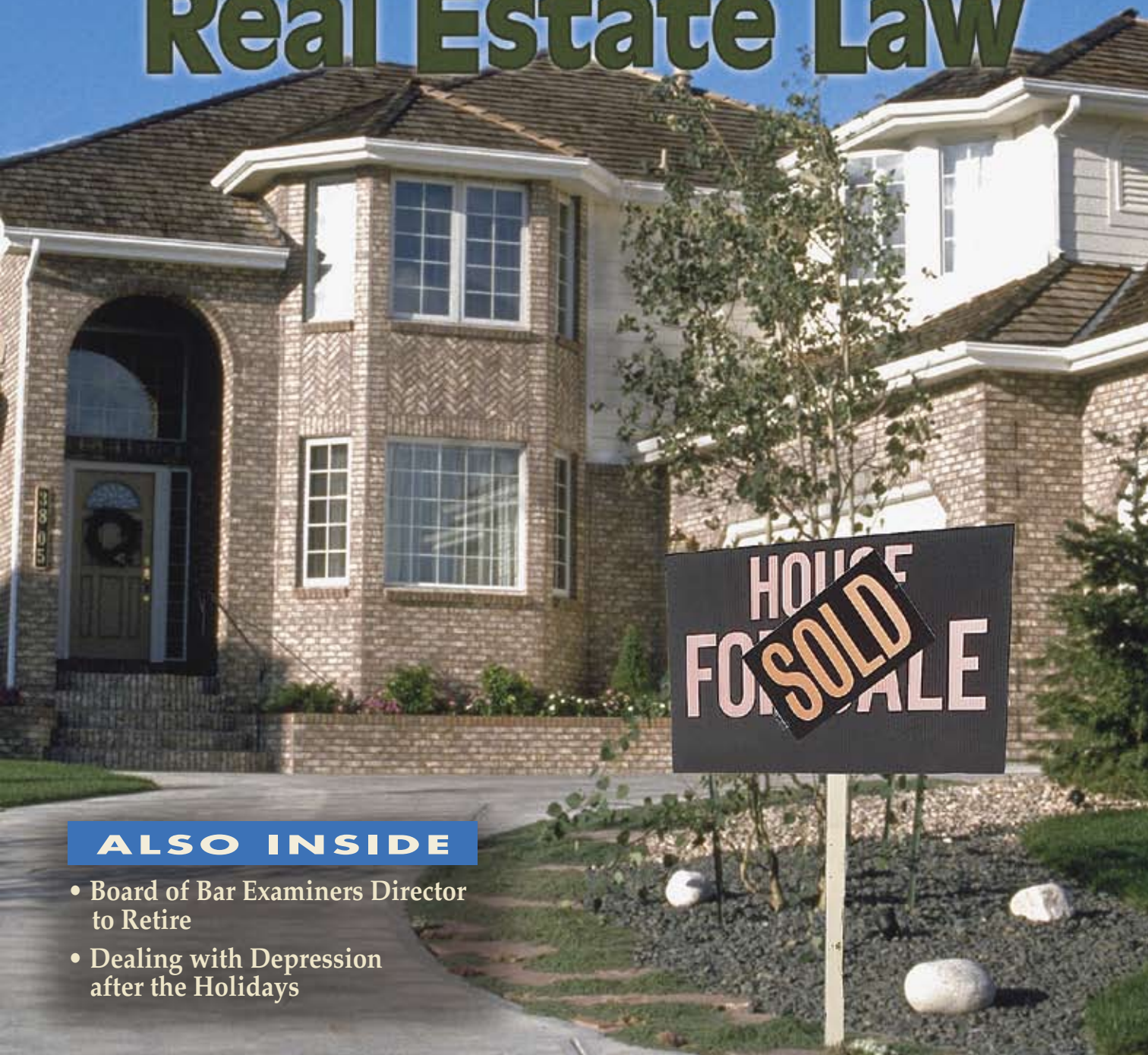


# WIT Oklahoma Bar JOURNAL

Volume 79 ♦ No. 4 ♦ February 9, 2008

## Real Estate Law



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**REAL ESTATE LAW**  
EDITOR: JOHN MUNKACSY

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# contents

February 9, 2008 • Vol. 79 • No. 4



## FEATURES

- 215 ACCELERATION OF RENT IN OKLAHOMA: WHAT'S A LANDLORD TO DO?  
*By Michael S. Laird and Jennifer L. Ivester Berry*
- 221 STEALING HOME: PROTECT YOUR CLIENTS AGAINST MORTGAGE FRAUD  
*By Briana J. Ross*
- 229 THE OKLAHOMA REAL ESTATE COMMISSION'S FORMS COMMITTEE AND ITS IMPACT UPON THE LEGAL PRACTITIONER  
*By John Munkacsy*
- 233 ALIEN OWNERSHIP OF LAND IN OKLAHOMA  
*By Jennifer Scott Moradi*

## DEPARTMENTS

- 212 FROM THE PRESIDENT
- 245 FROM THE EXECUTIVE DIRECTOR
- 247 LAW PRACTICE TIPS
- 251 ETHICS/PROFESSIONAL RESPONSIBILITY
- 255 OBA BOARD OF GOVERNORS ACTIONS
- 261 OKLAHOMA BAR FOUNDATION NEWS
- 264 ACCESS TO JUSTICE
- 266 YOUNG LAWYERS DIVISION
- 268 CALENDAR
- 272 FOR YOUR INFORMATION
- 278 BENCH AND BAR BRIEFS
- 283 IN MEMORIAM
- 246 EDITORIAL CALENDAR
- 288 THE BACK PAGE

pg. 240  
BAR EXAMINERS  
DIRECTOR RETIRING



## PLUS

- 240 BOARD OF BAR EXAMINERS  
DIRECTOR RETIRING
- 243 DEPRESSION AFTER THE HOLIDAYS

pg. 243  
DEALING WITH  
DEPRESSION



## Independence of the Judiciary

By Bill Conger

Never before has the issue of judicial independence become so important. The assault on the judiciary is profound and threatens to seriously erode the independence of our courts, which is vital to a fair and impartial system of justice and the rule of law. Moreover, it will undermine public confidence in our state courts. The assault comes from all corners, and it is not just extreme fanatical groups but mainstream large corporations, large associations representing self-interest groups such as unions, the medical profession and yes, even the legal profession, the national and local chambers of commerce — and even the executive and legislative branches of government.

The amount of money spent on judicial campaigns is staggering. Since 1999, Supreme Court candidates have raised more than \$157 million compared to \$61 million from 1991-98. Television ads have increased dramatically. In 2000, TV ads ran in fewer than one in four states. In 2006, it was 10 of 11 states, and most are full of misinformation. As Bert Brandenburg, executive director of the Justice at Stake campaign points out, these ads that present a dark fantasy world populated by abused children, fearsome rapists, malevolent corporations, greedy lawyers and unscrupulous judges, are often the only information people get about judicial races.

Perhaps the most troubling development is the growth in “check the box” questionnaires where judicial candidates are requested to check in a box a one-word or short-phrase position on complex and controversial issues such as abortion, same-sex marriage, death penalty or some other highly charged local issue. The pressure on the judicial candidate, challenger or incumbent, is enormous and pressure the candidate to essentially promise a certain outcome to a special interest group — and don’t think judicial candidates don’t feel the pressure. As former Justice Sandra Day O’Connor said, “In too many states, judicial elections are becoming political prize fights where partisans and special interests seek to install judges who will answer to them instead of the law and the constitution.”

The battle for judicial seats is now being waged with the typical weapons of politics: money, influence and salacious advertising. Examples of the

vigor in which these weapons are being used abound, but perhaps the most egregious occurred in 1996. Justice Penny White was an associate justice in the Tennessee Supreme Court. She was only the second woman to serve on the court in the history of the state. She had previously been a trial and appeals court judge where she served with distinction.

In 1996, the case of a man who stabbed to death and raped a 78-year-old woman came before the Supreme Court. Justice White was one of five judges who ruled that procedural errors in a lower court required a new sentencing hearing. She did not write in the majority or concurring opinion.

In her retention election later that year, Justice White was voted out of office. This was accomplished primarily through the efforts of the Tennessee Conservative Union. The special interest group flooded the state with literature and advertisements that claimed the defendant in the murder/rape case “won’t be getting the punishment he deserves — thanks to Penny White. She felt the crime wasn’t heinous enough for the death penalty, so she struck it down.”

Although the advertisements were completely false, Justice White, bound by the judicial code of conduct, refused to address the ads.

*cont’d on page 260*

**The assault on the judiciary is profound...**



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# EVENTS CALENDAR

## FEBRUARY

- 12 **OBA Women in Law Committee Meeting**; 11:45 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Amber Peckio Garrett (918) 549-6747
- 14 **OBA Work, Life Balance Committee Meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa, Tulsa; Contact: Melanie Jester (405) 609-5280
- OBA Legal Intern Committee Meeting**; 3:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: H. Terrell Monks (405) 733-8686
- 18 **President's Day** (State Holiday)
- 19 **OBA Civil Procedure Committee Meeting**; 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: James Milton (918) 591-5229
- 20 **OBA Member Services Committee Meeting**; 3:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Keri Williams (405) 385-5148
- OBA Professionalism Committee Meeting**; 4 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa, Tulsa; Contact: Sharisse O'Carroll (918) 584-4192
- OBA Bar Center Facilities Committee Meeting**; 9 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: John Morris Williams (405) 418-7000
- 21 **OBA Bench and Bar Committee Meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Jack Brown (918) 581-8211
- Mock Trial Committee Meeting**; 5:45 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Judy Spencer (405) 755-1066
- 22 **OBA Board of Governors Meeting**; OCU Law School, Oklahoma City; Contact: John Morris Williams (405) 416-7000
- OBA Law Schools Committee Meeting**; 1 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Michael DeBerry (580) 286-2221 or Ken Delashaw (580) 276-3136
- OBA Diversity Committee Meeting**; 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa, Tulsa; Contact: Linda L. Samuel-Jaha (405) 290-7030
- 26 **Death Oral Argument, Jeremy Alan Williams – D-2006-338**; 10:00 a.m.; Hornsey Family Moot Courtroom, Sarkey's Law Center, Oklahoma City University

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

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# Acceleration of Rent in Oklahoma: What's a Landlord to Do?

## Framework for a Practical Approach

*By Michael S. Laird and Jennifer L. Ivester Berry*

Few issues that arise in connection with a typical commercial lease relationship have been the subject of more commentary, disagreement and judicial “fairness” interpretations as the acceleration of rents remedy for the landlord in the event of a tenant default. Perhaps this is because the concept is typically analyzed at two levels: first, in the abstract as the provisions of the lease are being negotiated; and second, in a more practical context where the landlord is attempting to enforce the remedy while the tenant is aggressively contesting its exercise, usually on both legal and equitable grounds.

The intellectual discussion of rent acceleration has produced numerous articles and commentaries with an excellent overview having been published in this journal in 1995, authored by William E. Wallo.<sup>1</sup> A few jurisdictions (not Oklahoma) have passed legislation addressing the issue, but this is far from commonplace,<sup>2</sup> and courts continue to be presented with the issue of enforceability of acceleration clauses with mixed results.<sup>3</sup> Simply stated, why is it that parties to a commercial lease should not be held to an agreed upon remedy, in this case, rent acceleration?

The arguments advanced by landlords and tenants when the acceleration issue arises, whether in negotiations or litigation, can be both articulate and passionate. A landlord often starts with two undeniable truths: the only reason acceleration ever becomes an active issue is because the tenant has defaulted (the “bad actor” principle), coupled with the fact that the landlord is at risk of losing the “benefit

of the bargain.” The tenant, rather than directly attacking these points since it is usually in a precarious legal position if it does so, parries with the argument of equitable fairness. This defense is usually aligned with one or both of the following legal principles: 1) to allow a landlord to accelerate and collect all remaining rent is clearly a penalty and therefore unenforceable under applicable law, and 2) the landlord has a duty to mitigate its resultant damages in any event.

“Fairness” has an interesting duality in this discussion. Some have argued that even a defaulting tenant has “rights” to be protected.<sup>4</sup> While perhaps true, should those protections trump the rights of the non-defaulting landlord?

The subtext of each party’s argument is interesting and often intellectually stimulating, but even when taken together they do not offer a great deal of guidance towards a more

practical perspective from which to approach the acceleration issue. Furthermore, while many courts have declined to enforce acceleration clauses for one reason or another, the authors believe there is no reason a well-drafted and logical acceleration clause should not be enforceable in an arm's length, commercial environment, given that a broad rejection of such clauses could render a commercial lease nothing more than a month-to-month tenancy essentially at tenant's option, with only an actual damages remedy for landlord if tenant defaults.

## A QUESTION OF PERSPECTIVE

What are each of the parties looking for in the bargain of a commercial lease relationship? Generally speaking, the basics include the following:

LANDLORD	TENANT
A tenant (identity of varying importance)	A landlord (identity often inconsequential)
Definite term	Definite term
Specific leased premises	Specific leased premises
Quantified income stream	Quantified expense (rent) component

While some elements of the "benefit of the bargain" for landlord and tenant are common, others are not. The landlord loses its benefit of the bargain when the tenant stops paying rent and vacates the leased premises. Even if the landlord re-lets the leased premises, the original benefit is lost and a replacement tenant and income stream, sometimes better, sometimes not, are introduced. This distinction is critical in analyzing the issue from the landlord's point of view.

How does the mitigation issue fit in to all this, if at all? To be clear, parties to a residential lease in Oklahoma have a duty to mitigate.<sup>5</sup> In contrast, a landlord's duty to mitigate (or not to mitigate) when a tenant defaults under a commercial lease was addressed in *Carpenter v. Riddle*,<sup>6</sup> in which the Oklahoma Supreme Court held that when a tenant abandons the leased premises the landlord shall not be forced to re-enter, take possession of the leased premises and hence mitigate.<sup>7</sup> Rather, the appropriate remedy in this situation is for the landlord to choose.<sup>8</sup> Query whether *Carpenter* could be interpreted more broadly to capture situations in which something less than abandonment of

the leased premises occurred (e.g. tenant stops paying rent but continues to be in possession).

Regardless of their legal rights, landlords are usually pragmatists particularly in a soft rental market, so mitigation, even if not legally mandated, often results in a better situation for both parties. The landlord collects at least some portion of the benefit it had bargained for in the form of rent from the new tenant and, at least in theory, retains the ability to seek reimbursement from the defaulting tenant for the costs and losses the landlord incurred in the re-letting. The tenant on the other hand, no longer faces the claim from the landlord for all remaining rent.

## BUILDING A BETTER MOUSETRAP

It has been said that transactional lawyers prepare written "how-to" instructions for resolving issues, while litigators have to both build the machine contemplated by the instructions, and then try to make it work. That contrast is certainly evident when it comes to the issue of acceleration of rents. This fact is overlaid by the differing expectations of the respective parties as to how the remedy would actually be implemented in the event of a tenant default. When you add the component of the factual realities, such as market forces, vacancy rates, current rental rates, etc., at the time the landlord attempts to exercise the remedy, it is easy to see why the ultimate outcome in litigation is usually very difficult to predict. Given this reality, it would make sense from both parties' perspectives to craft a contractual remedy with the fewest number of variables, and with a clear and concise narrative of how the remedy would be implemented at the time of tenant default.

When crafting an acceleration clause, here are a few suggestions:

- If you provide in a lease that the landlord can pursue both acceleration and possession — in other words — landlord gets to accelerate all remaining rent for the lease term and recover possession and control of the leased premises, understand the possible ramifications of this approach. No matter how one tries to address it, this argument typically looks to a court like the landlord is getting double recovery, the accelerated rent from the defaulting tenant and a new rental income from the replacement tenant.



“Landlords are typically in a less than desirable position when exercising remedies for tenant default, especially acceleration of rents.”

- Set out an acknowledgement by the tenant in the lease that whatever the acceleration formula may be, it is deemed to be fair and equitable as liquidated damages and not as a penalty. At a minimum, this will put the tenant in the posture of having to explain such a statement while being questioned about the language of the lease and why at the time of default (and resulting litigation), the tenant feels quite differently about the remedy.
- Build in the concept of economic balance to the acceleration remedy, either by providing for an offset in favor of the tenant of the “fair market rental value” of the leased premises for the remainder of the term or a reduction to present value of the total remaining rent, or agreeing on a predetermined amount to be accelerated which is something less than the entire remaining term (but still significant insofar as landlord’s recovery is concerned, perhaps 12 to 18 months worth of rent). This latter approach is akin to what is commonly called a “break up fee” in the mergers and acquisitions context.
- Consider limiting the acceleration of rent remedy to situations where the nature of the tenant default is significant (and perhaps only to situations where the landlord is also terminating the lease).

The real reason for limiting the playing field when it comes to crafting acceleration of rent provisions is to provide some degree of certainty in the event a court ends up scrutinizing the enforcement of this remedy. Such limitations would decrease the likelihood that a court would meander far afield on the basis of what is 1) “unreasonable,”<sup>9</sup> 2) or is not a “minute or unimportant” default<sup>10</sup> or 3) in keeping with “public policy.”<sup>11</sup> Also, landlords need to understand the possibility that given

the proper factual context, a court may decide that the acceleration of all rents without any applied credit or discount is an operative remedy only if the lease itself is not terminated.<sup>12</sup> Similarly, if the tenant has exercised an option to extend the term of the lease and such option term does not include an acceleration clause, a court will likely find that such remedy is unavailable.<sup>13</sup>

One thing attorneys often fail to question is whether landlord clients even want an acceleration remedy to be part of their default arsenal, given that the remedy can be fractious to negotiate and difficult to apply. For instance, there are numerous situations where, for all practical purposes, a landlord (or its successor), will not seriously consider exercising the remedy because the particular tenant is not that critical to the overall financial viability of the project in question (in other words, not an anchor tenant or critical provider of goods or services in the particular project tenant mix). In Oklahoma, acceleration of rents is a contractual and non-statutory remedy, so without the specific remedy, at the time of tenant default the landlord would simply seek its actual damages, such as loss of rent, cost of refitting the leased premises for a new tenant, brokerage commission, etc.

## CONCLUSION

Landlords are typically in a less than desirable position when exercising remedies for tenant default, especially acceleration of rents. Unfortunately, the landscape of decisions pertaining to rent acceleration clauses is peppered with uncertainty. However, such a clause that takes into consideration the benefits of mitigation (e.g. re-letting the leased premises), includes an acknowledgment from the tenant that the agreed upon formula is reasonable, and incorporates an offset in favor

of the tenant (either for the “fair market value” of the leased premises, a reduction of the gross accelerated rent amount to present value), or a predetermined amount to be accelerated, is more likely to be deemed enforceable than a wide open acceleration of rents provision. The best advice is to establish a straight forward exit strategy that courts will be more likely to understand and enforce, so as to let the parties decide the price to be paid for a tenant’s default.

1. William E. Wallo, *Remedy or Penalty: The Enforceability of Acceleration of Rent Provisions in Commercial Leases in Oklahoma*, 66 Okla. B.J. 2951 (1995).

2. See e.g., FLA. STAT. ANN. § 727.112 (West 2007); MICH. COMP. LAWS ANN. § 600.5714 (West 2007); Va. Code Ann. § 55-248.35 (West 2007), WASH. REV. CODE ANN. § 704.17 (West 2007).

3. See e.g., *Seidenbach’s v. Crown Drug*, 102 P.2d 186, 188 (Okla. 1940) (declining to enforce the accelerator clause because it was not included in the option terms, under which the relationship was operating); *Andrews v. Liberty Nat’l Bank & Trust Co. of Oklahoma*, 463 P.2d 953, 958 (Okla. 1969) (awarding only the amount of rent due at the time plaintiff filed its petition because the lease did not expressly provide for all rents to become due immediately); *Ross Realty v. V&A Iron Fabricators, Inc.*, 787 N.Y.S.2d 602, 603 (N.Y. App. Div. 2004) (declining to enforce acceleration clause because lease did not require landlord to re-rent); *IPC Retail Properties, L.L.C. v. Oriental Gardens, Inc.*, 86 P.3d 543, 549 (Kan. Ct. App. 2004) (holding acceleration clause unenforceable as a penalty because it applied to both minor and major breaches); Cf. *Cummings Properties, LLC v. Nat’l Communications Corporation*, 869 NE.2d 617, 622 (Mass. 2007) (upholding acceleration clause where parties had agreed failure to pay would be significant breach of the lease).

4. Wallo, *supra* note 1 at 2957.

5. 41 OKLA. STAT. § 105 (2001).

6. 527 P.2d 592 (Okla. 1974).

7. *Id.* at 594.

8. *Id.*

9. See e.g., *Nobles v. Jiffy Market Food Store Corp.*, 579 S.E.2d 63, 66 (Ga. Ct. App. 2003) (finding acceleration clause to be “manifestly unreasonable and oppressive” because landlord was not required to re-let the premises and future rent was not reduced to present value).

10. See e.g., *IPC Retail Properties*, 86 P.3d at 549.

11. See e.g., *In re Admetric BioChem, Inc.*, 284 B.R. 1, 10 (Bankr. D. Mass. 2002) (agreeing with the bankruptcy trustee that acceleration of rent clause was contrary to public policy and constituted a penalty where damages sought were in excess of 80% of the total rent).

12. See e.g., *Benderson v. Ross*, 530 N.Y.S.2d 362, 363 (N.Y. App. Div. 1988) (holding that once the lease was terminated, the contractual acceleration right was similarly terminated and that all the landlord could possibly collect from the tenant was its actual damages after proof, related to the tenant’s default).

13. See *Seidenbach’s v. Crown Drug*, 102 P.2d at 188.

## ABOUT THE AUTHORS



Michael S. Laird is a shareholder and past president of Crowe & Dunlevy PC and is currently chairman of the firm’s Real Estate Practice Group. He is a past president of the Commercial Real Estate Council of Oklahoma City, a Fellow of the American College of Mortgage

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## Program Planner

**Matthew L. Winton**, Vaughn, Winton, and Clark PLLC

**PROGRAM:** **April 9, 2008**  
**12 p.m.** **Oklahoma Homeowner Association Law - Discussion of the law, recent cases, trends, and representation techniques**  
**Matthew L. Winton**

**12:50** **Adjourn**

**PROGRAM:** **April 16, 2008**  
**12 p.m.** **Oklahoma Condominium Law- Discussion of the law, recent cases, drafting, and representation techniques**  
**Matthew L. Winton**

**12:50** **Adjourn**

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# Stealing Home: Protect Your Clients against Mortgage Fraud

*By Briana J. Ross*

**A**ccording to recent government statistics, reports of mortgage fraud are on the rise.<sup>1</sup> Consequently, the number of indictments filed by the federal government is also increasing.<sup>2</sup> Unfortunately, Oklahoma has not been spared from this recent crime wave. In fact, one recent Oklahoma mortgage fraud scheme garnered national attention. A team of fraudsters targeted a subdivision in Edmond and colluded with industry insiders to inflate the purchase price of homes in order to obtain cash back at closing for alleged remodeling and repair costs.

Four individuals involved in the scheme pled guilty in December 2006 to the federal criminal charges brought against them.<sup>3</sup> One of those individuals was a leading real estate broker who was licensed to sell real estate in Oklahoma for more than 25 years. As a result of her involvement, the broker's real estate license was suspended. Six other individuals involved in the scheme were convicted by a federal jury in April 2007.<sup>4</sup>

Most consumers are not familiar with the crime of mortgage fraud (which has been referred to as "the worst crime no one's heard of"),<sup>5</sup> and this lack of knowledge makes them easy targets. Accordingly, Oklahoma attorneys must be knowledgeable about the crime in order to protect clients from becoming mortgage fraud victims. This article discusses mortgage fraud categories, schemes used to perpetrate the crime, warning signs of mortgage fraud, and its impact on neighborhoods and communities.

## **MORTGAGE FRAUD CATEGORIES**

Mortgage fraud occurs "when a consumer or professional intentionally causes a financial

entity to fund, purchase or insure a mortgage loan when the entity otherwise would not have done so if it had possessed the correct information."<sup>6</sup> Although there are numerous schemes utilized to perpetrate mortgage fraud, all of the schemes contain one common factor — a "material misstatement, misrepresentation, or omission relating to the property or potential mortgage relied on by an underwriter or lender to fund, purchase or insure a loan."<sup>7</sup> Mortgage fraud schemes can generally be grouped into one of three categories: 1) fraud for profit, 2) commission fraud and 3) fraud for property.

"Fraud for profit consists of systematic transactions by industry professionals who are attempting to steal a significant amount of the funds associated with one or more mortgage transactions."<sup>8</sup> Multiple participants — usually industry insiders such as mortgage brokers, real estate brokers, real estate appraisers and settlement agents (attorneys and title examiners) — are involved and paid in a fraud for profit scheme. Perpetrators of fraud for profit schemes do not intend to repay their mortgage loans, thus resulting in significant losses to financial institutions. Fraud for profit schemes

account for the majority of losses to consumers and financial institutions.

Commission fraud occurs when one or more industry professionals misrepresent information in a loan transaction in order to receive a commission on a loan that would not normally be acceptable to the lender. Commission fraud is very common in the industry and results in losses to consumers, financial institutions and insurers.

Fraud for property is perpetrated by borrowers who seek to acquire and maintain ownership of a house under false pretenses. Borrowers misrepresent information on the loan application — such as their income, assets and intent to occupy the premises — in order to qualify for the loan. The borrowers would not normally be approved for the loan because they simply cannot afford the house they are attempting to purchase. As a result, these borrowers often default on their mortgage loans. Although fraud for housing is a problem, its impact is relatively minor and does not cause significant losses for financial institutions.

### COMMON MORTGAGE FRAUD SCHEMES

Mortgage fraud schemes can be difficult to identify because often, several industry insiders are involved in a single fraudulent transaction. Some of the most common schemes are discussed below.

Many people use the term “property flipping” to refer to the purchase of a property that is then remodeled and upgraded and resold for a profit. *Illegal* property flipping occurs when a property is purchased and then immediately refinanced or resold for an artificially inflated value. The buyer does not remodel or upgrade the property. Instead,

the buyer acts in collusion with a real estate appraiser to artificially inflate the value of the property. Property flipping is illegal because the home’s value at the time of sale is based upon a false appraisal.



“Often, a ‘fictitious or stolen identity’ is utilized to gain approval for a loan.”

A “silent second” scheme occurs when the buyer of property borrows the down payment from the seller through the issuance of a non-disclosed second mortgage. The primary lender is led to believe that the borrower has invested his own money for the down payment. The second mortgage is further concealed from the primary lender by the failure of the borrower to record the second mortgage in the county land records.

“Nominee loans” or “straw buyers” are utilized to conceal the identity of the borrower

through the use of a nominee who allows the borrower to use the nominee’s name and credit history to apply for a loan. Straw buyers do not intend to occupy the property or make payments on the loan. In fact, they often deed the property to the true buyer immediately after closing. Straw buyers are usually compensated for the use of their identity.

Often, a “fictitious or stolen identity” is utilized to gain approval for a loan. This scheme constitutes a form of identity theft, causing its victims to suffer long-lasting consequences. Victims usually have no knowledge that the perpetrator has obtained a mortgage utilizing their name, personal identifying information and credit history until the loan goes into default.

“Inflated appraisals” occur when an appraiser acts in collusion with a borrower by providing an appraisal report to the lender that falsely inflates the property value. The appraiser usually receives an increased fee or some other form of kickback from the borrow-

er. An Oklahoma real estate appraiser, whose license was suspended at the time of his fraudulent appraisal, pled guilty to federal charges of wire fraud associated with an inflated appraisal that he provided to a financial institution and was sentenced to one year in prison and ordered to pay \$235,000 in restitution.<sup>9</sup> The appraiser, at the request of a branch manager of a national mortgage broker, provided an inflated appraisal that he knew would be transmitted through interstate communications for the purpose of securing approval of the loan. The branch manager paid the appraiser additional compensation in exchange for the inflated appraisal.

Inflated appraisals may explain recent findings by the Mortgage Asset Research Institute, a research group associated with the Mortgage Bankers Association, listing Enid second in the nation for potential mortgage fraud involving subprime loans.<sup>10</sup> This ranking is derived from the highest early payment default index values based upon 2006 subprime loan originations. Enid's poor ranking may be explained by the pressure that is placed upon real estate appraisers by industry insiders to "make value," *i.e.*, to appraise the property for the sales price even if the actual value of the home is less than the sales price. The subprime connection comes into play where a borrower receives a "no-money down" loan for an overvalued property and then cannot make the payments. The lender suffers a significant loss. Most early payment defaults<sup>11</sup> are the result of some form of mortgage fraud, whether it is an inflated appraisal, falsified loan application or the result of

property flipping. For example, suppose a home is actually valued at \$100,000, but an inflated appraisal is submitted to the lender valuing the home at \$150,000. The lender loans \$150,000 to the borrower, but the borrower soon defaults and the lender forecloses on the property. The lender now owns a property worth only \$100,000, and it has suffered a \$50,000 loss.

A "foreclosure rescue scam" involves a perpetrator who identifies and seeks out homeowners at risk of defaulting on their mortgage or homeowners whose homes are already in foreclosure. The perpetrator claims to offer or arrange for a new loan, but ultimately convinces the homeowners to sign over the deed by agreeing to lease the home back to the homeowners, allowing them to buy it back over time, or purchase the home with a land contract. The perpetrator usually requires the homeowner to pay some form of up-front payment. The perpetrator will then either pay off the existing mortgage or take out a new loan. The perpetrator now owns the home and has stripped the victim of all his equity. The former homeowner's lease or land contract payments

are usually low at first, but the agreement (unbeknownst to the former homeowner) usually requires an enormous balloon payment at the end of a short time period. Most of the former homeowners cannot afford the balloon payment. Victims of foreclosure rescue scams usually do not know they have been deceived until they are evicted from their home. The perpetrator then sells the home and profits enormously.



“New mortgage fraud schemes are constantly being developed.”

Another common mortgage fraud scheme is conducted by the use of two settlement statements. One settlement statement — accurately reflecting the true selling price of the property — is prepared and provided to the seller. A second settlement statement — falsely reflecting an inflated selling price — is provided to the lender. The lender provides a higher loan amount based upon the fraudulent settlement statement. These funds are usually placed in escrow with the closing company. After the loans are settled, the proceeds are disbursed among the fraudsters. This type of mortgage fraud scheme can only be committed by industry insiders working in collusion with each other.

### **WARNING SIGNS OF MORTGAGE FRAUD**

New mortgage fraud schemes are constantly being developed. The changing nature of the schemes makes it difficult for the government to identify and prosecute the perpetrators. There are, however, several warning signs of mortgage fraud of which attorneys should be aware. The following activities are warning signs of potential mortgage fraud:

- Inflated appraisals
- Exclusive use of one appraiser
- Increased commission /bonuses – brokers and appraisers
- Bonuses paid (outside or at settlement) for fee-based services
- Higher than customary fees
- Falsifications on loan applications
- Borrowers told/explained how to falsify the mortgage application
- Requests to sign any type of blank form associated with the purchase or sale
- Fake supporting loan documentation
- Purchase loans that are disguised as refinances (requires less documentation/lender scrutiny)
- Investors-short term investments with guaranteed re-purchase
- Investors used to flip property prices for fixed percentage
- Multiple “holding companies” utilized to increase property values

### **PROTECTING YOUR CLIENTS FROM MORTGAGE FRAUD**

Mortgage fraud can be greatly reduced by taking a few extra precautions. Attorneys advising a client in a real estate transaction should recommend the following preventative measures:

- Obtain referrals for real estate and mortgage professionals and check the licenses of the industry professionals with state, county or city regulatory agencies.<sup>12</sup>
- Beware of promises of extraordinary profits in a short period of time.
- Be wary of strangers, unsolicited contacts and high pressure sales techniques.
- Use a reputable title company or title attorney to examine the title history. If the property has been sold multiple times within a short period of time, it could mean that the property has been “flipped” and the value falsely inflated.
- Never sign blank deeds, loan applications or mortgages.
- Do not sign any documents with terms different than agreed to or that the client does not understand.

### **MORTGAGE FRAUD IMPACTS ENTIRE NEIGHBORHOODS AND COMMUNITIES**

Mortgage fraud not only impacts its direct victims, the homeowners and lenders who have been defrauded, it also has negative implications on indirect victims, including entire neighborhoods and communities. Perpetrators often target specific neighborhoods and seek to purchase multiple homes within the neighborhood over a short period of time in order to maximize the potential earnings before the scams are detected. Once the homes are purchased and the scams are completed, the perpetrators take the money and run, leaving victims and other residents of the neighborhood to suffer the consequences. Some of these consequences include increased property taxes, market confusion, vandalism, low home occupancy rates, and higher mortgage rates and fees.<sup>13</sup>

One negative impact to a neighborhood occurs when inflated appraisal values falsely inflate a home’s sales price which, in turn, leads to higher property taxes. When perpetrators target several homes within a neighbor-

hood — falsely inflating the value of these homes — property taxes throughout the entire neighborhood may increase. Higher property taxes make homes in the neighborhood less attractive to potential buyers, thus making it more difficult for the residents to sell their homes. Another negative impact of mortgage fraud on neighborhoods is market confusion, which occurs when legitimate sales prices become difficult, if not impossible, to determine due to fraudulent activities. Buyers, sellers, real estate brokers and appraisers may become confused about the legitimate value of a home after a property has been fraudulently flipped and/or appraised.

Mortgage fraud also leads to home foreclosures. Foreclosure proceedings often result in homes being left vacant for a period of time, which create opportunities for vandals to enter the homes undetected and steal property or destroy the homes. The foreclosing lender must either clean up the mess or risk losing even more money when the house is sold. Consequently, neighborhoods with high rates of foreclosures may see an increase in crime in their neighborhoods.

Entire communities may also be impacted by mortgage fraud. First, mortgage fraud is often affiliated with money laundering and other criminal behavior. If the community presents opportunities for perpetrators to commit mortgage fraud without being detected, the community becomes an attractive target for other types of criminal behavior, thus resulting in an increased rate of crime. Second, lenders will raise mortgage rates and fees in order to recover their losses from mortgage fraud in the community. Finally, normally honest consumers and professionals are often implicated in mortgage fraud schemes. The perpetrators approach these normally honest individuals and convince them that they will be able to earn a quick profit without being detected.

## **MORTGAGE FRAUD IS A FEDERAL CRIME**

Mortgage fraud is investigated by the Federal Bureau of Investigation. The Internal Revenue Service also investigates cases of mortgage fraud that involve money laundering. Mortgage fraud is a federal crime that is punishable by up to 30 years in prison or a \$1 million fine, or both.

There is no federal statute that specifically addresses the problem of mortgage fraud;

rather, mortgage fraud is prosecuted under a variety of federal criminal statutes, depending on the scheme perpetrated.<sup>14</sup> If you suspect your client has been defrauded or if you identify several warning signs of mortgage fraud in a real estate transaction, report your suspicions to one or more of the following local agencies:<sup>15</sup>

FBI Field Office, Mortgage Fraud  
White Collar Crime Supervisor  
<http://oklahomacity.fbi.gov/>  
3301 W. Memorial Drive  
Oklahoma City, OK 73134-8801  
Phone: (405) 290-7770

HUD Field Office: Oklahoma City  
301 N.W. 6th St., Suite 200  
Oklahoma City, OK 73102  
Phone: (405) 609-8509

Office of the Attorney General  
Consumer Protection Unit  
2300 N. Lincoln Blvd., Suite 112  
Oklahoma City, OK 73105  
Phone: (405) 521-3921

HUD Field Office: Tulsa  
1516 S. Boston Ave., Suite 100  
Tulsa, OK 74119-4030  
Phone: (918) 581-7434

Mortgage fraud is occurring in Oklahoma with greater frequency. Oklahoma attorneys must be knowledgeable about this crime in order to protect clients that engage in real estate transactions, attorney's failure to notice blatant warning signs of mortgage fraud could be deemed as malpractice. Most importantly, though, the effects of mortgage fraud can ruin entire neighborhoods and communities, thus destroying the value of most individuals' largest investment — their home.

1. FED. BUREAU OF INVESTIGATION, FINANCIAL CRIMES REPORT TO THE PUBLIC - FISCAL YEAR 2006, at [www.fbi.gov/publications/financial/fcs\\_report2006/financial\\_crime\\_2006.htm](http://www.fbi.gov/publications/financial/fcs_report2006/financial_crime_2006.htm). (last visited Oct. 2, 2007); FIN. CRIMES ENFORCEMENT NETWORK, THE SAR ACTIVITY REVIEW - BY THE NUMBERS, Issue 8, June 2007, available at [www.fincen.gov/pub\\_reports.html](http://www.fincen.gov/pub_reports.html) (last visited Oct. 2, 2007); INTERNAL REVENUE SERV., U.S. DEP'T OF THE TREASURY, REAL ESTATE FRAUD: FACTS, FIGURES AND CLOSED CASES, Sept. 2007, at [www.irs.gov/compliance/enforcement/article/0,id=162992,00.html](http://www.irs.gov/compliance/enforcement/article/0,id=162992,00.html) (last visited Oct. 2, 2007).

2. INTERNAL REVENUE SERV., U.S. DEP'T OF THE TREASURY, REAL ESTATE FRAUD: FACTS, FIGURES AND CLOSED CASES, Sept. 2007, at [www.irs.gov/compliance/enforcement/article/0,id=162992,00.html](http://www.irs.gov/compliance/enforcement/article/0,id=162992,00.html) (last visited Oct. 2, 2007).

3. *U.S. v. Alford*, No. CR-06-274-T (W.D. Okla. 2006); *U.S. v. Campbell*, No. CR-06-275-C (W.D. Okla. 2006); *U.S. v. Jew*, No. CR-06-276-HE (W.D. Okla. 2006); *U.S. v. Mykel*, No. CR-06-277-HE (W.D. Okla. 2006).

4. *U.S. v. Baum*, No. CR-06-264-HE (W.D. Okla. 2006).

5. Carol Lloyd, *Mortgage Fraud - The Worst Crime No One's Heard Of*, San Francisco Chronicle, October 29, 2006 at K-2, available at <http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2006/10/29/REGKQM0RN81.DTL> (last visited Oct. 2, 2007).

6. WILLIAM MATTHEWS, MORTGAGE ASSET RESEARCH INST., LLC, TESTIMONY BEFORE THE UNITED STATES HOUSE OF REPRESENTATIVES SUBCOMMITTEE ON HOUSING AND COMMUNITY OPPORTUNITY, *available at* [www.mari-inc.com/resources-news/articles-rulings.asp](http://www.mari-inc.com/resources-news/articles-rulings.asp) (last visited Oct. 2, 2007).

7. FED. BUREAU OF INVESTIGATION, STATEMENT OF CHRIS SWECKER ASSISTANT DIRECTOR CRIMINAL INVESTIGATIVE DIVISION FEDERAL BUREAU OF INVESTIGATION BEFORE THE HOUSE FINANCIAL SERVICES SUBCOMMITTEE ON HOUSING AND COMMUNITY OPPORTUNITY, Oct. 7, 2004, *at* [www.fbi.gov/congress/congress04/swecker100704.htm](http://www.fbi.gov/congress/congress04/swecker100704.htm) (last visited Oct. 2, 2007).

8. MATTHEWS, *supra* note 6.

9. *U.S. v. Goodwin*, No. CR-06-128-T (W.D. Okla. 2006).

10. MORTGAGE ASSET RESEARCH INST., LLC, *Ninth Periodic Mortgage Fraud Case Report to Mortgage Bankers Association*, April, 2007, *at* [www.mari-inc.com/resources-news/reports.asp](http://www.mari-inc.com/resources-news/reports.asp) (last visited Oct. 2, 2007). MARI's index ranks seven cities ahead of Enid; however, six of these cities are located in areas affected by Hurricane Katrina. The index figures for areas affected by Hurricane Katrina, as acknowledged by MARI, do not accurately reflect the number of early payment defaults resulting from potential mortgage fraud.

11. An Early Payment Default (EPD) is usually defined as a loan that goes 90+ days delinquent in its first year.

12. To check an Oklahoma real estate broker's license, contact the Oklahoma Real Estate Commission (OREC) at [www.orec.ok.gov](http://www.orec.ok.gov). To check an Oklahoma mortgage broker's license, contact the Oklahoma Department of Consumer Credit at [www.okdccc.state.ok.us/mainMB.php](http://www.okdccc.state.ok.us/mainMB.php). To check an Oklahoma real estate appraiser's license, contact the Oklahoma Real Estate Appraisers Board (REAB) at [www.oid.state.ok.us/REAB.asp](http://www.oid.state.ok.us/REAB.asp).

13. FANNIE MAE, MORTGAGE FRAUD OVERVIEW, May, 2007, *at* <https://www.efanniemae.com/utility/legal/pdf/mtgfraudoverview.pdf> (last visited Oct. 2, 2007).

14. Those federal criminal statutes include (i) 18 U.S.C. § 1001 – Statements or entries generally; (ii) 18 U.S.C. § 1006 – Credit Institution Fraud; (iii) 18 U.S.C. § 1010 – Department of Housing and Urban Development and Federal Housing Administration transactions; (iv) 18 U.S.C. § 1014 – Loan and credit applications generally; (v) 18 U.S.C.

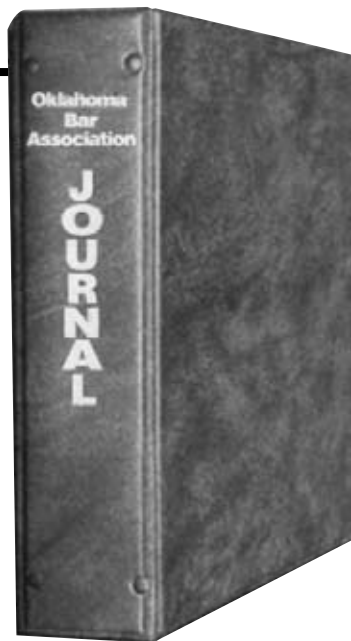
§ 1028 – Fraud and related activity in connection with identification documents, authentication features, and information; (vi) 18 U.S.C. § 1341 – Frauds and swindles by mail; (vii) 18 U.S.C. § 1342 – Fictitious name or address; (viii) 18 U.S.C. § 1343 – Fraud by wire; (ix) 18 U.S.C. § 1344 – Bank fraud; 18 U.S.C. § 1503 – Obstruction of justice; 18 U.S.C. §§ 1956 and 1957 – Money laundering; 18 U.S.C. § 2314 – Interstate transfer of funds; 26 U.S.C. § 7206(2) – Filing false tax returns; and (x) 42 U.S.C. § 408(a) – False social security number.

15. For additional local and federal agencies, *see* [www.mortgage-newsdaily.com/mortgage\\_fraud/report\\_Oklahoma.asp](http://www.mortgage-newsdaily.com/mortgage_fraud/report_Oklahoma.asp) (last visited Oct. 2, 2007).

## ABOUT THE AUTHOR



Briana J. Ross is a vice president and title attorney at Guaranty Abstract Company in Tulsa. She serves as the OBA/YLD director for Judicial District 6 and was recently appointed to the OBA Real Property Section Board and the OBA Women in Law Committee. She also serves as a board member of the TU College of Law Alumni Association, where she co-chairs the Young Lawyer Alumni Committee.



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# The Oklahoma Real Estate Commission's Forms Committee and its Impact upon the Legal Practitioner

*By John Munkacsy*

**T**he Oklahoma Real Estate Commission has authority over the licensing and regulation of real estate licensees.<sup>1</sup> In addition, it has been authorized by statute<sup>2</sup> to create an Oklahoma Real Estate Contract Form Committee by rule which will be required to draft and revise residential real estate purchase contracts and any related addenda for voluntary use by real estate licensees. Effective Jan. 1, 2008, the commission's authority was expanded authorizing the committee to develop purchase or lease contracts for all facets of real estate, *i.e.*, commercial, agricultural, property management, etc.<sup>3</sup> The Oklahoma Real Estate Commission (OREC) has promulgated a rule<sup>4</sup> establishing the Contract Forms Committee.

The Forms Committee is composed of 11 members, three appointed by OREC, three appointed by the Oklahoma Bar Association and five appointed by the Oklahoma Association of Realtors Inc. (the realtors' trade association). The currently serving attorneys appointed by the president of the Oklahoma Bar Association are Robert J. Nichols, Tulsa; R. Victor Kennemer, Wewoka; and the author.

The Forms Committee has been in existence and hard at work for several years and has developed several standardized contracts (residential sales, vacant land, new home construction) for the use of the licensees, along with many other related forms that are typically

used in residential real estate transactions. The forms have been approved by OREC and can be viewed at the OREC Web site.<sup>5</sup> By all indications, the use of these approved forms by real estate licensees is prevalent throughout the state. The Forms Committee regularly reviews comments from the field and considers whether revisions would be useful or appropriate.

The purpose of this discussion is to acquaint the members of the Oklahoma Bar Association with the Forms Committee, its purpose and how the development of these forms may relate to the legal practitioner.

Among the purposes served by the implementation of the standardized forms are to create more uniformity, reduce the need for additional drafting by a licensee, and offer a greater degree of protection to the consumer. Superimposed upon this is the fact that the real



“Additional complexities involve seller disclosure requirements and buyer due diligence.”



estate industry in Oklahoma has transitioned from laboring under the law of agency (the subject of much difficulty in the way that the

real estate broker has traditionally operated) to what is commonly referred to as “transaction brokerage” as defined and implemented by the Brokers’ Relationships Act.<sup>6</sup> This regimen was enabled in 1999 and effective Nov. 1, 2000, and replaces the law of agency as it applies to a real estate broker’s relationship with the customer.<sup>7</sup> The implications of this change are beyond the scope of this article and are significant.

The modern residential real estate transaction is more complex in many ways than the same transaction of 30 or 40 years ago. In addition to the buyer, seller and brokers being involved, there are mortgage loan originators, primary and secondary mortgage lenders, real estate appraisers, home inspectors, abstract companies, title insurers, termite inspectors and often others. Additional complexities involve seller disclosure requirements and buyer due diligence. Home inspectors are now licensed and regulated by statute.<sup>8</sup> The typical real estate licensee is in relationship to these many players and guides the seller and/or buyer through the maze.

Just the number of relationships that through the course of the transaction arise briefly and disappear, make the case of a process better suited to the real estate licensee than to the attorney. Few attorneys have established similar relationships. The role as developed has become a traditional part of the service rendered and no longer is simply one of bringing a willing buyer and a willing seller together. That formula is long gone. The practicing bar left the arena years ago for one reason or another, so for the most part this process has defaulted to the licensee. Now, and unfairly, the attorney is sometimes viewed as an impediment rather than a facilitator. Despite the occasional grumbling among lawyers about real estate licensees engaging in the unauthorized practice of law, it does not appear likely that the practicing bar is willing to reclaim this area of practice, even limited to drafting contracts or reviewing the forms and documents. Too often, the lawyer, unlike the licensee, doesn’t appear willing to remain in direct and constant contact with the buyer or seller client or to establish the necessary relationships among the other services that play a part in the typical transaction. Furthermore, the contract is often executed away from the broker’s professional offices, perhaps at the home of the parties with the licensee there and assisting.

The public appears to be well conditioned to this process of the typical residential real estate sale transaction and the role of the real estate licensee. Within this process the consumer is better served with the use by the real estate licensees of the universal, standardized forms developed by the Forms Committee and approved for use by OREC.


1. 59 O.S. '858-101, *et seq.*
2. 59 O.S. '858-208(14)
3. See OSCN reference to above citation.
4. Rule 605 '1-1-4, Oklahoma Real Estate Commission Rules.
5. [www.orec.ok.gov](http://www.orec.ok.gov)
6. 59 O.S. '858-351 through Section 363.
7. 59 O.S. '858-360.
8. 59 O.S. '858-621, *et seq.*

## ABOUT THE AUTHOR



John Munkacsy is a partner in the firm of Ashton, Wisener & Munkacsy PC. He is a member of the Oklahoma, Ohio and American bar associations. He currently serves on the Oklahoma Bar Foundation board and is an Oklahoma Fellow of the ABA Foundation. He also serves on the *Oklahoma Bar*


*Journal* editorial board. He is a past member of the OBA Board of Governors and the Professional Responsibility Tribunal.



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# Alien Ownership of Land in Oklahoma

*By Jennifer Scott Moradi*

**A**t first glance, the subject of alien land ownership would not appear to be a topic ripe for discussion. After all, the basic concept of such ownership has been part of Oklahoma's Constitution since the Constitutional Convention in 1907 and part of the Oklahoma Statutes since the 1907-08 edition, with very little revision since that time.

Further, the last (and only) major case addressing the topic was decided by the Oklahoma Supreme Court in 1981. However, despite the rather static development of the laws on this subject, the question of whether aliens may own land in Oklahoma remains a murky and complicated issue for many practitioners. This article seeks to clear up some of that confusion and provide practitioners with some background regarding Oklahoma's laws concerning alien land ownership.

## OKLAHOMA CONSTITUTION AND STATUTES

The Oklahoma Constitution and the Oklahoma Statutes define the term "alien" as "any person who is not a citizen of the United States."<sup>1</sup> Section 1 of Article XXII of the Oklahoma Constitution states generally that "[n]o alien or person who is not a citizen of the United States, shall acquire title to or own land in this state" with exceptions for "Indians born within the United States," persons "who may become bona fide residents of" the State of Oklahoma, and "lands now owned by aliens in this State."

Pursuant to a constitutional directive contained in Section 1 of Article XXII, Oklahoma also enacted several statutes on the subject of alien land ownership. These statutes, located at

60 Okla. Stat. §§121–127, also prohibit, subject to certain enumerated exceptions, aliens from owning or holding title to real property in Oklahoma, under penalty of escheat of such lands to the state. These exceptions include: 1) those aliens who owned their lands in 1910, so long as they are held by the 1910 owners;<sup>2</sup> 2) those aliens who are or shall become "bona fide" residents of the state of Oklahoma, provided that if any of those aliens cease to be "bona fide" residents at any time, they shall have five years from the date they ceased to be bona fide residents to transfer such lands;<sup>3</sup> and 3) those nonresident aliens who acquire land by devise, descent or purchase at a lien foreclosure sale, who are also allowed five years in which to transfer the lands.<sup>4</sup>

If an alien does not meet any of the exceptions listed above, the alien may not own land in Oklahoma. In the event it is discovered that a nonresident alien not meeting any of the constitutional or statutory exceptions owns real property in Oklahoma, either the Oklahoma attorney general or the district attorney of the county in which the lands are located must bring suit on behalf of the state of Oklahoma asking that the real property be escheated to the state.<sup>5</sup> However, prior to the institution of the suit, the attorney general or district attorney, as applicable, must provide either the

owner of the lands, the owner's agent or the persons who last paid the taxes on the lands with 30 days' written notice of his or her intention to sue, and such notice must be sent by registered letter to the person's last known post office address.<sup>6</sup>

In the event that the nonresident alien land owner is under a legal disability by virtue of being a minor or a person of unsound mind, the attorney general or district attorney's notice shall be addressed to the guardian of the owner.<sup>7</sup> If no guardian exists for the owner, the attorney general or district attorney must make application to the court and obtain a guardian ad litem for the property owner.<sup>8</sup> After the guardian has been appointed, the district attorney shall direct the court clerk to locate the residence or post office address of the property owner's next of kin and to send a copy of the petition to escheat the land to the next of kin.<sup>9</sup> After mailing of the petition to the owner's next of kin, the owner shall have 90 days to appear and defend the lawsuit.<sup>10</sup>

If at trial the court finds that the lands are held by a nonresident alien in violation of the Oklahoma Constitution and the Oklahoma Statutes, then the court shall enter judgment in favor of the state, providing for the condemnation of the lands and ordering that the lands be sold upon the terms and conditions determined by the court.<sup>11</sup> After confirmation of the sale of the land, the proceeds of the sale, less the costs of the lawsuit, are paid to the court

both before the landowner is divested of his or her title to the land and after the sale of the land. Prior to the institution of escheat proceedings, any alien who holds land in violation of Oklahoma law is permitted to convey fee simple title to any person eligible to hold land in the state of Oklahoma at any time.<sup>14</sup> Further, after the sale proceeds have been paid into the state treasury, the former alien landowner or his heirs may obtain a return of the funds by applying for and receiving an order from the court "showing that such judgment escheating said property was procured by fraud, or mistake, or that there was material irregularity in the proceedings."<sup>15</sup> However, the application to recover the funds must be made within two years from the date the money was turned over to the state treasury.<sup>16</sup>



## “Several procedural safeguards are provided to nonresident alien landowners in the Oklahoma Constitution and the Oklahoma Statutes...”

clerk to be held for one year from the date of the payment, subject to any claim or further order of the alien owner.<sup>12</sup> If the sale proceeds are not claimed within the year in which they are held by the court clerk, the funds shall be paid into the state treasury to be placed in the school fund.<sup>13</sup>

Several procedural safeguards are provided to nonresident alien landowners in the Oklahoma Constitution and the Oklahoma Statutes,

Finally, it is important to note that only one situation will cause an automatic forfeiture of land. If the nonresident alien landowner exercises his or her right to convey title prior to the institution of the escheat proceedings, and the conveyance is made to either another alien or to a citizen in trust for the

alien "and for the purpose and with the intention of evading the provisions" of Oklahoma law, the conveyance is null and void.<sup>17</sup> Further, the land so conveyed "shall be forfeited and escheated to the state absolutely."<sup>18</sup>

### INTERPRETATION OF OKLAHOMA LAW REGARDING ALIEN LAND OWNERSHIP

The constitutional and statutory provisions concerning alien land ownership remained

largely free from interpretation until the 1970s. However, during that decade, the "growth of the foreign investors market and the influx of alien students into the state" created a necessity for interpretation of Oklahoma's laws regarding alien ownership of land.<sup>19</sup> In 1975 and 1976, the attorney general of Oklahoma issued two advisory opinions on the subject.<sup>20</sup> Then, early in 1979, the Oklahoma state Senate asked the attorney general to investigate the extent of foreign land investment in the state and to compile a report on his findings.<sup>21</sup> To aid the attorney general in his investigation, on Jan. 30, 1979, the Oklahoma state Senate adopted Senate Resolution No. 11 which, among other things, "call[ed] upon every citizen with knowledge of nonresident alien land purchases to report to their local District Attorney and to the Attorney General."<sup>22</sup> The Attorney general issued his report on May 1, 1979, which included a list of corporations suspected of violating Oklahoma's alien land ownership laws.<sup>23</sup>

After submitting his report to the state Senate, the attorney general issued another advisory opinion on the subject of alien ownership of land in Oklahoma. On Sept. 12, 1979, Opinion No. 79-286 provided: 1) that aliens may not directly or indirectly acquire title to or own land in Oklahoma; 2) that aliens who can be shown to have become bona fide residents of the state may acquire and hold property until they cease to be bona fide inhabitants, at which time they will have five years in which to alienate their lands; 3) that a nonresident alien may only hold land in Oklahoma if the land was acquired by descent, devise or by purchase at a sale foreclosing a lien in favor of the alien, which land can be held for only five years; 4) that title to land conveyed in violation of Oklahoma law has escheated to the state; and 5) that the term "person" includes bodies corporate, who do not avoid the prohibition by obtaining articles of domestication.<sup>24</sup>

In furtherance of his duty under the Oklahoma Constitution and the Oklahoma Statutes, the attorney general next began to bring actions to enforce the law. On Nov. 14, 1979, the state served written notice on Hillcrest Investment Ltd., an Alberta, Canada, corporation, stating that the state believed that the company owned land in contravention of Oklahoma law.<sup>25</sup> Thereafter, the attorney general brought suit against Hillcrest.

In its answer to the state's petition, Hillcrest admitted that it owned certain land in Oklahoma, that it was a corporation formed under the laws of Alberta, Canada, and that it had filed Articles of Domestication with the Oklahoma Secretary of State and had received a Certificate of Authority to transact business in Oklahoma.<sup>26</sup> At trial, the court held that the restriction on alien ownership of land contained in the Oklahoma Constitution and the Oklahoma Statutes applied only to individuals and not to corporations.<sup>27</sup> The state appealed.

On appeal, the Oklahoma Supreme Court considered two issues: 1) whether the trial court erred in holding that Section 1 of Article XXII of the Oklahoma Constitution did not apply to corporations;<sup>28</sup> and 2) whether the corporation at issue is an alien corporation and whether the defendant corporation is a non-resident of the state of Oklahoma.<sup>29</sup>

To answer the first issue, the court examined the intent of the drafters of the Oklahoma Constitution and whether the drafters understood the terms "alien" or "person" to include corporations within their definitions. The court concluded, based on the territorial statutes in effect at the time and relevant case law, that the drafters of the Oklahoma Constitution did intend for the prohibitions on alien ownership of land to apply to corporations.<sup>30</sup> The statutes of the territory "specifically define[d] 'person' to include corporations, and such was the law in Oklahoma Territory for quite some time prior to the Constitutional Convention. Thus, the term 'person' was, in law, understood to include corporations when the Constitutional Convention was convened."<sup>31</sup> The court further held that "at the time the Constitution was adopted, existing case law construed the term 'alien' to include corporations, so that a corporation created by the laws of a foreign country was an alien."<sup>32</sup>

After determining that the prohibitions on alien ownership of land contained in the Oklahoma Constitution apply to corporations, the court turned to an examination of the second issue in the case. The court "easily ascertained" the answer to the first inquiry because the defendant admitted that it was a corporation formed under the laws of Alberta, Canada.<sup>33</sup> The court stated, "[i]t is well settled that corporations formed under the laws of foreign nations are alien corporations."<sup>34</sup>

The court next addressed the second inquiry, whether the defendant corporation is a resident or nonresident of the state of Oklahoma, which the court referred to as the “determinative question” in the case.<sup>35</sup> At the outset, the court recognized that there are “material differences” between corporations and natural persons, in that “under some circumstances and for some purposes,” corporations may “be considered residents of more than one jurisdiction.”<sup>36</sup> The court further noted that many jurisdictions support the view that “for certain purposes, a residence within a jurisdiction may be considered apart from the legal residence or domicile of a corporation, and that ‘foreign corporation’ and ‘nonresident corporation’ are not necessarily synonymous terms”<sup>37</sup> and that Oklahoma had “long ago embraced the rationale expressed by [its] sister jurisdictions.”<sup>38</sup>



After determining that foreign corporations may, in various circumstances, be considered residents of the state of Oklahoma, the court considered whether a foreign corporation may be a state resident for the purposes of property ownership. In making this determination, the court again turned to constitutional and statutory provisions of the drafters, this time in the context of the treatment of domesticated corporations. The court concluded that “a foreign corporation, once it has complied with the domestication procedures established under Oklahoma law, is, for the purposes of restrictions on alien land ownership, a resident of the State and thus no longer subject to the restrictions

of Article 22, Section 1, of the Oklahoma Constitution.”<sup>39</sup>

In reaching this conclusion, the court cited the fact that the drafters of the Oklahoma Constitution provided that foreign corporations that become authorized to conduct business in the state of Oklahoma through the domestication process “are subject to the same restrictions and requirements as domestic corporations.”<sup>40</sup> Therefore, the court concluded that the drafters “did not intend for domesticated corporations to be subject to the land ownership restrictions imposed upon aliens, but rather left such decision to the Legislature” and that “it was the intent of the drafters . . . that domesticated corporations be considered ‘bona fide residents,’” as that term is used in Article 22, Section 1.<sup>41</sup>

The court further stated that the Legislature, rather than imposing the land ownership restrictions on alien corporations, instead provided that “foreign corporations, upon receiving a certificate of domestication, enjoy the same rights and privileges as domestic corporations.”<sup>42</sup> One of the rights and privileges of domestic corporations is the right to own property in the state; thus, the same right is afforded to domesticated corporations.<sup>43</sup>

In short, the Supreme Court in *Hillcrest* held that, although nonresident

“The court next addressed the second inquiry, whether the defendant corporation is a resident or nonresident of the state of Oklahoma...”

alien individuals are prohibited from owning land in the state of Oklahoma, except in certain circumstances, foreign corporations are entitled to own land in the state, after the corporation becomes domesticated in the state. The court was careful to caution, however, that nothing in its holding “should be taken to mean that such rights would be afforded a sham corporation, set up by individual aliens solely to avoid the restrictions of Article XXII, Section 1, when such entities are not in fact operated as legiti-

mate corporations.”<sup>44</sup> No further judicial determinations have been made regarding the application of the principles set forth in *Hillcrest*.

## SUMMARY OF OKLAHOMA LAW WITH REGARD TO ALIENS AND ALIEN BUSINESS ENTITIES

Based upon the constitutional and statutory provisions regarding alien land ownership and the decision of the Oklahoma Supreme Court in *Hillcrest*, the following summarizes current Oklahoma law:

1) Aliens that are bona fide residents of Oklahoma (i.e., those that have established through intention and fact that Oklahoma is their primary residence) may own real property in Oklahoma, subject to the proviso that they must transfer title to the land within five years after they end their bona fide residence in Oklahoma.

2) Aliens that are not bona fide residents of Oklahoma cannot own property within the state, subject to the five-year safe harbors allowed in the event that an alien receives property through descent and devise or obtains title to the property through a foreclosure of a lien held by the alien.

3) Alien corporations, if domesticated in Oklahoma (that are not sham corporations formed for the sole purpose of owning land in Oklahoma), are allowed to own property in Oklahoma, subject to the limitations placed on corporate ownership of real property located outside of “incorporated cities and towns” as set forth in Section 2 of Article XXII of the Oklahoma Constitution and in 18 Okla. Stat. §1020 and on corporate ownership of farmland as set forth in 18 Okla. Stat. §955.

4) As for other types of alien business entities for which Oklahoma law provides domestication procedures (e.g., limited liability companies, limited partnerships and limited liability partnerships), it seems likely that a court would uphold the right of such entities to own land in Oklahoma based upon the reasoning set forth in *Hillcrest*.<sup>45</sup> However, since there has been no judicial determination regarding these entities, it is of course safest to use an alien corporation instead.

1. Okla. Const. art. XXII, §1; 60 Okla. Stat. §121.

2. 60 Okla. Stat. §122.

3. *Id.*

4. 60 Okla. Stat. §123.

5. 60 Okla. Stat. §125.

6. *Id.*

7. 60 Okla. Stat. §126.

8. *Id.*

9. *Id.*

10. *Id.*

11. 60 Okla. Stat. §127.

12. *Id.*

13. *Id.*

14. 60 Okla. Stat. §124.

15. 60 Okla. Stat. §127

16. *Id.*

17. 60 Okla. Stat. §124.

18. *Id.*

19. See Douglas A. Echols, *Constitutional Law: Are Oklahoma's Restrictions on Alien Ownership of Land Constitutional?*, 32 Okla. L. Rev. 144 (1979).

20. Opinion Nos. 74-214 and 76-253.

21. *Recent Developments in Oklahoma Law – State Constitution*, 6 Okla. City U.L. Rev. 589, 592 (1981) (hereinafter referred to as “Recent Developments”).

22. Okla. S. Res. 11, 37th Cong., 1st Sess. §1 (1979); See also *Recent Developments*, at 592, n.19.

23. *Recent Developments*, at 592.

24. Opinion No. 79-286, 11 Op. Atty. Gen. 452 (1979). For an excellent discussion regarding Opinion No. 79-286, see Steven L. Barghols, *Alien Ownership of Oklahoma Urban Real Property*, 50 Okla. B.J. 2439 (1979).

25. *Recent Developments*, *supra* note 21, at 592.

26. *State ex rel. Cartwright v. Hillcrest Investments, Ltd.*, 630 P.2d 1253, 1255 (Okla. 1981).

27. *Id.*

28. *Id.*

29. *Id.* at 1258.

30. *Id.* at 1256.

31. *Id.*

32. *Id.* at 1257.

33. *Id.* at 1258.

34. *Id.*

35. *Id.*

36. *Id.*

37. *Id.*

38. *Id.* at 1259.

39. *Id.*

40. *Id.* at 1260.

41. *Id.*

42. *Id.* at 1261.

43. *Id.*

44. *Id.* at 1263.

45. These business entities, just like corporations, have been granted the right to hold property in the name of the entity, separate from the principals. See 18 Okla. Stat. §2003 (limited liability companies); 54 Okla. Stat. §§1-201, 307 (for limited partnerships and limited liability partnerships). When you take into account the fact that these business entities also have established domestication procedures (like corporations) it is difficult to imagine that a court would come to a result inconsistent with the decision in *Hillcrest*.

### ABOUT THE AUTHOR



Jennifer Scott Moradi is legal counsel for Stewart Abstract & Title of Oklahoma. She received her B.A. and her J.D. from the University of Oklahoma. Until recently, she was an associate with Andrews Davis PC in Oklahoma City, where she practiced primarily in the area of commercial real estate. Ms. Moradi is currently serving as immediate past chairperson of the OBA Young Lawyers Division's Mock Trial Committee.

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**Samantha Snow Cardwell-Ward** is a dynamic attorney, professional speaker and trainer. She received her J.D. from the University of Missouri-Columbia School of Law in 1999, and her B.A. in Spanish and Political Science from Central Methodist University in 1996.

She has taught and presented for the Association of Continuing Legal Education Professionals (ACLEA), The Missouri Bar, The Missouri Department of Revenue, Central Methodist University, Moberly Area College, Mineral Area College, Columbia Career Center, and William Woods University.

She has also interpreted and translated for several Missouri courts and for the Bootheel Migrant Farmworker's Project. She recently served as the Assistant Director and CLE Programs Attorney at The Missouri Bar. Samantha practiced law for a number of years in Federal Bankruptcy Court in Missouri and Kansas.

Samantha's international experience includes a study abroad with Duke University in Spain, and a language exchange in Mexico City, Mexico. Samantha is a licensed attorney in Texas and Missouri.

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# Director Says Goodbye after 35 Years

Every February and every July, bar member hopefuls set their sights on an examination that determines their future. No more scantrons, no more mid-term tests and no more papers to write. The Oklahoma bar examination has been under the direction of Charlotte Nelson, administrative director of the Board of Bar Examiners, for 35 years. However, that tenure will end later this month as she plans for a well-deserved retirement.

Charlotte entered the legal profession as a legal assistant in Wichita Falls, Texas. Her husband was then transferred to Oklahoma in 1973. Having worked in a law office before, she interviewed with Turner and Turner in downtown Oklahoma City.

"They told me, 'you could have this job, but we have a job that's perfect for you. Go to the bar center,'" Charlotte recalled.

So it began. However, she didn't think for a second that she would occupy this position for more than three decades.

"I really didn't have time to think about it to be honest. I was here for eight years by myself doing all of it. It was very, very challenging by myself and I didn't have time to think about looking for other jobs, but fortunately it worked out and I've enjoyed it," she said.

When Charlotte began, she used a typewriter and stapled every application and exam individually by hand.

"I am very grateful and will forever be in debt to technology," she said.

The Board of Bar Examiners does everything online now, and this streamlined process has made the job much faster.

Mariachi bands, construction trucks, water hazards and a 16,000-member nationwide church group are just a few of the distractions she has dealt with on exam day at the Cox Convention Center.



"I was telling the band and the construction workers they were not going to get in here and it would be over my body before they would. I worried about the 16,000 member church group for a year before the exam got here but it all worked out fine due to the efforts of the event coordinator and security keeping things quiet."

Thirty-five years is a substantial amount of time anywhere, but Charlotte's office has not always been in the same place. The entire wing

of the Oklahoma Bar Center that houses the Board of Bar Examiners was not there 35 years ago. Evidently, there was not much of a need for that wing because there were only nine people on staff at the bar center when she began.

"There was one general counsel, one secretary of general counsel, no investigators, no CLE director and no communications department. I think what has become of the bar center is pretty neat," Charlotte said.

Charlotte is responsible for admitting 15,000 bar members during her term as director.

"I don't really think about the number of people, I just do the job. I still get excited at the admission ceremony and I really get excited for those who pass. One of the greatest feelings is seeing the disabled and what they have accomplished," she said.

The bar exam has not changed much, according to Charlotte.

"The biggest difference is clearly technology," she said. "Also, the exam used to be two days of essay format and now it is one day of essay and one day of multi-state and is offered in Oklahoma City and Tulsa. Also, back when I started there were very few women taking the bar exam, maybe 10 a year at the most, compared to now where about 60 percent taking the exam are women."

Over the years, she has faced many challenges, but overall she said, "Getting all of it done and meeting the deadlines, there is always a deadline. Getting the grades, the questions, getting it all entered and ready for the bar results and making sure I don't leave anyone out. Those have been the biggest challenges."

Retirement has come difficult for Charlotte.

"I have mixed emotions about retiring. I'm excited about it, excited to be able to be home and spend more time with my husband and family. I'm hoping I don't get bored but I'm looking forward to it. I'm going to miss all of the people here especially and miss the job too. It has been very fun and I am certainly not counting the days until retirement or anything."

Charlotte and her husband plan to do what they want without having to worry about getting back for deadlines.

"We've had the opportunity to go to places for meetings but never the time to take everything in and enjoy it to the fullest. We have many places that we would like to go back to and hopefully we will get the chance."

They also plan to spend more time with their kids and grandkids and take better care of themselves.

One thing sticks out in Charlotte's mind when she looks back at all her years of service: "I surely have enjoyed it," she said.

Charlotte, it has been an honor and pleasure working with you and we only hope we can do our jobs with the same passion and success that you did yours. Thank you for 35 years of outstanding service and happy retirement.

## The Year Charlotte Started...

- *President Nixon accused of Watergate cover-up*
- *Average price for a gallon of gasoline=\$0.48*
- *Billboard Top Hit of 1973: "Tie A Yellow Ribbon 'Round The Ole Oak Tree" by Tony Orlando and Dawn*
- *Supreme Court settles Roe v. Wade*
- *Sears Tower is completed*
- *United States & Vietnam sign cease-fire*
- *"Good Morning America" premiers on ABC*
- *Billie Jean King defeats Bobby Riggs in the Battle of the Sexes tennis match*
- *"The Sting" wins Academy Award for best picture*
- *Pablo Picasso dies in France at 91*
- *KISS performs their first show*
- *Dolphins complete only undefeated season in NFL history*

  
*Charlotte  
Nelson  
Retiring*

*After 35 years of dedicated service Charlotte Nelson is retiring as Administrative Director of the Oklahoma Board of Bar Examiners. You are cordially invited to attend a reception in her honor at the Bar Center on Thursday, Feb. 21, 2008 from 5:30 – 7:00 p.m.*

*Please RSVP with numbers attending by e-mailing [rsvpcharlotte@okbar.org](mailto:rsvpcharlotte@okbar.org). If you would like to send an electronic greeting to be presented to Charlotte at the reception, you can do so at [congratscharlotte@okbar.org](mailto:congratscharlotte@okbar.org)*



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Effective March 1, 2008

# Depression after the Holidays

By Wenona R. Barnes, Ph.D., CEAP, LADC, RT

One of the most common myths regarding depression is that symptoms of depression increase during the holidays. Many argue that this is because individuals suffering from depression are more likely to feel “down” when their holiday events do not compare with those of others around them. Oftentimes, the people who come to mind are those isolated individuals who have little money and few friends with whom to celebrate.

In actuality, however, the holidays often function as a buffer for most individuals. They often serve to provide a sense of hopefulness and belonging. This sense of connectedness often makes it easier for depressed individuals to function during the holidays with fewer symptoms. In fact, rates of depression and completed suicides are actually lower during the holiday season.

Stress is higher during the holidays, but depression really doesn't spike until after the holidays. We get stressed about the financial pressures of Christmas, the social stressors, family differences, the loss of loved ones during this time, and the biggest stressor is expectations. You want this holiday to be “better” than it can possibly be, and you may want to share some of your joy with the other people. You are likely to be let down.

Often, it is not until after the holidays that those with depression find themselves having increased symptoms. Loneliness and despair become more common. It is during this time that the hopefulness associated with the holidays begins to wane. Individuals suffering from depression realize that their lives are the same as they were before the holidays, and that the hopefulness they felt was only temporary. This realization often leads to increases in depression and can also lead to thoughts of suicide. In fact, suicide rates often spike dramatically after the holidays.



## SYMPTOMS ASSOCIATED WITH DEPRESSION

- Appetite and/or weight changes (either loss or gain)
- Chronic aches and pains that are not explained by a physical condition
- Decreased energy or a general sense of fatigue
- Difficulty concentrating or making decisions

- Feelings of hopelessness, guilt and worthlessness
- Loss of sexual desire
- Irritability and/or excessive crying
- Loss of interest in activities
- Sadness, anxiety, or feelings of emptiness
- Sleep disturbances

### WHAT IF A LOVED ONE IS PERHAPS SUFFERING FROM POST-HOLIDAY DEPRESSION?

Talk to them about concerns. Offering support and a sympathetic ear works wonders. Be prepared to hear difficult answers, though. An honest response to inquiries could lead to a frank discussion about a very serious condition. Know local resources beforehand, and don't be afraid to suggest getting help from a trained professional. Today, physicians view depression as a medical condition that is treatable; usually this treatment involves a combination of

individual counseling and medication. Whatever approach is taken, be aware that ignoring depression only communicates an uncaring attitude.

If you or a loved one needs help, please call LifeFocus Counseling at (405) 840-5252 or toll-free (866) 726-5252. The OBA has provided you with free counseling sessions and direction with us, in addition to your Lawyers Helping Lawyers Program. Remember that when the holiday parties are over, those suffering from depression are only just beginning to realize that their lives have not miraculously improved. This time of the year can be the most difficult for many and help can be invaluable.

*Dr. Barnes is a psychologist with LifeFocus, a service provider working with the Lawyers Helping Lawyers Committee providing initial contact and counseling.*

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**At Home**



**At Work**



**And on the Go**

# I Got a Call One Day...

*By John Morris Williams*

When I was in law school in the early '80s, I clerked at four different law firms. I split up the summers to get some different experiences. I was trying to decide on what type of law I wanted to practice. Once, I decided to become an oil and gas lawyer and took a summer clerkship in New Mexico. The first day of my clerkship was the day Penn Square Bank went under. So much for my timing. But I digress...

At the end of my oil and gas clerkship, I took a job in downtown Oklahoma City clerking for a small firm. The firm has a rather eclectic clientele that includes a few large corporations — and some exotic dancers. Needless to say, the work was varied and interesting. As the law student, I was assigned the task of taking all the calls from persons who had rather “strange” stories or otherwise the secretaries wanted to just pass off to someone.

I got a call one day from a lady. Her story was incredible. To me it sounded bizarre and unlikely to be true. She started with a tearful story of how “they” were trying to kill her. She went on to tell me that she had been poisoned and that “they” had killed her parrot. I listened

with respect all the while thinking this lady needed help; however, I was thinking the help she needed was not from a lawyer. After listening to this tale for several minutes, I told the lady I would report her story to the senior attorney in the firm and if he was interested he would call her back. I also mentioned to her that I was not sure the firm handled her type of case and wished her luck.

had contaminated her water and poisoned her. The fumes and contaminated water had killed her pet parrot. This turned out to be one of the biggest superfund sites in the country, and millions of dollars were spent on clean up and litigation. I am not sure the firm could have handled the work, but I know a lot of lawyers, engineers and other professionals earned a living wage for some time on this clean up.

“ From this experience I learned to always listen to the story no matter how strange it may seem. ”

After I got off the phone, I reported the story to the secretary and thanked her (with an unthankful tone to my voice) for sending the call to me. Later, I discussed the call with the lawyers in the firm. There were a few chuckles, and I am sure the lady's call was never returned.

Now why would this story stay with me all these years? Here is the reason. A few weeks later her name caught my attention in a big newspaper story of how a toxic waste dump near her home

From this experience I learned to always listen to the story no matter how strange it may seem. Sometimes people tell us incredible stories because they have had incredible experiences. Of the many letters I have received from prisoners, both in this job and when I worked in legal aid services, there is a chance someone innocent has contacted me. I have developed form letters that explain why I cannot assist them. My letter states that the OBA is an arm of the Oklahoma Supreme Court

and that we do not offer legal services to the public. Often times the request is for free legal services. The request usually reaches me after the person has been turned down by a number of agencies and lawyers. So I send my "I cannot help you because..." letter. However, I wonder if my responses do anything other than frustrate already frustrated people.

Our new president has called upon us to heighten our pro bono efforts and examine the possibilities of wrongfully convicted persons. I know that some of the phone calls are incredible. But so are some of the things that happen to people. It is incredible that we have the ability to right wrongs and at times fail to act. It is incredible that as a law student I had the chance to participate in the type of case that fueled my desire to be a lawyer, and I chose to ignore the possibilities because the story did not sound right. I perhaps missed my chance to be in THE case of my life.

I hope that you are smarter than I am and listen to those calls — and venture out to help folks even when in the beginning the story does not sound right. It might be the chance of a lifetime for both you and the client.



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

## Oklahoma Bar Journal Editorial Calendar

### 2008

- **March**  
**Pretrial Litigation**  
Editor: Julia Rieman  
[rieman@enidlaw.com](mailto:rieman@enidlaw.com)  
Deadline: Jan. 1, 2008
- **April**  
**Law Day**  
Editor: Carol Manning
- **May**  
**Work/Life Balance**  
Editor: Jim Stuart  
[jtstuart@swbell.net](mailto:jtstuart@swbell.net)  
Deadline: Jan. 1, 2008
- **August**  
**Insurance Law**  
Editor: Judge Lori Walkley  
[lori.walkley@oscn.net](mailto:lori.walkley@oscn.net)  
Deadline: May 1, 2008
- **September**  
**Bar Convention**  
Editor: Carol Manning
- **October**  
**Guardianship**  
Editor: Stephen Barnes  
[barneslaw@alltel.net](mailto:barneslaw@alltel.net)  
Deadline: May 1, 2008
- **November**  
**Technology/Practice Management**  
Editor: Melissa DeLacerda  
[melissde@aol.com](mailto:melissde@aol.com)  
Deadline: Aug. 1, 2008
- **December**  
**Ethics & Professional Responsibility**  
Editor: Martha Rupp Carter  
[mcarter@tulsa-health.org](mailto:mcarter@tulsa-health.org)  
Deadline: Aug. 1, 2008

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

# What's in My Electronic Toolbox?

By Jim Calloway, Director, OBA Management Assistance Program

What's in your electronic toolbox? Is your computer workstation pretty much as it came from the factory or are you one of those people who customizes a lot of different things on your PC and adds many utility programs?

Recently, after spending some time at home drafting some papers and articles over the weekend, I experienced a great horror. Monday morning my computer hard drive crashed leaving me staring at the infamous Blue Screen of Death. I'm usually pretty good on back-up but I hadn't bothered to copy any of the weekend's work at home over onto a flash drive or e-mail it into the office. Because I had several projects that I had to push forward on Monday, I could not take too much

time to mourn over the dead hard drive. I borrowed another laptop from the OBA CLE department and started to work.

The rest of that day and the next was an interesting experience for me. Since this was only a computer temporarily in my possession, I was not interested in customizing or installing utilities on the computer. I just needed to get some things done so I could then see if a data recovery from my laptop was possible.

It turned out that this was quite an interesting (and frustrating) exercise in rediscovering all of the customizations and utilities that I normally used and missed when using a "straight from the factory" computer. And

thus was born the idea for this column.

I expect some of you already use some or all of these tools.

So what do I use every day that I might have started to take for granted?

## DESKTOP SEARCH

I've written before about the benefits of having all of your documents and e-mails indexed by a desktop search engine. I've now learned that there is a detriment to this as well. You can become dependent on being able to quickly search through hundreds of documents or hundreds of e-mails with a full text search

“ So what do I use every day that I might have started to take for granted? ”



tool. I was still able to find most documents when I needed them. I use long descriptive filenames and sort them into appropriate folders. Generally sorting a list of documents by the date will help you get pretty close to locating the correct docu-

ment. E-mail is a bit more problematic, especially when you decide to look for one in deep storage and don't know if it is one or two years old.

Nevertheless the point is that desktop search is a lot quicker than manually trying to locate any document more than a few months old. I think it may be a little easier for lawyers who organize their electronic documents into client folders.

I use X1, available from X1.com. A similar utility is called Copernic, available free from copernic.com. I prefer not to use the desktop search tools from Yahoo or Google. I just like the independent applications at this point. Reports on the desktop search tool contained in Vista are very positive. In fact it is one of the few aspects of Vista that most everyone comments favorably about.

### **SPEECH RECOGNITION SOFTWARE**

As many of you are aware, I am a big fan of DragonDictate NaturallySpeaking speech recognition software. Of course it was not installed on the temporary computer and so I found myself having to keyboard a bit more than usual, which was not a productivity increase. The current version of this software is version 9. I do not have any inside information but I assume that version 10 will be out sometime in 2008. I tend to only use DragonDictate when I am drafting rather long projects. So I don't use it as much with e-mail as drafting CLE papers and these articles for the *Oklahoma Bar Journal*. Nevertheless it was an important tool missing from my electronic toolbox.

I will note that readers who are very fast and accurate typists will probably not find a significant benefit from this program.

My original article on speech recognition software is 'Computer, Can You Hear Me Now?' *One Lawyer's Surprisingly Positive Experience with Speech Recognition Software*.<sup>1</sup>

### **ADOBE ACROBAT PROFESSIONAL**

One of the tools that I really missed was Adobe Acrobat Professional. The temporary computer did come with the Adobe reader, of course. I'm trying to follow my own advice and send documents out as PDF files rather than Word or WordPerfect files unless the recipient needs to edit the file. One of the big benefits of having Adobe Acrobat Professional in my job is to save and archive useful material. I've set up a folder on my computer called My Library and I save lots of interesting material to it, including the complete contents of CDs from technology conferences and CLE programs when the materials come in digital format. I use Adobe Acrobat

“...customized toolbars in various applications are very useful if you frequently do an operation that is not available from the standard toolbar.”

Professional on almost a daily basis to save detailed e-mails from colleagues that I might want to refer to in the future and archival copies of Web sites or blogs with useful information to the My Library folder.

Printing to a PDF file from all of these sources is a snap with Adobe Acrobat Professional. Of particular interest to lawyers is a feature of Adobe Acrobat Professional that allows you to print an entire Outlook folder filled with dozens of e-mails on one particular client file or matter to the single PDF file. I find that many lawyers want to keep e-mails on a matter in an Outlook folder while the matter is active, but then use this method to archive all of the e-mails to a single PDF file when the file is closed.

### **CUSTOM TOOLBARS**

As many of you are aware, customized toolbars in various applications are very useful if you frequently do an operation that is not available from the standard toolbar. While I do not heavily customize the toolbars, I did quickly note that there were a few differences in the standard toolbars on the temporary computer.

Most of us (including me) would benefit from spending an hour or so adding buttons to a toolbar for operations that we do frequently and removing those that we would likely never do. If you've never done this before, you should definitely click on the View - Toolbars just to see the impressive number of specialized toolbars that you can make visible with a single click.

Parenthetically, I have to note that one of the best tool-

bar customization tips I've ever heard was to customize the Outlook toolbar so that the Reply All button was on the opposite side of the toolbar from the Reply button. We've all noted the potentially embarrassing consequences that can occur when one clicks Reply All when they meant to click Reply. So separating those two buttons is a very good idea.

### ANAGRAM

Anytime there is a technology program on favorite utility programs, Anagram is always mentioned. It is available at [www.getanagram.com](http://www.getanagram.com). If you use Outlook or GroupWise and have not given this program a try, I would strongly encourage you to make use of the 45 day free trial.

What this utility does is capture the signature blocks from e-mails, Web sites, pleadings or any other digital document you have displayed on your computer and places the contents into Outlook contact card. This might not sound like a big deal at first glance, but unless you are an extremely well-organized individual, most of your Outlook contact cards are not completely filled in and only have a name and an e-mail address or maybe a phone number. By using Anagram you can fill in complete addresses, corporate titles, fax numbers and a whole host of information into an Outlook contact card automatically. You never can tell when it will be handy to have this information in Outlook. If you synchronize

Outlook with your mobile phone, you may find that you have a lot of information in your mobile phone that you didn't have before.

As noted previously, there's a 45 day free trial of this program so if you are an Outlook or GroupWise user, what do you have to lose? I will warn you that most attorneys to actually use Anagram during the 45 day trial end up paying a rather modest purchase price of \$29.95 to own it afterwards.

### OUTLOOK AUTOCOMPLETE

AutoComplete is the feature of Outlook that offers to complete an address for you in the To: line of an e-mail as

you are typing one in. You can just hit enter to insert the suggested e-mail address. My colleague Ross Kodner of Microlaw.com says that AutoComplete in Outlook is so potentially dangerous that you should disable it. The danger is that while working quickly you will send that confidential e-mail to Mary Smith, the opposing counsel on that case, when you are trying to send it to Mary Schwatz, your co-counsel. This is certainly a legitimate concern.

One would assume it is taking these names from your Outlook contacts but that is not exactly true. It comes from a "nicknames" database. So if you change someone's e-mail address in your Outlook contacts, AutoComplete will still be sending it to the old e-mail address.

But I don't send out very many confidential e-mails and I do like AutoComplete. You can minimize the danger by verifying the recipient every time before you hit Send. You can also easily prune the dangerous names out of AutoComplete by looking at the drop-down list presented by AutoComplete. You use the arrow key to move down to select an entry and then the delete key to remove them from the nicknames database.

On the other hand, disabling AutoComplete may be the smart thing to do. I'm just noting I missed it.



“ I have my 12 most frequently visited sites all visible on my links bar... ”

## THE LINKS BAR IN MY INTERNET EXPLORER BROWSER

One of the customizations that I always recommend lawyers make is to fill the links bar in their browsers with their most frequently visited Web sites. This is very simple. You just go to View -Toolbars in Internet Explorer, unlock the toolbars, drag it down where it is visible if it is not and lock the toolbars again. Then you visit your most frequently used sites and drag the icon in the address bar down to the links bar.

The default MIME for some of the sites will be quite long so I always recommend right clicking on the name that reunites me with a very short name or abbreviation. I have my 12 most frequently visited sites all visible on my links bar, which means I can navigate to them with a single click. This sounds complicated but is actually very easy and a big timesaver.

## AUTOTEXT/ AUTOCORRECT IN MICROSOFT WORD AND QUICKWORDS/ QUICKCORRECT IN WORDPERFECT

These are two similar functions that allow you to insert a large block of preformatted text by only typing a few characters. I'm already over my allocated space this month, so I'll just direct you to the help files of your browser.

But generally speaking, you just type the text,

highlight it and save it under one of these two functions with a nonsense name that you won't be typing for any other reason.

The bottom line is you can then type "words" like IOAD, which will expand to: IT IS THEREFORE ORDERED ADJUDGED AND DECREED. This is a real time-saver, especially when you use it to automatically insert several paragraphs.

I hope you've enjoyed this walk through some utilities and customizations. I will note that most



“ I will note that most of these are very inexpensive or just require a commitment of your time to set them up. ”

of these are very inexpensive or just require a commitment of your time to set them up.

By the way, it turned out that when I finally got back to the old laptop that I used for the last four years, I able to get it up and running again by using the CHKDSK repair feature of the original Windows CDs that came with it. I was pleased. Given the error message I was receiving on the Blue Screen of Death, the odds on that actually working were probably about like betting a non-suited two and seven for your hole cards in Texas hold 'em and hitting a full house on the flop.

So for me the story clearly has a happy ending. I got an inspiration for this story idea for this February *Oklahoma Bar Journal*. I recovered the one I had half written which I can now use for the April *Oklahoma Bar Journal*. And in the March *Oklahoma Bar Journal* I will talk about the OBA Solo and Small Firm Conference which is scheduled for June 19-21, 2008 at Tanglewood Resort.

1. [www.okbar.org/members/map/articles/2006/090206.htm](http://www.okbar.org/members/map/articles/2006/090206.htm)

See also, Jim Calloway, "Computer, Can You Hear Me Now?" *One Lawyer's Surprisingly Positive Experience with Speech Recognition Software*, 77 *Oklahoma Bar Journal* 2485,2489 (Sept. 2, 2006)

# Dim the Lights: Issues in Winding Down a Law Practice

By Gina L. Hendryx, *Ethics Counsel*

The decision to close your law practice may be the result of varying factors. Judicial appointment, change of employment, retirement and relocation constitute life events which may precipitate the need to shutter your solo or small firm. Regardless of motivation, ending a law practice requires preparation and planning. Due consideration must be given to clients, rules of professional conduct, courts and compensation.

Oklahoma attorneys have options when determining the vehicle to use to close their law practices. Included in these options are 1) the sale of the entire practice or an area of the practice; 2) establishing a partnership wherein the partnership agreement details the transfer terms of the practice; 3) associate counsel on current files within your office; and 4) withdrawal from client representation and termination of the law practice.

## SALE OF A LAW PRACTICE

Effective Jan. 1, 2008, a lawyer may sell an entire practice or an area of practice.

Oklahoma Rules of Professional Conduct Chapter 1, App. 3-A Client-Lawyer Relationship Rule 1.17. Sale Of Law Practice

1. A lawyer or a law firm (or the authorized representative of a lawyer or a law firm) may sell or purchase a law practice, or an area of practice, including good will, if the following conditions are satisfied:

(a) The seller ceases to engage in the private practice of law, or in the area of practice that has been sold, in the geographic area in Oklahoma in which the practice has been conducted; and

(b) The entire practice, or the entire area of practice, is sold to one or more lawyers or law firms, except that:

(1) the representation of any client who does not consent as provided in paragraph (c) shall not be transferred;

(2) matters shall not be transferred to a purchaser unless the seller has reasonable basis to believe that the purchaser has the requisite knowledge and skill to handle such matters, or reasonable assurances

are obtained that such purchaser will either acquire such knowledge and skill or associate with another lawyer having such competence;

(3) matters shall not be transferred to a purchaser who would not be permitted to assume such representation by reason of restrictions contained in Rules 1.7 through 1.10 or other Rules; and

(4) where matters in litigation are involved, any necessary judicial approvals of the transfer of representation must be obtained.

(c) The seller or the seller's representative shall give written notice to each client whose representation is proposed to be transferred, stating:

(1) a sale of the entire practice, or the entire area of practice, is proposed;

(2) a transfer of the representation of such client to a specified lawyer, lawyers or law firm is contemplated;

(3) the client has the right to take possession

of the file and retain other counsel;

(4) the existence and status of any funds or property held for the client, including but not limited to retainers or other prepayments; and

(5) the fact that the client's consent to the transfer of the client's files will be presumed if the client does not take any action or does not otherwise object within 90 days of the date of the notice.

The signed written consent of each client whose representation is proposed to be transferred to a purchaser must be obtained; provided that the client's consent to the transfer of the client's files shall be presumed if the client does not take any action or does not otherwise object within 90 days of the date of the notice. If a client cannot be given notice, the representation of that client may be transferred to the purchaser only upon entry of an order so authorizing by a court having jurisdiction. The seller must disclose to the court in camera information relating to the representation only to the extent necessary to obtain an order authorizing the transfer of the file.

(d) The purchaser may, however, refuse to undertake the representation unless the client consents to pay the purchaser fees at a rate not exceeding the fees charged by the purchaser for rendering substantially similar services prior to the initiation of the purchase negotiations.

These amended rules permit the sale of all of the pri-

vate practice or all of an area of practice. The seller must cease to engage in the private practice of law or in the area of practice that has been sold. There is also a "geographic" restriction in that the seller must cease to practice in the geographic area in Oklahoma in which the practice has been conducted. Therefore, an attorney might sell her divorce practice while maintaining her probate practice. She could remain in the same jurisdiction, but could not continue a divorce practice after the sale. Or, for example, an attorney could sell his entire practice composed of primarily criminal defense clients. He could then move to a different geographical area of the state and open another practice which included the defense of criminal matters.

The sale of a practice may be to one or more attorneys. It is not required that one attorney or one firm purchase all the files. The new rule permits individual buyers. Therefore, you can target an attorney who does primarily criminal work for purchase of that area of your practice while selling another area to a different buyer.

These sale provisions are also available to the authorized representative of a lawyer such as the personal representative of an estate. In the event of an untimely or unexpected death, the deceased's practice may be sold for the benefit of the estate.

Ethical considerations when selling a practice include what information may be disclosed to the prospective buyer, notification

of clients of the potential sale, consent of the clients and whether the purchaser may change the fee agreement with the client.

Rule 1.17 requires the seller to have a reasonable belief that the purchaser has the skill and knowledge to handle the matters and does not have a conflict that would preclude the representation. Notice must be given to the client of the proposed sale. The client has the option to continue with the representation with the buyer or to pick up the file and hire other counsel. The client must be given information on the existence and status of any client funds in the possession of the attorney. It is best to get written consent for the transfer of the file to the purchasing attorney. Consent may be presumed if no action is taken by the client within 90 days of the notice. The sale may not be financed by increases in fees charged to the clients of the practice. However, the purchaser may decline the representation of any client who chooses not to pay the purchaser's normal presale rates for handling similar cases.

## **FORMATION OF A PARTNERSHIP**

Another option for the attorney planning an exit strategy from the practice of law is the formation of a partnership with another attorney or group of attorneys. Law partnerships are governed by the provisions of the Uniform Partnership Act. The act gives partners a great deal of freedom to vary its standard provisions on such subjects as cause and consequence of dissolution. A partner(s) can pay you for

your share in the partnership assets and can protect your interests in your cases. Through the partnership agreement you can control buy/sell terms, asset purchases and valuation of partnership shares. Ethical issues to be considered during the discussions of such a formation primarily include questions of confidentiality and potential conflicts of interest. Attorneys should be wary of divulging detailed information about the representation of specific clients to prospective partners. The potential partners should compare client lists in order to identify conflicts of interest that such a formation may produce. If conflicts arise, then informed consent may cure same. If not, mutual termination of the representations may be necessary.

#### **ASSOCIATE COUNSEL AND/OR REFER CASES**

Another option is to associate counsel or refer your cases to other attorneys. Either option requires the consent of the client to the association. You should prepare a written agreement signed by yourself, associated counsel, and the client memorializing the agreement and reflecting the client's consent to same. The pertinent section on referrals is Oklahoma Rule of Professional Conduct 1.5(e):

"(e) A division of a fee between lawyers who are not in the same firm may be made only if:

- (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint

responsibility for the representation;

- (2) the client agrees to the arrangement and the arrangement is confirmed in writing; and

- (3) the total fee is reasonable."

Paragraph (e) permits the lawyers to divide a fee either on the basis of the proportion of services they render or if each lawyer assumes responsibility for the representation as a whole.

#### **WITHDRAWAL OF CLIENT REPRESENTATION AND CLOSING OF THE PRACTICE**

If you opt not to turn the file over to another attorney whether by sale or association, you should attempt to complete all representations prior to closing your practice. If completion is not practicable, assist your clients with the location of other counsel. You may be able to work out a fee split pursuant to Rule 1.5(e) or, at the least, a return of advanced costs.

If the matter has been filed, a substitution of counsel should be filed with the court clerk.

If no counsel has been retained, then you will need to file a motion to withdraw and follow the applicable statutory requirements for same. Title 12 of the Oklahoma Statutes provides as follows:

**C. WITHDRAWAL OF COUNSEL.** A motion to withdraw may be filed at any time. All motions to withdraw shall be accompanied by a pro-

posed order. No counsel may withdraw from a pending case without leave of the court. The counsel filing the motion shall serve a copy of the motion on the client and all attorneys of record. All motions to withdraw shall be signed by the party on whose behalf counsel has previously appeared or contain a certificate by counsel that:

1. The client has knowledge of counsel's intent to withdraw; or
2. Counsel has made a good faith effort to notify the client and the client cannot be located.

In civil actions, the court may grant a motion to withdraw where there is no successor counsel only if the withdrawing attorney clearly states in the body of the motion the name and address of the party. The order allowing withdrawal shall notify the unrepresented party that an entry of appearance must be filed either by the party *pro se* or by substitute counsel within 30 days from the date of the order permitting the withdrawal and that a failure of the party to prosecute or defend the case may result in dismissal of the case without prejudice or a default judgment against the party. If no entry of appearance is filed within 30 days from the date of the order permitting withdrawal, then the unrepresented party, other than a corporation, is deemed to be representing himself or herself and acting *pro se*. In all cases, counsel seeking to withdraw shall advise the court if the case is currently

set for motion docket, pretrial conference, or trial. 12 O.S. 2005.2

When withdrawing from representation, you should provide the client a complete copy of his file, identification and information on any upcoming deadline or statute of limitations.

Oklahoma Rule of Professional Conduct 1.16 delineates the circumstances under which a lawyer must or may withdraw from the representation of a client. You should refer to the rule and cite the applicable section in your motion to withdraw filed with the court.

#### RETENTION OF DOCUMENTS

Even though you have packed the mini van and locked the doors, you still must maintain some closed client documents. Most state ethics committees agree that lawyers are not obligated to keep client files indefinitely. However, most jurisdictions concur that "clients and former clients reasonably expect from their lawyers that valuable and useful information in the lawyer's files, and not otherwise readily available to the clients, will not be prematurely and carelessly destroyed." ABA Standing Committee on Ethics and Professional Responsibility, Informal Op. 1384 (1977).

The Oklahoma Rules of Professional Conduct (ORPC) do not provide specific direction or guidelines on the subject of file reten-

tion. However, ORPC 1.15(a) does require that complete records of client account funds and other client property be kept for five years after termination of the representation. A good general office policy for file retention would be the five-year rule imposed on trust account records. However, the length of time that a file should be retained may depend on the type of case or the contents of the file or both. For example:

- Files pertaining to claims of minors should be maintained until the child is beyond the age of majority and any statutes of limitations have expired.
- Some probate, estate and guardianship matters may require an indeterminate retention period.
- Real estate title opinions and title insurance work may require a far more lengthy retention of work product.

Ultimately, the decision should be based on factors such as statutes of limitations, substantive law, the nature of the particular case and the client's needs. A lawyer should also consult his or her malpractice carrier for any specific requirements it has on document retention.

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

## Closing a Practice Checklist

- ☐ Employee final payroll, 1099s, and W2s
- ☐ Operating account
- ☐ Trust account
- ☐ Firm credit cards and auto pays
- ☐ Change of address with bar association/post office
- ☐ Telephone number forwarding
- ☐ Advertising
- ☐ Insurance
- ☐ Building lease
- ☐ Equipment (owned vs. leased)
- ☐ Legal status of law firm
- ☐ Storage of closed files/trust account record

# January Meeting Summary

*The Oklahoma Bar Association Board of Governors met at the Oklahoma Bar Center on Friday, Jan. 18, 2008.*

## REPORT OF THE PRESIDENT

President Conger reported he attended the Board of Governors Christmas party at the Oklahoma City Golf & Country Club, OBF Retreat in Norman, gave the commencement address for the OCU School of Law December graduation and spoke to the Garfield County Bar Association. He reported that he made and continues to make appointments to the OBA standing committees and that he has had many discussions with Executive Director Williams about bar matters for the coming year.

## REPORT OF THE PAST PRESIDENT

Past President Beam reported he attended the staff appreciation luncheon at the bar center, December Board of Governors meeting and social event, Women in Law holiday reception, ethics musical by the CLE Department and had lunch with Executive Director Williams.

## REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the December Board of Governors meeting and holiday dinner, Garfield County Bar Association luncheon with President Conger, new gov-

ernor orientation and monthly staff celebration. He reported that he attended several meetings with the decorator on furniture selection for the remodeled portion of the building, two meetings on the Web redesign project and participated in two conference calls with President Conger and the task force regarding the Rule of Law Conference.

## BOARD MEMBER REPORTS

**Governor Bates** reported she attended the December Board of Governors meeting, Cleveland County Bar CLE and luncheon and the Oklahoma County Bar Association Christmas party. **Governor Brown** reported he attended a full day retreat of the OBF Board of Trustees at the Sarkey's Foundation in Norman, Tulsa County Bar Association committee meeting and several funerals of colleagues. He reported he has participated in two conference call meetings with President Conger, Governor Christensen, Executive Director Williams and Communications Director Manning in planning the OBA Rule of Law Conference. **Governor Christensen** reported she attended the December Board of Governors meeting and the holiday dinner at the Oklahoma City Golf & Country Club,

Women in Law Committee holiday reception at the Skirvin Hotel and OBA staff appreciation luncheon. She also attended the commencement for OCU School of Law December graduation, ethics musical CLE, new governor orientation, Bench and Bar Committee meeting and participated in two planning sessions with President Conger, Executive Director Williams, Director Manning and Governor Brown regarding the Rule of Law Conference. **Governor Dirickson** reported she attended the December Board of Governors meeting and Christmas party at Oklahoma City Golf & Country Club and Solo and Small Firm Planning Committee meeting. **Governor Farris** reported he attended the December Board of Governors meeting and holiday party at Oklahoma City Golf & Country Club and Tulsa County Bar Association Mentor Committee meeting. He also completed teaching his course on elder law at the University of Tulsa College of Law. **Governor Hermanson** reported he attended the December Board of Governors meeting and Christmas party at the Oklahoma City Golf & Country Club and January Kay County Bar Association meeting. He also presented a CLE for the ABA on "Ethics in Criminal Cases." **Governor Hixson**

reported he attended the Canadian County Bar Association Christmas party, new governor orientation and observed the December Board of Governors meeting. **Governor Reheard** reported she attended the December Board of Governors meeting and Christmas party at Oklahoma City Golf & Country Club, Solo and Small Firm Planning Committee meeting, and Bench and Bar Committee meeting. **Governor Souter** reported he attended the December Board of Governors meeting, Christmas social and the December and January Creek County Bar Association meetings. **Governor Stockwell** reported she attended the December Board of Governors meeting and Christmas party, Women in Law Committee holiday reception, Cleveland County Bar Association Christmas party, Cleveland County Bar Association luncheon and Cleveland County Bar Association Executive Committee meeting.

#### **SUPREME COURT LIAISON REPORT**

Justice Taylor reported the formal swearing-in ceremony for Justice John F. Reif will be held Jan. 23 at 3:30 p.m. in the Supreme Court Courtroom. Everyone is invited to attend.

#### **LAW STUDENT DIVISION LIAISON REPORT**

President Conger noted that LSD Chair Pappy will be unable to attend the board meetings remaining in her term due to a conflict with a required class; however, she will be able to attend Thursday evening social events in Oklahoma

City. He will talk to her about perhaps designating an alternate division representative for the meetings.

#### **BOARD LIAISON REPORTS**

Governor Hermanson reported judges are needed for the upcoming We the People competition, coordinated by the OBA/LRE program. President Conger said he attended the national We the People competition and served as a judge. He encouraged others to volunteer as judges for the state level event. Governor Brown reported the Bench and Bar Committee has extended its comment period for proposed Code of Judicial Conduct to March 31, 2008. Governor Brown and Governor Christensen were commended for the substantive work being accomplished.

#### **GENERAL COUNSEL REPORT**

General Counsel Murdock shared a status report of the Professional Responsibility Commission and OBA disciplinary matters. He reported he assisted in a reinstatement hearing, participated in the ethics CLE musical in Oklahoma City and in Tulsa, presented a noon CLE to the Oklahoma County Public Defender's Office, attended the Professional Responsibility Commission meeting and the monthly OBA celebration. He also conducted interviews for the vacant investigator position and met with the decorator.

#### **BAR CENTER RENOVATIONS**

President Conger reported OBA staff has suggested a

picnic area be created outside to eat lunch. Expense is expected to be minimal. Executive Director Williams reported bids are being obtained for furniture and will be reviewed by the committee at its next meeting.

#### **ABA RESOLUTION**

President Conger reported the OBA has received a request from the New York Bar Association to cosponsor a resolution to promote an alternative method of financing long term care needs for older adults and the disabled. The resolution will be submitted for consideration at the ABA 2008 Midyear Meeting. Governor Farris provided background information. The board voted to support the resolution.

#### **CREATION OF POLICY TO ALLOW ANNUAL CARRYOVER OF FUND BALANCE FOR LAWYERS HELPING LAWYERS PROGRAM**

Executive Director Williams reviewed the background information, including that donations are received to support the crisis hotline program through the dues-paying process. It was noted Oklahoma Attorneys Mutual Insurance Co. also contributes. Without this policy, unspent funds would go back into the general fund. The board approved a policy to annually carryover unspent funds designated for Lawyers Helping Lawyers.

#### **APPOINTMENTS**

The board approved the following appointments recommended by President Conger:

Board of Editors Chairperson — reappoint Melissa DeLacerda, Stillwater, for a one-year term (expires 12/31/08)

Board of Editors Associate Editors — appoint Pandee Ramirez, Okmulgee, Dist. 7; Leslie D. Guajardo, Oklahoma City, Dist. 3; and reappoint James T. Stuart, Shawnee, Dist. 8 for three-year terms (expires 12/31/10)

MCLE Commission — reappoint A. Clark Jett, Guyton, and M. Courtney Briggs, Oklahoma City; and reappoint Margaret Hamlett, Tulsa, to three-year terms (expires 12/31/10)

Professional Responsibility Commission — reappoint Michael E. Smith, Oklahoma City, and reappoint Mark W. Dixon, Tulsa, to three-year terms (expires 12/31/10)

Child Death Review Board — reappoint Jennifer King, Yukon, to a two-year term (expires 12/31/09)

Legal Aid Services of Oklahoma Board of Directors — appoint Dwight Smith, Tulsa, to a three-year term (expires 12/31/10)

Clients' Security Fund Committee — appoint Dietmar Caudle to complete the unexpired term of the late Jim Lang (expires 12/31/09) and appoint Dwight L. Smith, Tulsa, to a three-year term (expires 12/31/10)

#### **RULE OF LAW CONFERENCE**

President Conger reported planning has begun for a half-day Rule of Law Conference with a tentative date of April 11 at OCU in Oklahoma City. He reviewed the list

of distinguished speakers being asked to participate.

#### **LEGISLATIVE ACTIVITY**


Past President Beam reported he understands bills dealing with tort reform and adding legislative involvement to the Judicial Nominating Commission appointment process are going to be introduced. Executive Director Williams was asked to keep the board informed about legislative activity on these topics.

#### **NEXT MEETING**

The board will meet in Oklahoma City on Friday, Feb. 22, 2008.

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## Oklahoma Merit Protection Proceedings: Transition to the Electronic Age

<b>DATE &amp; LOCATION:</b>	<b>Oklahoma City</b> April 3, 2008 Oklahoma Bar Center 1901 N. Lincoln Blvd.
<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 0 hours of ethics.
<b>TUITION:</b>	\$150 tuition 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.
<b>CANCELLATION POLICY:</b>	Cancellations will be accepted at any time prior to the seminar date; however, a \$25 fee will be charged for cancellations made within four full business days of the seminar date. Cancellations, refunds, or transfers will not be accepted on or after the seminar date.

**Program:**

**Program Planner**

**Susan Bussey**, Executive Director, Oklahoma Merit Protection Commission, Oklahoma City

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

**9:00 Electronic Pleadings and Technology History: The Federal Model and Overview of Courtroom Technology**  
**Rhonda Reynolds**, Chief Deputy Court Clerk, United States District Court for the Western District, Oklahoma City

**9:50 Break**

**10:00 Preparing Your Case For a Hearing**  
**Sam Anderson**, Legal Graphics, Oklahoma City

**10:50 Legal Pleadings and Practice in the Federal Courts: A Litigator's Perspective on Online Filing and Court Room Technology**  
**Robert D. Evans, Jr.**, U.S. Attorney's Office, Oklahoma City

**11:40 Networking lunch** (included in registration)

**12:10 p.m. Oklahoma Merit Protection Online Filing System: An Overview of How it Works with Courtroom Technology**  
**Austin Gilley**, Deputy Director, Oklahoma Merit Protection Commission, Oklahoma City

- 1:00 Oklahoma Merit Protection Commission: Judges' Perspectives on Online Filing - How it Will Change Practice Before the Commission**  
**Judge P. Kay Floyd**, Administrative Law Judge, Oklahoma City  
**Judge Annita Bridges**, Administrative Law Judge, Oklahoma City  
**Judge Lydia Lee**, Administrative Law Judge, Edmond
- 1:50 Break**
- 2:00 Oklahoma Merit Protection Commission: Judges' Perspectives on Use of Courtroom Technology**  
**Judge P. Kay Floyd**  
**Judge Annita Bridges**  
**Judge Lydia Lee**
- 2:50 Adjourn**

## Oklahoma Merit Protection Proceedings: Transition to the Electronic Age

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Justice White's previous conduct, contrary to the claims of the Tennessee Conservative Union, seems to indicate she was anything but soft on crime. In her time on the appellate court, she upheld 85 percent of the convictions of criminals seeking reversals, and in 90 percent of cases where criminals sought probation instead of prison time, she ordered imprisonment.

It is all about money. A new Democratic Judicial Campaign Committee is promising to raise millions to unseat judges and justices across the country. "Changing control of our country comes down to one factor — money," says its Web site. In 2004, Illinois judicial candidates in one race raised \$9.3 million, more than 18 out of 34 U.S. Senate races. "That's obscene," said the winner on election night. "How can people have faith in the system?" Apparently they don't. Seventy-six percent of Americans believe campaign contributions have at least some influence in judges' decisions, 79 percent of business leaders agree and 26 percent of state judges agree.

### **IS JUDICIAL INDEPENDENCE IN OKLAHOMA AT RISK?**

As in every state that holds judicial elections, the judicial independence of Oklahoma's judges is at stake. This is especially true of Oklahoma's District Court judges. Oklahoma's 73 District Court judges face non-partisan elections every four years. The combination of relatively short terms along with the non-partisan elections makes our district court judges particularly susceptible to attacks on their judicial independence.

One specific group that is based in Oklahoma and is actively advocating for pro-business state judges is The Oklahoma Project.

The Oklahoma Project has pushed forward several initiatives including "Citizens for Judicial Review" and the "Economic Judicial Report." Both initiatives were designed to advocate for judges the group has identified as pro-business. One of the projects set in motion by The Oklahoma Project was a plan to evaluate each state's judges voting records in an effort to identify and provide support for pro-business judges. The stated goals of this project were to "have a significant impact in judiciary behavior and create positive cost results in our state, region and nation."

The report published by The Oklahoma Project led directly to lobbying by local special interests groups to vote two particular judges off the bench who were identified as anti-business.

The Oklahoma Project has also conducted surveys of local members of the bar in Oklahoma and five other states including Florida. These surveys asked the bar members to assess the performance

of local judges. In Florida, it was not initially revealed that the survey was being conducted by a pro-business advocacy group. When this fact was revealed, it generated great controversy. In Alabama, The Oklahoma Project's efforts to conduct a survey of bar members was criticized by the state bar association and was eventually abandoned.

This is merely one initiative that is based right in our backyard. The judiciary is fast becoming a battleground for business and special interest groups that may believe it is easier and cheaper to achieve political goals from the bench than it is through the political process. It would appear that our district court judges are most at risk to having their judicial independence attacked, although none of our state judges are exempt.

### **POSSIBLE SOLUTIONS AND CONCLUSION**

One of the problems with judicial elections is that the public knows so little about the candidates, and the judges themselves are bound by judicial ethics rules that keep them from publicly establishing positions. As a result, judicial elections are even more susceptible to being influenced by whichever business or special interest group makes the most effort and spends the most cash to disseminate information about the candidates. If judicial elections are going to be the method of selecting judges, something needs to be done to fill this vacuum of information.

One suggestion is that a neutral commission be set up to provide judicial evaluations that could be disseminated to the public. One local attorney suggests that judges should be rated on work ethic, neutrality and competency by this neutral commission. The issue with this solution that first comes to mind is, "Where can we find a neutral commission?"

Another issue that needs to be addressed is judicial campaign contributions. Some states are moving to fund judicial campaigns through public funds rather than private fundraising. This eliminates the pressure judges feel to rule for those who gave to their campaign, and it also eliminates the pressure on attorneys to donate funds to the campaigns of judges they could possibly appear before. Another option is to allow donations to a judicial campaign fund that is equally divided among the judicial candidates.

I don't know whether any of these solutions are workable. Justice O'Connor thinks we should do away with judicial elections. My perception is that will not happen. I do know this, we, as officers of court, must educate our fellow citizens about the importance of an independent judiciary and, when they cannot speak out, as in the case of Justice White in Tennessee, we need to step forward on their behalf.

# Winning with Teamwork

By Renée DeMoss, OBF President

*"Teamwork is the ability to work together toward a common vision. The ability to direct individual accomplishments toward organizational objectives. It is the fuel that allows common people to attain uncommon results." - Andrew Carnegie*

This is the time of year that "teamwork" takes the spotlight. What team has worked together hard enough to get to the BCS Championship game? What team has worked together hard enough to get to the Super Bowl? What team will be the ultimate winner this year?

One "team" that sincerely wants to win is the Oklahoma Bar Foundation. The foundation was created by lawyers for lawyers to accomplish a very worthy goal - the attainment of legal justice and services for all Oklahomans. One way the foundation can help accomplish this goal is to ensure that qualified legal service organizations have adequate money to operate. Giving away money thoughtfully, however, is not always an easy task, and the foundation team works hard to consider all aspects of the charitable programs to which foundation dollars are pledged. Through careful analysis, the foundation is able to assist a variety of organizations who are providing legal services to Oklahomans in many different areas.

The Foundation Board of Trustees is comprised of a team of lawyers from across the state who bring all the dedication, experience and knowledge they can to the table. Every trustee plays an important role on the team. For example, the Grants and Awards Committee is charged with reviewing every grant request that comes in from across the state every year. After carefully reviewing each written request, the committee conducts in-person, face-to-face interviews of the applicants to help make final determinations. The full board votes on every grant award. Being good stewards of foundation funds at every step of the process is a priority.

Similarly, the Finance Committee devotes extensive time to ensuring funds are managed and invested properly. The committee recently concluded a comprehensive search for a new investment management group. The committee examines every avenue available to maximize income and invest wisely so that foundation funds will continue to grow, and more legal services can

be provided to Oklahoma citizens.

Your foundation board team continues to strive to make the best possible informed decisions and work toward the most productive future possible. Consequently, on Jan. 11, members of the OBF Board gathered at the Sarkeys Foundation in Norman to spend a day in discussions with nationally acclaimed nonprofit governance consultant Dr. Sandra R. Hughes.

Dr. Hughes is an expert in governance matters for nonprofit boards and senior management, and is particularly attuned to the special work of bar foundations and their members. Prior to her work as a consultant, Dr. Hughes held a variety of senior management positions with various organizations, including Levi Strauss & Company, the Levi Strauss Foundation, the American Bar Association, the University of Tennessee, BoardSource and the United States Rowing Association. Dr. Hughes conducts training on complex nonprofit governance projects, teamwork and effective meetings, and

coordinates programs on strategic thinking, planning, organizational culture and values, and other topics. The day spent with Dr. Hughes resulted in fresh ideas for the OBF "team" and generated even more enthusiasm for the year ahead.

The OBF's mission is the advancement of education, citizenship and justice for all. What that mission reflects is the belief that every Oklahoman deserves quality legal assistance. The foundation is committed to providing legal

resources to every Oklahoman in need, including children, the poor, the vulnerable and all other Oklahomans who need access to justice and understanding of the law and legal issues.

So what does this mean? It means that the OBF team of trustees cares about what we do and it means we want to do a good job. It means that we want you to be proud of the foundation and the work that is being done on behalf of our profession. It means that if you have a question,

comment or suggestion about foundation matters, you can contact any one of our team members and talk to them directly.

Why don't you join the team? You can help make a difference in the lives of many Oklahomans. Please consider joining the OBF team by becoming a Fellow. Together we can change the lives of Oklahomans who need legal justice, and we will all be winners.



*Your OBF Board Team at the Jan. 11, 2008, OBF Board Retreat at the Sarkeys Foundation, Norman. Team members left to right, front to back are Jack L. Brown, Tulsa; Brett Cable, McAlester; Linda Thomas, Bartlesville; Roger R. Scott, Tulsa; Richard Riggs, OKC; President Renée DeMoss, Tulsa; Susan Shields, OKC; Director Nancy Norsworthy, Edmond; Past President Mark Curnutte, Vinita; Shon Erwin, Lawton; Kevin Donelson, OKC; Brooke Murphy, OKC; Ed McComas, Elk City; Dennis A. Smith, Clinton; Secretary/Treasurer John Munkacsy, Lawton; Bill Conger, OKC; Jack Dawson, OKC; Mike Mordy, Ardmore; Judge Valerie Couch, OKC; and Vice President Phil Frazier, Tulsa.*

# OBF

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

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

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# Update on Committee Goals

## Need for Volunteer Lawyers Continues

By Kade A. McClure

As longtime managing attorney of the Legal Aid Services of Oklahoma Lawton Office and Access to Justice Committee chairperson for a second year, I welcome this opportunity to review the committee's work from last year, delineate some of our goals for the upcoming year and describe some of the ways that pro bono attorneys are needed to assist Legal Aid Services in the real estate area.

### THE COMMITTEE IN 2007

Last year the committee worked on prospective amendments to the Oklahoma Rules of Professional Conduct in regard to *pro se* representation. The reality of increased Internet resources for litigants to research their legal issues and draft their own pleadings have placed this issue directly into the courts of our state. Judges are faced everyday with the dilemma of *pro se* litigants. The committee will continue working on a solution that will give court access to the public, afford lawyers and judges guidelines that ensure attorneys' livelihood and provide judges with ethical guidelines.

Other issues for the committee last year included

legal access for the homeless, law school loan repayment assistance, requests for assistance from prisoners in the state penal system, a listing and review of Oklahoma statutes requiring appointment of counsel and the need for a statewide pro bono referral system.

A homeless subcommittee was created at the first meeting of last year acknowledging the special legal access needs of significant numbers of homeless in the state. Last month the Access to Justice column in the *Oklahoma Bar Journal* was written by Will Hoch, a committee member, entitled "Does Oklahoma Need A Homeless Court?" The article documents other states' efforts to solve some of the thorny issues of the homeless and their interactions with the court system. Access to justice for the homeless remains a priority for this year's agenda.

### LEGAL AID AND REAL ESTATE

Legal Aid Services of Oklahoma's high priorities for client acceptance include loss of a client's home which is being purchased or which is owned. The subprime mortgage crisis has now become international and resulted in

the removal of several chief executive officers of large financial corporations blamed for unprecedented loss of profits. And the fallout reaches into Oklahoma where borrowers with marginal credit have secured mortgages with variable interest rates that will result in foreclosures. Sources predict that the rate of foreclosures will increase this year and next. The loss of a home to a marginal or low income family is of course devastating. Equity in a home is often a family's largest asset, and the prospect of seeking alternate housing can be daunting. Defense of a foreclosure suit can be long and often the only solution is a bankruptcy. Pro bono attorneys take on these bankruptcies and more attorneys will be needed in response to this crisis.

Legal Aid Services also prioritizes the acceptance of clients who rent and may live in unsafe housing, or may be locked out of their home for late rent, or may be terminated from public housing. These cases are tried in small claims courts with packed dockets, and many renters have valid defenses including failure of the landlord to provide habitable housing,

and the right to counterclaim for damages when a landlord locks a client out without going to court. Many of these are winnable cases and some result in money judgments to the renter. Too often, Legal Aid Services is unable to provide representation because there are not enough lawyers. Preventing an eviction can prevent the loss of a job, keep a family off the streets and out of shelters.

Another real estate issue common to low income clients is rent to own contracts

or as they are also known: contracts for deed. These contracts if notarized, are deemed mortgages under Oklahoma law [Title 16 Oklahoma Statutes §11A] and can be filed at the county clerk's office to equitable title. They are common among buyers who have poor or no credit and provide little or no security of title. Often the unscrupulous seller moves to evict the buyer in small claims court, and the buyer without funds or legal counsel is unable to assert ownership rights and remove the case to district

court where it can be tried as a title dispute or foreclosure.

An attorney can educate the buyer about their property rights, prevent the forfeiture of substantial mortgage payments and secure housing for a family that would otherwise be turned out on the streets. All these scenarios present great opportunities for pro bono attorneys to take on representation that can make a tremendous difference. Please contact your local legal aid office and volunteer at [www.legallaidok.org](http://www.legallaidok.org).

## INTEREST ON JUDGMENTS

The State Treasurer has certified to the Administrative Director of the Courts that the prime interest rate as listed in the first edition of the Wall Street Journal published on the first business day of 2008, is 7.25 percent. In accordance with 12 O.S. 2004 Supp. § 727.1[I], two (2%) percentage points are added to the prime interest rate. Therefore, the interest rate to be charged on judgments in accordance with 12 O.S. § 727.1[I], for the calendar year 2008 shall be 9.25 percent. This interest rate will be in effect from January 1, 2008 until the first regular business day of January, 2009.

Interest rates since the inception of the law of November 1, 1986, are as follows:

1986 11.65%	1992 9.58%	1998 9.22%	2004 5.01%
1987 10.03%	1993 7.42%	1999 8.87%	2005 7.25%
1988 9.95%	1994 6.99%	2000 8.73%	2006 9.25%
1989 10.92%	1995 8.31%	2001 9.95%	2007 10.25%
1990 12.35%	1996 9.55%	2002 7.48%	2008 9.25%
1991 11.71%	1997 9.15%	2003 5.63%	

/s/ Michael D. Evans  
Administrative Director of the Courts

## **GETTING INVOLVED WITH THE YLD**

Over the past few months, questions have been rolling in asking about the purpose of the YLD and how someone can get involved. This causes one to conclude that many newer lawyers in Oklahoma are apparently missing out on the substantial benefits and opportunities that the YLD provides to its members.

The YLD is the Young Lawyers Division of the Oklahoma Bar Association. All OBA members who were first admitted to the practice of law in any jurisdiction 10 years ago or less are automatically members – meaning that the age range varies greatly and the tag “young” does not relate only to those who were in high school during the New Kids on the Block era. All “young” attorneys are invited. As an extra bonus, you are not required to sign up or pay any additional dues to join.

The YLD exists as the OBA's public service arm. It also focuses on serving the newer lawyers in the state. While the division represents approximately 4,500 OBA members, the work of the division is accomplished through the combined efforts of its officers, board of directors, liaisons to OBA committees and its own committees. The numerous YLD committees serve as the backbone of the division through which programs

and projects benefiting the public and the bar are implemented. An excellent way to get involved with the YLD is to join a committee.

A description of each committee's objective along with the contact information of the chair(s) is on the YLD section of the OBA Web site at [www.okbar.org/members/yld/committee.htm](http://www.okbar.org/members/yld/committee.htm). You can contact the chair of any committee or any YLD officer if you are interested in getting involved in a particular committee. We are always looking for volunteers.

Other ways members can get involved are by attending the YLD Midyear Meeting (which is held in conjunction with the Solo & Small Firm Conference) June 19-21, the YLD Annual Meeting (which is held in conjunction with the OBA Annual Meeting) Nov. 19-21, a New Admittee Happy Hour in Oklahoma City or Tulsa or by serving as a director on the YLD Board.

As you can see, there are many ways and opportunities to take advantage of your YLD membership. Don't let your YLD years go by without getting involved!

If you have any questions or suggestions about how the YLD can better assist the public or help you in establishing yourself in the practice of law please contact the 2008 YLD Chairperson Kimberly Warren at [kwarren@coleandreed.com](mailto:kwarren@coleandreed.com).

## **2008 OBA/YLD COMMITTEES:**

Awards

Citizenship/Americanism/  
Patriotism

Children and the Law

Continuing Legal  
Education

Disaster Legal Assistance

Gift of Life Project

Law School Committee

Long Range Planning

Membership

Mock Trial Committee

New Attorney Orientation  
Committee

Nominations

Publication/Web Site  
Committee

Tolerance in Education

Seniors

Surviving the Season

Volunteers

## **YOUNG LAWYERS ATTEND ABA MIDYEAR MEETING**

The YLD was well represented at this year's American Bar Association Midyear Meeting in Los Angeles. The Oklahoma delegation to the YLD Assembly included Kimberly Warren, Molly Bircher, Nathan Johnson,

John Truskett and Shanda McKenney. Doris Gruntmeir also attended as the ABA/YLD District 24 Representative. The meeting, held Feb. 7-9, featured a Young Lawyer Summit, which focused on top issues facing young lawyers across the nation, including striking a work-life balance, dealing with law school debt and managing a legal career. The group also attended the YLD Assembly where they debated and voted on important resolutions affecting the legal profession. If you would like information on any of the resolutions, please contact one of your delegates.



### THE ROASTING OF CHRISTOPHER CAMP

YLD Immediate Past Chair Chris Camp was "roasted" by the YLD board members on the evening of Jan. 19 at Fleming's Steakhouse in Tulsa. The evening was filled

with stories and tributes to Mr. Camp's exceptional year as division chairperson.

Also in attendance at the roast were OBA Executive Director John Morris Williams, OBA Past President Stephen Beam, OBA President-Elect Jon Parsley, OBA Board of Governors member Alan Souter, Law Student Division Chairperson Rachel Pappy and past YLD chairs Lou Ann Moudy, Mark Osby and Luke Gaither.



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# Calendar

## February

**12 OBA Women in Law Committee Meeting;** 11:45 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Amber Peckio Garrett (918) 549-6747

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

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

**18 President's Day** (State Holiday)

**19 OBA Civil Procedure Committee Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: James Milton (918) 591-5229

**20 OBA Member Services Committee Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Keri Williams (405) 385-5148

**OBA Professionalism Committee Meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa, Tulsa; Contact: Sharisse O'Carroll (918) 584-4192

**OBA Bar Center Facilities Committee Meeting;** 9 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: John Morris Williams (405) 418-7000

**21 OBA Bench and Bar Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Jack Brown (918) 581-8211

**Mock Trial Committee Meeting;** 5:45 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Judy Spencer (405) 755-1066

**22 OBA Board of Governors Meeting;** OCU Law School, Oklahoma City; Contact: John Morris Williams (405) 416-7000

**OBA Law Schools Committee Meeting;** 1 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa, Tulsa; Contact: Michael DeBerry (580) 286-2221 or Ken Delashaw (580) 276-3136

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

**26 Death Oral Argument, Jeremy Alan Williams – D-2006-338;** 10:00 a.m.; Homsey Family Moot Courtroom, Sarkey's Law Center, Oklahoma City University

**26-29 OBA Bar Examinations;** 8 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Board of Bar Examiners (405) 416-7075



## March

**6 OBA Law Day Committee Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Giovanni Perry (405) 601-2222

**12 OBA Volunteer Night at OETA;** 5:45 p.m.; OETA Studio, Oklahoma City; Contact: Brandon Haynie (405) 416-7018

**13 OBA Bench and Bar Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Jack Brown (918) 581-8211

## mar. cont'd

- 14 OBA Family Law Section Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Lynn S. Worley (918) 747-4610
- 15 OBA Title Examination Standards Committee Meeting;** 9:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Scott McEachin (918) 296-0405
- 18 OBA Civil Procedure Committee Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: James Milton (918) 591-5229
- 20 OBA Paralegal Committee Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Joseph H. Bocock (405) 235-9621
- 27 OBA Legal Intern Committee Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: H. Terrell Monks (405) 733-8686
- 28 OBA Board of Governors Meeting;** Idabel; Contact: John Morris Williams (405) 416-7000

## April

- 9 OBA Awards Committee Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Gary Clark (405) 385-5146
- 10 OBA Work/Life Balance Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Melanie Jester (405) 609-5280
- OBA Professionalism Committee Meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Sharisse O'Carroll (918) 584-4192



*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).*

**The Muscogee (Creek) Nation District Court**  
**Presents**  
**The Sixth Annual Continuing Legal Education Program:**  
***Doing Business in Indian Country*©**

**13 Hours of OBA CLE Credit including 1 hour of Ethics\***

**Thur. & Fri., March 13<sup>th</sup>-14<sup>th</sup>, 2008**

**Tribal Mound Building Great Auditorium  
Okmulgee, Oklahoma**

***“Stop thinking in terms of limitations and start thinking in terms of possibilities”***

***Co-Sponsored by***  
**The Principal Chief's Office and the Muscogee (Creek) National Council**  
**Muscogee (Creek) Nation Supreme Court ♦**

**Outline of Day One – Thur., Mar. 13<sup>th</sup>, 2008**

**8:30...Registration & Complimentary Continental Breakfast**  
**8:40...Ceremonial Opening Exercise**  
**8:50...Welcome, Introductions by Judge Patrick Moore**  
**& Comments by Principal Chief A.D. Ellis**

**9:00...Jurisdiction in Indian Country...Melissa Tatum, Prof. of Law, Univ. of Tulsa**

**10:00.....Break**

**10:10...Tribal Financing ...Townsend Hyatt, Orrick Law**

**11:50.....Complimentary Lunch – Culinary Arts Chefs, OSU**

**1:15...Ethical Considerations with Indian Tribes... Shelly Grunsted, JD, LL.M. – Prof. University of Oklahoma**

**2:20.....Break**

**2:30...Class II vs. Class III Gaming... Phil Hogan, National Indian Gaming Commissioner**

**3:30...Preservation of Sovereignty and Protecting Tribal Property**  
**Shannon Prescott, JD, Glendening, McKenna & Prescott**

**4:30...Question & Answer Period – Entire Panel**

**5:00...Muscogee (Creek) Nation Bar Swearing-In Ceremony**  
**- Justices of the Muscogee (Creek) Nation Supreme Court**

**5:30...Complimentary Barbecue Dinner at the Okmulgee Casino**

## Outline of Day Two – Fri., Mar. 14<sup>th</sup> , 2008

**8:30...Opening Remarks – Judge Patrick Moore**

**9:00...Issues with Tribal Restricted and Trust Property –**  
Casey Ross- Petherick, Prof. of Law, Okla. City University

**10:00.....Break**

**10:05...Indian Gaming Industry Report – Alan Meister, Ph.D. -**  
Vice President, Analysis Group

**11:00...Updates on Federal Indian Law Cases – Timothy Posey,**  
Hall, Estill

**12:00...Complimentary Lunch – Culinary Arts Chefs, OSU**

**1:30....Sports and Entertainment on Tribal Property – Frank**  
Marley, Jr., JD. Seminole Tribal Attorney

**2:20.....Break**

**2:30...Enterprise Development – Frank Marley, Jr.**

**3:20...Economic Development on Tribal Property – Dr. Jerry**  
Bread, Prof. University of Oklahoma

**4:30...Closing Comments and Evaluations**

**Adjourn**

## **2008 Doing Business In Indian Country**

**March 13th-14th, 2008**

**Tuition: \$150 for all attendees who pre-register on or before March. 7, 2008**

**Late & Walk-Ins: \$175 (space avail.)**

**13 hours of CLE credit ♦ Includes 1 hour of Ethics**

**Name** \_\_\_\_\_

**Firm/Org.** \_\_\_\_\_

**Address** \_\_\_\_\_

**City** \_\_\_\_\_ **State** \_\_\_\_\_

**Zip** \_\_\_\_\_ **OBA Mbr? Yes ☐ No ☐ OBA#** \_\_\_\_\_

**E-mail** \_\_\_\_\_



**Checks payable to MCN District Court – CLE & mail this form to:**

**MCN District Court, P.O. Box 652, Okmulgee OK 74447**

**Questions: Call the MCN District Court at 918.758.1400**

**\*Pending**

Photo Courtesy of Legislative Service Bureau Photo Division



*Justice John F. Reif was formally sworn in at a ceremony in the Supreme Court Courtroom on Jan. 23. Former Oklahoma Supreme Court Justice Robert Lavender administered the oath of office to his successor. Justice Reif served on the Court of Civil Appeals for 23 years and had been a special judge and assistant district attorney in Tulsa County.*

## Bar Members Volunteer for Law-related Education

Every year the OBA Law-related Education program administers the “We the People – The Citizen and the Constitution” competition held at the state Capitol. For the competition, teams of high school students study the history and principles of the U.S. Constitution. They then form small groups to make presentations on different topics during simulated congressional hearings. This year, Norman High School walked away with the championship and will advance to the national competition in Washington, D.C.

The bar members who volunteered as presenters and/or judges for the competition are Judge Jerry Bass, Jack G. Clark Jr., J. William Conger, Leonard Feuerhelm, Judge Lisa Hammond, Brady Henderson, Brian Hermanson, David Hopper, Judge David Lewis, Tracy Pierce Nester, Jane Pennington, Tom McConnell, Michael Ridgeway and Richard Riggs.

## Oklahoma Native Leads Federal Appeals Court

Judge Robert H. Henry became chief judge of the 10th Circuit U.S. Court of Appeals in an investiture ceremony at the OU College of Law on Jan. 25. He will serve a seven-year term. Judge Henry is a former 10-year state House representative and two-term Oklahoma attorney general. He was appointed to the 10th Circuit in 1994. Among the many distinguished guests at the ceremony were retired U.S. Supreme Court Justice Sandra Day O'Connor and U.S. Supreme Court Justice Stephen Breyer.



Photo Courtesy of OU Law

*Retired U.S. Supreme Court Justice Sandra Day O'Connor, Judge Robert Henry and U.S. Supreme Court Justice Stephen Breyer.*



*OBA President J. William Conger is sworn into office in a ceremony last month.*

### **OBA Board Members Sworn In**

Eight new members of the OBA Board of Governors were sworn in to their positions on Jan. 18. The new officers are President J. William Conger, Oklahoma City; President-Elect Jon K. Parsley, Guymon; Vice President Michael C. Mordy, Ardmore; Immediate Past President Stephen D. Beam, Weatherford; Jack L. Brown, Tulsa; W. Mark Hixson, Yukon; Jerry L. McCombs, Idabel; James T. Stuart, Shawnee; and Young Lawyers Division Chairperson Kimberly Warren, Tecumseh.



### **Bar Center Holiday Hours**

The Oklahoma Bar Center will be closed Monday, Feb. 18 in observance of President's Day.

### **OBA Member Resignations**

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

Don Keith Barnes  
OBA No. 527  
2020 N. Tyler  
Little Rock, AR 72207

Mary Ellen Bingaman  
OBA No. 3295  
427 N.W. 19th St.  
Oklahoma City, OK 73103

Dawn Denise Fassnacht  
OBA No. 20692  
3341 Pine Meadow  
Drive S.E., Apt. 201  
Kentwood, MI 49512

Jake William Gage  
OBA No. 10815  
6947 E. 78th Place  
Tulsa, OK 74133

Sidney Walton Maurras  
OBA No. 20565  
2801 Charlotte Lane  
Fort Smith, AR 72901

Douglas Gene Moring  
OBA No. 10411  
1111 N.E. Oak Tree Drive  
Lees Summit, MO 64086

Lisa J. Moring  
OBA No. 6025  
1111 N.E. Oak Tree Drive  
Lees Summit, MO 64086

Eugene Bowers Ralston  
OBA No. 11591  
3231 S.W. Gisbourne Lane  
Topeka, KS 66614

Shelley Agatha Scott  
OBA No. 10605  
3414 Cascadera Drive  
Austin, TX 78731

## NOTICE OF INVITATION TO SUBMIT OFFERS TO CONTRACT

THE OKLAHOMA INDIGENT DEFENSE SYSTEM BOARD OF DIRECTORS gives notice that it will entertain sealed Offers to Contract ("Offers") to provide non-capital trial level defense representation during Fiscal Year 2009 pursuant to 22 O.S. 2001, §1355.8. The Board invites Offers from attorneys interested in providing such legal services to indigent persons during Fiscal Year 2009 (July 1, 2008 through June 30, 2009) in the following counties: **100% of the Oklahoma Indigent Defense System caseloads in Blaine, Canadian, Carter, Hughes, Johnston, Kay, Kingfisher, LeFlore, Love, Marshall, Murray and Seminole Counties, Oklahoma.**

Offer-to-Contract packets will contain the forms and instructions for submitting Offers for the Board's consideration. Contracts awarded will cover the defense representation in the OIDS non-capital felony, juvenile, misdemeanor and traffic cases in the above counties during FY-2009 (July 1, 2008 through June 30, 2009). Offers may be submitted for partial or complete coverage of the open caseload in any one or more of the above counties. Sealed Offers will be accepted at the OIDS offices Monday through Friday, between 8:00 a.m. and 5:00 p.m. **The deadline for submitting sealed Offers is 5:00 PM, Thursday, March 6, 2008.**

Each Offer must be submitted separately in a sealed envelope or box containing one (1) complete original Offer and two (2) complete copies. The sealed envelope or box must be clearly marked as follows:

FY-2009 OFFER TO CONTRACT  
\_\_\_\_\_ COUNTY / COUNTIES

TIME RECEIVED:  
DATE RECEIVED:

The Offeror shall clearly indicate the county or counties covered by the sealed Offer; however, the Offeror shall leave the areas for noting the time and date received blank. Sealed Offers may be delivered by hand, by mail or by courier. Offers sent via facsimile or in unmarked or unsealed envelopes will be rejected. Sealed Offers may be placed in a protective cover envelope (or box) and, if mailed, addressed to OIDS, FY-2009 OFFER TO CONTRACT, Box 926, Norman, OK 73070-0926. Sealed Offers delivered by hand or courier may likewise be placed in a protective cover envelope (or box) and delivered during the above-stated hours to OIDS, at 1070 Griffin Drive, Norman, OK 73071. **Please note that the Griffin Drive address is NOT a mailing address; it is a parcel delivery address only.** Protective cover envelopes (or boxes) are recommended for sealed Offers that are mailed to avoid damage to the sealed Offer envelope. **ALL OFFERS, INCLUDING THOSE SENT BY MAIL, MUST BE PHYSICALLY RECEIVED BY OIDS NO LATER THAN 5:00 PM, THURSDAY, MARCH 6, 2008 TO BE CONSIDERED TIMELY SUBMITTED.**

Sealed Offers will be opened at the OIDS Norman Offices on Friday, March 7, 2008, beginning at 9:00 AM, and reviewed by the Executive Director or his designee for conformity with the instructions and statutory qualifications set forth in this notice. Nonconforming Offers will be rejected on Friday, March 7, 2008, with notification forwarded to the Offeror. Each rejected Offer shall be maintained by OIDS with a copy of the rejection statement.

Copies of qualified Offers will be presented for the Board's consideration at its meeting on **Friday, March 28, 2008**, at Griffin Memorial Hospital, Patient Activity Center (Building 40), 900 East Main, Norman, Oklahoma 73071.

## NOTICE OF INVITATION TO SUBMIT OFFERS TO CONTRACT

With each Offer, the attorney must include a résumé and affirm under oath his or her compliance with the following statutory qualifications: presently a member in good standing of the Oklahoma Bar Association; the existence of, or eligibility for, professional liability insurance during the term of the contract; and affirmation of the accuracy of the information provided regarding other factors to be considered by the Board. These factors, as addressed in the provided forms, will include an agreement to maintain or obtain professional liability insurance coverage; level of prior representation experience, including experience in criminal and juvenile delinquency proceedings; location of offices; staff size; number of independent and affiliated attorneys involved in the Offer; professional affiliations; familiarity with substantive and procedural law; willingness to pursue continuing legal education focused on criminal defense representation, including any training required by OIDS or state statute; willingness to place such restrictions on one's law practice outside the contract as are reasonable and necessary to perform the required contract services, and other relevant information provided by attorney in the Offer.

The Board may accept or reject any or all Offers submitted, make counter-offers, and/or provide for representation in any manner permitted by the Indigent Defense Act to meet the State's obligation to indigent criminal defendants entitled to the appointment of competent counsel.

FY-2009 Offer-to-Contract packets may be requested by facsimile, by mail, or in person, using the form below. Offer-to-Contract packets will include a copy of this Notice, required forms, a checklist, sample contract, and OIDS appointment statistics for FY-2004, FY-2005, FY-2006, FY-2007, and FY-2008 together with a 5-year contract history for each county listed above. The request form below may be mailed to OIDS OFFER-TO-CONTRACT PACKET REQUEST, Box 926, Norman, OK 73070-0926, or hand delivered to OIDS at 1070 Griffin Drive, Norman, OK 73071 or submitted by facsimile to OIDS at (405) 801-2661.

\*\*\*\*\*

### REQUEST FOR OIDS FY-2009 OFFER-TO-CONTRACT PACKET

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

Street Address: \_\_\_\_\_ Phone: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_ Fax: \_\_\_\_\_

County / Counties of Interest: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

# Litigation and Trials in the Digital Age

## VIDEO REPLAY

**DATE & LOCATION:** February 12, 2008  
Oklahoma Bar Center  
1901 N. Lincoln Blvd.

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

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

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

**Program Planner/Moderator**

**Eric Eissenstat**, Fellers, Snider, Blankenship, Bailey & Tippens, P.C., Oklahoma City

**Program outline:**

**8:30 a.m. Registration**

**9:00** “I Still Haven’t Found What I’m Looking For”<sup>1</sup>: Location and Preservation of Electronic Evidence

- Sources and types of ESI
- Creation of ESI
- Storage and retrieval
- Searching, filtering, and collecting
- Extraction and conversion
- E-mails, e-messaging and voice mail
- Data and video
- Internet and web pages
- Accessing “deleted” data
- Electronic discovery software tools
- How to select and use data and forensic experts - request for admission and request for proposal
- Metadata
- Review of ESI

**Dean Kuhlmann**, Renew Data, Austin  
**Mikki Tomlinson**, Chesapeake  
Energy, Oklahoma City

**9:50**                      **Break**

**10:00**      **“New Rules”<sup>2</sup>: Electronic Discovery Issues (Part 1)**

- New federal e-discovery rules
- Meet and confer conferences
- Initial disclosures

- Preservation notices
- Litigation holds
- Trends and agreements
- Spoliation issues/sanctions
- Duties of attorney and client
- Rule 37 safe harbor
- Preservation orders
- On-site inspections of computer system or other electronic sources
- Third party electronic data

**Thomas M. Jones**, Cozen O'Connor, Seattle

**10:50 “You Can’t Always Get What You Want”<sup>3</sup>:  
Electronic Discovery Issues (Part II)  
(ethics)**

- Propounding requests for production
- Format requests- what and why
- Responding to ESI requests for production
- Search duties
- Determining production format
- “Not reasonably accessible” data
- Sampling issues: legacy and back-up systems
- Interrogatories and responses
- Requests for admission responses
- Rule 30(b)(6) and 12 O.S. § 3230 (C)(5) notices on electronic information
- Cost shifting
- Motion to compel
- Clawback and quick peek agreements
- Ethical issues and client confidentiality
- Attorney-client privilege issues

	<ul style="list-style-type: none"> <li>E-mail strings</li> </ul> <b>Brooks A. Richardson</b> , Fellers, Snider, Blankenship, Bailey & Tippens	<b>1:00</b>	<b>"I Was Meant for the Stage"<sup>5</sup>: Effective Use and Presentation of Electronic Evidence</b> <ul style="list-style-type: none"> <li>Depositions</li> <li>Admissions</li> <li>E-mails</li> <li>Voice mails</li> <li>Demonstrative aids</li> <li>Summaries</li> <li>Computer recreations</li> <li>Videos</li> </ul> <b>David Mykel and Stephen W. Tuholski</b> , Courtroom Sciences, Irving <b>Eric S. Eissenstat</b>
<b>11:40</b>	<b>Lunch</b> (On your own)		
<b>12:10</b>	<b>"Puzzling Evidence"<sup>4</sup>: Use and Admission of Electronic Evidence in Pretrial and Trial Proceedings</b> <ul style="list-style-type: none"> <li>Evidentiary issues</li> <li>Federal Rules of Evidence and Oklahoma Evidence Code</li> <li>Chain of Custody</li> <li>Authenticity</li> <li>Reliability</li> <li>Use before court</li> <li>Use before jury</li> <li>ESI and pretrial motions</li> <li>Experts/lay witnesses</li> <li>Best Evidence</li> <li>Internet material</li> <li>Web pages</li> <li>E-mails</li> <li>Business records</li> <li>Digital photos, video, etc</li> <li>Best practices in strategic use re ESI</li> </ul> <b>Eric S. Eissenstat</b> <b>Mary Coulson James</b> , Senior Attorney, AT&T Services, Oklahoma City	<b>1:50</b>  <b>2:00</b>	<b>"I Fought the Law"<sup>6</sup>: Views from the Bench Moderator</b> <b>Eric Eissenstat</b> <b>Judge Stephen Friot</b> , U.S. District Court for the Western District of Oklahoma, Oklahoma City <b>Judge Tim DeGiusti</b> , U.S. District Court for the Western District of Oklahoma, Oklahoma City <b>Judge Bryan Dixon</b> , District Court of Oklahoma, Oklahoma City
		<b>2:50</b>	<b>Adjourn</b>

## Litigation and Trials in the Digital Age

### VIDEO REPLAY

☐ **February 12, 2008**  
Oklahoma Bar Center

Register online at [www.okbar.org/cle](http://www.okbar.org/cle)

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

Full Name \_\_\_\_\_

Firm \_\_\_\_\_

Address \_\_\_\_\_

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

Phone (        ) \_\_\_\_\_ E - Mail \_\_\_\_\_

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

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

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

Credit Card# \_\_\_\_\_ Exp. date \_\_\_\_\_

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

# Kudos

**T**he Oklahoma City Chapter of the Association for Women in Communications honored **Lt. Gov. Jari Askins** and **Judge Carol M. Hansen** with 2008 Byliner Awards Feb. 7. The awards recognize the accomplishments of women who have made a significant contribution to the community through their professional and volunteer achievements. Lt. Gov. Askins was honored for her commitment to public service. She has served in all three branches of state government. Judge Hansen was honored in the field of law. When elected by her fellow judges as chief judge of the Court of Civil Appeals in 1993, she became the first female to serve as chief judge of any appellate court in the state.

**P. Blake Allen** of Duane Morris LLP has been elected president of the San Diego, Calif., chapter of the Association for Corporate Growth. Mr. Allen's one-year term as president began on Jan. 1. The Association for Corporate Growth was founded in 1954 and is a global organization for professionals involved in all aspects of corporate growth, development, and mergers and acquisitions. The San Diego chapter has approximately 200 members.

**Calvin Sharpe**, a partner with Pierce Couch Hendrickson Baysinger & Green LLP, was elected to the Board of Directors of Red Earth, Inc. and also was elected to join the Rotary Club of Oklahoma City Club 29.

**A**ssociate Justice of the Muscogee (Creek) Nation of Oklahoma Supreme Court **Denette Mouser** has been selected to serve as distinguished practitioner in residence at the TU College of Law. Ms. Mouser received her J.D. with honors in 1999 from the OU College of Law and joined the legal team at Wal-Mart Stores Inc. in 2002. She currently serves as assistant general counsel for the company's class action division, which manages the defense of statewide and nationwide class actions. In May 2005, she was appointed to the Muscogee (Creek) National Supreme Court. She served as chief justice for two years before stepping aside in October 2007 to become an associate justice.

**Mary Ellen Ternes** of McAfee & Taft has been elected director of the American Institute of Chemical Engineers Environmental Division, after serving a term as chair of Legislative and Regulatory Educational Programming for the division. Ms. Ternes was also elected as second vice chair of the AIChE Nanoscale Science and Engineering Forum, a position which

progresses to chair after two years of service. She has been appointed ethics chair of the ABA's Section of Environment, Energy & Resources (SEER), vice chair of the SEER Climate Change, Sustainable Development and Ecosystems Committee, as well as continuing vice chair of the SEER Air Quality Committee. At the ABA SEER 2007 fall meeting in Pittsburgh, Ms. Ternes' comprehensive publication titled "Basic Practical in Nanotechnology," won a competitive, peer-reviewed "Best Paper Award."

**William H. Hoch** has been elected president of the Oklahoma City Chapter of the Federal Bar Association for 2007-2008. He will lead the organization, which serves 326 members, including district and appellate judges, government attorneys, private practitioners and law professors.

**Lee Brown** with Brown & Sawicki LLP in Dallas has been elected to membership in the fellows of the Texas Bar Foundation. Fellows of the foundation are selected for their professional achievements and their demonstrated commitment to the improvement of the justice system throughout the state of Texas. Each year one-third of one percent of state bar members are invited to become fellows. Once nominees are selected, they must be elected by the

Texas Bar Foundation Board of Trustees.

**Judge J. Ray Oujesky** was appointed municipal court judge for the City of Haltom City, Texas. He will continue to preside as municipal court judge for the City of North Richland Hills, Texas, as well.

**Stephen R. Money** has graduated from Central America Health Sciences University earning his doctor of medicine degree. Mr. Money graduated from the OCU School of Law in 1986 and has maintained a law practice as well as his business interests in the health care industry. Following his two years of basic sciences training, Mr. Money's clinical training was obtained in hospitals in London, England; Mexico and Miami, Fla. Mr. Money has returned to his duties at AllCare Health Systems, Inc. and to his law practice and is studying to take his medical licensing examinations.

**Louis J. Price** of McAfee & Taft was one of 148 lawyers nationwide to be named to the BTI Client Service All-Star Team for 2008. The annual list, which is prepared by The BTI Consulting Group, is based strictly on interviews with corporate counsel at Fortune 1000 and other large companies.

At its January 2008 meeting, Fellers Snider's shareholders elected **Kevin R. Donelson** to his fourth consecutive term as firm president and executive committee member. In addition,

**Warren F. Bickford** was elected to a three-year term to the executive committee. Other executive committee members include **Michael R. Ford**, **Terry L. Watt** and **John D. Russell. Doneen**

**D. Jones** was re-elected as firm secretary. **Brooks A. Richardson** and **Lance E. Leffel** were elected co-recruiting coordinators.

**Mark Swiney**, senior Assistant city attorney in the City of Tulsa's Legal Department, served as faculty member at the American Law Institute-American Bar Association course of study, Eminent Domain and Land Valuation Litigation, Jan. 3-5 in San Francisco. Mr. Swiney's presentation was titled, "Condemnation Issues Relevant to Billboards and Signs."

**Jay Shanker** and **Nathan Whatley**, attorneys with McAfee & Taft, were selected as authors in the recently released book, *Entertainment and Media Law Client Strategies*, published by Aspatore Books. The book, which is co-authored by entertainment and business attorneys, provides an insider's perspective on protecting creative property, resolving legal disputes, negotiating deals and exceeding client expectations. Mr. Shanker and Mr. Whatley's contribution examines both the business and legal perspectives in entertainment and media law matters.

## On The Move

**Derek S. Casey** announces that he has moved his practice and joined the Wichita, Kan., firm of Patterson, Gott & Burk LC, of counsel. Mr. Casey graduated from OU Law in 1991 and has been in practice in Wichita since then, handling complex civil claims including medical malpractice, tobacco products liability, estate litigation and personal injury. He will continue to focus his practice on similar claims, primarily in Kansas and Oklahoma, in his new position at 245 N. Waco, Suite 405, Wichita, KS, 67202; (316) 687-2400; derek@dsc-law.net.

**Pray Walker Jackman Williamson** and **Marlar** announces that **Chad C. Taylor** has become a shareholder of the firm in its Tulsa office. Mr. Taylor, a 1998 graduate of the TU law school, will concentrate his litigation practice in business, insurance, real estate and tort disputes in both state and federal courts.

**Jay P. Walters** announces the formation of Walters Law Firm PLLC. Mr. Walters is a former litigation partner in the Oklahoma City office of Fellers Snider who previously worked as an associate with the Washington, D.C. office of Dow, Lohnes & Albertson, and was a law clerk to U.S. District Judge Robin J. Cauthron. His

practice will continue to focus upon trial and appellate work before state and federal courts, while also representing brokers, dealers and customers in arbitrations before the FINRA (formerly, NASD). He can be reached at 723 N.W. 23rd St., Oklahoma City, 73103; (405) 601-7744; jwalters@walterslaw.net.

**H**all, Estill, Hardwick, Gable, Golden & Nelson PC announces **Theodore Q. Eliot** has joined the firm as a shareholder in the Tulsa office. Mr. Eliot received a B.A. from Drake University and his J.D. from the OU College of Law. His practice areas include business litigation, oil and gas litigation, class action defense, construction litigation, contract litigation, and tort and insurance defense litigation.

**M**cAfee & Taft has named attorneys **Timothy J. Bomhoff, Justin Jackson, Patricia A. Rogers, Spencer F. Smith** and **Mary Ellen Ternes** as new shareholders. Mr. Bomhoff is a trial lawyer with nearly 20 years of experience representing clients in broad range of civil litigation matters. He also counsels and trains employers on a wide range of employment issues. He is a 1984 OSU graduate and a 1988 graduate of the OU College of Law. Mr. Jackson is a corporate lawyer whose practice is concentrated on mergers and acquisitions and corporate finance. He regularly counsels clients in connection with private placements and public offerings of debt and equity securities,

mergers, acquisitions and divestitures, joint ventures and a broad range of other commercial transactions. He joined McAfee & Taft in 2000 and holds both a bachelor's degree and law degree from OU. Ms. Rogers is a career health care professional, and she currently serves as the chair of the OBA Health Law Section and is a member of the Oklahoma Health Lawyers Association and American Health Lawyers Association. Prior to entering law school, she was employed in management positions with health care institutions and served as the coordinator for the Institutional Review Board at an academic medical center. She holds a bachelor's degree from the University of Pittsburgh, a master's degree in health policy and management from Johns Hopkins University and a law degree from OCU. Mr. Smith is a trial lawyer whose practice covers a wide range of commercial litigation matters. During the course of his career, he has represented corporations in a variety of industries, including technology, insurance, pharmaceuticals, telecommunications and energy. Prior to joining McAfee & Taft in 2004, he was a litigation associate with the international law firm of Vinson & Elkins. He is a graduate of OU and the University of Texas School of Law. Before entering law school, Ms. Ternes worked as a chemical engineer for the Environmental Protection Agency in Superfund emergency response/site characterization and Resource Conservation and Recovery Act incinerator permitting,

and then as an environmental project officer for a commercial hazardous waste incineration company. She holds a bachelor's degree in chemical engineering from Vanderbilt University and a J.D. from the University of Arkansas at Little Rock School of Law.

**B**ret A. Sanders has been named partner with the Dallas-based firm of Fee, Smith, Sharp & Vitullo LLP. He will be managing partner of the firm's Austin office and will continue to focus his practice on construction liability and defects, products liability, transportation, premises/retail litigation and insurance bad faith. He may be reached at 816 Congress Ave., Suite 1265, Austin, TX, 78701; (512) 479-8400; Fax: (512) 479-8402; bsanders@feesmith.com.

**P**ierce Couch Hendrickson Baysinger & Green LLP announces that **Randall Wood** has joined the firm as an of counsel attorney in the Oklahoma City office. Formerly a staff counsel for Avalon Correctional Services Inc., he will practice in the areas of civil rights and employment law. **Robert Powell, Kristina Bell, Cristi Bullard** and **Randy Smith** have also joined the firm's Oklahoma City office as associate attorneys. Mr. Powell received his J.D. from OCU in 2002, and his area of practice will be workers' compensation. Ms. Bell received her J.D. from OU in 2007 and will practice in the area of insurance defense. Ms. Bullard received her J.D.

from Wake Forest University in 2007 and will also practice in the area of insurance defense. Mr. Smith attended OCU and received his J.D. in 2007. His area of practice will be insurance defense and construction law. The firm's Tulsa office has moved to 1100 Petroleum Club Building, 601 S. Boulder Ave., Tulsa, 74119. The telephone number remains (918) 583-8100.

**S**teven Young has been appointed to the position of assistant district attorney in Grant County. Mr. Young has been in private practice in the Oklahoma City area for the last eight years focusing his practice on estate and tax planning.

**M**elissa L. Hackney has joined the law firm of Evans & Davis. Her practice will focus on family and domestic matters, adoption, employment law, medical malpractice and general civil litigation. She received her B.S. in nursing from Oklahoma Baptist University. She attended OCU School of Law. She is a member of the American Bar Association and the Oklahoma County Bar Association Community Service Committee.

**T**he law firm of Pignato, Cooper, Kolker & Roberson PC announces that **Dawn M. Goeres** and **Scarlet A. Wootton** have joined the firm as associates. Ms. Goeres is a 2000 graduate from the University of Southern Illinois Law School. She is a chartered property casualty underwriter and a registered professional liability un-

derwriter. She will practice in the areas of professional liability defense and complex coverage issues. Ms. Wootton graduated from the OU College of Law in 2002 with distinction. She served as an Army JAG officer prior to accepting this position. She will practice in the area of general insurance defense.

**C**rossroads Youth & Family Services Inc. announces **Catherine (Kate) Butler** as director of human resources. Butler joined Crossroads YFS in 2005 as the human resource coordinator and has participated in multiple conferences on state and federal personnel laws and training in the area of civil and commercial mediation. She has a B.S., an M.B.A. and a J.D. from OU and has been an OBA member since 2002.

**F**ellers Snider announces that **Lance E. Leffel** has become a shareholder and director of the firm. Mr. Leffel practices in the areas of commercial litigation and insurance law. He earned his bachelor's degree from OU and his J.D. with distinction from the OU College of Law.

**J**oyce & Paul PLLC announces that **David M. vonHartitzsch** has become a partner with the firm. Mr. vonHartitzsch received his B.A. from Southern Methodist University in 1992 and his J.D. with highest honors from TU in 2000. He practices primarily in the area of general civil and business litigation, including civil appellate practice, with significant

emphasis on environmental, construction, pipeline and transportation issues.

**T**hompson & Knight LLP announces the expansion of its Intellectual Property Practice Group with the addition of **Reagan Allen** as an associate in the firm's Dallas office. Mr. Allen focuses his practice on intellectual property litigation and transactions, including patent infringement matters, trademark and trade secret matters, and copyright matters. He received his J.D. and a master in intellectual property from Franklin Pierce Law Center in 2003 and his B.S. in business marketing and business management from the University of Missouri at Columbia in 1996.

**C**onner & Winters LLP announces that **Melinda L. Kirk**, **P. Bradley Bendure** and **Debra R. Stockton** have been named partners in the firm's Tulsa office. Ms. Kirk works in the litigation group and practices in the areas of labor and employment, whistleblower defense, construction and commercial litigation. Her practice includes handling a broad range of cases in federal and state courts, as well as administrative proceedings before the U.S. Department of Labor, the Equal Employment Opportunity Commission and various state human rights commissions. She earned an undergraduate degree in 1986 and a J.D. with highest honors in 2001, both from TU. Mr. Bendure practices in the litigation group with emphasis in the areas of labor

and employment, construction and insurance defense. He has represented clients in a variety of industries in both state and federal courts on matters including claims for wrongful death, negligence, products liability and breach of contract. He earned an undergraduate degree in economics in 1998 from Knox College, magna cum laude, and a J.D. with honors in 2001 from OU. Ms. Stockton practices in the corporate and securities group with an emphasis on mergers and acquisitions and general business representation. Her experience includes representation of entities from a wide variety of industries, including retail, energy, telecommunications and manufacturing. She has assisted clients with mergers and acquisition matters and general business matters, including contract preparation, review and negotiation. She earned an undergraduate degree in 1991 from Northeastern State University and a J.D. in 1994 from TU.

## At The Podium

**Teresa Meinders Burkett** was included on a panel discussion presented by the Tulsa chapter of the Oklahoma Business Ethics Consortium on Jan. 24. The event was titled, "Risky Business – Balancing Ethical Business Practices while Mitigating

Risk." She was included among a group of experts who explored the risks of doing business today in a broad range of categories including IT, personnel issues, safety, and accounting controls.

**Amir M. Farzaneh**, attorney for Hall, Estill, Hardwick, Gable, Golden & Nelson PC, will be the featured speaker at the Feb. 15 meeting of the General Counsels' Forum. He will be speaking on recent trends in immigration enforcement along with discussion of Oklahoma's new immigration law, HB-1804. The meeting will be at 11:30 a.m. at Italiano's Restaurant, 4801 N. Lincoln Blvd., Oklahoma City.

**John Papahronis**, a shareholder with McAfee & Taft and leader of the firm's employee benefits practice, will be a featured speaker at the 2008 SouthWest Benefits Association Internal Revenue Service Plan Administration Skills Workshop to be held Feb. 15 at the Crowne Plaza in Tulsa. He will discuss an overview of COBRA, its application in the real world, highlight recent litigation involving COBRA, and examine compliance and administration issues and state continuation rules.

**Bill Wells** of Wells Law Firm has been presenting a three-hour seminar to business groups around the state of Oklahoma regarding immigration compliance in the workplace, including Oklahoma's new immigration

reform legislation, Oklahoma House Bill 1804. He has made presentations at Central Oklahoma Manufacturers Association in Oklahoma City, Francis Tuttle Technology Center in Oklahoma City, High Plains Technology Center in Woodward, Oklahoma Panhandle State University in Goodwell, Pioneer Technology Center in Ponca City and Red River Technology Center in Duncan. He is scheduled to present the program at Canadian Valley Technology Center in Chickasha, Gordon Cooper Technology Center in Shawnee, Kiamichi Technology Center at various locations in southeastern Oklahoma and Southern Oklahoma Technology Center in Ardmore.

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**Articles for the Mar. 8 issue must be received by Feb. 19**

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*Compiled by Jeff Kelton*

## *Justice Robert D. Simms*



**Former Oklahoma Supreme Court Justice Robert D. Simms** died Jan. 31. He was born Feb. 6, 1926, in Sand Springs, where he grew up. He graduated from Sand Springs High School receiving the Craftsman Award, given to an outstanding senior boy. **He enlisted in the U.S. Navy in May 1943 and was honorably discharged in**

**May 1946.** He attended Milligan College in Tennessee and Phillips University in Enid. He earned his law degree from TU in 1950 and opened a private practice in Sand Springs. He was elected Tulsa County attorney in 1953. He served as the county's chief prosecutor until 1962 before being named a Tulsa County district judge, where he served until December 1971. In that year, he was appointed to the State Court of Criminal Appeals, where he spent a year on the bench before being appointed to the Oklahoma Supreme Court in 1972. He was the court's chief justice during 1985 and 1986. He served as National Legal Counsel for the Veterans of Foreign Wars; guest lecturer, National College of District Attorneys, Houston, Texas; Oklahoma and Arizona District Attorneys Association; lectured at various law schools and universities; served on the Oklahoma Crime Commission by gubernatorial appointment; and served on the Oklahoma Narcotics and Drug Abuse Council. He was the recipient of the TU College of Law Annual Faculty and Alumni Award for outstanding service to the legal profession. He also received special recognition from the Oklahoma Judicial Conference, the Oklahoma Conference of Municipal Judges, Tulsa County Bar Association, Tulsa Trial Lawyers Association and the Board of Bar Examiners. In 1999, he retired after nearly 38 years on the bench.

**Roy William (Bud) Byars II** of Tulsa died Dec. 28, 2007. He was born July 15, 1940, in Bartlesville. He graduated from Bartlesville College High School in 1958 and attended OU, earning his law degree from there in 1969. **He also served in the U.S. Army.** After law school, he moved to Tulsa and began work at the Public Defender's Office, where he later became chief public defender. He later joined the District Attorney's Office. He was also the judge for the town of Sperry for many years. After leaving the D.A.'s Office, he entered into private practice. He was a Mason, a Shriner and a member of the Sons of the Confederacy. Although he was a loyal OU fan, he never missed a TU football game since 1988.

**David L. Fist** of Tulsa died Jan. 18. He was born July 28, 1931. He was a retired law partner with Rosenstein, Fist & Ringold. He was an outstanding student at the OU College of Law where he received the two highest honors bestowed: the Nathan Scarritt Award and the S.T. Bledsoe Memorial Prize, awarded for all-around merit. He served as the editor in chief of the Oklahoma Law Review, and his name was added to the James F. Hawes Memorial Cup. He was a member of Temple Israel and the Sherwin Miller Museum of Jewish Art. He was also a member of the Men's Rose Club and loved tending the flowers at his home.

**James Cottingham Gibbens** of Oklahoma City died Dec. 19, 2007. He was born Sept. 22, 1923, in Oklahoma City. He graduated from Classen High School and earned a bachelor's degree in history from Yale University and a law degree from Harvard Uni-

versity. **He then served in the U.S. Army in Okinawa and Germany shortly after the end of World War II.** After returning to Oklahoma, he started a law practice in Tulsa before joining Crowe and Dunlevy in 1953. He became senior partner and continued to practice law until illness prevented him from doing so in 2004. He was active in the Episcopal Church and the Democratic Party. He also enjoyed classical music, attending as many symphony performances as possible, enjoyed playing tennis, nature and bird watching. Memorial contributions may be made to the Oklahoma City Philharmonic or the American Civil Liberties Union.

**Jim Hadley** of Pryor died Jan. 8. He was born March 3, 1958, in Fairfax. He lived in Pryor and Vinita most of his life, attending school in Pryor and graduating high school there in 1976. He received his law degree from TU in 1996 and practiced law in Pryor. He was a member of St. Martin Tours' Episcopal Church, Rotary Club, Kappa Sigma fraternity, and the Mayes and Craig county bar associations. He was past president of the Pryor Athletic Booster Club and was an avid OU fan. He enjoyed photography, especially taking pictures of airplanes.

**Patricia Ellen Morrison (Martin)** of Tulsa died Oct. 14, 2007. She was born June 19, 1962. She was a graduate of Baylor University and Baylor Law School. She practiced law with the

Williams Companies legal department from 1990 to 2002 and was appointed by President George W. Bush to the office of Principal Deputy Secretary of the U.S. Department of the Interior in 2002, where she served until 2004. She was a member of the Kaw and Osage Nations and the Kappa Delta sorority. Memorial contributions may be made to the Baylor University Foundation.

**Kent Clay Phipps** of Tulsa died Dec. 31, 2007. He was born March 12, 1930, in Tulsa. He grew up in Mangum. He graduated from OU with a bachelor's degree in speech in 1952. **Following college, he was commissioned a lieutenant in the U.S. Army. While stationed at Ft. Sill, he volunteered for duty in Korea, where he served for a year as an artillery officer.** After discharge, he graduated from OU with a J.D. in 1957. He began his career in the land department of Humble Oil Co. In 1960, he moved to Ponca City, where he opened a private law practice. He was active in many community organizations, including the Salvation Army, YMCA, Domestic Violence Center and the Marland Mansion Commission. He also enjoyed performing in acting roles at the Ponca City Playhouse, traveling, tennis, racquetball and golf.

**William Fleming Powers** of Tulsa died Jan. 3. He was born May 18, 1941, in Tulsa. He earned his B.A. from OSU and his J.D. from OU in 1965. He was a member

of the Phi Delta Phi fraternity and was published in the Law Review while still a student. He worked as an assistant district attorney in Tulsa. He enjoyed fishing, golf, cooking and spending time with his family and friends.

**Bennett Schlinke** of Edmond died Dec. 29, 2007. He was born Aug. 21, 1943, in Durant. He graduated high school from Northwest Classen in Oklahoma City. He attended Central State University and earned his J.D. from OCU in 1971. While completing his law degree, he served in the National Guard. He maintained a private law practice in the Oklahoma City area for many years. He enjoyed UCO basketball and spending time at the beach with his family.

**Ezellmo Opio Akil Toure** of Oklahoma City died Feb. 4. He was born March 31, 1954. He received his law degree from OU and was admitted to the state bar in 1979. He was elected to the state House of Representatives in 1994 and served until 2006, when he left office because of term limits. Throughout his life, he was a staunch opponent of the death penalty and pushed legislation to prevent the execution of mentally retarded defendants and those under the age of 18. In 2002, he was awarded the Angie Debo Award by the American Civil Liberties Union. In January 2007, he took a post at Langston University as the pre-law coordinator and assistant professor.

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

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OKLAHOMA CITY LAW FIRM concentrating in the statewide representation of mortgage lenders seeks attorney. Title examination helpful, but will train the right candidate. Statewide travel required. Send resume and salary requirement to Kirk J. Cejda c/o Shapiro & Cejda, L.L.P., 770 N.E. 63rd, Oklahoma City, OK 73105 or by e-mail to kcejda@logs.com.

OKC FIRM seeks self-motivated associate with 1-5 years experience in civil litigation, personal injury and/or family law. Responsibilities include depositions, court appearances, research, discovery and trial work. Send resume and salary requirements to Box "P," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

## POSITIONS AVAILABLE

TULSA LAW FIRM seeks associate with 4+ years experience in civil litigation and trial experience, with emphasis on medical malpractice defense/insurance defense. Strong academics and writing skills required. Submit resume to Box "L," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

AV RATED SMALL DOWNTOWN TULSA FIRM seeks associate. Excellent academic background, research skills, writing skills and 5+ years of litigation experience required. Compensation package commensurate with experience and performance. Send resume including references and writing sample to Box "M," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

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# The King's Bench

By William F. O'Brien and Vance Winningham

In 1771 a court case was initiated in England that was to begin the process of ending slavery in the British Empire.

James Somerset was a slave who belonged to an American who was living in London, Charles Stewart. Somerset had been purchased in America by Stewart and had been brought to the British capital by him. After several years in London, Somerset ran away, and Stewart hired people who were able to locate and return him. Stewart had been angered by Somerset's departure and sold him to a plantation owner in Jamaica. Somerset was placed on a ship that would take him to that Caribbean island.

An individual who was active in the anti-slavery movement in England at that time, Granville Sharp, caught wind of Somerset's impending departure and filed a writ of habeas corpus in the King's Bench court alleging that Somerset was being held illegally aboard the vessel that was to transport him. The presiding judge on the King's Bench at that time was a brilliant jurist who has been described as the "father of modern commercial law," Lord Mansfield. As set forth in a recent account of the Somerset case, "Let the Heavens Fall," by Stephen Wise, 18th Century England had become a great commercial power, and her merchants sold goods and services throughout the world. The

antiquated British Common Law was based on decisions and customs from previous times and did not address many of the legal questions that were arising out of international commercial transactions.

It fell to Mansfield and his colleagues to help construct a legal regime through their rulings that would incorporate practices and procedures that would protect the rights of all of the parties involved. To further that goal, Mansfield often sought advice in court from merchants who were referred to as "Mansfield's jurors". Mansfield was also a formidable presence in his court. It was said that if he thought that an advocate had talked long enough he would begin to read a newspaper.

When one advocate told him that he was going to have to throw away all of his law books because the decision that Mansfield had just issued was without legal precedent, Wise relates how his Lordship replied that it was "a pity to throw away books that had never been read."

When Mansfield received the writ, he ordered that James Somerset be brought before him and then had him released over the objections of the barrister who had been retained by Stewart to represent his interests in the proceeding.

In a series of arguments that were made on the case, Stewart's representa-

tives argued that their client had purchased Somerset pursuant to a bill of sale that constituted a valid contract and that Stuart had the right to enter to another contract selling Somerset, and that Lord Mansfield should honor those contracts and let Somerset be sent to Jamaica. They also pointed out that while English law did not recognize slavery, it was in fact legal in the American colonies and in Jamaica, and that British law recognized the validity of contracts that were in accordance with the laws of the states where they were made.

The Caribbean colonies and the sugar and coffee that they produced was a major source of the wealth that was flowing into England at that time. Some British subjects who had interests in those colonies had bought slaves there and had brought them back to England, and a ruling on behalf of Somerset would set a precedent that would wreak havoc on them, Stewart's barristers asserted. The Barristers who appeared on behalf of Somerset argued that since the British Parliament had never authorized the enslaving of

one person by another, Somerset became a free man when he first landed on British soil, and that he had not entered into an agreement to be in the service of James Stewart. His former owner had no legal claim to him.

Mansfield subsequently issued a ruling that is referenced in all accounts of the development of human rights that ordered Somerset be released because there was no enactment of the British Parliament that permitted slavery.

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

