate of the ward, new assets are located or a new guardian is appointed.<sup>12</sup> The inventory of the ward's assets can be updated every year in the annual report, and it is recommended that the inventory should be updated annually in the annual report. All assets of the ward should be inventoried, including joint tenancy assets, life estates, property held in trust, life insurance policies owned by the ward, retirement plans and assets solely owned by the ward. The inventory of the assets should provide enough information to allow the court to identify the type of ownership and the rights of the ward to

the property. Additionally, any property which is perishable or has extensive and urgent care requirements should be identified for the court so that the appropriate management decisions can be made. As stated in the previous article, real and personal property of the ward can only be sold with permission of the court.<sup>13</sup>

#### **ANNUAL REPORTS ON THE PERSON AND THE PROPERTY AND ACCOUNTING**

At the anniversary date of the appointment as guardian, and every year thereafter, the guardian must file an annual report of the person and property of the ward and an accounting.<sup>14</sup> The annual report must include an accounting of any money received by the guardian for the ward, any payments made for the ward by the guardian, any changes of property on the inventory and any significant change in the physical or mental condition of the ward, or of the ward's financial resources.

##### *Annual Report on the Guardianship of the Person*

The annual report on the guardianship of the person shall include the name and place of residence of the ward and the address of the guardian. It must also contain any significant change in the capacity of the ward to meet the essential requirements for his physical health or safety and the services being provided to the ward and the relationship of those services to the guardianship plan. If any significant actions have been taken by the guardian during the year, any illnesses and hospitalization of the ward should be disclosed along with any significant problems relating to the guardianship that have arisen during the year. The guardian should advise the court why the guardianship should be continued and the reasons, if any, why there are no less restrictive alternatives that will permit the ward to meet the essential requirements for his health and safety.<sup>15</sup> If there are anticipated changes in the

care for the ward, such as more comprehensive care, change of residence to more restrictive living arrangements, the need for hospice care or implementation of the ward's pre-existing end of life documents, those items should be addressed in the annual report and approved as a change to the guardianship care plan.<sup>16</sup>

“At the anniversary date of the appointment as guardian, and every year thereafter, the guardian must file an annual report of the person and property of the ward and an accounting.”



The annual report shall contain attachments of 1) an accounting of any money received by the guardian of the person on behalf of the ward, 2) any expenditures made by the guardian of the person on behalf of the ward, 3) any medical records or evaluations relevant to the recording period, and 4) if the guardian of the person seeks any compensation or reimbursement for expenses of the guardian, a request and receipts should be attached to the annual report.<sup>17</sup> The annual report of the guardian shall be sworn as true and correct by the guardian. A sample of the statutory form for

the annual report on the guardianship of the person is located in the Guardianship Handbook. The annual report on the guardianship of the person of a minor child may be waived by the court but shall not be waived for a period in excess of five years.<sup>18</sup>

##### *Annual Report on the Guardianship of the Property of the Ward*

The annual report on the guardianship of the property of the ward shall include the name and address of the guardian of the property, and the place of residence of the ward. If the ward is incapacitated, the annual report shall identify any significant changes in the capacity of the ward to manage his financial resources that have occurred during the prior year. The annual report shall contain information about

any significant actions taken by the guardian of the property during the prior year and any significant problems that have arisen during the prior year. If the ward is incapacitated, the annual report should state the reasons why the guardianship should be continued or why no less restrictive alternative would permit the ward to manage his own financial resources.<sup>19</sup> The annual report and accounting of the guardian of the property of the ward shall be sworn as true and correct by the guardian. A sample of the statutory form for the annual report on the guardianship of the property is located in the Guardianship Handbook. If the ward is a minor, the format of the annual report is different. A copy of the annual report on the guardianship of the property of a minor is also included in the Guardianship Handbook.

The annual report on the guardianship of the property may be waived by the court when 1) the assets of the ward are less than \$40,000, excluding the value of the homestead, if the guardian has a bond posted, or 2) if the value of the assets of the ward is less than \$10,000, excluding the value of the homestead, if the guardian does not have a bond posted and the guardian of the property is the spouse or a relative of the ward within the fourth degree of consanguinity.<sup>20</sup> If the guardian seeks reimbursement of out-of-pocket expenses, including reimbursement for the guardian's attorneys' fees and compensation of the statutory guardianship fee, the annual report must request the pay-

ment of these fees and reimbursements. These distributions must be approved by the court prior to any reimbursement or payment by the guardian and prior to the payment to the attorney of the guardian for services rendered during the prior year.<sup>21</sup>



**“The annual accounting shall contain a complete financial statement of the financial resources of the ward under the control and supervision of the guardian, along with an accounting of all receipts and disbursements received and expenditures made by the guardian on behalf of the ward.”**

The annual accounting shall contain a complete financial statement of the financial resources of the ward under the control and supervision of the guardian, along with an accounting of all receipts and disbursements received and expenditures made by the guardian on behalf of the ward.<sup>22</sup> The court may direct that the guardian submit to an actual review of the financial resources placed under the guardian's control.<sup>23</sup> If the guardian anticipates the need to make any extraordinary expenditures during the upcoming year, the guardian should seek pre-approval for those expenses through the annual report. Some guardians may summarize the activities of the guardianship by categorizing all annual income of a certain type (*i.e.*, a 12-month aggregation of Social Security income, interest income and dividends as one entry), and all expenses of a particular type (*i.e.*, a 12-month aggregation of rent or mortgage expenses, medical expenses, utilities and insurance), and attaching the bank statements with copies of checks

and receipts to the annual accounting. Others keep a ledger much like a checkbook, with individual entries, and attach the beginning and ending statements for the banking accounts



to their annual accounting, along with receipts for any extraordinary items. The guardian should attach adequate documentation and receipts for expenses that the guardian seeks reimbursement. The preferences of the court should be taken into consideration in adopting a format for advising your guardians in book keeping methods.

Again, the attorney should advise the guardian that diligent and accurate accounting records must be kept by the guardian and that their records and the transactions of the guardian should be transparent and the guardian should be forthright to the court about all financial matters. The guardian should also be advised that the guardian and the guardian's family should not engage in any financial transactions with the ward's property, such as purchasing property from the ward, loaning money to the ward, or borrowing and using the ward's property, such as automobiles, except for transportation of the ward and errands to benefit the ward, such as picking up groceries and prescriptions.

#### *Notice and Mailing of Annual Reports and Accountings*

The annual reports and accountings, along with a notice of the hearing on the annual report, or alternatively the notice and order approving the annual report, shall be mailed to all of the parties entitled to notice of the guardianship under 30 Okla. Stat. § 3-110. The district courts vary on how they approve annual reports. In some district courts, you file the annual reports and accounting with the court clerk and obtain an order setting the annual reports for hearing. The notice of the hearing and a copy of the annual report and accounting are then mailed to all the parties entitled to notice. Any objections are raised at or before the hearing, and the court approves the annual report at the hearing.

Other district courts require that the annual report and accounting are submitted to the court for review and approval. At the time the annual report is delivered to the court, it is mailed to all parties. After approval by the court, the order approving the annual report and accounting is mailed to all parties. The order contains the appropriate notice that the parties have 15 days from the date of the entry of the order approving the annual report and accounting to file any objections to the annual report and accounting.<sup>24</sup> If an objection is filed,

the court then may hold a hearing on the objection. Notice of the hearing on the objection shall be given at least 10 days prior to the date set for the hearing.<sup>25</sup> If no objection is filed within the 15-day period, the court's order becomes final. The attorney shall file an affidavit of mailing of the annual report and the notice of the hearing, or alternatively the annual report and the order approving the annual report (with the notice that objections shall be filed within 15 days or the order becomes final) with the court indicating the addresses of all the parties entitled to notice within the affidavit. At the time that the annual report and accounting is filed with the court clerk, the guardian shall pay the court costs for filing the annual report, which in 2008, are currently \$59.30.

#### *Guardian's Compensation*

The guardian is entitled to compensation at the statutory rate and to reimbursement for the guardian's out-of-pocket expenses.<sup>26</sup> The guardian is entitled to reimbursement for his expenses, and to compensation for his services as the court deems are just and reasonable. The statutory rate for compensation of the guardian of the property for the collection of income shall not exceed 7 ½ percent of the income collected by the guardian.<sup>27</sup> "Income" is defined in the statutes as funds received and accounted for by the guardian on behalf of the ward, other than from the sale of the property of the ward, plus the net proceeds from the sale of the ward in excess of the value of the property of the ward identified in the guardianship inventory.<sup>28</sup> All compensation and reimbursement to the guardian from the ward's funds shall be approved by the court prior to payment.<sup>29</sup>

#### **REMOVAL OF GUARDIAN**

A guardian can be removed by the court for numerous causes:<sup>30</sup>

- for abuse of fiduciary responsibility;
- for continued failure to perform his duties;
- for incapacity to perform his duties;
- for gross immorality;
- or having interests adverse to the faithful performance of his duties;
- if the instrument in which the person was nominated as guardian is judicially determined invalid;

- if a guardian of the property is insolvent; or
- when it is no longer proper that the ward should be under a guardianship.

## TERMINATION OF GUARDIANSHIP

A guardianship may be terminated if the ward marries,<sup>31</sup> upon the death of the ward, the termination of the disability of the ward<sup>32</sup> or the termination of the guardianship as unnecessary.<sup>33</sup> The duties of the guardian are terminated upon the guardian's incapacity, death or removal as guardian.<sup>34</sup> At the termination of the guardianship, the guardian shall file a final report within 30 days of the event causing the termination of the guardianship.<sup>35</sup> The guardianship court shall set the hearing on the final report and accounting not less than within 15 days after the filing of the report. Notice of the hearing on the final report and accounting shall be given at least 10 days prior to the hearing by first-class mail.<sup>36</sup>

In closing, it should be stressed that the reporting requirements and record keeping of the guardian of the person and the guardian of the property are statutory, and the guardian should keep a checklist of the dates for their filing requirements. Missing a deadline and failing to keep adequate records can be grounds for removal of the guardian. The Guardianship Handbook contains both a time table for the guardianship indicating the notice and hearing deadlines and requirements, as well as a guardian checklist on which the guardian can note the important dates and deadlines for his filing requirements. The most important thing to advise your client, the guardian of the property, is that transparency is the key — if there is any question about whether a transaction is proper and allowed under the statutes, tell them to call and ask you about the transaction. If you have any doubt about the transaction, it is better to seek clarification and pre-approval from the court than it is to ask for forgiveness after the fact. It should also be stressed upon the guardian of the property that they are subject to a higher standard in managing the ward's money than in managing their own finances. A guardian is a fiduciary and must manage the funds of the wards in accordance with the statutes and as a reasonably prudent person would manage the funds of another. It

should also be stressed to the guardian of the person that they must provide the ward with the best care possible, they must protect the health and safety of the ward, and the care plan must be for care that impedes the least upon the ward's liberties and freedoms, is in the least restrictive environment and treats the ward with the utmost respect and dignity.

1. 30 Okla. Stat. § 3-118.
2. 30 Okla. Stat. § 3-120(A).
3. 30 Okla. Stat. § 3-108.
4. 30 Okla. Stat. § 3-120(C).
5. 30 Okla. Stat. § 3-120(B).
6. 30 Okla. Stat. § 3-122(A).
7. 30 Okla. Stat. § 3-122(B).
8. 30 Okla. Stat. § 4-709.
9. 30 Okla. Stat. §§ 3-122, 4-301.
10. 30 Okla. Stat. § 4-301(A).
11. 30 Okla. Stat. § 4-301(B).
12. 30 Okla. Stat. § 4-301(B)-(C).
13. 30 Okla. Stat. § 4-705.
14. 30 Okla. Stat. §§ 4-303, 4-305, 4-306.
15. 30 Okla. Stat. § 4-305.
16. 30 Okla. Stat. § 4-305(C).
17. 30 Okla. Stat. § 4-305(D).
18. 30 Okla. Stat. § 4-303(D), (E).
19. 30 Okla. Stat. § 4-306(A).
20. 30 Okla. Stat. § 4-303(B)(3).
21. 30 Okla. Stat. § 4-306(E)(3), (4).
22. 30 Okla. Stat. § 4-306(E).
23. 30 Okla. Stat. § 4-306(F).
24. 30 Okla. Stat. § 4-307(A).
25. 30 Okla. Stat. § 4-307(B).
26. 30 Okla. Stat. § 4-401 et seq.
27. 30 Okla. Stat. § 4-401(A), (B) and § 3-122.
28. 30 Okla. Stat. § 4-401(B).
29. 30 Okla. Stat. § 4-401(C).
30. 30 Okla. Stat. § 4-801.
31. 30 Okla. Stat. § 4-802.
32. 30 Okla. Stat. § 4-803.
33. 30 Okla. Stat. § 4-804.
34. 30 Okla. Stat. § 4-803.
35. 30 Okla. Stat. § 4-803.
36. 30 Okla. Stat. §§ 2-101, 3-110, 4-803.

## ABOUT THE AUTHOR



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**THE 2008 ANNUAL OKLAHOMA CRIMINAL DEFENSE LAWYERS ASSOCIATION  
AWARDS FOR EXCELLENCE IN CRIMINAL DEFENSE DEADLINE OCTOBER 31, 2008 @ 5pm**

Each year your peers in the practice of criminal defense select three of their own to receive the most prestigious awards for excellence in criminal defense achievements in Oklahoma. These awards are the only statewide awards that are nominated and selected by attorneys that practice criminal defense in Oklahoma. The awards are as follows:

**The Clarence Darrow Award**

Clarence Darrow was born in Ohio in 1857. After being admitted to the bar in 1878, he became a small-town lawyer for nine years.

During WWI he defended anti-war activists and was critical of The Espionage Act that was used to stifle anti-war activities. You need only mention the names of his famous cases to realize his impact on criminal defense; the *Scopes Monkey Trial*, the *Scottsboro 9* and the *Leopold-Loeb Murder Trials*. A 1936 FBI memo to Clyde Tolson, aide-de-camp to J. Edgar Hoover, gave Mr. Hoover some quotes that Clarence Darrow had made in an article entitled *Attorney for the Defendant*. It was suggested that Mr. Hoover could use these quotes in speeches to point out how unscrupulous criminal lawyers stimulate disrespect for law and influence crime conditions.

The award recognizes the efforts of an individual who has, during the year, exemplified the zealous criminal defense advocacy that befits the namesake of the award "Clarence Darrow". It is in the deeds and spirit of Clarence Darrow that this award is given each year for the zealous criminal defense advocacy by an individual attorney. The only qualification requirement is that the event(s) upon which the nomination is based must have taken place during the current year.

**The Lord Thomas Erskine Award**

Lord Erskine was a Scotsman, the third son of the 10th Earl of Buchan, educated at Edinburgh and Cambridge and called to the bar in 1778. He was a strong advocate and defender of popular liberties and constitutional rights. His defense of Thomas Paine cost him his post of attorney general to the Prince of Wales. The award is given to honor a member of the criminal defense bar who has over the years steadfastly placed the preservation of personal liberties over his or her own personal gain or reputation. The award is a cumulative year award and is not limited to any particular activities in any given year.

**The Thurgood Marshall Appellate Advocacy Award**

Thurgood Marshall, the grandson of a slave, was born in 1908 in Maryland. In 1930, he was denied admission to the University of Maryland Law School due to the fact that he was black. This event was to direct his future professional life.

In 1934, he began his association with the NAACP and dismantled school segregation in his 1954 victory of *Brown vs. Board of Education of Topeka*. He later desegregated graduate schools with his victory in *McLaurin vs. Oklahoma State Regents*. As a Justice for the Court of Appeals for the 2nd Circuit, he made 112 rulings that were all upheld before the United States Supreme Court. As Solicitor General for the United States, he won 14 of 19 cases argued before the United States Supreme Court. In 1967, Thurgood Marshall was the first African American appointed to the United States Supreme Court. He was often the lone voice of dissent against the death penalty and always spoke for voiceless Americans in his opinions. He died in 1993.

The only qualification for the awards is that the nominee must be the appellate attorney of record in the decision that formed the basis of the nomination. However, there is no requirement that the decision must have occurred within the current year.

Please submit written nominations and the reasons therefore to:  
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The deadline is October 31, 2008. The awards will be announced prior to the OBA Convention and awarded at the OCDLA Annual Meeting on November 20, 2008 at 1:30 p.m. You do not have to be a member of OCDLA to nominate an individual.

Awards not received by October 31, 2008 at the OCDLA post office box will not be considered.





## Temporary Guardianship Proceedings under the Protective Services for Vulnerable Adults Act [TITLE 43A O.S. §10-101, *et seq.*]

By Yvonne Fisher

Beginning in 1977, the Oklahoma Legislature formally recognized the need to protect its adult citizens who, as a result of “the infirmities of aging, incapacity, or other disability, are unable to manage their own affairs or to protect themselves from exploitation, abuse, or neglect and are in need of protective services.”<sup>1</sup>

The legislature’s purpose and intent—to establish a program of protective services for vulnerable adults—were codified in what is now known as the Protective Services for Vulnerable Adults Act [hereinafter, the “Act”].<sup>2</sup> The state entity mandated under the Act to provide protective services for this population of citizens is the Oklahoma Department of Human Services.<sup>3</sup>

In order to fulfill the mandate, Adult Protective Services (APS), a special unit within the Department of Human Services, was created with APS staff located in many but not all DHS county offices. APS is charged with providing voluntary and involuntary protective services to those persons over the age of 18 who have minimal capacity, as well as those who are incapacitated, unable to care for or provide for themselves and are at risk of suffering from abuse, neglect [including self neglect], financial exploitation or financial neglect.<sup>4</sup>

The process begins with a referral, which could be in the form of a telephone call or voice

message, letter, e-mail, fax, or an in-person visit to a DHS office, alleging abuse,<sup>5</sup> neglect,<sup>6</sup> or exploitation;<sup>7</sup> the referral is screened, and if appropriate, an investigation is initiated by the local APS unit in the county in which the person is a resident, is temporarily located or is receiving services such as medical and/or other care in a hospital.<sup>8</sup> APS referrals across the state in the year 2007 were well over 17,000,<sup>9</sup> the vast majority of which were for alleged self-neglect.<sup>10</sup>

### THE REFERRAL

The responsibility for making a report or referral falls upon any person having reasonable cause to believe that a person over the age of 18 years is suffering from abuse, neglect or exploitation, as soon as that person is aware of the situation.<sup>11</sup> While the statute provides a list of those persons required to make reports [such as physicians, EMSA, law enforcement, etc.] the law obligates “any person” to report suspected abuse, neglect or exploitation when first discovered. The reporter may contact DHS

or law enforcement in the county in which the suspected abuse, neglect or exploitation occurred. The report may be anonymous, but if the reporter's identity is given, it remains confidential.<sup>12</sup>

Failure to report may, upon conviction, result in a misdemeanor punishable by imprisonment in the county jail or fine or both.<sup>13</sup> A willful, reckless false report may result in civil liability for any actual damages suffered by the person being reported and any punitive damages set by the court or jury which may be allowed in the discretion of the court or jury.<sup>14</sup> The reporter who, in good faith and exercising due care, makes a report of suspected abuse, neglect or exploitation pursuant to the Act, shall have immunity from any civil or criminal liability that might otherwise be imposed.<sup>15</sup> Employees are likewise protected from termination or other sanction solely on the basis of a good faith report or cooperation with an investigation under the Act.<sup>16</sup>

If the initial report or referral is not written, the agency receiving the initial report [the department or law enforcement], is required to reduce the report to writing as soon as possible. Said report must contain the name and address of the vulnerable adult, the name and address of the caretaker, guardian, or person having power of attorney over the vulnerable adult's resources if any, a description of the vulnerable adult's current location and condition and a description of the situation which may constitute abuse, neglect or exploitation of the vulnerable adult.<sup>17</sup> In addition, all final investigative reports are sent to the district attorney.<sup>18</sup>

## THE INVESTIGATION

APS specialists are required under the Act, and therefore trained, to conduct investigations of reports of abuse, neglect and/or exploitation and are authorized to determine whether the subject of the report requires protective services as well as whether or not that person possesses minimal capacity to consent to those services.<sup>19</sup>

The law mandates that the investigation include a visit to the home or other place of residence where the alleged victim may be found; a private interview with that person; and consultation with persons who have information about the alleged victim and the surrounding circumstances.<sup>20</sup> If APS is denied

either entrance to the residence or place where the alleged victim is residing, access or private interview with the victim, or is denied access to records or other information about that person, the court may issue an order allowing entry, private access to the alleged victim and/or the production of such documents, upon a finding of probable cause of the vulnerability of the adult.<sup>21, 22</sup> While with the alleged victim is in their place of habitation, APS specialists may photograph injuries to the alleged victim and/or the vulnerable adult's surroundings, to document conditions that have resulted in or may result in

an injury or serious harm to a person, such as unsafe or inhabitable living quarters, lack of suitable food within the home, nonfunctioning plumbing, evidence of hoarding, etc.<sup>23</sup>

The investigation shall also include a statement of the least restrictive services needed, whether such services are available from the department or the community and how those services can be provided; whether the person would be capable of acquiring needed services



“The law mandates that the investigation include a visit to the home or other place of residence where the alleged victim may be found.”



and could bear the expense or would be eligible for the department's services; whether the caretaker or guardian would be willing to provide services or consent to their provision; whether the person desires such services; and a statement of any needed follow up investigation or monitoring and any other relevant information.<sup>24</sup>

In addition to the notification requirement to law enforcement and the district attorney,<sup>25</sup> the APS investigator must also make a "reasonable effort to locate and notify the caretaker, legal guardian and next of kin of the vulnerable adult..."<sup>26</sup> As the conclusion of its investigation, APS may when indicated, file a copy of its final investigative report with other entities, such as the Department of Health, or with the court to which the alleged victim's legal guardian, if he or she has one, is accountable.<sup>27</sup>

### THE INVESTIGATIVE REPORT

Notification, including a brief oral summary and easily understood written description of the investigation process, shall be provided to the caretaker of the alleged victim, the legal guardian and next of kin of the vulnerable adult, regardless of whether the caretaker, guardian or next of kin is alleged to be the perpetrator of the abuse, neglect or exploitation of the vulnerable adult.<sup>28</sup> The statute specifies what information shall be included in the notification, including a statement that the identity of the person who reported the incident of abuse is confidential and may not even be known to the department since the report could have been made anonymously.<sup>29</sup> However, if the subject of the investigation retains capacity to consent to voluntary services and does not wish for a caretaker or next of kin to receive notification of the investigation, then the department shall abide by their wishes.<sup>30</sup>

### WHAT IS AN "INCAPACITATED PERSON"?

In order to identify the population served by APS, it is important to understand certain critical definitions under the Act:

An "incapacitated person" is defined in under the Act, §10-103(A)(4) as follows:

- a. any person eighteen (18) years of age or older:
  - (1) who is impaired by reason of mental or physical illness or disability, dementia or related disease, mental

retardation, developmental disability or other cause, and

- (2) whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that such person lacks the capacity to manage their financial resources or to meet essential requirements for his or her mental or physical health or safety without assistance from others, or

b. a person for whom a guardian, limited guardian, or conservator has been appointed pursuant to the Oklahoma Guardianship and Conservatorship Act ["Title 30"].

It is noteworthy that the definition of incapacitated person in Title 30 §1-111(A)(12), which references various statutes pertaining to mental illness, mental retardation, drug and alcohol addiction, and criminal incompetency rulings, is nonetheless quite consistent with the definition of incapacitated person under the Act.<sup>31</sup>

### WHAT IS A "VULNERABLE ADULT"?

It should be noted that a new phrase and definition has entered the adult protective services lexicon in recent years that slightly expands the APS population served in Oklahoma, and that is the "vulnerable adult." This phrase, as defined by the legislature in subsection 10-103(A)(5) of the Act, is defined as:

an individual who is an incapacitated person or who, because of physical or mental disability, incapacity, or other disability, is substantially impaired in the ability to provide adequately for the care or custody of himself or herself, or is unable to manage his or her property and financial affairs effectively, or to meet essential requirements for mental or physical health or safety, or to protect himself or herself from abuse, verbal abuse, neglect, or exploitation without assistance from others.

There is a high degree of similarity in the above quoted language and the definition of "partially incapacitated person" as defined in Title 30 §1-111(A)(22). Note that, a "partially incapacitated person" can only have the services of a "Limited Guardian" as defined in

Title 30 §1-111(A)(16). Under the latter section, a private guardian has limited powers over the person or property of a ward. If approved by the court, however, DHS/APS can be authorized for any of the powers available under the Act over a “vulnerable adult” as are available over an “incapacitated person.” There is no provision under the Act for a “limited guardian” in APS cases.

## RELIGIOUS PRACTICES

There is a statutory exception that excludes certain individuals from the population served by APS, based upon religious practices.<sup>32</sup> In essence, the person cannot be considered to be abused or neglected [which would probably be interpreted to include “self-neglect” as defined under the Act] if the individual in good faith relies solely upon spiritual means through prayer as long as it is in accordance with the practices of a recognized religious method of healing, for the treatment or cure of disease.

The case law addressing religious practices within the guardianship arena is beyond the scope of this article, but such issues do arise in APS cases as well as guardianships under Title 30, and must be carefully evaluated in conjunction with statutory presumptions and requirements contained in other statutes such as the Hydration and Nutrition for Incompetent Patients Act,<sup>33</sup> the Oklahoma Do-Not-Resuscitate Act,<sup>34</sup> and the Oklahoma Rights of the Terminally Ill or Persistently Unconscious Act.<sup>35</sup>

## VOLUNTARY PROTECTIVE SERVICES

The Act provides for the department to provide or arrange for the provision of available protective services for a person who APS has determined possesses the requisite capacity to consent.<sup>36</sup> Assuming the alleged victim is capable of providing informed consent and affirmatively consents to receive voluntary protective services, “...the Department shall immediately provide...protective services in the least restrictive manner.”<sup>37</sup> If, however, the vulnerable adult consents to protective services and that person’s caretaker refuses or impedes the provision of those services, the department may seek a court order to enjoin the caretaker or other person from interfering in the matter.<sup>38</sup> Additionally, the department may seek a court order freezing the assets of the alleged victim if it has been determined by a preponderance of the evidence that she or he is being exploited and protection of such assets is necessary.<sup>39</sup>

The vulnerable adult who possesses minimal capacity may, however, refuse to the consent of the receipt of protective services or, having consented, withdraw that consent.<sup>40</sup> Of course, if the department determines that the adult who withdraws consent lacks capacity to consent at that time, the department may pursue authorization to provide involuntary protective services pursuant to sections 10-107 and 10-108 of the Act.<sup>41</sup>

Payment of the costs of providing protective services shall be made from either the assets of the person receiving those services, available private or public assistance programs for which the vulnerable adult is eligible or emergency department funds, if available.<sup>42</sup> The Act authorizes the department to contract with any public or private agency for the provision of protective services and mandates the use of public, nonprofit, private, volunteer and faith-based services whenever feasible and available.<sup>43</sup>

## INVOLUNTARY PROTECTIVE SERVICES

The courts are authorized under the Act to provide involuntary protective services recommended by the department to an adult who lacks capacity through an emergency order.<sup>44</sup> The court, however, should order only those involuntary services that are warranted, and in the least restrictive manner, in order to protect the rights of the incapacitated adult.<sup>45</sup> Whenever possible, and when consistent with the welfare and safety of the person, administration of those involuntary protective services should be made in that person’s present living accommodations.<sup>46</sup>

In any case in which involuntary protective services are sought from a court by the state, a person who is the subject of an APS proceeding has a statutory right to be present and represented by counsel.<sup>47</sup> If indigent, or if mentally incapable of waiving the right to counsel, the court must appoint counsel and if that person is indigent, the cost shall be borne by the state.<sup>48</sup>

## COURT PROCEEDINGS

Following an investigation, if the department determines that the vulnerable adult is the victim of some form of abuse, neglect, or exploitation that presents a “...substantial risk of death or immediate and serious physical harm...or financial exploitation of the estate... and the vulnerable adult lacks mental capacity

“If the vulnerable adult is not present at any scheduled hearing, the court must make a special finding as to why he or she is absent.”



to consent to receive protective services and no consent can be obtained,” the department may petition the district court in the county where the vulnerable adult is a resident or is receiving inpatient services.<sup>49</sup> The department may also, however, seek an order wherever the person is located if delay in going to the court in the county of residence or where inpatient services are provided “...would result in greater substantial risk of death or...physical harm to the vulnerable adult.”<sup>50</sup>

The petition must include, but is not limited to, the allegations of abuse, neglect, or exploitation, the services needed, and information relating to the capacity of the adult to consent to services.<sup>51</sup> Provisions also include notice of hearing, expedited setting on the court docket but no later than five days after the date the notice of hearing is signed, closed hearings, and, except for certain individuals accused of abusing, neglecting, or exploiting the incapacitated adult, persons who must receive notice.<sup>52</sup>

Because some situations are so dire, and action must be taken within a matter of hours, there is provision for, in essence, an *ex parte* temporary guardianship order [oral or written] authorizing involuntary services for 72 hours.<sup>53</sup> The court is statutorily authorized to waive prior notice of the issuance of the 72 hour order upon the “sworn testimony of a representative of the Department or law enforcement officer, or statement of a district attorney, that immediate and reasonably foreseeable death or serious physical harm to, or financial exploitation of, the vulnerable adult will result....”<sup>54</sup> The vulnerable adult and the adult’s attorney, if known, must, however, be personally served within 24 hours of issuance of the 72 hour order, with written notice scheduling a hearing within 72 hours [weekends and holidays excluded].<sup>55</sup>

Upon conclusion of any such hearing, the court may terminate the temporary guardianship or continue it for 30 additional calendar days.<sup>56</sup> Prior to the expiration of the 30 day period and upon application by the department, the temporary guardianship may be continued for increments of up to 180 days.<sup>57</sup> The court will order a physical, mental, and social evaluation conducted by the department for the hearing on the department’s motion for the 180 day extension, as well as a plan for the placement, care and treatment, as set forth in the Act.<sup>58</sup> If the vulnerable adult is not present at any scheduled hearing, the court must make a special finding as to why he or she is absent.<sup>59</sup> In some instances, the court proceedings may be held at the location or facility where the vulnerable adult currently resides.

The department, as temporary guardian, may face issues such as refusal of medical evaluation or treatment, emergency surgery for life-threatening situations, lack of food or utilities in the home, financial exploitation or neglect by caregivers or other trusted individuals in the vulnerable adult’s life and must fashion a plan of care and treatment that, with authorization from the court, addresses these issues under the law.

## AUTHORITY OF THE COURT

The Act explicitly provides for the types of relief that can be ordered in a temporary guardianship proceeding, in addition to appointment of a temporary guardian and authorization of involuntary services, such as authorization for medical and/or psychological treatment and evaluations; residential placement subject to provision of §10-108(G); enter an order freezing all assets of the vulnerable adult; establishment of any new account



necessary to pay the daily living expenses of the vulnerable adult; order a full accounting and investigation of the person alleged to be improperly managing the vulnerable adult's estate; suspend or revoke powers of attorney; and/or terminate a guardianship or conservatorship upon a finding that the attorney-in-fact, guardian or conservator failed to act appropriately on behalf of the vulnerable adult.<sup>60</sup> It is not uncommon for the basis of a referral to be allegations of neglect or exploitation by the very persons pledged to protect the vulnerable, their attorney-in-fact or even a Title 30 guardian.

Under certain conditions, the court may also order the sale of real property of the vulnerable adult when, after the one year anniversary of the temporary guardianship and no one is willing and able to act as guardian for the vulnerable adult.<sup>61</sup> Additionally, prior to the one year anniversary of the temporary guardianship, if not selling the real property would jeopardize the vulnerable adult's eligibility for Medicaid, the court may likewise order the sale of real property.<sup>62</sup> Personal property may be sold when additional resources are required to pay for necessary care for the vulnerable adult pursuant to state law.<sup>63</sup> The sale of real or personal property is governed by the provisions of the Title 30 and related statutes.<sup>64</sup>

The court also has the authority under the act to issue an order evicting persons who are in a position to exploit the vulnerable adult from any property owned, leased or rented by the vulnerable adult and further restrict those persons' access to any property of the vulnerable adult.<sup>65</sup>



**“Personal property may be sold when additional resources are required to pay for necessary care for the vulnerable adult pursuant to state law.”**

## LIMITATIONS OF THE COURT'S AUTHORITY

There are clear limitations, however, on the court's authority to authorize the department to provide certain involuntary services. When the court issues an order for involuntary services, only those protective services necessary to remove the conditions creating the emergency shall be ordered and the court shall specifically designate the approved services in the order of the court, such as placement or transport by EMSA, etc.<sup>66</sup>

Certain circumstances exist when a person would be more appropriately served by the Department of Mental Health and Substance Abuse Service, for example, for emergency detention and/or involuntary commitment. While the Act authorizes emergency placement to such facilities as nursing homes, hospital rehabilitation centers and in-home placement, the Act clearly states that, "Emergency placement shall not be made to facilities for the acutely mentally ill".<sup>67</sup>

In terms of end of life issues, the Act is unequivocal that the department shall not be authorized by the court to make certain decisions:

Under no circumstances shall the court authorize the department, to consent or deny consent to a Do-Not-Resuscitate order or the withdrawal of hydration or nutrition or other life-sustaining treatment although the court retains the jurisdiction to hear such matters under applicable law.<sup>68</sup>

It is not uncommon for the department to be contacted by hospitals, doctors, or relatives seeking to protect the interests of an alleged victim, even when the respective stances may be at odds. In those instances, the department's role is limited to an investigation of the facts

and when appropriate, to bring some disputes before the court for resolution.

## CONFIDENTIALITY OF RECORDS AND REPORTS

The reports, records, and working papers used or developed in an investigation of the circumstances surrounding a vulnerable adult are confidential and may be disclosed only pursuant to order of the court.<sup>69</sup> Neither subpoena nor subpoena *duces tecum* are adequate for the production of records and/or testimony of DHS/APS investigators. Additionally, the court order must contain the protective order language found in subsection 10-110(D) of the Act, mandating that the records and their contents remain confidential and that the use of those records be limited to the stated purposes for which disclosure was authorized.<sup>70</sup> Generally, the department will agree to the order releasing records and/or providing testimony if in proper form and filed with the court. The unlawful use of the records or unauthorized disclosure is a misdemeanor under the Act.<sup>71</sup>

The department may, at its discretion, allow agency records pertaining to a vulnerable adult to be inspected, copied or contents otherwise disclosed fully or with limitation, without a court order to certain properly credentialed persons: the district attorney and members of his/her staff; the attorney representing a vulnerable adult; employees of law enforcement agencies and APS units of other states; physicians who are treating a vulnerable adult; a caretaker, guardian, custodian or other family members of the adult except that the department may limit such disclosures; public and private agencies or persons authorized by the department to diagnose, care for, or treat the adult; any other agency authorized by the department to supervise or provide other services to said adult; any person or agency conducting research for the State of Oklahoma or employed by the department.

## RESTRICTION OF VISITATION

Unfortunately, situations arise when visitation between the vulnerable adult and other persons, including family members and friends, must be restricted or modified to protect the safety and well-being of the vulnerable adult and in some instances, to prevent further incidents of exploitation. The Act vests the court with jurisdiction to issue and enforce orders restricting visitation whenever said restriction is consistent with the welfare and safety of a vulnerable adult, including any person alleged

or determined to have abused, neglected or exploited the vulnerable adult.<sup>72</sup> The Act provides for notice, as ordered by the court, to the subject of the visitation restriction [custodian or other person alleged or determined to have abused, neglected or exploited the vulnerable adult], although the Act does not specify whether that notice is in anticipation of the visitation restriction or after the order is issued.<sup>73</sup>

Practically speaking, the long term care or other facility where the vulnerable adult may reside has the authority to govern their own private property and remove unwanted persons with or without the assistance of law enforcement.<sup>74</sup> Nonetheless, facility staff or administration may request assistance from the department, which is authorized under the Act to petition the court to restrict visitation with the vulnerable adult as needed.<sup>75</sup> The court must state in the record the basis for any visitation restriction, which may include requiring supervised visitation, prohibiting visitation altogether or otherwise limiting the visitation between the vulnerable adult and other persons.<sup>76</sup>

In summary, the Act provides the court with authority to implement involuntary protective services through temporary guardianship of the person or estate, when a vulnerable adult can no longer make sound medical or financial decisions, fails to appreciate his or her circumstances or the consequences of his or her actions, and as a result, is placed at risk of serious physical harm or death, or financial exploitation. The dedicated APS staff across the state is charged with the responsibility of investigating allegations of abuse, neglect or exploitation and determining whether or not voluntary or involuntary protective services are warranted to protect the vulnerable adult, under the Protective Services for Vulnerable Adults Act.

1. 43A O.S. §10-102(A).

2. *Id.* at §10-102(C); *see also* Estate of Goodwin, 854 P.2d 390 (Okla. 1993).

3. 43A O.S. §§10-103(A)(7); *see also*, sections 10-105(A), 10-106(A) and 10-108(A).

4. Oklahoma Administrative Code 340:105-3-1(a).

5. Title 43A O.S. §10-103(8), "abuse" means causing or permitting:  
a. the infliction of physical pain, injury, sexual abuse, sexual exploitation, unreasonable restraint or confinement, or mental anguish, or  
b. the deprivation of nutrition, clothing, shelter, health care, or other care or services without which serious physical or mental injury is likely to occur to a vulnerable adult by a caretaker or other person providing services to a vulnerable adult.

6. *Id.* at §10-103(11), "neglect" means:

a. the failure to provide protection for a vulnerable adult who is unable to protect his or her own interest,  
b. the failure to provide a vulnerable adult with adequate shelter, nutrition, health care, or clothing, or

c. negligent acts or omissions that result in harm or the unreasonable risk of harm to a vulnerable adult through the action, inaction, or lack of supervision by a caretaker providing direct services;

7. *Id.* at §10-103(9) “exploitation” or “exploit” means an unjust or improper use of the resources of a vulnerable adult for the profit or advantage, pecuniary or otherwise, of a person other than the vulnerable adult through the use of undue influence, coercion, harassment, duress, deception, false representation or false pretense.

Section 10-103(11), added in November 2007, defines “financial neglect” as repeated instances by a caretaker, or other person, who has assumed the role of financial management, of failure to use the resources available to restore or maintain the health and physical well-being of a vulnerable adult, including but not limited to:

a. squandering or negligently mismanaging the money, property or accounts of a vulnerable adult;

b. refusing to pay for necessities or utilities in a timely manner, or

c. providing substandard care to a vulnerable adult despite the availability of adequate financial resources.

8. See generally *Id.* at §10-105, Investigation of Report and §10-108(A)(3), district court jurisdiction.

9. Source, OKDHS, Family Support Services Division, APS State Office.

10. Title 43A O.S. §10-103(14) “self neglect” means the action or inaction of a vulnerable adult which causes that person to fail to meet the essential requirements for physical or mental health and safety due to the vulnerable adult’s lack of awareness, incompetence or incapacity;

11. *Id.* at §10-104(A), emphasis added. If the initial report is made to law enforcement, the statute requires that a report be made as soon as possible to DHS. *Id.* at §10-104(D).

12. *Id.* at §10-105.1(C)(2). The Act specifically mandates report to the district attorney or law enforcement official by any state or county medical examiner or physician who has reasonable cause to suspect that the death of any vulnerable adult may be the result of abuse or neglect as defined under the Act. *Id.* at §10-104(J).

13. *Id.* at §10-104(E).

14. *Id.* at §§10-104(F)(1)(2) and (G).

15. *Id.* at §10-104(F)(1).

16. *Id.* at §10-104(K).

17. *Id.* at §§10-104(C)(A)(a) through (3). If federal law specifically prohibits the disclosure of any of the required information, that information may be excluded from the report pursuant to § 10-104(C)(2).

18. *Id.* at §10-104(I).

19. *Id.* at §10-105(4). The report may also be anonymous.

20. *Id.* at §10-105(C)(1)(a), emphasis added.

21. *Id.* at §§10-105(C)(1)(b) and (2). The Department must be accompanied by law enforcement when such forcible entry is ordered. *Id.* at §10-105(C)(3).

22. *Id.* at §10-105(C)(3).

23. *Id.* at §10-105(B)(5).

24. *Id.* at §§10-105(B)(4)-(B)(12).

25. Section 10-105(B)(1) of the Act specifies that the report to law enforcement shall include copies of results or records of an examination, including clinical notes, x-rays, photographs or previous or current relevant records of a vulnerable adult who is alleged to have been abused, neglected or exploited.

26. *Id.* at §10-105(B)(3).

27. *Id.* at §10-105(D), (E) and (F).

28. *Id.* at §10-105.1(A).

29. See generally *Id.* at §§10-105.1(C)(1) through (11) and specifically, (C)(2).

30. *Id.* at §10-105.1(A)(B).

31. Title 30 defines incapacitated person as a person eighteen (18) years of age or older who is impaired by reason of mental illness... mental retardation or developmental disability...physical illness or disability, drug or alcohol dependence...or such other similar cause, and whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an extent that said person lacks the capacity to meet essential requirements for his physical health or safety, or is unable to manage his financial resources. Further, a judicial adjudication of “incompetent person” because of an impairment or condition as described in this paragraph shall have the same means as “incapacitated person” but shall not include a person who is a partially incapacitated person. Title 30 §1-111(A)(12).

32. *Id.* at §10-103(B).

33. 63 O.S. §3080.1, *et seq.*

34. 63 O.S. §3101, *et seq.*

35. 63 O.S. §3131, *et seq.*

36. See generally Title 43A O.S. §10-106.

37. *Id.* at §10-106(A).

38. *Id.* at §10-106(B)(3)(a).

39. *Id.* at §10-106(B).

40. *Id.* at §10-106(C).

41. *Id.* emphasis added.

42. *Id.* at §§10-106(D)(1) and (2).

43. *Id.* at §10-109(A)-(C).

44. *Id.* at §10-107(A).

45. *Id.* at §10-107(B)(1).

46. *Id.* at §10-107(B)(2). Payment for involuntary services is made under the same guidelines for voluntary services. *Id.* at §10-107(C)(1).

47. *Id.* at §10-107(C)(2).

48. If the vulnerable adult is not indigent, the court may order costs of representation paid from the estate in the same manner as currently paid under Title 30. 43A O.S. §10-108(E)(4).

49. *Id.* at §§10-108(A)(1) and (A)(3)(a) and (b)

50. *Id.* at §10-108(A)(3)(c)

51. *Id.* at §10-108(B)

52. *Id.* at §§10-108(C)(1) and (2)

53. *Id.* at §10-108(D)(1)

54. *Id.*

55. *Id.*, emphasis added.

56. *Id.* at §10-108(D)(2).

57. *Id.* at §10-108(L).

58. 65 *Id.* at §§10-108(M)(2) and (4).

59. *Id.* at §10-108(E)(2).

60. *Id.* at §§10-108(F)(1)(a)-(c).

61. *Id.* at §10-108(F)(2)(b).

62. *Id.* at §10-108(F)(2)(c).

63. *Id.* at §10-108(F)(2)(d).

64. *Id.* at §§10-108(F)(2)(b), (c) and (d).

65. *Id.* at §10-108(J)(1)(c).

66. *Id.* at §10-108(G)(1).

67. *Id.* at §10-108(G)(2), emphasis added.

68. *Id.* at §10-108(A).

69. *Id.* at §10-110(A). The Act states that confidential records may be disclosed only pursuant to rules promulgated by the Commission for Human Services or by order of the court. Since the former has not occurred, the remaining alternative is only order of the court.

70. *Id.* at §10-110(D).

71. *Id.*

72. *Id.* at §§10-111(A)(1) and (2).

73. *Id.* at §10-111(A)(3).

74. *Id.* at §10-111(D).

75. *Id.* at §10-111(B).

76. *Id.* at §§10-111(C)(1) and (2).

## ABOUT THE AUTHOR



Yvonne Fisher, a native Oklahoman, attended undergraduate and law school at the University of Tulsa. A nontraditional law student, Ms. Fisher was Senior Staff, Tulsa Law Journal and received the CALI Excellence for the Future Award in Trial Practice. Ms. Fisher is the 2008 Recipient of

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# Got Arrested?

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<b>DATES&amp; LOCATIONS:</b>	<b>Oklahoma City</b> October 16, 2008 Oklahoma Bar Center 1901 N. Lincoln Blvd.	<b>Tulsa</b> October 17, 2008 Renaissance Hotel 6808 S. 107 <sup>th</sup> East Ave.
<b>CLE CREDIT:</b>	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.	
<b>TUITION:</b>	\$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 <a href="http://www.okbar.org/cle">www.okbar.org/cle</a> . The Oklahoma City program will be webcast. For details go to <a href="http://www.legalspan.com/okbar/webcasts.asp">www.legalspan.com/okbar/webcasts.asp</a> .	
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**Program Planner/Moderator**  
**Deborah Reheard, Reheard Law Office, Eufaula**

<b>8:30 a.m. Registration &amp; Continental Breakfast</b>	<b>11:40 Networking lunch</b> (included in registration)
<b>9:00 <u>Got DUI? Defending the Intoxicated Driver</u></b> <b>John Hunsucker</b> , Hunsucker DUI Defense Firm, Oklahoma City <b>Bruce Edge</b> , The Edge Law Firm, Tulsa	<b>12:10 <u>Got Publicity? Defending the High Profile Client</u></b> (ethics) <b>Allen Smallwood</b> , Law Office of Allen M. Smallwood, Tulsa
<b>9:50 Break</b>	<b>1:00 <u>Got Indicted? Federal Court and Multi-County Grand Juries</u></b> <b>David Ogle</b> , Ogle Law Office, P.L.L.C., Oklahoma City
<b>10:00 <u>Got Rights? Not Your Usual Motions</u></b> <b>Tom Salisbury</b> , Law Office of Thomas E. Salisbury, Ponca City	<b>1:50 Break</b>
<b>10:50 <u>Got Domestic Assault &amp; Battery?</u></b> <b>Marny Hill</b> , Law Office of J. Marny Hill, Tulsa	<b>2:00 <u>Got Sex Registration?</u></b> <b>Jack Dempsey Pointer, Jr.</b> , Pointer Law Office, Oklahoma City
	<b>2:50 Adjourn</b>

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## The Elderly Client Comparing and Contrasting a Guardianship with the Durable Power of Attorney Document in the Event of Incapacity

By Phyllis J. Bryce and Cara Collinson Wells

**T**he Oklahoma Supreme Court, *In the Matter of the Guardianship of Holly*, makes clear that a guardianship is a “massive curtailment of liberty” and requires “the utmost care to ensure that the ward subject to that curtailment receives due process.”<sup>1</sup> While a guardianship is one method of dealing with incapacity, a Durable Power of Attorney is an alternative more palatable to many of Oklahoma’s aging population.

As a population, we are living longer and the number of people with dementia continues to be on the rise.<sup>2</sup> Estate planning, using a combination of legal documents, is a way for an individual to create a roadmap of what they wish to happen in case they become incapacitated at some point in the future and provides an alternative to guardianship. In anticipation of the client’s incapacity, most practitioners encourage their clients to execute estate planning documents to avoid guardianship proceedings. A common document used for this purpose is the Durable Power of Attorney for finances and health care (DPOA).<sup>3</sup> Usually, if this document is properly executed, the need for a guardianship is moot. However, there is an exception to this rule when someone petitions the court for a guardianship even though these documents are in operation. This scenario is likely when 1) agent(s) misuse their powers and/or 2) an outsider comes in and attempts to get guardianship over the person. The purpose of this paper is to discuss Oklahoma law as to the standard of conduct that an Attorney-In-Fact is expected to follow regarding the incapacity of the principal, how this may lead to

guardianship proceedings, and how the DPOA is treated once a guardianship is put into place. Although there are several types of guardianship procedures, this paper only addresses the general guardianship.<sup>4</sup>

### INCAPACITY

Incapacity is an unfortunate reality for many of our elderly clients. Preparing for such incapacity can be accomplished with or without the input of the client. The input of the client can only occur during periods of capacity and can be established through the use of legal documents, such as the DPOA. An individual who does not prepare for incapacity is likely to fall into the category of those who become the subject of a guardianship proceeding and are without the same opportunity to determine who will care for them during incapacity.

There are differences between an “incapacitated” person and a “partially incapacitated person” as defined under the Oklahoma Guardianship and Conservatorship Act.<sup>5</sup> This paper addresses the issue of when a person is considered “incapacitated.”<sup>6</sup> In a guardianship



proceeding, the court makes a ruling on whether the potential ward has capacity.<sup>7</sup> At the time the petition is filed, the court must still make this determination.<sup>8</sup> In contrast, most DPOA documents that go into effect immediately do not contain language that addresses incapacity. If the DPOA is a springing document, the document contains language that describes the “triggering” event in which the principal (individual that creates the DPOA) becomes incapacitated.<sup>9</sup> (Immediate and springing DPOA’s are discussed in further detail below). Therefore, the DPOA is set up so as to avoid court determination of incapacity.



#### RELATIONSHIP OF THE DURABLE POWER OF ATTORNEY DOCUMENT TO THE GUARDIANSHIP

Upon court appointment of a guardian, the Attorney-In-Fact (agent that has powers within DPOA) is no longer the primary caretaker of the ward’s money and/or person. Instead, the guardian takes on this role and the Attorney-In-Fact becomes accountable to the principal and the guardian.<sup>10</sup>

A guardianship proceeding is usually initiated because the potential ward is showing signs of dementia or another disability. In contrast, when the potential ward executed the DPOA capacity was not at issue. It is also important to note that in most situations, a

third party, usually not the Attorney-in-Fact, is petitioning the court to get guardianship over an elderly adult. The petitioner is taking an active role under a guardianship in determining who should act on behalf of the potential ward; contrasting with the DPOA, wherein, the principal pre-selects the agent who should act on behalf of the potential ward should the ward become incapacitated.

A guardianship generally curtails the rights of the potential ward to a greater degree than that of the DPOA. Prior to the need of a guardianship, the principal has the ability to define the powers the principal wishes the Attorney-In-Fact to have, as well as to establish the Attorney-In-Fact’s standard of conduct. A guardianship is much more stringent as compared to a DPOA document, wherein the principal has the flexibility to establish narrow or broad powers of the Attorney-In-Fact. However, if the principal sets up a DPOA to go into effect immediately, the principal may not desire the Attorney-In-Fact to be held to such a high standard of care because they do not actually want the Attorney-In-Fact to exercise their power at the time the document is executed — rather the power is meant to be used only when the principal is no longer capable. Under a guardianship, the duty is immediate and the statute sets out the guardian’s fiduciary duty.

#### DURABLE POWER OF ATTORNEY

As discussed herein, the DPOA for health care and finances is a common estate planning tool used to prepare for the possibility of incapac-

ity<sup>11</sup> and allows the principal to avoid being subject to guardianship. The DPOA can be combined into one document or separated into two different documents, one being over the finances of the principal and the other being over the health care of the principal.<sup>12</sup> A DPOA

“A guardianship generally curtails the rights of the potential ward to a greater degree than that of the DPOA.”

is executed by the principal with the intention of giving certain powers to the Attorney-In-Fact. Because it is durable, the document is recognized even while the principal is incapacitated.<sup>13</sup>

The principal may either execute a DPOA as springing or immediate.<sup>14</sup> If it is "springing," it is dependent upon some event that is defined within the document and which sets out the criteria for determination of incapacity.<sup>15</sup> Therefore, with a springing DPOA, the Attorney-In-Fact's fiduciary duty is not triggered until the event defined within the DPOA occurs.

In the alternative, the principal may execute an "immediate" DPOA which becomes effective upon execution.<sup>16</sup> There does not appear to be a requirement under Oklahoma law that the principal notify an Attorney-in-Fact of their appointment, and yet, upon execution of the document, the individual has the power to act in the capacity of the principal regarding the principal's affairs.<sup>17</sup> Many individuals choose immediate DPOA's to avoid the cumbersome process and medical hurdles now present due to HIPAA<sup>18</sup> laws, thinking the result is an easier transfer of power when the actual need arises. However, upon execution of an immediate DPOA and knowledge by the Attorney-in-Fact, a fiduciary duty may commence, often contrary to the principal's intention. The Attorney-in-Fact may be held to a higher standard of conduct with regard to the capacity of the principal if the DPOA is immediate versus springing.<sup>19</sup>

Because the principal still has capacity upon the execution of a DPOA, the Attorney-In-Fact

rarely uses this power. It is not uncommon for a principal to appoint an Attorney-In-Fact that lives in another city and hire other types of local agents to help take care of the principal's everyday needs. In these situations, the Attorney-In-Fact with immediate power is inactive in their fiduciary role, and yet the fiduciary role may be considered as active and the Attorney-in-Fact may be treated as having neglected a duty.

#### **ATTORNEY-IN-FACT WITH IMMEDIATE POWER: BEWARE OF GUARDIANSHIP PROCEEDINGS**

The problem lies in the potential incapacity of the principal. If the principal becomes incapacitated and the Attorney-In-Fact with immediate power remains inactive during this period, a question of neglect may arise.

Because the principal continues to take care of his or her own medical and financial affairs, there is no built-in incapacity or disability "trigger" within the DPOA defining when the duty of the Attorney-In-Fact with immediate power begins. The fiduciary duty of the Attorney-In-Fact is defined under 58 O.S. §1081 as "[a]ny attorney-in-fact, whether acting pursuant to a durable or nondurable power of attorney or otherwise, is bound by standards of conduct and liability applicable to other fiduciaries." To what standard do we look for "other fiduciaries" standard? Black Law's dictionary defines fiduciary as follows: "1) One who owes to another the duties of good faith, trust, confidence, and candor.... 2) One who must exercise a high standard of care in managing another's money or property."<sup>20</sup> This trigger becomes clouded because of the principal and Attorney-in-Fact's customary and continuous patterns of behavior.



“It is not uncommon for a principal to appoint an Attorney-In-Fact that lives in another city and hire other types of local agents to help take care of the principal's everyday needs.”

The Attorney-In-Fact is often accustomed to a “hands off” approach and unless the incapacity or disability of the principal is immediately obvious, the Attorney-In-Fact may not use the power to conduct affairs related to the health and finances of the ward. As a consequence, to some observers, the Attorney-In-Fact may appear to be in breach of the fiduciary duty owed to the principal and in reality, a breach may not exist. The principal may have a routine that seems completely normal to that of their Attorney-In-Fact, and yet, as time passes, the risk that the principal develops dementia increases. Under Oklahoma law, it is unclear as to what degree and at what point in time an immediate Attorney-in-Fact, who has not used the power, owes a duty to the principal to monitor the principal’s health care in order to determine capacity.

#### **GUARDIANSHIP GUIDELINES ARE EXPLICIT UNDER THE GUARDIANSHIP STATUTE**

Under Oklahoma law, O.S. 30 §3-118 sets out the fiduciary standard for a guardian. The guardian is responsible to the court for all acts or inactions relative to the care of the ward. Further, the guardian must seek court approval to change the location of the ward’s residence and must report at least annually regarding the finances of the ward. The guidelines set out under the statute are as follows:

A. A guardian or limited guardian of the person of an incapacitated or partially incapacitated person is responsible for the care or control of the ward pursuant to the provisions of the Oklahoma Guardianship and Conservatorship Act, and the orders of the court, and the guardianship plan approved by the court and shall perform diligently and in good faith any specific duties and powers assigned by the court.

B. 1. A guardian or limited guardian of the person of an incapacitated or partially incapacitated person shall:

a. become or remain sufficiently acquainted with the ward and maintain sufficient contact with the ward to know of the capacities, limitations, needs, opportunities, and physical and mental health of the ward;

b. assure that the ward has a place of abode in the least restrictive, most normal

setting consistent with the requirements for his health or safety; and

c. provide any required consents or approvals on behalf of the ward as authorized by the court.

2. A guardian or limited guardian of the person, if consistent with the terms of an order of the court, may:

a. if no guardian of the property or conservator for the estate of the ward has been appointed, institute proceedings, including administrative proceedings, or take other appropriate action to compel the performance by any person of a duty to support the ward or to pay sums for the welfare of the ward; and

b. consent to routine or necessary medical or other professional care, treatment, or advice for the ward without liability by reason of the consent for injury to the ward resulting from the negligence or acts of third persons unless a parent would have been liable in the circumstances.

C. If satisfied that the incapacity or partial incapacity of the ward has ceased, the guardian or limited guardian shall file a petition requesting a determination on the restoration to capacity of the ward and the termination of the guardianship.<sup>21</sup>

In addition, the court provides a guardian with a handbook that sets out the expectations of the court.<sup>22</sup> Although the guardianship proceeding may be much more tedious, it does provide the guardian with a lot more guidance as to what is expected versus the Attorney-In-Fact.

#### **CONCLUSION**

An Attorney-In-Fact may need to have a more active role in the principal’s estate planning process from the beginning in order to prevent guardianship proceedings at a later date. As this paper points out, the Attorney-in-Fact with immediate power may be better off not knowing of the role to which he or she has been appointed, which is unnerving. Such knowledge may trigger a duty which is unclear at best and creates liability issues for the Attorney-In-Fact.

“Powers of attorney are usually executed for the express purpose of avoiding court proceedings.”<sup>23</sup> However, when an individual sets up



estate planning documents, such as a DPOA for health care and finances, they may not meet their goal of avoiding guardianship. A guardianship proceeding may be unavoidable if steps are not taken to monitor the capacity of the elder. Some states, notably Florida, do not expressly permit the creation of a "springing" power of attorney, but define certain powers that are "conditioned upon the principal's lack of capacity" and provide that such powers are "exercisable" only on presentation of appropriate affidavits.<sup>24</sup>

Until Oklahoma law becomes clearer in this area, the practitioner may need to take further steps within the DPOA document to avoid guardianship proceedings. For example, the document might include a section that clearly defines the standard of conduct that the principal expects the Attorney-In-Fact with immediate power to follow in monitoring their capacity. To better define the standard of conduct, certain questions may need to be asked such as 1) Does the Attorney-In-Fact have the duty to be in ongoing contact with the principal's physician so they may be notified if and when incapacity occurs in the opinion of the principal's physician? 2) Does there need to be some type of capacity test that the Attorney-In-Fact is obligated to give within certain time periods to the principal? So that a guardianship proceeding is avoided, these are questions that practitioners should consider in preparing a DPOA for their clients as well as other estate planning documents.

1. In the Matter of the Guardianship of Holly, 164 P.3d 137 at 144 (Okla. 2007) (quoting In re Towne, 3P.3d 154 (Okla. 2000)).

2. Dementia on the Rise In Aging Populations, SCIENCE DAILY, Nov. 1, 2006 available at <http://www.sciencedaily.com/releases/2006/10/061031192543.htm> (last visited Sept. 1, 2008).

3. OKLA. STAT. tit. 58, §§ 1071-1077.

4. OKLA. STAT. tit. 30, § 1-109(A).

5. OKLA. STAT. tit. 30, § 1-111(A)(12); Okla. stat. tit. 30, §1-111 (A) (22).

6. OKLA. STAT. tit. 30, § 1-111 (A) (12).

7. OKLA. STAT. tit. 30, § 3-111.

8. *Id.*

9. OKLA. STAT. tit. 58 § 1072.1.

10. OKLA. STAT. tit. 58 §1074(A) states, "If, following execution of a durable power of attorney, a court of the principal's domicile appoints a conservator, guardian of the estate, or other fiduciary charged with the management of all of the principal's property or all of his property except specified exclusions, the attorney-in-fact is accountable to the fiduciary as well as to the principal. The fiduciary has the same power to revoke or amend the power of attorney that the principal would have had if he were not disabled or incapacitated."

11. OKLA. STAT. tit. 58 §§ 1071-1077.

12. OKLA. STAT. tit. 58 § 1072.1.

13. OKLA. STAT. tit. 58 §1072.

14. OKLA. STAT. tit. 58 §1072.1.

15. An example of a common phrase within the springing DPOA is, "This Durable Power of Attorney shall become effective upon my disability or incapacity and shall not be effective until then. In lieu of judicial determination of my disability or incapacity, I shall be presumed to be disabled or incapacitated and this Durable Power of Attorney shall become effective whenever two (2) physicians shall certify in writing that, in their medical opinion, I am unable to make my own decisions concerning my finances and health care."

16. OKLA. STAT. tit. 58 §1072.

17. OKLA. STAT. 58 § 1072.1.

18. Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. § 160 (2007).

19. *Id.*

20. BLACK'S LAW DICTIONARY 640 (Bryan A. Garner ed., West 7th ed., 1999). Even Black's law dictionary uses a quote that emphasizes the lack of definition for fiduciary duty: "'Fiduciary' is a vague term, and it has been pressed into service for a number of ends...." *Id.* quoting D.W.M. Waters, *The Constructive Trust* (1964).

21. Okla. Stat. tit. 30 § 3-118.

22. R. ROBERT HUFF, OKLAHOMA PROBATE LAW AND PRACTICE CHAPTERS VOLUME 2 (West 1995), VARLEY H. TAYLOR, JR., OKLAHOMA PROBATE LAW AND PRACTICE WITH FORMS THIRD EDITION §30A.2 (2008 Pocket Part, Thomson West 2008); Guardianship Forms, OSCN.NET available at <http://www.oscn.net/static/forms/AOCforms.asp> (last visited Sept. 2, 2008).

23. ROBERT B. FLEMING AND LISA NACHMIAS DAVIS, ELDER LAW ANSWER BOOK 10-1 (Wolters Kluwer Law & Business 2d ed. 2008 Cumulative Supplement 2008).

24. *Id.*

## ABOUT THE AUTHORS



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# A DAY WITH THE JUDGES: Medical Liability Issues

**Friday, October, 24, 2008, St. Francis Hospital, Tulsa, Oklahoma 74136**

## **SESSION I**

8:45 – 9:15 a.m.

9:15 – 9:45 a.m.

9:45 – 10:15 a.m.

10:30 – 11:00 a.m.

11:00 – 11:30 a.m.

11:30 – 12:00 noon

## **SESSION II**

1:00 – 1:30 p.m.

1:30 – 2:00 p.m.

2:00 – 2:30 p.m.

2:30 – 3:00 p.m.

3:00 – 3:30 p.m.

3:30 – 4:00 p.m.

4:00 p.m.

**Moderators:** Justice Marian P. Opala, and Dr. Lee Schoeffler, President, OSMA

**If Sued, What Should the Doctor Do?** Carl Hook, MD, CEO, PLICO

**Informed Consent and Informed Refusal in Oklahoma,** Justice M. Opala

**Expert Witness: Ethical & Liability Issues,** Judge John Fischer

**Public Health: All Hazard Preparedness,** Commissioner Dr. Michael Crutcher

**End of Life: Ethical & Liability Issues,** Attorney General Drew Edmondson

**Tort Reform Update,** Senator Glenn Coffee, Co-President Pro Tempore

**Moderators:** Justice Marian P. Opala, and Mr. Ken King, CEO, OSMA

**Medical Negligence, Trial & Appeal,** Judge Kenneth L. Buettner

**Patient Safety, Quality and Never Event Medical Errors,** Dale W. Blatzler, MD

**Unprofessional Medical Conduct,** Gerald Zumwalt, MD, Secretary, OSBMLS

**Criminalization of Negligence,** Dr. Curtis E. Harris, MS, MD, JD, FCLM

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# Can a Buyer and Secured Party Rely on a Certificate of Title?

## Part IV: The *Wilserv* Case

By Alvin C. Harrell and Fred H. Miller

On Jan. 24, 2008, the 10th Circuit U.S. Court of Appeals issued its opinion in *Malloy v. Wilserv Credit Union (In re Harper)*,<sup>1</sup> holding that a Muscogee (Creek) Nation certificate of title (CT) is not a CT as that term is defined in the Uniform Commercial Code (UCC).<sup>2</sup> While the 10th Circuit opinion presents a largely sound analysis of the UCC,<sup>3</sup> the analysis is not complete in some respects, and the holding casts doubts on numerous transactions involving tribal CTs, suggesting a need to immediately address the statutory deficiencies evidenced by the 10th Circuit decision.

### THE WILSERV CASE

The facts in *Wilserv* fit a pattern that has become familiar to Oklahoma bankruptcy, commercial and consumer lawyers.<sup>4</sup> A tribal member living in Oklahoma purchased a vehicle on credit and chose to have the CT and license tag issued by the tribe.<sup>5</sup> The initial purchase-money secured transaction was later refinanced by Wilserv Credit Union, which paid off the prior creditor and followed the Creek Nation procedure for perfecting the security interest by "lien entry" on the tribal CT.<sup>6</sup> When the debtor filed bankruptcy in the Northern District of Oklahoma,<sup>7</sup> the bankruptcy trustee asserted that the credit union's security interest was unperfected under Oklahoma Article 9 (because there was no lien entry under the Oklahoma CT law<sup>8</sup>) and therefore the security interest was subordinate to (and essentially avoided by) the trustee's lien creditor status in bankruptcy.<sup>9</sup> While this argument was disingenuous as to the Oklahoma CT law (which does not apply to a CT created by

another jurisdiction<sup>10</sup>), it raised the question whether the Creek Nation CT qualified as a CT for perfection purposes under Article 9.<sup>11</sup>

### BACKGROUND

As noted in previous articles in this journal, Oklahoma bankruptcy courts (and the Oklahoma Legislature) have wrestled with these issues for years,<sup>12</sup> sometimes seeming to dance around the basic issue (validity of "lien entry" perfection on a tribal CT) but in the process creating some of the most thorough case law ever created with respect to this complex set of issues (which involves an interplay between traditional choice of law analyses, federal bankruptcy and constitutional law, tribal law and procedures, the UCC and state CT laws). These cases have properly concluded, among other things, that a vehicle subject to a legally insufficient tribal CT can be consumer goods subject to the PMSI automatic perfection rule at UCC section 9-309(1),<sup>13</sup> but have also gone astray by suggesting that amendments to the Oklahoma



CT law can directly cure deficiencies in the CT law of another jurisdiction.<sup>14</sup> As a response to all of this, the nonuniform Oklahoma amendments to Oklahoma Article 9 at title 12A Okla. Stat. section 1-9-311(a)(4)<sup>15</sup> were thought to be sufficient to address the Article 9 consequences of deficiencies in an applicable tribal CT law.<sup>16</sup> In all of this (until *Wilserve*), the results were generally satisfactory, in the sense of upholding the reasonable expectations of the parties under their contracts and the UCC, and avoiding an unjust forfeiture, but in some cases the underlying analysis (or the legislative response) included shortcomings that left a trail of pitfalls and uncertainty for subsequent parties and transactions.<sup>17</sup>

These problems became apparent in *Wilserve*, where the facts did not fit the creative solutions that had saved the parties' bargains in the prior cases, and as a result, the 10th Circuit's straightforward analysis of Article 9 serves to illuminate some dramatic deficiencies in current law.

## ALTERNATIVE SOLUTIONS

In *Wilserve*, the secured party's primary fallback position, as an alternative to tribal CT "lien entry" perfection, was automatic perfection for a PMSI under section 9-309(1). This theory was rejected on grounds that the transaction was a refinancing of the PMSI by a different creditor. However, *Wilserve* also asserted subrogation to the rights of the prior PMSI, and the 10th Circuit opinion seems overly strict in its rejection of this argument.<sup>18</sup> The court also stated that subrogation to the prior secured party's lien entry perfection would be useless because the prior lien entry had been terminated, but this likewise seems fundamentally incorrect, as the prior PMSI perfection did not depend on the lien entry.<sup>19</sup> The nonuniform Oklahoma Article 9 amendment at section 1-9-311(a)(4) did not help, in the court's view, because more than 30 days had elapsed before the credit union's tribal lien entry was effectuated,<sup>20</sup> and in any event because the court concluded that there was no Creek Nation CT or secured transactions law as required in the UCC.<sup>21</sup> Thus, the crucial issue considered by the court was whether the Creek Nation CT qualified as a CT pursuant to the requirements for CT perfection under UCC Article 9.

## THE ARTICLE 9 REQUIREMENTS

The Article 9 requirements for a CT appear in the definition of that term at section 9-102(a)(10),

and are essentially repeated at section 9-311(a)(2) and (3) (which defer to an applicable CT law for perfection purposes). Section 9-303 is a choice of law rule determining which jurisdiction has the applicable law, if a qualifying CT has been created. If no qualifying CT has been created, choice of law issues must be resolved outside section 9-303.

The 10th Circuit opinion in *Wilserve* does not dwell on the historical reasons for the somewhat cumbersome Article 9 language defining "certificate of title,"<sup>22</sup> and at one point seems to misuse the terminology (by suggesting that the applicable tribal CT law must refer to "perfection," a test that many state CT laws would fail and something clearly not required by Article 9<sup>23</sup>). But the court gets it basically right: Article 9 requires a state (or tribal) CT law that provides for an indication on the CT as a means or result of a procedure providing priority over lien creditors via the underlying law of that jurisdiction.

In the states and some tribal jurisdictions this underlying law is Article 9, but the Article 9 test for a CT does not require that the applicable priority rules be in Article 9, or the UCC, or even in a statute. The test at sections 9-102(a)(10) and 9-311(a)(2) and (3) merely requires a CT law that is designed to result in an indication on a CT (for purposes of notice to third parties) and (in conjunction with other law) priority over a subsequent lien creditor. Thus, the Amici brief argued that the test in a case like *Wilserve* is whether that result would occur under the "whole law" (including the "common law") of the tribe. The 10th Circuit rejected this argument, perhaps too summarily, as noted below.

## IMPLICATIONS OF WILSERV

This is where the 10th Circuit diverged from the path of analysis advocated by the Amici and your authors. The *Wilserve* opinion seems almost dismissive of the suggestion that an analysis of tribal common law is required, to determine the likely result under tribal law, for purposes of the definition in Article 9 section 9-102(a)(10), stating in effect that "here there is too little [tribal law] to go on" and therefore there was no a basis for determining priority under tribal law as required by Article 9.<sup>24</sup> Though it is not your authors' view,<sup>25</sup> it appears that the court was persuaded, by the paucity of evidence on this issue in the record, that there was no such tribal law to apply. In combination

with the complexity of the issues and the somewhat cumbersome language in Article 9 section 9-102(a)(10),<sup>26</sup> it is perhaps not surprising that the court focused its attention on the paucity of CT and secured transactions law in the tribal jurisdiction. But this leaves the issue open for more litigation, on a case-by-case, tribe-by-tribe basis, with new litigation required every time a tribe changes its law, to determine whether tribal law meets this test.<sup>27</sup>

In effect, the next court to confront this kind of case will likely have to face the issue avoided by the 10th Circuit in *Wilserve*: What would be the result in a priority dispute under tribal law? Over a period of time it is likely that this kind of litigation will lead to recognition, or development, of a quite satisfactory structure of tribal common law in each tribal jurisdiction, and this may already exist, at least in some cases. It is likely the federal courts will ultimately recognize this, although at best some expensive and protracted litigation will be necessary in tribal, as well as bankruptcy and other federal courts, before this solution is reached. Indeed, because of the multiplicity of tribes and the diversity of their legal systems, it is possible that multiple bankruptcy and federal appellate decisions may be necessary for each tribe that issues CTs, in order to resolve these issues. In the meantime, thousands of existing and future vehicle sales and secured transactions will be left in a state of uncertainty.

That of course, is the beauty of a rational codification — done right, in conformity with common expectations and other applicable law, and with due regard for the need to avoid creating new problems, codification bypasses the expensive and lengthy process of developing a visible common law structure. Perhaps the good news in *Wilserve*, along with the 10th Circuit's largely straightforward analysis of Article 9, is that the tribes (and the state of Oklahoma) have been alerted in an unmistakable manner to the need for an up-to-date legal structure to support these

common CT transactions. Fortunately, ready-made uniform laws are available, in the form of UCOTA and Article 9, that will enable the tribes to easily adopt modern, clear and nonintrusive laws to put them on a par with (or even ahead of) the states on these issues. And, even if not all of the tribes do so, the states can enact UCOTA, thereby creating an optimal “back-up” rule for cases involving tribes that do not protect their own CTs.

## LESSONS FOR PRIVATE PARTIES AND THE STATES

For private parties, particularly creditors, the immediate lesson is clear: Unless Oklahoma enacts UCOTA, avoid non-PMSI secured transactions involving CTs created by tribes that do not have a comprehensive structure of CT and secured transactions laws. A PMSI in a vehicle that is consumer goods (unfortunately, this determination involves a sometimes difficult set of issues — *see, e.g.*, UCC section 9-102(a)(23)) should be automatically perfected under law like section 9-309(1), though as noted this may be viewed by some as creating a secret lien and is not the best solution from a policy standpoint.<sup>28</sup> A secured party also can try to meet the thirty day requirement of the nonuniform Oklahoma Article 9 amendment at section 1-9-311(a)(4), which should be effective in the right case (although under *Wilserve* only if the tribal CT qualifies as such under section 1-9A-102(a)(10), which means the tribe must have an adequate

“Over a period of time it is likely that this kind of litigation will lead to recognition, or development, of a quite satisfactory structure of tribal common law in each tribal jurisdiction...”

secured transactions law and CT procedure, and in any event only if Oklahoma Article 9 is applied). Of course, some of the tribes in Oklahoma have enacted Article 9 and some have enacted UCOTA. This will solve the problem for those tribes. Tribes that enact Article 9 and UCOTA can issue CTs that will be accepted for all purposes, just like a state-issued CT. Even in a worst-case scenario (such as the facts in *Wilserve*, where none of these theories was said to work), the *Wilserve* analysis leaves open an invitation for the secured party to argue in

every case that the specific tribal law or procedure in question satisfies the UCC test for a CT and perfection law. It is probable that in the next case the secured party will not leave the record bare on these issues. As noted, the subrogation issue is also fact-specific and deserves further exploration in future cases, and a formal assignment of a prior PMSI would bolster the secured party's position, even if taken after the refinance transaction. Absent prompt enactment of UCOTA in Oklahoma, however, it seems likely that these issues will be litigated again and again, until the state law issues and tribal common laws are fully clarified. This may require years, even decades, of litigation, but it provides multi-faceted opportunities to avoid unjust enrichment in individual cases.

For the state of Oklahoma, the obvious solution to these problems is to enact UCOTA. If UCOTA is enacted, it will apply in the *Wilserve* scenario pursuant to the choice of law rule at UCOTA section 4, in cases where a qualifying tribal CT has not been issued. UCOTA sections 25-26 then allow a secured party to perfect its security interest by filing a security-interest statement (essentially what is now called a lien entry form) with the state CT office (or a tag agent). If a vehicle is covered by a tribal CT which does not qualify as a CT under Article 9, section 9-102(a)(10), UCOTA would allow this method of perfection with the state CT office (assuming the state CT office wishes to accept these filings<sup>29</sup>). This would allow such filings as a "back-up" to the uncertainties of tribal CT perfection, allowing perfection by a filing with the CT office in cases where there is any uncertainty as to whether a valid tribal CT has been issued, a needed option given the large number of tribes and the unlikelihood that they will all enact UCOTA and Article 9. This would also provide maximum public notice, in both the state CT records and on the tribal CT.

There is not much else that can be done by the states to directly address the issue of tribal CTs. CTs created by the state CT office are not directly implicated by the *Wilserve* decision, and there is little that a state can do to directly save tribal CTs unless the tribes themselves act to do so. Clearly it is inadvisable to make additional nonuniform amendments to Oklahoma Article 9, as that would risk considerable additional harm and unintended consequences, create more conflicts of law and nonuniformity, and muddy these turbulent waters even more (in the bargain creating new interstate choice of

law issues — which can quickly become a quagmire). Moreover, there are other problems with the current Oklahoma CT law, some of which have been noted<sup>30</sup> and some of which are lurking beneath the surface but seem to be percolating. Absent enactment of UCOTA, it is quite possible that there will be state law equivalents of the *Wilserve* problem.<sup>31</sup> Enactment of UCOTA in Oklahoma will resolve these problems, as well as allowing tribal CT transactions to continue while the tribes struggle with their own law reform efforts. As noted more specifically below, the alternative is to leave these issues and large numbers of tribal CTs in a state of legal limbo, at great cost to tribal members, creditors and vehicle dealers, and to the detriment of the economy of the state.

## LIFE WITHOUT UCOTA

If Oklahoma does not enact UCOTA, as noted above the resolution of the issues discussed in this article will be complicated. But for transactions already outstanding, and those completed before any UCOTA effective date, some of these issues cannot be avoided. The following brief analysis may be helpful in such cases.

The starting point for an application of Oklahoma UCC Article 9 to a secured transaction is the choice of law rule in UCC Article 1 at section 1-301 and (assuming section 1-301 leads the analysis to Article 9) the scope provision at Article 9 section 9-109. In a case like *Wilserve*, this means that Oklahoma Article 9 applies to determine perfection and priority of the security interest, absent application of an applicable CT perfection law under section 9-311(a).<sup>32</sup> Section 9-303 (the choice of law rule for CT transactions under Article 9) does not apply unless a qualifying CT has been created. This leaves perfection and priority subject to the general Article 9 choice of law rule at section 9-301, absent a suitable CT perfection law such as UCOTA.

This situation is potentially unsatisfactory from the standpoint of secured transactions law because section 9-301 refers to the law of the jurisdiction where the debtor is located (and in the *Wilserve* scenario, this could mean either Oklahoma or Indian country). In any event, Oklahoma does not have an appropriate state law perfection system for vehicles covered by an inadequate tribal CT law.<sup>33</sup> As noted, if the security interest is a PMSI in consumer

goods, it would be automatically perfected under section 9-309(1), assuming Article 9 applies, solving the problem for the secured party but without any state law notice to interested parties.<sup>34</sup> And for the secured party, qualifying for this Article 9 protection involves several risky requirements, especially in the case of a refinancing, as illustrated in the *Willserv* court's analysis of these issues.

Absent a PMSI the analysis is even murkier. As noted, section 9-301 refers to the law of the debtor's location. In a case like *Wilserv*, that could mean a choice of tribal law and (absent a qualifying tribal statute) a required analysis of tribal common law. In *Wilserv* the Amici argued that such an analysis was required under Article 9 sections 9-102(a)(10) and 9-311(a), to determine the adequacy of the CT and priority under that law. That argument was summarily rejected by the 10th Circuit. Your authors continue to believe that the Amici argument is correct, but section 9-301 probably leads to the same result. Thus, an analysis of tribal law may be unavoidable in a case like *Wilserv*, because Article 9 section 9-301 may refer to tribal law to determine perfection and priorities for a debtor located in Indian country, e.g., with regard to collateral registered with the tribe and owned by a tribal member resident in Indian country, absent a qualifying CT law (such as UCOTA) under section 9-311(a).

Unfortunately, however, the analysis under section 9-301 is not so clear-cut as the equivalent analysis under sections 9-102(a)(10) and 9-311(a), as advocated by the Amici in *Wilserv*, all but assuring extended litigation on this additional point (the location of a tribal member resident in Indian country). There is currently no precedent on this issue, meaning that another appeal to the 10th Circuit may be needed to resolve it.

If it is determined that these analyses do not adequately address or resolve the issue, i.e., if it is determined that this is an issue not covered by Article 9 (a so-called "omitted case"), then it would have to be resolved under other appli-

cable law.<sup>35</sup> This opens the analysis to any manner of common law and choice of law analyses, the scope of which we can only hint at here. But this is likely to lead, at some level, to analysis of the relevant tribal law, as advocated by the Amici in *Wilserv*. By rejecting this as a straightforward analysis under Article 9 sections 9-102(a)(10) and 9-311(a), the 10th Circuit has mandated a more difficult and uncertain analysis likely to lead to the same result.

For example, a traditional choice of law analysis likely will be necessary, consistent with UCC section 1-301, applying the "most significant relationship" test of the *Second Restatement*, with broad deference to the choice

of the parties.<sup>36</sup> This would allow the parties to address the "omitted" issue in the security agreement, at least as to future transactions.<sup>37</sup> Alternatively, it is logical to argue that tribal membership, together with tribal registration of the vehicle, and perhaps bolstered by a contractual choice of law, together indicate that the location of the debtor is Indian country and tribal law should apply, both under the UCC and

a traditional choice of law analysis.

While these arguments appear sound, it may take years, or even decades, to resolve them through multiple bankruptcy cases, state lawsuits, tribal litigation and appellate decisions, given the summary treatment of these issues in *Wilserv* and the lack of any alternative judicial precedent. The adverse impact on the Oklahoma economy, tribal members, other Oklahoma residents and important private transactions is apparent. Fortunately, enactment of UCOTA offers a quick and simple alternative, if the state (and tribes) want to solve these problems more easily.

Your authors have been told that some parties oppose the enactment of UCOTA because it is complex. It is not, but the problems it resolves certainly are. If Oklahoma does not enact an adequate solution, like UCOTA, we are likely to learn the real meaning (and effects) of legal complexity.

“Fortunately, enactment of UCOTA offers a quick and simple alternative, if the state (and tribes) want to solve these problems more easily.”



## CONCLUSION

If the state and tribes enact UCOTA, and the tribes enact Article 9, it will not only avoid further *Wilserv* cases (and the associated economic and legal disruptions), it will place Oklahoma and the Oklahoma tribes together, at the forefront of a new era of modern, clear and uniform laws governing important CT issues and secured transactions. This is a distinction worthy of our best efforts.

1. No. 07-5016 (10th Cir. Jan. 24, 2008).

2. See UCC §§ 9-102(a)(10), 9-311(a). Unless otherwise noted, citations herein are to the uniform text of the UCC; the equivalent Oklahoma sections are codified in Title 12A Okla. Stat. §§ 1-9-101 — 1-9-709.

3. One of your authors participated in preparing an Amici Brief in the *Wilserv* appeal, with Jason C. Boesch, on behalf of the Oklahoma Credit Union League and the Oklahoma Bankers Association, arguing that the Creek Nation CT should be recognized as a CT under the UCC. While the 10th Circuit disagreed as to this ultimate conclusion, for reasons relating to tribal law as discussed below, the court's analysis of the UCC is largely correct and provides some additional guidance in this area of law.

4. This basic fact pattern has been explained previously in this journal. See Alvin C. Harrell, *Can a Buyer and Secured Party Rely on a Certificate of Title? Part III: Tribal CTs*, 77 Okla. Bar J. 547 (2006).

5. As noted by the 10th Circuit, tribal members are authorized to choose this option. See *Wilserv*, Slip. Op. at 16-17.

6. The characterization of the transaction as a refinancing was said to preclude *Wilserv* from directly asserting the automatic perfection available for a purchase-money security interest (PMSI) under UCC § 9-309(1). See *Wilserv*, Slip. Op. at 8. However as discussed *infra* at Part IV., the court may have been overly dismissive of the *Wilserv* claim of subrogation to the PMSI of the prior creditor. Moreover, there are other arguments on behalf of PMSI status in these circumstances, which were not fully explored in *Wilserv*. For example, PMSI status does not require any particular time period proximity between the connected events, only that there be such a connection. See, e.g., *National Bank of Commerce v. First National Bank & Trust Co. of Tulsa*, 446 P.2d 277 (S.Ct. Okla. 1968); Oklahoma Comments to 12A Okla. Stat. § 1-9-103. Thus *Wilserv* may have had a PMSI in its own right, as well as a claim to PMSI status by subrogation. Moreover, in addition to *Wilserv*'s apparent right to be subrogated to the PMSI rights of the prior secured party, there was nothing to prevent *Wilserv* from taking an assignment of those rights, even after the litigation had begun (subject to the effect of the Bankruptcy Code automatic stay, at 11 U.S.C. § 362). Given a proper subrogation or assignment scenario, priority would date from the time of the prior secured party's PMSI perfection, under Article 9 § 9-317(a) and (e). These issues deserve full consideration in a case like *Wilserv*, and could change the outcome in such a case. Still, one obvious, short-term lesson for lenders, at least as to future transactions, is to avoid nonpurchase-money security interests of vehicles that are or may become covered by a tribal CT affected by the *Wilserv* analysis. See also *infra* Part IV. and Parts VI.-VIII.

Yet another and even more fundamental question is whether *Wilserv*'s PMSI status and subrogation rights should be governed by state law (including but not limited to Oklahoma UCC Article 9), or tribal law. Arguably, this issue depends on analysis of the choice of law rules in UCC Article 1 (§ 1-301) and Article 9 (§ 9-301). These issues were not addressed in *Wilserv*, and are not extensively discussed here due to page limitations and our focus on the *Wilserv* analysis, but they can be challenging. See *infra* Part VIII. Note that enactment of the Uniform Certificate of Title Act (UCOTA) solves this problem, because UCOTA has an independent choice of law provision at § 4 that allows it to apply as a back-up to the above analysis, as a means to obtain perfection in the absence of an alternative CT statute. See UCOTA §§ 4, 25, and 26.

7. For the order and judgment of the Bankruptcy Appellate Panel (BAP), in turn affirming the bankruptcy court decision, see *In re Harper*, 2007 WL 45918 (10th Cir. BAP Jan. 9, 2007). In its decision issued Jan. 24, 2008 (see *supra* note 1) the 10th Circuit affirmed the BAP decision.

8. 47 Okla. Stat. § 1110.

9. See 11 U.S.C. § 544(a). Note that the trustee may have other avoidance powers under the Bankruptcy Code, e.g., at 11 U.S.C. § 547. However, these were not at issue in *Wilserv*.

10. See UCC §§ 9-109, 9-303, and 9-311.

11. See *supra* this text and note 2. The relation between state and tribal law in this context is quite interesting. See, e.g., *supra* note 6, and *infra* Part VIII. Because the initial applicable law is Article 9, the governing law regarding a security interest is UCC §§ 1-301 and 9-109, and the tribal CT must meet the requirements of § 9-102(a)(10) before an application of tribal law CT is triggered by §§ 9-303 and 9-311(a). Once this happens, the tribal law takes over as to perfection and priority, and state law becomes largely irrelevant as to those issues (while other applicable law remains determinative as to scope, attachment, and enforcement). But if there is not an adequate tribal CT and secured transactions law, which qualifies under § 9-102(a)(10), tribal law does not apply under § 9-303. Whether tribal law or the applicable state Article 9 then is the governing law depends on a choice of law analysis, unless § 9-311(a) refers to an applicable state CT law. The current Oklahoma CT law does not qualify for the reference at § 9-311(a) in these circumstances, though UCOTA does. See *infra* parts V. and VI. Thus, enactment of UCOTA is the obvious solution to this problem. *Id.* Absent the enactment of UCOTA, a further choice of law analysis must be conducted under § 9-301(1), an ambiguous exercise in the context of Indian country in Oklahoma. See *infra* Parts VII. and VIII. This argues strongly for enactment of UCOTA.

Note again that all of this depends on an initial application of Oklahoma Article 9, in this case because the bankruptcy petition was filed in an Oklahoma-located bankruptcy court and the court properly turned to Oklahoma UCC § 1-301 to determine the choice of law for state secured transactions issues. See UCC § 1-301(1); *cf. id.* §§ 1-301(2), 9-301. Although as noted these issues are largely beyond the scope of this article, it is clear that slight changes in the facts, or even a more rigorous examination of the facts in *Wilserv*, could lead the choice of law analysis in a different direction. Once again, enactment of UCOTA would provide a back-up rule to allow these transactions to go forward regardless of the outcome on these issues. See *supra* note 6. Absent UCOTA, however, the choice of law issues are very challenging, at multiple levels. See *infra* Part VIII.

12. See, e.g., Harrell, *supra* note 4, at 547.

13. Assuming the state version or a similar tribal version of Article 9 exists and is applicable. *Malloy vs. Bank of Commerce (In re Dalton)*, No. 04-10025-R C Bank N.D. Okla. May 18, 2005). *Dalton* provides a clearly correct analysis on this point but a result that could leave such vehicles subject to a "secret lien" (in the sense of automatic perfection in a context where that is not normally expected) that endangers innocent parties and transactions. However, it should be noted that the result is not entirely "secret," as the notation of the security interest on the tribal CT is effective as notice even if the CT does not qualify as such under Article 9. Still, automatic perfection as to CT goods is not a satisfactory solution from a policy perspective.

14. *Malloy v. Cornerstone bank (In re Snell)*, No. 04-14329-M (Bankr. N.D.Okla. Sept. 5, 2005). This is a questionable analysis that was sidestepped by the 10th Circuit. See *Wilserv*, Slip Op. at 12.

15. 12A Okla. Stat. § 1-9-311(a)(4).

16. See, e.g., Harrell, *supra* note 4, at 547 and 551. In *Wilserv*, the 10th Circuit declined to opine significantly on this amendment, because it concluded that the amendment was not applicable on the facts of this case (e.g., the credit union did not obtain its tribal lien entry within 30 days, as provided in § 1-9-311(a)(4)). Moreover, the court indicated that application of § 1-9-311(a)(4) is predicated on the existence of a tribal CT or secured transactions law (*Wilserv*, Slip Op. at 13), casting some doubt on the effectiveness of § 1-9-311(a)(4) in cases where (as in *Wilserv*) the court concludes that no such law exists, even if the 30 day limit is met. Still, it should be noted that § 1-9-311(a)(4) was drafted so as to permit any tribal CT procedure or perfection method. It appears that this issue deserves more consideration than it has yet received in the cases.

17. See Harrell, *supra* note 4. See also *supra* notes 6 and 11.

18. See *Wilserv*, Slip Op. at 18-19. The *Wilserv* argument that there was a sufficient nexus between its loan and the borrower's purchase of the collateral is necessarily a case-by-case issue, but perhaps one worthy of more attention than it received in *Wilserv*. See *supra* note 6. Arguably a refinancing creditor can have a PMSI by reason of this nexus. Moreover, a refinancing creditor can obtain PMSI status by subrogation -- that is what subrogation means, and the lack of a formal assignment in these circumstances (cited by the court, *Wilserv*, Slip Op. at 18) is a reason for application of the equitable doctrine, not an argument against it. See, e.g., *French Lumber Co. v. Commercial Realty & Finance Co.*, 195 N.E. 2d 507 (Mass. 1964). Contrary to the court's suggestion (*Wilserv*, Slip Op. at 19), the doctrine does not require fraud, merely unjust enrichment (which was surely present here). The *Wilserv* court's

view on this seems both overly-stated and under-developed. See also *infra* note 19.

19. *Wilserve*, Slip Op. at 16-17. Subrogation only requires stepping into the shoes of a prior creditor's automatic PMSI perfection, which does not rely on a prior CT lien entry. See UCC § 9-309(1). See also DAN B. DOBBS, REMEDIES 251-52 (1973) (noting that subrogation is an equitable remedy intended to avoid unjust enrichment and that it carries with it any security of the party who was paid). Equitable subordination, in contrast was properly rejected by the 10th Circuit as a theory in the case. See *Wilserve*, Slip Op. at 16-17. See also UCC Article 1, § 1-103(b) (2001 uniform text).

20. Such delays are common in CT transactions, another problem that can be fixed by enactment of UCOTA. See UCOTA §§ 25-26 (allowing perfection of the security interest before the CT is issued). Note that the UCOTA accomplishes the difficult task of providing a CT law that qualifies as such under Article 9 §§ 9-102(a)(10) and 9-311(a), so as to provide a satisfactory means of perfection in the absence of an application for a CT. See *id.*, *supra* this text and note 11, and UCOTA §§ 4, 11, and 25. It is essential for the state's CT law to capture this nuanced relation between the state UCC and CT law, and tribal laws. UCOTA accomplishes this purpose; current CT laws do not.

21. *Wilserve*, Slip Op. at 13 and 15. Arguably this was another erroneous conclusion. See *supra* note 16. See *supra* notes 11, 16 and 20 as to how UCOTA would resolve this.

22. See *e.g.*, Harrell, *supra* note 4, at 548-549 for a brief description of this history.

23. See *Wilserve*, Slip Op. at 15. Cf. UCC § 9-102(a)(10).

24. *Wilserve*, Slip Op. at 15. One may suspect that a tribal court might differ, and it seems that this should be the point under the Article 9 test, though one must also admit that the proffered evidence on this issue in the record was nil. For this reason the Amici urged remand.

25. *Id.* As noted, the Amici brief argued that the 10th Circuit should remand the case for a determination of this issue pursuant to whatever tribal law exists.

26. See *supra* note 22.

27. Unless of course the tribe enacts UCOTA and Article 9, in which case the tribal law will clearly meet the standards of the UCC and this litigation can be avoided.

28. See *supra* note 13. Among other things, this solution means that a prospective purchaser or secured creditor has no means under state law to discover a security interest in goods covered by such a CT, although as a practical matter (as noted *supra* at note 13) the notation on a tribal CT may provide notice.

29. Note that this does not impose any duty on the CT office. It simply means that if the filing is accepted the security interest is perfected under Article 9 § 9-311(a), thereby resolving the perfection and priority problem. In addition, assuming the CT office maintains and indexes a file, this will provide a convenient and intuitive central filing system for records of security interests perfected on tribal CTs.

30. See *supra* this text at notes 10 and 14.

31. See, *e.g.*, Bruce A. Campbell, *Ohio Car Buyers, Their Financers, and "Uniformers" Beware: Certificates of Title Control in Ohio*, 60 Consumer Fin. L.Q. Rep. 216 (2006) (noting the effects of inadequate coordination between the CT law and Article 9 in Ohio). Oklahoma has some of these same (or equivalent) problems.

32. As noted *supra* at Part VII., *Wilserve* leaves the door open to litigation in every such case as to the adequacy of the tribal law and procedure at issue in the case. The possibility that a secured party

might prevail on that argument should not be discounted, but absent UCOTA and Article 9 it is a fact-intensive analysis, and not a prudent basis for new transactions going forward.

33. It should be noted again that enactment of UCOTA will cure this deficiency. See *supra* Part VII.

34. See *supra* note 27.

35. See, *e.g.*, § 1-103(b).

36. These theories are reflected in the general UCC choice of law rule at § 1-301.

37. Arguably the limits on party autonomy for perfection issues, at UCC § 1-301, would not apply due to the nature of an "omitted case." This would allow the parties to a new transaction to prescribe application of tribal law to perfection and priority issues. Indeed, it seems feasible that the parties to an existing contract could amend that contract to resolve an ambiguity or "omitted" issue by subsequent agreement.

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# Committee Presents Spotlight Awards

*By Deborah J. Bruce*

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**JULIE BATES** is a member of the Oklahoma City law firm of Postic & Bates. She currently serves on the OBA Board of Governors and has served on numerous OBA committees over the years — Awards, Civil Procedure, Legal Ethics, Rules of Professional Conduct

and the National Mock Trial and Lawyer Referral Services Task Forces. She also previously served as vice chief master of the Professional Responsibility Tribunal, is a Fellow of the Oklahoma Bar Foundation and is a member of the Oklahoma County Bar, serving on its Board of Directors. Ms. Bates is the co-founder, former administrator (1995-2006) and master emeritus of the Ruth Bader Ginsburg American Inn of Court. She was co-author of a chapter in Matthew Bender's three-volume treatise, "Personal Injury Defense Litigation Techniques." She serves as an adjunct professor at the OU College of Law, teaching adoption law and civil pretrial litigation. Since 1997 she has served as a

faculty member for the law school's "Graduate School of Trial Advocacy," a practical skills refresher course for attorneys. She also volunteers her time to speak to junior high and high school students about the law, legal system, and rights and responsibilities as citizens.



**MARY F. FITZGERALD** is a district court judge for Tulsa County. She formerly served as a judicial referee for Tulsa County and as managing attorney for Legal Aid Services. She then assumed a position with the legal department of The Williams Companies. Judge

Fitzgerald was hired by the Tulsa County District Courts as family court case manager and juvenile court referee in 2003. Her assignments have included criminal arraignments, guardianship disposition dockets, review of DHS records, truancy prevention, DUI/drug court, parenting plan conferences and hardship juror exemptions. Judge Fitzgerald currently presides over a general jurisdiction civil docket. In addition, she is the chief judge



of the family division. She serves on numerous OBA and Tulsa County Bar Association committees. Judge Fitzgerald has been a member of the OBA Women in Law planning committee for many years. She is on the Board of Directors for Tulsa CASA Inc. and is active with the Tulsa Community Food Bank. She is a member of Hudson Hall Wheaton Chapter of The American Inns of Court and currently serves as president, where she has instituted a new practice of adopting a charity for each monthly meeting and inviting members to bring products to donate to that charity.



**PATRICIA D. MACGUIGAN** is an administrative law judge for the Oklahoma Corporation Commission in the oil and gas division. She has more than 30 years experience and a diverse background in numerous areas of the law, including significant work history in the corporate/business litigation field.

She was the first woman to serve as judge and presiding judge of the Oklahoma Court of Civil Appeals. She held that position for nine years. She is also a member of the Ontario Law Society of Upper Canada Bar (bar of the province of Ontario, Canada) and can practice in all Canadian courts. She is a member of the Oklahoma County, Oklahoma and American bar associations. She is also a member of the Women Lawyers Association, and has been a member of the National Association of Women Judges and Iota Tau Tau. She is an adjunct professor at the OU College of Law. In 1983 she was named Woman of the Year by the Business and Professional Women's Association and became a master of the bench of the American Inn of Court XXIII in 1990. She also is a master in the William J. Holloway Jr. American Inn of Court CV and is a member of the Oklahoma Lawyers for Children. She has received numerous merit and service awards from the above listed professional and legal organizations.



**SHEILA J. SEWELL** currently serves as chief deputy court clerk for the U.S. Bankruptcy Court for the Western District of Oklahoma. She has a long and distinguished legal career dedicated to public service. Ms. Sewell first served as an assistant district attorney in Comanche

County and then as an assistant city attorney in Lawton. She previously served as general

counsel to the Pardon and Parole Board and as assistant general counsel for the Oklahoma City Public Schools. For many years, Ms. Sewell was the deputy director of the Administrative Office of the Courts and also served as administrative secretary for the Council on Judicial Complaints. She later assumed the position of trial court administrator for Oklahoma County District Court. She has served on numerous committees including the Public Defender Committee and Administration of Justice. She was a charter fellow of the Young Lawyers Division, is a member of the Oklahoma Bar Foundation and was the co-founder of the OBA Attorney Art Show. Her community activities include serving as president of the Little Theatre Board, member of the Lyric Academy Parents Support Board and as technical crew or prop mistress for eight (and four upcoming) community theater productions.



**APRIL SELLERS WHITE** is an associate district judge for Creek County, a position she has held since 1986. She is the first judge in a long family line of lawyers including her great-aunt, Crenna Sellers Dolge, who graduated from Yale Law School in 1929. She and her brother Jefferson, a district

judge for Tulsa County, are the only sister-brother judge team in Oklahoma history. She chaired the Creek County Juvenile Justice Task Force for 15 years and the Creek County Mental Health Solutions Committee for 14 years. She was appointed to the Oklahoma Court of Criminal Appeals — Emergency Appellate Division and since 1996, has been a member of the State Post Adjudication Review Advisory Board. She is a member of the OBA, ABA and Creek County Bar. She currently serves as co-chair of the Judges Helping Judges Committee. She has received numerous awards including United Methodist Women's Distinguished Service Award, Outstanding Judge of 2003 by the Oklahoma Chapter of Bikers Against Child Abuse, Outstanding Wildlife Judge by the Game Rangers Association, Champion for Children Award by the Foster Care Association of Oklahoma Inc., the Rape Crisis Project Award by Call Rape Foundation of Tulsa and the Community Service Award from Sapulpa Public Schools.

# 2008 OBA Award Winners

*generations of change*



104th Annual Meeting • Nov. 19-21, 2008

**Wednesday, Nov. 19**

**Law School Luncheons**

**Outstanding Senior Law  
School Student Award**

OCU – Melissa Peros

OU – Blake Pinard

TU – Melissa Taylor



**Thursday, Nov. 20**

**OBA CLE Plenary Session**

8:50 a.m.

**Earl Sneed Award**

*for outstanding continuing legal  
education contributions*

Julie Simmons Rivers,  
Oklahoma City

**Annual Luncheon**

**Thursday, Nov. 20**

Noon

**OBA Artist of the Year**

*(will be announced at the luncheon)*

**Judicial Excellence Award**

*for excellence of character, job performance or achievement  
while a judge and service to the bench, bar and community*

Judge Doyle Argo, Oklahoma City

Judge Vicki Robertson, Oklahoma City

**Liberty Bell Award**

*for nonlawyers or lay organizations for promoting or  
publicizing matters regarding the legal system*

Central Oklahoma Association of Legal Assistants (COALA)

**Joe Stamper Distinguished Service Award**

*to an OBA member for long-term service to the bar association  
or contributions to the legal profession*

Bob E. Bennett, Ada

**Alma Wilson Award**

*for a lawyer who has made a significant contribution to  
improving the lives of Oklahoma children*

Renee DeMoss, Tulsa

Judge Richard A. Woolery, Sapulpa

## **Fern Holland Courageous Lawyer Award**

*to an OBA member who has courageously performed in a manner befitting the highest ideals of our profession*

Robert McCarthy, Oklahoma City

## **Golden Gavel Award**

*for OBA Committees and Sections performing with a high degree of excellence*

OBA Work/Life Balance Committee,  
Melanie Jester, Chair

## **Neil E. Bogan Professionalism Award**

*to an OBA member practicing 10 years or more who for conduct, honesty, integrity and courtesy best represents the highest standards of the legal profession*

Judy Hamilton Morse, Oklahoma City

## **John E. Shipp Award for Ethics**

*to an OBA member who has truly exemplified the ethics of the legal profession either by 1) acting in accordance with the highest standards in the face of pressure to do otherwise or 2) by serving as a role model for ethics to the other members of the profession*

Ronald Main, Tulsa

# **Friday, Nov. 21 • General Assembly**

## **Trailblazer Award**

*to an OBA member or members who by their significant, unique visionary efforts have had a profound impact upon our profession and/or community and in doing so have blazed a trail for others to follow*

Judge Thomas S.  
Landrith, Ada

## **Hicks Epton Law Day Award**

*for individuals or organizations for noteworthy Law Day activities*

Bryan County  
Bar Association

Tulsa County  
Bar Association

## **Outstanding Service to the Public Award**

*for significant community service by a lawyer*

S. Douglas Dodd, Tulsa

## **Outstanding County Bar Award**

*for meritorious efforts and activities*

Cleveland County  
Bar Association

Pontotoc County  
Bar Association

## **Outstanding Young Lawyer Award**

*for a member of the OBA Young Lawyers Division for service to the profession*

Christopher L. Camp, Tulsa

## **Outstanding Pro Bono Service**

Jim Webb, Oklahoma City

## **Maurice Merrill Golden Quill Award**

*for best Oklahoma Bar Journal article*

Sarah J. Glick,  
Oklahoma City

Phil R. Richards, Tulsa

# OBA Governance

## 2009 Transitions

### 2008 President

**J. William Conger, Oklahoma City**

**O**CU General counsel and distinguished lecturer in law; of counsel and founder of Hartzog Conger Cason & Neville, Oklahoma City; OU, B.A., 1967; Louisiana State University School of Law, 1967-68; OU College of Law, J. D., 1971; member of OBA, Oklahoma County Bar Association and ABA; member of OBA Board of Governors, 2003-2005, vice president 2006; recipient, 2004 John E. Shipp Award for Ethics; recipient, 2004 President's Award for Outstanding Service to the OBA; chair, OBA Task Force on Tort Reform; chair, Bar Center Facilities Committee; vice chairman, Bench and Bar Committee (2005); member, Access to Justice Advisory Committee; member, Work/Life Balance Committee; Oklahoma County Bar Association past president and former director; former chair of Oklahoma County Bar Law Day Committee and Fee Grievance and Ethics Committee; former chair of Oklahoma County Bar Legal Aid Fundraising Drive; member of Oklahoma County Bar Task Force for Work/Life Balance and numerous other county bar committees; trustee and benefactor fellow of Oklahoma Bar Foundation; fellow, American College of Trial Lawyers; fellow of American Bar Foundation; master emeritus of William J. Holloway Jr. Inn of Court; past president, past counselor, former member of Executive Committee of William J. Holloway Jr. American Inn of Court; recipient of Presidents Award, 1999; Service Award, 2000; Presidents Award, 2001; Professionalism



Award, 2002; past president, board of trustees of Heritage Hall School, past trustee of Heritage Hall School; former director, Speck Home for Boys; member of Oklahoma Museum of Art Legacy Campaign; recipient, Professor of the Year, OCU School of Law (2004-2005).

### 2009 President

**Jon K. Parsley, Guymon**

**J**on K. Parsley is a sole practitioner in Guymon. He received a Bachelor's degree from Central State University in Edmond in 1991. Mr. Parsley received his Juris Doctor Degree from the University of Oklahoma College of Law. He was admitted to the Oklahoma Bar Association in 1994. His practice is very general with an emphasis in litigation. He is also admitted to practice before the U.S. District Court for the Western District of Oklahoma. Mr. Parsley was the chairperson of the OBA Young Lawyer's Division in 2002. He was then elected as the Governor from District 4 and served on the OBA Board of Governors from 2004-2006. Mr. Parsley is a member of the American Bar Association, Oklahoma Association for Justice, and the American Association for Justice. Mr. Parsley is a benefactor fellow of the Oklahoma Bar Foundation.





## 2009 Nominees

### President-Elect

Allen M. Smallwood, Tulsa

**A**llen M. Smallwood is a solo criminal defense practitioner in Tulsa. He received a B.S. from Oklahoma State University in 1972 and his J.D. from the University of Tulsa College of Law, 1974. He has been a member of the Oklahoma Bar Association and the Tulsa County Bar Association since 1975. Prior to obtaining his degrees, Smallwood served in the United States Marine Corps 1966-1968. He is a two time past president of the Tulsa County Bar Association and former director of the Tulsa County Bar Foundation. He has been or is a member of the American Inns of Court, Council Oak Chapter, OBA Board of Governors, Oklahoma Judicial Nominating Commission, Tulsa Criminal Defense Lawyers Association, National Association of Criminal Defense Lawyers, Fellow, Oklahoma Bar Association, Fellow, American Bar Foundation and Fellow, American Association for Justice. In addition to serving, he has received numerous awards such as the TCBA Golden Rule Award, OBA Award for Ethics, President's Award for Service to the Centennial Committee – TCBA, TCBA Neil E. Bogan Award for Professionalism, OBA Neil E. Bogan Award for Professionalism and ABA General Practice, Solo & Small Firm Division Donald C. Rikli Solo Lifetime Achievement Award (2006).



### Vice President

Linda S. Thomas, Bartlesville

**L**inda S. Thomas received her Juris Doctorate from the University of Tulsa College of Law in 1994, and was admitted to the Oklahoma Bar Association in September 1994. She is a solo practitioner in Bartlesville engaged in the general practice of law, concentrating in the area of juvenile and family law. She is a trained mediator and Guardian Ad Litem. In 2007, Ms. Thomas was appointed by Governor Brad Henry as a lifetime member of the Oklahoma Child Abuse Training and Coordination Council. She served on the Oklahoma Bar Association Board of Governors from 2003-2005, and has served on the Board of Trustees for the Oklahoma Bar Foundation since 2006. Ms. Thomas received the OBA President's Award at the 2007 Annual Meeting for her service as chairperson of the OBA 2007 Leadership Task Force, and is currently co-chair of the 2008-09 Leadership Academy. She is a member of the Washington County Bar Association, the American Bar Association, the OBA Family Law Section and the OBA Women in Law Committee. She has served on numerous OBA committees, including the Women in Law Committee, Law Day Committee, Budget Committee, Strategic Planning Task Force, Centennial Task Force and Access to Justice Committee. She is a past president of the Washington County Bar Association and continues to be an active part of the WCBA. She has been a Fellow of the Oklahoma Bar Foundation since 2001, and a Benefactor Fellow since 2004. She is also an Oklahoma Fellow of the American Bar Foundation.



## Supreme Court Judicial District One

**Charles W. Chesnut, Miami**

**C**harles W. (Chuck) Chesnut is a sole practitioner in Miami. He received a B.B.A. from OU in 1974 and his Juris Doctor degree from OU in 1977. His main areas of practice are real estate, probate and estate planning. He is a member and past president of the Ottawa County Bar Association. He served as United States Magistrate Judge (part-time) for the U. S. District Court, Northern District of Oklahoma from 1983-1987. He was a Temporary Panel Judge for the Oklahoma Court of Appeals in 1991-1992. He is a past member of the Board of Directors of the OBA Young Lawyers Division. He is a sustaining member of the Oklahoma Bar Foundation, was a Trustee of the OBF from 1993-2000 and served as President of the OBF in 1999. He is a member of the Real Property Law, Estate Planning and Probate, and Law Office Management and Technology Sections (Chairman, 2005) of the OBA and has been a member of a number of OBA Committees.



## Supreme Court Judicial District Six

**Martha Rupp Carter,  
Tulsa**

**M**artha Rupp Carter has spent 28 years practicing law through public service and handling local government legal issues. Since June 2004, Carter has served the Tulsa City-County Health Department as its general counsel. She graduated from Oklahoma State University with a B.A., honors in English, and obtained her Juris Doctor degree from the University of Oklahoma College of Law in 1980. Prior to her positions now, Carter worked as an associate attorney in private practice with the



law firm Sonberg and Waddel for five years. She also served in the City of Tulsa Legal Department for nineteen years, as Tulsa's City Attorney for the last four years of her service. Carter is an International Municipal Lawyers' Association Government Law Fellow, the first Oklahoman recognized. She has participated for many years on the Tulsa County Bar Association Executive Committee with two terms as secretary, one as treasurer, vice-president, president-elect and president. She currently serves as its past president. She served the Tulsa County Bar Foundation as its vice-president. Carter is a member of the Oklahoma Bar Association Board of Editors, the Oklahoma State Chairperson for the International Municipal Lawyers' Association and an adjunct settlement judge for the U. S. District Court for the Northern District of Oklahoma. She is a recipient of the 2004 Mona Lambird Spotlight Award and a Tulsa County Bar Association Golden Rule honoree.

## Supreme Court Judicial District Seven

**Charles D. Watson Jr.,  
Drumright**

**C**harles D. Watson Jr. is a solo practitioner in Drumright. He has been actively engaged in the general practice of law since 1969, 34 years of which were in partnership with his father, Doyle Watson. Mr. Watson is a graduate of the University of Oklahoma College of Law and is a Lifetime Sustaining Fellow of the Oklahoma Bar Foundation. His previous OBA service includes membership on the OBA Rules of Professional Responsibility Committee, service as an Associate Bar Examiner, membership on the OBA Professional Responsibility Commission, and multi-term service as a Governor-member of the OBA Board of Governors.



## Supreme Court Judicial District Seven

Lou Ann Moudy, Henryetta

**L**ou Ann Moudy is a sole practitioner in Henryetta. Lou Ann received her Juris Doctor in 1989 from the University of Oklahoma College of Law. Her practice is focused on family and small business issues, but as a solo general practitioner, she has many areas of interest.



Lou Ann has been very active in her local bar associations and at the state level. While practicing in Woodward, she served as the president of the Woodward County Bar Association, and has done the same for Okmulgee County since returning to her hometown. She served as director of the OBA Young Lawyers Division from 1994-2000, and was chairperson of the division in 2001. Lou Ann has been a member of several OBA committees and served on the 2006 National Mock Trial Host Committee. When she is not at the office, Lou Ann enjoys tennis, golf, church, civic activities and keeping up with her nephews.

## Member-At-Large

Steven Dobbs, Oklahoma City

**S**teven Dobbs is a managing attorney of Dobbs & Middleton and staff counsel for the Farmers Group of Companies. He received a B.A. in 1973, Master of Public Administration in 1974, both from the University of Missouri and his J.D. from the University of Oklahoma



College of Law in 1979. He was admitted to the Oklahoma Bar Association in 1980 and is able to practice before the United States Supreme Court, the Tenth Circuit Court of Appeals, and the Western, Eastern and Northern Federal District Courts in Oklahoma. Dobbs has remained active in the OBA through service on the Legal Ethics Committee, Legal Ethics Advisory Panel, Rules of Professional Conduct Committee, Professionalism Committee and has been a moderator and speaker at OBA Continuing Legal Education programs. He has worked on volunteer assignments for Lawyers for Children and also serves on the Professional Responsibility Tribunal as the Presiding Chief Master. Governor Keating appointed him to consecutive terms on the Oklahoma Dental Board from 1997 to 2003 where he was elected president in 2002, becoming the first and only non-dentist ever elected president of that board. Dobbs was a recipient of the Oklahoma Bar Association's 2003 John E. Shipp Award for Ethics. He served a term as the Ward 8 City Councilman for Oklahoma City and continues to serve Oklahoma City as the current chairman of the Board of Adjustment. He was a Corporal in the U.S. Marine Corps and was awarded two Purple Hearts for combat related wounds while in Vietnam. He and his wife Lisa reside in Oklahoma City. Lisa is the director of finance for the American Red Cross-Central Oklahoma Chapter.

# 2008 House of Delegates

*Delegate certification should be sent to OBA Executive Director John Morris Williams in order for names to appear in print in the bar journal and to be included in the House of Delegates agenda book.*

COUNTY	DELEGATE	ALTERNATE
ADAIR .....	Kathryn R. Morton .....	
ALFALFA.....	Marcus A. Jungman .....	Kyle B. Hadwiger
ATOKA .....	Antoine J. Bastien van der Meer.....	
BEAVER.....	Jerry L. Venable .....	Todd Trippet
BECKHAM.....	Brian J. Henderson .....	Avery "Chip" Eeds Jr.
BLAINE .....	Daniel G. Webber .....	F. Douglas Shirley
BRYAN.....	Theresa McGehee .....	Chris D. Jones
CADDO .....		
CANADIAN .....	Gregory Kyle Parker.....	Judge Edward C. Cunningham
	Roger D. Everett .....	A. Gabriel Bass
	W. Mark Hixson.....	Michael D. Denton Jr.
CARTER .....	Judge Thomas S. Walker .....	Julie Austin Dewbery
	Michael C. Mordy.....	
CHEROKEE .....	Jerry S. Moore .....	Gregory N. Combs
CHOCTAW .....	Julie C. Flowers .....	Gaylene Flanary McCallum
CIMARRON.....	Stanley Ed Manske .....	Ronald L. Kincannon
CLEVELAND.....	Michael Tupper .....	Michael Johnson
	Craig Sutter .....	Cindee Pichot
	Holly Iker .....	Gerald (Blake) Virgin
	Judge Stephen Bonner .....	Treva Kruger
	Peggy Stockwell .....	David Ponder
	Henry Herbst.....	Roger Housley
	Gary Rife.....	Amelia Pepper
	Golda Long.....	John Sparks
	Judge Lori Walkley .....	Jim Loftis
	Janis Grant-Johnson .....	Richard Wall
	Sandee Coogan .....	Blaine Nice
	Dave Stockwell .....	Clint Pratt
	Jan Meadows .....	Debra Loeffelholz
	Benjamin (Ben) Odom .....	David Smith
	Micheal Salem .....	Steve Stice
	David Poarch Jr.....	Blake Farris
	Richard Stevens .....	
	Robert Pendarvis.....	
	Jim Pence .....	
COAL .....	Preston Harbuck .....	Trae Gray
COMANCHE.....	J. Bill Doolin .....	Dietmar K. Caudle
	Kade A. McClure.....	John D. Munkacsy Jr.
	Paul J. Sowinski.....	Chandra Ray-Holmes
COTTON .....	Kathleen Flanagan .....	Michael C. Flanagan
CRAIG.....	O.B. Johnston III .....	Kent Ryals



CREEK .....	Lauren Lester Allison .....	M. Alan Souter
	Judge Richard A. Woolery .....	
CUSTER.....	Donna L. Dirickson.....	Perry Luther “Luke” Adams
DELAWARE.....	Brandi Peden .....	Lee Griffin Eberle
DEWEY.....	David L. Mosburg .....	Julie D. Strong
ELLIS.....	Laurie E. Hays .....	Judge Joe L. Jackson
GARFIELD .....	David C. Henneke .....	Michael C. Bigheart
	Randy J. Long .....	
	Robert R. Faulk .....	
GARVIN .....	Daniel Sprouse.....	John A. Blake
GRADY.....		
GRANT.....	Judge Jack D. Hammontree Jr. ....	Steven A. Young
GREER.....	Judge Danny R. Deaver .....	
HARMON .....	David L. Cummins .....	Judge Winford Mike Warren
HARPER.....	Judge G. Wayne Olmstead .....	Marcus Holcomb
HASKELL.....	Thomas H. Conklin III .....	
HUGHES .....	Robert L. Irby.....	
JACKSON.....	John Weigel .....	John M. Wampler
JEFFERSON.....	Carrie E. Hixon .....	James H. Ivy
JOHNSTON .....		
KAY .....	K. Wayne Lee .....	John Raley Jr.
	C. Paige Lee .....	Kenneth Jean
KINGFISHER.....	Matt Oppel.....	Rick Goralewicz
KIOWA.....	Tom Talley .....	Tony Mitchell
LATIMER.....	F. Nils Raunikar.....	Ronald Boyer
LEFLORE.....	Marc L. Bovos .....	Samuel Stephen Barnes
LINCOLN.....	David T. Ball .....	Ned Burleson II
LOGAN .....	Jeff L. Hirzel.....	Tim W. Green
LOVE.....	Kenneth L. Delashaw Jr.....	Richard A. Cochran Jr.
MAJOR .....	Judge N. Vinson Barefoot.....	Mitchell A. Hallren
MARSHALL.....	Richard A. Miller.....	Jeffrey S. Landgraf
MAYES.....	Gerald Lee .....	Darrell Moore
MCCLAIN.....	Suzanne Woodrow .....	
MCCURTAIN.....	Judge Michael D. DeBerry.....	Laura Wallis
MCINTOSH .....	Deborah A. Reheard .....	Cindy Dawson
MURRAY .....	Phil S. Hurst.....	Judge John H. Scaggs
MUSKOGEE.....	Larry Vickers Jr. ....	
	Carman D. Rainbolt .....	
	Roy D. Tucker .....	
NOBLE.....	Sherry DeBord .....	Sarah Kennedy
NOWATA.....	Judge Carl G. Gibson .....	Linda M. Branstetter
OKFUSKEE .....	Bruce Coker .....	Regina Meyer
OKLAHOMA.....	Jim Kirk.....	Daniel J. Morgan
	Mack K. Martin .....	Randall L. Sewell
	Judge Bryan C. Dixon.....	Linda Samuel-Jaha
	Judge Glenn Jones.....	Jennifer L. Thompson
	Larry M. Spears .....	Stephen A. Coleman
	Judge Carol Hubbard .....	W. Todd Blasdel
	Judge Timothy D. DeGiusti .....	Jim Webb
	Laura H. McConnell-Corbyn .....	Timothy E. Rhodes
	David W. Kisner .....	Ken Felker

	Judge E. Bay Mitchell III .....	Richard L. Rose
	George W. Dahnke .....	Shanda McKenney
	John Heatly .....	Timothy Henderson
	Judge Page Morgan .....	Debra A. Charles
	M. Courtney Briggs .....	Myra P. Kaufman
	Judge Vicki L. Robertson .....	Ashley Bowen Murphy
	Charles E. Geister III. ....	Alan Bardell
	Judge Barbara Swinton .....	Richard A. Riggs
	Jack S. Dawson .....	Celeste T. Johnson
	Judy Hamilton Morse .....	Judge Philippa James
	Reid Robison .....	D. Renee Hildebrant
	Timothy J. Bomhoff .....	Ray Zschesche
	Judge Lisa K. Hammond .....	Sheila D. Barnes
	Don Holladay .....	Brian W. Pierson
	Michael Mullins .....	Tracey D. Martinez
	Nicholle Jones Edwards .....	Margo Brown
	Leslie L. Lynch .....	Ron Shinn Jr.
	Amy Pierce .....	Lance Schneiter IV
	Kevin D. Gordon .....	Eugene K. Bertman
	Tracy Pierce Nester .....	Yolanda Downing
	Clifford C. Dougherty III .....	Marchi McCartney
OKMULGEE .....	Luke Gaither .....	Lou Ann Moudy
OSAGE.....	B. David Gambill.....	
OTTAWA .....	Charles W. Chesnut.....	Erik C. Johnson
PAWNEE .....	Jon M. Carter .....	Patrick M. Pickerill
PAYNE .....	Jodie L. Gage .....	Keri Williams Foster
	Andrew M. Ihrig .....	Brad Wooten
	Susan Colleen Worthington .....	Mozella Irwin-Smith
PITTSBURG .....	Brett D. Cable .....	Hannah Cable
PONTOTOC.....	Joel D. Stafford.....	Bob E. Bennett
	Karen Thomas .....	T. Walter Newmaster
POTTAWATOMIE.....	Jim Marshall.....	John Canavan
	Tracy McDaniel .....	Jim Pettis
PUSHMATAHA .....	James T. Branam .....	Jacqueline Jo Perrin
ROGER MILLS .....	Newell E. Wright Jr. ....	F. Pat VerSteege
ROGERS .....	Mark Antinoro .....	Gregory Wayne Laird
	Kimberly Appelman .....	
SEMINOLE.....	R.Victor Kennemer III.....	William Huser
SEQUOYAH.....	Kent S. Ghahremani .....	John T. Cripps III
STEPHENS.....	Josh Creekmore .....	
	Jacob Bachelor .....	
TEXAS.....	Jon K. Parsley .....	Douglas D. Dale
TILLMAN.....	Clyde H. Amyx II .....	Bradford L. Benson
TULSA.....	Judge Jane Wiseman.....	Molly A. Bircher
	Robert S. Farris .....	Trisha Linn Archer
	Judge Millie Otey .....	Sharisse O'Carroll
	Judge Charles R. Hogshead.....	Mia Vahlberg
	William G. LaSorsa .....	John Thomas Hall
	Paul D. Brunton.....	Michael Scott Ashworth
	B. Darlene Crutchfield .....	Christopher L. Camp
	Kenneth L. Brune .....	Kenneth G. Miles
	C. Michael Zacharias .....	David M. Thornton Jr.
	Anne B. Sublett .....	John D. Dale
	Leonard Pataki.....	James C. Milton
	Robert "Bob" Redemann .....	Keith A. Jones
	Jack L. Brown.....	Shelton Benedict
	Theodore P. Gibson.....	Stephen J. Greubel

	Vivian C. Hale . . . . .	Jeffrey Tracy
	Allen Smallwood . . . . .	Barbara J. Eden
	Martha Rupp Carter . . . . .	Julie Evans
	Mark W. Dixon . . . . .	Dwight L. Smith
	James R. Gotwals . . . . .	Mary Katherine Saunders
	Phil Frazier . . . . .	Blake R. Givens
	D. Faith Orlowski . . . . .	William E. Farrior
	Patrick O'Connor . . . . .	D. Kenyon Williams Jr.
	John R. Woodard III . . . . .	Robert P. Coffey Jr.
	Robert B. Sartin . . . . .	J. Christopher Davis
	Renee DeMoss . . . . .	Chad Christopher Taylor
	Steve Balman . . . . .	Matthew R. Dowdell
	Wm. Brad Heckenkemper . . . . .	
	Ron Main . . . . .	
	Thomas P. Nally . . . . .	
WAGONER.....	Kenneth A. Hicks . . . . .	Amy B. McFarland
WASHINGTON.....	Remona Colson . . . . .	Michael Shiflet
	Zachary Hyden . . . . .	
WASHITA.....	Judge Christopher S. Kelly . . . . .	Megan Simpson
WOODS.....	Larry L. Bays . . . . .	Ron Bittle
WOODWARD.....	Bryce Hodgden . . . . .	Robyn Price

## JUDICIAL CONFERENCE

	<i><b>DELEGATES</b></i>	<i><b>ALTERNATES</b></i>
District Judge	Judge P. Thomas Thornbrugh	Judge Richard G. VanDyck
Associate District Judge	Judge Mickey J. Hadwiger	Judge Norman L. Russell

## MEMBERS AT LARGE (Past Presidents)

Stephen D. Beam	Andrew M. Coats
William R. Grimm	R. Forney Sandlin
Michael D. Evans	Michael Burrage
Harry A. Woods Jr.	Anthony M. "Tony" Massad
Melissa DeLacerda	Burck Bailey
Gary C. Clark	David K. Petty
Charles D. "Buddy" Neal Jr.	James R. Eagleton
M. Joe Crosthwait Jr.	Judge Paul M. Vassar
Douglas W. Sanders Jr.	John L. Boyd
John A. Gaberino Jr.	Leslie L. Conner Jr.
William J. Baker	William G. Paul
J. Duke Logan	C.D. Northcutt
Sidney G. Dunagan	Judge Thomas R. Brett
Bob W. Rabon	Winfrey D. Houston



# 104th OBA Annual Meeting Sheraton Hotel, Oklahoma City Nov. 19-21, 2008

*All events will be held at the Sheraton Hotel unless otherwise specified.*

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## TUESDAY, NOVEMBER 18

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OBA REGISTRATION.....4 – 8 P.M.

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OKLAHOMA FELLOWS OF  
THE AMERICAN BAR  
FOUNDATION .....6:30 – 9:30 P.M.

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## WEDNESDAY, NOVEMBER 19

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OKLAHOMA FELLOWS OF THE AMERICAN BAR  
FOUNDATION .....8 – 9 A.M.

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ART SHOW REGISTRATION.....8 A.M. – 5 P.M.

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OBA HOSPITALITY AREA .....8 A.M. – 5 P.M.

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OBA REGISTRATION.....8 A.M. – 5 P.M.

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BOARD OF BAR  
EXAMINERS.....8:30 – 11:45 A.M.

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OBA/CLE SEMINAR.....8:30 A.M. – 5 P.M.

*See seminar program for speakers  
and complete agenda*

CRIMINAL LAW  
FAMILY LAW  
WORK/LIFE BALANCE  
NUTS & BOLTS

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OU COLLEGE OF LAW  
ALUMNI RECEPTION  
AND LUNCHEON.....11:15 A.M. – 1:30 P.M.

OUTSTANDING SENIOR LAW SCHOOL STUDENT  
AWARD  
*Blake Pinard*

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TU COLLEGE OF LAW  
ALUMNI LUNCHEON.....11:30 A.M. – 1:30 P.M.

OUTSTANDING SENIOR LAW SCHOOL STUDENT  
AWARD  
*Melissa Taylor*

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OCU COLLEGE OF LAW  
ALUMNI LUNCHEON.....NOON – 1:30 P.M.

OUTSTANDING SENIOR LAW SCHOOL STUDENT  
AWARD  
*Melissa Peros*

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CRIMINAL LAW SECTION  
LUNCHEON .....NOON – 1:30 P.M.

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BOARD OF GOVERNORS MEETING .....2 – 4 P.M.

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LEGAL INTERN COMMITTEE .....2:30 – 3:30 P.M.

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FRIENDS OF BILL W.....5 – 6 P.M.

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LAW DAY COMMITTEE.....5 – 6:30 P.M.



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**PRESIDENT'S RECEPTION**

– LIFE'S A BEACH ..... 7 – 9 P.M.

*(Free for everyone  
with meeting registration)*

*Kick back, relax and enjoy a day at the beach with  
President Bill Conger. Each attendee receives two free  
drink tickets.*

**ENTERTAINMENT:** *Chuck Allen Floyd*

---

**AMERICAN IDOL - OBA STYLE** ..... 9 – 11 P.M.

**ENTERTAINMENT:** *Watch fellow OBA members  
compete for the title of OBA Idol  
in this entertaining spin off of  
the hit TV show, American Idol.  
Admission is free.*

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## THURSDAY, NOVEMBER 20

**PRO BONO BREAKFAST** ..... 7:30 – 9 A.M.

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**AMERICAN COLLEGE OF  
TRUST AND ESTATE COUNSEL** ..... 8 – 9:30 A.M.

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**PROFESSIONALISM  
COMMITTEE BREAKFAST** ..... 8 – 9 A.M.

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**OBA HOSPITALITY AREA** ..... 8 A.M. – 5 P.M.

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**OBA REGISTRATION** ..... 8 A.M. – 5 P.M.

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**CREDENTIALS COMMITTEE** ..... 9 – 9:30 a.m.

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**OBA/CLE PLENARY  
SESSION** ..... 9 – 11:40 A.M.

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**EARL SNEED AWARD**  
*Julie Simmons Rivers, Oklahoma City*

### FEATURING:



**Rita Murray**  
**Leadership coach**

**TOPIC:** *A Perfect Storm of Opportunity:  
Communicating across the Generations*

**BARRISTER SPONSOR:**  
*OBA Litigation Section*

**ESQUIRE SPONSOR:**  
*Oklahoma Attorneys Mutual Insurance Co.*

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**OBA RULES AND BY-LAWS  
COMMITTEE** ..... 10 – 10:30 A.M.

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**ESTATE PLANNING, PROBATE  
AND TRUST SECTION** ..... 10 – 11:45 A.M.

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**OBA BENCH AND BAR  
COMMITTEE** ..... 10 – 11:45 A.M.

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**OBA RESOLUTIONS  
COMMITTEE** ..... 10:45 – 11:45 A.M.

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**OBA ANNUAL LUNCHEON  
FOR MEMBERS, SPOUSES  
AND GUESTS** ..... NOON – 1:45 P.M.  
*(\$30 with meeting  
registration)*

**OBA ARTIST OF THE YEAR**  
*(to be announced at the luncheon)*

**JUDICIAL EXCELLENCE AWARD**  
*Judge Doyle Argo, Oklahoma City*  
*Judge Vicki Robertson, Oklahoma City*

**LIBERTY BELL AWARD**  
*Central Oklahoma Association of Legal Assistants  
(COALA)*

**JOE STAMPER DISTINGUISHED SERVICE AWARD**  
*Bob E. Bennett, Ada*

**ALMA WILSON AWARD**  
*Renee DeMoss, Tulsa*  
*Judge Richard A. Woolery, Sapulpa*

**FERN HOLLAND COURAGEOUS LAWYER AWARD**

*Robert McCarthy, Oklahoma City*

**GOLDEN GAVEL AWARD**

*OBA Work/Life Balance Committee,  
Melanie Jester, Chair*

**NEIL E. BOGAN PROFESSIONALISM AWARD**

*Judy Hamilton Morse, Oklahoma City*

**JOHN E. SHIPP AWARD FOR ETHICS**

*Ronald Main, Tulsa*

**FEATURING:**



**Jeffrey Toobin**  
**Law, media and**  
**political analyst**

JEFFREY TOOBIN BOOK SIGNING ..... 2 – 3 P.M.  
*(Books available for purchase)*

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BANKRUPTCY AND  
REORGANIZATION SECTION ..... 2 – 4 P.M.

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REAL PROPERTY SECTION ..... 2 – 4 P.M.

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2008-2009 OBA  
LEADERSHIP ACADEMY ..... 2 – 5 P.M.

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OBA/CLE AND LAWYERS  
HELPING LAWYERS ASSISTANCE  
PROGRAM PRESENT FRAMING  
THE QUESTIONS/FINDING  
THE ANSWERS: MENTAL  
HEALTH AND THE OBA ..... 3 – 4:15 P.M.  
*(OBA Annual Meeting  
registration not required  
for admission)*

**PROGRAM:**

What's Happening with Mental Health  
Services in Oklahoma?

How is the OBA Addressing Member  
Mental Health Issues?

How Should OBA Members Address  
Lawyer Mental Health Issues? *(ethics)*

**MODERATOR:**

*Clif Gooding, The Gooding Law Firm PC,  
Oklahoma City*

**SPEAKERS:**

*Terri White, Oklahoma Department of  
Mental Health and Substance Abuse  
Services, Oklahoma City*

*Wenona Barnes, LifeFocus Counseling  
Services, Oklahoma City*

*Mike Stewart, Bradford Health Services,  
Alabama*

*John Albert, Mike Arnett & Associates,  
Oklahoma City*

*Gina Hendryx, OBA Ethics Counsel,  
Oklahoma City*

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BOARD OF EDITORS ..... 3:30 – 5 P.M.

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OKLAHOMA BAR FOUNDATION  
BOARD OF TRUSTEES ..... 3:30 – 5:30 P.M.

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DIVERSITY COMMITTEE FORUM ..... 3 – 4:30 P.M.

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MINERAL LAW SECTION ..... 4 – 6 P.M.

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FINANCIAL INSTITUTIONS  
SECTION ..... 3:30 – 4:30 P.M.

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DIVERSITY COMMITTEE  
RECEPTION ..... 4:30 – 5:30 P.M.

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HEALTH LAW SECTION ..... 5 – 7 P.M.

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OBF RECEPTION ..... 6 – 7:30 P.M.

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JUST DESSERTS .....7:30 – 9 P.M.  
(Free for everyone  
with meeting registration)

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YLD CASINO NIGHT ..... 9 – MIDNIGHT  
(Free for everyone  
with meeting registration)

SPONSOR: OBA YOUNG LAWYERS DIVISION

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## FRIDAY, NOVEMBER 21

### PRESIDENT'S PRAYER

BREAKFAST .....7:30 – 9 A.M.  
(\$20 with meeting registration)

SPEAKER: Dr. Robert Gorrell, Church of the  
Servant, Oklahoma City

TOPIC: Living an Epic Life

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YLD FELLOWS BREAKFAST .....7:30 – 9 A.M.

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OBA REGISTRATION .....8 – 10 A.M.

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### OKLAHOMA BAR ASSOCIATION

GENERAL ASSEMBLY .....9 – 10 A.M.

### TRAILBLAZER AWARD

Judge Thomas S. Landrith, Ada

### OUTSTANDING COUNTY BAR AWARD

Cleveland County Bar Association  
Pontotoc County Bar Association

### HICKS EPTON LAW DAY AWARD

Bryan County Bar Association  
Tulsa County Bar Association

### OUTSTANDING YOUNG LAWYER AWARD

Christopher L. Camp, Tulsa

### OUTSTANDING SERVICE TO THE PUBLIC AWARD

S. Douglas Dodd, Tulsa

### OUTSTANDING PRO BONO SERVICE

Jim Webb, Oklahoma City

### MAURICE MERRILL GOLDEN QUILL AWARD

Sarah J. Glick, Oklahoma City  
Phil R. Richards, Tulsa

### PRESIDENT'S AWARDS

(to be announced)

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### GENERAL ASSEMBLY

#### SPEAKERS:

Chief Justice  
James R. Winchester  
Oklahoma  
Supreme Court



Presiding Judge  
Gary L. Lumpkin  
Oklahoma Court of  
Criminal Appeals

J. William Conger  
President



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INDIAN LAW SECTION ..... 10 A.M. – NOON

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OKLAHOMA BAR ASSOCIATION  
HOUSE OF DELEGATES ..... 10 A.M. – NOON

*Jon K. Parsley*  
**President-Elect, Presiding**



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BALLOT COMMITTEE ..... 11 – 11:30 A.M.

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2008-2009 OBA  
LEADERSHIP ACADEMY ..... 1 – 6 P.M.

A background graphic featuring several zebras in a savanna setting, partially obscured by a dark rectangular box containing text.

# Got e-mail?

Check your official  
mailing address & add  
your e-mail address

Go to <http://myokbar.org/Login>

- ♦ Use your new OBA number & PIN  
number to enter this password-protected  
portion of the OBA's Web site
- ♦ OBA member e-mail addresses are for the exclusive use  
of the association and are not for sale to outside sources  
nor are they considered to be public record



# OBA/CLE Annual Meeting 2008

**November 19, 2008 • Sheraton Hotel**

**DAY 1**

	<i>Family Law</i>	<i>Criminal Law</i>	<i>Work/Life Balance</i>	<i>Nuts &amp; Bolts</i>
WEDNESDAY Registration 8 - 9 a.m.	Program Planner/ Moderator  Amy E. Wilson	Program Planner/ Moderator  Ben Brown	Program Planner/ Moderator  Leslie Lynch Melanie J. Jester	Program Planners/ Moderators  Lindsey Andrews Eric Schelin
<b>Session 1</b> 9 - 9:50 a.m.	<b>Cocktail Party Family Law Tips for the Non-Family Law Attorney</b>  Rees Evans David Echols Eileen Echols	<b>Perceptions from the Other Side</b>  Charles Sifers David Prater Judge Virgil C. Black Catherine Burton Marny Hill Carol Iski	<b>Substance Abuse - Spotting the Signs in Our (Friends and) Colleagues and Tips on What to Do to Protect Our Practice (and Their Lives)</b>  Glenn Mirando	<b>Maneuvering Through DPS and the DUI Case</b>  David Ogle
<b>Session 2</b> 10 - 10:50 a.m.	<b>Legislative Update</b>  Noel Tucker Julie Rivers	<b>Representing Your Client before the Oklahoma Pardon &amp; Parole Board</b>  Mike Arnett Susan Loving J.D. Daniels	<b>How to Pay Those Law School Loans (and Other Debts) while Saving For the Future</b>  Melinda Olbert	<b>Commencing the Estate Administration Process</b>  Jack L. Brown
<b>Session 3</b> 11 - 11:50 a.m.	<b>Parenting Coordinator Basics: How to Get a PC Appointed, PC Authority, and Reading PC Reports</b>  Jerry Perigo	<b>Digital Forensic Information from Cameras and Cell Phones</b>  Mark R. McCoy	<b>Find Joy in Life - To Make Bad Days Practicing Law a Little More Tolerable</b>  Linda King Ryan Cunningham Rodney Cook	<b>How to Play Nice in the Sandbox: Tips on Professionalism, Civility and Etiquette (ethics)</b>  Members of YLD
<b>12-2 p.m. LUNCH (On your own)</b>				
<b>Session 4</b> 2 - 2:50 p.m.	<b>The New Child Support Guidelines: What You Need to Know About Changes to the Guidelines Statute</b>  Amy E. Wilson	<b>Representing Clients before the Department of Public Safety... What Lawyers Should Expect?</b>  Wellon Poe Deann Taylor	<b>What to Do When Your Case Goes to Hell (ethics)</b>  Gina Hendryx Judge Edward Cunningham	<b>Getting to Know Discovery: Tips for Civil, Family, and General Practice</b>  John Echols Amy Howe Matt McDevitt

# OBA/CLE Annual Meeting 2008

<i>cont'd</i>	<i>Family Law</i>	<i>Criminal Law</i>	<i>Work/Life Balance</i>	<i>Nuts &amp; Bolts</i>
<b>Session 5</b> 3 - 3:50 p.m.	<b>Best Web Sites for Family Lawyers</b> Jim Calloway	<b>Prosecutorial Misconduct/Ineffective Assistance of Counsel... What To Avoid?</b> Chris Blair	<b>Navigating the Intersection of Work &amp; Life - Charting Organizational and Individual Success</b> Jannine Rupp Ellen Ostrow	<b>The Basics of Implementing (and Keeping) a Guardian Ad Litem</b> David Echols Eileen Echols
<b>Session 6</b> 4 - 4:50 p.m.	<b>Family Law Ethics Players (ethics)</b> Donelle Ratheal Jay Buxton Rees Evans Phil Tucker Noel Tucker Eileen Echols	<b>DNA Analysis Updates and Changes</b> Mary Long	<b>Life Goes to Hell - But the Law Goes On</b> Jim Chastain Jim Calloway Joe Ashbaker	<b>What Your Clients Need to Know About Employment Law</b> Erica Anne Dorwart

4:50 p.m. ADJOURN

**November 20**

**DAY TWO**

<b>THURSDAY</b> <i>Registration</i> 8 - 9 a.m.		
<b>OBA/CLE Plenary Session</b> 9 - 11:40 a.m.	<b>Topic:</b> <b><i>A Perfect Storm of Opportunity: Communicating Across the Generations</i></b>	<b>Featured Speaker:</b> <b><i>Rita Murray</i></b> Workforce demographic, cultural and socioeconomic events are colliding to produce the biggest business changes ever experienced in the United States, Canada and many other developed countries. Using a provocative and insightful look at the successful business diversity initiatives in the legal profession, this presentation will provide practical ideas you can put to work now.



# 2008 Annual Meeting Registration Form

*generations of change*  
104th Annual Meeting • Nov. 19-21, 2008

Please complete a separate form for each registrant.

Name \_\_\_\_\_  
E-mail \_\_\_\_\_  
Badge Name (if different from roster) \_\_\_\_\_ Bar No. \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Phone \_\_\_\_\_  
Name of Non-Attorney Guest \_\_\_\_\_

Please change my OBA roster information to the information above. ☐ Yes ☐ No

## Check all that apply:

- ☐ Judiciary ☐ OBF Fellow ☐ OBF Past President ☐ OBA Past President ☐ YLD Officer ☐ YLD Board Member ☐ YLD Past President  
☐ Board of Bar Examiner ☐ 2008 OBA Award Winner ☐ Delegate ☐ Alternate ☐ County Bar President: County \_\_\_\_\_

## ☐ YES! Register me for the 2008 Annual Meeting, November 19, 20 & 21, in Oklahoma City.

Events will be held at the Sheraton Hotel. Registration fee includes continental breakfast in hospitality area, President's Reception ticket(s), Just Desserts reception, convention gift, Vendors Expo, Art Contest and Viva Las Vegas Casino Night.

- MEMBER: ☐ \$50 through Oct. 24; \$75 after Oct. 24..... \$ \_\_\_\_\_  
■ NEW MEMBER (Admitted after Jan. 1, 2008): ☐ Free through Oct. 24; \$15 after Oct. 24..... \$ \_\_\_\_\_  
■ LAW STUDENT DIV. ☐ \$25 through Oct. 24; \$35 after Oct. 24 ..... \$ \_\_\_\_\_  
☐ I will submit an entry (or entries) in the Art Contest. (Submit art registration form by Oct. 24.  
Entry fee included in meeting registration.)

## I will be attending/participating in the following ticketed events in addition to my registration fee for Annual Meeting:

- ☐ WED. & THURS.: CLE Multitrack ( \_\_\_\_\_ [0 or 1] ticket @ \$150 through Oct.24; \$175 after Oct. 24;  
and Plenary \$50 for new members through Oct. 24, \$75 after Oct. 24) ..... \$ \_\_\_\_\_  
☐ THURSDAY: CLE Plenary only ( \_\_\_\_\_ [0 or 1] ticket @ \$75 through Oct. 24; \$100 after Oct. 24;  
\$25 for new members through Oct. 24, \$50 after Oct. 24). ..... \$ \_\_\_\_\_  
☐ THURSDAY: Annual Luncheon ( \_\_\_\_\_ number of tickets @ \$30 each) ..... \$ \_\_\_\_\_  
☐ FRIDAY: President's Prayer Breakfast ( \_\_\_\_\_ number of tickets @ \$20 each)..... \$ \_\_\_\_\_  
☐ Please check here, if under the Americans with Disabilities Act you require specific aids or services during  
your visit to the OBA Annual Meeting. ☐ Audio ☐ Visual ☐ Mobile (Attach a written description of your needs.)

## I will be attending the following ticketed events that do NOT require Annual Meeting registration:

- ☐ WEDNESDAY: Law School Luncheon – (check one) ☐ OCU ☐ OU ☐ TU  
( \_\_\_\_\_ number of tickets @ \$30 each..... \$ \_\_\_\_\_  
TOTAL \$ \_\_\_\_\_

### THREE WAYS TO REGISTER

- **MAIL** this registration form with payment or credit card info to:

OBA Annual Meeting  
P.O. Box 53036  
Okla. City, OK 73152

■ **FAX** this registration form with credit card information to: (405) 416-7092.

■ **ONLINE** at [www.okbar.org](http://www.okbar.org)

■ **CANCELLATION POLICY** Full refunds will be given through Nov. 7. No refunds will be issued after deadline.

### PAYMENT OPTIONS:

- ☐ Check enclosed: Payable to Okla. Bar Association

Credit card: ☐ VISA ☐ Mastercard

Card # \_\_\_\_\_

Exp. Date \_\_\_\_\_

Authorized Signature \_\_\_\_\_

### HOTEL ACCOMMODATIONS:

Fees do not include hotel accommodations. For reservations contact: Sheraton Hotel at (405) 235-2780. Call by Oct. 26 and mention hotel code: OK BAR for a special room rate of \$94 per night. For hospitality suites, contact Craig Combs at (405) 416-7040 or e-mail: [craigc@okbar.org](mailto:craigc@okbar.org).

OBA Annual Meeting Event  
Wednesday, Nov. 19, 2008  
9 – 11 p.m.



- Perform one song to wow celebrity judges
- Prizes for first, second & third places
- Limited to 15 individuals or groups
- Groups must include at least 1 OBA member
- Participants provide background music on CD
- OBA performers must register for the meeting

Fill out the form below and submit.

or print and mail to: American Idol – OBA Style,  
OBA, P.O. Box 53036, OKC 73152

Fax to: 405.416.7089 • Scan & e-mail to: [idol@okbar.org](mailto:idol@okbar.org)

Name of act: \_\_\_\_\_

Your Name: \_\_\_\_\_

OBA #: \_\_\_\_\_

E-mail address: \_\_\_\_\_

If group, names of other performers:

\_\_\_\_\_ OBA # (if applicable) \_\_\_\_\_

\_\_\_\_\_ OBA # (if applicable) \_\_\_\_\_

\_\_\_\_\_ OBA # (if applicable) \_\_\_\_\_

\_\_\_\_\_ OBA # (if applicable) \_\_\_\_\_

*Questions: E-mail [idol@okbar.org](mailto:idol@okbar.org)*



# 2008 OBA ATTORNEY ART SHOW

## REGISTRATION FORM

**Deadline: Oct. 24, 2008**

(No registrations will be accepted after this deadline)

Return form with  
Annual Meeting registration fee to:

Oklahoma Bar Association • P.O. Box 53036 • Oklahoma City, OK 73152

Name \_\_\_\_\_

OBA Number \_\_\_\_\_

\*E-mail \_\_\_\_\_  
(\*Must be submitted to receive additional information and forms)

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_

I will enter \_\_\_\_ pieces of art, each of which are described below.

For each entry, complete in detail all information requested below. Please attach an additional sheet with all the required information for entries exceeding the space provided.

*The following categories of art will be judged:*

- Oil Painting
- Acrylic
- Watercolor
- Black and White Drawing
- Color Drawing
- Black and White Photograph
- Color Photograph
- Three Dimensional (sculptures, woodwork, etc.)
- Craft (tile work, stained glass, needlepoint, etc.)
- Mixed Media (screenprint, enhanced photographs, etc.)



*Watercolor*



*Pottery*



*Photography*



*Stained glass*

Name of Piece	Size/Weight	Date Created	Category

# 2009 OBA Board of Governors Vacancies

**Nominating Petition Deadline was 5 p.m. Friday, Sept. 19, 2008**

## OFFICERS

### President-Elect

Current: Jon K. Parsley, Guymon  
 Mr. Parsley automatically becomes OBA president  
 Jan. 1, 2009  
 (One-year term: 2009)  
 Nominee: **Allen M. Smallwood, Tulsa**

### Vice President

Current: Michael C. Mordy, Ardmore  
 (One-year term: 2009)  
 Nominee: **Linda S. Thomas, Bartlesville**

## BOARD OF GOVERNORS

### Supreme Court Judicial District One

Current: Brian T. Hermanson, Ponca City  
 Craig, Grant, Kay, Nowata, Osage, Ottawa,  
 Pawnee, Rogers and Washington counties  
 (Three-year term: 2009-2011)  
 Nominee: **Charles W. Chesnut, Miami**

### Supreme Court Judicial District Six

Current: Robert S. Farris, Tulsa  
 Tulsa County  
 (Three-year term: 2009-2011)  
 Nominee: **Martha Rupp Carter, Tulsa**

### Supreme Court Judicial District Seven

Current: Alan Souter, Bristow  
 Adair, Cherokee, Creek, Delaware, Mayes,  
 Muskogee, Okmulgee and Wagoner counties  
 (Three-year term: 2009-2011)  
 Nominee: **Charles D. Watson Jr., Drumright**  
**LouAnn Moudy, Henryetta**

### Member-At-Large

Current: Julie E. Bates, Oklahoma City  
 (Three-year term: 2009-2011)  
 Nominee: **Steven Dobbs, Oklahoma City**

## Summary of Nominations Rules

Not less than 60 days prior to the Annual Meeting, 25 or more voting members of the OBA within the Supreme Court Judicial District from which the member of the Board of Governors is to be elected that year, shall file with the Executive Director, a signed petition (which may be in parts) nominating a candidate for the office of member of the Board of Governors for and from such Judicial District, or one or more County Bar Associations within the Judicial District may file a nominating resolution nominating such a candidate.

Not less than 60 days prior to the Annual Meeting, 50 or more voting members of the OBA from any or all Judicial Districts shall file with the Executive Director, a signed petition nominating a candidate to the office of Member-At-Large on the Board of Governors, or three or more County Bars may file appropriate resolutions nominating a candidate for this office.

Not less than 60 days before the opening of the Annual Meeting, 50 or more voting members of the Association may file with the Executive Director a signed petition nominating a candidate for the office of President-Elect or Vice President or three or more County Bar Associations may file appropriate resolutions nominating a candidate for the office.

See Article II and Article III of OBA Bylaws for complete information regarding offices, positions, nominations and election procedure.

Vacant positions will be filled at the OBA Annual Meeting Nov. 19-21. Terms of the present OBA officers and governors listed will terminate Dec. 31, 2008.

# OBA Nominating Petitions

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

## OFFICERS

### PRESIDENT-ELECT

#### **ALLEN M. SMALLWOOD, TULSA**

Petitions have been filed nominating Allen M. Smallwood for election of President-Elect of the Board of Governors of the Oklahoma Bar Association for a one-year term beginning January 1, 2009.

**A total of 289 signatures appear on the petitions.**

### VICE PRESIDENT

#### **LINDA S. THOMAS, BARTLESVILLE**

Petitions have been filed nominating Linda S. Thomas for election of Vice President of the Board of Governors of the Oklahoma Bar Association for a one-year term beginning January 1, 2009.

**A total of 284 signatures appear on the petitions.**

**County Bar Resolutions Endorsing Nominee:**  
Comanche, Payne and Washington County

## BOARD OF GOVERNORS

### SUPREME COURT JUDICIAL DISTRICT ONE

#### **CHARLES W. CHESNUT, MIAMI**

Nominating Petitions have been filed nominating Charles W. Chesnut for election to the Board of Governors of the Oklahoma Bar Association Supreme Court Judicial District 1 for a three-year term beginning January 1, 2009.

**A total of 54 signatures appear on the petitions.**

### SUPREME COURT JUDICIAL DISTRICT SIX

#### **MARTHA RUPP CARTER, TULSA**

Nominating Petitions have been filed nominating Martha Rupp Carter for election to the Board of Governors of the Oklahoma Bar Association, Supreme Court Judicial District Six for a three-year term beginning January 1, 2009.

**A total of 97 signatures appear on the petitions.**

### SUPREME COURT JUDICIAL DISTRICT SEVEN

#### **CHARLES D. WATSON JR., DRUMRIGHT**

A Nominating Resolution has been filed nominating Charles D. Watson Jr. for election to the Board of Governors of the Oklahoma Bar Association Supreme Court Judicial District 7 for a three-year term beginning January 1, 2009.

**County Bar Resolutions Endorsing Nominee:**  
Creek County

#### **LOU ANN MOUDY, HENRYETTA**

A Nominating Resolution has been filed nominating Lou Ann Moudy for election to the Board of Governors of the Oklahoma Bar Association Supreme Court Judicial District 7 for a three-year term beginning January 1, 2009.

**County Bar Resolutions Endorsing Nominee:**  
Okmulgee County

### MEMBER-AT-LARGE

#### **STEVEN DOBBS, OKLAHOMA CITY**

Nominating Petitions and Nominating Resolutions have been filed nominating Steven Dobbs for election to the Board of Governors of the Oklahoma Bar Association, Member-at-Large for a three-year term beginning January 1, 2009.

**A total of 304 signatures appear on the petitions.**

**County Bar Resolutions Endorsing Nominee:**  
Craig County and Harmon County

# Carter County Bar Association Hosts Board of Governors

Sept. 18, 2008 • Ardmore



*President-Elect Jon Parsley visits with Ron Worthen, Mike Hisey and Judge Lee Card during a reception held at the Noble Foundation Conference Center.*



*President Bill Conger with Carter County Bar President Julie Austin-Dewberry and Gov. Mike Mordy, from Ardmore. The Board of Governors traveled to Ardmore for its September meeting.*



*Rennie Collins poses for a photo with his father, T. Fred Collins, who was honored that evening for achieving the milestone of 60 years as an OBA member.*



# BIGGER STRONGER BETTER FIRM

[smaller name]

The law firm of  
**Phillips McFall McCaffrey McVay & Murrah**  
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Today, we serve our clients and community with a legal team that is bigger and stronger than ever – including 11 top lawyers, who joined us this year. Whether structuring a make-or-break deal or litigating a bet-the-company case, we are much more than lawyers, we are strategic partners.  
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405.235.4100 | Fax 405.235.4133 | [phillipsmurrah.com](http://phillipsmurrah.com)

## Public Defender

The Kickapoo Tribal District Court of the Kickapoo Tribe of Oklahoma is seeking one (1) Public Defender with a salary of \$500.00 per month. A Public Defender shall possess the following: An enrolled member of a Federally Recognized Tribe, an Attorney, an Individual who physically resides within the jurisdiction of the Kickapoo Tribe of Oklahoma, an advocate who has practiced before the Tribal Court on a regular basis for more than two (2) years as a member of the Oklahoma Bar Association, or a graduate of an American Bar Association accredited law school approved by the Supreme Court of the Kickapoo Tribe of Oklahoma. A Public Defender must show the following: has exhibited moral integrity and fairness, has never been convicted of a felony (including the pleading of nolo contendere), has consistently abstained from alcohol and has never used any illegal drug or substance in any form whatsoever, is more than twenty-five (25) years of age, is not a member of the Business committee or any other Ordinance created Committee, Board, or Commission, however, that Individual may resign that post to assume the role of Judge or Justice, and has experience in the legal profession or has legal education/training. All resumes will be accepted beginning September 25, 2008 and will close on October 17, 2008. Please submit all resumes to Rochelle Murdock, Court Administrator, Kickapoo Tribal Court, PO BOX 1310 McLoud, OK. 74851.

## 7 Hours CLE, 1 Hour Ethics - Only \$90!

### Providing Services for Oklahoma's Aging Population

**Friday, October 24, 2008**

8:15a.m. - 4:30p.m.

OSU-OKC Student Center, 3rd Floor

**Early Registration: \$90 (deadline: Oct. 10)**

**Regular Registration: \$115**

**TOPICS:** Advocacy in a Hospital Setting ❖  
Hospice Care ❖ Medicaid Home-Based Services  
& Financial Eligibility ❖ Long-Term Care  
Options ❖ Serving Clients with Diminished  
Capacity ❖ Advance Directives for Health Care

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# Get Involved — Volunteer for an OBA Committee

One of my first duties as your president next year is to keep the momentum of our committees going by appointing new members. And this year I'd like to make a special appeal to those of you who have never served on a committee before. We need you. We need your fresh ideas; we need your involvement to keep the direction of our committees moving forward.

We became lawyers to make a difference, and committee work is a way we can enhance our practice and our profession in so many ways. Videoconferencing equipment in Tulsa makes it convenient to be linked with Oklahoma City and saves so much time (if you don't live in Guymon).

Indicate your willingness to serve — or to be reappointed — by logging onto **www.okbar.org** and under Other News, click 2009 Committee Sign Up. Another option is to complete the form below and return it to me by **Dec. 12, 2008**, by mail, fax or e-mail.

Jon Parsley, President-Elect

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## Standing Committees

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- |                                |  |   |
|--------------------------------|--|---|
| • Access to Justice            | • Group Insurance                            | • Professionalism                         |
| • Awards                       | • Law Day                                    | • Rules of Professional Conduct           |
| • Bar Association Technology   | • Law-related Education                      | • Solo and Small Firm Conference Planning |
| • Bar Center Facilities        | • Law Schools                                | • Strategic Planning                      |
| • Bench and Bar                | • Lawyers Helping Lawyers Assistance Program | • Unauthorized Practice of Law            |
| • Civil Procedure              | • Lawyers with Physical Challenges           | • Uniform Laws                            |
| • Clients' Security Fund       | • Legal Intern                               | • Women in Law                            |
| • Communications               | • Legislative Monitoring                     | • Work/Life Balance                       |
| • Disaster Response and Relief | • Member Services                            |   |
| • Diversity                    | • Paralegal                                  |   |
| • Evidence Code                |  |   |

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Committee Name

1st Choice \_\_\_\_\_

2nd Choice \_\_\_\_\_

3rd Choice \_\_\_\_\_

Have you ever served  
on this committee?

☐ Yes ☐ No

☐ Yes ☐ No

☐ Yes ☐ No

If so, when?  
How long?

☐ Please assign me to only one committee.

☐ I am willing to serve on (two or three - circle one) committees.

Besides committee work, I am interested in the following area(s):

---

Mail: Jon Parsley • c/o Oklahoma Bar Association • P.O. Box 53036  
• Oklahoma City, OK 73152-3036 • Fax: (405) 416-7001 • E-Mail: [debbieb@okbar.org](mailto:debbieb@okbar.org)

# Statement of Ownership Management and Circulation

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9. Full names and complete addresses of publisher, editor, and managing editor:

Publisher: Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152-3036

Editor: Melissa DeLacerda, 301 S. Duck, Stillwater, OK 74076

Managing Editor: John Morris Williams, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152-3036

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I certify that the statements made by me above are correct and complete.

John Morris Williams  
Editor-in-Chief

## District Court Judges

The Kickapoo Tribal District Court of the Kickapoo Tribe of Oklahoma is seeking two (2) District Court Judges with a salary of \$500.00 per session. A District Court Judge shall possess the following requirements: an enrolled member of a Federally Recognized Tribe, an Attorney, an Individual who physically resides within the jurisdiction of the Kickapoo Tribe of Oklahoma, or an advocate who has practiced before the Tribal Court on a regular basis for more than two (2) years as a member of the Oklahoma Bar Association, accredited law school approved by the Kickapoo Tribe of Oklahoma Supreme Court. All applicants must show the following: has exhibited moral integrity and fairness, has never been convicted of a felony (including the pleading of nolo contendere), has consistently abstained from alcohol and has never used any illegal drug or substance in any form whatsoever, is more than twenty-five (25) years of age, is not a member of the Business committee or any other Ordinance created Committee, board, commission, however, that individual may resign that post to assume the role of Judge or Justice and has experience in the legal profession or has legal education/training. All resumes will be accepted beginning September 25, 2008 and will close on October 17, 2008. Please submit all resumes to Rochelle Murdock, Court Administrator, Kickapoo Tribal Court, PO BOX 1310 McLoud, OK. 74851.

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## FROM THE PRESIDENT

*cont'd from page 2172*

If you believe as I do that values are the core for the transformation of the profession, then we must decide, as Dean Hall suggests, what values are fundamental to this profession and how we will instill these values. Certainly, service is a fundamental value. But there are others — caring, honesty, dedication, loyalty and practicing law as though people matter.

To instill these values, it begins in the law school and continues in the culture of law firms and our professional organizations. At OCU it starts the first week of orientation. All OCU students attend an orientation session, where they take an oath usually administered by the chief justice of the Supreme Court or one of the associate justices. It is called the Pledge of Professional Commitment. These students make a sworn commitment to a number of things such as the pursuit of excellence, honesty, integrity, courtesy, civility and fairness as well as a commitment to seek improvement of the law, access to the legal system, the administration of justice and the quality of service rendered by the legal profession. Following the oath, the students participate in a discussion of legal ethics. The process of instilling values doesn't stop there but continues throughout their law school career.

We need to challenge lawyers to dream and imagine a different world. As Dean Hall stated so eloquently, "We need dreamers who are willing to proclaim that as lawyers they are the healers of peoples' wounds and the wounds of this society and are not parasites that benefit from the suffering of others." He says we need for lawyers "to become problem solvers and not gladiators, to be healers and not band aids ... to work as compassionate professionals."

Now I realize there are some who will suggest that I am not realistic, who will say I am naïve — a dewy-eyed romantic — but I don't think that is the case. I have seen far too many lawyers who are great because they are more than just lawyers. They are servant leaders, and they are raising the bar. As Oklahoma Bar Association president, one of the great privileges I have is meeting lawyers all over the state. One such lawyer is Yonne McDaniel from Mangum.

In June, I attended a luncheon in Mangum honoring Yonne for 62 years in the practice of law. Incidentally, Yonne never went to law school. She read the law and then took the bar exam. There was a large crowd; numerous lawyers and lots of townspeople were there. The mayor took the podium and as I listened to her remarks, I was

struck by the fact that she was not only recognizing Yonne as a lawyer, she was thanking her for all she had done for the community, the many boards she had served on and her many years of teaching Sunday School in her church.

As I listened, I realized that Yonne was the epitome of what I have been trying to teach law students at OCU. And when it was my turn to speak, I told her this — I said, "Yonne, you are an inspiration to not only women but to all of us for your 62 years of service to our profession, and you are exactly who I have in mind when I talk to students about leadership. For you see, I tell them that when they go to their communities, especially smaller ones like Mangum, they are expected to be leaders. They will be one of the three or four most educated people in the community along with the doctors, the clergy, and, if there is a college nearby, the professor. The citizens of the community expect them to serve on the town council, in the mayor's office, on the school board and on the church vestry." Interestingly, as I was making these remarks, the townspeople in the audience were nodding their heads in agreement.

Now Yonne was a pioneer who has completed a long and distinguished career. But she is only one example of a lawyer who transformed our profession because of her values and the work she did. There are others who come to mind. I think of people like Judge Vicki Miles-LaGrange and her works in Rwanda and other conflict countries such as Ghana and Liberia; I think of Fern Holland from Tulsa and the work she did in Iraq for which she gave her life. I think of Kent Myers and Don Nicholson who created Oklahoma Lawyers for Children; I think of Will Hoch and the work he does for the homeless and the poor. I think of David Boren, Burns Hargis and Tom McDaniel, lawyers who are leading great universities. The list could go on forever.

Several years ago Justice Tom Colbert of our Supreme Court gave the commencement address for the OCU School of Law; and, among other things, he talked about what your law degree gives you — that it empowers you to transform the profession and the world. It is appropriate for the lawyer to view herself as a public citizen but with that there are many obligations not the least of which is doing what is right and decent — not just legally permissible.

This profession requires much of its top lawyers. It requires people to be involved, to be of service to others and to have the highest ethical standards. In sum, to be a leader! The type of person who can and must transform this profession!

# Lawyers Often Work to Find Solutions to Social Ills

*By John Morris Williams*

A couple of years ago I read that Oklahoma has more grandparents raising grandchildren than any other state in the nation. I was not certain if that was per capita or just outright raw numbers. In either case, it is a sad testament to our state. The obvious cause is drug addiction. The meth epidemic has far-reaching consequences that will last a generation if it were solved today.

This edition of the bar journal focuses on guardianships. It is a timely subject given the number of children who have been abandoned by parents who have fallen prey to this terrible addiction. As with almost all social ills, it has fallen upon the legal profession to find solutions or a least to bring some order to the chaos.

A couple of examples show that the legal profession has been engaged in finding solutions in this area. The OBA sponsored legislation to make grandparent guardianships easier to obtain and maintain. Legal Aid Services set up a kiosk in the Tulsa County Courthouse to help fill out the forms and has done numerous programs and given

tremendous assistance to many grandparents on fixed incomes. Countless hours have been donated by legal organizations set up to help children. In short, our profession has done much to help the least among us.

“In short, our profession has done much to help the least among us.”

On the other hand, our criminal courts and treatment facilities are overwhelmed with the fallout from the use, sale and distribution of this poison. To answer this call, drug courts were created to find alternatives to costly and mostly ineffective incarcerations. Once again, a social problem our profession is trying help solve. I say this not as a complaint but as proof that we possess great problem-solving skills and stand ready to help solve the difficult problems of our time.

When I became a lawyer, I wanted to help people. That is true of all of us. It just did not dawn on me the problems we would face and the challenges that would come before us. Who would have thought that grandparent guardianships would have been so necessary? Who would have thought we would have the need for drug courts and so many children would be abandoned and left to find their way through the legal system? Thank goodness we wanted to help people because the opportunities sure exist.

My hat goes off to the countless lawyer volunteers who take cases for Legal Aid Services and for Lawyers for Children and the other organizations that provide legal services to the poor and disenfranchised. I know this kind of selfless giving never makes the front page of the newspaper, and the general public finds delight in our faults rather than our generosity. However, I know we all live in a better community because of your efforts.

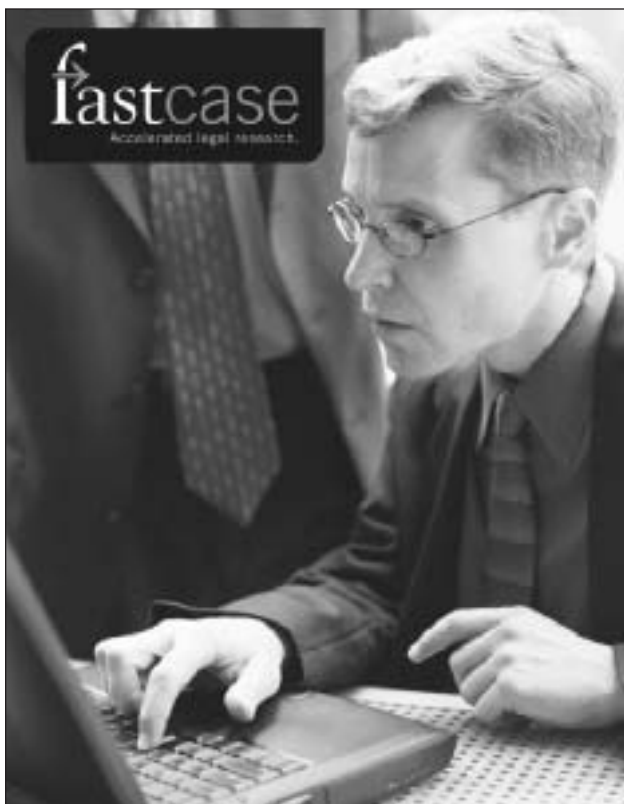
Of course, not all guardianships involve children of drug addicts. There are many other often sad and

serious situations that lead to the appointment of a guardian. Often these cases involve competing family members and expose some rather unpleasant family dynamics. Once again, it is the lawyers and judges who are called upon to find solutions to these very hard problems.

As you read through this issue I would hope that you take a moment to reflect upon the important work our profession does and what opportunities we have to make positive contributions in even the most difficult situations. Your work is important and your results are lasting. For this I am proud to work for you and to call you my colleagues.



To contact Executive  
Director Williams,  
e-mail him at [johnw@okbar.org](mailto:johnw@okbar.org)



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# An Increased Focus on Improving Client Satisfaction Is Your Formula for Success

*By Jim Calloway, Director, OBA Management Assistance Program*

So, who is the most important person in your office?

In a large firm, this question may invoke thoughts of the founding partner or managing partner. The staff in the solo practitioner's office may believe the most important person to be the lawyer, while the lawyer may think of the office manager or the employee who makes sure that the bills go out each month. The new lawyer, brimming with confidence and excitement about law practice, may think (but, hopefully, would not say) "it's me."

But no matter what size of law firm is involved, the most important people are the clients. For without the clients, there really is no private law practice. (Yes, I know that many of you reading this column immediately answered this question correctly.)

During the recent New Lawyer Experience program, I discussed with those setting up new law practices how important it is for clients to be satisfied with

how they are treated by the lawyer and the lawyer's office, even if they may not be satisfied with the result in their legal matter. After all, in litigation, for example, there are winners and losers. Hopefully all law firm personnel understand that a commitment to excellent client service and communication is an integral part of operations of the

successful 21st century law firm.

But there's a bit more involved than just doing great work and having great client communications. Generally speaking, we are satisfied when our expectations are met and dissatisfied when our expectations are violated.

So with every new engagement, some time should be devoted to ascertaining both the client's expectations with the substantive legal work at hand and making sure that the client has reasonable expectations about the process and the law firm's methods of operations. It is certainly no secret that some legal matters take some time to complete. The client should understand after the initial engagement what a reasonable time frame is and what types of contingencies might cause that time frame to be even longer.

Over 10 years ago, I wrote an article titled "Form Letters You and Your Clients will Love" (69 OBJ 802 - March 7, 1998). You can find the article online at

**“The client should understand after the initial engagement what a reasonable time frame is and what types of contingencies might cause that time frame to be even longer.”**



# The Ten Commandments of Good Client Relationships

<http://tinyurl.com/26jv5a>. With the benefit of hindsight, I might have given the article a different title, but I still believe in the content. The main premise of the article is that one should develop forms and reusable standard language to facilitate client communication just as carefully as the firm develops checklists and forms to help accomplish substantive work.

Today I would like to point you to some resources to assist with that. Some time ago, practicePRO, the law practice assistance division of the Canadian lawyers' professional indemnity insurance provider LawPRO, published a feature on dealing with difficult clients. It is online at [www.practicepro.ca/practice/DifficultClients.asp](http://www.practicepro.ca/practice/DifficultClients.asp). I encourage you to review this Web feature. In addition to the paper "Dealing with the Difficult Client," by Canadian lawyer (now judge) Carole Curtis, there are two documents that are available for download for readers to use in creating their own similar documents. These include a billing information document and an administrative information document. Both of these documents are to be given to each client at the establishment of the attorney-client relationship. You probably do not want to use these forms verbatim,

but they can serve as great guides in drafting similar documents for your firm.

It is important for the law office staff to understand that while they are employed by the law firm, they work for the clients. If there are no clients to pay attorney's fees, there will soon be no jobs at the law firm. This is an important concept. Sometimes, during particularly stressful matters, even the lawyers need to be reminded of this basic concept.

The Ten Commandments of Good Client Relations is a good reminder of this. The Queensberry Law Society of Australia is credited for originally distributing these commandments. However, a similar Ten Commandments relating to patients can be found on the walls of some doctor's offices in Oklahoma. After reading the commandments in the attached sidebar, you can download a copy suitable for framing and posting in your law office lobby or break room at <http://tinyurl.com/nz4y8>.

We all know who is really vital for our law offices to prosper, but hanging a reminder on the wall cannot hurt.

1. Clients are the most important people in our practice — in person, by mail or by phone.
2. Clients are not dependent on us. We are dependent on them.
3. Clients are not an interruption of our work. They are the purpose of it.
4. Clients do us a favor when they call. We are not doing them a favor by serving them.
5. Clients are a part of our business. Do not treat them as outsiders.
6. Clients are not "statistics." They are flesh-and-blood human beings with feelings and emotions like our own.
7. Clients are not people to argue or match wits with. Nobody ever won an argument with a client.
8. Clients are people who bring us their wants. It is our job to meet those wants.
9. Clients are the lifeblood of this practice.
10. Clients are deserving of the most courteous and attentive treatment we can give them.

# Taking on Matters Adverse to Former Clients (Part 2)

By Gina Hendryx, OBA Ethics Counsel

The following is part two of a three-part series on conflicts in representations adverse to a former client.

Part one of this series delved into the ethical considerations faced when a lawyer takes on a matter that is adverse to a former client. A lawyer may not represent a present client against a former client in the same or a substantially related matter unless the former client gives informed consent, confirmed in writing. This article will consider the ethical implications when it is the lawyer's former firm, rather than the lawyer personally, that represented someone with interests adverse to the lawyer's client. For example, Lawyer Smith was an associate at Alpha and Beta Law Firm during the time the firm represented Client A in a nasty divorce. The case is over and A has remarried. Lawyer Smith has moved to a new firm, Omega Law Offices. Omega's prospective client B is currently married to A and is seeking a divorce. Client A claims Omega has a conflict because of Lawyer Smith's prior employment. May Lawyer Smith and Omega Law Offices represent client B against Alpha and Beta's former client?

Oklahoma Rule of Professional Conduct (ORPC) 1.9 (b) states:

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client:

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9 (c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

In our scenario, Smith and his new firm would be disqualified if Smith had actually acquired information relating to client A that would be protected under Rules 1.6 (confidentiality) or 1.9 (c) during his prior employment with Alpha and Beta. However, if while at his former firm, attorney Smith received no confidential information about client A and had no part in the representation, then Smith and his subsequent firm may

represent client B in this new matter.

Rule 1.9 (b) and the comments to Rule 1.9 allow a lawyer to rebut the presumption that while at a former firm he received confidential information about a client of the firm. Comment [5] to Rule 1.9 states:

"Paragraph (b) operates to disqualify the lawyer only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9 (c). Thus, if a lawyer while with one firm acquired no knowledge or information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict. See Rule 1.10 (b) for the restrictions on a firm once a lawyer has terminated association with the firm."

Courts are looking more and more to the actual involvement of an attorney in a matter and allowing the attorney to rebut the presumption that he received confidential information by

mere virtue of his employment status. Courts are evaluating the former representations and the lawyer's involvement in same. Comment [6] to rule 1.9 gives guidance for this review:

"Application of paragraph (b) depends on a situation's particular facts, aided by inferences, deductions or working presumptions that reasonably may be made about the way in which lawyers work together. A lawyer may have general access to files of all clients of a law firm and may regularly participate in discussions of their affairs; it should be inferred that such a lawyer in fact is privy to all information about all the firm's clients. In contrast, another lawyer may have access to the files of only a limited number of clients and participate in discussions of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a lawyer in fact is privy to information about the clients actually served but not those of other clients. In such an inquiry, the burden of proof should rest upon the firm whose disqualification is sought."

In *Adams v. Aerojet-General Corp.*, 104 Cal. Rptr.2d 116, (Cal. Ct. App. 2001) the court held that a lawyer who changes firms is not presumptively disqualified

from litigation wherein a former client of his former firm is the adverse party. The court stated that "A rule of automatic disqualification based solely on a lawyer's past association in a firm and without inquiry into his actual exposure to the former client's secrets sweeps with too broad a brush."

Comment [6] suggests a

**“It is insufficient to deny knowledge of any relevant confidential information or to deny any present recollection of confidences.”**

need to evaluate the type of practice and the manner in which the lawyers work within the firm to determine whether a lawyer has actual knowledge of a client's secrets. Facts to consider include:

- Do lawyers within the firm have wide access to information about other lawyers' cases?

- How and where are case files maintained within the firm?
- Do the lawyers within the firm regularly discuss their cases with each other?
- Does the firm hold case reviews, firm meetings, or other assemblies wherein cases and/or clients are discussed?
- Does a review of time records, affidavits, court docket sheets, etc. confirm that the lawyer has had little or no exposure to the file?

Whether the lawyer had access to confidential information will be a question of fact to be determined by a host of factors specific to each representation. It is insufficient to deny knowledge of any relevant confidential information or to deny any present recollection of confidences. The lawyer will need to provide affirmative evidence and testimony confirming his lack of involvement in the subject matter. See *Dieter v. Regents of University of California*, 963 F. Supp. 908 (E.D. Cal. 1997) and *Kassis v. Teacher's Ins. & Annuity Ass'n*, 695 N.Y.S.2d 515 (N.Y. 1999).

Next month this column will review the process for disqualification of an attorney with a Rule 1.9 conflict.

# September & Special Meeting Summary

*The Oklahoma Bar Association Board of Governors met at the Noble Conference Center in Ardmore on Friday, Sept. 19, 2008.*

## REPORT OF THE PRESIDENT

President Conger reported he addressed the participants in the Leadership Academy, attended dinner with the Board of Governors and attendees of the Leadership Academy, August Board of Governors meeting, OBF Grants and Awards Committee meeting and the Boiling Springs Institute. He also spoke at the memorial service for attorney Laura Cross and at the dedication of the new bar center east wing. He gave the keynote address at the William Holloway Inn of Court opening banquet and participated on a panel at the Women in Law Conference.

## REPORT OF THE VICE PRESIDENT

Vice President Mordy reported he attended the Board of Governors reception and dinner for members of the OBA Leadership Academy, August Board of Governors meeting, OBF Grants and Awards Committee meeting and the dedication of the east wing of the bar center.

## REPORT OF THE PRESIDENT-ELECT

President-Elect Parsley reported he attended the dinner with the Board of Governors and attendees of the Leadership Academy, August Board of Governors meeting, preliminary budget meeting with staff, Annual Meeting 2009 planning committee with staff, Boiling Springs Institute in Woodward, one meeting of the Texas County Bar Association and the dedication of the new bar center east wing.

## REPORT OF THE PAST PRESIDENT

Past President Beam reported he attended the August Board of Governors meeting and event with the Leadership Academy attendees, Civil Procedure Committee meeting, Awards Committee meeting, 2009 Annual Meeting meeting, Custer County Bar Association meeting, Boiling Springs Institute and the dedication of the bar center east wing.

## REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported that he attended portions of the Leadership Academy programming, Board of Governors Thursday night dinner event, dedication of the east wing renovation, staff meet-

ings, Budget Committee meeting to work on the budget for 2009, staff directors meeting, staff meeting for Annual Meeting and National Association of Bar Executives Program Committee meeting to plan for ABA mid-year and annual meeting programs. He also met with Dick Beale on member benefit issues, with the construction company and others regarding lighting deficiencies in the remodeled area, with Wenona Barnes to discuss a new two-year contract with LifeFocus Counseling, participated in two phone conferences with a Leadership Academy presenter and presented a CLE at Boiling Springs Institute.

## BOARD MEMBER REPORTS

**Governor Bates** reported she attended the dinner and reception with the Board of Governors and attendees of the OBA Leadership Academy, August Board of Governors meeting, Awards Committee meeting and dedication and reception for the new bar center east wing. **Governor Brown**, absent from the September meeting, submitted a written report that he attended the dinner and reception with the Board of Governors and attendees of the OBA Leadership Academy, August Board of



Governors meeting, OBA Bench and Bar Committee meeting, ABA Section Officers Conference in Chicago and the dedication and reception of the Oklahoma Bar Center new east wing. **Governor Christensen** reported she attended the Board of Governors reception and dinner with OBA Leadership Academy members, August Board of Governors meeting, OBA Bench and Bar Committee meeting, OBA Awards Committee meeting, OBA Women in Law Annual Meeting, OBF Grants and Awards Committee meeting, dedication of the remodeled bar center east wing, memorial service for Oklahoma lawyer Laura Cross and chaired the OBA Women in Law Walk of Hope. **Governor Dirickson** reported she attended the Thursday evening event with the Leadership Academy attendees, August Board of Governors meeting and the September Custer County Bar meeting. **Governor Farris** reported he attended the board reception and dinner with Leadership Academy participants, August board meeting in Oklahoma City and Tulsa County Bar Association annual luncheon, at which he awarded certificates of service on behalf of the OBA. He began teaching a class on elder law at the University of Tulsa College of Law. **Governor Hermanson** reported he attended the Board of Governors reception and dinner with the members of the OBA Leadership Academy, August Board of Governors meeting, Bench and Bar Committee meeting, Professionalism Committee meeting, Kay County Bar Association meeting and the bar

center east wing dedication. **Governor Hixson** reported he attended the Board of Governors reception and dinner with the Leadership Academy, August Board of Governors meeting, Professionalism Committee meeting, Boiling Springs Legal Institute, Canadian County Bar luncheon meeting/CLE seminar and the dedication of the bar center east wing. **Governor McCombs** reported he attended the Board of Governors reception and dinner with the Leadership Academy, Board of Governors meeting, McCurtain County Bar meeting and helped plan a year-end video CLE for McCurtain County. **Governor Reheard** reported she attended the Thursday evening event with Leadership Academy attendees, Friday August Board of Governors meeting, September Pittsburg County Bar meeting and the east wing dedication. **Governor Souter** reported he attended the dinner and reception for the Leadership Academy, August Board of Governors meeting and the Awards Committee meeting. **Governor Stockwell** reported she attended the August Board of Governors meeting, Awards Committee meeting, Cleveland County Bar Association Executive Committee regular meeting, CCBA Executive Committee special meeting, CCBA monthly meeting and the dedication of the bar center east wing. **Governor Stuart**, absent from the September meeting, submitted a written report that he attended the August Board of Governors meeting, OBA Board of Editors meeting, Awards Committee meeting and the Missouri

Bar Association Annual Meeting in Kansas City.

## REPORT OF THE YOUNG LAWYERS DIVISION

Governor Warren reported she attended the August Board of Governors meeting, August YLD Board of Directors meeting and the planning conferences regarding Annual Meeting Casino Night. She shared details about the YLD receptions planned for new lawyers in Tulsa and Oklahoma City.

## LAW STUDENT DIVISION LIAISON REPORT

LSD Chair Janoe reported he attended the August Board of Governors meeting, participated in various phone and e-mail meetings of the Law Student Division.

## SUPREME COURT LIAISON REPORT

Justice Taylor reported the swearing-in ceremony has changed to three separate ceremonies by law school to accommodate the large size crowd in the House of Representatives chamber at the State Capitol Building. The fall ceremony was formerly held in a church. He encouraged board members to attend. He reported Oct. 2 Executive Director Williams will present proposed rule changes to the Supreme Court in conference. Justice Taylor said the court is working on the court budget, not just the Supreme Court but for district courts as well and that proposed budget will be presented to the Oklahoma Legislature in November.

## GENERAL COUNSEL REPORT

A written status report of the Professional Responsibility

ity Commission and OBA disciplinary matters was submitted for the board's review.

#### **OBA ANNUAL MEETING UPDATE**

President Conger reminded board members about luncheon speaker Jeffrey Toobin, plenary speaker Rita Murray and Dr. Robert Gorrell, who will speak at the President's Prayer Breakfast.

#### **BAR CENTER RENOVATION**

President Conger said most board members were able to attend the Sept. 11 open house celebrating the east wing renovation, and bar members seemed to enjoy the event.

#### **LEADERSHIP ACADEMY UPDATE**

President Conger said background information about the Leadership Academy was put together for board members. He is encouraged that new leaders will result.

#### **OBA TAXATION LAW SECTION BYLAWS AMENDMENTS**

The board approved amendments recommended

by the Taxation Law Section to its bylaws.

#### **AWARDS COMMITTEE RECOMMENDATIONS FOR OBA AWARDS**

The board approved the Awards Committee's recommendations for OBA award recipients. Awards will be presented at the OBA Annual Meeting Nov. 19-21.

#### **RESOLUTIONS**

The board issued resolutions to the Carter County Bar Association, Mike and Christy Mordy and the Noble Foundation for their hospitality in hosting the Board of Governors in Ardmore.

#### **STAFF APPRECIATION LUNCH**

President Conger reported that the OBA staff will be treated to a catered lunch at the bar center on Dec. 2, and board members are invited to attend.

#### **OBA CRUISE**

President-Elect Parsley reported promotion has started for the 2009 CLE cruise to the western Caribbean. Family-friendly events were discussed.

#### **EXECUTIVE SESSION**

The Board of Governors voted to meet in executive session. They met in executive session and voted to come out of session.



*The Oklahoma Bar Association Board of Governors met for a special meeting at the Oklahoma Bar Center in Oklahoma City on Friday, Oct. 3, 2008.*

#### **EXECUTIVE SESSION**

The Board of Governors voted to meet in executive session. They met in executive session and voted to come out of session.

#### **RESIGNATION ACCEPTED**

The board voted to accept the resignation of General Counsel Dan Murdock, which is effective Dec. 31, 2008.

#### **NEXT MEETING**

The board will meet at the Oklahoma Bar Center at 9 a.m. on Friday, Oct. 24, 2008.

*For summaries of previous meetings, go to [www.okbar.org/obj/boardactions](http://www.okbar.org/obj/boardactions)*

## **PROPOSED TENTH CIRCUIT RULES CHANGES FOR 2009**

**Tenth Circuit Rule 8.2(A)(5)** This new proposed rule requires parties filing emergency motions in immigration stay matters to attach relevant agency orders. **Tenth Circuit Rule 25.6** — This new proposed rule will allow parties, with approval from opposing counsel/parties, to use the court's ECF system to serve pleadings when the court goes live in 2009. **Tenth Circuit Rule 27.3(A)** — This is a proposed amendment to the existing rule requiring parties to contact opposing counsel when filing a motion. The proposed amendment requires counsel to contact opposing parties "well in advance of filing a motion." The court has seen a proliferation of situations where opposing counsel is called immediately before filing, and the resulting statement advises that counsel could not be reached. This proposed amendment encourages counsel to communicate with opposing parties well in advance of any pending deadlines. **Grammar Changes Anticipating ECF** — Small changes were made in the local rules in various sections alerting practitioners that the court will begin to transition to attorney "ECF" filing in 2009. None of the changes alter the substance of the rules. If you have comments, please submit them to [Ca10\\_Clerk@ca10.uscourts.gov](mailto:Ca10_Clerk@ca10.uscourts.gov) by October 27, 2008. The new local rules will take effect January 1, 2009. Both a redlined and original version of the proposed rules can be found on the court's website at [www.ca10.uscourts.gov](http://www.ca10.uscourts.gov).

# Lawyers Transforming Lives

## OBF Awards \$869,000

The Oklahoma Bar Foundation's mission is to promote justice, advance legal education and fund critical legal services. Each year OBF receives dozens of applications for assistance from worthy charitable organizations seeking funding. This year's requests greatly exceeded available funds. Economic conditions continue to exhaust the resources of law-related charitable organizations which struggle to meet ever increasing needs.

The OBF's Grants and Awards Committee is charged with the consideration of grant requests. The

members of the committee review the written applications and then conduct applicant interviews prior to making a final recommendation to the full OBF board. This year 23 programs will receive OBF grant awards totaling \$814,500 with an additional \$54,500 awarded for law student scholarships, bringing 2008 awards to \$869,000.

**OBF HAS EXCEEDED THE \$8 MILLION AWARD LEVEL WITH A TOTAL OF \$8,401,916 TO DATE**

With the help of generous attorney donors and income from Interest on Lawyer

Trust Accounts (IOLTA) and other invested funds, the OBF strives to meet legal service and law-related educational needs. The 25th anniversary of Oklahoma IOLTA will be celebrated during the OBA Annual Meeting this year. IOLTA was established in Oklahoma in 1983 as a voluntary program and became mandatory in 2004. Of the more than \$8.4 million in total OBF grant awards to date, only some \$500,000 was awarded prior to establishment of the program. OBF awards have dramatically increased by \$2,865,810 since IOLTA became mandatory.

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### PROGRAMS RECEIVING OBF GRANTS THIS YEAR ARE:

<b>American Councils for International Education</b>	\$ 2,000
Oklahoma participation in the Open World Rule of Law programming	
<b>Center for Children &amp; Families Inc. of Cleveland County</b>	7,500
Court ordered supervised visitation and family exchange assistance services	
<b>Domestic Violence Intervention Services Inc.</b>	20,000
Civil legal services and educational programming in Tulsa and surrounding counties	
<b>Family Shelter of Southern Oklahoma Inc.</b>	10,000
Civil legal services for victims of domestic violence in Southern Oklahoma	
<b>Legal Aid Services of Oklahoma Inc.</b>	450,000
Maintenance of upgrade salary funding and program expansion into satellite regions	
<b>Marie Detty Youth &amp; Family Services Center Inc.</b>	17,500
Civil legal services and educational programming in the Comanche County area	
<b>Norman High School National "We the People" Constitution Competition</b>	2,000
Oklahoma representation in the final rounds of the competition	
<b>OBA Law-Related Education PACE Teacher Institute</b>	12,000
Program maintenance for presentation of a statewide summer classroom teacher workshop	

<b>OBA/YLD Oklahoma High School Mock Trial Program</b>	\$ 50,000
Statewide program presentation and addition of web based seminars	
<b>Oklahoma CASA Association Inc.</b>	10,000
Statewide training conference to provide mandatory training for Court Appointed Special Advocates staff and volunteers for abused and neglected children	
<b>Oklahoma CAAVA Association Inc.</b>	30,000
Court Appointed Advocates for Vulnerable Adults program maintenance and expansion	
<b>Oklahoma City University Law School, Native American Legal Resource Center</b>	20,000
Implementation of the Wills Legal Services Project in Western Oklahoma	
<b>Oklahoma Indian Legal Services, Low-Income Taxpayer Clinic</b>	20,000
Support staff maintenance for the provision of free legal tax services and advice statewide	
<b>Oklahoma Lawyers For Children Inc.</b>	40,000
Funding to provide legal representation for abused, neglected and deprived children in Juvenile Court and at emergency show cause hearings through volunteer pro bono lawyers in Oklahoma county and surrounding areas	
<b>Oklahoma University College of Law</b>	2,000
Travel expenses for the Law Students for Access to Justice Program participation	
<b>Open World Leadership Center</b>	2,000
Oklahoma representation in the Rule of Law Program and educational conference	
<b>Senior Law Resource Center Inc.</b>	25,000
Free educational outreach program to promote informed, thoughtful incapacity planning and prevention of elder exploitation	
<b>Teen Court Incorporated of Comanche County</b>	20,000
Program maintenance funding for teen court presentation serving first time juvenile offenders and their peers	
<b>Trinity Legal Clinic of Oklahoma Inc.</b>	3,000
One-time funding to purchase computer equipment for coordination of a program providing legal services to the OKC homeless (supplementing LASO services)	
<b>Tulsa Lawyers For Children Inc.</b>	55,000
Funding to provide legal representation for abused, neglected and deprived children in Juvenile Court and at emergency show cause hearing through volunteer pro bono lawyers	
<b>Tulsa University College of Law Boesche Legal Clinic</b>	7,500
Immigrant rights legal clinic project utilizing law-student interns to provide civil legal services	
<b>William W. Barnes Children's Advocacy Center</b>	5,000
Presentation of free educator workshops to train participants to better recognize, respond and report child abuse in Rogers, Mayes and Craig counties	
<b>YMCA Oklahoma Youth &amp; Government Program</b>	4,000
High school officer leadership training program and presentation of the junior high Model Legislative Day	

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## HOW DO I GET INVOLVED?

Complete the OBF Fellows Form TODAY. Join OBF in its mission to promote justice, advance legal education and fund critical legal services. Be more than a spectator, get in the game — contribute to OBF — Lawyers Transforming Lives.





# FELLOW ENROLLMENT FORM

☐ Attorney    ☐ Non-Attorney

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

Firm or other affiliation: \_\_\_\_\_

Mailing & Delivery Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ E-Mail Address: \_\_\_\_\_

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

☐ Total amount enclosed, \$1,000

☐ \$100 enclosed & bill annually

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

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

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

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

***“Lawyers  
Transforming  
Lives — Become an  
OBF Fellow Today”***

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: \_\_\_\_\_

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

***Many thanks for your support & generosity!***

# Real World Legal Experience

By Laurie W. Jones

What began as an informal conversation between two members of the OBA Access to Justice Committee after the committee's May meeting has developed into a collaborative program pairing lawyers and customers of the Oklahoma Department of Human Services (OKDHS) Child Support Enforcement Division (CSED) with first-year law students at Oklahoma City University School of Law. The committee members, an attorney who works in CSED as a programs manager and a law professor at OCU, realized that each had programs and people with needs and abilities that could be shared with the ultimate goal to improve access to justice for Oklahoma's children and families.

The Oklahoma Department of Human Services Child Support Enforcement Division handles over 175,000 cases a year. The division has 43 offices throughout the state and is staffed by over 60 lawyers. When a child does not receive support from one or both parents, CSED lawyers locate the parents' addresses and employers, establish legal paternity, establish child support and medical support orders, enforce support for married, separated, and divorced parents, modify child support orders and work with other

states and countries to obtain child support. Between \$15 and 23 million is collected each month for child support. CSED lawyers work tirelessly as economic advocates for the children of Oklahoma, ensuring that parents financially support their children, thus enabling families to become self-sufficient.

First-year law students at OCU take legal research and writing classes which require them to research and write objective legal memoranda during the first semester. Their first written assignment is typically due after the students have been in law school for a month. The students also take legal analysis, civil procedure, torts and contracts classes. After a month of law school, they have a basic understanding of legal doctrine, the role of lawyers and judges, and how the legal system is designed. They understand and can use basic legal terminology, can analyze cases, fact situations and spot issues. They are enthusiastic and eager learners and come to law school with a willingness to serve.

Although the case load of CSED continues to grow, some of the tasks necessary to litigate and monitor the

cases can be handled by someone with some knowledge of the law, but not necessarily a license to practice law. The law students' developing legal knowledge and skills, and consequent need to apply that knowledge and practice those skills, coupled with their desire to engage in actual client contact and to observe lawyers and judges at work, made this collaboration obvious.

This semester, 50 law students have been provided the research for and written their first legal memorandum on one of three topics encountered by CSED lawyers on a daily basis: modification of child support orders, contempt proceedings for failure to pay child support, and the inclusion of Social Security disability and retirement payments in income calculations for child support. In late September, CSED lawyers in the Oklahoma City metro area will conduct a training session for the students on child support, customer intake and interview procedures, how to fill out appropriate forms and orders, and the procedures for court contempt and arraignment dockets. In October and November, the students will participate in one of several "mini-clinical"

experiences where they will work alongside and under the supervision and guidance of the CSED lawyers. They will participate in a "show cause marathon" at one of the local CSED offices which will require them to assist with pre-hearing conferences for show-cause paternity hearings before an administrative law judge. Along with CSED lawyers, they will attend court dockets in Oklahoma County District Court for contempt and arraignment proceedings. There, they will assist in discussions with non-custodial parents, obtain information for forms and orders, and generally assist the CSED lawyers in ways that allow the lawyers to maximize their efficiency and to serve as many customers as possible.

The students will get a real-world legal experience and work closely with experienced lawyers — the lawyers will have extra minds and hands to help them with their caseloads. While all the participants will benefit, we hope that the greatest beneficiaries of the collaboration are the children and families of Oklahoma, who will have greater access to justice.

*Ms. Jones is a legal research and writing professor at Oklahoma City University School of Law and is a member of the Access to Justice Committee.*

# Oklahoma Bar Journal

## Editorial Calendar

### 2008

- November  
**Technology/Practice Management**  
Editor: Melissa DeLacerda  
melissde@aol.com  
Deadline: Aug. 1, 2008
- December  
**Ethics & Professional Responsibility**  
Editor: Martha Rupp Carter  
mcarter@tulsa-health.org  
Deadline: Aug. 1, 2008

### 2009

- January  
**Meet Your OBA**  
Editor: Carol Manning
- February  
**Immigration**  
Editor: John Munkacsy  
johnmunk@sbcglobal.net  
Deadline: Oct. 1, 2008
- March  
**Privacy**  
Editor: Melissa DeLacerda  
melissde@aol.com  
Deadline: Oct. 1, 2008
- April  
**Law Day**  
Editor: Carol Manning
- May  
**Oil & Gas and Energy Resources Law**  
Editor: Julia Rieman  
rieman@enidlaw.com  
Deadline: Jan. 1, 2009
- August  
**Bankruptcy**  
Editor: Judge Lori Walkley  
lori.walkley@oscn.net  
Deadline: May 1, 2009
- September  
**Bar Convention**  
Editor: Carol Manning
- October  
**Criminal Law**  
Editor: Pandee Ramirez  
pandee@sbcglobal.net  
Deadline: May 1, 2009
- November  
**Family Law**  
Editor: Leslie Guajardo  
lguajardo@swolaw.net  
Deadline: Aug. 1, 2009
- December  
**Ethics & Professional Responsibility**  
Editor: Jim Stuart  
jstuart@swbell.net  
Deadline: Aug. 1, 2009

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

# 2009 YLD Leadership



**KIMBERLY WARREN**  
*Immediate Past Chairperson*

Kimberly is a tax senior manager at the firm of Cole & Reed PC. She received her B.A. in political science and economics from TU and her M.B.A., J.D. and LL.M. in taxation from Capital University. Kimberly is a member of the OBA, American Bar Association, Oklahoma Society and American Institute of Certified Public Accountants. She has served as a director of the OBA/YLD Board of Directors for Judicial District 8 since 2002. Currently serving as chairperson, Kimberly previously served as secretary and treasurer. She was named OBA/YLD Outstanding Director of the Year in 2004 and Outstanding Officer of the Year in 2005. Kimberly is also a member of the Downtown Exchange Club and serves on the Board of the Exchange Club Center.



**RICHARD L. ROSE**  
*2009 Chairperson*

Rick is an associate at the law firm of Mahaffey & Gore PC in Oklahoma City, practicing in their litigation division. Rick graduated from Southern Nazarene University (B.S. 2000, distinguished achievement award) and Oklahoma City University (J.D. 2003, magna cum laude). Rick has been active on the OBA/YLD board since 2002, serving as secretary (2005-06), treasurer (2006-07) and as both an ex-officio board member in 2002-03 and as an elected board member in 2004-08, co-chairing the Gift of Life Committee. Rick is also the past chair of the Oklahoma County YLD (2006-07), serving on its board since 2004. In law school, Rick was president of the Student Bar Association, he received the Dean's Service award and he was named to the Order of the Barristers. Currently, in addition to being the incoming chair of the OBA/YLD, Rick is also the YLD representative for the Oklahoma City Chapter of the Federal Bar Association. In addition to his elected

positions, Rick serves as the chair of the Disaster Relief Committee, co-chair of the Wills for Heroes Committee, and Rick and his family participate in the Edmond adopt-a-street program. Rick is also a barrister in the Holloway Inn of Court.

## CONTESTED ELECTIONS:



**LINDSEY ANDREWS**  
*Secretary*

Lindsey Andrews is a 2004 graduate of OCU School of Law. She is the current chair of the Oklahoma County Bar Association Young Lawyers Division and has served as a board member for the OBA Young Lawyers Board of Directors for the past three years. Lindsey is co-chairperson of the Wills for Heroes project, which provide wills and advance directives for firefighters, police officers and military service members within the state of Oklahoma. Lindsey is also the co-founder of Oklahoma County Champions for Children, an organization dedicated to raising money for children in DHS custody. In 2007, Lindsey was honored as the out-



standing Young Lawyer Director for the Oklahoma County Bar Association. She is an associate with the firm of Echols and Associates in Oklahoma City, where she practices primarily in the area of family law.



**ROY D. TUCKER**  
*Secretary*

Roy is the interim city attorney for the City of Muskogee. Prior to his affiliation with the City of Muskogee, Roy focused his practice in the areas of employment law, community law and general litigation. He was a partner in Coulter Tucker PC since its formation in January 2005. Roy is admitted to practice before the U.S. District Courts for the Northern, Eastern and Western Districts of Oklahoma, as well as the 10th Circuit Court of Appeals. He is an active member of the OBA and the American Bar Association. Since 2005, Roy has served on the Board of Directors for the YLD. In 2006, Roy served as the art show coordinator for the 2006 OBA Annual Meeting, and in that same year was also selected as YLD Director of the Year. Roy was also recently selected to serve as the vice-chair of the YLD Solo/Small Firm General Practice Committee of the ABA. He earned his J.D. in May 2003 from the TU College of Law. Additionally, he received a certificate in

public policy/public regulation. He has a bachelor of arts in English and a minor in political science from the University of Central Oklahoma. He is also a graduate of Class 31 of Leadership Tulsa, and as such, continues to be actively involved in the non-profit sector.

#### **UNCONTESTED ELECTIONS:**

*The following persons have been nominated. They are running uncontested and will be declared elected at the Annual Meeting of the Oklahoma Bar Association Young Lawyers Division.*



**MOLLY A. BIRCHER**  
*Chairperson-Elect*

Molly has been an associate at Hall, Estill, Hardwick, Gable, Golden & Nelson in the Tulsa office for five years. Her primary practice area is employment and labor defense litigation. Molly provides employment counseling and advice to numerous employers and represents employers in employment litigation matters. Molly is currently serving as treasurer of the OBA Young Lawyers Division Board of Directors. Molly has served on the board as a director for Judicial District 6 since 2004 and has been chair of the YLD Membership Committee for the past three years. Molly is also active as an

Oklahoma YLD Delegate to the American Bar Association YLD Assembly. In addition, Molly has served on the Tulsa County Bar Association Board of Directors, is a past chair of the TCBA/YLD, and was named the TCBA Young Lawyer of the Year in 2006. Molly earned her bachelor of arts degree, with honors, in economics and political science from Fort Hays State University in May 2000. While at Hays, Molly was a state finalist for both the Rhodes and Truman Scholarships. Molly received her J.D. from the University of Kansas School of Law in May 2003. While at Kansas, Molly received the Rice Scholarship, a full tuition scholarship, and was a member of the Kansas Law Review. She is admitted to practice in Oklahoma and Kansas. In addition to bar activities, Molly is also co-administrator for the Council Oak/Johnson-Sontag American Inns of Court, is an ambassador for the Tulsa Young Professionals, and is active in the Junior League of Tulsa and Kirk of the Hills Presbyterian Church.



**NATHAN JOHNSON**  
*Treasurer & District Nine*

Nathan Johnson practices law and serves as a part-time municipal judge in Lawton. He was born and raised in Oklahoma. He graduated

from OU (B.A., economics, 1999) and the OU College of Law (J.D., 2002). He is a member of the American, Federal, District of Columbia, Oklahoma and Comanche County bar associations. Nathan is a past president of the Comanche County Bar Association. He also serves on the OBA Young Lawyers' Division Board of Directors, the Board of Directors for the Lawton Food Bank and is a fellow of the Oklahoma Bar Foundation. In his free time he enjoys reading, traveling, watching Formula One races and cheering on the OU Sooners football team. He also enjoys training for and competing in bike races and triathlons.

#### LINDSEY ANDREWS

*District Three*  
(Biography appears above)



#### ROBERT FAULK

*District Four*

Robert R. Faulk is originally from Oklahoma City. He graduated from Northwest Classen High School in 1996. After graduation, he attended OSU where he was president of several organizations including Lambda Chi Alpha Fraternity, Political Science Club and College Republicans. Upon his graduation in 2001, he was awarded the Kenny Gallagher Award for top Arts & Science Male. Robert then attended OCU School of Law on a Hatton W.

Sumners Scholarship. While at OCU Law, he founded the Criminal Law Association and was active in many other organizations including Merit Scholars, American Trial Lawyers Association and the Federalist Society. In 2004, he graduated magna cum laude from OCU and was admitted to the Oklahoma bar in October of 2004. Robert now lives in Enid and practices in the areas of criminal defense, general civil litigation, family law, personal injury, custody and divorce. He has been an active member of the Garfield County Bar Association, serving as treasurer and social chair for the past three years. In 2007, the county bar presented him the Outstanding Young Lawyer Award. He is a member of the Oklahoma Bar Association, the American Bar Association, Enid Noon Ambucs Board of Directors and past president, is an Oklahoma Bar Foundation Fellow and a member of the Federal Bar of the Western District of Oklahoma. He has been a member the Board of Directors of the Young Lawyers Division representing the rural counties of the state including Enid for the last two years. Robert is also a member of the inaugural OBA Leadership Academy.



#### SHAWNAE ROBEY

*District Five*

Shawnae E. (Proctor) Robey, associate general counsel in the Department of Litigation at the University of Oklahoma's Office of Legal Counsel, was admitted to practice in Oklahoma in 2001 and is also admitted to practice in the Western, Northern and Eastern Districts of Oklahoma and the 10th Circuit. Preparatory education, Cameron University (B.S., criminal justice, 1998); legal education, OCU School of Law (J.D., 2001) — Phi Delta Phi, Merit Scholar, Oklahoma City University Law Review, Hatton W. Sumners Scholar. Member: Oklahoma Bar Association, Oklahoma County Bar Association, American Bar Association, Federal Bar Association, Young Lawyer Division, District 3, Director 2002-2006; District 5, Director 2006 to present.



#### AMBER PECKIO GARRETT

*District Six*

Amber Peckio Garrett is an associate with the Tulsa law firm of Garrett Law Office

PC. She received dual bachelor's degrees in economics and political science from Southeastern State University in 1999 and her J.D. in 2003 from the TU College Of Law, where she served as articles editor for the Tulsa Journal of Comparative and International Law and as the Student Bar Association speaker of the house. She was admitted to practice in Oklahoma in 2003. Amber's practice areas include personal injury, insurance disputes, product liability, criminal defense and family law. Amber currently serves as the OBA Women in Law Committee co-chair and as OBA/Young Lawyers Division Board Director representing District 6 for Tulsa. She serves on the Professionalism Law Committee and the OBA Lawyer Advertising Task Force. She was most recently selected as a participant in the inaugural 2008-2009 OBA Leadership Academy. In addition to her work with the OBA, Amber also serves on the pro bono attorney panel for Legal Aid of Oklahoma, Tulsa working with at-risk women and families. She is admitted to practice in all courts in the state of Oklahoma and before the U. S. District Court for the Eastern District of Oklahoma. She is an active member of the American Bar Association, American Association for Justice, the Oklahoma Association for Justice and Tulsa County Bar Association.



**KIMBERLY K. MOORE-WAITE**  
*District Six*

Kimberly is a staff attorney at Legal Aid Services of Oklahoma, where she focuses on housing law and consumer law. Kimberly is a 2001 graduate of the TU College of Law. While at TU, Kimberly served as a judicial intern to Linda G. Morrissey in the Tulsa County District Court, was a member of the honors legal fraternity, Phi Delta Phi, the vice president of the Women's Law Caucus and the president of the International Law Society. Kimberly is a member of the Tulsa County Bar Association, OBA and American Bar Associations. She is also a co-chair of the Young Lawyer Committee for the bar exam survival kits, a member of the TCBA Mentoring Committee and a member of the Animal Law Committee. Kimberly has also been involved in charitable and community activities including the Tulsa Alzheimer's Association, Saint Francis Hospice and she is a licensed wildlife rehabilitator.

**ROY D. TUCKER**  
*District Seven*  
(Biography appears above)



**JAVIER RAMIREZ**  
*At-Large*

Javier currently sits on the Board of Directors for District 7, a seat which he has held for four years. Javier is a graduate of Dartmouth College and a graduate from the TU College of Law. He is in general practice with his main office in Okmulgee and an office in Tulsa. He is married to Pandee Moore, who is also a TU law alum, and with whom he has two sons. They reside in Okmulgee.



**LEANNE MCGILL**  
*At-Large*

LeAnne is an attorney with the law office of Cathy M. Christensen PC. Born and raised in Oklahoma City, LeAnne received her B.A. in English and political science from OSU in 2003 and her J.D. from OCU in 2006. While in law school, LeAnne served two terms as the National Secretary Treasurer of the ABA Law Student Division and one term as the OBA Law Student Division Chair. Since her admission to

the bar, LeAnne has served on several OBA committees including the Mentoring Task Force Committee, the Law Day Committee, the Women in Law Committee, the Access to Justice Committee, the Bench and Bar Committee and the Lawyers Helping Lawyers Assistance Program Committee. In addition, she was selected as one of the members of the 2008-2009 Leadership Academy. LeAnne also serves on the Oklahoma County Bar Association Young Lawyers Division Board of Directors, the OCU Law Alumni Association Board of Directors and is active in the American Bar Association Young Lawyers Division, having served on the Programming Team last year and currently serving as chair of the YLD Access to Justice Committee. In addition to bar activities, LeAnne is involved in charity work through the American Cancer Society and has served as the regis-

tration and logistics chair as well as the coordinator for the Youth Outreach Committee for the Oklahoma City Relay for Life for the last two years.



**DORIS GRUNTMEIR**  
*At-Large Rural*

Doris Gruntmeir works as a staff attorney for the U.S. Department of Veterans Affairs. She received her J.D. from the OU College of Law in 2000. She has been active on the OBA/YLD Board since 2004 and was named Outstanding Director in 2007. She is co-chair of the OBA/YLD New Attorney Orientation Committee and attended the 2007 OBA Leadership Conference. Doris is

also a member of the OBA Law Day Committee and contributed to the Centennial Task Force Committee. She is a member of the American Bar Association and currently serves as the ABA/YLD Representative for District 24 (OK and AR.) Doris previously served on the board of directors for the Oklahoma County Bar Association's Young Lawyers Division for four years, having served as its chair from 2004-2005. Doris has also been a member of the Ruth Bader Ginsburg American Inn of Court since 1999 and has served as its administrator since 2004. Outside the OBA, Doris is a board member for the American Red Cross (Adair, Cherokee, Muskogee and N. McIntosh counties) and a founding member of the Muskogee Young Professionals organization and currently serves as chair-elect.

## **Associate Supreme Court Judge**

The Kickapoo Tribal District Court of the Kickapoo Tribe of Oklahoma is seeking one (1) Associate Supreme Court Judge with a salary of \$500.00 per session. An Associate Supreme Court Judge shall possess the following: An enrolled member of a Federally Recognized Tribe, an Attorney, an Individual who physically resides within the jurisdiction of the Kickapoo Tribe of Oklahoma, an advocate who has practiced before the Tribal Court on a regular basis for more than two (2) years as a member of the Oklahoma Bar Association, or a graduate of an American Bar Association accredited law school approved by the Supreme Court of the Kickapoo Tribe of Oklahoma. An Associate Supreme Court Judge must show the following: has exhibited moral integrity and fairness, has never been convicted of a felony (including the pleading of nolo contendere), has consistently abstained from alcohol and has never used any illegal drug or substance in any form whatsoever, is more than twenty-five (25) years of age, is not a member of the Business committee or any other Ordinance created Committee, Board, or commission, however, that individual may resign that post to assume the role of Judge or Justice and has experience in the legal profession or has legal education/training. All resumes will be accepted beginning September 25, 2008 and will close on October 17, 2008. Please submit all resumes to Rochelle Murdock, Court Administrator, Kickapoo Tribal Court, PO BOX 1310 McLoud, OK. 74851.



# OBA YOUNG LAWYERS DIVISION 2008 OFFICIAL BALLOT

All members of the division (members of the OBA in good standing admitted to practice in any jurisdiction 10 years ago or less) are eligible to vote. All voters shall:

1. Mark the ballot for candidates as set forth below;
2. Affix the voter's Oklahoma Bar Journal mailing label to the ballot where indicated below;
3. Sign the ballot, which shall certify the voter is qualified and entitled to cast a ballot; and
4. Mail or deliver the ballot to the following address:

Christopher L. Camp  
300 ONEOK Plaza  
100 W. 5th St.  
Tulsa, OK 74103

Ballots must be received at the above address no later than 5 p.m., Nov. 7, 2008.

## **FAILURE TO CAST A BALLOT IN STRICT CONFORMITY WITH THESE RULES SHALL INVALIDATE THE ENTIRE BALLOT**

For the office of Secretary of the OBA/YLD, **VOTE FOR ONE** person by circling his/her name. **All members of the OBA/YLD are eligible to cast a vote for this office.**

Lindsey Andrews

Roy Tucker

*Attach OBJ Mailing Label Here*

Signature \_\_\_\_\_

There will be no disclosure of voter ballots. Members of the Nominating Committee are not eligible to vote except in the case of a tie, which shall be broken by secret ballot of the Nominating Committee.

Election results will be announced at the Annual Meeting of the Division held in conjunction with the OBA Annual Meeting.



"Why Teach (And Study)  
State Constitutional Law?"

**The Hon. Jeffrey S. Sutton**

United States Court of Appeals  
for the Sixth Circuit

Tuesday, October 21, 2008

5 p.m. Public Lecture

Homsey Family Moot Courtroom

Sarkeys Law Center

*Free and Open to the Public*



**OKLAHOMA CITY UNIVERSITY  
SCHOOL OF LAW**

2501 North Blackwelder, Oklahoma City, OK 73106  
405.208.5335, [www.okcu.edu/law](http://www.okcu.edu/law)

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Your source for OBA news.



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**At Work**



**And on the Go**

# Calendar



## October

- 14 OBA Annual Meeting Task Force Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Bill Conger (405) 208-5845
- 15 Ruth Bader Ginsburg American Inn of Court;** 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Julie Bates (405) 691-5080
- 17 OBA Lawyers Helping Lawyers Assistance Program Meeting;** 11:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Tom C. Riesen (405) 843-8444
- OBA Access to Justice Committee Meeting;** 10:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Kade A. McClure (580) 248-4675
- 21 OBA Civil Procedure Committee Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: James C. Milton (918) 591-5229
- Hudson Hall Wheaton Inn Pupilage Group Two;** 5:30 p.m.; Federal Building, 333 West Fourth St.; Contact Michael Taubman (918) 260-1041
- Death Oral Argument; John Fitzgerald Hanson — D-06-126;** 10 a.m.; Court of Criminal Appeals Courtroom
- 22 Oklahoma Hispanic Bar Network Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Saul Olivarez (405) 227-9700
- 23 OBA Bench & Bar Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Jack Brown (918) 581-8211
- 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
- OBA Budget Committee Hearing;** 4 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jon Parsley (580) 338-8764
- 24 OBA Board of Governors Meeting;** 9 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: John Morris Williams (405) 416-7000
- 25 OBA Mock Trial Committee Meeting – Student Clinic;** 9 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Judy Spencer (405) 755-1066

*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](http://www.oscn.net) or [www.okbar.org](http://www.okbar.org).*



## November

- 11 Veterans Day** (State Holiday)
- 12 Ruth Bader Ginsburg American Inn of Court;** 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Julie Bates (405) 691-5080
- 13 OBA Bench & Bar Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Jack Brown (918) 581-8211
- Hudson Hall Wheaton Inn Pupilage Group Three;** 5:30 p.m.; Federal Building, 333 West Fourth St.; Contact: Michael Taubman (918) 260-1041
- 17 OBA Alternative Dispute Resolution Section Meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Ann Dudley Marshall (405) 848-5715
- 19-21 OBA 104th Annual Meeting;** Sheraton Hotel, One North Broadway, Oklahoma City
- 19 OBA Board of Governors Meeting;** 2 p.m.; Sheraton Hotel, One North Broadway, Oklahoma City; Contact: John Morris Williams (405) 416-7000
- 27-28 Thanksgiving Holiday** (State Holiday)



## December

- 4 Law-related Education Committee Meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Jack G. Clark Jr. (405) 232-4271
- 10 OBA Clients' Security Fund Committee Meeting;** 2 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Micheal Charles Salem (405) 366-1234
- 12 OBA Family Law Section Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Lynn S. Worley (918) 747-4600 or Noel Tucker (405) 348-1789
- 18 OBA Bench & Bar Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Jack Brown (918) 581-8211
- 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
- 19 OBA Board of Governors Meeting;** 9 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: John Morris Williams (405) 416-7000
- 20 OBA Young Lawyers Division Committee Meeting;** 9:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Kimberly Warren (405) 239-7961
- 25-26 Christmas Holiday** (State Holiday)



# LAWYERS HELPING LAWYERS ASSISTANCE PROGRAM



If you need help coping with emotional or psychological stress please call 1 (800) 364-7886. Lawyers Helping Lawyers Assistance Program is confidential, responsive, informal and available 24/7.



### **Law Day Contests Include New Video Category**

The annual Law Day art and writing contests are back again, but this year a new category is being offered: a YouTube video contest. Oklahoma students in 12th grade or younger can create their own video for a shot at winning \$500. This year's theme is "A Legacy of Liberty: Celebrating Lincoln's Bicentennial," and the contest deadline is Dec. 12. Complete details can be found at [www.okbar.org](http://www.okbar.org).

Help spread the word by alerting the teachers in your community about the contests!



### **Want to save money?**

**Register for the OBA Annual Meeting before the early bird registration deadline of Oct. 24! Fill out the registration form in this issue, or register online at [www.okbar.org](http://www.okbar.org).**

### **Judicial Conference Announces Winter Programs**

Bar members are invited to attend two programs offered during the Oklahoma Judicial Conference's winter conference next month. "An Afternoon with Clarence Darrow: A Judicial Perspective" features Gary L. Anderson, a nationally renowned Darrow portrayer, and is scheduled for Nov. 18 from 3:10-5:10 p.m. "I'll Do It" is a dramatization of the life of Ada Lois Sipuel Fisher, written and produced by Cheryl Wattlely, associate professor of law at OU. It will be offered on Nov. 19 from 3-5 p.m. Both events will take place at the Cox Convention Center Ballroom in Oklahoma City. RSVPs may be sent to [judicial.education@oscn.net](mailto:judicial.education@oscn.net) through Nov. 12. Chief Justice James R. Winchester and Judicial Conference President Greg A. Zigler invite all OBA members to the event.

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### **Columbus Day Notice**

The Supreme Court Clerk's office will be open on Columbus Day, Oct. 13. If your appeal-time trigger occurred 30 days before this date, your time to bring an appeal will not be extended by failing to file on Columbus Day.



# OBA Web Sites

## What Information Do They Provide?

**NEW!**

### **[www.okbar.org/oknewsbar.htm](http://www.okbar.org/oknewsbar.htm)**

- ▶ Designed with the needs of OBA members in mind, OKNEWSBar has been created to allow you to quickly access new Oklahoma and U.S. Supreme Court opinions as well as up-to-date legal news and law practice management tips.

### **[www.okbar.org](http://www.okbar.org)**

- ▶ The official Web site of the Oklahoma Bar Association. 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](http://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](http://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](http://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.

### **Fastcase at [www.okbar.org](http://www.okbar.org)**

- ▶ The OBA teamed up with Fastcase in 2007 to provide online legal research software as a free benefit to all OBA members. Fastcase services include national coverage, unlimited usage, unlimited customer service and unlimited free printing — at no cost to bar members, as a part of their existing bar membership. To use Fastcase, go to [www.okbar.org](http://www.okbar.org). Under the Fastcase logo, enter your username (OBA number) and password PIN for the myokbar portion of the OBA Web site.

## Kudos

**M. Joe Crosthwait** became the president of the National Conference of Bar Presidents. He will serve a one-year term. He has served on the organization's council for several years and was president of the OBA in 2000.

**Mary Ellen Ternes** has been selected as a fellow of the American College of Environmental Lawyers. In her practice, she represents and counsels clients regarding environmental issues arising under federal and state law involving regulatory, enforcement, transactional and litigation matters.

**Timothy D. Matheny** was elected to a three-year term to serve on the Council for the Construction Law Section of the State Bar of Texas. He will also be speaking on alternative project delivery methods for Texas Public Projects at the November meeting of the Construction Law Section of the Dallas Bar Association.

**Stanley Evans**, assistant dean for students at the OU College of Law, has been selected chairman of the Oklahoma Human Rights Commission. He will serve as chairman for the upcoming

ing fiscal year. He has served as commission vice chair and chairman of the annual Human Rights Day Award Program Subcommittee. He has also served on the executive search and legislative liaisons subcommittees.

**McAfee & Taft** has been chosen by M. Lee Smith Publishers LLC of Brentwood, Tenn., to serve as editor of the Oklahoma Employment Law Letter, a monthly review of new court decisions, regulations and laws that affect Oklahoma employers. Serving as co-editors of the review are **Charlie Plumb** of the firm's Tulsa office and **Sam Fulkerson** of the firm's Oklahoma City office.

**Six attorneys and two judges** were among the 50 women honored by The Journal Record. Recognized were attorneys **Shannon Edwards, Karen Langdon, Janet Levit, Brooke Smith Murphy, Nellie Perry and Elizabeth Tyrrell**. The judges honored were Judge Noma Gurich and Judge April Sellers White. They were recognized for making a difference in the state. The organizers of the event started the annual salute to women in 1981 to recognize a "growing and influential sector of the business community."

**Dwight L. Smith** was recently appointed to a third consecutive term as

chairperson of the American Bar Association's Standing Committee on Public Education. He became chair of the committee in August 2006 and his third term began this August. The committee promotes public education of law and its role in society and oversees the work of the ABA's Division for Public Education. He is in his ninth year of service in the ABA's House of Delegates and was appointed by the incoming chair of the house to a one-year term as a member of the Select Committee of the 546-member House.

## On The Move

The law firm of Baker, Logadon & Schulte announces that **G. Dale Elsener** has joined the firm. He received his B.S. from OSU and his J.D. from the OU College of Law. His focus is on Indian land titles, oil and gas, probate, real estate and general civil matters. He is currently a member of Kingfisher and Seminole county bar associations. Mr. Elsener will office at 302 N. Main St., Kingfisher, 73750; (405) 375-4165; Fax: (405) 375-5944; delsemer@kfrlaw.net.

**Jim Drummond** announces that he has opened his law office in Norman. His



primary focus is on trial and appellate criminal defense. He has served as supervisor of capital habeas corpus unit for the Federal Public Defender. He was also chief of the non-capital trial division of the Oklahoma Indigent Defense System for the past 12 years. His office is located at 220 1/2 E. Main St., Norman, 73069.

**T**he Oklahoma City firm of Phillips Murrah PC announces that **Catherine L. Campbell** has returned to the firm. She practiced with the firm for two years. She left in 2006 to serve as a clerk for Judge Jerome A. Holmes of the 10th U.S. Circuit Court of Appeals. Her focus will be on appellate law. She completed her undergraduate studies at the University of Colorado in 1987 and graduated with distinction from the OU College of Law in 1991.

**R**hodes, Hieronymus, Jones, Tucker and Gable PLLC announces that **Larry D. Henry** has joined the firm as an of counsel member. He graduated with distinction from the University of Iowa College of Law in 1970 where he served on the Iowa Law Review. He entered Army JAGC and handled over 2,000 courts martial and administrative hearings. His focus is on advising employers on employment law, issues related to the Fair Credit Reporting Act and the law governing background checks.

**F**ederman & Sherwood announces that **Joshua D. Wells** has joined the firm.

He graduated from OBU in 2004, where he graduated with honors and was captain of the basketball team. He earned his J.D. from OCU School of Law in 2008, where he graduated with honors and was executive editor of the law review.

**D**eBee Gilchrist PC announces that **Shelly A. Perkins** has joined the firm. She graduated from Rose State College with an A.A. in political science/pre-law. She received her B.A. from OU in public affairs and administration and her J.D. from OCU School of Law. Her focus is on non-profit organizations, estate planning, and federal and state taxation. She previously worked with former Congressman J.C. Watts Jr. and Corporation Commissioner Jeff Cloud. She has also worked as a consultant on numerous state and federal campaigns.

**E**ller and Dietrich PC announces that **Andrew A. Shank** has joined the firm as an associate attorney. He earned his undergraduate degree in 2002 and his M.B.A. in 2005 from TU. He received his J.D. from TU in 2008. His focus of practice will be in commercial transactions, real estate and litigation.

**T**he Tulsa firm of Richards & Connor announces that **Jason L. Glass** and **Jeffrey C. Baum** have become partners in the firm. Mr. Glass received his undergraduate degree from Southern Methodist University and he received his law degree from the University of Texas

School of Law in 1997. His focus will be on insurance defense, bad faith/extra-contractual liability defense, medical malpractice defense, employment law, general civil litigation, appellate practice and immigration law. Mr. Baum received his undergraduate degree from OU in 1992, where he also received his law degree in 1995. His focus is general civil litigation, insurance defense, real property law, commercial and business law, and corporate law. Recently joining the firm as associates are **Patrick S. Wells** and **Jason T. Seay**. Mr. Wells graduated from Northeastern State University in 1998 and attended law school at OCU, where he graduated in 2004. Mr. Seay graduated from OU in 2004 and graduated from TU College of Law in 2007.

**M**ichelle Lindo McCluer was named the new executive director of the National Institute of Military Justice, a Washington, D.C.-based non-profit organization associated with American University's Washington College of Law. The institute was created to advance the fair administration of military justice and foster improved public understanding of the military justice system. She previously served for nearly 11 years as a judge advocate in the U.S. Air Force, serving worldwide as a prosecutor, defense counsel, appellate counsel and deputy staff judge advocate. She can be reached at (202) 895-4534 or [mmccluer@wcl.american.edu](mailto:mmccluer@wcl.american.edu).

The Oklahoma Department of Commerce General Counsel **Jonna Kirschner** has been named the deputy director, general counsel for the state agency. She graduated from both Dartmouth College and Boston College, where she received her J.D. in 1987.

**Jarrod H. Stevenson, Jason Spanich** and **Will Clark** announce that they have opened a public defenders office in Newkirk. They were appointed as the new public defenders of Kay County by the Oklahoma Indigent Defense System. Mr. Stevenson started his own law firm in Oklahoma City working with OIDS to handle numerous conflicts from its public defenders in addition to his private clients. He primarily focused on criminal cases but they also represented clients in civil cases. Mr. Spanich focuses exclusively on criminal defense. He will practice out of his Oklahoma City office. Mr. Clark has four years experience as an assistant district attorney in Kay County from 2004 to 2008. He had a private practice for four years in Stillwater and was an assistant district attorney in Payne County. He will primarily practice in Kay County. **Fera Terrell** of Burlie and Terrell has a minority interest in the public defender contract working misdemeanor and juvenile cases. She served for four years as an assistant district attorney for Kay County. The office will be at 100 N. Main, Suite 200, Newkirk, 74647.

**Titus, Hillis, Reynolds, Love, Dickman & Mc-**

Calmon announces that **Shannon Dodd** has joined the firm as an associate. She holds a B.S. in business administration from OSU and earned her J.D. with highest honors from the TU College of Law where she was named the J. Will Pless International Graduate of the Year and was a recipient of the Order of the Curule Chair. She served as Magister of the local chapter of Phi Delta Phi, as treasurer of the Women's Law Caucus and as treasurer of the Board of Advocates. She also was an editor of the Tulsa Law Review.

**C**rowe and Dunlevy announces that **Gayle Barrett** has been named chair of the firm's labor and employment practice group. She has served as past secretary and chairwoman of the OBA's Labor and Employment Law Section, a past member of the Board of Directors of the Oklahoma County Bar Association and currently serves as a member of the American Bar Association's Labor and Employment Law Section.

**H**all, Estill, Hardwick, Gable, Golden & Nelson PC announces the addition of four new attorneys to the Tulsa office, **Christopher L. Carter, Briana J. Clifton, Chace W. Daley** and **Jean C. Lopez**. The firm also hired one new attorney for the Oklahoma City office, **Jodi C. Cole**. Mr. Carter received his undergraduate degree from OSU and his J.D. from the OU College of Law. He received the American Jurisprudence Award in antitrust

and was a member of the Oklahoma Law Review. His focus will be on corporate/commercial general corporate. Ms. Clifton received her B.A. from George Washington University and her J.D. from the University of Texas School of Law. Her focus will be on Indian law and litigation. Mr. Daley received his undergraduate degree from the University of Missouri and received his J.D. from Washington and Lee University School of Law. His focus will be in litigation. Mr. Lopez received his B.A. from OU, where he graduated summa cum laude. He received his J.D. from the OU College of Law. His focus will be on bankruptcy/creditor/debtor law. Ms. Cole received her B.A. from Henderson State University and her J.D. from OCU School of Law. She will focus on labor and employment, litigation, and oil and gas.

**B**uxton Carson PC announces that **Jennifer Fato** has joined the firm as an associate. She received her B.A. in international business from the University of Memphis and her J.D. from OCU School of Law. Her practice will be on all general practice areas including general civil litigation defense, personal injury, family law, probate and estate planning, business law, and wills and trusts. She may be reached at (405) 604-5577 or [jennifer@buxtoncarson.com](mailto:jennifer@buxtoncarson.com).

**T**yler Mantooth joined Fellers Snider as an associate. He received a B.S. in 2005 and a J.D. from OU in 2008. His primary focus of

practice is intellectual property law. He is a member of the American Intellectual Property Law Association. He is licensed to practice before the U.S. Patent and Trademark Office.

**H**ornbeek, Vitali & Braun PLLC announces that **Thomas Knowlton Ishmael** and **Jane Ann Webb** have become associates with the firm. Mr. Ishmael received his B.A. from Christian Brothers University and his M.B.A. from Webster University. He received his J.D. from OCU School of Law in 2008. He served as managing editor of the OCU Law Review and legal extern for U.S. District Magistrate Judge Robert E. Bacharach. His focus of practice will be in the firm's litigation department. Ms. Webb received her bachelor's in business administration from UCO. She received her J.D. from OCU School of Law in 2008. She will practice in the firm's litigation and workers' compensation departments. The firm's offices are at 3711 N. Classen Blvd., Oklahoma City, 73118; (405) 236-8600; [ishmael@hvblaw.com](mailto:ishmael@hvblaw.com) and [jwebb@hvblaw.com](mailto:jwebb@hvblaw.com).

## At The Podium

**John D. Rothman** provided a CLE presentation to the Association of Attorney-Mediators last month in Austin, Texas. The topic of his presentation was "Available by Telephone: Practical and Ethical Tips on Handling This Imperfect Situation." He also gave a CLE presentation to the Oklahoma Association for Justice in Tulsa. The topic of the presentation was "Joint Session/Opening Statements At Mediation: Redundant Ritual or Useful Opportunity."

**Randall J. Wood** gave several presentations for Sterling Education Services in Oklahoma City. He gave a lecture on current developments in employment law and responding to harassment and discrimination claims in the workplace. He also gave a presentation on privacy issues in the workplace. The lectures were included in a seminar presented to attorneys and human resource professionals in Oklahoma City.

**Chris A. Paul** gave two presentations at the 2008 Association of Oil Pipe Lines annual Business and Regulatory Conference last month in Austin, Texas. The first presentation covered the emerging regulatory programs related to pipeline security. The second addressed issues associated with integrity management programs.

*Compiled by Chris Porter*

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

Melissa Brown  
Communications Dept.  
Oklahoma Bar Association  
P.O. Box 53036  
Oklahoma City, OK 73152  
(405) 416-7017  
Fax: (405) 416-7089 or  
E-mail: [barbriefs@okbar.org](mailto:barbriefs@okbar.org)

**Articles for the Nov. 8 issue must be received by Oct. 20.**

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**B**ill Powell Guest of Oklahoma City died Sept. 20. He was born July 20, 1963, in Oklahoma City. He graduated as a salutatorian from Jones High School, where he was senior class president and football captain. He attended OU where he received both his B.B.A. and his law degree. He graduated from the OU College of Law with honors in 1994. He was a member of the Order of the Coif, a research editor of the Oklahoma Law Review and a member of the Golden Key Honor Society. He became an adjunct professor of law at OU, where he taught agency and partnership law. He joined the firm of Day Edwards Propester & Christensen PC in 1996. Contributions may be made to the OU Foundation with a memo that they be used for the Bill P. Guest Memorial Scholarship, and mailed: OU College of Law, Attn: Financial Services, 300 W. Timberdell Road, Norman, 73019.

**H**arold Dale Cook of Tulsa died Sept. 22. He was born April 14, 1924, in Guthrie. **At age 18, he enlisted in the U.S. Army and became a 2nd Lieutenant in the Army Air Corps. He was discharged in 1945 and later served in the Air Force Reserve until 1953.** He graduated from the OU College of Law in 1950. He opened his first practice in Guthrie. In

1951, he was elected county attorney for Logan County until 1954, when he became first assistant U.S. attorney in Oklahoma City. In 1961, he became a partner in the law firm of Butler, Rinehart & Morrison. In 1963, he became legal counsel and advisor at then Gov. Henry Bellmon's request until 1965. Soon after, he went back to private practice and established the firms of Cook & Ming and Cook, O'Toole and Tourtellotte. He served as director of the Bureau of Hearings and Appeals of the Social Security Administration in Washington, D.C. and as chairman of the Appeals Council for the Social Security Administration. He was awarded the Secretary's Special Citation in recognition of outstanding leadership to the corps of administrative law and managerial director to the Bureau of Hearings and Appeals. In 1974, he was sworn in as a U.S. district judge for the Northern, Eastern and Western districts of Oklahoma. He served as chief judge for the Northern district of Oklahoma for nearly 14 years. Memorial donations may be made to the Wounded Warrior Project or Freedom Alliance or The Fitzgerald Ivy Chapel.

**W**illiam Lawton Teague Jr. of Oklahoma City died Sept. 22. He was born Feb. 3, 1963, in Bainbridge,

Md. **After high school, he served as an officer in the Oklahoma Army National Guard.** He graduated cum laude from Southern Nazarene University. He received his law degree from OCU, where he graduated in 1993 summa cum laude. He was a partner at Crowe & Dunlevy where his practice focused on aviation/aircraft law. He was a member of the American Bar Association and also served as an adjunct professor of law at OCU.

**J.** Ralph Moore of Pryor died Sept. 8. He was born Oct. 12, 1928, in Eagletown. **He was a Marine Corps veteran of World War II and a retired Army Reserve Colonel.** He graduated from OU with a B.S. in economics and received his J.D. from the OU College of Law in 1952. He practiced law in Pryor from 1952 until he retired. Memorial donations may be made to the Pryor Public Library building fund or the First Baptist Church, Pryor, designated for foreign mission.

**F**anne Lu Yaffe of Muskogee died Sept. 20. She was born Oct. 10, 1933, in Oklahoma City. She graduated from Northeastern State University and received her J.D. from TU. She was active in the Bonds, Matthews, Brennan & Bonds firm of Muskogee. She was a mem-



ber of the Muskogee chapter of the American Bar Association and served a two-year term on the OBA's Ethics Counsel. She served on the Court Appointed Special Advocates as a founding member. She also served with the Salvation Army, Habitat for Humanity, Muskogee Little Theater and the Muskogee Red Cross. She was also president of Land Real Estate Inc., a family-owned commercial real estate business. Memorial donations may be made to your favorite charity in her memory.

**Walter Scott Mason III** of Cordell died July 24. He was born Aug. 26, 1952, in Clinton. He graduated from OSU and received his J.D. from OCU. He began his legal career as assistant district attorney in Beckham County and entered into private practice in Cordell in the early '90s. He was a member of the Oklahoma Board of Bar Examiners and the Custer, Washita and Beckham county bar associations. He was the past president of the Oklahoma State Board of Health, past governor of Best

Western Hotels International and member of the Cordell School Board. He was also a member of the Sigma Nu fraternity and the Washita County Cattlemen Association. He was also an FFA American Farmer. Memorial contributions may be made to the Washita/Custer County Drug Program, Washita County Courthouse, 111 E. Main St., Cordell, 73632.



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# Framing the Questions/Finding the Answers: Mental Health and the OBA

Sponsored by the OBA/CLE and OBA Lawyers Helping Lawyers Counseling Assistance Program

**DATE & LOCATION:** Oklahoma City  
November 20, 2008  
OBA Annual Meeting

**CLE CREDIT:** This course has been approved by the Oklahoma Bar Association Mandatory Continuing Legal Education Commission for 1.5 hours of mandatory CLE Credit, including .5 hours of ethics.

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## Program Moderator

Clif Gooding, The Gooding Law Firm, A P.C., Oklahoma City

## **PROGRAM:**

- 3:00 p.m.**      **What's Happening with Mental Health Services in Oklahoma?**  
Terri White, Oklahoma Department of Mental Health and Substance Abuse Services, Oklahoma City
- 3:15**            **How is the Oklahoma Bar Association Addressing Member Mental Health Issues?**  
**A Panel Discussion**  
Mike Stewart, Bradford Health Services, Alabama  
John Albert, Mike Arnett & Associates, Oklahoma City
- 3:45**            **How Should OBA Members Address Lawyer Mental Health Issues?(ethics)**  
Gina Hendryx, OBA Ethics Counsel, Oklahoma City
- 4:15**            **Adjourn**

# Framing the Questions/Finding the Answers: Mental Health and the OBA

☐ **Oklahoma City**  
November 20, 2008  
OBA Annual Meeting

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# Halloween Memories

By Margaret Travis

I am in the process of de-cluttering my life. I am working hard to get rid of the pieces of paper, books, documents, stuffed animals and minutia of our everyday life that is just...clutter.

This is a difficult task made more difficult because I live with pack-rats, disguised as regular people. People who believe every book, assignment and drawing that has ever touched their hands is precious and should be stored for eternity. I'm not sure what they are hoping will happen. I get the impression they want to save everything in the event they become famous some day and need to donate their "papers" to a museum.

We have lived in our house for going on nine years. In that time I have managed to get rid of boxes and boxes of books (donated to the library book sale) and empty other boxes that contained old clothes, shoes and toys as well as pounds of paper that included tax returns from before my husband and I were married, receipts, instructions for the first lawn mower I ever bought, and other mundane items that should have been chucked years ago.

Emptying these boxes is a tricky matter. It has to occur at a time when I am the only one home. Because invariably someone will walk past the "throw this crap out box" and squeal, "You can't throw this away!" That's

how my most valuable member of the swim team plaque ended up on my six-year-old's wall or my high school letter jacket ended up in my daughter's closet.

Most of the boxes are marked, so I have an idea of what I'm getting into when I open them up. But recently I came across a box that had no markings. And when I opened it up, it made me smile.

My husband, the King Pack Rat, has been saving our children's Halloween costumes. Or the pieces he could timely wrestle from the children before they wore them into oblivion.

The Walt Disney Co. has been prominently featured in our children's Halloween celebrations. There are the years they were Sully, Snow White, Mickey Mouse, Winnie the Pooh and a dalmatian puppy.

But the ones which made me smile the most were the ones we made and which for some reason or another there was so little left, that unless you remembered what they were for, they would have no meaning. This included

the black fuzzy head band with fuzzy ears for the year my daughter was a cat. The psychedelic vest for the year she was a hippie. The black hooded sweatshirt with ears on the hoodie and wings on the back for the year my son was a bat. The black and silver spray-painted paper plate that had been a steering wheel for my son's Jeep costume.

Vincent De Paul could use those Disney costumes.

And as I had these discussions with myself, I came to the bottom of the box. All that remained was a green piece of felt with a piece of brown felt sticking out the top. I remembered making a costume for my then five-month-old daughter; an orange union suit with snaps up the legs and black triangles sewn to the front to create a jack-o-lantern face. I didn't sew, and I had struggled with how to create that hat. I'd finally decided on green felt squares sewn together by hand and a crooked "c" looking thing coming out the top for the stem.

As I sat in the house by myself, I piled all of it back into the box and laid the green felt jack-o-lantern hat on the top. I know that we will never need that stuff. It is just taking up precious storage space in my spare bedroom closet. It is something we should get rid of. I know that some day, I will get rid of those things. Some day one of the kids will decide they "need" something in that box; ravaging its contents for an afternoon of play or a party or a different costume.

But today, the memories it brings back are far more valuable.

*Ms. Travis practices in Oklahoma City*



As I went through this box, I struggled with what to do with these things. These were not things that we would ever need again. They were not things my children would ever want. It was taking up space in the box in my spare bedroom. Some child at St.