

# OKLAHOMA BAR JOURNAL

Volume 80 ♦ No. 1 ♦ January 10, 2009



Meet 2009  
OBA President  
Jon K. Parsley

## Meet Your Bar Association

### ALSO INSIDE

- What You Need to Know about New HB 2639
- Oklahoma as *Lex Mercatoria*?
- Oklahoma Judicial Immunity
- The New Broader Americans with Disabilities Act



OBA/CLE



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COMING SOON

Produced by OBA/CLE In association with OBA/MCLE

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LEGALSPAN

4.2.09





## OETA Festival Volunteers Needed

OBA members are asked again this year to help take pledge calls during the OETA Festival to raise funds for continued quality public television.

- Thursday, February 5
- 5:45 - 11 p.m.
- OETA studio at Wilshire & N. Kelley, Oklahoma City dinner & training session
- recruit other OBA members to work with you

For 30 years OETA has provided television time as a public service for the OBA's Law Day "Ask A Lawyer" program. By assisting OETA, we show our appreciation. It is also a highly visible volunteer service project.

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## Attention OETA Donors

Don't forget to call  
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Thursday, Feb. 5  
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To keep the OBA at  
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For 30 years, OETA has  
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as a public service for  
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# TWELVE GOOD REASONS TO TEST YOUR CASE.



A jury can surprise you. Not always in a good way.

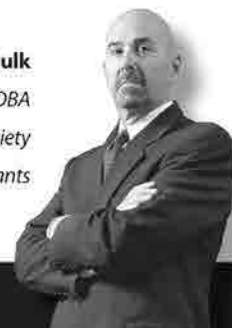
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## THEME: MEET YOUR BAR ASSOCIATION

Cover photo: Newly Renovated Board Room at the  
Oklahoma Bar Center.  
Photographer: Melissa Brown

# contents

January 10, 2009 • Vol. 80 • No. 1



pg. 7  
NEW OBA PRESIDENT

## FEATURES

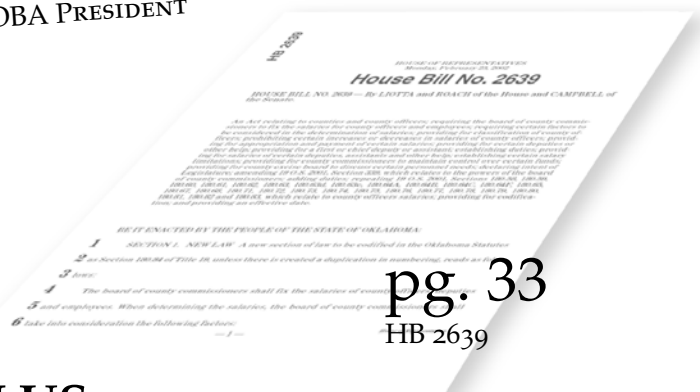
- 7 OBA PRESIDENT JON K. PARSLEY
- 11 OBA OFFICERS AND BOARD OF GOVERNORS
- 18 OBA DEPARTMENTS AND THE MEMBER SERVICES THEY PROVIDE
- 27 OBA MEMBERSHIP BENEFITS
- 32 OBA WEB SITES: WHAT INFORMATION DO THEY PROVIDE?



pg. 32  
OBA ON THE WEB

## DEPARTMENTS

- 52 FROM THE EXECUTIVE DIRECTOR
- 54 LAW PRACTICE TIPS
- 57 ETHICS/PROFESSIONAL RESPONSIBILITY
- 58 OBA BOARD OF GOVERNORS ACTIONS
- 61 OKLAHOMA BAR FOUNDATION NEWS
- 64 ACCESS TO JUSTICE
- 66 YOUNG LAWYERS DIVISION
- 67 CALENDAR
- 69 FOR YOUR INFORMATION
- 71 BENCH AND BAR BRIEFS
- 74 IN MEMORIAM
- 65 EDITORIAL CALENDAR
- 80 THE BACK PAGE



## PLUS

- 33 WHAT YOU NEED TO KNOW ABOUT NEW HB 2639: THE 'NONTTESTAMENTARY TRANSFER OF PROPERTY ACT'  
By Julie Bushyhead
- 36 OKLAHOMA AS *LEX MERCATORIA*?  
By Jeffrey S. Wolfe
- 45 JUDICIAL IMMUNITY AND THE OKLAHOMA JUDGE  
By D. Michael Haggerty II
- 49 LABOR AND EMPLOYMENT LAW SECTION: THE NEW BROADER AMERICANS WITH DISABILITIES ACT  
By Mary L. Lohrke and Stephanie Manning Johnson

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Oklahoma Bar Foundation (405) 416-7070

# EVENTS CALENDAR

## JANUARY 2009

- 13 **Hudson Hall Wheaton Inn Pupilage Group Four**; 5:30 p.m.; Federal Building, 333 West Fourth St.; Contact: Michael Taubman (918) 260-1041  
**OBA Mock Trial Committee Meeting**; 5:45 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Judy Spencer (405) 755-1066
- 14 **Oklahoma Bar Foundation Meeting**; 8:15 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Nancy Norsworthy (405) 416-7070
- 15 **OBA Bench & Bar Committee Meeting**; 11:30 a.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Jack Brown (918) 581-8211  
**Supreme Court Chief Justice and Vice Chief Justice Swearing In**; 2 p.m. Supreme Court Courtroom, State Capitol; Contact: John Morris Williams (405) 416-7000
- 19 **Martin Luther King Jr. Day** (State Holiday)
- 20 **Death Oral Argument**; James T. Fisher; D-2005-460; 10 a.m.; Homsey Family Moot Courtroom, Oklahoma City University
- 21 **Ruth Bader Ginsburg American Inn of Court**; 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Julie Bates (405) 691-5080
- 22 **OBA Law-related Education Supreme Court Teacher and School of the Year Luncheon**; Oklahoma Bar Center, Oklahoma City; Contact: Jane McConnell (405) 416-7024
- 23 **OBA Board of Governors Meeting**; 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: John Morris Williams (405) 416-7000  
**Board of Bar Examiners Meeting**; 9:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Dana Shelburne (405) 416-7021  
**OBA Board of Governors Swearing In**; 10 a.m.; Supreme Court Courtroom, State Capitol; Contact: John Morris Williams (405) 416-7000  
**OBA Mentor Committee Meeting**; 2 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: David Allen Poarch Jr. (405) 325-0702
- 24 **OBA Law-related Education We the People Program State Finals**; 9 a.m.; State Capitol; Contact: Jane McConnell (405) 416-7024  
**OBA Young Lawyers Division Committee Meeting**; 3:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Rick Rose (405) 236-0478
- 30 **Oklahoma Bar Foundation Trustee Meeting**; Tidal School Vineyard; Drumright, Oklahoma; Contact: Nancy Norsworthy (405) 416-7070

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

The Oklahoma Bar Association's official Web site: **[www.okbar.org](http://www.okbar.org)**

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*In front of his law  
office in Guymon.*



*Jon K. Parsley*



*Jon (fourth from the left)  
with his college debate  
squad the year he placed  
third at the national debate  
tournament.*



# Meet Your Bar Association

## Guymon Attorney Jon K. Parsley to Serve as 2009 OBA President

Jon was born and raised in Guymon. He has lived there all of his life with the exception of the four years he lived in Edmond for college and the three years he lived in Norman for law school.

### EDUCATION

Jon graduated from Guymon High School in 1987. While in high school he was very active in speech and debate. His senior year of high school, he was recognized as one of the best debaters in the state. He earned a full ride debate scholarship at Central State University in Edmond, spending all four years in college traveling the country debating. Jon and his partner placed third at the National Debate Tournament in 1991. At that time, it was one of the largest debate tournaments ever held. Jon was part of the squad that won the debate national championship the prior year.

"Debating in high school and college was very important to my decision to become a lawyer. I was lucky enough to have a high school debate coach and a college debate coach who became two of my main mentors in life," Jon said. He graduated from Central State University in 1991 with a bachelor of arts in political science with a double minor in history and sociology. Jon was then admitted to law school at the University of Oklahoma College of Law, where he obtained his juris doctorate in 1994.

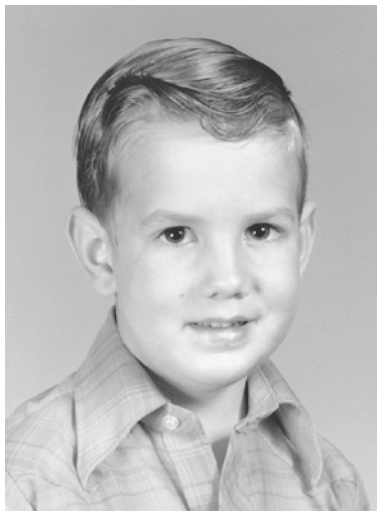
### LEGAL CAREER

He returned to his lifelong home of Guymon to practice with David K. Petty in 1994. "I had planned on working at one of the large firms in Oklahoma City after graduation. As with most people, I had stated I never wanted to move

back home. Mr. Petty contacted me and the more we talked, the more it made sense for me to practice law in Guymon." Jon practiced with the Law Offices of David K. Petty for about nine years. In 2003, he opened his own office and has been engaged in the general practice of law ever since. "I was so blessed to have had the opportunity to work with Mr. Petty. He taught me how to practice law the right way. He is a master attorney."

Jon has a varied practice and does not specialize in any particular area. He has an emphasis in litigation both as a plaintiff's attorney and for the defense. He handles criminal cases, divorces, probates, real

estate transactions, and anything else that comes in the door. "Practicing in a small town lends itself to a very general practice. The practice of law in Guymon is wonderful. My fellow attorneys are a very congenial group, and the judges as well as the court clerks and other



*Jon at 4 years old.*

# Personal Trivia

**Ideal vacation spot:**

Waikiki Beach, Hawaii

**Most prized possession:**

A globe given to me by my father

**Last concert you attended:**

Billy Joel

**What song always gets stuck in your head?**

"Who Let the Dogs Out"

**If I weren't a lawyer, I'd be a:**

Carpet layer

**Favorite movie quote:**

"We came. We saw. We kicked its \*ss." *Ghostbusters*

**Favorite hobby:**

Playing cards

**Do you have any pets?**

No pets

**What do you have set as your home page?**

MSN

**What is the best Halloween costume you have ever worn?**

George Jetson

**What's the best thing about living in Guymon?**

The people. Everyone is really nice here.

**Distance from OKC to Guymon:**

About 270 miles

**Time it takes to drive from OKC to Guymon:**

4 hours (if I hurry)

courthouse personnel are top notch in this area. It is a real joy to practice law here," he said.

## FAMILY

Jon may be the first OBA president who is not married and has no children.

Unfortunately, OBA records cannot confirm that fact.

He is the youngest of a large family of six children. Growing up, he worked in his father's carpet business. Two of his sisters also live in Guymon. One sister lives in Edmond. He also has a sister in Tulsa, and his brother lives in Houston. Jon's father, Ed Parsley, passed away last year from Parkinson's disease and dementia. His mother, Gail Parsley, still lives in Guymon. Jon has 10 nieces and nephews – and even one great niece. "My family is very important to me. That's an advantage to practicing in my hometown, so that I can help with family issues as they arise."

## HOBBIES

Jon enjoys fishing, snow skiing, traveling, movies and playing Texas hold 'em poker. "It's hard to list a whole lot of hobbies because work and bar activities have kept me super busy over the past few years," he said.



*2003 OBA President Melissa DeLacerda presents Jon with the Outstanding Young Lawyer Award.*



*The Parsley Family – (front row, from left) sister Jo Ann, his mother Gail, Jon, father Ed and (back row) sisters Julie, Janet, Toni and brother Eddie.*

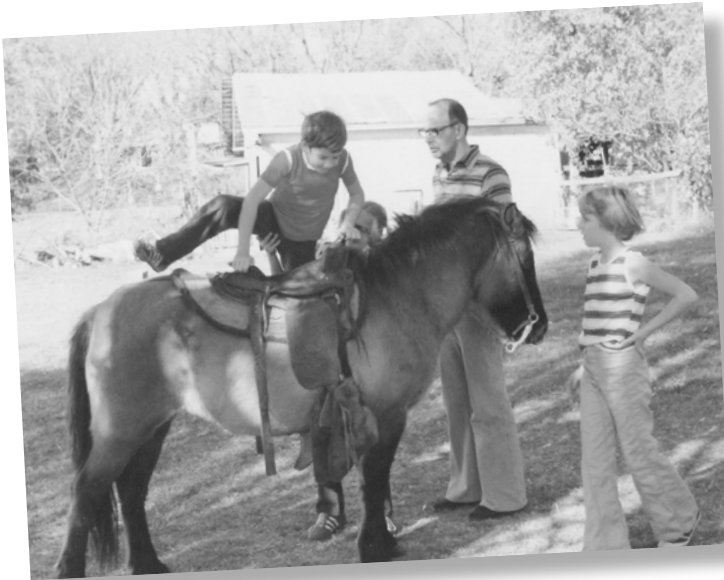
## COMMUNITY SERVICE

Active is a good adjective to describe his community involvement. He is a member of the chamber of commerce and served on its board of directors. He is a graduate of the Leadership Guymon program. Jon has been very interested in a local children's sports program called Kids Incorporated. He also helped in raising hundreds of thousands of dollars for the construction of two gymnasiums that are dedicated for use by children in the community.

## OBA ACTIVITIES

He began active involvement in the bar association very early in his career. Within his first year in practice, he ran for a seat on the Young Lawyers Division board. He became the YLD chairperson in 2002, and as the chair of the YLD, he served a year on the OBA Board of Governors. Then in 2003, Jon successfully ran for the Board of Governors seat representing District Four and served from 2004 to 2006. He ran for president-elect in 2007 and was elected to the position. He served on the Board of Governors in 2008 as the president-elect and became the OBA president on Jan. 1, 2009.

"Even though I am young, I have been involved in the governance of our association for many years. David Petty, having been OBA president in 1987, taught me the importance of bar work; and I aspired to become president while working for him," he said. Jon has also been involved in numerous OBA committees and task forces.



*Saddling up to ride a horse named Penny.*

## Trivia cont'd

### **Favorite food:**

Steak and lobster

### **Favorite book:**

I don't read a lot for enjoyment.

### **My worst habit is:**

Cussing

### **Why did you choose to go to CSU for school?**

I got a full ride debate scholarship there.

### **If a movie was made of your life, who would play you?**

Vince Vaughn

### **Ten years from now, I'll be:**

Living in Guymon practicing law

### **Nobody knows I:**

Play the harmonica while driving

### **What are you most proud of having accomplished in your professional career?**

Becoming president of the Oklahoma Bar Association

### **What inspired you to become a lawyer?**

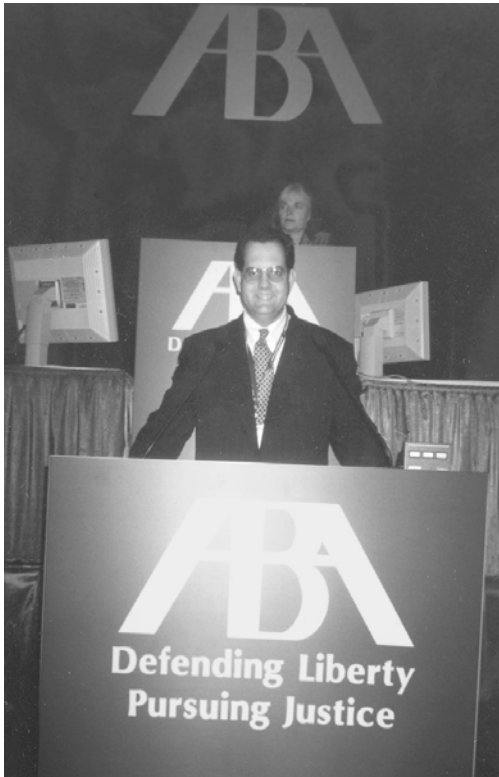
My mom was the long-time bailiff for Judge Ogden here in Texas County, and I would watch trials as a child.

### **What did you want to be when you were a kid?**

A lawyer

### **Best advice I could give a new lawyer is:**

Your integrity is the most important thing you have. Once lost, it can never be regained.



*At the podium at the ABA House of Delegates in 2002.*



*Jon rides an old bike his dad bought at a garage sale.*

## ABA ACTIVITIES

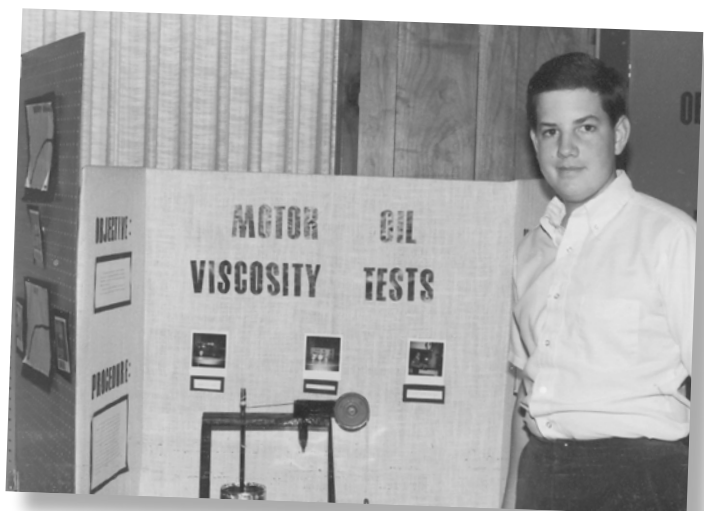
Jon served as one of the Oklahoma delegates to the ABA House of Delegates in 2002, 2003 and 2008. He will also serve as an ABA delegate in 2009 and 2010. Jon was very active in ABA Young Lawyers Division functions. He served as a YLD delegate for many years. Jon also attended the ABA's Bar Leadership Institute in Chicago last year.

## GOALS FOR 2009

The OBA's new president has plans for much to be accomplished during the coming year. An early priority is finding the right person to fill the OBA's vacant general counsel position. He has also planned an OBA CLE cruise on Carnival Cruise Lines for July 11-16. It's a five-day cruise out of Galveston with ports in Progreso and Cozumel.

The OBA will be having a technology fair, tentatively set in September. Jon said, "This tech fair will be new for the OBA. We are working on and hopeful of having several presenters from the ABA tech fair. It will be a great way to showcase some of the new technology in the newly renovated bar center." He is in the process of setting the speakers for the Solo and Small Firm Conference, June 11-13 at Tanglewood Resort on Lake Texoma.

The OBA Law Day theme this year is the legacy of Lincoln, which is a tribute to the 200th anniversary of the birth of Abraham Lincoln. The OBA recently conducted its first YouTube contest as part of the Law Day activities. He is planning to restructure the OBA Annual Meeting and add several different events with the hope of boosting attendance. "I want 2009 to be the best year ever for the OBA," he said.



*Jon in the ninth grade with his regional champion science fair project.*



# Meet Your Bar Association OBA Officers and Board of Governors



**Allen  
Smallwood**

PRESIDENT-ELECT  
*Tulsa*

- Ideal vacation spot: Grand Lake, Oklahoma
- Most prized possession: 230-year old *Baltimore Sun* newspaper
- Last concert you attended? I can't remember.
- Favorite movie quote: "God how I do love being king." -Peter O'Toole as Henry II in *Lion in Winter*

- Favorite hobby: Golf
- What song always gets stuck in your head? None
- Do you have any pets? Yes, seven cats: Fanny, Fraidy, Feisty, Truman, Beau, Gus and Otto. One dog, Sissy.
- What do you have set as your home page? OSCN.net
- What is the best Halloween costume you have ever worn? Birthday suit
- If I weren't a lawyer, I'd be a: Policeman/fireman
- What interested you about being part of the Board of Governors? Board service in 2002-2004



**Bill Conger**

PAST PRESIDENT  
*Oklahoma City*

- Background: Born and raised in Shreveport, La.; moved to Bartlesville as a junior in high school, met Sherry Martin, who became wife; we've been married for 44 years.
- Education: B.A. – OU, J.D. – OU
- Ideal vacation spot: Anywhere there's a beach and water
- Most prized possession: Elvis Presley's greatest hits
- Last concert you attended? Elton John/Billy Joel
- Favorite movie quote: "Stand up, Scout, your father's passing by." — *To Kill a Mockingbird*
- Favorite hobby: Boating and reading
- What song always gets stuck in your head? The "Five-Dollar Footlong" commercial from Subway
- Do you have any pets? My best friend Max, a Labrador retriever
- What do you have set as your home page? Law.com
- What is the best Halloween costume you have ever worn? G.I. Joe
- If I weren't a lawyer, I'd be a: History professor
- What interested you about being a part of the Board of Governors? Service and giving back to our profession



**Linda Thomas**  
VICE PRESIDENT  
*Bartlesville*

Background: I was born in San Antonio, Texas, while my father was in the Air Force. I lived briefly in Stillwater, grew up in Tulsa, moved to Arkansas while in high school, married and went to college there. My three children were born in Arkansas, and we moved back to Bartlesville in 1990 when I decided to go to law school at TU.

I was a school teacher for 20 years before becoming an attorney.

- Education: I received my undergraduate degree in speech pathology from Ouachita Baptist University (Arkadelphia, Ark.) in 1977 and my J.D. from TU in 1994.
- Ideal vacation spot: Anywhere warm
- Most prized possession: Family heirlooms
- Last concert you attended: Sam Harris Christmas concert
- Favorite hobby: Home decorating
- What do you have set as your home page? Picture of my grandchildren, Adam and Abigail.
- What is the best Halloween costume you have ever worn? Circus clown
- If I weren't a lawyer, I'd be a: Retiree and full-time grandmother
- What interested you about being a part of the Board of Governors? I was honored when Jon Parsley asked me to run for vice president during his presidency, and glad to stay involved with the governance of the OBA. It also gives me the opportunity to stay in touch with friends and colleagues I met while previously serving on the board.



**Jack Brown**  
GOVERNOR AT  
LARGE  
*Tulsa*

Background: Born and raised in Miami, Okla., I have been in private law practice for over 20 years concentrating on business law and litigation, individual and corporate trusts, estate planning and probate. In 1994, I joined the law firm of Jones, Gotcher & Bogan PC where I currently serve as the hiring partner and vice president. My service includes two

terms as president of Legal Aid Services of Oklahoma, and have also served on the Board of Governors for the ABA, OBA and the Tulsa County Bar Association. I am currently a four-year co-chair of the OBA Bench & Bar Committee, and in 2009 will become the Chair of the ABA Judicial Division. ABA Judicial Division Lawyers Conference; Chair.

- Education: B.A. – journalism, OU 1979; J.D. – TU College of Law 1984
- Ideal vacation spot: Anywhere in Europe
- Most prized possession: My law degree
- Last concert you attended: Carrie Underwood
- Favorite movie quote: "If you just learn a single trick, Scout, you'll get along a lot better with all kinds of folks. You never really understand a person until you consider things from his point of view... Until you climb inside of his skin and walk around in it." - Atticus Finch in *To Kill a Mockingbird*
- Favorite hobby: Reading and exercising
- What song always gets stuck in your head? Anything by the Beatles
- Do you have any pets? Two dogs: Zoe, bichon frise; Jasmine, golden retriever
- What do you have set as your home page? The Weather Channel
- What is the best Halloween costume you have ever worn? Batman
- If I weren't a lawyer, I'd be a: Broadcast journalist
- What interested you about being a part of the Board of Governors? I've been fortunate to serve in leadership positions in both service to the public and legal profession. As a member of the board, I'm able to utilize my background and experiences to make responsible policy and budget decisions for our association.



## Martha Rupp Carter

GOVERNOR -  
DISTRICT NO. SIX  
*Tulsa*

■ Background: Born in Abilene, Texas; raised in Perry; married with two daughters; living and working in Tulsa since law school graduation; government lawyer

■ Education: OSU, bachelor of arts with honors in English; OU College of Law, J.D.

■ Ideal vacation spot: Any beach that's sunny and warm with good sand, a beautiful view, and

reasonable access to a few interesting sites, eateries, plenty of good books and sun screen

- Most prized possession: The book I'm reading at the time
- Last concert you attended: James Taylor
- Favorite movie quote: "Don't shoot until you can see the whites of their eyes."
- Favorite hobby: Reading/tennis/quilts
- What song always gets stuck in your head? "Yellow Submarine"
- Do you have any pets? Dog – Annie, Australian Cattle Dog; Cat – Teddy, no idea; Rabbit – Oreo, the kind with long ears; Mutant Frog – no name and no idea
- What do you have set as your home page? Home page...? Just kidding – Tulsa City-County Health Department
- What is the best Halloween costume you have ever worn? Since I haven't worn one since I went trick-or-treating, and I created the costumes myself, all of them were favorites and hard to describe.
- If I weren't a lawyer, I'd be a: Either an award-winning novelist or a rock star, which may partially explain why I'm still a lawyer
- What interested you about being a part of the Board of Governors? Working with attorneys all over the state to further the rule of law and the legal profession



## Charles Chesnut

GOVERNOR -  
DISTRICT NO. ONE  
*Miami*

■ Background: Born and reared in Miami; Married to Shirley Murphy Chesnut; Four children: Matthew 22, Mark 20, Michael 18 and Laura 15.

■ Education: B.B.A. – OU 1974; J.D. – OU 1977

■ Ideal vacation spot: Eleuthera (in the Bahamas)

■ Most prized possession: My Wal-Mart reading glasses

- Last concert you attended: Miami High School Choral Concert at The Coleman Theatre in Miami, December 2008 (to hear my daughter sing)
- Favorite movie quote: "Human nature, Mr. Allnut, is what we were put on this earth to overcome" -Katharine Hepburn to Humphrey Bogart in *The African Queen* [probably because it's endlessly fascinating and entertaining watching people (including me) attempt to deal with it]
- Favorite hobby: Trying to outwit the stock market
- What song always gets stuck in your head? The last one that I heard
- Do you have any pets? Yes – A dog, Tara, part Staffordshire Terrier, part ???; Bob, the Bearded Dragon (not a lot of personality); Cartman, an African Clawed Frog (appears to be very well fed)
- What do you have set as your home page? Yahoo
- What is the best Halloween costume you have ever worn? A yellow leisure suit - I was a disco dancer.
- If I weren't a lawyer, I'd be a: Fund manager for a mutual fund
- What interested you about being a part of the Board of Governors? I wanted the opportunity to work on behalf of and serve the lawyers of this state, and I wanted to see how the OBA really works.



## **Cathy Christensen**

GOVERNOR –  
DISTRICT NO. THREE  
*Oklahoma City*

Background: I was born in Norristown, Penn., and lived there until 1974 when my parents decided to move the family to Tulsa. I'd never leave Oklahoma.

Education: OSU for my undergraduate degree followed by OCU School of Law

Ideal vacation spot: Cape Cod or Martha's Vineyard

Most prized possession: My mother's Bible or all the photo albums of my children

Last concert you attended: James Taylor at Red Rocks Amphitheatre, Morrison, Colo.

Favorite movie quote: Forrest Gump: "What's my destiny, Mama?" Mrs. Gump: "You're gonna have to figure that out for yourself, son."

Favorite hobby: Horseback riding or playing golf with my sons.

What song always gets stuck in your head? "Somewhere Over the Rainbow"

Do you have any pets? Our family dog is Sadie. She is a bichon with very bad allergies. Our fancy mouse, Ace, died in November and our two nameless goldfish died in December.

What do you have set as your home page? AOL

What is the best Halloween costume you have ever worn? Spy for the CIA or private investigator

If I weren't a lawyer, I'd be a: Volunteer layperson on one of the many bar committees just for fun!!

What interested you about being a part of the Board of Governors? I wanted to be an active part of the Oklahoma Bar Association and the many good things the OBA does for our community. I am honored to serve the attorneys in my district and represent their interest in OBA activities and decisions.



## **Donna Dirickson**

GOVERNOR –  
DISTRICT NO. FOUR  
*Weatherford*

Background: Born in San Diego, Calif., while my father was stationed there in the Navy. My family moved around a bit and landed in Weatherford during my junior high days; graduated from Weatherford High School but spent my junior year in Warialda, Australia, doing a rotary exchange program. I am married and have one daughter who is in the first grade.

Education: Undergraduate degree from Southwestern Oklahoma State University in Weatherford and attended law school at OCU.

Ideal vacation spot: Anywhere with my husband and daughter

Last concert you attended: Barry Manilow when I was in the 9th grade

Favorite movie quote: I'm not a movie person, so I'm at a loss on this one.

Favorite hobby: Reading, anything.

What song always gets stuck in your head? Whatever my daughter was listening to on Radio Disney before I drop her off at school each morning!

Do you have any pets? Yes, his name is Roscoe and he is a bichon frise. If you don't like giving a dog a bath, don't get one because they are all white and need a bath all the time!

What do you have set as your home page? MSNBC

What is the best Halloween costume you have ever worn? I don't ever remember dressing up for Halloween, although I'm sure I probably did when I was young.

If I weren't a lawyer, I'd be a: Something in the medical field probably.

What interested you about being a part of the Board of Governors? Something I hadn't done before and it was another area of service I could give to the bar association.





## Steven Dobbs

GOVERNOR -  
AT LARGE  
*Oklahoma City*

■ Background: Raised in orphanages in Ohio and Missouri, USMC in Viet Nam, started Dobbs & Middleton in 1993, current chair of the professional responsibility tribunal, wonderful wife Lisa who is the CFO of the OKC Red Cross; two great children, Sara, her husband Craig and our grandson Ty live in Kansas City; Bryan and his wife Jessica are in OKC; was a city manager before starting law school.

- Education: B.A. – University of Missouri, master's in public administration – University of Missouri, J.D. – OU College of Law
- Ideal vacation spot: Any Palm Springs golf course during the winter
- Most prized possession: Picture of the USS Oklahoma City autographed and presented to me by the captain
- Last concert you attended: Neil Diamond
- Favorite movie quote: "Your heart is free. Have the courage to follow it." - *Braveheart*
- Favorite hobby: Golf
- What song always gets stuck in your head? "Bad to the Bone"
- Do you have any pets? Leo, a rescued 2-year-old golden retriever – expect to rescue his brother in February
- What do you have set as your home page? Refdesk.com
- What is the best Halloween costume you have ever worn? W.C. Fields
- If I weren't a lawyer, I'd be a: Red Cross volunteer
- What interested you about being a part of the Board of Governors? Wanted to be a part of returning a positive image of lawyers to the general public.



## Mark Hixson

GOVERNOR –  
DISTRICT NO. NINE  
*Yukon*

■ Background: Born and raised in Oklahoma City. Live and practice in Yukon, Canadian County, Oklahoma. Three boys, 9, 6 and 1. Married to the beautiful Shaa Hixson.

■ Education: Catholic parochial school brat, Bishop McGuinness High School, Conception College and OU Law.

■ Ideal vacation spot: My couch

- Most prized possession: My grandfather's watch fob
- Last concert you attended: The Nutcracker last month (it is as close to a concert as I get)
- Favorite movie quote: I actually used this in a trial once: "Emotion has always been the enemy of true justice." -Harvey Two Face in *Batman Forever*
- Favorite hobby: My boys
- What song always gets stuck in your head? Christmas carols
- Do you have any pets? Brandi, an 11-year-old Jack Russell terrier
- What do you have set as your home page? OSCN.net
- What is the best Halloween costume you have ever worn? Vampire
- If I weren't a lawyer, I'd be a: Pilot
- What interested you about being a part of the Board of Governors? I have been involved with the bar for some time, and it seemed like the next logical step.



## Jerry McCombs

GOVERNOR –  
DISTRICT NO. TWO  
*Idabel*

■ Background: I was born, raised and educated through high school in Idabel. I have been married to the same long-suffering woman for almost 39 years, have two grown (age-wise anyway) children and four angelic grandchildren.

■ Education: B.A. in English (which is a great surprise to

anyone who has heard me speak) from Central State University and a J.D. from OCU (which amazes many of the folks who knew me in my formative years).

■ Ideal vacation spot: Laying beside the swimming pool in my backyard

■ Most prized possession: The 1971 Ford Mustang Convertible that Joyce and I bought new in 1970

■ Last concert you attended: Willie Nelson's memorable performance at an indoor rodeo arena in DeKalb, Texas, in 1975

■ Favorite movie quote: "You are a wise man Van Helsing – for one who has not yet lived even a single lifetime!" - From Bela Lugosi's first *Dracula* movie

■ Favorite hobby: Sooner football with golf a close second

■ What song always gets stuck in your head? K9 Advantix commercial jingle: "There ain't no bugs on me" as sung by a yellow lab puppy

■ What do you have set as your home page? OKNewsBAR

■ What is the best Halloween costume you have ever worn? A "slightly" overweight Indiana Jones

■ If I weren't a lawyer, I'd be a: Resident of a poorhouse. No, seriously folks, a heavy equipment operator on a pipeline somewhere in the world

■ What interested you about being a part of the Board of Governors? I wanted to give back a little to the organization that has allowed me to make a good living doing something that I love to do every day.



**Lou Ann Moudy**

GOVERNOR –  
DISTRICT NO. SEVEN  
*Henryetta*

■ Background: Family from northeastern Oklahoma – Miami, Commerce, Vinita, raised in Henryetta, returned and opened my practice here in 1996.

■ Education: East Central University, OU Law School

■ Ideal vacation spot: Can't beat my cousins' lake houses – no airport hassles, great food, friends, family and the price is right

■ Most prized possession: Opal necklace I

bought while an exchange student in Australia... for all the memories it represents.

■ Last concert you attended: Last one I paid to attend – Eagles in OKC – I am not including all those middle and high school choir concerts we have all had to endure

■ Favorite movie quote: I can't ever remember the great lines.

■ Favorite hobby: Working in the flower beds

■ What song always gets stuck in your head? The last one played

■ Do you have any pets? Two office cats – Miss Angel DeVill and Tinkerbelle – each are of the elite dipsy dumpster breed.

■ What do you have set as your home page? Yahoo

■ If I weren't a lawyer, I'd be a: Landscaper/horticulturist

■ What interested you about being a part of the Board of Governors? I wanted to serve the bar association and work with a great group of lawyers and staff.



**Deborah Reheard**

GOVERNOR –  
AT LARGE

■ Background: Born in Vinita. Raised on a dairy farm. First career as newspaper editor.

■ Education: TU, J.D. 1988

■ Ideal vacation spot: New Zealand or Hawaii

■ Most prized possession: My mother's wedding ring which is now my wedding ring

■ Last concert you attended: B.B. King

■ Favorite movie quote: "I'm your huckleberry." -Doc Holliday in *Tombstone*

■ Favorite hobby: Gardening

■ What song always gets stuck in your head? "Deck the Halls" especially the "FaLaLaLaLa LaLaLaLa" part

■ Do you have any pets? Zeb and Maxie, Parson Russell Terriers; Scooter, Mountain Feist; Tater the Rat Terrorist

■ What do you have set as your home page? OKNewsBAR

■ What is the best Halloween costume you have ever worn? A trash bag with fake garbage sticking out of it – I was "A Trashy Woman."

If I weren't a lawyer, I'd be a: Veterinarian  
 What interested you about being a part of the Board of Governors? The opportunity to be involved at the decision-making level for issues important to the practice of law.



**Peggy Stockwell**

GOVERNOR –  
 DISTRICT NO. FIVE  
*Norman*

Background: I was born in Oklahoma City; moved to Norman at age 5; been here ever since.

Education: B.A. OU 1978; J.D. OU 1983

Ideal vacation spot: Paris

Most prized possession: 1971 VW Convertible

Last concert you attended: Tony Bennett

Favorite movie quote: "Frankly my dear, I don't give a damn."  
 - *Gone With the Wind*

Favorite hobby: Art collecting

What song always gets stuck in your head? "You Don't Own Me"

Do you have any pets? Winston – boxer, Izze – tabby cat

What do you have set as your home page? Google

What is the best Halloween costume you have ever worn? Tin Man

If I weren't a lawyer, I'd be an: Artist (painter)

What interested you about being a part of the Board of Governors? I wanted to be of service and give back to the bar association because it has given me so much over the years.



**Jim Stuart**

GOVERNOR –  
 DISTRICT NO. EIGHT  
*Shawnee*

Background: Born and raised in Shawnee; married to Kathy in 1977; three daughters: Emily (teacher in Dallas), Rachel (4th year at UCO) and Sarah (2nd year at OU); partner with Stuart & Clover (est. 1904) since 1979.

Education: Graduated from Shawnee High School in 1971; B.B.A. from UCO in 1975; J.D. from TU in 1978

Ideal vacation spot: Playa del Carmen, Mexico

Most prized possession: Presidential pen given to me by Richard Nixon at Boys Nation in 1970

Last concert you attended: Three Dog Night in 2008

Favorite movie quote: "I'll have what she's having." - *When Harry Met Sally*

Favorite hobby: Family genealogy

What song always gets stuck in your head? "Story in Your Eyes" - The Moody Blues

Do you have any pets? Yes, Bella, a chihuahua

What do you have set as your home page? iGoogle

What is the best Halloween costume you have ever worn? We did the "big butt family" from Saturday Night Live

If I weren't a lawyer, I'd be a: School teacher

What interested you about being a part of the Board of Governors? Being able to give back to my profession.



**Rick Rose**

GOVERNOR – YLD  
 CHAIR  
*Oklahoma City*

Background: Have lived in Edmond my whole life so far.

Education: Bachelor's degree — Southern Nazarene University; Oklahoma City University School of Law

Ideal vacation spot: New Mexico

Most prized possession: My coin collection

Last concert you attended: Green Day

Favorite movie quote: "Be the ball"  
 - *Caddyshack*

Favorite hobby: Gardening

What song always gets stuck in your head? "You May Be Right" - Billy Joel

Do you have any pets? Dogs: Roxanne, got her at a garage sale (with the coaxing of my then 4-year-old son); Red, I found him and his three sisters at 7-11; Bobo, my wife got from her Mom; Cat: Daisy, she brings us live snakes to play with.

What do you have set as your home page? CNN

What is the best Halloween costume you have ever worn? Austin Powers

If I weren't a lawyer, I'd be a: Chef – I love to cook

What interested you about being a part of the Board of Governors? The opportunity to serve my bar association and be a part of the process.

# Meet Your Bar Association

## OBA Departments and the Member Services They Provide

**V**olunteer leaders may be the chief engineers who keep any professional association on track, but it is the staff who provides the power to move forward. Member services are an essential part of the Oklahoma Bar Association. Learn more about what each department offers members, and put a name together with a face in photos of the employees who work for you — bar association members.

### *Administration*

The responsibilities of the Administration Department are multi-faceted, but its primary emphasis is handling finances, human resources, Annual Meeting planning, bar center operations and maintaining official membership information. Specific duties include:

- scheduling bar center meeting rooms
- coordinating and scheduling meetings utilizing video conference equipment in Oklahoma City and Tulsa
- assisting committees and sections with mailings to their members
- providing mailing labels of bar members to committees and sections
- tracking expenditures for all committees and sections
- providing monthly committee and section accounting reports upon request
- ensuring the bar center interior and exterior facilities are maintained so members can take pride in their building

- maintaining and updating member roster information
- invoicing senior members and non-members for *Oklahoma Bar Journal* subscriptions
- managing the Legal Intern Program
- producing certificates of good standing for our members
- processing expense claims for OBA officers, YLD officers, and section and committee members



*ADMINISTRATION - (Front Row) Suzi Hendrix, Roberta Yarbrough, Wanda R. Murray, Jenny Barrett; (Back Row) Director Craig Combs, Durrel "Doc" Lattimore*



- managing OBA mail room and OBA office equipment
- contract negotiations with Annual Meeting hotels, scheduling and coordinating Annual Meeting events, exhibitors, and committee and section meetings
- accounting and budgeting for all departments
- investing association reserves
- management of employee benefit programs

**Phone: (405) 416-7000**

**Membership: (405) 416-7080**



*COMMUNICATIONS - Jeff Kelton, Director  
Carol Manning and Melissa Brown*

## Communications

The Communications Department has responsibility for the OBA's member communications and external public relations efforts. Areas of major emphasis are:

- publishing 34 issues of the *Oklahoma Bar Journal* every year
- managing the content of the OBA's main Web site to ensure its organization and up-to-date information
- assisting the Law Day Committee in accomplishing extensive Law Day statewide activities and community service projects that generate significant positive public recognition for the legal profession
- publishing the OBA Annual Meeting program and House of Delegates book and promoting award winners, the meeting itself and election results

## More specific duties that benefit members are:

- editing information submitted by and about bar members for the FYI and Bench & Bar Briefs section of the bar journal
- reviewing Web content submitted by committees and sections and assisting them with organization and content ideas
- publishing the monthly E-News for OBA members with e-mail addresses
- expediting information requests from the news media
- issuing news releases about association events
- assisting OBA committees, sections and divisions in publicizing their projects to both members and the media
- working with sections to publish short law articles related to the section's focus
- assisting sections and committees with placing and designing free ads in the bar journal to promote their activities to other members

The department serves as a liaison for one board and several committees and assists in accomplishing their goals. A summary of services provided to those groups are:

- working with the 10-member Board of Editors that reviews articles submitted and plans for future theme-related *Oklahoma Bar Journal* issues; once articles are approved for publication, the staff has charge of editing, proofreading and layout
- assisting the Communications Committee in its projects including overseeing the publication of 16 brochures on such topics as divorce, landlord tenant rights, advance directive and lawyers and legal fees; Brochures are distributed free as a community service to individuals, libraries, nonprofit organizations, etc., and staff handles the continuous demand for those materials to be mailed across the state

**Law Day Committee** — Communications Department staff members work closely with committee members in their efforts to promote Law Day, celebrated nationwide on May 1. Activities include:

- conducting statewide contests for Oklahoma students

- providing county Law Day chairpersons with both event and promotion ideas for county celebrations
- coordinating the statewide Ask A Lawyer community service project in which volunteer attorneys give free legal advice to people who call in
- producing public service announcements and other marketing strategies to promote the Ask A Lawyer free legal advice
- produce a one-hour, interview style TV program, in cooperation with OETA (the state's PBS affiliate) featuring lawyers and other experts discussing three legal topics

The department also assists the Awards Committee, Disaster Response and Relief Committee, Lawyers Helping Lawyers Assistance Program Committee and Young Lawyers Division.

**Phone: (405) 416-7004**



*CONTINUING LEGAL EDUCATION - (Back Row) Director Donita Douglas, Mark Schneidewent, Brandon Haynie and Heidi McComb; (Front Row) Susan Hall, Nina Anderson and Renee Montgomery*

## Continuing Legal Education

The most recent OBA Membership Survey established that more than 80 percent of our members identify OBA Continuing Legal Education as an important service to them—more than any other OBA service. The staff of OBA/CLE is honored that members hold that view and will continue to work with the aspiration of becoming an even more integral part of each member's legal life by providing the best, the most creative, the most timely and

the most practical in CLE programming and publications. OBA/CLE is a necessity, not a requirement!

Let us know what else you want and need because OBA/CLE wants to be your continuing legal education provider. Call CLE Director Donita Douglas at (405) 416-7028 with your ideas.

### Department services include

- developing and producing over 125 live seminars, webinars and webcasts throughout the state
- offering video replays of the live seminars
- developing and producing online video and mp3 audio seminars, including webcast seminars
- offering recent seminar publications, digital book chapters and CDs for sale to association members
- developing and producing the multi-track, multiple session CLE at the OBA Annual Meeting
- coordinating with the Management Assistance Program to plan the annual Solo and Small Firm Conference
- coordinating with the Management Assistance Program to plan the New Lawyer Experience seminar
- coordinating with the Women in Law Committee to plan the annual Women in Law Conference
- coordinating with OBA officers to plan leadership training for OBA members
- coordinating with various OBA sections in the planning of OBA/CLE section co-sponsored CLE seminars
- attracting and securing nationally-recognized experts to present continuing legal education programming to OBA members
- publishing volumes (non-seminar) to members to assist in their practice, including form books, practice manuals and treatises
- providing online registration for OBA/CLE to members

- applying attendance credit electronically to enable members to have an up-to-date view of accumulated OBA/CLE credit on [my.okbar.org](http://my.okbar.org)

- coordinating the 2009 OBA/CLE Cruise

**Phone: (405) 416-7006**

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



*LAW-RELATED EDUCATION - Debra Jenkins and Coordinator Jane McConnell*

## Law-related Education

The Law-related Education (LRE) Department of the Oklahoma Bar Association was established in 1989 to further the OBA's goals of increasing public service and enhancing public understanding of the law and the legal system. To that end, LRE endeavors to educate citizens in a constitutional democracy and to create an active, responsible citizenry.

LRE conducts programs independently and in partnership with nonprofits, civic organizations and educational groups. Programs include professional development for teachers and others in the civic community via institutions and workshops. Classroom materials are created and distributed for programs administered by LRE at no cost to educators.

LRE aims to join the education and law communities in its mission of fostering civic-mindedness. An understanding of the role of the law in society is essential to informed participation in democracy. Creating active citizens requires active civic education.

LRE is under the direction of Jane McConnell, Law-related Education coordinator and Debra

Jenkins, administrative assistant. Among the many programs and resources available are:

- **Lawyers in the Classroom:** Attorney guest presenters instruct students on topics in law, the Constitution, citizenship and the new INFORM (Information Now for Oklahomans Rejecting Meth) Program. Participating attorneys are trained in making presentations to K-12 students and provide a unique perspective on topics related to scheduled courses. Attorneys are provided reference lesson plans if desired.

- **Young Adult Guide:** "You're 18 Now — It's Your Responsibility!" Updated in spring 2007. This booklet explains the rights and responsibilities of adult citizens under U.S. and Oklahoma law. Approximately 13 areas of law are addressed, including consumer credit and contracts, criminal law and family law matters such as divorce and parental rights and responsibilities. A new Spanish edition is available in electronic and print format. Both guides are available free of charge and on the Web site at [www.okbar.org](http://www.okbar.org).

- **Pocket Constitutions:** These handy editions include the full text of the Constitution and Declaration of Independence. They are available for class-wide distribution and also free of charge.

- **Supreme Court Awards:** School of the Year and Teacher of the Year. These awards are given annually to those who develop creative, innovative approaches to civic education programming. Members of the Oklahoma Supreme Court recognize outstanding service by presenting honorees with awards and stipends in a ceremony held in the Supreme Court Courtroom.

- **Civitas:** An International Civic Exchange Program. The Civitas exchange program partners U.S. teachers and civic education leaders with their counterparts in countries with developing democracies. OBA/LRE participates in a partnership with Michigan, Colorado, the Czech Republic and Slovakia.

- **Lending Resources:** Materials are available on loan for four week check out. These resources include: Foundations of Democracy Series and the *State v. Bean* DVD (mock trial).

- **YLD High School Mock Trial Committee:** The LRE coordinator serves as the liaison to the committee. LRE staff supports Mock Trial

Coordinator Judy Spencer with efforts related to the rounds of competition that lead to the finals competition that determines Oklahoma's state champion, who advances to nationals.

- **The PACE Institute:** PACE (Programs Advancing Citizenship Education) guides educators through a focused examination of a topic in law-related education. During the week-long summer session, presenters provide both content and strategies to apply the subject in the classroom. Participants are required to develop lesson plans based on the selected topic, to be added to the LRE resource library and our Web page at [www.okbar.org/public/lre](http://www.okbar.org/public/lre). The institute's goal is to educate participants in a topic in citizenship education, to expose them to creative methods in presenting the subject matter to their students, and to encourage them to develop and share their own strategies in teaching law-related education. PACE is offered free of charge to educators. PACE is sponsored by the Oklahoma Bar Foundation.

- **We the People: Project Citizen:** This is a portfolio-based program for elementary through high school students. As a class, the students identify and study a public-policy issue and develop an action plan for implementing a policy change. The final project is a portfolio including a research binder and presentation boards displaying the group's efforts. Our state winning portfolio (Grades 5-8) will compete at the nationals in Philadelphia, PA in July.

- **We the People: The Citizen & The Constitution:** Students demonstrate their understanding of their rights and responsibilities as citizens by testifying in a simulated congressional hearing before panels of judges, which include, among other dignitaries, OBA/LRE committee members, concerning the values and principles found in the Constitution and its conception and development. The winning class will represent Oklahoma at the national competition in Washington, D.C., end of April.

- **PROS (Peers Responsible for Oklahoma Students):** PROS is a collaborative project of the Early Settlement Programs administered by the Supreme Court of Oklahoma, Administrative Office of the Courts and LRE. This school-based peer mediation program encourages young people to resolve conflicts in a positive and constructive manner.

Regional trainings will be held in September at the bar center.

- **Hatton W. Sumners Foundations of Democracy** — LRE Basic 101 Summer Teacher Training Institute will guide educators through a focused examination of K-12 curricular programs based on the four basic concepts fundamental to an understanding of politics and government; authority, privacy, responsibility and justice. This multi-disciplinary institute will draw upon such fields as political philosophy, political science, law, history, literature and environmental studies.

- **Representative Democracy in America** — This program is a national project to introduce citizens, particularly young people, to the representatives, institutions and processes that serve to realize the goal of a government of, by and for the people.

**Phone: (405) 416-7024**

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



*ETHICS COUNSEL - Manni Arzola and Ethics Counsel Gina Hendryx*

## **Ethics Counsel**

The Office of Ethics Counsel is a membership service available only to OBA members. It was created to assist members with conflict dilemmas, confidentiality questions, communication concerns and other ethical inquiries unique to

the profession. The Office of Ethics Counsel is completely autonomous from and independent of the Office of the General Counsel. Members seeking assistance with ethical questions are afforded an "attorney/client" relationship with the full expectation of confidentiality of disclosed information.

Through the Office of Ethics Counsel, Oklahoma Bar Association members can obtain informal advice and interpretations of the rules of professional conduct. Responsibilities of the Ethics Counsel include:

- answering ethics questions from members of the Oklahoma Bar Association
- memorializing questions presented and advice given
- researching and writing ethics materials for the Oklahoma Bar Association Web site and the *Oklahoma Bar Journal*
- preparing and presenting CLE programs on the topics of ethics and professionalism
- working with the Legal Ethics Advisory Panel to produce practical written advice and opinions
- monitoring attendance and compliance of diversion program attendees
- creating, supervising and administering training in the areas of trust accounting, ethics and professionalism
- coordinating the registration of out-of-state attorneys

**Phone: (405) 416-7083**

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



*GENERAL COUNSEL - (Back Row) Jan Hubbard, Robert Hanks and Krystal Willis; (Front Row) Tracy Sanders, Debi Lowry and Janna Hall*

## General Counsel

The Office of the General Counsel has certain enumerated powers and duties regarding disciplinary actions pursuant to the Rules Governing Disciplinary Procedure as written by the Oklahoma Supreme Court. Included among those powers and duties are:



*GENERAL COUNSEL - (Back Row) Mark Davidson and Loraine Farabow; (Middle Row) Misty Hill and Laura Willis; (Front Row) Sharon Orth and Dorothy Walos*

- investigating alleged lawyer misconduct or incapacity to practice law
  - reporting to the Professional Responsibility Commission the results of those investigations
  - making recommendations to the commission concerning the disposition of any investigation, and prosecuting all disciplinary and reinstatement proceedings before the Professional Responsibility Tribunal
- Many grievances received include complaints from clients about a lack of communication, in that their lawyer will not return phone calls or respond to letters or requests for information concerning the progress of their case. In October 1987 the Office of the General Counsel created a "two-week letter" that requests the attorney communicate with the client concerning the status of the case and send the general counsel a copy of that communication. This procedure has proven to be an effective method of allowing a problem to be resolved on an informal basis and is appreciated by both attorneys and their clients.



In a one-year period the Office of the General Counsel receives and handles:

- about 450 formal grievances involving approximately 340 attorneys
- over 1,100 informal grievances involving nearly 800 attorneys
- about 300 items of general correspondence

All activities of the Office of the General Counsel, including investigation, prosecution of attorney discipline, criminal summary proceedings, reinstatements, resignations and suspension of attorneys for personal incapacity to practice law are performed under the supervision of the Professional Responsibility Commission.

Also as a member service, the general counsel, and the staff of the office of the general counsel and the Professional Responsibility Tribunal and Commission members speak to county bar association meetings, Continuing Legal Education classes and various civic organizations at no charge. In these sessions, disciplinary and investigative procedures, case law and ethical standards within the profession are discussed. This effort directs lawyers to a better understanding of the disciplinary process and informs the public of the efforts of the OBA to regulate the conduct of its members.

**Phone: (405) 416-7007**



*INFORMATION SYSTEMS - Matt Gayle, Robbin Watson and Director Rick Loomis*

### **Information Systems**

The Information Systems Department is responsible for desktop computer support to staff, network management of internal servers and externally accessible servers, Web site development and maintenance, mailing list

management, development of association management system and database, network security, audio/visual support to staff, monitoring of evolving technologies and assistance to all departments to utilize technology in their departments. The Information Systems Department's functions are mostly of an internal nature; however, services directly benefiting members are:

- providing a mailing list for each committee and section through the list servers to communicate with members easily and in a cost effective manner
- maintaining a committee chairperson list and a section chairperson list serve to allow communication between the association and the chairs, as well as between the chairs themselves
- working hand in hand with the Communications Department to maintain [www.okbar.org](http://www.okbar.org)
- helping develop Web sites for Oklahoma county bar associations
- providing a members-only Web site where members can update roster information, pay dues, register for CLE, review MCLE credits, etc.
- providing free sign-up for the [www.oklahomafindalawyer.com](http://www.oklahomafindalawyer.com) lawyer referral service

**Phone: (405) 416-7045**



*MANAGEMENT ASSISTANCE PROGRAM - Director Jim Calloway and Sharon Dotson*

## Management Assistance Program

The OBA Management Assistance Program focuses on helping Oklahoma lawyers with the nuts and bolts of running their law offices. From “basic training” for the new lawyer to providing management and technology advice for the seasoned professional, the department has a wide array of information to assist every lawyer in every practice setting.

■ **Free Telephone Hotline** — The OBA-MAP staff attempts to answer brief questions about management and technology issues. Our number is (405) 416-7008. The toll free number is (800) 522-8065. Advice provided is confidential.

■ **The OBA Solo and Small Firm Conference** — Attend great CLE programs with nationally recognized experts, network with other small firm lawyers from across the state and meet with vendors in a fun family setting. Join us for the 12th Annual Solo and Small Firm Conference June 11-13, 2009 at Tanglewood Resort on Lake Texoma.

■ **OBA-NET** — This is an incredible online resource that is free to all OBA members. Oklahoma lawyers post questions and brainstorm with other lawyers online. Additional paid premium services, such as downloadable OBA/CLE materials since 1996, are available also.

■ **Jim Calloway's Law Practice Tips Blog** — Weekly postings of Internet tips, law practice tips and hot news in law office management and technology are available by either visiting the blog Web site, subscribing to the e-mail alerts or subscribing to the RSS news feed. Visit the blog at <http://jimcalloway.typepad.com>.

■ **Oklahoma Bar Journal Articles** — Each theme issue of the *Oklahoma Bar Journal* contains the regular column “Law Practice Tips” by OBA-MAP Director Jim Calloway. They are available online at [www.okbar.org/members/map/articleindex.htm](http://www.okbar.org/members/map/articleindex.htm).

■ **Office “Health Checks”** — These consultations take place in the lawyer's office on a fee for services basis. A wide range of management issues can be covered. Typically all staff and attorneys will be involved both in group and individual interviews.

■ **Free Consultations at the Bar Center** — Any lawyer who is setting up a new practice or has encountered a difficult issue that

cannot be comfortably handled over the telephone is welcome to schedule a free one-hour appointment with the OBA-MAP director.

■ **The New Lawyers Experience: Hit the Ground Running** — This innovative new program consists of a one-day seminar, scheduled twice a year in both Oklahoma City and Tulsa, to assist attorneys setting up new solo practices. A companion project is the “Starting a Law Practice Web Directory” which is available to any attorney at [www.okbar.org/members/map/practice.htm](http://www.okbar.org/members/map/practice.htm).

■ **Resource Center and Lending Library** — Attorneys can browse free management resources and product information. Law practice management books, videos and audio tapes are available for lawyers to “check out” and review. We are also a distributor of ABA Law Practice Management books and offer these for sale to our members at a discounted price.

■ **Local Bar Presentations** — The OBA-MAP director is available to speak at your county bar meetings or other organized lawyer groups at no charge.

■ **Grande Macros** — We are the exclusive sales agent for Doug Loudenback's Grande Macros for family lawyers who use the WordPerfect word processing program. These macros can be used to draft pleading and compute child support in a fraction of the time previously needed. For more information on the Grande Macros, go to [www.dougloudenback.com](http://www.dougloudenback.com).

**Phone: (405) 416-7008**



MANDATORY CONTINUING LEGAL EDUCATION - Brenda Card, Administrator Beverly Petry (seated) and Johnny Floyd

## Mandatory Continuing Legal Education

The OBA Mandatory Continuing Legal Education Department is the regulatory office concerned with the accreditation of all continuing legal education programs and the compliance by all Oklahoma Bar members with the MCLE requirement. Often confused with the CLE Department, the MCLE Department does not sponsor CLE seminars.

Mandatory Continuing Legal Education, a program adopted by the Oklahoma Supreme Court in 1986, establishes minimum requirements for continuing legal education for Oklahoma attorneys. The program is administered by the OBA Mandatory Continuing Legal Education Commission, which consists of nine members, that has general supervisory authority over the rules and may adopt regulations consistent with the rules.

### Member services provided include:

- reviewing seminars for accreditation
- accreditation of teaching activities
- responding to requests for clarification of the Rules of the Oklahoma Supreme Court for Mandatory Continuing Legal Education

- processing the annual reports of compliance
- helping each member receive all the credit he or she is entitled to for qualified CLE activities
- keeping a record of the Oklahoma approved seminars attended by members

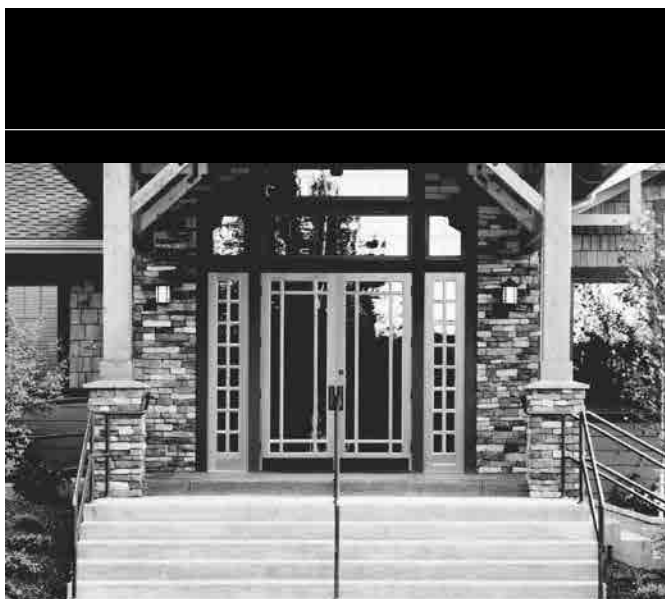
**Phone: (405) 416-7009**

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



## Don't Know Whom to Contact?

If you need more information about which employee in a department to contact, check out the staff list at [www.okbar.org/public/about/staff.htm](http://www.okbar.org/public/about/staff.htm). You will find a list of each OBA staff member, a summary of his or her responsibilities, and their e-mail address.



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# Meet Your Bar Association

## OBA Membership Benefits

### Perks Bar Members Receive from Their Association

**Y**our state bar association offers you a broad selection of opportunities to make the most of your membership. You may not even be aware of some of the professional benefits available to you as an Oklahoma Bar Association member. Check this list to be sure you are taking full advantage of the member services provided.

#### ONLINE SERVICES

**[www.okbar.org/oknewsbar.htm](http://www.okbar.org/oknewsbar.htm)** – Designed with the needs of OBA members in mind, OKNewsBAR has been created to allow you to quickly access new Oklahoma and U.S. Supreme Court opinions as well as up-to-date legal news and law practice management tips.

**Fastcase** – The OBA now offers online legal research software as a free benefit to all OBA members. The OBA has contracted with Fastcase to provide the member benefit for three years, which includes national coverage, unlimited usage, unlimited customer service and unlimited free printing – at no cost to bar members, as a part of their existing bar membership. To use Fastcase, go to [www.okbar.org](http://www.okbar.org). Under the Fastcase logo, to log in enter your username (OBA number) and password PIN for the myokbar portion of the OBA Web site. [www.okbar.org](http://www.okbar.org) – main site or front door for the OBA with links to all other OBA Web presences and much information for members as well as a great deal of information for the public.

**My okbar** – password-protected portion of the OBA's Web site. Easy to do everything from changing your official address, enrolling in a CLE course, checking your MCLE credits to listing your practice areas on the Internet so potential clients can find you. You can also receive electronic communications from the bar by adding your e-mail address to the roster.

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

**E-News** – current OBA news and information to assist in your law practice that is sent once a month to members with an e-mail address as part of their official roster information.

**Online CLE** – quality OBA/CLE online programming, plus online seminar programs from other state bar associations. It's a convenient way to get up to six hours MCLE credit.

**Oklahomafindalawyer** – the OBA's official lawyer listing service. Free to members and the public. It is also a useful tool for lawyers to identify attorney practice area expertise in specific geographic areas. Sign up through myokbar.

**[www.okbar.org/research/links.htm](http://www.okbar.org/research/links.htm)** – a quick way to find the Oklahoma Supreme Court Web site to look up Oklahoma cases and statutes online. Can be used to find the online site of the Court of Criminal Appeals or any of Oklahoma's District Courts, hunt a state or federal agency, locate a federal court site, find a municipal ordinance or find the rules from local or

federal courts. As a bonus there are many other links to assist in your legal and factual research.

**Web site design and hosting** – provided by the OBA staff to committees, sections and county bar associations.

**Prepared speeches for community/civic groups** – speeches, outlines and handouts prepared by the OBA's Bench and Bar Committee on selected topics for presentation to public groups. Available though [www.okbar.org](http://www.okbar.org).

## PUBLICATIONS

**Oklahoma Bar Journal** – 34 issues annually, contains articles, court opinions, substantive law, state bar news, professional changes, member news (moves, kudos, additions to firms, etc.), master calendar of judicial and bar events, \$55 annual subscription, free to members. Specially printed binders to keep bar journals organized are provided to members at \$15.95 each.

**Continuing Legal Education materials** – seminar materials and form books available for purchase, an affordable way to get quality, state-specific practice aids. Prices start at approximately \$40. A complete list of topics is available online, or come by the CLE Dept. at the Oklahoma Bar Center Monday- Friday, 8:30 a.m. - 5 p.m., and review the books available.

**Consumer information brochures** – pamphlets on 16 topics covering commonly asked questions to give to clients, sold to OBA members at a minimal cost of \$16 for 100. Brochure topics are: wills, probate, joint tenancy, home buying, tenant rights and duties, landlord rights, divorce, small claims court, employee rights, bankruptcy, trial juror information, lawyers & legal fees, living wills (brochure and form), criminal law and resolving conflicts and disputes. As a community service the OBA distributes the brochures free to courthouses and libraries throughout the state.

## PRACTICE MANAGEMENT/ PROFESSIONALISM

**Young Lawyers Division** – YLD is a professional service network offering the chance to participate in community and bar-related programs. Lawyers of any age who have been in practice less than 10 years are automatically members. No dues are required. Information about YLD programs is available at [www.okbar.org/members/yld](http://www.okbar.org/members/yld).

**Continuing Legal Education seminars** – the OBA creates and coordinates 125 live seminars, produces numerous videotaped programs annually and offers materials on a full spectrum of legal topics. OBA members can come

to the Bar Center anytime during regular business hours to watch a seminar video of your choice and earn CLE, but please call in advance to schedule. Call Renee Montgomery at (405) 416-7029.

**Practice management/technology hotline service** – free telephone calls to the Management Assistance Program (MAP) staff and the OBA Director of Information Systems for brief answers about practical management and technology issues, such as law office software, understanding computer jargon, staff and personnel problems, software training opportunities, time management and trust account management. Call (405) 416-7008.

**Office “health checks”** – in-depth personal or group consultations that take place in the lawyer's office, consultations may focus on technology, office procedures or other areas agreed upon by attorney and MAP Coordinator. Fee is \$500 per day for small law firms (five attorneys or less) or \$750 per day for medium or larger firms (more than five attorneys), program offered by OBA's MAP Dept. Call (405) 416-7008 to schedule.

**MAP workshops** – customized day-long presentations on technology and office procedures conducted on-site to a group of attorneys and





staff members from different firms using a multimedia approach, may include computer generated presentation, videotapes on such topics as professionalism and trust accounting procedures and workshop exercises, afternoon session devoted to answering specific questions anonymously submitted. This is for firms who wish to share costs and have more general information presented to them.

**Book purchasing program** – OBA members can purchase ABA Law Practice Management Section books at the same discount as ABA/LPM members through the OBA Management Assistance Program.

**Lending library** – law practice management books, video and audio tapes available for lawyers to check out and review. There is no fee for checking out materials to take home.

**Ethics counsel** – assists members with ethical questions and inquiries on subjects such as conflicts, confidentiality and client concerns. The Ethics Counsel also presents continuing education programs on the topics of ethics and professionalism. Call (405) 416-7083.

**Crisis counseling services** – Need help with stress, depression or addiction? Call the Lawyers Helping Lawyers Assistance Program hotline at (405) 840-5252 or toll-free (800) 364-7886. The OBA offers all bar members up to six hours of free crisis counseling. It's strictly confidential and available 24 hours a day.

**OBA sections** – 23 substantive law sections that offer professional development and interaction, experience professional growth by learning from colleagues in your practice area and develop new contacts, benefits vary by section with a growing number of sections holding midyear or quarterly meetings that offer free or discount CLE to section members, some sections publish member newsletters. For a list of sections and their annual dues, go to [www.okbar.org](http://www.okbar.org).

**County bar association and civic group speakers** – OBA officers, Board of Governors members and staff members are available (for the price of a meal) to speak at luncheons and banquets on a wide variety of topics including legislative issues, ethics, law office management and law practice tips.

## NETWORKING

**Leadership opportunities** – boards, committees, sections and commissions are some of the

volunteer opportunities that offer career development and ways to interact with other attorneys and judges.

**Annual Meeting** – participate in CLE programs, section and committee meetings, have a voice in determining the OBA's legislative program and electing future state bar leaders, take advantage of networking opportunities with attorneys and judges from throughout the state. The 2009 Annual Meeting will take place Nov. 4-6 at the Sheraton Hotel in Oklahoma City.

**Solo & Small Firm Conference/YLD Midyear Meeting** – lawyers have the opportunity to get to know one another and to take advantage of a CLE seminar in a relaxed family setting. The 2009 meeting will be held June 11-13 at Tanglewood Resort on Lake Texoma.

## OBA MERCHANDISE

**Lady of Justice color lithograph** – this framed and matted lithograph of the bar center's Lady of Justice makes a great addition to any office. Each piece is signed by the artist, Greg Burns. Visit [www.okbar.org](http://www.okbar.org) for more details and to view a sample.

## OTHER SERVICES

**Toll free phone number** – in-state OBA members who live outside the Oklahoma City metro calling area can place free calls to the Oklahoma Bar Center by dialing (800) 522-8065, which connects you to our receptionist (a real, live person - not a machine) to direct your call to the proper person or department.

**Direct dial and 24-hour messaging to OBA staff members** – bypass waiting for the OBA receptionist to answer your call by dialing a staff person or department directly, a list of phone numbers is published in the *Oklahoma Bar Journal* next to the events calendar, leave a voice message anytime (nights and weekends too). After-hour calls to the general phone numbers (405) 416-7000 or (800) 522-8065 are automated and will list department extension numbers to punch in if you don't know the direct phone number.

**Video conferencing** – available at the Tulsa County Bar Center so that committee and section members can join in on meetings without traveling to Oklahoma City.

**Legislative services** – the OBA's executive director works for adoption of legislative issues approved by the House of Delegates, and the

Legislative Monitoring Committee provides a periodic legislative report highlighting the status of selected bills during the session. The report is published in the *Oklahoma Bar Journal* and on the Web site while the Legislature is in session.

**Meeting rooms at bar center** – many size rooms to choose from to accommodate small and large group meetings, client conferences and depositions, free to members during week-day business hours, nominal fee for evenings.

#### **OPTIONAL MEMBER PURCHASE**

**Oklahoma Legal Directory** – official directory of OBA members with addresses and phone numbers, roster alphabetical and by county, includes guide to county, state and federal offices plus departments of the U.S. and Oklahoma government, complete digest of courts, professional associations including OBA officers, committees and sections. Published by Legal Directories Publishing Co., hard bound edition \$54, computer disk and CD ROM also available. Call (800) 447-5375 to request order form or go to [www.legaldirectories.com](http://www.legaldirectories.com).

**Title Examination Standards** – contains all the presently effective Oklahoma Title Examination Standards and reflects all revisions, produced by the OBA Real Property Law Section, \$5 per copy, free to section members. The 2009 Title Examination Standards are now available.

**OBA sponsored insurance programs** – keep rates low through group buying power. For information about OBA programs for life, health (employer-group and individual), individual disability, personal umbrella liability, long-term care and other insurance plans, contact Beale Professional Services (405) 521-1600, (800) 530-4863. For information on professional liability and court bonds, contact Oklahoma Attorneys Mutual at (405) 236-8205, (800) 318-7505.

**ABA Retirement Funds** – ABA Retirement Funds offers tax-qualified retirement plan services to qualified law professionals. This includes full-service, cost-effective retirement plans such as 401k and profit sharing. Corresponding services include plan design, administration and fiduciary oversight. Program eligibility is open to any law firm or practitioner that has at least one partner or shareholder who is a member of the ABA, or state or local bar association represented in the ABA's House of Delegates. For more information, call (877) 947-2272 or visit [www.abaretirement.com](http://www.abaretirement.com).

#### **MEMBER DISCOUNTS**

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**LawWare** – bar members may subscribe to the document assembly, document management and client management software program at a discounted group rate. Created by Oklahoma attorneys in 1991, LawWare streamlines the process of organizing and generating legal forms and related documents for law offices of any size. With the OBA endorsement, members may subscribe to LawWare at a discounted rate of \$49 per month for the first copy and \$10 per month for each additional office copy. To inquire about LawWare or to order a subscription, call (866) LAW-WARE or visit [www.LawWare.com](http://www.LawWare.com).

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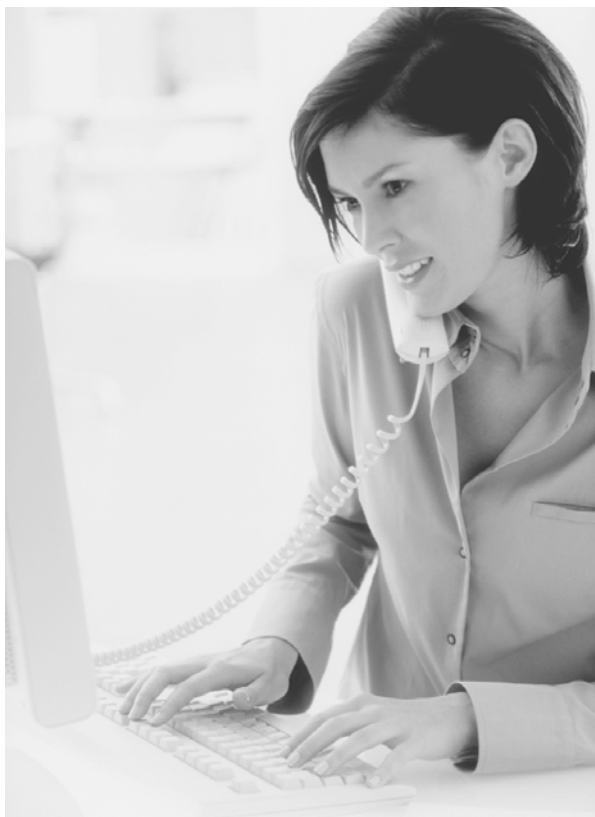
**International Travel** – Go Next has been in business for more than 37 years. They provide high quality, recreational travel to destinations around the globe. Group rates on trips are available to you, your family and your friends. All trips include airfare from either Oklahoma City or Tulsa, accommodations, transfers, breakfast buffet and other amenities. See highlights of the current trip offerings at [www.GoNext.com](http://www.GoNext.com). Call Go Next Toll Free at 1-800-842-9023 for more information and/or reservations.

**Office Furniture** – OBA members receive a 51 percent discount off the list price on all National Furniture products offered by Bill Warren Office Products. Delivery is FREE in the Okla-

homa City and Tulsa metro areas. There is also FREE drop shipment within the state of Oklahoma. Installation services are available with the fee based on the product. OBA members can also receive a FREE initial office design and space plan with up to two free revisions per project. Additional design work will be billed at \$45 per hour. Call Bea Gee, Amanda Epplin or Shae Wick at (405) 947-5676 or visit [www.warrenproducts.com](http://www.warrenproducts.com).

**WESTLAW discounts** – West Publishing Corp. offers OBA members a variety of discounts on its products and services, members receive Oklahoma's jurisdictional CD-ROM libraries with the first billable monthly subscription charge waived. For information on other offers available call (800) 762-5272.

**WordPerfect Licensing Program** – The Oklahoma Bar Association has signed on to Corel Corporation's new Bar Association licensing program, allowing Oklahoma Bar Association members to purchase licenses of the award-winning WordPerfect® Office 4 at substantially reduced prices. To place an order go to [www.corel.com/barassociation](http://www.corel.com/barassociation).



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

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

- ▶ The official Web site of the Oklahoma Bar Association. It's your one-click resource to all the information you need, including what's new at the OBA, ethics opinions, upcoming CLE seminars, staff contacts, and section and committee information.

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

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

### **[www.oba-net.org](http://www.oba-net.org)**

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

### **[www.oklahomafindalawyer.com](http://www.oklahomafindalawyer.com)**

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

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

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

# What You Need to Know About New HB 2639: The ‘Nontestamentary Transfer of Property Act’

By Julie Bushyhead

This new session law, effective Nov. 1, 2008, provides a method for individuals to transfer real property outside probate upon their death.<sup>1</sup> This method of transferring property is similar to a Pay-on-Death bank account, and is frequently termed a Transfer-On-Death (TOD) deed. In addition to real property, Oklahoma enables TOD transfers for securities such as stocks and bonds under the “Oklahoma Uniform TOD Security Registration Act.”<sup>2</sup> Similar to Pay-on-Death bank accounts and other TOD transfers, the grantor or property owner transferring his/her real property upon death may revoke the beneficiary designation at any time prior to death, and the beneficiary may choose to disclaim his/her interest upon the grantor’s death. The beneficiary deed is almost limitless in its scope to transfer property upon death.

The Nontestamentary Transfer of Property Act extends to “an interest in real estate.” *Blacks Law Dictionary* states that “real estate” has the same meaning as real property.<sup>3</sup> Oklahoma law defines real property as including land, fixtures to land, and appurtenances to land.<sup>4</sup> Oklahoma law defines land as “the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock or other substance.”<sup>5</sup> A thing is affixed when “it is attached to it by roots, as in the case of trees, vines or shrubs, or embedded in it, as in the case of walls,

or permanently resting upon it, as in the case of buildings, or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts or screws.”<sup>6</sup> Finally, a thing is incidental or appurtenant when “it is by right used with the land for its benefit, as in the case of a way or watercourse, or of a passage for light, air or heat, from or across the land of another.”<sup>7</sup>

In terms of oil, gas, and mineral interests, Oklahoma’s case law supports that both the interest in the “exclusive right to drill for, pro-

duce, or otherwise gain possession of such substances,"<sup>8</sup> and the right to royalty interests, or the percentage of profit from what is drilled or taken out of property under an oil and gas lease, are both real property interests.<sup>9</sup> However, Oklahoma's case law also suggests that a leasehold interest to explore for hydrocarbons such as oil and gas creates interest or estate in realty, but is *not per se real estate*.<sup>10</sup> Thus, the question arises as to whether or not HB 2639 includes transfers of leasehold interests in its scope.

## HOW TO CREATE A TRANSFER-ON-DEATH DEED

First, the record owner must title the real property as "transfer-on-death." This requires the record owner, through the use of a TOD deed, to designate a grantee beneficiary who is to receive the interest upon the record owner's death. Just as common practice is to designate an alternate beneficiary or executor in a will, you should also designate an alternate beneficiary in a TOD deed. If the record owner does not designate an alternate beneficiary, and the primary beneficiary either dies or disclaims his/her interest, the transfer will lapse. This would cause the property to fall into probate and transfer according to the terms of the record owner's will or by intestate succession. Second, the record owner must sign the TOD deed and record the deed in the county where the real estate is located. A transfer-on-death deed does not require consideration to be effective.<sup>11</sup>

## HOW TO REVOKE A TRANSFER-ON-DEATH DEED

The record owner may revoke the transfer to a grantee beneficiary at any time prior to the grantor's death. The grantor may accomplish this goal in two ways. First, the record owner may execute an instrument revoking the designation, acknowledge the instrument before a county clerk or notary public, and record the instrument in the office of the county clerk where the real estate is located. The grantor is not required to give the designated beneficiary notice of the revocation.

The first method of revocation results in the grantor not transferring property through a TOD deed.

Second, the grantor may execute a new TOD deed. Any subsequent TOD deed controls the designation of the transfer and revokes all prior designations to grantee beneficiaries. The grantor need not notify the prior beneficiary or new beneficiary for any reason. The grantor should follow the steps listed above under "HOW TO CREATE A TRANSFER-ON-DEATH DEED" for the second method of revoking a beneficiary designation. Where the record owner's goal is to avoid probate, the second method might be a more appropriate choice.<sup>12</sup>

Finally, "a transfer-on-death deed executed, acknowledged and recorded in accordance with the Nontestamentary Transfer of Property Act may not be revoked by the provisions of a will."<sup>13</sup> In other words, a will executed subsequent to recording a TOD deed does not effectively revoke a TOD deed where the will designates a different beneficiary for the same property. Does a TOD deed partially revoke an inconsistent provision in an existing will? The effect of executing a TOD deed is to convert probate property, or property subject to probate, to non-probate property. For example, when a property owner owns property in joint tenancy with right of survivorship, title to the property passes to the surviving joint tenant upon the death of the other joint tenant by operation of law, and is not subject to probate. Similarly, a property owner/grantor who executes a TOD deed no longer owns the real property upon his/her death. The



real property transfers to a designated beneficiary, or alternate beneficiary, upon the death of the grantor by operation of law. Therefore, a provision in a will bequeathing the same real property that is the subject of a TOD deed will be adeemed, in other words, fail, because the decedent/grantor does not own the real property upon his/her death. Although a TOD deed does not partially revoke an inconsistent provision in a pre-existing will, inquiry as to a



client's existing will may be relevant in order to effectively assist clients with estate planning.

### HOW TO CLAIM AN INTEREST TRANSFERRED

First, a designated grantee beneficiary must execute a notarized affidavit affirming three facts: 1) verification of the record owner's death, 2) whether or not the record owner and the designated beneficiary were married at the time of the record owner's death, and 3) a legal description of the real estate. In addition, if the grantee beneficiary was not the record owner's spouse, he/she must attach a copy of the record owner's death certificate and an estate tax release to the beneficiary affidavit. Last, the beneficiary must record the affidavit and related documents with the office of the county clerk where the real estate is located.<sup>14</sup> Of note, real property owned in joint tenancy with right of survivorship would not pass to the beneficiary unless the grantor was the last surviving joint tenant.<sup>15</sup>

### HOW TO DISCLAIM OR REFUSE AN INTEREST TRANSFERRED

A designated grantee beneficiary, or guardian of a minor or legally incompetent grantee beneficiary, may disclaim or refuse to accept a transfer within nine months of the record owner's death. Including this and other reasons, a designated beneficiary may choose to disclaim the transferred interest due to the beneficiary's obligation to honor any and all agreements made by the grantor during his/her lifetime. These obligations include, but are not limited to, any mortgage on the property, easement, deed of trust or lien, lease, contract of sale or other agreement. In order to effectively disclaim the interest, the grantee beneficiary must file a disclaimer with the office of the county clerk in which the TOD deed was recorded. In addition, if the beneficiary intends to disclaim the interest, he/she *should not* exert dominion over the real estate within the nine month period.<sup>16</sup> The Nontestamentary Transfer of Property Act defines dominion as "possession or the execution of any conveyance, assignment, contract, mortgage, security pledge, executory contract for sale, option to purchase, lease, license, easement or right of way."<sup>17</sup> If the grantee beneficiary exerts dominion, his/her disclaimer is waived.

### CONCLUSION

The beneficiary deed or TOD deed provides a low-cost alternative for individuals desiring to avoid probate. The TOD deed does not preclude the necessity of having a will. For example, if both a grantee beneficiary and alternate grantee beneficiaries are deceased at the time of the record owner's death, or if both disclaim the interest after the record owner's death, the real estate interest will pass by intestate succession. If a grantor desired to transfer real property outside the progression of intestate succession, it would be prudent to execute a will to that effect. Further, a grantor/testator would need to execute a will for the appointment of a guardian for his/her minor children, funeral and/or burial wishes, etc. Moreover, the TOD deed does not preclude other estate planning instruments. The TOD deed is merely a low-cost alternative for transferring real property upon a record owner's death without the formalities of probate.

1. 58 O.S. Supp.2008, §§ 1251-1258.

2. 71 O.S.2001 § 901.

3. *Blacks Law Dictionary* 1254 (Bryan A. Garner ed., 8th ed., West 2004).

4. 60 O.S.2001 § 5.

5. 60 O.S.2001 § 6.

6. 60 O.S.2001 § 7.

7. 60 O.S.2001 § 8.

8. *Frost v. Ponca City*, 1975 OK 141, ¶ 8, 541 P.2d 1321, 1323.

9. *Booner v. Oklahoma Rock Corp.*, 1993 OK 131, ¶ 11 n. 28, 863 P.2d 1176, 1182 (citing *Hays v. Phoenix Mutual Life Ins. Co.*, 1964 OK 80, ¶ 7, 391 P.2d 214, 216).

10. *Booner* at ¶ 19, 863 P.2d at 1185.

11. 58 O.S. Supp.2008, § 1252.

12. 58 O.S. Supp.2008, § 1254.

13. 58 O.S. Supp.2008, § 1254(C).

14. 58 O.S. Supp.2008, § 1255.

15. 58 O.S. Supp.2008, § 1256.

16. 58 O.S. Supp.2008, § 1254(D).

17. 58 O.S. Supp.2008, § 1254(D).

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# Oklahoma as *Lex Mercatoria*?

## Scrutinizing Oklahoma's New Arbitral Remedy

By Jeffrey S. Wolfe

The new Oklahoma Uniform Arbitration Act became effective on Jan. 1, 2006.<sup>1</sup> It provides an expanded and updated remedial structure to Oklahoma's arbitral remedy. It also contains a seeming contradiction, requiring in an arbitration "decision" that there be "findings of fact and conclusions of law" — this, in stark contrast to an earlier paragraph in this same statutory section which provides that an arbitration "award may, or may not, contain the evidence and conclusion upon which the award was based unless the parties' agreement specifies the type of award."<sup>2</sup> This article explores the significance of this apparent contradiction, looking to the history, traditions and developing case law surrounding the arbitral remedy and suggests a remedy found within the statute itself.

### THE HISTORY AND TRADITIONS OF ARBITRATION

It is commonly accepted that the dispute resolution process we now know as "arbitration" finds its roots in the resolution of mercantile disputes arising in medieval Europe, growing with the emergence of the renaissance and with the growth of the mercantile guilds. "Courts made up of merchants themselves adjudicated disputes, applying universal commercial customs and enforcing decisions by threat of boycott and expulsion."<sup>3</sup> Scholars debate the reach of this ancient system, some describing the scope of the mercantile "courts" as extending across the continent.<sup>4</sup> Others disagree, questioning whether this system spanned Europe "universally," arguing that this "was not a systematic law; it was not standardized across Europe; it was not synonymous with commercial law; [arguing that] it was not merely a creation of

merchants without vital input from governments and princes."<sup>5</sup>

Most, however, generally agree that what was practiced by the merchant guilds — and what evolved into arbitration as we know it today was "a layer of laws and practices that included legislative mandates, broad-reaching customs, and narrow trade-usages which begin to look very much like modern commercial law."<sup>6</sup> What is generally accepted is the concept embodied by the term "*lex mercatoria*" or the "law merchant." This refers to a body of "law" — practices, customs and trade-usages — that stand apart from any national body of law. Some have described the concept as referring to "an autonomous legal order, created spontaneously by parties involved in international economic relations and existing independently of national legal orders."<sup>7</sup> Others view *lex mercatoria* as a "body of

rules” existing as an “alternative to otherwise applicable national law” but nevertheless “sufficient to decide a dispute” complementary to “otherwise applicable law” – a “consolidation of usage and settled expectations in international trade.”<sup>8</sup>

The application of *lex mercatoria* finds its outworking in commonly accepted practices reflected in working arbitration agreements.<sup>9</sup> For example, “many arbitration statutes and arbitration rules direct arbitrators to resolve disputes on the basis of trade usages — and the available evidence suggests that arbitrators frequently rely on trade usages in international arbitration awards.”<sup>10</sup> The parties themselves often set decisional parameters, frequently calling upon “trade usage” or “custom and practice” as opposed to any particular law or rule as the standard required of the arbitrator. “Commercial concerns agree to refer their most consequential disputes to arbitration, rather than submit them to court, because they expect that the process will reach a commercially sensible disposition of the controversy, while avoiding or minimizing the risks and disadvantages of litigation”<sup>11</sup> – not the least of which is a decision by “relatively unschooled judges and cynical juries.”<sup>12</sup>

In reaching an award, arbitrators are regarded as “professionals who can be expected to reach reasonable decisions founded upon a mixture of law and industry custom.”<sup>13</sup> And because arbitration is a creature of contract, it is the parties themselves who structure the nature, scope and reach of the remedy.<sup>14</sup> This is most clearly seen looking even further into the past. Consider Martin Shapiro’s summary of early Roman law procedures:

“The two parties at issue first met to decide under what norm their dispute would be settled. Unless they could agree on a norm, the dispute could not go forward in juridical channels. Having agreed on the norm, they next had to agree on a judge, a third person who would find the facts and apply the previously agreed upon norm to settle their dispute. The eventual loser was placed in the position of having chosen both the law and the judge and thus of having consented to the judgment rather than having had it imposed on him.”<sup>15</sup>

This excerpt all but describes the essential framework of “arbitration” as we know it today. The hallmarks of arbitration as an expression of “alternative dispute resolution” free the remedy

from the requirements of a particular form of proceeding (such as litigation mandated by the Oklahoma Rules of Civil Procedure); a particular type of evidence to be considered (such as is required by the Oklahoma Evidence Code) or even the mandates of specific laws or legal principles. Unless the parties agree, arbitration, while retaining the adversarial character of litigation, is freed of litigation’s other formal attributes. It is left to the parties to determine the degree to which arbitration may or may not take on the trappings of formal litigation, including more or less discovery and adoption of formal rules of procedure or evidence.<sup>16</sup>

It is this inherent flexibility which transforms arbitration into an “alternative” to litigation. The ability of the parties to mold the remedial structure to suit the dispute is precisely the attraction which draws disputants to its doors. Indeed, “merchant groups have preferred arbitrators’ equitable determinations pursuant to industry norms over courts’ legalistic judgments.”<sup>17</sup> Arbitrators are not expected to be judges, applying rigid legal norms. Instead, they are often called upon to render equitable awards predicated on “what the right thing to do is” in a given industry, unhindered by judicial limitations. “Arbitrators earn community respect and acceptance by making determinations based on field-specific knowledge and expertise.” They are not necessarily “hemmed in by legal precedents” but may endorse equitable and creative remedies not readily available to a court. They are said to act in such a way as “to exercise their discretionary power to provide relief with an eye toward correcting injustice, even where strict application of the law would prevent just results.”<sup>18</sup>

This decisional attribute — unique to arbitrators — has long been recognized by the nation’s courts. Consider the holding of the California Supreme Court in *Advanced Micro Devices Inc., v. Intel Corp.*, 885 P.2d 994, 1005 (Cal. 1994), endorsing the idea that arbitrators may, indeed, order remedies not available in or to a court:

“Were courts to re-evaluate independently the merits of a particular remedy, the parties’ contractual expectation of a decision according to the arbitrators’ best judgment would be defeated.”

In essence, “arbitration is a streamlined method of adjudication, chosen voluntarily at the time of contracting in an arm’s length transaction between parties. Parties choose arbitration because . . . rather than a lengthy court battle,

arbitration provides both parties the opportunity to obtain a speedy and less costly resolution of their dispute using procedures that best suit them.”<sup>19</sup> It lends itself to flexible tailoring, reflecting the parties’ desire to address resolution in a particular form or fashion considering both the relationship between the parties and the nature and complexity of the dispute. Retaining an adversarial jurisprudence, arbitration departs from the formalities of litigation, foregoing an established substantive and procedural framework, giving the parties great latitude in selecting the decision-maker, the rules to be applied and the law to be followed.

In this, the ability to select the decision-maker is significant. While the overwhelming majority of trial courts are courts of general jurisdiction, presided over by “generalist” judges – judges who hear and decide cases involving a wide variety of issues and disciplines and who, as a result, are experts in case management, trial practice and judicial procedure, but not in a given substantive area — arbitrators are often substantive experts. The inherent flexibility of the arbitral process frequently enables the parties to forego retention of a substantive expert witness — often necessary in complex cases — and appoint a substantive expert or panel of experts as arbitrators. This results in an overall savings and potentially a more accurate and informed decision as the decision-maker need not first be ‘educated’ before rendering an award.

When substantive experts are employed as *arbitrators*, modern arbitral processes closely resemble their medieval mercantile roots. Just as the ancient merchant guilds looked to the wisdom and expertise of their senior members as presiding decision-makers so today do parties to modern arbitral processes often entrust the outcome of highly specialized disputes to those they acknowledge as able to bring to bear the necessary expertise and balance given the issues presented. The standards applied often reflect standards of custom and practice within a given



“ It is this inherent flexibility which transforms arbitration into an ‘alternative’ to litigation. ”

industry as opposed to strict legal principles or rules.

How a given industry regards a particular circumstance or series of events is frequently industry-specific with consequent industry-specific effects, not only for the immediate dispute but for the continuing future commercial relationship between the parties. This is but a continuing manifestation of the ancient *lex mercatoria*. Consequently, this custom or industry-crafted “law” — applied by those who are experts in a given field — often differs from traditional legal principles both in perception of the dispute and in execution of its resolution. The motivations of the parties to select a substantive expert are, therefore, significantly tied to the choice to employ arbitration in the first instance.

tration in the first instance.

Arbitration has evolved from a little respected English common law remedy to an established ADR alternative, firmly made a part of the American legal landscape with the passage of the Federal Arbitration Act in 1925. To reverse current public policy is to reverse a developed jurisprudence whose ancient roots can be traced to the early rise of Western civilization – something the supreme court has been asked to do on repeated occasions and has, repeatedly, declined:<sup>20</sup>

“We have set forth this background because respondents, supported by 20 state attorneys general, now ask us to overrule *Southland* and thereby to permit Alabama to apply its antiarbitration statute in this case irrespective of the proper interpretation of § 2. The *Southland* Court, however, recognized that the pre-emption issue was a difficult one, and it considered the basic arguments that respondents and *amici* now raise (even though those issues were not thoroughly briefed at the time). Nothing significant has changed in the 10 years subsequent to *Southland*; no later cases have eroded *Southland*’s authority; and no unforeseen practical problems have arisen. Moreover, in the interim, private parties have likely written contracts relying upon *Southland* as authority. Further,

Congress, both before and after *Southland*, has enacted legislation extending, not retracting, the scope of arbitration. See, e. g., 9 U.S.C. § 15 (eliminating the Act of State doctrine as a bar to arbitration); 9 U.S.C. §§ 201-208 (international arbitration). For these reasons, we find it inappropriate to reconsider what is by now well-established law.”

*Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 272 (1995).

## THE NEW OKLAHOMA UNIFORM ARBITRATION ACT

Statutory formulations, such as the Revised Uniform Arbitration Act as promulgated by the National Conference of Commissioners on Uniform State Laws<sup>21</sup> and its overarching federal cousin, the Federal Arbitration Act at 9 U.S.C. § 1 et seq. seek to preserve the freeform essence of the arbitral remedy – leaving to the parties the ability to control the structure of arbitral methodology, allowing for a more or less formal manifestation of the arbitral process as the parties may agree. This stands now in question in Oklahoma with the passage of the Oklahoma version of the Revised Uniform Arbitration Act (RUAA) on Jan. 1, 2006, now known as the Oklahoma Uniform Arbitration Act (OUAA).

The Oklahoma Legislature, in adopting the new revised Uniform Act, apparently altered the essence of the arbitral remedy, arguably limiting the ability of the parties to name non-lawyer substantive experts as arbitrators; or even to allow arbitral results which depart from established law and legal precedent. In so acting, has Oklahoma crafted a fundamental change in the arbitral remedy – invoking a new *lex mercatoria* which if not corrected signals a reversal in a long-standing trend toward alternative dispute resolution?

The impetus behind this inquiry lies in a seemingly innocuous but critical deviation from the original language adopted by the commissioners on Uniform State Laws.<sup>22</sup>

The Oklahoma version of the newly revised RUAA contains a small but potentially high-profile revision — one that holds potential to undermine a critical characteristic of arbitration as an alternative remedy. It was a revision not a part of the original Revised Uniform Act adopted by the commissioners on Uniform State Laws.<sup>22</sup>

As enacted, Title 12 Okla. Stat. §1870 now provides:

A. An arbitrator shall make a record of an award. **The award may, or may not, con-**

**tain the evidence and conclusion upon which the award was based unless the parties’ agreement specifies the type of award to be issued.** The record shall be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

B. An award shall be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend or the parties to the arbitration proceeding may agree in a record to extend the time. The court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

C. **Upon rendering a final decision on the merits of a case, the arbitrator shall support his or her decision by likewise rendering findings of fact and conclusions of law.**

Paragraphs (A) and (C) are plainly contradictory and their terms potentially significantly limit the arbitral remedy in Oklahoma. The inclusion of paragraph (C) creates a statutory ambiguity standing in contrast to paragraph (A). Resolution of the ambiguity depends upon the application of principles of statutory construction. However, before addressing the issue of statutory construction it is important to understand the significance of the attempted revision in paragraph (C).

The issue raised by the revisions in paragraph (C) center on 1) *who may serve as an arbitrator* and 2) *the nature of the award authorized*. The end result of any arbitration is an “award.” Because arbitration is extra-judicial, the arbitrators enter an “award” which must then be “confirmed” by the court.<sup>23</sup> If confirmed, the “award” becomes an enforceable judgment. Absent confirmation, the award is unenforceable in the courts and is otherwise only enforceable by voluntary compliance of the parties. The ancient remedies by which otherwise “unenforceable” awards are given force — of “boycott” and economic pressure — may still be applicable, though far less widespread than in the times of the mercantile guilds, given the modern web of antitrust legislation and corporate regulation which now permeate our economic structures. Thus it falls to

the confirmation process to provide a viable means of enforcement. In this, the court may be said to “backstop” the arbitral process, which is otherwise intended to be an entirely private resolution of the parties’ dispute.

“Awards” come in two essential forms. An arbitral “award” per se is an expression of the arbitrator’s decision without accompanying discussion or stated rationale. It is a straightforward rendition of the outcome of the dispute with no explanation of the underlying justification. A “reasoned award,” on the other hand, includes a statement of the rationale underlying the award and as such, often resembles a formal legal opinion entered by a court of record. To require a “reasoned award” is to require a formal explanation of the arbitrator’s reasoning. To require “findings of fact and conclusions of law” implicitly, if not expressly requires the arbitrator set forth the facts and apply *governing law* – all in support of the award made. But, what if the arbitrator is a construction engineer, petroleum engineer, or any one of a number of other non-lawyer professionals – substantive experts – called upon to serve as arbitrators? Arguably, the “reasoned” award they prepare reflects *lex mercatoria*, the “law” of their industry, and not necessarily established public law, since they are not lawyers and not, therefore, expected to render decisions which reflect application of existing law.<sup>24</sup>

If the OUAA requires every arbitrator provide “findings of fact and conclusions of law” in accord with §1870(C), are arbitrators then bound to express their awards only as “reasoned awards;” and, more critically, are they then limited to awards which are bounded by the requisites of *public law* – of statute, regulation and case law?

Does the requirement of an award accompanied by “findings of fact and conclusions of law” as opposed to simply a “reasoned award” curtail heretofore accepted *lex mercatoria*, transforming the arbitrator from one free to apply industry custom, practice, trade and usage, to, in effect, a “private judge” bound only to apply public law? Has Oklahoma become, in effect, its own brand of *lex mercatoria*, establishing for itself a new, less open arbitral standard?

### HAS OKLAHOMA THUS TRESPASSED?

Close review of §1870 is telling. Paragraph (A) properly leaves to the parties the decision to provide for a “reasoned award.” That is, this section does not require the inclusion of “findings of fact and conclusions of law” in every award, leaving it to the parties to decide wheth-

er they wish such a result.<sup>25</sup> This comports with long-standing and traditional arbitral practice. Unless the parties specify that the arbitrator(s) issue what is termed a “reasoned award” – one embodying an analysis of the standards applied (legal or otherwise) and the evidence adduced, the usual practice is to the contrary. The arbitrator(s) simply issue(s) an *award*, specifying the obligations of the parties – without a lengthy explanation of the underlying reasoning.

Paragraph (C) now provides otherwise. If the dictates of this section trump those of paragraph (A), arbitrators will arguably be required to specify the factual *and legal* basis underlying their awards. Implicitly, an argument can then be made that such determinations are subject to judicial review, examining whether the arbitrator’s stated reasoning comports with the award made – this, despite the parties’ intention that the arbitrator’s award be “final.” Indeed, under the standards seemingly enumerated here, when an award is sought to be *confirmed*<sup>26</sup> the opposing party arguably has ready ammunition to oppose confirmation, attacking not only the arbitrator’s virtually intrinsic right to craft an award within the bounds of the parties’ agreement, but on the all-but-court-like question whether the award complies with existing public law. Such a stricture effectively dilutes arbitration as an alternative means of dispute resolution in Oklahoma, reducing it to a mere shadow of judicial exercise, a pale reflection of the public court system, its essence buried by the seeming simple requirement that the “decision” be “on the merits” and that the “arbitrator . . . support his or her decision by likewise rendering findings of fact and conclusions of law.”

Surely this result was not intended by those who sought to bring to life the RUAA to replace the prior enactment of the Uniform Arbitration Act?

Upon close scrutiny, the insertion of paragraph (C) could be interpreted as an intention to rein-in the arbitral remedy, foreclosing the ability of Oklahoma arbitrators to craft an award based on *lex mercatoria* – in apparent contrast to public policy otherwise demonstrated by both the Oklahoma Legislature and the U.S. Congress with the passage of this and various other previous ADR statutes. In response, those seeking to retain the arbitral remedy in its traditional form can argue that the reference in paragraph (C) to an arbitral “decision” as opposed to an “award” renders paragraph (C) moot as inapplicable to an arbitration, since arbitrations result in “awards” which must be confirmed by a court



of record before becoming enforceable judgments.

Setting this argument to the side, the requirement that the arbitrator's "decision" be rendered "on the merits" ignores the time-honored tradition underlying the arbitral process represented by *lex mercatoria*. That is, the essence of the arbitral remedy is the blank slate upon which it begins. It is left to the parties to decide the boundaries of the remedy, filling in the rules, procedure and law to be applied, as the parties deem appropriate to the nature of the dispute. Paragraph (C) – if interpreted to apply to arbitrators and the awards they make — deprives the parties of this crucial right, and more importantly, strips the arbitral remedy in Oklahoma of key arbitral characteristics which otherwise traditionally define the remedy.

If paragraph (C) trumps paragraph (A) the following questions arise:

- Are all arbitrators in Oklahoma now required to render "awards" "on the merits" expressing "findings of fact and conclusions of law?"
- How, indeed, are engineers, IT professionals, geologists and other non-lawyer substantive experts to apprehend a "legal" "decision" when called upon to render an award applying industry (and not legal) standards?
- Does this mean that all arbitrators must, of necessity, be lawyers, or have legal counsel in order to ensure compliance with a requirement of legal defensibility?<sup>27</sup>

## A PRACTICE REMEDY AND A PRACTICAL PROBLEM

Absent legislative amendment, the remedy for this inartfully crafted language, inserted somewhat clumsily into the re-codified act can be found within the statute itself. Title 12 Okla. Stat. §1855(A) provides, "subject to the public policy of this state" and except as otherwise provided in the statute, **"a party to an agreement to arbitrate or to an arbitration proceeding may waive, or the parties may vary the effect of, the requirements of the Uniform Arbitration Act to the extent permitted by law."** This "out" clause permits the parties to tailor their arbitration agreement by affirmatively opting out of, adding to or modifying selected provisions of the OUAA. While §1855 contains various exceptions to this, shielding specifically enumerated sections from waiver or modification, §1870 is not one of the sections so protected.

The problem, of course, is that the majority of arbitration agreements are found in pre-printed

forms, such as that considered by the supreme court in *Doctor's Associates Inc., et al. v. Casarotto et ux.*, 517 U.S. 681 (1996) (the court considered the enforceability of an arbitration clause in a pre-printed license agreement promulgated by DAI, the parent company of the Subway franchises); or in employment agreements such as was considered by the Tenth Circuit Court of Appeals in *Shankle v. B-G Maintenance Management etc.*, 163 F.3d 1230 (10th Cir. 1999) (where an employee was required to sign an arbitration agreement as a condition of continued employment).

Neither plaintiff in the foregoing cases had an opportunity to re-draft or amend the proffered agreement before signing. And, such is the case with many arbitration provisions now included almost routinely in banking, retail sales and employment agreements. So, while the OUAA provides a *drafting remedy*, such a remedy is only effective *before* an agreement is signed; and only then if both parties have an opportunity to participate in its drafting.<sup>28</sup>

So, ideally, parties seeking to avoid the potential strictures of paragraph (C) need only opt out of §1870(C) in their agreement to arbitrate. Pursuant to paragraph (A) an "award" need not be "reasoned" unless the parties so specify. Opting out of paragraph (C) leaves the arbitral remedy (and the role of the arbitrator) intact.

Failing to affirmatively opt out of paragraph (C) creates a potential ambiguity within the statute and facially appears to bring paragraphs (A) and (C) into conflict. The United States Supreme Court, in *Brown v. Gardner*, 513 U.S. 115, 117-118 (1994) defined a statutory ambiguity as *contextual*, that is, in determining whether there is a statutory ambiguity, requires examination of the context within which the language appears, looking to the statutory language as a whole:

"Ambiguity is a creature not of definitional possibilities but of statutory context, see *id.*, at 221 ("The meaning of statutory language, plain or not, depends on context"), and this context negates a fault reading. Section 1151 provides compensability not only for an "injury," but for an "aggravation of an injury" as well. "Injury" as used in this latter phrase refers to a condition prior to the treatment in question, and hence cannot carry with it any suggestion of fault attributable to the VA in causing it. Since there is a presumption that a given term is used to mean the same thing throughout a statute, *Atlantic Cleaners & Dyers Inc. v. United States*, 286 U.S. 427, 433, 76 L. Ed. 1204, 52 S. Ct. 607 (1932), a presumption surely at its most vig-

orous when a term is repeated within a given sentence, it is virtually impossible to read “injury” as laden with fault in the sentence quoted.”

Applying this reasoning to the construction of the OUAA and to paragraphs (A) and (C) of §1870 specifically, lends credence to the argument that the use of the term “decision” within paragraph (C) renders that section inconsistent with the whole of the statutory context within which it is found — that is, the remainder of the OUAA; and thus inapplicable when determining the type of “award” an arbitrator is to issue.<sup>29</sup> In other words, the failure of the statute to address a “decision” in any other section enables one to conclude that what is intended is regulation of arbitral “awards” and not “decisions.”

In effect, paragraph (C) becomes a statutory orphan, without effect (though it is a clear rule of statutory construction that where possible a statute should be construed to give effect to all its sections.) Where, as here, however, there is no context which gives any meaning to the term “decision” as contrasted to an “award” it is difficult to ascribe any meaning that will not create a further ambiguity, if not an outright contradiction.

Statutory construction of otherwise contradictory legislative enactments also requires judicial construction. The Tenth Circuit Court of Appeals in *Concepcion Padilla-Caldera v. Alberto R. Gonzales, United States Attorney General*, 426 F.3d 1294, 2005 U.S. App. LEXIS 22399 (10th Cir. 2005) observed:

“Because we are faced with two conflicting provisions of the immigration code, our foremost duty is to “ascertain the congressional intent and give effect to the legislative will” — as in all cases of statutory construction. *Philbrook v. Glodgett*, 421 U.S. 707, 713, 44 L. Ed. 2d 525, 95 S. Ct. 1893 (1975). To ascertain congressional intent in cases of statutes in conflict, when, as here, the text itself gives no indication of which provision Congress intended to supersede the other, we look to legislative history and the underlying policies of the statutory scheme, keeping in mind canons of statutory construction. See *Chickasaw Nation v. United States*,



534 U.S. 84, 99, 151 L. Ed. 2d 474, 122 S. Ct. 528 (2001). The most “familiar” such canon is that “conflicting statutes should be interpreted so as to give effect to each but to allow a later enacted, more specific statute to amend an earlier, more general statute . . . .” *Smith v. Robinson*, 468 U.S. 992, 1024, 82 L. Ed. 2d 746, 104 S. Ct. 3457 (1984).

The paradigmatic canon of statutory construction cited above, that the later statute trumps the earlier, cuts in Padilla-Caldera’s favor. Our analysis, however, cannot end there. In *Watt v. Alaska*, 451 U.S. 259, 68 L. Ed. 2d 80, 101 S. Ct. 1673 (1981), the court acknowledged that the case “involved two statutes each of which by its literal terms applies to the facts before us.” *Id.* at 266. There, as here, the argument was made that the plain language of the later statute controlled and thus made any resort to legislative history improper. While the court agreed that the statutory language was the starting point, **it clarified that the clear language of the later-adopted statute does “not preclude consideration of . . . the circumstances of the enactment of particular legislation”** *Id.* (citations and footnote omitted).

Here, paragraphs (A) and (C) of §1870 were enacted simultaneously. And, if the term “decision” is equated with “award” there is an evident conflict between these two sections. Given the simultaneous enactment of conflicting provisions, the most appropriate conclusion is that this creates an “ambiguity” resolved by looking to the statutory context as a whole. This, of course, serves only to highlight the potential problem raised by pre-printed forms; or where one party does not have the ability to “opt out” by drafting a responsive agreement.

## CONCLUSION

Oklahoma’s Uniform Arbitration Act deviates from that approved by the National Conference of Commissioners on Uniform State Laws, adding §1870(C) which requires an arbitrator’s “decision” be made “on the merits” and supported by “findings of fact and conclusions of law.” This stands in direct conflict with §1870(A) which leaves to the parties the discretion to require a “reasoned award;” further leaving to the parties

the decision whether to require an arbitrator follow substantive law or "*lex mercatoria*."

If an arbitrator were required to substantively support his or her "decision" (*nee*, "award") by applying governing public law (as opposed to custom, trade or practice) a question arises whether all arbitrators must either be lawyers or if not, whether arbitrators should then retain legal counsel to ensure conformity with "the law?" Such a requirement would, of course, undermine the arbitral remedy, excluding from service a cadre of experienced non-lawyer arbitrators; so encumbering the arbitral system as to render it ineffective as an alternative to litigation.

Some argue that fundamental fairness requires adherence to public law – applying the same decisional standard in all disputes. This is especially the case, they assert, when enforcing arbitration clauses in consumer contracts, given the all-too-often one-sided nature of such agreements (*i.e.*, the consumer often has little, if any, opportunity to negotiate the terms, or even the existence of the arbitration agreement embedded within the contract).

If accomplished, such a result should be narrowly and not broadly drawn. To interpret §1870 to require adherence to public law in all arbitral "decisions" "on the merits" effectively transforms arbitration into a sub-species of litigation, whose primary attributes become "privacy" and the ability to select the decision maker (who is then constrained to "follow the law.") Great flexibility would thus be lost, and the value of the arbitral remedy as a speedy, cost effective alternative to litigation would be significantly diminished.<sup>30</sup>

Some even urge enactment of a legislative declaration that pre-dispute arbitration clauses included in "form" contracts where, for example, the consumer has little or no opportunity to bargain, be deemed 'unconscionable' as a matter of law.<sup>31</sup> Others say, however, that this suggestion flies in the face of long-standing and accepted public policy underlying the *Federal Arbitration Act* — to place all contracts on the same footing, such that arbitration agreements are treated no differently than other contracts.<sup>32</sup>

Short of legislative amendment, the effective remedy in response to the ambiguity created by

“Some argue that fundamental fairness requires adherence to public law — applying the same decisional standard in all disputes.”

paragraphs (A) and (C) at §1870 is to invoke the "opt out" or modification remedy specified at §1855(A) of the OUAA when crafting the initial arbitration agreement, specifying either that the parties 1) *exclude §1870(C) from their agreement*; or 2) *modify §1870 (A) and (C) by specifying the type of award the arbitrator will issue*. The problem, of course, is how to deal with the plethora of pre-printed or "form" contracts which include arbitration clauses?

With the addition of 12 Okla. Stat. §1870(C), has Oklahoma become a new "law merchant?" Has the Legislature inadvertently or otherwise established a new arbitral standard, limiting the arbitral remedy? The issue is easily corrected by legislative amendment; but failure to act may, at best, create a statutory ambiguity; or, in a worst-case scenario, give rise to unintended grounds upon which to object to confirmation of arbitral awards.

1. Title 12 Okla. Stat. §1851 *et seq.*

2. *See*, 12 Okla. Stat. §1870(A) and (C).

3. Christopher R. Drahozal, "Competing and Complementary Rule Systems: Civil Procedure and ADR: Contracting Out of National Law: An Empirical Look at the New Law Merchant," 80 *Notre Dame L. Rev.* 523, 526 (January 2005).

4. *See*, Michael Hunter Schwartz, "From Star to Supernova to Dark, Cold Neutron Star: The Early Life, the Explosion and the Collapse of Arbitration," 22 *W. St. U. L. Rev.* 1, 4 (Fall, 1994), who observes:

"Arbitration has been traced as far back as thirteenth century England. Along with its legal system England exported arbitration pretty much in its current form, to its American colonies . . . By mid-eighteenth century, the colonial merchants had come to perceive a conflict between judicial settlement of disputes and their need for privacy and cooperation. They therefore developed their own private tribunals using merchant decision-makers. In fact, one of the reasons the merchants formed the New York Chamber of Commerce was their desire to organize arbitration of disputes."

5. *Id.* at p. 527.

6. *Id.* at p. 528.

7. *See* Drahozal, *supra* note 1, at 529, citing W. Lawrence Craig, et al. *International Chamber of Commerce Arbitration* 35.01-.04 (3d ed. 2000).

8. *Id.*

9. *See, e.g.*, Amy J. Schmitz, "Secrecy and Transparency in Dispute Resolution: Untangling the Privacy Paradox in Arbitration," 54 *Kan. L. Rev.* 1211, 1223 (June 2006), who writes:

"Merchant and trade groups are prime examples of communities that have benefitted from arbitrator's private adjudication of disputes. By the early twentieth century, nearly every trade or profession had developed arbitration systems that determined intra-community disputes in accordance with local norms, standards and rules."

10. *Id.*

11. J.D. Wangelin, "Buttressing the Pillars of Arbitration," *Mealey's International Arbitration Report*, excerpt found at <http://www.cidra.org/articles/pillar.htm>.

12. *Id.*

13. *Id.*

14. *See, e.g.*, *Volt Info. Sciences Inc. v. Bd. Of Trustees*, 489 U.S. 468, 478 (1989), where the court held:

"While Congress was no doubt aware that the [Federal Arbitration] Act would encourage the expeditious resolution of disputes,

its passage was motivated first and foremost by a congressional desire to enforce agreements into which parties had entered.” (quoting, *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 220 (1985)).

15. Martin Shapiro, *Courts*, p. 2 (The University of Chicago Press, 1981.)

16. See Sara Rudolf Cole, “Incentives and Arbitration: The Case Against Enforcement of Executory Arbitration Agreements Between Employers and Employees,” 64 *UMKC L. Rev.* 449 (Spring 1996) who notes:

“[R]ules are largely absent from the arbitral process. Parties usually select the arbitrator who will resolve their case . . . . The parties may choose the extent to which they wish to be bound by formal procedural rules and may define their own procedure. Arbitration proceedings need not follow the rules of evidence and often limit or eliminate discovery. Direct testimony in arbitration proceedings may be presented in writing with presentation of evidence at the arbitration hearing limited to cross-examination based on the written direct testimony.”

17. See Schmitz, *supra* note 6.

18. *Id.* at p. 1225.

19. See Sara Rudolf Cole, *supra* note 14.

20. “In any event, § 2 gives states a method for protecting consumers against unfair pressure to agree to a contract with an unwanted arbitration provision. States may regulate contracts, including arbitration clauses, under general contract law principles and they may invalidate an arbitration clause “upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2 (emphasis added). What states may not do is decide that a contract is fair enough to enforce all its basic terms (price, service, credit), but not fair enough to enforce its arbitration clause. The act makes any such state policy unlawful, for that kind of policy would place arbitration clauses on an unequal “footing,” directly contrary to the act’s language and Congress’ intent. See *Volt Information Sciences Inc.*, 489 U.S. at 474.” *Allied-Bruce Terminix Cos. v. Dobson*, 513 U.S. 265, 281 (1995).

21. See, n. 22, *infra*.

22. The National Conference of Commissioners on Uniform State Laws unanimously adopted the first changes to the Uniform Arbitration Act on Aug. 3, 2000. “*The Revised Uniform Arbitration Act: An Overview*,” at [http://findarticles.com/p/articles/mi\\_qa3923/is\\_200105/ai\\_n8938152](http://findarticles.com/p/articles/mi_qa3923/is_200105/ai_n8938152).

23. See, e.g., 9 U.S.C. §9 *et seq.* setting forth the requirement for confirmation within one (1) year of the award when applying the Federal Arbitration Act; and Title 12 Okla. Stat. §1873.

24. See, e.g., Justice Black’s dissent in *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, wherein he observed of non-lawyer arbitrators:

“The court holds, what is to me fantastic, that the legal issue of a contract’s voidness because of fraud is to be decided by persons designated to arbitrate factual controversies arising out of a valid contract between the parties. And the arbitrators who the court holds are to adjudicate the legal validity of the contract need not even be lawyers, and in all probability will be nonlawyers, wholly unqualified to decide legal issues, and even if qualified to apply the law, not bound to do so.”

*Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395 (1967).

25. Indeed, the parties may seek a “reasoned award” without requiring it reflect “findings of fact and conclusions of law.” Such an award might reflect, instead, the arbitrator’s application of custom, practice, trade or usage in a given industry, or might otherwise reflect an equitable as opposed to ‘legal’ result. To require an arbitrator prepare an award requiring “findings of fact and conclusions of law” thus works a dual stricture: 1) the arbitrator must prepare and reasoned award; and 2) the award must reflect an application of public law. Such a requirement thus deprives the parties of the right to determine the type of award sought; and deprives them of a resolution based on equitable or industry standards, limiting the result to public law. To do otherwise is to risk vacation of the award.

26. Following “notice of an award” a party “may make an application and motion to court for an order confirming the award.” Title 12 Okla. Stat. §1873. Note that the reference here is to confirmation of an “award” — a term of legal art, and not to the otherwise inchoate term, “decision” reflected in §1870(c).

27. *But see*, Anne Radford, “Arbitration Clauses in Consumer Contracts of Adhesion: Fair Play or Trap for the Weak and Unwary?” 21 *Iowa J. Corp. L.* 331, 359 (Winter 1996), who says,

“Compliance with law. Consumer arbitrators should be obligated to apply the extensive body of consumer legislation, not simply their personal ideas of fairness.”

28. Of course, nothing prevents the parties from amending the original agreement and ‘opting out’ of 12 Okla. Stat. §1870(C) after the fact.

29. “It is a “fundamental tenet of statutory construction that a court should not construe a general statute to eviscerate a statute of specific effect.” *State Bank of S. Utah v. Gledhill (In re Gledhill)*, 76 F.3d 1070, 1078 (10th Cir. 1996) (citing *Morales v. Trans World Airlines Inc.*, 504 U.S. 374, 384, 119 L. Ed. 2d 157, 112 S. Ct. 2031 (1992)). *Sierra Club-Black Hills Group v. United States Forest Serv.*, 259 F.3d 1281, 1287 (10th Cir. Colo. 2001). Here, arguably use of a generic term such as is “decision” when contrasted with the specific term “award” is subject to this same construction. Use of the term “decision” should not be applied to limit the otherwise specific term “award.”

30. See, Sara Rudolph Cole, *supra* note 14, at page 456, where the author affirms the benefits of the arbitral remedy:

“Essentially, arbitration is a streamlined method of adjudication . . . . Parties choose arbitration because it offers a different approach to a dispute. Rather than a lengthy court battle, arbitration provides both parties the opportunity to obtain a speedy and less costly resolution of their dispute, using procedures that best suit them.”

31. See, Anne Bradford, *supra*, note 23, at p. 352, where she comments:

“Despite the court’s proper application of established contract law . . . [t]hey argue that even though courts may be following the black-letter law of unconscionability, the consumers have not truly consented and this renders the arbitration clause invalid. Consequently, one commentator, Todd D. Rakoff, proposed that the law should establish a rebuttable presumption that arbitration clauses are unenforceable when imposed on a consumer through an adhesion contract. Instead or presuming the standardized terms enforceable, the law – judicial or legislative – should provide “background law” which will replace the standardized terms.”

32. “Although Congress recognized the benefits of arbitration, arguably the statute [the Federal Arbitration Act at 9 U.S.C. §1 *et seq.*] is not so much pro-arbitration as it is pro-agreement.” Ann Bradford, *supra*, note 23 at page 334. She goes on to say:

“Legislative history suggests, then, that the legislators’ primary purpose in passing the FAA was to ensure enforcement of arbitration agreements rather than to create a policy favoring arbitration. Nonetheless, there is legal authority supporting those who insist that the FAA indicates a clear intent to favor arbitration as well as authority to support those who insist on the narrower view that the FAA only favors agreements.”

## ABOUT THE AUTHOR

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# Judicial Immunity and the Oklahoma Judge

By D. Michael Haggerty II

As any practicing attorney knows, any case involving disputes between parties is likely to result in at least one party being unhappy with the result. While a few disputes may be resolved in such a manner as to render both sides reasonably happy with the outcome, in many cases the parties' expectations and desires are in such conflict that dissatisfaction is unavoidable. When this occurs, a number of unhappy litigants are bound to consider legal action against one or more of the authors of their discontent. In many cases, the unhappy party identifies the judge hearing the case as the culprit, with allegations against him ranging from stupidity to bias to outright corruption. Notwithstanding the prohibitions against expressing such allegations, even the practicing bar is not immune from such feelings.

Once dissatisfaction is present, then a party will naturally consider what remedies, if any, he may have against the cause of that displeasure. One remedy that has historically been pursued has been a lawsuit against the judge. This led to the doctrine of judicial immunity centuries ago, a doctrine that remains alive and well today. This article will examine the current status of the judicial immunity doctrine and how it impacts Oklahoma's hundreds of judges.

The doctrine of judicial immunity is of ancient origin, with its beginnings dating back to the 14th century reign of Edward III.<sup>1</sup> Its origins lie in disputes between the various courts in England for authority over the common law courts.<sup>2</sup> Initially applicable only to the highest judges of those courts, it was extended over time to all

judges for actions within their jurisdiction.<sup>3</sup> This doctrine was adopted by the U.S. Supreme Court in 1871 in *Bradley v. Fisher*.<sup>4</sup> In that case, the court noted that the doctrine had been settled in England for "many centuries," had "never been denied" in the United States and "obtains in all countries where there is any well-ordered system of jurisprudence."<sup>5</sup> The court has also held that this doctrine is applicable to civil rights actions under 42 U.S.C. § 1983.<sup>6</sup> Judicial immunity is active in the court's jurisprudence, as will be seen below.

Oklahoma recognized this doctrine before statehood in *Comstock v. Eagleton*,<sup>7</sup> where the Supreme Court of Oklahoma Territory affirmed the dismissal of a false imprisonment lawsuit against a probate judge who had erroneously

remanded a defendant to custody for failing to pay court costs.<sup>8</sup> This doctrine continued to be recognized after statehood.<sup>9</sup> These early cases relied on the holding in *Bradley*.<sup>10</sup> The doctrine has now been codified as part of the Governmental Tort Claims Act.<sup>11</sup>

The obvious purpose of the doctrine is to permit judges to decide cases on their merits, without fear of personal repercussions.<sup>12</sup> Were judges to be threatened with personal consequences for rendering a decision, it would destroy the independence necessary to the judiciary.<sup>13</sup> Given the intense emotions aroused by almost any litigation, since a judge's errors may be corrected on appeal, "he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption. Imposing such a burden on judges would contribute not to principled and fearless decision-making but to intimidation."<sup>14</sup> Accordingly, judges are immune from suit for damages for judicial acts, unless they act in the complete absence of all jurisdiction.<sup>15</sup> This immunity extends to an immunity from the suit itself, as well as the threat of damages.<sup>16</sup>

The limitations of this doctrine are important in determining whether a judge is immune for his actions. First, it should be understood that while a judge is immune from a suit for damages, this immunity does not protect against injunctive relief.<sup>17</sup> Additionally, while money damages cannot be awarded, in a civil rights case where the plaintiff seeks and obtains an injunction, a judge remains financially vulnerable to an award of attorney fees.<sup>18</sup> Thus, even when a judge acts within the other limitations of the doctrine, he is still not entirely invulnerable for constitutional violations. A judge's private co-conspirators do not share his immunity from suit, and the judge is not immune from being summoned as a witness against them.<sup>19</sup> A judge is not immune from criminal prosecution.<sup>20</sup> A judge is also not immune from bar discipline if his misconduct involves fraud, crime or dishonesty.<sup>21</sup> Finally, a judge is not immune from impeachment or removal proceedings to remove him from the bench for his unlawful or oppressive misconduct.<sup>22</sup>

The second limitation of this doctrine is that it must involve a "judicial act." Two factors have been recognized in determining whether a judge's act is judicial: first, there is the nature of the act, whether the act is "a function normally performed by a judge," and second, examining the expectations of the parties, "whether they

dealt with the judge in his judicial capacity."<sup>23</sup> Thus, a judge acting on a petition submitted to him is acting judicially and is immune from suit.<sup>24</sup> Likewise, when a judge orders an attorney forcibly brought to his courtroom, he is immune.<sup>25</sup> However, when a judge acts in an administrative, executive or legislative capacity, he is not immune.<sup>26</sup> For instance, judges are not immune from suit because of alleged gender discrimination in hiring or firing because those are administrative and not judicial decisions.<sup>27</sup> When exercising rulemaking authority, a judge is not entitled to judicial immunity but *legislative* immunity for this type of legislative act.<sup>28</sup> A judge also does not have judicial immunity when serving on a board with merely legislative and administrative powers.<sup>29</sup> Whether an act is "judicial" is not affected by the formality of the proceedings. Thus, a judge can commit a judicial act even if a case has not been filed, no docket number assigned, outside of a courtroom and without his robe.<sup>30</sup>

The final limitation is that of subject matter jurisdiction. The cases draw a distinction between situations where a judge merely acted in excess of his jurisdiction versus situations where a judge had no jurisdiction at all over the subject matter. Only the latter instance, when a judge is exercising "usurped authority," subjects him to liability.<sup>31</sup> Thus, when a petition to sterilize a minor was heard *ex parte*, without notice to the minor, by an Indiana judge with general original jurisdiction, the judge was immune from suit for his wrongful decision to grant the petition because that type of case fell within his subject matter jurisdiction.<sup>32</sup>

It is plain from the cases that *only* subject matter jurisdiction is required. *Bradley* spoke primarily of subject matter jurisdiction.<sup>33</sup> A judge is immune from suit even if he had no personal jurisdiction<sup>34</sup> over the person he rules against.<sup>35</sup> Thus, a failure to give another party notice *even when that party should have been given notice* does not deprive the judge of his immunity.<sup>36</sup> This jurisdiction must be construed broadly for immunity purposes.<sup>37</sup> In short, a judge, or the court of which he is a part, must simply have jurisdiction over the type of case which is before him.<sup>38</sup>

This immunity remains in place even if "grave procedural errors" are committed by the judge, such as failing to give notice to an adverse party or otherwise comply with procedural due process.<sup>39</sup> A judge is not liable if he acts with malice, or corruptly, or as part of a conspiracy with others who are not immune.<sup>40</sup> Error in granting or



denying relief, even when that error is plainly apparent, only constitutes an action “in excess of jurisdiction” for which the judge remains immune.<sup>41</sup>

Examples given in the cases help illustrate this point. For example, if an Oklahoma district judge were to convict and sentence a defendant for a non-existent crime, that would fall within his subject matter jurisdiction, and his action would merely be in excess of jurisdiction; he would remain immune.<sup>42</sup> Likewise, a judge who sentences a defendant to a penalty greater than that provided by law would merely exceed his jurisdiction.<sup>43</sup> Were a district judge to order the sterilization of a child, without notice to that child or anyone else, he would remain immune.<sup>44</sup> On the other hand, were a court of limited jurisdiction, such as a probate court, to take action in a criminal case, a case beyond its cognizance, then the probate judge would be acting in the absence of all jurisdiction and would lose his immunity.<sup>45</sup>

Oklahoma’s municipal courts provide an appropriate context to explore this issue. Oklahoma’s municipal courts are courts of sharply limited jurisdiction with power only to hear criminal cases charging violations of municipal ordinances.<sup>46</sup> Thus, unlike district judges, there are large classes of cases that are outside a municipal judge’s subject matter jurisdiction. For instance, a probate petition, a motion to modify in a divorce or an ordinary civil action are well outside any concept of a municipal judge’s subject matter jurisdiction; thus, a municipal judge acting on one of those matters would not be immune. However, if acting on a criminal complaint for violation of a municipal ordinance, a municipal judge retains immunity even if his specific action is not authorized by law. For instance, were a municipal judge of a court not of record to issue a search warrant for investigation of possible violations of city ordinances, which he is not authorized to grant,<sup>47</sup> he would retain his immunity since violations of ordinances are within his subject matter jurisdiction.<sup>48</sup> The same reasoning applies to excessive punishments.<sup>49</sup> Likewise, if a municipal judge convicts and sentences a defendant under an unlawful ordinance, either because it was not properly enacted, purports to criminalize an act which under state law is a felony<sup>50</sup> or because it unlawfully discriminates based on race, gender, religion, etc., he retains immunity even though the ordinance is invalid.<sup>51</sup>

Judicial immunity is not limited solely to judges. Since judicial immunity involves a functional analysis of the judge’s conduct, it is not limited strictly to those who hold the title of judge. Administrative law judges and other hearing officers employed by an executive agency have judicial immunity.<sup>52</sup> So do receivers,<sup>53</sup> guardians ad litem<sup>54</sup> and witnesses appointed as advisers to the court.<sup>55</sup> Court clerks and other court officials are also protected, so long as they are acting in a quasi-judicial capacity or under court order; they lose this protection when they perform non-discretionary ministerial functions not specifically ordered by a court.<sup>56</sup>

To summarize, extraordinary care should be taken in deciding whether to sue either a judge or someone acting in a judicial capacity. It seems reasonable to assume that most judges hearing such a suit, with an eye toward their own liability, would be generous toward applying judicial immunity; this is particularly true when the applicable cases tell them to construe this immunity broadly. There is also the danger that an attorney and/or his client could be sanctioned for bringing such a suit. Such risks warrant extreme caution in initiating a claim for damages against someone in this position.

However, this does not mean that judges are bulletproof. Judges can be removed from office, criminally prosecuted and disbarred in appropriate circumstances. They are subject to injunction, and in the civil rights context at least, can be ordered to pay attorney fees if an injunction is granted. Thus, for a host of reasons (including their oaths to do so) judges should make every effort to ensure that their actions are in full conformity with applicable law.

1. *Schuer v. Rhodes*, 416 U.S. 232, 239 n.4 (1974), overruled on other grounds *Imbler v. Pachtman*, 424 U.S. 409 (1976).
2. *Pulliam v. Allen*, 466 U.S. 522, 530 (1984).
3. *Id.*
4. 80 U.S. (13 Wall.) 335 (1871).
5. *Id.* at 347.
6. *Pierson v. Ray*, 386 U.S. 547, 554-55 (1967).
7. 1902 OK 20, 69 P. 955, appeal dismissed 196 U.S. 99 (1905).
8. *Id.*, 1902 OK 20 at ¶¶ 8-13.
9. See *Waugh v. Dibbens*, 1916 OK \_\_\_\_, 160 P. 589, 590-92 (affirming directed verdict in favor of judge in false imprisonment claim, on basis of judicial immunity).
10. See *Comstock* at ¶¶ 11-12 and *Waugh* at 591 (citing *Bradley* as authority for holding).
11. See 51 O.S. § 155(2) (state or political subdivision not liable for claim resulting from judicial function).
12. *Bradley* at 347.
13. *Id.*
14. *Pierson* at 554.
15. *Mireles v. Waco*, 502 U.S. 9, 11-12 (1991).
16. *Id.* See *Allen v. Zigler*, 2002 OK CIV APP 30, 41 P.3d 1060 (following *Mireles*).
17. *Pulliam* at 541-42.
18. *Id.* at 543-44.
19. *Dennis v. Sparks*, 449 U.S. 24, 29-31 (1980).

20. *O'Shea v. Littleton*, 414 U.S. 488, 503 (1974).

21. *State ex rel. Okla. Bar Assoc. v. Sullivan*, 1979 OK 1, ¶ 18, 596 P.2d 864. This point is illustrated by two recent cases involving disbarment of judges. Judge Lile from the Court of Criminal Appeals was disbarred for his false travel and expense reimbursement claims (among other issues) while he was serving as a judge. *State ex rel. Okla. Bar Assoc. v. Lile*, 2008 OK 82, ¶¶ 15, 27, \_\_\_\_ P.3d \_\_\_\_\_. Likewise, Judge Thompson from Sapulpa was disbarred for exposing himself on the bench while serving as district judge. *State ex rel. Okla. Bar Assoc. v. Thompson*, 2008 OK 89, ¶¶ 5-8, \_\_\_\_ P.3d \_\_\_\_\_.

22. *Bradley* at 350. Also, note that in *Sullivan*, *supra*, while the Court held that judicial immunity protected the judge from bar discipline, it had not protected him from removal prior to the bar disciplinary proceedings.

23. *Stump v. Sparkman*, 435 U.S. 349, 362 (1978).

24. *Id.* at 362-63.

25. *Mireles* at 12-13. However, it has been held that the act of applying force to a person in the courtroom, as opposed to merely *ordering* that force, can be a non-judicial act. See *Stump* at 361 n.10, discussing *Gregory v. Thompson*, 500 F.2d 59 (9th Cir. 1974).

26. *Allen*, *supra* at ¶ 5.

27. See *Forrester v. White*, 484 U.S. 219, 229-30 (1988) (permitting suit against judge for allegedly demoting and firing probation officer because of her gender).

28. *Supreme Court of Virginia v. Consumers Union of the United States Inc.*, 446 U.S. 719, 734 (1980). Interestingly, although judicial immunity does not protect the defendant judge from attorney fees liability, legislative immunity *does* immunize him from attorney fees. See *id.* at 738-39 (rulemaking judges immune from attorney fees due to legislative immunity).

29. *Stump* at 361 n.10.

30. See *Stump* at 360-61 and the cases cited therein. Thus, a judge awakened in the middle of the night, in his own home, clad only in his pajamas, commits a "judicial act" when reviewing and approving or disapproving a search warrant affidavit. See *Burns v. Reed*, 500 U.S. 478, 492 (1991) ("[T]he issuance of a search warrant is unquestionably a judicial act.")

31. *Bradley* at 351-52.

32. *Stump* at 358-60.

33. See *Bradley* at 351 (drawing distinction between excess of jurisdiction and "the clear absence of all jurisdiction over the subject matter").

34. In one case, the Ninth Circuit previously held that personal jurisdiction was also required for judicial immunity. *Rankin v. Howard*, 633 F.2d 844, 849 (9th Cir. 1980), cert. denied sub nom. *Zeller v. Rankin*, 451 U.S. 939 (1981). However, even the Ninth Circuit abandoned this reasoning in *Ashelman v. Pope*, 793 F.2d 1072, 1076 (9th Cir. 1986) (en banc). The early Oklahoma cases also refer to personal jurisdiction, although it is clear that the Court in each case noted that the judge at issue had *both* subject matter *and* personal jurisdiction. See *Comstock* at ¶ 9 (noting that plaintiff admitted defendant judge had both personal and subject matter jurisdiction); *Waugh* at 590 (judge who had personal and subject matter jurisdiction was immune from suit); *Quindlen v. Hirshchii*, 1955 OK 164, ¶¶ 5, 8, 284 P.2d 723 (same holding). However, Oklahoma now apparently recognizes that only subject matter jurisdiction is necessary. See *Gregory v. Fransein*, 2008 OK CIV APP 35, n.5, 42 P.3d 298 (citing Tenth Circuit, noting that only subject matter jurisdiction is necessary).

35. See *Ashelman* at 1076 (judge entitled to judicial immunity if he has subject matter jurisdiction but lacks personal jurisdiction); *Dykes v. Hoseman*, 776 F.2d 942, 947-50 (11th Cir. 1985) (en banc) (same holding); *John v. Barron*, 897 F.2d 1387, 1392 (7th Cir. 1990) (following *Ashelman*); *Crabtree v. Muchmore*, 904 F.2d 1475, 1477 (10th Cir. 1990) ("no attorney" could conclude that judge lacked immunity if he had subject matter but not personal jurisdiction, affirming award of sanctions against plaintiffs who sued judge); *Green v. Maraio*, 722 F.2d 1013, 1017-18 (2d Cir. 1983) (judge who lacked personal jurisdiction but had subject matter jurisdiction retained judicial immunity).

36. *Stump* at 359.

37. *Id.* at 356.

38. *Bradley* at 352.

39. *Stump* at 359.

40. *Bradley* at 351; *Stump* at 355-56; *Dennis*, *supra* at 27.

41. *Bradley* at 352; *Stump* at 359; *Gregory* at n.4.

42. *Bradley* at 352.

43. *Id.*; *Okla. Tax Comm'n v. City Vending of Muskogee Inc.*, 1992 OK 110, ¶ 7, 835 P.2d 97 (Opala, J., concurring).

44. *Stump* at 359.

45. *Bradley* at 352.

46. OKLA.CONST. art. 7 § 1; 11 O.S. §§ 27-103, 28-102(A).

47. It has long been held that a municipal court, referred to in older cases as a "police court," does not have the authority to issue search warrants. *Crump v. State*, 29 Okla.Cr. 7, 8, 231 P. 901 (Okla.Cr. 1925); *Grimes v. State*, 65 Okla.Cr. 99, syl.6, 115, 83 P.2d 410 (Okla.Cr. 1938). However, municipal judges of courts of record are expressly authorized to issue search warrants. 11 O.S. § 28-121.

48. As noted in *Stump*, the judge retains jurisdiction over the request, *even if the only permissible action is to deny it*. See *Stump* at 359 (fact that law required petition to be denied did not deprive judge of subject matter jurisdiction).

49. This issue was brought to municipal judges' attention by the opinion in *House v. Town of Dickson*, 2007 OK 57, \_\_\_\_ P.3d \_\_\_\_, wherein the Town of Dickson was sued for levying excessive penalties against defendants in its municipal court. The action in *House* was premised on Dickson's failure to compile and supplement its ordinances as required by 11 O.S. §§ 14-109 and 14-110. In such a case, the maximum penalty for violation of a municipal ordinance is capped at \$50.00. 11 O.S. §§ 14-111(E) and 27-119. See *House* at ¶ 3 (discussing this limitation). At a recent conference of the Oklahoma Municipal Judges Association, the opinion was expressed that a judge who entered a sentence in excess of that permitted by law was subject to potential personal liability. However, under existing cases, a judge retains immunity under these circumstances. *Bradley* gave as an example of immunity a judge who gave a greater punishment than that authorized by law. *Bradley* at 352. This example has been broadly applied by other courts in cases of excessive punishment. See *McAllister v. District of Columbia*, 653 A.2d 849, 850-51 (D.C. 1995) (judge immune for ordering excessive sentence); *Hurlburt v. Graham*, 323 F.2d 723, 725 (6th Cir. 1963) (justice of peace immune for sentence in excess of statutory authority).

50. Municipalities are not permitted to criminalize felonies in their ordinances. 11 O.S. § 14-111(B)(1) and (C).

51. See *Pierson* at 553-54 (judge immune for convicting defendants of violating ordinance which unlawfully discriminated based on race). But cf. *Schorle v. City of Greenhills*, 524 F.Supp. 821 (S.D. Ohio 1981), overruled on other grounds *Thomas v. Shipka*, 829 F.2d 570 (6th Cir. 1987) (mayor acting as municipal judge lacked all jurisdiction, and thus was not immune, for hearing prosecution for case more serious than those for which he had jurisdiction). It should be noted that *Schorle* has not been widely followed; the Sixth Circuit has declined on at least one occasion to follow its reasoning. See *DePiero v. City of Macedonia*, 180 F.3d 770, 784-85 (6th Cir. 1999) (declining to follow *Schorle*).

52. *Butz v. Economou*, 438 U.S. 478, 512-14 (1978).

53. *Hervey v. Ward Real Estate Co.*, 1998 OK CIV APP 185, ¶ 9, 972 P.2d 42; *Farrimond v. Fisher*, 2000 OK 52, n.4, 8 P.3d 872.

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

55. *Hartley v. Williamson*, 2001 OK CIV APP 6, ¶ 16, 18 P.3d 355 (approved for publication by Oklahoma Supreme Court). This is separate from the immunity of witnesses for their in-court testimony. See *Briscoe v. LaHue*, 460 U.S. 325, 345-46 (1983) (witnesses immune from civil rights suit for perjured testimony).

56. See *Forte v. Sullivan*, 935 F.2d 1, 3 n.4 and n.5 (1st Cir. 1991) (discussing cases from various circuits); *Wilhelm v. Gray*, 1988 OK 142, ¶ 20, 766 P.2d 1357 (Kauger, J., dissenting) (court clerks); *Antoine v. Byers & Anderson Inc.*, 508 U.S. 429, 435-37 (1993) (court reporter not immune from suit for failure to perform non-discretionary act in preparing transcript in timely manner).

## ABOUT THE AUTHOR



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## Labor and Employment Law Section

# The New, Broader Americans with Disabilities Act: Congress Enacts Substantial Changes

By Mary L. Lohrke and Stephanie Johnson Manning

On Sept. 25, 2008, President Bush signed into law the ADA Amendments Act of 2008 amending the Americans with Disabilities Act of 1990. The act, which became effective Jan. 1, 2009, expressly rejects a series of U.S. Supreme Court decisions limiting coverage under the ADA and restores congressional intent to provide *broad* protections to disabled individuals in the employment context.<sup>1</sup>

### BROADENED INTERPRETATION OF DISABILITY

The ADA prohibits an employer from discriminating against a qualified individual with a disability.<sup>2</sup> In order to be protected by the ADA, an employee must first show that he or she has a disability within the meaning of the ADA. This has not proved to be an easy task since the statutory definition of disability is vague and courts, following U.S. Supreme Court precedent, narrowly interpreted the statute. Under the ADA, the term “disability” means, with respect to an individual: 1) a physical or mental impairment that substantially limits one or more life activities of such individual; 2) a record of such an impairment; or 3) being regarded as having such an impairment.<sup>3</sup> Although the statutory definition of “disability” has not changed, the amendments expand the interpretation of the definition. Indeed, the act includes a findings and purposes section that rejects the use of a “demanding standard” for assessing whether an individual has a disability.<sup>4</sup> The act also includes

rules of construction providing that the definition of disability “shall be construed in favor of *broad* coverage” and “to the *maximum extent* permitted” by the statute.<sup>5</sup>

### CHANGES TO ‘SUBSTANTIALLY LIMITS’ LANGUAGE

The amendments expressly reject the construction given the term “substantially limits” by the Supreme Court in *Toyota Motor Mfg. Kentucky Inc. v. Williams*<sup>6</sup> requiring an individual to show an impairment that “prevents or severely restricts” the individual from performing activities that are of “central importance” to most people’s daily lives.<sup>7</sup> In *Toyota*, the court found the plaintiff, who could not wipe down cars coming off the assembly line due to carpal tunnel syndrome, was not substantially limited in the major life activity of performing manual tasks.<sup>8</sup> Key to the court’s holding was that the plaintiff could still perform a variety of manual tasks important to most people’s daily lives, such as personal and household chores and tending to her personal hygiene.<sup>9</sup> The amendments criticize the holding in *Toyota* as imposing “a greater degree of limitation than was intended by Congress.”<sup>10</sup> Despite this sharp criticism, Congress did little to provide additional clarity into the definition of “substantially limits” and, instead, tasked the EEOC to develop regulations consistent with the act.<sup>11</sup>

## ELIMINATION OF MITIGATING MEASURES

The act significantly broadens the scope of individuals covered under the ADA by eliminating the consideration of mitigating measures and ameliorative effects in determining whether an individual has a disability.<sup>12</sup> Specifically, the act rejects a series of Supreme Court decisions anchored by *Sutton v. United Air Lines Inc.*,<sup>13</sup> which allowed courts and employers to consider mitigating measures, such as eye glasses or medications, in determining whether an employee was disabled under the act.<sup>14</sup> In *Sutton*, severely myopic twins were disqualified from consideration for positions as pilots because they failed to meet the airline's minimum, uncorrected vision requirements.<sup>15</sup> The court found that because eye glasses corrected their vision, plaintiffs were not substantially limited in the major life activity of seeing and were, therefore, not disabled under the ADA.<sup>16</sup> The act criticizes *Sutton* for eliminating protections for many individuals Congress intended to protect.<sup>17</sup> Under the amendments, the determination of whether an impairment substantially limits a major life activity "shall be made without regard to the ameliorative effects of mitigating measures," such as, medication, medical supplies, equipment, prosthetics, hearing aids, mobility devices, assistive technology or auxiliary aids.<sup>18</sup> The single exception to this rule is that ordinary eyeglasses or contact lenses can be considered as a mitigating measure.<sup>19</sup>

## IMPAIRMENTS THAT ARE EPISODIC OR IN REMISSION

The amendments also make it easier for individuals with impairments that are episodic or in remission to meet the definition of an individual with a disability. The act sets forth that an impairment that is "episodic" or "in remission" can still qualify as a disability if it would substantially limit a major life activity "when active."<sup>20</sup> For example, an individual whose cancer is in remission could still be disabled under the act if, at the time the cancer was active, the cancer substantially limited a major life activity. This provision could potentially render an individual permanently disabled under the act without regard to the current effects of the impairment.

## EXPANDING MAJOR LIFE ACTIVITIES

While the ADA as originally enacted was silent on what constitutes a "major life activity," the amendments contain a lengthy, non-

exhaustive list of activities which are considered major life activities – once again broadening the scope of coverage.<sup>21</sup> The amendments adopt the list of major life activities listed in the EEOC regulations, including: caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.<sup>22</sup> The act includes additional activities, such as eating, sleeping, standing, lifting, bending, reading, concentrating and communicating.<sup>23</sup> Most significantly, the act also includes as major life activities "major bodily functions" such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory and reproductive functions.<sup>24</sup> Consequently, impairments that do not impact major life activities such as caring for oneself or working, may now be considered disabling if they impact a major bodily function. The act further makes clear that an impairment that substantially limits a single major life activity need not limit any other major life activity in order to be considered a disability.<sup>25</sup>

## 'REGARDED AS' COVERAGE

Finally, the act makes it easier for an individual to meet the definition of a person "regarded as" having a disability. The act clarifies that individuals who are "regarded as" having an impairment are covered under the ADA – whether or not an actual or perceived impairment limits a major life activity.<sup>26</sup> In imposing a broader interpretation of the "regarded as" prong, the amendments seek to reinstate the Supreme Court's reasoning in *School Board of Nassau County v. Arline*,<sup>27</sup> a case brought under the Rehabilitation Act of 1973, holding that the anti-discrimination laws are designed to protect individuals from discrimination because of myths, irrational fears and prejudice.<sup>28</sup> However, the amendments exclude from the "regarded as" prong transitory and minor impairments that last less than six months.<sup>29</sup> Further, the act provides that employees who are "regarded as" disabled are not entitled to reasonable accommodations under the ADA.<sup>30</sup> This provision implicitly rejects the position taken by some courts requiring employers to provide reasonable accommodations to employees who are not in fact disabled, but only regarded as disabled.

## UNRESOLVED ISSUES

Although the amendments were meant to clarify and ultimately streamline issues under the ADA, the amendments raise numerous

questions. For example, it remains to be seen how the inclusion of “major bodily functions” will affect claims under the ADA, particularly where certain “major bodily functions,” such as reproductive functions, have no impact on the employee’s ability to perform his or her job duties. Under the amendments, does an employer have an obligation to provide time off to an employee undergoing fertility treatments as a reasonable accommodation?

The amendments further leave unresolved the issue of whether a plaintiff must show that he or she is restricted in the ability to work in a broad class of jobs (as opposed to a particular job) in order to be “substantially limited” in the major life activity of working. In *Sutton*, the Supreme Court rejected the “single job rule” and held that an employee must demonstrate that he or she is substantially limited in performing a broad range of jobs in order to establish a disability under the ADA.<sup>31</sup> The amendments specifically reject the holdings in *Sutton* regarding mitigating measures and the “regarded as” disabled prong, but do not address the holding in *Sutton* regarding the “single job rule.”<sup>32</sup> This issue, however, may not be pressed given the significant broadening of the “regarded as” disabled prong, where an employee simply has to show that he or she has an impairment and that the employer’s adverse employment decision was based on the impairment.

Also unresolved is the issue of whether transitory and minor impairments may constitute a disability. The amendments address transitory and minor impairments in the context of the new “regarded as” prong. The amendments are silent with regard to whether transitory and minor impairments may constitute an actual disability. Does this statutory silence indicate that temporary or transitory impairments will be considered under the actual disability prong? Further, it remains to be seen how the courts will treat impairments that are episodic or in remission when the impairment has not been active for a significant period of time. Will the courts accept the creation of a class of permanently disabled individuals? These and many other questions are likely to be addressed in both the forthcoming EEOC regulations and future cases brought under the ADA.

1. ADA Amendments Act of 2008 §2(b)(1). Notably, early versions of the amendments were entitled ADA Restoration Act of 2007. See H.R. 3195, 110th Cong. §1 (2007).

2. 42 U.S.C. §12112.

3. ADA Amendments Act of 2008 §3(a)(1).

4. ADA Amendments Act of 2008 §2(b)(4).

5. ADA Amendments Act of 2008 §3(a)(4)(A) (emphasis supplied). Notably, the amendments strike certain findings in the original ADA, including the finding that: 1) some 43,000,000 Americans have one or more physical or mental disabilities; and 2) these individuals constitute a “discrete and insular minority.” See ADA Amendments Act §3 of 2008 Codified Findings and 42 U.S.C. §12101 (a)(1) and (7). Earlier Supreme Court decisions relied on these findings to narrowly interpret coverage under the ADA. Striking these provisions is consistent with the mandate in the amendments that the ADA be construed broadly.

6. 122 S.Ct. 681 (2002).

7. *Id.* at 691.

8. *Id.* at 694.

9. *Id.*

10. ADA Amendments Act of 2008 §2(a)(7).

11. ADA Amendments Act of 2008 §2(b)(6).

12. *Id.*

13. 119 S.Ct. 2139 (1999).

14. See *id.* at 2144. Similarly, in one of the *Sutton* companion cases, *Murphy v. United Parcel Service Inc.*, 119 S.Ct. 2133, 2137 (1999), the Supreme Court held that the plaintiff’s high blood pressure, which was controlled by medication, did not substantially limit a major life activity and that the plaintiff was not “disabled” under the ADA. The Supreme Court held in the other *Sutton* companion case, *Albertson’s Inc. v. Kirkingburg*, 119 S.Ct. 2162, 2168-69 (1999), that an individual’s learned or natural ability to compensate for the effects of an impairment could be a mitigating measure considered in assessing whether that individual is “disabled” under the ADA.

15. *Id.* at 2149.

16. *Id.*

17. ADA Amendments Act of 2008 §2(a)(4).

18. ADA Amendments Act of 2008 §3(a)(4)(E).

19. ADA Amendments Act of 2008 §3(a)(4)(E)(ii).

20. ADA Amendments Act of 2008 §3(a)(4)(D).

21. ADA Amendments Act of 2008 §3(a)(2).

22. *Id.*

23. *Id.*

24. *Id.*

25. ADA Amendments Act of 2008 §3(a)(4)(C).

26. ADA Amendments Act of 2008 §3(a)(3)(A).

27. 107 S.Ct. 1123 (1987).

28. *Id.* at 1129-30.

29. ADA Amendments Act of 2008 §3(a)(3)(B).

30. ADA Amendments Act of 2008 §6(h).

31. *Sutton*, 119 S.Ct. at 2139.

32. ADA Amendments Act of 2008 §2(b)(2) and (3).

## ABOUT THE AUTHORS



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# The Last Year of the First Decade of the New Millennium

By John Morris Williams

I remember when I was in grade school contemplating how old I would be at the turn of the century. It was inconceivable that I would live to such an old age. The thought that I would be so ancient was beyond my comprehension. Well, that came and went. Now we are beginning the last year of the first decade of the new millennium. Gee, that sounds ominous.

To most people it is probably just the beginning of a new year with plans to do it different this year. Diets, exercise, new practice habits, better relationships, ending relationships, saving, spending and a thousand other things make up our New Year's resolutions. If you are under 40, you think there are many more resolutions to come, and if you fail there will be other chances. If you are a bit older, you might have just given up and decided to live with yourself the way you are. Those may be good choices. I, on the other hand, am still contemplating what my resolutions would be. I know. It's a bit late to still be playing the New Year's resolution game. However, I am thinking it is better to have a slow start than to just die at the gate.

Here are some things I am thinking: 1) To write more letters. It seems all I do is e-mail. It is quick, easy and everyone does it. There is still something special about getting something in the mail. A handwritten note is a rare and special thing. Maybe what I really should resolve here is to not let technology be a substitute for maintaining personal relationships. 2) I want to laugh more. I suspect that funnier things will not happen this year. I just want to develop that warped sense of the world that allows one to laugh rather than get angry or depressed. If I can't get to the laughing stage, I would at least like to smile a bit more at the absurd. 3) To be more appreciative of the everyday stuff. There is an old story of a man who complained of too many interruptions. He lamented the fact that he could not get any work done because of the interruptions. His world was changed when he realized

“ I want to wish you a happy and prosperous new year. ”



*Executive Director John Morris Williams and Executive Assistant Debbie Brink*

that what he had considered interruptions were in actuality his work. This year I might just become more appreciative of the everyday calls, e-mails and letters. Most of them are from people that I really like. Maybe I can become more appreciative of the relationship that fosters their arrival and less concerned with their timing.



Whatever your resolution situation, I want to wish you a happy and prosperous new year. Beyond that, I want to urge you to resolve to be active in the OBA this year. There are some exciting things already happening at the OBA. This year we have a new chief justice being sworn in. We have a new president and vice president and some new governors on our board. We are making plans to continue with the remodeling of the building. A new Tech Fair is being planned for the fall. The Solo and Small Firm Conference is well into its planning. Our annual Day at the Capitol is in the last planning stages. The spring CLE schedule is out and registration is available. Do not forget the OBA cruise this summer!

May the last year of the first decade of the new millennium be a great year for you. I hope this year we can enhance our relationships, laugh more often and appreciate even the mundane days. If not, go ahead and get a gym membership, stop smoking, eat better food and establish regular sleep patterns. Either way you will feel better and up your chances of enjoying the first year of the second decade of the new millennium.

HAPPY NEW YEAR!



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Director Williams,  
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## Duties of the OBA Executive Director

### *OBA Bylaws, Article IV, Section 4:*

(a). The Executive Director shall keep the roster of the members of the Association and of the House of Delegates entitled to vote therein. He or she shall record and be the custodian of the minutes, journal and records of the Association and of the House of Delegates and of the Board of Governors.

(b). The Executive Director shall act as Treasurer, and be the custodian of the funds of the Association. No funds shall be withdrawn except in the manner approved by the Board of Governors.

(1) The expenditures of the Association shall be in accordance with the provisions of the Rules Creating and Controlling the Oklahoma Bar Association as promulgated by the Oklahoma Supreme Court.

(2) The Executive Director shall maintain at all times a fidelity bond executed by a surety company as surety, the amount thereof and the surety to be approved by the Board of Governors.

(c). He shall supervise the office of the Association and its personnel and shall see that the work of the Association properly is performed. He or she shall also perform such other duties as the House of Delegates, the Board of Governors or the President of the Association may direct.

### *Rules Creating and Controlling the OBA, Article VI, Section 4:*

The Executive Director shall perform such duties and services as may be required by these Rules or the Bylaws and as may be directed by the Board of Governors or the President of the Association. He shall also keep a complete and accurate list of the members of the Association; notify delinquent members and certify the names of delinquent members to the Supreme Court as required by these Rules; certify to the Supreme Court records and other matters as provided by these rules.

# Practicing Law in Tough Economic Times

By Jim Calloway, Director, OBA Management Assistance Program

It has been impossible to escape all of the news and commentary associated with the changes in our economic landscape in the United States (and the world) in 2008. Bankruptcies, frozen financial markets, bailouts and the largest of all Ponzi schemes dominated the year-end news. Unfortunately the new year promises no immediate relief.

Some veteran lawyers reminded me of the old adage that lawyers thrive in good times or thrive in bad times, as long as they are willing to do different sorts of work. Their confidence is uplifting, even while one wonders just how realistic it is. The large number of lawyer layoffs from law firms during the last half of 2008 has to catch one's attention, along with the number of law firm hiring freezes. Many with law degrees who migrated to the financial services industry are poised to return to the legal industry. There are a lot of intelligent and accomplished lawyers looking for work right now. Some of them may end up doing the same type of legal work that you do.

So, while we hope for the best, we must plan for the worst (or at least, the bad.)

We all understand the basics of practicing law in a tightening economy. The prudent lawyer will pay close attention to overhead and expenses, as well as accounts receivable. The firm may have to enact policies about how long it can continue to represent non-paying clients. Throughout this year in this *Oklahoma Bar Journal* space, look for more focus on practicing law in tough times.

There has been a lot written on this topic recently. To start off the year, I have decided to refer you to some of the insightful comments made by some of the most highly regarded experts in law practice management in a pair of great articles.

One of the best articles about recession-proofing a law firm that I have read is called *Weather the Storm*. It was published in *The National*, the official publication of the Canadian Bar Association, in its April/May 2008 issue and warned that U.S. law firms were on the verge

of battling unprecedented economic pressures. Too bad this publication wasn't more widely circulated at that time south of the Canadian border. The co-authors are Gerry Riskin and Robert Millard, both partners in Edge International, an international management consulting firm. (Your attention is also directed to Mr. Riskin's popular blog, *Amazing Firms*, *Amazing Practices*, online at [www.gerryriskin.com](http://www.gerryriskin.com).)

It is my goal to get all of my readers to also read this article. Therefore I will provide you with their list of seven key strategies to recession-proof your law firm and the link to the online version of the original article so you can go there to understand their points better.

1. Display strong leadership
2. Ramp up the frequency of financial data reporting
3. Make hard decisions quickly and humanely
4. Focus practice and client team leaders on short-term action plans
5. Involve your clients

6. Manage internal expectations
7. This too shall pass: Keep a balance with your long-term strategy

Read the rest at [tinyurl.com/a8renu](http://tinyurl.com/a8renu).

Small firm lawyers may think this advice only applies to the large firm, but I think the advice is universal. In particular, small firm lawyers and solos tend to delay compiling financial reports. It is critical that you review your financial position frequently during 2009 (and thereafter.) Know who is falling behind on their billing. Know if you are delaying payments to your creditors because of cash flow issues.

Another great article was put together by my friend and colleague Dennis Kennedy. It was published in the November 2008 edition of the e-zine *Law Practice Today*, which was a theme issue on dealing with an economic downturn and can be found online at [www.abanet.org/lpm/lpt/archives/november08.shtml](http://www.abanet.org/lpm/lpt/archives/november08.shtml) or [tinyurl.com/9lfal4](http://tinyurl.com/9lfal4). The title is "What Should You Do Now? A Roundtable Discussion on Law Practice in a Time of Great Economic Turmoil," moderated and edited by Dennis Kennedy, with participants M. Tom Collins, Jordan Furlong, Patrick Lamb, Bruce MacEwen, Patrick McKenna, Edward Poll, Allison C. Shields and Marilyn Astin Tarlton. I will let you read their biographies in the original article, but Dennis assembled a very impressive group.

The remaining material in quotations is all taken from the above-referenced article.

So how will you know when it is about to get really bad?

Marilyn Astin Tarlton says, "[I]f you're watching to see when/if it will crack, you're too late. That's like waiting until the pandemic hits your neighborhood before getting vaccinated! Start now assessing the changes that must be made in your practice in order that it may thrive in the future. Admit it, you know what they are. Step back and take a big conceptual look at your area of practice, the industries you serve, the geographic implications, issues related to energy and economics."

Patrick McKenna notes:

"There are probably a number of obvious signs:

- Your rates become subject of continued discussion
- Number of new matters sent to your firm becomes reduced
- Deals and projects are continually postponed
- Clients stop paying promptly
- Client calls are not being returned
- Invitees don't attend your functions
- Access to key decision-makers starts to decrease
- You even stop receiving those unexpected RFP's
- Your phones stop ringing"

That is a pretty scary list! But I think few deny we are in significant trouble at this point, so let's discuss solutions.

McKenna notes that some immediate solutions include a renewed focus on client needs and wants and considering innovative means of working with clients, even to the extent of letting an associate go work for the client for a time.

Allison C. Shields says, "The key... is to take action based on what the current reality is by planning and taking advantage of opportunities that are arising now. Clients that are concerned about how this economy is affecting their business may have untapped legal needs that can help them to feel (and be) more secure."

Patrick Lamb states, "In any chaotic situation, there are huge opportunities, so the top priority needs to be having a strategic plan. If you could grow the number of clients and amount of client spend[ing] you capture, wouldn't you seek that, especially in this environment? But those things are clearly possible if you change your business model. Marketing and business development go hand in glove with the strategic review of your firm."

Ed Poll agrees. He says, "The best strategy, I believe, is to spend time to develop a strategic plan. The time spent usually is short and worth far more than the cost of the time spent. When you have a plan that you accept and understand, you will be

**“If you’re watching to see when/if it will crack, you’re too late. That’s like waiting until the pandemic hits your neighborhood before getting vaccinated.”**

working from a roadmap. When you work from a roadmap, fear and panic are reduced considerably.”

Merrilyn Astin Tarlton concurs. She counsels, “Don’t panic! Figure out which are your most critical resources: specific clients, lawyers, employees, offices, etc. And lock them up. Figure out what you can afford to lose and either eliminate them now (if you can afford to lose them, why do you have them in the first place?) or plan for their elimination.”

I have collected a lot more interesting opinions from experts, but I do not want to overwhelm anyone and I really want you to have time to read the articles I have referenced. So let’s have one more quote from Ed Poll on the fundamentals.

Ed Poll says, “Always, first, look at cash flow. Look to see that collections stay on pace. This is the first telltale sign. Lawyers traditionally have failed to pay close enough attention to this, wanting to do the work. When they turn around to realize that a client hasn’t

paid the bill, they are already into the problem so deeply that they feel compelled to continue in the hope that a successful outcome will cause the client to pay the now increased billing. Seldom does this occur. If you have to take a loss, it’s better

to take a small one earlier in the representation, freeing up your time to seek a new, better client.”

Finally, while it may be a bit counterintuitive in a credit crunch to discuss credit cards, I think that this is an important topic. I’ve noted before, and will repeat here, that any law firm that represents very many individual consumer clients should accept credit cards. There’s simply no excuse for not allowing your clients the opportunity and convenience to pay by credit card, especially when you are denying yourself the opportunity to receive an attorney fee payment when the client’s bank account may be low.

Another aspect of accepting credit cards is that many people now have ATM cards for their bank account that are also debit cards. So, if a client has convinced you that they have to make regular monthly payments on attorney’s fees, either initially or after a balance has been incurred, why not have them sign an agreement to have the payments charged

against their bank account on the day they specify each month? You have a bit more security for the payment and they don’t have to write and mail a check.

Making certain that you have an adequate retainer is very important. I see no objection to receiving a retainer fee by credit card as long as you make sure that the funds are deposited directly to your trust account where they remain until they are earned. You can use your local bank to figure out how to set this up or get information about the OBA Law Firm Merchant Account program for our members by calling (866) 376-0950 or visiting [www.affiniscape.com/oklahomabar](http://www.affiniscape.com/oklahomabar).

## CONCLUSION

Maybe things won’t be as bad during 2009 as many are predicting now. But as the cliché goes, it’s better to be safe than sorry. The immediate future may be tough. We need to be cautious and prudent, but continue to do good work for our clients as lawyers have always done. We should also not forget that economic pressures will add even more stress to many of our clients when often their legal matters are stress-inducing by themselves. So we will likely have some opportunities to be kind and understanding. Lawyers like to be known as counselors. We may have lots of additional opportunities for counseling in the coming months.

# Changes to Trust Account Reporting

By Gina Hendryx, OBA Ethics Counsel

Historically when you received your dues statement, you also were required to report whether or not you maintained a client trust account with information pertaining to the location, type and number of the account. Effective Jan. 1, the method and timing of reporting trust accounts has changed. If you noticed, your dues statement this year does not include a section for reporting of trust accounts. Instead, your statement includes a separate sheet of paper detailing the manner in which you should now report additions, changes or deletions to trust accounts.

You no longer need to make a yearly reporting if your trust account has had no changes. If you have had changes to your trust account since your last report, you are now required to notify the Oklahoma Bar Association within 30 days of the modification. Trust account changes are to be reported contemporaneously and annual reporting is no longer necessary.

These new reporting requirements may be found in Rule 1.15 to the Oklahoma Rules of Professional Conduct. The pertinent language is:

"g) Effective January 1, 2009, all members of the Bar who are required

under the Oklahoma Rules of Professional Conduct, to maintain a trust account for the deposit of clients' funds entrusted to said lawyer, shall do so and furnish information regarding said account(s) as hereinafter provided. Each member of the Bar shall provide the Oklahoma Bar Association with the name of the bank or banks in which the lawyer carries any trust account, the name under which the account is carried and the account number. The lawyer or law firm shall provide such information within thirty (30) days from the date that said account is opened, closed, changed, or modified. The Oklahoma Bar Association will provide on-line access and/or paper forms for members to comply with these reporting requirements. Provision will be made for a response by lawyers who do not maintain a trust account and the reason for not maintaining said account. Information received by the Association as a result of this inquiry shall remain confidential except as provided by the Rules Governing Disciplinary Proceedings. Failure of any lawyer to respond giving the information requested by the Okla-

ma Bar Association, Oklahoma Bar Foundation or the Office of the General Counsel of the Oklahoma Bar Association will be grounds for appropriate discipline."

You may check your account reporting status on the OBA Web site. Go to [www.okbar.org](http://www.okbar.org) and click on the link for my okbar. This is a password-protected site and will require your OBA number and password to enter. Your password is on your dues statement or may be obtained by requesting same from the site.

Once you have entered the my okbar section of the OBA Web site, you may review your roster information, dues and MCLE status, as well as report your trust account information. ALL client trust accounts should be reported on the form. This includes IOLTA accounts and non-IOLTA accounts.

If you do not have Internet access or wish to report changes directly, you may contact the OBA and request a paper form to report your trust account information.

*Questions about your client trust account? 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.*

# December Meeting Summary

*The Oklahoma Bar Association Board of Governors met at the Oklahoma Bar Center in Oklahoma City on Friday, Dec. 19, 2008.*

## REPORT OF THE VICE PRESIDENT

Vice President Mordy reported he attended the OBA annual convention, November Board of Governors meeting, OBF meeting, OBF 25th anniversary dinner and participated in several phone conferences with Governor Christensen.

## REPORT OF THE PRESIDENT-ELECT

President-Elect Parsley reported he attended the OBA Annual Meeting, chaired the OBA House of Delegates, appeared before the Oklahoma Supreme Court for the budget hearing, gave opening remarks at the OBA Law School for Legislators and completed proposed appointments to OBA committees and other appointments.

## REPORT OF THE PAST PRESIDENT

Past President Beam reported he attended the November Board of Governors meeting, Annual Meeting, House of Delegates meeting, Rules and Bylaws Committee meeting and the Custer County Bar Association Christmas party.

## REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported that he

attended the Annual Meeting and associated activities, Law School for Legislators, directors meeting, Supreme Court Conference to present the budget, meeting with the Administrative Office of the Courts on collaborative technology issues, Administrative Office of the Courts holiday lunch, staff appreciation lunch, OBF past presidents' dinner, staff holiday party and Board of Governors holiday dinner.

## BOARD MEMBER REPORTS

**Governor Bates** reported she attended the judicial conference reception for Chief Justice Winchester, November Board of Governors meeting, Board of Governors dinner, Annual Meeting and Oklahoma County Bar holiday reception. **Governor Brown** reported he attended the OBA Annual Meeting, Board of Governors meeting, OBA Bench and Bar meeting, OBA House of Delegates meeting, Legal Aid Services of Oklahoma board meeting, Oklahoma Bar Foundation meeting, Oklahoma Bar Foundation office dedication dinner, Oklahoma Fellows of the American Bar Foundation dinner and meeting and University of Tulsa College of Law Annual Meeting luncheon. He also was a CLE

presenter at the OBA Annual Meeting and the Tulsa County Bar Association. **Governor Christensen** reported she attended the November board meeting in Oklahoma City, OBA annual convention, General Assembly and House of Delegates, OBA Bench and Bar Committee meeting, Oklahoma County Bar meeting, Oklahoma Fellows of the American Bar Foundation meeting and dinner, Oklahoma Bar Foundation meeting and reception, Oklahoma County Bar holiday reception, Oklahoma City University Annual Meeting luncheon and the Thursday night dinner hosting the visiting bar presidents and representatives. **Governor Dirickson** reported she attended the judicial conference reception for Chief Justice Winchester, Annual Meeting, November board meeting and participated in the Solo and Small Firm Planning Committee teleconference. **Governor Farris** reported he attended the Tulsa County Bar Foundation meeting, OBA Annual Meeting, House of Delegates and Tulsa County Bar Association holiday dinner. He also hosted the Arkansas Bar Association president-elect at the Annual Meeting and gave a presentation at the Tulsa County Bar Association

annual estate planning CLE. **Governor Hermanson** reported he attended the judicial conference reception for Chief Justice Winchester, board dinner on Tuesday night, November Board of Governors meeting, OBA Annual Meeting, Professionalism Committee meeting, Oklahoma Criminal Defense Lawyers Association Annual Meeting, OBA Law-related Education meeting and the Oklahoma Bar Foundation's Silver Anniversary of IOLTA dinner. **Governor Hixson** reported he attended the judicial conference reception for the chief justice, November Board of Governors meeting, Credentials Committee meeting, OBA General Assembly, OBA House of Delegates, Professionalism Committee meeting, Criminal Defense Lawyers Association Annual Meeting, Canadian County Community Sentencing Planning Counsel, Clients' Security Fund Committee meeting, Criminal Law Section annual luncheon, OBA staff appreciation luncheon and the Canadian County Bar Association Christmas party. **Governor Reheard** reported she attended the judicial conference reception for Chief Justice Winchester, OBA Annual Meeting, November board meeting, Oklahoma Criminal Defense Lawyers Association annual meeting and participated in the Solo and Small Firm Planning Committee teleconference. **Governor Souter** reported he attended the November Board of Governors meeting, annual convention including General Assembly and House of Delegates. **Governor Stockwell** reported she attended the

judicial conference reception for Chief Justice Winchester, November Board of Governors meeting, Annual Meeting, Cleveland County Bar Association Executive Committee regular meeting and Cleveland County Bar Association monthly meeting and CLE. **Governor Stuart** reported he attended the November Board of Governors meeting, OBA Annual Meeting, Board of Editors meeting, Resolutions Committee meeting and Thursday night dinner for out-of-state bar presidents and representatives.

#### **YOUNG LAWYERS DIVISION REPORT**

Governor Warren reported she attended the OBA Annual Meeting, November board meeting, Tuesday night board dinner, November YLD board meeting and YLD Friends and Fellows breakfast.

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

Justice Taylor reported that Chief Justice Edmondson will be sworn in on Jan. 15, 2009, at 2 p.m. in the Supreme Court courtroom and invited all board members to attend. He advised that the court approved the 2009 budget presented by President-Elect Parsley, Executive Director Williams and Director of Administration Combs and that Executive Director Williams has two additional sessions set before the court to present amendments to the District Court Rules. He also offered the appreciation and thanks of all of the justices to the retiring Board of Governors for their service and work as

well as to those who remain on the board. He welcomed the 2009 board members and thanked them for offering their service.

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

LSD Chair Janoe reported he attended the Board of Governors November meeting, OBA Annual Meeting and Law Student Division annual meeting.

#### **COMMITTEE LIAISON REPORTS**

LRE Committee Liaison Governor Hermanson announced that the "We the People" program will be presented at the State Capitol in January and urged the Governors to volunteer as judges if asked.

#### **REPORT OF THE GENERAL COUNSEL**

A written status report of the Professional Responsibility Commission and OBA disciplinary matters was submitted for the board's review.

#### **CLIENTS' SECURITY FUND REPORT**

Chairperson Micheal Salem reviewed the recommendation of the committee to reimburse clients for the amount of \$280,425.53, pro rated at a rate of 62 percent. The board adopted the report and voted to publish the results by sending out a news release. Chairperson Salem praised Governor Hixson and former Governor Caudle for their active participation on the committee. Governor Hixson praised Chairperson Salem for his leadership and hard work. President-Elect Parsley



expressed concern regarding the definition of the term "income" and suggested that this matter be reviewed in the future by the Investment Committee.

### **OKLAHOMA BAR JOURNAL CONTRACT 2009-2010**

Communications Director Manning described the process used to bid the two-year *Oklahoma Bar Journal* contract for preparation, printing and mailing. She reported only one bid was received from the current vendor, Printing Inc. of Oklahoma City. She noted that the price increases were almost entirely due to the increase in the price of paper. Director Manning advised the board that Stigler Printing had expressed some interest in bidding, but upon making contact with the company, she was advised that they will submit a bid in the future once they have purchased additional equipment. The board approved the contract with Printing Inc.

### **APPOINTMENTS**

The board approved President-Elect Parsley's appointments as follows:

Board of Editors Chairperson – reappoint Melissa DeLacerda, Stillwater, for a one-year term expiring 12/31/09.

Board of Editors Associate Editors - appoint Scott Buhlinger, Bartlesville, from District 1; January Windrix, Poteau, from District 2, and Emily Duensing, Tulsa, from District 6, each for a three-year term expiring 12/31/11.

MCLE Commission Chairperson – reappoint Margaret Hamlett, Tulsa, for a one-year term expiring 12/31/09.

MCLE Commission Members – reappoint D. Faith Orłowski, Tulsa; Charles F. Alden III, Oklahoma City, and Judge Lori M. Walkley, Norman, each for a three-year term expiring 12/31/11.

Professional Responsibility Commission – appoint Melissa DeLacerda, Stillwater, and Stephen D. Beam, Weatherford, each for a three-year term expiring 12/31/11.

Oklahoma Indian Legal Services – reappoint Tyson Branyan, Cushing, and Julie Strong, Clinton; appoint Casey Ross-Petherick, Oklahoma City, each for a three-year term expiring 12/31/11.

Clients' Security Fund – appoint Donna Dirickson, Weatherford, and Luke Gaither, Henryetta; reappoint Lincoln Clay McElroy, Oklahoma City, and Micheal Salem, Norman, each for a three-year term expiring 12/31/11.

Board of Medicolegal Investigations – reappoint Shanda McKenney, Oklahoma City, to a one-year term expiring 12/31/09.

Legal Ethics Advisory Panel Coordinator/Chairperson – reappoint Roger R. Scott, Tulsa, to a one-year term expiring 12/31/2009.

Legal Ethics Advisory Panel – Oklahoma City Panel - reappoint Timila Rother, Oklahoma City; Debra McCormick, Oklahoma City, and Micheal Salem, Norman, to a three-year term expiring 12/31/11.

Legal Ethics Advisory Panel - Tulsa Panel - reappoint Lynnwood Moore, Tulsa; John Woodard, Tulsa,

and Allan E. Mitchell, McAlester, to a three-year term expiring 12/31/11.

Audit Committee Chairperson – appoint James T. Stuart, Shawnee, to a one-year term expiring 12/31/09.

Audit Committee – appoint James T. Stuart, Shawnee, to a two-year term expiring 12/31/10; appoint Charles W. Chesnut, Miami, to a three-year term expiring 12/31/11; and reappoint Cathy Christensen to a one-year term expiring 12/31/09.

### **YLD COMMITTEE LIAISONS**

2009 YLD Chairperson Rose submitted his appointments of committee liaisons to the board for review.

### **COMMITTEE CHAIRPERSONS, VICE CHAIRPERSONS AND BOARD LIAISONS**

President-Elect Parsley submitted his appointments to the board for review and advised that he was appointing Governor Hixson to the Clients' Security Fund as an additional board liaison.

### **EXECUTIVE SESSION**

An executive session was held.

### **EMPLOYMENT OF OUTSIDE COUNSEL**

The board voted to ratify all acts taken by the Board of Governors, including the employment of outside counsel and acts taken by counsel in furtherance of its representation.

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

# Your Foundation Looks Forward to 2009

By *Richard Riggs*

In the Dec. 13 edition of the *Oklahoma Bar Journal*, the Oklahoma Bar Foundation's 2008 President Renée DeMoss outlined the history and the many accomplishments of the foundation. From its organization in 1946, OBF has been inspired by the vision of its founding members as the charitable arm of the Oklahoma bar. Throughout the years, OBF has remained true to this vision as it has grown through the establishment of its Fellows program, whereby Oklahoma lawyers are recognized for their generous financial commitments, through its receipt of Interest On Lawyers' Trust Account funds (IOLTA), a program made mandatory by the Oklahoma Supreme Court in 2004, and most recently through the receipt of cy pres funds generated in certain class-action proceedings. These funds have enabled OBF to fund grants supporting legal services and other law related programs, and certain figures from Renée's article bear repeating:

**OBF grants in 2008 totaled \$857,500. An additional \$54,500 was awarded in 2008 scholar-**

**ships. These figures bring total OBF awards over the years to \$8,429,915. All members of the Oklahoma bar can be proud of the OBF story.**

## CELEBRATION OF THE PAST

The foundation celebrated these accomplishments in a Dec. 4, 2008, dinner held at the newly renovated Oklahoma Bar Center. Honored at the dinner were all former OBF presidents and others who have been instrumental in the foundation's success. The dedication with which these lawyers have served OBF was evidenced by the fact that almost all past presidents able to attend were present, many traveling long distances.

The contributions of OBF's immediate past president, Renée DeMoss, deserve special note. Early in 2008, Renée challenged the OBF board to undertake some strategic planning. This process began with a day-long retreat in January and continued throughout the year, with a number of meetings and brainstorming sessions. Through this process, the



*Richard Riggs  
2009 OBF President*

board has accomplished some much-needed housecleaning with respect to its internal structure, resulting in a more streamlined organizational structure and up-to-date policies and procedures. This process also facilitated the development of a long-range plan for the foundation and the articulation of the reason OBF exists — "Lawyers Transforming Lives." In addition to her duties in overseeing the administration of the foundation, Renée was instrumental in shepherding this planning process to completion. Renée undertook all these efforts with a genuine commitment to the organization, a positive attitude and a generous spirit. OBF is a better organization because of her efforts.

## LOOKING TO 2009

As the foundation looks forward to 2009, I would like to take the opportunity to share several themes that will flavor our efforts in the coming year. The first is an item that is on the minds of all Americans, the current economic climate. OBF will work closely with its financial advisors to see that it remains a good steward of its funds, with a view both toward minimizing risk and providing revenue to generously support the many needy programs that will be seeking funding. Secondly, the foundation will strive to enhance its visibility among the bar and beyond. Through the strategic planning process noted above, it became evident that many Oklahoma lawyers are not familiar with the work of the foundation and we intend on taking great strides to enhance its visibility. Finally, as the charitable arm of the Oklahoma bar, the foundation will be exploring ways in which it may enhance its relationship with the Oklahoma Bar Association and further the mutually supportive roles that these two organizations and their members play.

## OBF LEADERSHIP

I am honored to begin service as OBF's 2009 president. Other members of the 2009 executive committee are Phil Frazier of Tulsa, John D. Munkacsy Jr. of Lawton, Shon T. Erwin of Lawton,

and our immediate past president, Renée DeMoss of Tulsa. Other members of the 2009 Board of Trustees are:

Jack L. Brown, *Tulsa*  
Brett D. Cable, *McAlester*  
Cathy M. Christensen, *Oklahoma City*  
Judge Valerie Couch, *Oklahoma City*  
Dietmar K. Caudle, *Lawton*  
Jack S. Dawson, *Oklahoma City*  
Judge Deirdre E. Dexter, *Tulsa*  
Kevin R. Donelson, *Oklahoma City*  
William E. Farrior, *Tulsa*  
Leonard M. Logan IV, *Vinita*  
Luke Gaither, *Henryetta*  
Michael C. Mordy, *Ardmore*  
Brooke Smith Murphy, *Oklahoma City*  
Judge Millie E. Otey, *Tulsa*  
Jon K. Parsley, *Guymon*  
Roger R. Scott, *Tulsa*  
Susan B. Shields, *Oklahoma City*  
Allen M. Smallwood, *Tulsa*  
Dennis A. Smith, *Clinton*  
Linda S. Thomas, *Bartlesville*  
John Morris Williams, *Oklahoma City*

Nancy Norsworthy is the foundation's director of administrative and IOLTA programs and is responsible for the daily operation of the foundation. Nancy and staff members Tommie Lemaster and Marie Golloway are available to answer any questions regarding the foundation at (405) 416-7070

or foundation@okbar.org. I am also available and can be reached at (405) 552-2265 or richard.riggs@mcafeetaft.com. Please don't hesitate to contact any of us with questions, comments and suggestions, and when you visit the renovated bar center, please take a moment to visit the foundation's second floor offices.

## YOUR ROLE

While the issues noted above will "flavor" OBF's activities in 2009, the foundation's chief endeavor, as always, will be to raise funds through the generosity of Oklahoma lawyers and award those funds in the form of grants to deserving law-related organizations. While current economic circumstances present special challenges to the foundation, we know that they also challenge the many deserving organizations that have historically benefited by OBF grants. The need for generous support of the Oklahoma bar has never been greater. I know that OBF's Trustees will do their part in continuing to carry out the vision of the foundation's founding members. **I encourage you, if you have not already done so, to do your part by becoming an OBF Fellow, knowing that through that effort you are joining with lawyers throughout Oklahoma in transforming the lives of those in need.**



# FELLOW ENROLLMENT FORM

☐ Attorney ☐ Non-Attorney

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

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

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

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

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

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

☐ Total amount enclosed, \$1,000

☐ \$100 enclosed & bill annually

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

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

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

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

***“Join with lawyers  
throughout Oklahoma  
in transforming  
the lives of those  
in need!”***

Signature & Date: \_\_\_\_\_ OBA Bar #: \_\_\_\_\_

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

OBF SPONSOR: \_\_\_\_\_

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

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

# Making A Difference in Oklahoma

By Judith Maute and Kade McClure

2008 has been a productive year for the revitalized OBA Access to Justice (ATJ) Committee. These monthly bar journal columns have sought to inspire members of the bar to participate in some pro bono or public service activities. As you wind up the last year and prepare for 2009, we ask you to pause and reflect – have you given a “fair share” of your professional time or other resources in ways that serve the public good? In the words of Gov. Brad Henry, “Public service is the rent you pay for the space you occupy.”

The committee has adopted a statement of its goals and objectives *to encourage* 1) improved access to justice, not restricted by poverty, geography, literacy or other barriers; 2) meaningful participation in pro bono activities by Oklahoma lawyers and 3) collaboration in the state justice community among judges and court clerks, attorneys, law enforcement, educational institutions, administrative agencies and social service organizations. The committee objectives are detailed in its annual report, which can be found at [www.okbar.org/members/committees/access.htm](http://www.okbar.org/members/committees/access.htm).

After extended discussion spanning three years of research and policy analysis, the ATJ Committee reached consensus on potential changes to the Oklahoma Rules of Professional Conduct to facilitate appropriate unbundled legal services by lawyers who are willing to undertake “limited scope representation” for clients who are unable to pay the customary fees for “full service” representation. Work is underway to consider whether unbundling issues warrant potential changes to court rules. The committee understands that the concept raises numerous delicate issues, affecting legitimate concerns of the practicing bar, the judiciary, clients and the various legal service organizations concerned with the unmet legal needs of the low-income population. The proposal, which in due course will be forwarded for consideration to the Board of Governors and other relevant bar committees, tries to balance the competing interests by means that enhance access to the legal system by those unable to pay, ensuring fairness and candor to the tribunal.

Every law school has in place some type of program for law students to partici-

Rule 6.1 of the Oklahoma Rules of Professional Conduct (adopted effective July 1, 1988) provides:

*A lawyer **should** render public interest legal service.*

*A lawyer **may discharge** this responsibility by:*

- (a) providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations;*
- (b) serving without compensation in public interest activities that improve the law, the legal system, or the legal profession; or*
- (c) financial support for organizations that provide legal services to persons of limited means.*

pate in pro bono or public service activities – encouraging them to get in the habit of contributing to the public good, as a key component of being a member of the legal profession. Students are available to work with lawyers or legal service organizations in qualifying pro bono activities.

As the ATJ Committee looks forward to the new year, it will address specific legal issues relating to Oklahomans of low and moderate means. Future plans include problems of homelessness and issues relating to *pro se* litigants. Possible New Year's wishes: 1) creating a master list of lawyers throughout the state, in designated subject areas, who are willing to accept pro bono matters (whether or not limited in scope); 2) coming up with



innovative ways to help Oklahomans understand and access the legal system on matters of significance; 3) improved funding of legal

service programs and loan repayment assistance for those lawyers who work in public service.

Attorneys interested in participating in providing pro bono services and being included on a new master list of lawyers should contact the following ATJ Committee members:

Judith Maute,  
Vice Chairperson  
University of Oklahoma  
College of Law  
300 Timberdell Road  
Norman, OK 73019-5081  
(405) 325-4747  
jmaute@ou.edu

Kade McClure,  
Chairperson  
323 C Avenue  
Lawton, OK 73501  
(580) 248-4675  
kade.mcclure@laok.org

## Oklahoma Bar Journal Editorial Calendar

### 2009

#### ■ February

##### **Immigration**

Editor: John Munkacsy  
johnmunk@sbcglobal.net  
Deadline: Oct. 1, 2008

#### ■ March

##### **Privacy**

Editor: Melissa DeLacerda  
melissde@aol.com  
Deadline: Jan. 15, 2009

#### ■ April

##### **Law Day**

Editor: Carol Manning

#### ■ May

##### **Oil & Gas and Energy Resources Law**

Editor: Julia Rieman  
rieman@enidlaw.com  
Deadline: Jan. 15, 2009

#### ■ August

##### **Bankruptcy**

Editor: Judge Lori Walkley  
lori.walkley@oscn.net  
Deadline: May 1, 2009

#### ■ September

##### **Bar Convention**

Editor: Carol Manning

#### ■ October

##### **Criminal Law**

Editor: Pandee Ramirez  
pandee@sbcglobal.net  
Deadline: May 1, 2009

#### ■ November

##### **Family Law**

Editor: Leslie Taylor  
lguajardo@ymail.com  
Deadline: Aug. 1, 2009

#### ■ December

##### **Ethics & Professional Responsibility**

Editor: Jim Stuart  
jtstuart@swbell.net  
Deadline: Aug. 1, 2009

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

## **YLD - ARE YOU INVOLVED?**

The Young Lawyers Division welcomes you to the start of another year. For those who are not sure, anyone who has been in practice for fewer than 10 years, regardless of age, is automatically a member of the YLD.

Chairperson Rick Rose says he has been asked, "Why should I get involved with the YLD?" The YLD is active in many great projects, including Wills for Heroes – which provides free wills to first responders; Surviving the Season – which provides assistance to the elderly; Gift of Life – which provides information regarding organ donation; and our newest project, Serving the Community. Simply put, you should get involved with the YLD because it is a great way to help your community, your bar and yourself.

### **A NEW COMMITTEE WITH A VERY NOBLE PURPOSE: SERVICE TO OUR COMMUNITY**

Last year, President Conger emphasized the need for lawyers to be leaders in our communities. President Parsley has asked the YLD to carry this theme forward in 2009 and put it into action. In response, the YLD created a new committee dedicated to leadership and community service.

As the YLD considered how to put this theme into action, we were proud to see that our bar is already full of men and women

donating many volunteer hours. However, we also discovered many lawyers who are eager to become active participants and leaders in their community but just haven't found the project they are looking for. Therefore, our goal this year is to help identify and recognize the different ways in which lawyers are active in their communities and share these opportunities with those looking to become involved.

Lawyers sacrifice a lot of their time and do a lot of good work, much of which goes unnoticed. Often, the help lawyers provide is legal in nature; however, our leadership role is not limited to legal problems. This committee is a chance for lawyers to showcase the great work we do every day.

The impact of our bar on Oklahoma communities is huge. To put this into perspective, our bar has 16,000-plus members – if each active lawyer only did one hour of community service each month, we would log nearly 200,000 hours next year serving our communi-

ties. Whether your service is to your community, pro bono or something else, our committee would love to hear your story. Here are some examples we found so far: scouting, United Way, Lawyers for Children, Western District Pro Bono Panel, Adopt-a-Street, reading programs, mentoring programs, Habit for Humanity, Ask A Lawyer, and serving on non-profit or church boards.

The point is that, individually, we do a lot; now, collectively, let's show our state just how much.

### **HOW YOU CAN HELP**

The hard part for our committee is not going to be finding lawyers to serve their communities, as many lawyers already do. The challenge will be getting you to tell our committee about what you are doing. Our committee fully recognizes that many people do not want the spotlight; however, the project you are working on in your community may be just the one needed in another community. By sharing your story, or someone else's story, that example may benefit many additional people throughout the state. If you are a seasoned lawyer, your example will help show the younger lawyers what is expected. If you are new to practice, it will show the bar new and exciting ways for us to support our communities.

Please e-mail your stories and ideas to [rrose@mahaffeygore.com](mailto:rrose@mahaffeygore.com).

#### **Take Action!**

- Details on all YLD projects are available at [www.okbar.org/members/yld/default.htm](http://www.okbar.org/members/yld/default.htm)
- E-mail YLD Chair Rick Rose at [rrose@mahaffeygore.com](mailto:rrose@mahaffeygore.com) to serve on a committee, share your service story or to recruit volunteers for your community service event



# Calendar

## January

- 13 Hudson Hall Wheaton Inn Pupilage Group Four;** 5:30 p.m.; Federal Building, 333 West Fourth St.; Contact: Michael Taubman (918) 260-1041  
**OBA Mock Trial Committee Meeting;** 5:45 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Judy Spencer (405) 755-1066
- 14 Oklahoma Bar Foundation Meeting;** 8:15 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Nancy Norsworthy (405) 416-7070
- 15 OBA Bench & Bar Committee Meeting;** 11:30 a.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Jack Brown (918) 581-8211  
**Supreme Court Chief Justice and Vice Chief Justice Swearing In;** 2 p.m. Supreme Court Courtroom, State Capitol; Contact: John Morris Williams (405) 416-7000
- 19 Martin Luther King Jr. Day** (State Holiday)
- 20 Death Oral Argument;** James T. Fisher; D-2005-460; 10 a.m.; Homsey Family Moot Courtroom, Oklahoma City University
- 21 Ruth Bader Ginsburg American Inn of Court;** 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Julie Bates (405) 691-5080
- 22 OBA Law-related Education;** Supreme Court Teacher and School of the Year Luncheon; Oklahoma Bar Center, Oklahoma City; Contact: Jane McConnell (405) 416-7024
- 23 OBA Board of Governors Meeting;** 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: John Morris Williams (405) 416-7000  
**Board of Bar Examiners Meeting;** 9:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Dana Shelburne (405) 416-7021  
**OBA Board of Governors Swearing In;** 10 a.m.; Supreme Court Courtroom, State Capitol; Contact: John Morris Williams (405) 416-7000  
**OBA Mentor Committee Meeting;** 2 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: David Allen Poarch Jr. (405) 325-0702



- 24 OBA Law-related Education We the People Program;** 9 a.m.; State Capitol; Contact: Jane McConnell (405) 416-7024  
**OBA Young Lawyers Division Committee Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Rick Rose (405) 236-0478
- 28 OBA Administrative Law Section Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center; Contact: Gary Payne (405) 271-1269
- 29 OBA Legal Intern Committee Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: H. Terrell Monks (405) 733-8686
- 30 Oklahoma Bar Foundation Trustee Meeting;** Tidal School Vineyard; Drumright, Oklahoma; Contact: Nancy Norsworthy (405) 416-7070

## February

- 5 OBA Board of Editors Meeting;** 2 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Melissa DeLacerda (405) 624-8383  
**OBA Volunteer Night at OETA;** 5:45 p.m.; OETA Studio, Oklahoma City; Contact: Jeff Kelton (405) 416-7018
- 13 OBA Family Law Section Meeting; 3 p.m.;** Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Lynn S. Worley (918) 747-4600 or Noel Tucker (405) 348-1789

## February

- 16 President's Day** (State Holiday)
- 18 OBA Professionalism Committee Meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Sharisse O'Carroll (918) 584-4192
- 19 Hudson Hall Wheaton Inn Pupilage Group Five;** 5:30 p.m.; Federal Building, 333 West Fourth St.; Contact: Michael Taubman (918) 260-1041  
**OBA Bench and Bar Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Jack Brown (918) 581-8211
- 20 OBA Board of Governors Meeting;** 9 a.m.; Tulsa County Bar Center, Tulsa; Contact: John Morris Williams (405) 416-7000
- 21 OBA Young Lawyers Division Committee Meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Rick Rose (405) 236-0478
- 24 Death Oral Argument;** Richard Norman Rojem; D-2007-660; 10 a.m.; Court of Criminal Appeals Courtroom
- 24-27 OBA Bar Examinations;** 8 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Board of Bar Examiners (405) 416-7075



## March

- 3 OBA High School Mock Trial Finals;** OU Law School; Bell Courtroom; Norman, Oklahoma; Contact: Judy Spencer (405) 755-1066
- 11 OBA Professionalism Committee Meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center; Contact: Sharisse O'Carroll (918) 584-4192
- 13 Oklahoma Bar Foundation Trustee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Nancy Norsworthy (405) 416-7070  
**OBA Family Law Section Meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Lynn S. Worley (918) 747-4600 or Noel Tucker (405) 348-1789
- 17 OBA Day at the Capitol;** 11 a.m.; State Capitol; Contact: John Morris Williams (405) 416-7000
- 19 OBA Bench and Bar Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Jack Brown (918) 581-8211
- 21 OBA Young Lawyers Division Meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center; Contact: Rick Rose (405) 236-0478
- 20 OBA Board of Governors Meeting;** 9 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: John Morris Williams (405) 416-7000
- 24 OBA Law-related Education Committee Meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Jack G. Clark Jr. (405) 232-4271  
**Hudson Hall Wheaton Inn Pupilage Group Six;** 5:30 p.m.; Federal Building, 333 West Fourth St.; Contact: Michael Taubman (918) 260-1041
- 25 OBA Clients' Security Fund Committee Meeting;** 2 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Micheal Charles Salem (405) 366-1234

*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).*

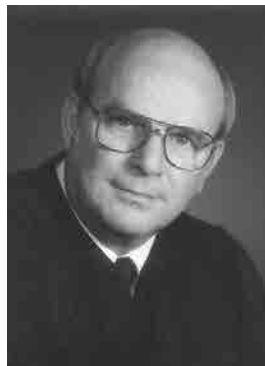
## Appellate Leadership Named

Newly elected Supreme Court Chief Justice James E. Edmondson and Vice Chief Justice Steven W. Taylor will be formally sworn into their positions at a ceremony to be held Jan. 15, at 2 p.m. in the Supreme Court Courtroom.

Court of Criminal Appeals Presiding Judge Charles A. Johnson and Vice Presiding Judge Arlene Johnson began serving their terms on Jan. 1.



*James E. Edmondson  
Supreme Court*



*Charles A. Johnson  
Court of Criminal  
Appeals*



*E. Bay Mitchell  
Court of Civil Appeals*

The Oklahoma Court of Civil Appeals will swear in new Chief Judge E. Bay Mitchell, and new Vice Chief Judge Jane P. Wiseman and Judges Jerry L. Goodman, Keith Rapp and John F. Fischer, who were retained in the November 2008 election, at the Court of Civil Appeals, Tulsa Division Courtroom, at 10:30 a.m. on Jan. 13.

## Oklahoma County Bar Seeks Nominations

The Oklahoma County Bar Foundation is now accepting nominations for the Howard K. Berry Sr. Award. The award will be given to an Oklahoma County individual or charitable organization to honor outstanding achievement or contribution to the justice system. The winner will be honored at the OCBA Law Day Luncheon and presented a \$10,000 cash award.

Nominees do not need to be an attorney or employed in the legal profession, but the winner's achievement or contribution must advance the charitable purposes of the foundation to advance the cause of justice, equal access to justice for all and/or the improvement of the justice system.

This award is made possible through the gift of Oklahoma County attorney Howard K. Berry Jr. to honor his father and 70-year bar member, Howard K. Berry Sr.

Nominations must be received at the OCBA by Feb. 29. The entire nomination – letter, supporting materials, clippings, seconding letters and attachments included may be no longer than five single-sided, 8 1/2" x 11" pages.

For further details on the nomination process, call the OCBA at (405) 236-8421.

## New OBA Board Members to be Sworn In

Nine new members of the OBA Board of Governors will be officially sworn in to their positions on Jan. 23 at 10 a.m. in the Supreme Court Courtroom at the State Capitol. The new officers are President Jon K. Parsley, Guymon; President-Elect Allen M. Smallwood, Tulsa; and Vice President Linda S. Thomas, Bartlesville.

To be sworn in to the OBA Board of Governors to represent their districts for three-year terms are Martha Rupp Carter, Tulsa; Charles Chesnut, Miami; Steven Dobbs, Oklahoma City; and Lou Ann Moudy, Henryetta.

To be sworn in to one-year terms on the board are Immediate Past President Bill Conger, Oklahoma City; and Young Lawyers Division Chairperson Richard Rose, Oklahoma City.

## OBA Member Resignations

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

Joe B. Cogdell Jr.  
OBA No. 1762  
3100 Valencia Terrace  
Charlotte, NC 28211

Amy Whinery Osborne  
OBA No. 17722  
101 Hudson Hills Road  
Pittsboro, NC 27312

Clinton Bryan Peterson  
OBA No. 19732  
400 N. Washington  
Liberal, KS 67905

R. Reid Stewart  
OBA No. 20949  
The Mulligan Law Firm  
4514 Cole Ave., Suite 300  
Dallas, TX 75205

Barr Duane Younker Jr.  
OBA No. 15064  
9137 Carters Grove Way  
Montgomery, AL 36116

## OBA Member Reinstatements

The following OBA members suspended for nonpayment of dues have complied with the requirements for reinstatement, and notice is hereby given of such reinstatements:

Michael Darren Beaver  
OBA No. 16125  
18727 Danforth Cove  
San Antonio, TX 78258

Kristen Suzanne Palmer  
OBA No. 20412  
2032 NW 21st St.  
Oklahoma City, OK 73106

The following member of the OBA suspended for noncompliance with the Rules for Mandatory Continuing Legal Education has complied with the requirements for reinstatement, and notice is hereby given of such reinstatement:

George H. Lowrey  
OBA No. 10888  
7107 S. Yale Ave., #283  
Tulsa, OK 74136-6308

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## Bar Center Holiday Hours

The Oklahoma Bar Center will be closed Monday, Jan. 19 in honor of Martin Luther King Jr. Day. The bar center will also close Monday, Feb. 16 in observance of President's Day.

### **NOTICE OF HEARING ON THE PETITION FOR REINSTATEMENT OF RANDY DAVID ST. ONGE, SCBD #5482 TO MEMBERSHIP IN THE OKLAHOMA BAR ASSOCIATION**

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

Any person desiring to be heard in opposition to or in support of the petition may appear before the Professional Responsibility Tribunal at the Oklahoma Bar Center at 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma, at 9:30 a.m. on **Monday, February, 2009**. Any person wishing to appear should contact Janis Hubbard, First Assistant General Counsel, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, Oklahoma 73152, telephone (405) 416-7007, no less than five (5) days prior to the hearing.

**PROFESSIONAL RESPONSIBILITY TRIBUNAL**

# Kudos

**Allison Dabbs Garrett**, vice president of academic affairs at Oklahoma Christian University, received the 2008 Simonsmeier Award for a paper she co-authored, "Leveling the Playing Field in the Pharmacy Benefit Management Industry," 42 Val. U.L. Rev. 33. The award was given by the American Society for Pharmacy Law at its conference in November.

# On The Move

**Crowe & Dunlevy** announces that **Roger A. Stong** is the new chair of the business department and the corporate and securities section. The firm's corporate and securities section assists a broad and diverse group of business clients, both public and private, in matters ranging from complex transactional work to day-to-day business counseling. Mr. Stong's practice focuses on corporate, securities and bankruptcy reorganization law. He is also the current president of the firm.

**Hall, Estill, Hardwick, Gable, Golden & Nelson PC** announces that **William C. Milks III** has been named a shareholder in the firm's Tulsa office. Mr. Milks received a B.S. in electrical engineering from Northwestern University and his J.D. from Case Western Reserve University Law School. His practice areas include intellectual property, including patents, trademarks, copyrights, licensing and litigation. Prior to moving to Hall Estill, he was with various law firms in California and Ohio as well as regional counsel, intellectual property at Hewlett-Packard, and Standard Oil Company.

**J. Brent Clark** announces the relocation of his firm, J. Brent Clark PC, from Norman to offices in Oklahoma City and Tulsa. He will continue his public finance practice, representing issuers of tax-exempt obligations, serving alternatively as bond counsel, underwriter's counsel and trustee counsel. He will consult with local governments exploring financing options involving sales tax or ad valorem tax elections. The firm's mailing address is P.O. Box 2525, Norman, 73070.

**Nicholas D. Rouse** has been named managing director of Dunlap Coddling. The firm has also changed its name to Dunlap Coddling PC. Mr. Rouse graduated from OU in 1987 with a B.S. in petroleum engineering and received his J.D. from OU in 1990. He is immediate

past president of the OBA Intellectual Property Law Section.

**Robert J. McCarthy** was recently named general counsel to the United States Section of the International Boundary and Water Commission in El Paso, Texas.

**The Law Offices of Johnson & Romero** announces that **Brandon Watkins** has joined the Miami office. An OU graduate, he began his career with the Oklahoma Attorney General's office, where he was assigned to civil litigation matters. Most recently, he operated his own law practice in Shawnee. Mr. Watkins may be reached at 2 N. Main, Suite 404, First National Bank Building, Miami, 74354; (918) 540-2199.

**American Eagle Title Insurance Company** announces the opening of its new commercial office located in the Land Title Building at 7306 S. Lewis Ave., Tulsa, 74136. **Briana J. Ross** has joined the company as vice president of commercial underwriting/attorney and will oversee the new Tulsa operation. Ms. Ross earned a bachelor's degree in finance, and a minor in accounting from OSU in 1997. She went on to earn her M.B.A. from the University of Phoenix in 2002 and her J.D. from TU in 2005. She previously held positions with Norman Wohlgemuth Chandler & Dowdell and Guaranty Abstract Company.

**H**elms & Underwood announces that **Erin M. Moore** has been named a partner in the firm. Ms. Moore received her J.D. with distinction in 2005 from OU and her B.S. in 2001 from Haverford College. She devotes her practice to litigation of complex matters at both the trial and appellate levels. The firm also announces that its name is now Helms, Underwood & Cook.

**E**dmonds Cole Law Firm announces its move to Bricktown with a new location at 7 S. Mickey Mantle Dr., 2nd Floor, Oklahoma City, 73104-2458. Attorneys with the firm are **David W. Edmonds, David H. Cole, John R. Hargrave, Greg D. Givens, Michael Woodson, Clinton D. Whitworth, Sheila R. Benson, Brandon P. Wilson, Nevin R. Kirkland, Christopher T. Comes** and **Paola Alvarez-Bennett**.

**B**ryon J. Will announces the opening of The Law Office of Bryon J. Will PLLC at 4301 SW 3rd St., Suite 120, Oklahoma City, 73108; (405) 308-4272; [bryon@bjwilllaw.com](mailto:bryon@bjwilllaw.com). Mr. Will's practice includes bankruptcy, administrative law, agricultural law, civil litigation, estate planning, business planning, probate, property law and secured transactions. Mr. Will is a 2008 OCU law graduate. He also holds a B.S. degree from OSU and an M.B.A. from UCO.

**H**ornbeek Vitali & Braun PLLC announces that **Nicole Blair** has become an associate with the firm. Ms. Blair received her B.A. magna cum laude from OU in 2002 and her J.D. from

Chicago-Kent College of Law in 2008. Prior to joining the firm, she interned with the Oklahoma County Public Defender's Office and Legal Aid Services of Oklahoma. She may be reached at [blair@hvblaw.com](mailto:blair@hvblaw.com).

## At The Podium

**W**illiam H. Whitehill was a speaker at the National Business Institute Seminar in Oklahoma City in November. Mr. Whitehill's topic focused on limited liability companies. Mr. Whitehill practices in the areas of taxation, civil tax controversies, real estate, commercial litigation and general business law.

**B**ill Wells will present "Crossfire: Navigating the New FMLA, the New ADA and the Oklahoma Workers' Compensation Act" on Jan. 15 at the State Chamber of Oklahoma. The program will focus on the statutory and regulatory changes to the Family and Medical Leave Act and the Americans with Disabilities Act, and recent Oklahoma Supreme Court decisions involving the Oklahoma Workers' Compensation Act. Mr. Wells will also be presenting the "Crossfire" program on various dates in January and February for the Central Oklahoma Manufacturers Association and at the Canadian Valley (El Reno and Chickasha) and Pioneer (Ponca City) Technology Centers.

**S**ean Paul Rieger presented at the Lien Law Seminar presented by the Builders Association of South Central Oklahoma. Mr. Rieger addressed the law applicable to payments owed for improvements to property and using liens and other procedures to secure compensation.

**E**ric L. Johnson, James A. McCaffrey and Fred H. Miller recently spoke about developments in the law and the impact on Oklahoma businesses at the 2008 Commercial Law Update, held recently in Oklahoma City. They spoke at the jointly sponsored Oklahoma Bar Review and the Conference on Consumer Finance Law seminar.

**A**dministrative Law Judge Jay L. Harrington and Martha F. Oakes, Natasha M. Scott and Rebecca J. Clampet, assistant general counsels for the Oklahoma Tax Commission, presented a mock hearing to the Oklahoma Society of Certified Public Accountants at its Winter Tax Institute in Oklahoma City. The hearing was conducted on the denial of a sales tax credit provided by the "Sales Tax Relief Act" to illustrate how a protest hearing is conducted.

**J**ohn W. Mee Jr. was a guest speaker at the 11th annual Advanced Estate Planning continuing education program sponsored by the Integris Foundation at UCO in December. He spoke on the topics of charitable remainder trusts and charitable lead trusts.

**D**avid W. Lee spoke at a seminar of the National College of District Attorneys in Savannah, Ga., in December. He presented "Section 1983 Litigation," "Qualified and Absolute Immunity under Section 1983" and "Civil Discovery and Depositions."

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

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Oklahoma Bar Association  
P.O. Box 53036  
Oklahoma City, OK 73152  
(405) 416-7017  
Fax: (405) 416-7089 or  
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**Articles for the Feb. 14 issue must be received by Jan. 26.**

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**Kurt J. Ackermann** of Tulsa died Dec. 21. He was born Sept. 11, 1951, in St. Louis, Mo. He graduated from MacArthur High School in Irving, Texas. He received his undergraduate degree from Tarleton State University in Texas, and he earned his law degree from the TU College of Law in 1992. He was the assistant city attorney for the City of Tulsa.

**Vickie Keller Ackermann** of Tulsa died Dec. 21. She was born June 21, 1957, in Hutchinson, Kan. She graduated from Lyons High School in 1975. She received her undergraduate degree from Sterling College and in 1988 earned her J.D. from the TU College of Law. She was an attorney with CompSource of Oklahoma. Memorial contributions may be made to the United Methodist Church in Lyons, Kan., or Lyons Chamber of Commerce in care of Birzer Funeral Home, Lyons, Kan.

**Barry J. Galt** of Houston died Aug. 22. He was born Dec. 14, 1933, in Ardmore. He received his bachelor's degree in accounting and his law degree from OU, where he graduated with high honors and received the Order of the Coif. **He interrupted his legal studies to serve his country as a naval aviator from 1955 to 1958.** Upon graduation, he joined a law firm in Tulsa, where in 1966 he was admitted as a partner. In 1976, he joined the Williams Cos. as senior vice president and general counsel. From 1979 through 1982, he served as

the president and chief operating officer of the company. In 1983, he was elected president and chief executive officer of Seagull Energy Corp. He served as a director of the company after his retirement. He also served as a director of Endeavour International Corp., Trinity Industries Inc., Standard Insurance Co., Chase Bank, Halter Marine Group Inc. and Abraxas Petroleum Corp. He served as trustee of Memorial Hospital in Houston, the OU Foundation, the Gilcrease Museum in Tulsa and St. John Medical Center in Tulsa. He was also director of the Salvation Army in Houston, the Houston International Festival, the Tulsa Area United Way and served as chair of the board and campaign chair. He served on the OU Presidential Search Committees from 1978 to 1988. Memorial donations may be made to the OU Foundation, 100 Timberdell Road, Norman, 73019; First Presbyterian Church of Houston, 5300 Main St., Houston, Texas, 77004; or the MD Anderson Cancer Center, P.O. Box 4486, Houston, Texas, 77210.

**Jason Wayne Richardson** of Sherman, Texas, died Sept. 24. He was born Aug. 25, 1970, in Dalhart, Texas. He earned a B.A. in accounting from East Texas State University in 1992 and earned his J.D. from the Texas Tech School of Law in 1998. He was a founding partner of the firm Graber and Richardson LLP in Sherman. He was also a certified public accountant, which he practiced

several years before becoming an attorney. Memorial contributions may be made to the First United Methodist Church of Sherman at 401 N. Elm, Sherman, Texas, 75090.

**Kay Elaine York** of Oklahoma City died Dec. 13. She was born Feb. 9, 1943, in Enid. She graduated from OSU with a B.S. degree in 1963, then teaching elementary grades in the Oklahoma City School System from 1963-1968. As a teaching assistant at OSU, she earned her M.S. in 1970. For the next eight years, she was guidance director at Putnam City West, leaving to be curriculum administrator at the Oklahoma State Department of Education until 1982. After two years selling real estate with Abide Realtors, she attended law school at OU and was awarded her J.D. in 1987. She joined the Department of Environmental Quality and remained until 1997. Then she traveled part time with her husband helping to grow their business for the next few years. She was an avid reader and treasured the members of her two book clubs. She was involved in the Small Businesswomen's Association and the United Methodist Church of the Servant. Her fondest memory with her church family was a church sponsored mission trip to Guatemala. Memorial contributions may be made to the Leukemia and Lymphoma Society or the Ministers Discretionary Fund at United Methodist Church of the Servant, Oklahoma City.

## THANKS

The family of Jess Horn wishes to thank the members of the Oklahoma Bar Association for their expressions of sympathy following Jess' death. We will all continue to miss him. Your thoughts and prayers are greatly appreciated.

*Linda Horn and family*

## SERVICES

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THE SEMINOLE NATION OF OKLAHOMA seeks proposals for its annual Attorney General contract. A preference shall be given to full service law firms with Native American attorneys as opposed to solo practi-tioners. Six copies of the firm's proposal must be received by the Seminole Nation no later than Tues-day, January 20, 2009. The proposals must include resumes for all attorneys that would be responsible for the representation and a comprehensive descrip-tion of the firm's experience representing Native American Tribes. Attorneys must be presently admit-ted to practice and currently practicing law in the State of Oklahoma, and admitted to practice in the Federal District Court for the Eastern District. Please provide courts where admitted, and the dates when admitted. Proposals should be mailed to the Seminole Nation, Attention to Office of the General Counsel, P. O. Box 1498, Wewoka OK, 74884.

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ASSISTANT FEDERAL PUBLIC DEFENDER for the Northern & Eastern Districts of Oklahoma. This is a full-time position, and requires a minimum of 5 years experience with an emphasis on criminal law. Com-puter knowledge and appellate experience desirable. An applicant must be a member in good standing of a State Bar in which he or she is currently admitted, and must be eligible for immediate admission to the Bar of the U. S. District Courts in Northern & Eastern Okla., the 10th Cir. Ct. of Appeals, and the U. S. Supreme Court. Federal salary and benefits apply. Salary is com-mensurate with experience and education. The initial period of employment will be probationary, subject to successful completion of a background check. This position is subject to mandatory electronic transfer (direct deposit) of net pay. Qualified applicants should submit a letter of interest and resume to Julia L. O'Connell, Federal Public Defender, 1 W. 3rd St., Ste. 1225, Tulsa, OK 74103. Applications must be received no later than 5:00 p.m. Central Time 1/30/09. Equal Opportunity Employer.

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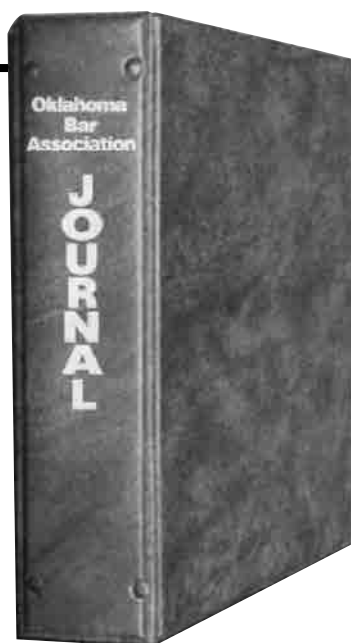
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# The Luck of the Draw

By Bob A. Smith

I do not gamble or understand how the games are played. I have a great appreciation for those who visit our tribal casinos and bring money into our treasury. This money benefits our tribal members. I do not believe in luck and yet my life has been directed by the luck of the draw (LOTD). I grew up poor in southeastern Oklahoma and never believed that I could afford to advance my education beyond high school.

LOTD stepped in. I received a small scholarship, and with a cardboard box containing my worldly possessions, I was off to one of our state universities. After two years with a global conflict raging, I left school and moved to Texas, where I worked for two years. I was then drafted into the U.S. Army. Completing basic training in Virginia, I was prepared to deploy to the war zone. LOTD again stepped in, and I was assigned to duty in France.

After 21 months of service and touring the continent, I received an early out and returned to the university courtesy of the GI Bill. I graduated, and since I had benefits remaining, I entered law school. At the same time, I got a civil service job with the federal government. On the first day of my discharge from the Army, still in uniform I applied for a loan at a credit union to purchase an automobile. The woman who managed the credit union and processed my loan became my wife two years later. By the time I graduated from law

school and passed the bar, we had two children. We later had two additional children.

My first appearance in court was representing a man in a divorce. His wife had retained a well-known divorce attorney, and my client had been advised to retain someone of equal stature. He kept me as his counsel, and we appeared in court. The judge, a stickler for protocol, began. I knew enough to rise when addressing the court while opposing counsel remained seated. "Mr. X," the judge said, "stand when addressing the court." I thought, I have this sucker won. Mr. X asked the judge, "What about my fee?" The judge replied, "She retained you, she pays you."

My client was a mail clerk in the facility where I worked. One day he brought me an announce-

ment showing that the government would select 20 employees throughout the country for five years and send them to an eastern university for graduate-level training. Those selected must change geographic locations and field of employment. The idea was to make specialists into generalists. I applied, was investigated for security purposes by the FBI — but not selected.

The next year LOTD appeared, and I was selected. Soon my family and I began our travel to Washington, D.C. for orientation and then to upstate New York for entry into the graduate school. Following graduation I was employed in Washington, D.C., back to Oklahoma City and then to Seattle.

Wherever we lived, our children had this great love for the state of Oklahoma. One Christmas we traveled from Seattle to Oklahoma. At 2 a.m. outside of Minco we had a flat tire. Our oldest son and I unloaded the luggage and Christmas gifts from the car, retrieved the spare tire, jacked up the car — which immediately fell into the sand. There was no traffic and then LOTD brought the only vehicle of the morning over the hill. It was a truck with a wench on the front. The truck driver raised our car while we put on the spare, reloaded and were soon on our way to grandmother's home. LOTD can be pretty amazing.

*Mr. Smith is chief judge of the trial court for the Cheyenne and Arapaho Tribes.*







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