

WIT Oklahoma Bar JOURNAL

Volume 81 ♦ No. 33 ♦ December 11, 2010

Ethics & Professional Responsibility

ALSO INSIDE

- Oklahoma's Unified Case Management System
- The New Oklahoma Discretionary and Special Needs Trust Act
- Aftermath of the *SemGroup* Case
- Annual Meeting Highlights
- Bar Journal 2010 Index

OBA/CLE PRESENTS

OBA 2010

Ethics Musical

Dec. 16 - Renaissance Hotel, Tulsa
Dec. 21 - Oklahoma Bar Center, OKC

THE MUSICAL ETHICS SINGERS

FOLLOW DEWY CHEATHAM AND
HIS VISITS FROM THE GHOSTS OF
COMPLAINTS PAST.

PRESENT AND FUTURE.

SING ALONG WITH SOON TO BE CLASSICS*

CHEATHAM THE RED NOSED LAWYER

TWELVE DAYS OF TRIAL

ALL I WANT FOR CHRISTMAS IS MY
LICENSE BACK

Registration and Dinner at 5:30 p.m.

Show at 6 p.m. Good for 2 hours MCLE/2 Ethics





oba ♦ cle
continuing legal education

Recent Developments 2010

OKC: Dec. 16 - 17, 2010 -Oklahoma Bar Center

This course has been approved by the Oklahoma Bar Association Mandatory Continuing Legal Education Commission for 12 hours of mandatory CLE Credit, including 1 hour of ethics for both days; 6 hours of mandatory CLE credit, including 0 hours of ethics credit for Day I; 6 hours of mandatory CLE credit, including 1 hour of ethics credit for Day II.

\$275 (both days), \$150 (day one or day two), for early-bird registrations received with payment at least four full business days prior to the seminar date; \$300 (both days), \$175 (day one or day two), for registrations received within four full business days of the seminar date. To receive a \$10 discount register online.

The Oklahoma City program will be webcast. NOTE: Tuition for webcast varies from live program tuition.

For full program outline and to register, visit www.okbar.org/cle



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THEME:
**ETHICS & PROFESSIONAL
RESPONSIBILITY**

EDITOR: PANDEE RAMIREZ

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Farewell and Thank You

By Allen Smallwood

I was told by former OBA presidents that their year as president passes as what seems like a couple of months. This has certainly been true in my case, and it's hard to believe that this is my last president's page. I have been humbled and gratified by the numerous comments I have received to this page over the year. Most have been positive. Rest assured those of you who have communicated with me about my comments will always be remembered and will be one of the highlights of my legal career.

There are more people to thank for this year than I have space in this column. The first person who has put up with me more than anyone is my wife, Barbara. She has implied on many occasions that she didn't know and wasn't sure if my presidency — and our marriage — would both survive this year. Thanks and love to her.



Allen M. Smallwood

President Smallwood
practices in Tulsa.
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(918) 582-1993

Next, my staff, particularly my legal assistant, Belinda Wildcat, who has been my alter-ego for decades and has covered my many deficiencies and mistakes with an unerring eye for detail.

Last, but certainly not least, is the extraordinary staff at the Oklahoma Bar Association — John Williams, our executive director, Debbie Brink, his administrative assistant, and Carol Manning, the editor of the bar journal — who have continually saved me from disaster.

What I hope my bar service will show some of you is that any of us, whether a senior partner, junior partner or associate with a law firm, or a

*I have been
humbled and
gratified by the
numerous comments
I have received
to this page over
the year.*

sole practitioner as I, can and should provide service to our profession. You will discover that you receive far more benefit from it than you give. I am extraordinarily proud and grateful to be a lawyer, a member of the Oklahoma Bar Association and your friend and colleague.

Our incoming president, Deborah Reheard, and soon to be president-elect, Cathy Christensen, are self-described "bar junkies," and they have already hit the ground running with great ideas, huge amounts of energy and deserve our thanks, support and encouragement.

Once again, thank you for the opportunity to serve our profession and for the experience of a lifetime.

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EVENTS CALENDAR

DECEMBER 2010

- 15 **Oklahoma Council of Administrative Hearing Officials**; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Carolyn Guthrie (405) 271-1269 Ext. 56212
- 17 **OBA Board of Governors Meeting**; 9 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: John Morris Williams (405) 416-7000
OBA Military Assistance Task Force Meeting; 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Dietmar Caudle (580) 248-0202
- 18 **OBA Young Lawyers Division Board of Directors Meeting**; 10 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Molly Aspan (918) 594-0595
- 23-24 **OBA Closed** – Christmas Day Observed
- 31 **OBA Closed** – New Year Holiday Observed

JANUARY 2011

- 5 **OBA Law-related Education Law School for Legislators**; 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jane McConnell (405) 416-7024
- 7 **OBA Lawyers Helping Lawyers Assistance Program Committee Meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact: Tom Riesen (405) 843-8444
- 14 **OBA Board of Governors Meeting**; 9 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: John Morris Williams (405) 416-7000
OBA Board of Governors Swearing-in Ceremony; 10:30 a.m.; Supreme Court Courtroom, State Capitol; Contact: John Morris Williams (405) 416-7000
OBA Family Law Section Meeting; 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Kimberly K. Hays (918) 592-2800
- 17 **OBA Closed** – Martin Luther King Jr. Day Observed
- 19 **Oklahoma Council of Administrative Hearing Officials**; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Carolyn Guthrie (405) 271-1269 Ext. 56212
- 21 **Oklahoma Bar Foundation New Trustee Orientation**; 10:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Nancy Norsworthy (405) 416-7070

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

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

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Ethics

& PROFESSIONAL RESPONSIBILITY

The Unauthorized Practice of Law in Oklahoma

By William R. Grimm

Generally, the practice of law involves an individual, duly licensed and admitted to the bar of a particular jurisdiction, rendering a service for another that calls for a professional judgment based upon the application of law to a specific factual situation. This professional service generally includes giving advice regarding an interpretation of the laws of that jurisdiction, drafting legal documents or representing a party in negotiations and/or court proceedings.

Today, there is a substantial amount of overlap between the practice of law and various other professions where clients are represented by agents, including real estate, architecture, banking, accounting and insurance. Moreover, a growing number of legal documents may now be created from a form generated by computer software, where one can respond to a series of questions in order to draft the legal document. Likewise, there are a growing number of paralegal service providers, licensed document preparers and notaries that are performing unsupervised services which infringe upon the practice of law.

The unauthorized practice of law is governed by Title 5 Okla. Stat., Chapter 1, Appendix 1-A, Article 2, §7 — Who May Practice Law, which states:

- (a) No person, corporation, partnership, or any other entity (hereinafter collectively referred to as “person”), shall practice law in the State of Oklahoma who is not an

active member of the Association, except as herein provided.

- (c) It shall be the duty and responsibility of this Association, acting through the Professional Responsibility Commission, to investigate and to seek judicial action to prevent the unauthorized practice of law by any person and to take appropriate action to enforce any lawful orders issued in such proceedings.

Thus, it is readily apparent that only active members of the Oklahoma Bar Association (OBA) are entitled to practice law in the state of Oklahoma. Furthermore, the OBA, acting through the Professional Responsibility Commission (PRC), is charged with the responsibility of investigation and prosecution of the unauthorized practice of law.

INHERENT POWER OF THE OKLAHOMA SUPREME COURT

The Oklahoma Constitution adopted in 1907 vests the full judicial power in the Judicial

Department under Article VII §1 and requires the maintenance of the proper separation of powers between the three departments of government under Article IV §1. The Oklahoma Supreme Court (the court) has the power and right to exercise all powers fundamental to its existence and has the inherent power to regulate admission to the bar, and to control and regulate the practice of law of those admitted to the bar.¹

The court exercised its inherent power to disbar an attorney for a false and malicious attack upon the courts and the judges.² The court held it had the inherent right to protect itself from malicious attacks of an officer of the court, and as such it is an attorney's duty not merely to observe the rule of courteous demeanor in open court, but also to abstain from all insulting language and offensive conduct toward the judges personally for their judicial acts.³ Subsequently, the court reaffirmed its power to disbar an attorney for professional misconduct or neglect of duty citing such actions are necessary to the full and complete administration of justice and that such power cannot be removed by legislative enactment.⁴

In one of the earliest cases dealing with unauthorized practice of law by a lawyer, admitted before a territorial court predicated upon a license obtained by fraudulently concealing his previous disbarment in another state, the court noted a general jurisdiction court's inherent power to purge themselves from a fraud perpetrated upon the court by an officer of the court or by one to secure for himself the privileges of an officer of the court.⁵ The same issue of deceitfully obtaining a law license was subsequently raised again after adoption of the Oklahoma Constitution that provided for lawyers with territorial licenses to be admitted to the bar without examination in the new state.⁶

However, in a subsequent opinion, the court agreed the Legislature may place reasonable limits upon the exercise of this power by statute, such as time bar limits for the prosecution of disbarment proceedings.⁷

STATE BAR ACT OF 1929

In 1929, the Oklahoma Legislature passed the State Bar Act, which prescribed certain rules and regulations whereby the legal profession of this state controlled the conduct of its members through a Board of Governors (BOG) elected by the members of the bar. The court

delegated to the BOG its authority to make all necessary inquiries into the fitness of the attorneys of this state and to report its findings. This delegation of authority was ultimately challenged and upheld.⁸ Subsequently, the BOG, with the approval of the court, was empowered to prescribe discipline under the newly codified "Rules of Professional Conduct," including cause for suspension of license to practice or disbarment of attorneys.⁹

Soon thereafter, the court also considered its authority over the unauthorized practice of law. In two closely issued opinions, the court ruled that a corporation was not authorized to engage in acts constituting the practice law¹⁰ and the practice of law by one who has not established his qualifications in the manner prescribed by law is forbidden.¹¹

In *Retail Credit Ass'n*, the court upheld the state bar association's judgment for injunctive relief prohibiting a corporation from holding itself out to its customers as being competent and possessing authority to render legal services, give legal advice and take legal action to collect claims, demands or debts. In considering the challenge to its standing to seek injunctive relief, the court determined the action was brought, not for financial gain, but in the interest of all the people of Oklahoma to prevent the continued wrongful and unauthorized acts.

Similarly, in *McConnell* the court held that a layman cannot properly bind himself by contract to perform an act which can only be performed by a licensed attorney, nor can he obligate the other party to the contract to pay him compensation for the performance of such an act. The court reasoned the preparation for consideration of legal instruments to be shaped from a mass of facts and conditions involving the application of intricate principles of law which can only be applied by a mind trained in existing laws in order to insure a specific result and to guard against other undesirable results comes within the term "practice of law."

In the exercise of its constitutional authority the court has determined the practice of law is a judicial function for the privilege of becoming an officer of the court.¹² The same power that grants the privilege of becoming an attorney may also withdraw it when one has been found to be unworthy.¹³

RULES CREATING, CONTROLLING AND REGULATING THE OKLAHOMA STATE BAR ASSOCIATION

On Oct. 10, 1939, the court issued its opinion creating the Oklahoma Bar Association (OBA) in response to the Legislature's repeal of the State Bar Act of 1929. Again resorting to its inherent powers under Article VII, the court issued its Rules Creating, Controlling and Regulating the Oklahoma State Bar Association (Rules Creating OBA).¹⁴ Under the Rules Creating OBA, "[n]o person shall practice law in the State of Oklahoma who is not an active member of the association, except as hereinafter provided."¹⁵ Within the next 30 days, the court strengthen its newly created Rules Creating OBA by striking down, as unconstitutional, the Legislature's newly enacted law to allow admission to the practice of law without examination.¹⁶

Without specifically addressing the unauthorized practice of law, the court again held the exercise of judicial power in the administration of justice includes the inherent right to define and regulate the practice of law, quoting from the Nebraska Supreme Court's decision "to define the practice of law and to punish by contempt proceedings persons not licensed to practice law for usurping the privilege of acting as attorneys."¹⁷ The court's opinion conceded that "the Legislature may, in the exercise of its police power, prescribe rules and regulations for admission to the bar which the courts will follow; but such rules and regulations must not be unreasonable or deprive the courts of their inherent power to prescribe other rules and conditions of admission to practice."¹⁸

Subsequently, the court upheld a damage verdict against a non-lawyer based upon his improper preparation of certain legal instruments for hire which subsequently resulted in property loss.¹⁹ In *Eaton*, the court stated that the practice of law is regulated for the benefit of the public which might be injured if unskilled and untrained persons were permitted to practice the work or duties of the legal profession. The court cited the preparation of receipts and options, deeds, promissory notes, deeds of trust, mortgages, releases of encumbrances,

“...the court
upheld a damage verdict
against a non-lawyer
based upon his improper
preparation of certain
legal instruments...”

leases, notice terminating tenancies and demands to pay rent or vacate, by completing standard and approved printed forms, coupled with the giving of advice or explanation as to legal effect thereof, constitutes the “practice of law.”²⁰

However, on two occasions,²¹ the court has upheld contracts between layman to commence litigation and pay all costs, including employment of attorneys, by declining to find the object of the contract authorized or required the layman to

practice law, particularly where there was no evidence the layman performed any act as an attorney in the litigation.

In 1967 the court opined that the OBA was created by the court in the exercise of its police power, which constituted the creation by state action of a state agency to serve a public purpose connected with the administration of justice. Since the OBA is a duly created state agency and an instrumentality of the Judicial Department with the regulatory power in respect to the practice of the law, the Oklahoma Bar Center was considered to be for the sole use and benefit of the State of Oklahoma and thus exempt from ad valorem taxes under Article X §6 of the Oklahoma Constitution.²²

R. J. EDWARDS INC. V. HERT

As a corollary of its constitutional authority to control and regulate the practice of law, the court is also vested with original jurisdiction to entertain complaints alleging unlawful practice of the law by unlicensed persons with full and complete authority to prevent the intrusion of unlicensed persons into the practice without regard to the acts involved.²³ According to *Hert*, the OBA is the only proper party to bring an action to enjoin the unauthorized practice of law in the district courts where the facts can be fully developed for the court's review.²⁴

The *Hert* opinion instructs trial courts to fully develop the factual basis for any reviewable action in policing the unauthorized practice of law or in permitting, as a matter of policy or of public convenience, certain types of legal practice by unlicensed persons.²⁵ The opinion reiterates the court's previous definition for the practice of law:

The preparation for a money consideration of legal instruments to be shaped from a mass of facts and conditions involving the application of intricate principles of law which can only be applied by a mind trained in existing laws in order to insure a specific result and to guard against other undesirable results comes within the term "practice of law."²⁶

The court concluded that the distinction between law practice and that which is not authorized may be determined only from a consideration of the acts of service performed in each case. The *Hert* opinion contains numerous citations from sister jurisdictions as examples of acts by an unlicensed person incidental to an independent vocation that should not be considered as the practice of law. However, if the practitioner of a "distinct occupation" goes beyond the determination of legal questions for the purpose of performing his special service and advises his patron as to the course to be taken to secure a desired legal status, then such action is an unauthorized practice of law. In such examples, the court reasoned that the practice of law would include:

1. A title searcher who renders an opinion or advice as to the legal effect of what is found.
2. An accountant who provides advice regarding the legal effects of his work.
3. One who, in the exercise of a commission to draw a conveyance, selects language designed to create a certain effect.
4. One who draws estate plans involving legal analysis.
5. A layman who draws a will for another.
6. One who draws legal instruments or contracts.
7. A layman who evaluates a claim and undertakes to settle it, based upon applicable legal principles.
8. A bank that furnishes legal information or legal advice with respect to investments, taxation, stocks, bonds, notes or other securities or property.
9. The preparation of pleadings and wills and other documents by unlicensed practitioners that are destined for consideration in the courts.

It is this area of certain service-related occupations, whose practitioners provide advice for a certain course of action to be taken to secure a desired legal result, which is increasingly becoming a growing problem for the unauthorized practice of law.

PROFESSIONAL RESPONSIBILITY COMMISSION

In 1975, the BOG proposed the establishment of an independent group to deal with disciplinary matters. Two years later, the court created the Professional Responsibility Commission (PRC) and appointed seven lawyers to assist the OBA general counsel in investigating and processing complaints against OBA members. Subsequently, in early 1981, the court changed the PRC membership to include two non-lawyers and reduce the number of lawyers to five.²⁷

On Feb. 23, 1981, the court adopted the Rules Governing Disciplinary Proceedings (the disciplinary rules), including providing for the jurisdiction of the court in the discipline of lawyers and the unauthorized practice of law.²⁸ Specifically, the PRC has the duty "[t]o consider and investigate ... any instance of the unauthorized practice of law called to its attention, or upon its own motion, and to take such action with respect thereto as shall be appropriate to effectuate the purposes of these Disciplinary Rules."²⁹ Additionally, the disciplinary rules provide for the creation of the Professional Responsibility Tribunal (PRT), composed of a 21-member panel of 14 lawyers and seven non-lawyers, to hear disciplinary charges, to report its findings to the court and to perform the duties conferred and imposed upon it by the disciplinary rules.³⁰

It is well settled that an attorney from a foreign jurisdiction who attempts to practice law in the state of Oklahoma is subject to disciplinary proceedings for the unauthorized practice of law absent special circumstances such as *pro hac vice* admission.³¹ However, such temporary admission is a privilege, not a right that is subject to the sound judicial discretion of the state trial court.³² Likewise, a suspended or disbarred lawyer who performs more than clerical work, such as court appearances, in association with other licensed attorneys is engaging in the unauthorized practice of law.³³ In addition, a lawyer licensed in Oklahoma is subject to discipline for the unauthorized practice of law in

another jurisdiction without proper admission to the bar thereof.³⁴

OKLAHOMA RULES OF PROFESSIONAL CONDUCT

In 1988, the Supreme Court adopted the Oklahoma Rules of Professional Conduct (conduct rules) to replace the Oklahoma Code of Professional Responsibility (the code) adopted in 1970. The conduct rules were intended to simplify the guidance to lawyers on several areas, in particular, contingent fees, conflicts of interest, candor to the court and advertising.³⁵ However, unchanged was an attorney's prohibition against the unauthorized practice of law under the Code DR 3-101.³⁶

Rule 5.5 of the conduct rules simply provided:

A lawyer shall not (a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction; or (b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

Under the code, the court denied the reinstatement applications wherein suspended lawyers violated the disciplinary rules for unauthorized practice of law by preparation of legal instruments for third parties³⁷ and for use of a sign and stationery identifying himself as an attorney at law while under an order of suspension.³⁸ Similarly, under the conduct rules, the failure of an Oklahoma licensed lawyer to report an investigation into his unauthorized practice of law in a foreign jurisdiction where his license was suspended constituted a "misrepresentation by omission" sufficient for discipline by the court.³⁹ The court retains jurisdiction to discipline a lawyer suspended for non-payment of dues for behavior that violates the conduct rules.⁴⁰

In 2007, the court amended Rule 5.5 of the conduct rules⁴¹ to establish certain circumstances for the multi-jurisdictional practice of law without modifying the basic tenets of the unauthorized practice of law. The amendments provide for provisional practice of law within Oklahoma by out-of-state attorneys, as well as the practice of Oklahoma attorneys outside this state, under certain circumstances.

Recently, the court considered whether an attorney seeking reinstatement to the OBA committed the unauthorized practice of law in

an adjoining state after the Oklahoma license was terminated for non-payment of dues. In its opinion, the court cited the definition of the practice of law as determined by the Texas Supreme Court, as follows:

The practice of law generally is defined as the rendering of legal services for someone else. These services include, but are not limited to, the preparation of a pleading or other document incident to an action or special proceeding or the management of the action or proceeding on behalf of a client before a judge in court as well as a service rendered out of court, including the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined.⁴²

UNAUTHORIZED PRACTICE OF LAW BY NON-LAWYERS IN OKLAHOMA

Oklahoma appellate courts have uniformly upheld the prohibition of layman involved in the unauthorized practice of law when the public interests are at stake. In the exercise of its authority to control and regulate the practice of law in all its forms and to prevent the intrusion of unlicensed persons into the practice of law, the Oklahoma Court of Civil Appeals has denied a layman from prosecuting appeal on behalf of a corporation by striking pleadings resulting in an appeal becoming a nullity,⁴³ and upheld monetary sanctions against a non-lawyer, sole shareholder pursuing a claim on behalf of a corporation.⁴⁴ Notwithstanding, by special rule,⁴⁵ a corporate officer may appear on behalf of a corporation in small claims actions.⁴⁶

However, in addressing the issue of charges of a non-lawyer's time for legal assistant services performed under the supervision of a lawyer, non-clerical in nature, and providing meaningful support in the case that a lawyer would have performed, the court held such charges are recoverable as attorney fees where the hourly rates are less than that had a lawyer perform such services.⁴⁷ In the *Taylor* opinion, the court stated that legal assistants may interview clients, draft pleadings and other documents, carry out legal research, both conventional and computer aided, research public documents, prepare discovery requests and responses, schedule depositions and prepare

notices and subpoenas, summarize depositions and other discovery responses, coordinate and manage document production, locate and interview witnesses, organize pleadings, trial exhibits and other documents, prepare witness and exhibit lists, prepare trial notebooks, prepare for attendance of witnesses at trial and assist lawyers at trial.⁴⁸

UNAUTHORIZED PRACTICE OF LAW BY NON-LAWYERS IN OTHER JURISDICTIONS

Other jurisdictions have issued injunctions, sanctions or civil penalties for the unauthorized practice of law where non-lawyers provide advice to a third party for a certain course of action to be taken to secure a desired legal result. The primary purpose of these opinions was to protect the public from harm of incompetence, divided loyalties and unskilled representation. The non-lawyer actions affected by these opinions include:

1. *Accountants*: Advice on the selection of the proper business structure for a client and preparation of documents to create the entity;⁴⁹ preparation and filing articles of incorporation for a third party;⁵⁰ preparation of certificates of dissolution and supporting documents;⁵¹ and providing legal assistance in preparation of bankruptcy petitions, schedules and applications to pay filing fees in installments.⁵²

2. *Architects*: Providing advice regarding legal rights and how to safeguard them in the preparation of subcontracts.⁵³

3. *Bankers*: Loan charges for document preparation fees or processing fee for preparation of pre-printed forms by non-lawyer employees;⁵⁴ bank's supervision by a non-attorney of the execution of a will.⁵⁵

4. *Business Brokers*: Document drafting involving complex and sophisticated legal issues as part of a package of services offered to customers for valuable consideration in sale of a business.⁵⁶

5. *Divorce Services*: Preparation for a fee of all papers considered by a non-lawyer to be necessary for securing a dissolution of marriage, as well as detailed instructions on filing and service of papers, setting hearings, the necessary questions and answers to be offered at trial and procedure for entry of final judgment of dissolution;⁵⁷ sale of "divorce kit" coupled with advice on preparation of necessary papers;⁵⁸ written instructions in "do-it-yourself" divorce kits, together with any consultation, explana-

tion, advice or other assistance in selecting particular forms, filling out any part of the forms or suggesting or advising how the forms should be used in solving the particular customer's marital problems.⁵⁹

6. *Estate Planners*: Preparation of deeds, legal documents and filing final settlement in probate matter for other person without charge;⁶⁰ preparing various legal papers for clients, including trusts, wills, a contractual agreement and other estate-planning documents;⁶¹ use of scripted sales presentation for preparation of living trust requiring consideration of legal concepts to complete;⁶² preparation and explanation of the operation of the revocable living trusts, including income and estate tax consequences arising from probate and trust law.⁶³

7. *Heir-Hunting Company*: Contacting prospective estate heirs without the authority of court or estate fiduciary and proposing to aid in asserting a claim in exchange for an assignment of the recovery.⁶⁴

8. *Immigration Service Agency*: Selection and preparation of appropriate form, gathering and storing the supporting documentation, and review of necessary documents for embassy interview.⁶⁵

9. *Mortgage Brokers*: Charging document preparation fees for closing a mortgage transaction.⁶⁶

10. *Paralegals*: Appearing as representative of another at hearing, drafting divorce complaints and judgments for pro se litigants without licensed attorney's supervision;⁶⁷ discipline of lawyer for paralegal's unsupervised correspondence and negotiation of settlements with insurance adjusters;⁶⁸ attorney discipline for fee-splitting with agency providing secretarial and paralegal support;⁶⁹ authorizes independent paralegals working under attorney supervision outside the attorney's office.⁷⁰

11. *Public Claims Adjusters*: Advising persons to accept an offered sum of money in settlement of claims for personal injuries and/or property damages under contingent fee contract;⁷¹ interpreting and advising on the insurance policy, as well as, negotiating with the insurer on coverage disputes.⁷²

12. *Real Estate Agents*: Authorized to fill in the blanks of standard, printed forms relating to documents necessary and coincidental to real estate transactions in his capacity as a broker;⁷³

agent or broker cannot give legal advice with insertion of terms in a real estate contract;⁷⁴ real estate broker may properly fill in usual form of real estate contract which only involves merely supplying of simple factual data;⁷⁵ presentation of oral argument before tax court on valuation complaint prepared with results of legal analysis.⁷⁶

13. *Real Estate Closing Company*: Providing legal advice in response to questions concerning legal effect of documents of conveyance being executed during a real estate closing;⁷⁷ preparation and facilitation of the execution of a deed on behalf of another.⁷⁸

14. *Tax Consultants*: Preparation and filing of a complaint to protest the assessment of real property;⁷⁹ preparation of inheritance tax return acting for another by one who is not a lawyer or qualified certified public accountant.⁸⁰

15. *Title Companies*: Providing advice to parties of their rights and action to be taken regarding title to property;⁸¹ providing opinion regarding effect of manner of taking title;⁸² charge for preparing legal documents by non-lawyer.⁸³

The primary reasoning utilized by the courts for the vast majority of these cases when determining what particular act constitutes the unauthorized practice of law is whether legal advice is given to a third party regarding the selection of a specific course of action based upon analysis of facts and application of legal principles. In such instances, the courts look to the potential harm to the public by allowing individuals without proper training and education to provide such advice.

ANTITRUST IMPLICATIONS FOR UNAUTHORIZED PRACTICE OF LAW

In the prosecution of a claim under the Sherman Antitrust Act against a state bar association, its committees and committee members, a federal court held the bar association and its individual committee members were entitled to state action immunity from federal antitrust liability. The court found that the prosecution of a business for the unauthorized practice of law did not fall within the "sham exception" to the Noerr-Pennington antitrust immunity doctrine where conduct of a bar association was reasonable and a foreseeable exercise of powers delegated by its Supreme Court, and there was active state supervision through its Supreme Court which retained authority to make final determination on issue.⁸⁴

PURPOSE FOR PROHIBITING THE UNAUTHORIZED PRACTICE OF LAW

The practice of law is the rendition of services requiring the knowledge and the application of legal principles and techniques to serve the interests of another with his or her consent.⁸⁵ The purpose of prohibiting the unauthorized practice of law is to protect the public from incompetence in the preparation of legal documents and to prevent harm resulting from inaccurate legal advice. Confining the practice of law to licensed attorneys is designed to protect the public from the potentially severe consequences of following advice on legal matters from unqualified persons; it is not intended to reserve to attorneys activities that may safely be conducted by laypersons.⁸⁶

It is not enough for an attorney that he be honest. He must be that and more. He must be believed to be honest. It is absolutely essential to the usefulness of an attorney that he be entitled to the confidence of the community wherein he practices. If he so conducts himself in his profession that he does not deserve that confidence, he is no longer an aid to the courts, nor a safe guide to his clients. A lawyer needs to be learned. It would be well if he could be learned in all the learnings of the schools. There is nothing to which the wit of man has turned that may not become the subject of his inquiries. Then, of course, he must be especially skilled in the books and rules of his profession. And he must have prudence and tact to use his learning — and foresight and industry and courage. But all these may exist in a moderate degree and yet he may be a creditable and useful member of the profession so long as the practice, to him, is a clean and honest function. But possessing all these great faculties, if once the practice becomes to him a mere "brawl for hire" or a system of legalized plunder, where craft and not conscience is the rule and where falsehood and not truth is the means by which to gain his ends, then he has forfeited all right to be an officer of any court of justice, or to be numbered among the members of an honorable profession.⁸⁷

1. *State Bar Commission ex rel. Williams v. Sullivan*, 1912 OK 527, 131 P. 703, (citing *In re Brown*, 1895 OK 7, 39 P. 469, for the courts' statutory right during the Territorial Statutes of 1893).

2. *Ibid.* at ¶ 2.

3. *Ibid.* at ¶ 4.

4. *In re Sadler*, 1913 OK 179, 130 P. 906.

5. *Dean v. Stone*, 1894 OK 2, 2 Okla. 13, 35 P. 578.

6. *In re Mosher*, 1909 OK 139, 24 Okla. 61, 102 P. 705.

7. *In re Evans*, 1919 OK 104, 72 Okla. 215, 179 P. 922.

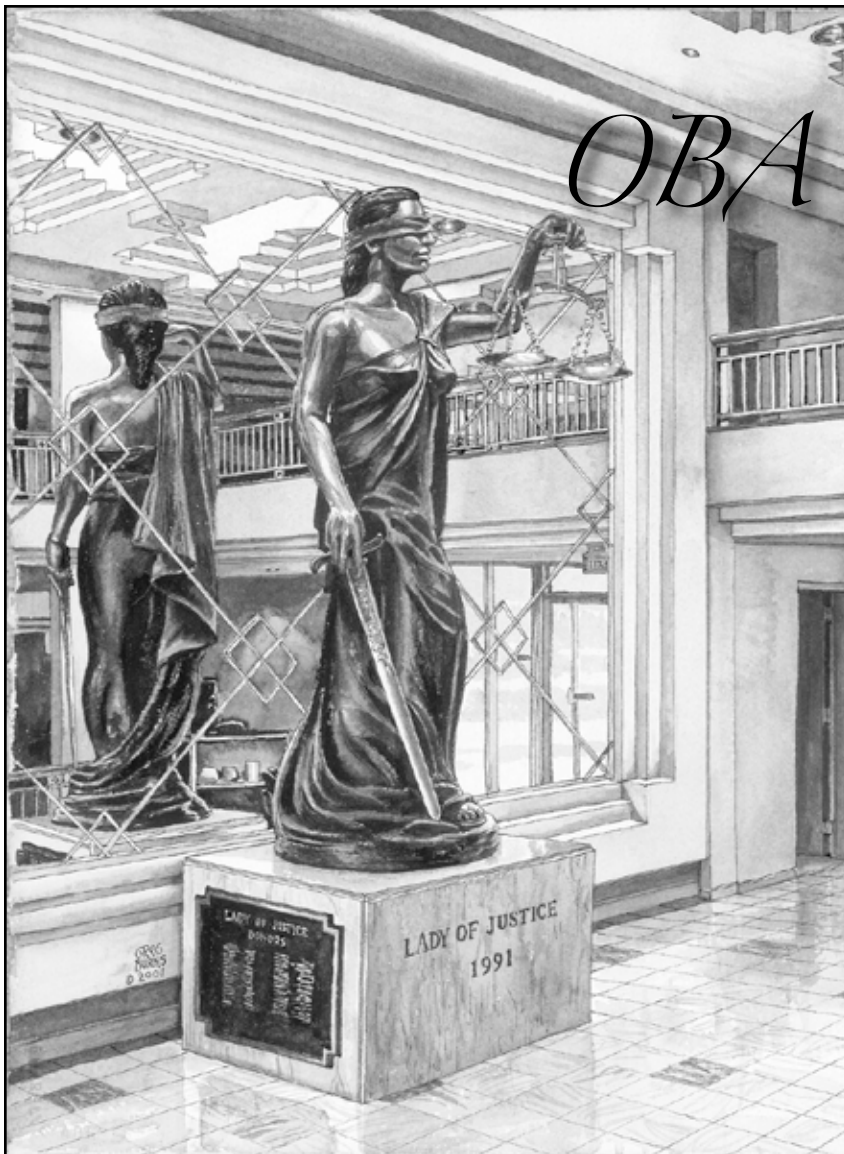
8. *State Bar of Oklahoma v. McGee*, 1931 OK 161, 298 P. 580.

9. *In re Hicks*, 1933 OK 212, 163 Okla. 29, 20 P.2d 896.
10. *State Bar of Okl. v. Retail Credit Ass'n*, 1934 OK 691, 37 P.2d 954.
11. *Crawford v. McConnell*, 1935 OK 791, ¶17, 49 P.2d 551.
12. *In re Bozart*, 1936 OK 811, ¶10, 63 P.2d 726.
13. *Ibid.*
14. *In re Integration of State Bar of Oklahoma*, 1939 OK 378, ¶ 6, 95 P.2d 113.
15. *Ibid.* at ¶ 14.
16. *In re Bledsoe*, 1939 OK 506, 186 Okla. 264, 97 P.2d 556.
17. *Ibid.* at ¶ 7.
18. *Ibid.* at ¶ 10.
19. *Latson v. Eaton*, 1959 OK 124, 341 P.2d 247.
20. *Ibid.* at ¶ 8.
21. *Cox v. Freeman*, 1951 OK 16, 227 P.2d 670; *Norris v. Van Handel*, 1945 OK 249, 163 P.2d 217.
22. *Ford v. Board of Tax-Roll Corrections of Oklahoma County*, 1967 OK 90, ¶ 33, 431 P.2d 423.
23. *R. J. Edwards Inc. v. Hert*, 1972 OK 151, ¶ 30, 504 P.2d 407.
24. *Ibid.* at ¶ 33.
25. *Ibid.* at ¶ 29.
26. *Ibid.* at ¶ 19.
27. *And Justice For All: The Legal Profession in Oklahoma, 1821 – 1989*, Orben J. Casey, pg 201-202.
28. Title 5 Okla. Stat., Chap. 1, Appendix 1 – A, §1.1 – Declaration of Jurisdiction.
29. Title 5 Okla. Stat., Chap. 1, Appendix 1 – A, §2.8 – Duties and Powers.
30. Title 5 Okla. Stat., Chap. 1, Appendix 1 – A, §4.5 – Duties and Powers.
31. *Norton v. Hughes*, 2000 OK 32, 5 P.3d 588.
32. *Smith v. Brock*, 1975 OK 27, ¶ ¶ 20-21, 532 P.2d 843, 848.
33. *OBA v. Samara*, 1986 OK 55 at ¶ 9; *OBA Ethics Opinion No. 319*, adopted Dec. 13, 2002.
34. *OBA v. Mothershed*, 2003 OK 34; 66 P.3d 420.
35. Casey at pg. 203.
36. DR 3-101 of the Code provides (A) “a lawyer shall not aid a non-lawyer in the unauthorized practice of law;” and (B) “a lawyer shall not practice law in a jurisdiction where to do so would be in violation of regulations of the profession in that jurisdiction.”
37. *Houts v. OBA*, 1971 OK 62, 486 P.2d 722.
38. *OBA v. Brewer*, 1989 OK 172, 794 P.2d 397.
39. *OBA v. Gentry*, 2003 OK 95, 80 P.3d 135.
40. *OBA v. Kouri*, 1992 OK 123, 837 P.2d 907.
41. Title 5 Okla. Stat., Chap. 1, Appendix 3 – A, Rule 5.5 Unauthorized Practice of Law; Multijurisdictional Practice of Law.
42. *In re Reinstatement of Mooreland-Rucker*, 2010 OK 43, ¶ 15.
43. *Massongill v. McDevitt*, 1989 OK CIV APP 82, 828 P.2d 438.
44. *Allen v. City of Chickasha*, 2009 OK CIV APP 52, 211 P.3d 241.
45. Title 5 Okla. Stat., Chap. 1, Appendix 1, Art. II, §6.
46. *Pryor v. Mid-West Investigations & Process Serving Inc.*, 2000 OK CIV APP 22, 999 P.2d 452.
47. *Taylor v. Chubb Group of Ins. Companies*, 1994 OK 47, 874 P.2d 806.
48. *Ibid.* at ¶ 15.
49. *Columbus Bar Assn. v. Verne*, 788 N.E.2d 1064, 99 Ohio St.3d 50 (Ohio 2003).
50. *Miami Cty. Bar Assn. v. Wyandt & Silvers Inc.*, 838 N.E.2d 655, 107 Ohio St.3d 259 (Ohio 2005).
51. *Dayton Bar Assn. v. Stewart*, 878 N.E.2d 628, 116 Ohio St.3d 289 (Ohio 2007).
52. *In re Robinson*, 162 B.R. 319 (Bkrcty.D.Kan. 1993).
53. *Dunn v. Finlayson*, 104 A.2d 830 (D.C. App. 1954).
54. *Eisel v. Midwest BankCentre*, 230 S.W.3d 335 (Mo. 2007).
55. *Persche v. Jones*, 387 N.W.2d 32 (S.D. 1986).
56. *Bray v. Brooks*, 41 S.W.3d 7 (Mo. App. W.D. 2001).
57. *The Florida Bar v. Furman*, 376 So 2d 378, app disd 444 US 1061, 62 L Ed 2d 744, 100 S Ct 1001.
58. *State v. Winder*, 348 NYS2d 270, 42 App Div2d 1039 (4th Dept 1973).
59. *Oregon State Bar v. Gilchrist*, 538 P.2d 913 (1975).
60. *Winkenhof v. Chaney*, 369 S.W.2d 113 (Ky. 1963).
61. *Disciplinary Counsel v. Goetz*, 836 N.E.2d 556, 107 Ohio St.3d 22 (Ohio 2005).
62. *Akron Bar Ass'n v. Miller*, 80 Ohio St.3d 6, 684 N.E.2d 288 (Ohio 1997).
63. *Stark County Bar Ass'n v. Beaman*, 574 N.E.2d 599, 60 Ohio Misc.2d 17 (Ohio Bd.Unauth.Prac., 1990).
64. *In re Rice's Estate*, 193 N.E.2d 566 (Ohio Prob. 1963).
65. *Unauthorized Practice Committee, State Bar of Texas v. Cortez*, 692 S.W.2d 47 (Tex. 1985).
66. *Carpenter v. Countrywide Home Loans, Inc.*, 250 S.W.3d 697 (Mo. 2008).
67. *Cleveland Bar Ass'n v. Coats*, 786 N.E.2d 449, 98 Ohio St.3d 413 (Ohio 2003).
68. *In re Garrett*, 12 So.3d 332 (La. 2009).
69. *In re Watley*, 802 So.2d 593 (La. 2001).
70. *In re Opinion No. 24 of Committee on Unauthorized Practice of Law*, 607 A.2d 962, 128 N.J. 114 (N.J. 1992).
71. *Brown v. Unauthorized Practice of Law Committee*, 742 S.W.2d 34 (Tex.App.-Dallas, 1987).
72. *Linder v. Insurance Claims Consultants Inc.*, 348 S.C. 477, 560 S. E.2d 612 (S.C. 2002).
73. *Pope County Bar Ass'n Inc. v. Suggs*, 624 S.W.2d 828, 274 Ark. 250, (Ark., 1981).
74. *Duncan & Hill Realty Inc. v. Department of State*, 62 A.D.2d 690, 405 N.Y.S.2d 339 (N.Y.A.D. 1978).
75. *Chicago Bar Ass'n v. Quinlan & Tyson Inc.*, 214 N.E.2d 771, 34 Ill.2d 116 (Ill. 1966).
76. *In re Yamaguchi*, 515 N.E.2d 1235, 118 Ill.2d 417 (Ill. 1987).
77. *Countrywide Home Loans Inc. v. Kentucky Bar Ass'n*, 113 S.W.3d 105 (Ky. 2003).
78. *In re UPL Advisory Opinion 2003-2*, 588 S.E.2d 741, 277 Ga. 472 (2003).
79. *Worthington Cty Sch. Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 707 N.E.2d 499 (Ohio 1999).
80. *Application of New Jersey Soc. of Certified Public Accountants*, 507 A.2d 711, 102 N.J. 231 (N.J. 1986).
81. *State Bar v. Guardian Abstract & Title Co. Inc.*, 91 N.M. 434, 575 P.2d 943 (N.M. 1978).
82. *Coffee County Abstract and Title Co. v. State ex rel. Norwood*, 445 So.2d 852 (Ala. 1983).
83. *The Florida Bar v. McPhee*, 195 So.2d 552 (Fla. 1967).
84. *Lender's Service Inc. v. Dayton Bar Ass'n*, 758 F.Supp. 429 (S.D. Ohio 1991).
85. *Hert* at ¶ 20.
86. 7 Am. Jur. 2d Attorneys at Law §119
87. *State ex rel. Dale et al. v. Vernor et al.* 1920 OK 129, 79 Okla. 124, 191 P. 729.

ABOUT THE AUTHOR



William R. Grimm practices primarily in business and commercial litigation. He received his juris doctorate in 1973 and a bachelor of business administration in accounting and finance in 1970 from the University of Oklahoma. He is an active member of many professional and civic organizations. Mr. Grimm served as OBA president in 2006. He currently serves as a member of the Professional Responsibility Commission and as co-chair of the OBA Unauthorized Practice of Law Task Force. Also, he is an ABA member and was selected as an American Bar Fellow in 2003.



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The Burnout Pandemic: Accommodating Workaholism in the Practice of Law

By Steven M. Angel

INTRODUCTION

For more than 20 years, social scientists have documented the pervasive incidents of depression and burnout in the legal profession. For that same 20 years, the profession has sought a means to address the consequences of these conditions. In general, efforts have included (a) creating lawyer assistance programs; (b) encouraging practicing attorneys to self identify themselves as being subject to these conditions; and (c) urging the creation of “work life balance” initiatives. Those efforts have neither stemmed the growth of depression/burnout nor created a satisfactory method for assisting lawyers who succumb to pressures of the profession.

The failure of these approaches appear to be due to the fact that they have relied heavily upon approaches to other addictive behavior. Items such as “self identification,” “lawyer assistance programs” and “lifestyle changes”

are all derivative of classic approaches to drug and alcohol addiction. However, workaholism, unlike any other addictive behavior, is encouraged and reinforced by society. Indeed, within the legal community, the institutions of the

From the Board of Editors:

Mr. Angel's conduct resulted in great harm to his clients and eventually cost him greatly, both professionally and personally — and the OBA thousands of dollars. His story represents a warning to all legal professionals of the potential danger that may befall anyone for whom the practice becomes an outsize part of life. For candor in sharing what must be a deeply personal and painful story so that others might avoid the same pitfalls, the *Oklahoma Bar Journal* Board of Editors would like to extend appreciation to Mr. Angel.

If you or someone you know is struggling with depression or substance dependency, please call the OBA 24/7 hotline at (800) 364-7886. You are not alone.

profession take a lead role in enabling this addictive behavior. Therefore, an approach which focuses solely upon individual lifestyle choices is doomed to failure because the society, the profession and the institutions of the profession will effectively undermine the individual's attempt to adjust his "work life" balance. Stated more directly, if an individual commits to adjust his lifestyle to eliminate the stressors that lead to depression and burn out, his progress will soon be undermined by the realities of the need for financial and professional success that is inherent in what lawyers do for a living.

This is not to say, and this article does not argue, that addressing the problem of depression and burnout is solely a societal or institutional problem. Quite frankly, there is no hope that during our lifetime the pressure towards workaholicism in the profession will change significantly. Rather, this article argues that rather than simply trying to cure the condition which causes depression and burnout, the institutions of our profession work proactively with lawyers to accommodate the imperative to succeed.

UNDERSTANDING THE RELATIONSHIP BETWEEN BURNOUT AND WORKAHOLIC LAWYERS

Understanding How Bad it Can Get

In preparing to write this article, I recognized that prior discussions of the issue of workaholicism were always clinical in nature and failed to effectively communicate the devastating consequences of burnout. I realized that in order to humanize this article, and to establish my bona fides for the observations I make, I would have to discuss in detail my own experiences.

My name is Steve Angel, and I am neither a social scientist nor a representative of any of the institutions of the legal profession. I am a workaholic who, after 27 years in the profession, hit a wall, crashed, burned and lost the one thing I always wanted to do — practice law.¹

Oddly, my story is not one of failure but one of success. And that is the inherent problem with a lawyer's lifestyle. Too often, success is the drug that leads to addictive behavior. The more successful we are as lawyers, the more we work to achieve greater success, the more we develop dysfunctional behaviors that lead to depression and burnout.

In this regard, I was a classic underachiever until I reached law school. But on that first day

of orientation I had the fear of God put into me. When the dean of the law school gave the famous "look to your left, look to your right, two out of three students don't make it here" speech, I committed to myself I was not going to be one of those people who failed. And so I started my traditional 100-hour work week, and I was rewarded with high grades.

And so it went. I worked harder; I made law review. I worked harder; I got my dream job with the National Labor Relations Board. I worked harder; I was successful as a field attorney with the NLRB. I worked harder and was successful as a supervisory attorney with the Federal Labor Relations Authority. I left government service and established my own firm, and I found out what real work was like. For the next 23 years, I never put in less than 80 hours in a week — and frequently exceeded 100 hours. The night my son was born, I was working on firm financials in the waiting room after my wife delivered. I worked harder, and the case load expanded. As I added more personnel, I added more functions. Once solely a litigator, now I became a chief executive, manager and immediate supervisor in multiple offices.

This constantly expanding workload was like a black hole swallowing everything within its gravitational pull. Every time I think of that time, I feel like paraphrasing the classic Martin Niemöller sermon:

*The first thing to go was sleep
But I didn't complain because I didn't need sleep*

*The next things to go were my friends and hobbies
But I didn't complain because I needed my work
more than I needed my friends and hobbies*

*The next things to go were my marriage and my family
But I didn't complain because I believed my work
served a greater good*

*Finally, I had nothing left, and nothing and no one
to save me from myself.*

And so it was. Instead of eight hours of sleep a night I was able to get by on six hours and finally four hours. The next things to go were my hobbies. I didn't have time for reading, so I stopped reading for fun. I didn't have time to take off from work so I stopped taking vacations. Then I stopped socializing because I didn't have time to waste away from work.

Then I suffered through a divorce and the loss of my family.

For the next 10 years, the chief source of joy in my life was winning a case. Finally, in 2003, I had nothing left to give, hit a wall and crashed and burned.

This is not to say that I didn't have plenty of warnings along the way. At CLE meetings, Dan Murdock, who was then OBA general counsel, would constantly advise every lawyer he could reach of the importance of maintaining a healthy personal life. I remember his warning that the bar seldom had problems with lawyers who had a well balanced life. But I never thought it would happen to me.

The warnings about my workload became louder over the next five years. In 1987, during counseling sessions seeking to halt the inevitable divorce I was going through, the counselor pointed out that my life style was inherently destructive of any sense of stability or commitment to the marriage. I understood at the time what the counselor was saying — but I simply didn't listen. My divorce simply freed up more time to take in more cases.

In 1993 I received a public reprimand for failing to promptly and diligently represent a client.² Shortly after that reprimand, Judge Robin Cauthron issued a public rebuke for a lawyer who had taken on a greater workload than he could handle. In summarizing the problem, Judge Cauthron wrote that the facts "reveal a law firm out of control and unable to handle its caseload." Judge Cauthron further noted the firm was still aggressively seeking new clients while unable to provide adequate representation to existing clients. Although directed at someone else, I felt that Judge Cauthron had actually seen my client list.

The combination of Judge Cauthron's warnings to another firm, and my public reprimand forced me to actually listen to the warnings about my workload. I just kept working harder to be sure I was able to handle the caseload I had taken on. This required me to hire more staff, which required me to take on more cases to pay for the staff which, in turn, created more work.

In 2002, I recognized that I was reaching the beginning stages of burnout. The key to me was that I no longer took any joy in winning cases. I could no longer get my adrenaline pumping to put in those 20 hour days. All I wanted to do was to stay in bed and not go to work.

Recognizing that I couldn't live like this anymore, I stopped taking in cases. I felt like if I could just spend a year closing my cases, I could save myself. However, as I stopped taking in cases, I also tried to reduce overhead. The reduction in staff associated with trying to wind down the business created a situation in which I had to work harder still.

As I worked harder, and longer, in order to close cases, the feelings of depression, which had begun to limit my abilities in 2002, began to seize my life. My staff often had a hard time getting in touch with me because (unbeknownst to them) I was in bed with the covers over my head hiding from the world. I knew I had to get up and get to work, but I simply could not force myself to do it.

“For the next 10 years, the chief source of joy in my life was winning a case.”

One of my staff members became so concerned about my growing depression that she contacted Dan Murdock at the Oklahoma Bar Association. When I met with Dan, I explained to him that I had seen enough cases of depression in my clients to know what was happening. I told

him that I had closed out almost half my case load, and that I was pushing to close out the remainder of the cases one way or another. I told him that I knew a number of clients were becoming dissatisfied because I was never in the office and had a hard time returning all the calls because of the constant demands to close those cases. I specifically asked Dan if he had any suggestions on how I could solve the problem in a way that was acceptable to the bar. Dan said that he didn't have any program for overworked lawyers.³ The bar did have a program to help with a business model, but he didn't think that sounded like my problem. Dan said the only thing he could do was to remind me of the ethical obligation to diligently represent my clients.

When I left Dan's office, I recommitted myself to working the cases to get them closed. This

lasted for another two months, and I started spending more and more time in bed trying to force myself to get up and do the work. I would lay there in bed knowing full well the horrible consequences of not getting up — and still not being able to force myself to get dressed.

By July 2003, I had closed approximately 110 of my 150 cases. My office lease was up, so I closed the office and tried to work out of my house without a staff. For some reason, leaving the office and working out of my house seemed to trigger the major depression. I no longer had an office to go to, so I think subconsciously this allowed me to spend more time in bed hiding from my responsibilities.

When I say the depression took complete control in the fall of 2003, I was in severe distress. I spent virtually the entire day in the study in my house where I could block out any light and hide from the world. I wouldn't walk out to the mailbox to get any mail. It stacked up so much that the post office refused to deliver it anymore. If the phone rang or the doorbell chimed, I would become panicked and rush to hide inside an interior bathtub for hours in fear that someone was nearby. I couldn't bring myself to face anyone or explain to anyone what was going on. The depression was so severe that I learned subsequently that my IQ dropped to below 90. On one occasion, Judge Friot, unable to contact me and having heard from my clients about a pending case became so concerned he sent marshals to my house to try to find out if I was okay. When I appeared before him to explain my absence, all I can remember is not being able to stop crying in open court.

At some time in October, an investigator from the OBA appeared at my house. To this day I can't remember who it was or how he got into my house. I just remember him sitting at my dining room table and saying, "*Steve do you think you are in any condition to continue representing your clients?*" That got through to me. I knew I wasn't. And so, I signed a voluntary resignation from the bar. I knew that since many of my remaining clients had filed bar complaints against me, this resignation would come with some stiff penalties. But he was right; I just was not in any condition to represent my clients.

I wish I could say that after I resigned from the bar, things got better. They really got worse. A feeling of complete failure now exacerbated

the depression. If I was unable to function as a lawyer before, after my resignation I had difficulty functioning as a human being. My fear of opening mail, answering telephone calls and opening the front door continued to grow for months thereafter. I was virtually a hermit hiding in the dark recesses of my house.

During that next year, I saw my psychologist who got me on antidepressants, which at least allowed me to function at a basic level. More importantly, I was lucky enough that an attorney named Carl Hughes became worried about me. At some intuitive level, Carl understood that what I needed more than anything was work that I was capable of performing without any stress. He started me working as a law clerk/research assistant on investigations and research projects. As the project developed, he would monitor my work and when he felt I was becoming overwhelmed and depressed, he would cut the work off for a period. He knew when to push and when to back off. I think without Carl Hughes I would never have pulled myself back from the abyss.

So, answering the question of how bad it can get, the answer is worse than you can imagine. Left unattended, you will lose the very things that make your life worthwhile. The black hole of depression, and its gravitational pull, will swallow you up and leave you with nothing. Knowing that I was one of many to whom this occurred makes it no less difficult to accept. It is my hope that in this article, my experience will provide a vignette which underscores the clinical research.

THE BURNOUT PANDEMIC

The reference to a "burnout" pandemic in the title of this article is not hyperbole. For over a quarter century, psychologists have been describing worker burnout throughout the world as a mental illness of epidemic proportions. What was described as an epidemic in the 1980s has now reached pandemic proportions with as many as half the workers in high stress occupations suffering from some form of burnout.

Initially, the research suggested that the root cause of burnout was the failure of individuals to appropriately cope with the stress of the modern workplace. However, as evidence of burnout has continued to grow exponentially, researchers have recognized that it may well exist as a result of societal and institutional pressures.⁴ As a result, European countries

have recognized “burnout” as an occupational illness for which the employer, rather than the employee, bears financial responsibility.⁵

The classic definition of burnout is a progressive “syndrome of emotional exhaustion, depersonalization and reduced personal accomplishment.”⁶ The emotional exhaustion arises as a result of the workload, the depersonalization arises as the volume of work forces the practitioner to dehumanize his own clients and the reduced personal accomplishment relates to the perception of that the worker is not performing in a worthwhile job.⁷

On its face, this description would appear to be inapplicable to professions such as lawyers. While we have seen the workload create an emotionally fragile state, the very nature of the work would appear to require continued connection to one’s clients and a sense of accomplishment. However, in considering those lawyers, including myself, who reached the most severe levels of burnout, the dehumanization of clients (they became cases to close rather than people) and the loss of feeling that I was performing worthwhile work became manifest.

In addition, one author has differentiated between traditional concepts of burnout and burnout among successful people. Termed “supernova burnout” the author explained that it “afflicts successful people who find their vocations are no longer psychologically rewarding.”⁸ Thus, lawyers who began their practice receiving the psychological reward of an important job well done lose that compensation as a result of the overwhelming workload that dehumanizes the clients and makes the work feel meaningless. More important, professionals subject to “supernova burnout” feel that “other people are encroaching on them ... using them like a ‘tool’ by demanding that they fulfill performance expectations or sustain previously achieved levels of success.”⁹

Irrespective of any dispute of the psychological underpinnings of burnout, the results of burnout are universally recog-

nized. The symptoms are progressive and cumulative. It is a gradual process having “no beginning and ending point but varying levels or degrees.”¹⁰ The initial signals involve feelings of fatigue, frustration, anger, depression and dissatisfaction. As burnout progresses, these feelings become more severe and chronic.¹¹

Physical symptoms of burnout manifest as low energy, chronic fatigue, sleep difficulties, headaches, colds and physical weakness. Cognitive symptoms range from stereotyping and depersonalization to cynicism and negative attitudes toward clients, work and self. Emotional symptoms include feelings of helplessness, hopelessness, guilt, anxiety and entrapment. Behavioral symptoms are seen in absenteeism, aggression, changing jobs, substance abuse and leaving one’s profession. In addition, Grosch and Olsen (1994) identified symptoms of burnout related to the spiritual dimensions of life, which include loss of faith; loss of meaning and purpose; feelings of alienation and estrangement; despair; and changes in values, religious beliefs and religious affiliation.¹²

There are only a limited number of studies of the extent of burnout in the legal profession, and none of them compare the legal profession to the population as a whole.¹³ However, there have been studies of the symptoms of burnout amongst lawyers which support the conclusion that the burnout pandemic is particularly prevalent among lawyers.

A Johns Hopkins University study found that lawyers are the most likely group to suffer major depression and 3.6 times more likely than all occupations studied. Further, a study by the National Institute for Occupational Safety and Health found that lawyers had higher suicide rates than other occupations.¹⁴ Lawyers suffer alcohol and substance abuse at a greater percentage than the population in general.¹⁵

In light of the evidence that incidents of depression and substance abuse are significantly underreported,¹⁶ it is

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reasonable to project pandemic proportions to lawyer burnout. This conclusion is buttressed by studies of lawyer job satisfaction. Studies by the American Bar Association show that between 15 percent and 23 percent of lawyers are dissatisfied with their jobs.¹⁷ These rates of dissatisfaction were corroborated by a 2003 Oklahoma County Bar Association study.¹⁸

THE WORKAHOLIC LAWYER

The term “workaholic” was first “defined as an addictive disorder in a person ‘whose need for work has become so excessive that it creates noticeable disturbance or interference with his bodily health, personal happiness and interpersonal relationships.’”¹⁹ Over the next 40 years, the scientific community has been split on whether the definition should carry such a negative connotation. Many scientists suggest that rational workaholism was a positive condition which need not interfere with other interpersonal relationships.²⁰ In 2006, Piotrowski and Vodanovich distinguished between functional and dysfunctional workaholism and described the latter as follows:

“[D]ysfunctional” workaholism is a rather insidious, progressive maladaptive set of behaviors that becomes exacerbated over time. The syndrome begins when normally functioning individuals/employees face stressors, emanating either from within individuals or external demands. These stressors initiate workaholic tendencies and behaviors, which in the early stages, do not interfere with one’s normal functioning. Indeed, such workaholic behaviors are often reinforced at work (e.g., positive performance evaluations) and at home (e.g., greater income). However, over time, the personal characteristics of individuals interact with job/work factors to produce a deteriorating environment both at home and work. That is, workaholism behaviors begin to intensify at this point, with work becoming a primary source of reinforcement. As workaholic behaviors begin to escalate out of control, alienation at work and disengagement with family and friends occur. During this dysfunctional phase, the employee experiences health symptoms, burnout and problem awareness (or denial). The result of this emerging pathological process culminates into the full-blown Workaholism Syndrome.²¹

In this description lies the fundamental explanation of the burnout pandemic within the legal profession. Workaholic behaviors are inherent in the practice of law and reinforced by society and the institutions of the profession. These behaviors and reinforcement agents, initially producing a positive result, can become chronic and result in full-blown workaholism.

WORKAHOLIC BEHAVIORS

The two primary workaholic behaviors are 1) working long hours and 2) withdrawing from healthy interpersonal relationships with family and friends. Three lesser behaviors have also been identified 3) obsessive compulsiveness/perfectionism 4) competitiveness and 5) conflict. These behaviors which in the early stages of workaholism are productive and responsible for an individual’s success, become the core of the workaholic’s being in the dysfunctional stage.

The existence of long hours of stressful work has been a core requirement of a successful law practice. In many law practices, 50- to 90-hour work weeks are the norm.²² In 2001, the ABA reported that 60-hour work weeks are routine and that 40-hour weeks are considered part-time work.²³ In 2007, it was reported that 56 percent of “extreme workers,” including lawyers, are on the job 70 hours a week or more, 25 percent are on the job 80 hours a week and 9 percent are working more than a 100 hours a week. Fifty percent of these extreme workers cancel vacations due to work pressure.²⁴

Based upon these studies, this leaves very little time for a personal life. For example, assume that most lawyers work at least 70 hours per week, spend 10 hours a week commuting to work and 56 hours a week sleeping. This allows 32 hours a week for a personal life. Further, assuming that eight hours a week are spent on catching up on “household chores” on the weekend this leaves only 24 hours a week for a personal life — or 3.4 hours a day.

This large commitment of time has a snowball effect on the loss of personal relationships. There is simply not enough time to maintain many relationships. As relationships fail, professionals tend to (a) commit themselves to the area in which they are successful, i.e. their work, and/or (b) self medicate with alcohol and other substances. The combination of the sense of failure, the emotional loss of relationships and, for some, self medication, creates further stress, further depression and further withdrawal from a shrinking personal life.

In addition to these behaviors, the practice of law also involves three other workaholic behaviors. The importance of rules to the practice of law mandates that lawyers develop an obsessiveness, or desire for perfectionism, in order to ensure a quality work product. The constant pressure to “get it right” can often transform the lawyer from a healthy productive individual to one with increasing symptoms of mental illness. Moreover, the competition and conflict inherent in our system of advocacy, particularly where joined with emotional stress of shouldering the client’s troubles, tends toward maladaptive behavior. As one author explained:

One root cause of workaholism is the very nature of our adversarial legal system, which requires many lawyers to adopt a dog eat dog pessimistic world view. With this environment it is realistic for lawyers at times to suspect that people have ulterior motives, that it is safe to be secretive, that others will seize every opportunity to take advantage, and that manipulation and selfishness is widespread.²⁵

REINFORCEMENT OF WORKAHOLIC BEHAVIOR

The fact that maladaptive workaholic behavior is inherent in the practice of law is further exacerbated by external societal and professional influences. These influences include (a) societal support for the work/success ethic; (b) attrition; (c) demographic changes in the profession; (d) institutions of the profession; and (e) technology.

These external influences, like the workaholic behavior’s discussed above, all serve a significant interest in maintaining the quality of the profession. However, these influences exercise powerful dominion over lawyer’s subconscious and may explain why existing treatments have failed to prevent relapse into dysfunctional behavior.

“...the primacy of work urged by Martin Luther and John Calvin were extensions of the already well established work ethic. In the 19th century, Calvin’s work ethic was transformed by the realities of the Industrial Revolution.”

The Work/Success Ethic

At the core of the motivation of workaholics is that work is essential to their very being. Work, in our society, is not only necessary for survival but as a means to define us as human beings. Contrary to popular belief, this central role of work did not begin with the Protestant reformation. Paul’s epistles to early Christians identified work as a form of serving God,²⁶ the philosopher Philo of Alexandria argued that Adam was created in order to work the Garden of Eden,²⁷ and Marcus Aurelius urged that work was the attribute that separated man from beasts.²⁸ Thus, the primacy of work urged by Martin Luther and John Calvin were extensions of the already well established work ethic. In the 19th century, Calvin’s work

ethic was transformed by the realities of the Industrial Revolution.

As described by Daniel Boorstin, the combination of Protestantism and modern capitalism “made a virtue of the personal qualities required to become rich.”²⁹ The transformation from the work ethic to the gospel of wealth was only an intermediate step to the current societal view of work. In the post-WWII civilization, the traditional work ethic has been replaced by an all consuming pursuit of public recognition of success. In his landmark work, Christopher Lasch described our current *zeitgeist*:

In a society in which the dream of success has been drained of any meaning beyond itself, men have nothing against which to measure their achievements except achievements of others. Self-approval depends on public recognition and acclaim, and the quality of this approval has undergone important changes in its own right. The good opinion of friends and neighbors, which formerly informed a man that he had lived a useful life, rested on appreciation of his accomplishments. Today men seek the kind of approval that applauds not their actions but their personal attributes. They wish to be not so much esteemed as admired. They crave not the fame but the glamour and excitement of

celebrity. They want to be envied rather than respected. Pride and acquisitiveness, the sins of an ascendant capitalism, have given way to vanity.³⁰

This socialization process creates a powerful reinforcement of workaholic behaviors. That is, the pursuit of success controls our psyche. In the practice of law, success translates to more work hours and less personal interaction. Our driving force is no longer the quality of our life, but the visage of success created by long hours of work.

Attrition

A second reinforcement of workaholic behaviors is simple attrition. The fact is that law school and the first years of practice tend to weed out the non-workaholics. In this regard, this initial training relies heavily upon methods based upon maladaptive behaviors, such as heavy workload, increased time pressure, competition, perfectionism and the treatment of altruism as naïve.³¹

Not surprisingly, when students begin their legal training, their incidence of mental illness approximates the population in general. After the first year, 52 percent of students suffer from depression (versus 5 to 9 percent in the population in general); the second year, 40 percent were still depressed and two years after law school 17 percent remained depressed. Thus, lawyers starting out in the profession suffer depression at a rate twice to four times the general population.³² Indeed, the very concept of “minimum billing hours” for associates with established firms presupposes an established level of workaholism by which young lawyers are trained to sacrifice their personal lives to meet production expectations. Those who cannot embrace these maladaptive behaviors are eliminated through attrition.

Demographic Changes

Stated simply, women are the future of the legal profession. At one point, it was believed that women would be less subject to maladaptive behaviors than men. However, recent studies have shown them to be subject to workaholism to the same extent as men.³³ Indeed, women in the profession face an additional stressor not faced by most men, i.e. the burden of being the primary caregiver in the home.³⁴ This paradigm of the modern family causes further attrition within the profession. Those women who are unable to shoulder the

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burden of twice the work of their male counterparts are leaving the profession. The result is that the remaining women lawyers will continue to engage in working long hours in two separate sectors of their lives.

Institutional Reinforcement

As previously discussed, the very institutions of the profession reinforce workaholic behaviors. The training received in law school, the workload imposed by law firms, the workload required to litigate increasingly complex cases, the perfectionism required by the courts and the fear of sanction by the bar all reinforce workaholic behaviors.

Technology

Originally it was believed that technology would reduce the workload of lawyers. The advent of computers, Internet access and mobile technology was predicted to be the solution for an absence of personal life for high achievers. In fact, this technology has reinforced maladaptive behaviors in several significant ways. The line between work and home has been effectively eliminated. Attorneys who try to leave work to attend to their personal lives are constantly in contact with

the office. The stress of the office never goes away. At the same time, the increased technology has increased time pressures.³⁵ When I first started practicing law, a letter from opposing counsel imposed a two- to three-day turnaround. Now, with e-mail, the practitioner is under pressure to respond within hours rather than days. Moreover, the productivity tools provided by technology have increased the tendency toward obsessive compulsive/perfectionist thinking. Accordingly, rather than making more time for personal life, modern technology has reinforced existing workaholic behaviors.

ACCOMMODATING THE WORKAHOLIC LAWYER TO PREVENT BURNOUT

[W]orkaholics bring an incredible resistance to a treatment setting presuming that is, that they are willing to accept the need to modify that lifestyle that Spreull referred to as 'the addiction most rewarded in our culture.' In bottom line terms workaholics resist... because workaholism not only thrives within our culture but to some it is the embodiment of our materialistic ethos.

Stephen Berglas, *Treating Workaholism*

Traditionally, the legal profession has attempted to address lawyer burnout on an individual basis without consideration of the societal and professional sources of the condition. The bar has established a "lawyer to lawyer" program as an extension of its alcohol/substance abuse program. Law firms have adopted "work/life balance" programs designed to make the workplace more satisfying and the workload less stressful. At the same time, the institutions of the profession have ignored the maladaptive behaviors which are caused and reinforced by the practice of law.

This article urges that addressing the symptoms of burnout, while ignoring the impact of workaholism, is simply shuffling deck chairs on the Titanic. You cannot "cure" the symptoms of burnout when there are powerful social and professional forces that reinforce a need to return to unhealthy behaviors. It is unlikely to be successful to convert a workaholic to a balanced lifestyle without taking into consideration the external factors forcing the lawyer to return to the dysfunctional behaviors. Indeed, the record on the success of such programs is limited at best.³⁷

It is equally untenable to suggest that established external pressures which insure the viability of the profession are going to change. Long work hours, attrition, changing demographics and institutional reinforcement are going to continue to pull lawyers toward workaholic behaviors.

Without an effective individual "cure" for burnout, or the possibility of widespread changes in the requirements to practice law, the question arises whether there is any way to avoid the mental illness that is occurring as a result of their desire to succeed in their chosen profession.

It is suggested that the solution lies in accepting reality. That is, accepting that powerful forces will encourage lawyers to engage in a pursuit of success which is unhealthy in the long run merely means that the profession must become adaptive in addressing these forces. Because the dysfunctional trinity of workaholism, depression and burnout are all progressive in nature, the key is to identify those most likely to become dysfunctional and to intercede with proven accommodations that will ameliorate the negative consequences of forces inherent in the practice of law.

Identification

The key to any accommodation to workaholism is identification of those in need of assistance. Since workaholism, depression and burnout are all progressive conditions, the key is to select the most appropriate stage to provide that assistance. Unlike other addictive behavior, workaholism can be addressed too early. Functional workaholic behaviors are engrained and essential to the success of the individual and the profession. It is only when the behaviors become dysfunctional that intervention is appropriate. The profession must, in conjunction with mental health professions, identify the optimum point in time for identifying workaholics.

At the present time, aside from generalized "work life balancing" programs, self-identification is the key element of any assistance provided to the workaholic. Intervention by the institutions of the profession is normally delayed until the attorney has suffered significant mental illness and/or chemical dependence.

Self-identification of addictive behavior makes perfect sense for all other forms of addictive behavior. Unlike other addictive

behavior, a workaholic attorney may not know he is impaired until he is critically ill.³⁸

The statistics on lawyers suffering from depression demonstrate that self-identification simply does not work. For example, we know that there is a relatively steady 17-20 percent of the professional population who are suffering from depression at any given time. We also can see from the record of bar complaints that the symptoms of depression/burnout often manifest themselves in a failure to adequately represent clients. Although the numbers of self identifying attorneys are not public, it seems unlikely that anywhere near this number seek assistance without the intervention of a third party. The clear pattern has been that at-risk attorneys often do not become apparent to the bar until there is a professional responsibility issue. At that time, the attorney may raise his mental health condition in mitigation of a penalty.³⁹

If a more proactive identification process were established, the bar and the attorney might avoid future damage to clients. The key to this identification is to “red flag” conduct rather than a medical condition. In this regard, certain conduct is clearly indicative of growing dysfunction. For example, for my own part, when I received the public discipline in 1993, I resolved to never again fail to meet my obligations under Rule 1.3. However, since I was unaware of my own growing dysfunction, I failed to seek appropriate relief. Rather, I just committed to work harder — the worst thing I could have done.

Moreover, the bar association is not the only institution that could proactively engage in identification of potential dysfunctional workaholics. Just as the “red flag” for the bar association are complaints under Rule 1.3, the judicial system has a front row seat to missed deadlines and other indicia of burnout. Again, rather than making a medical determination, the judiciary could well establish a referral system when attorneys meet some threshold of missed deadlines and dates.

Furthermore, law firms, more than any other institution, are in a position to know when their attorneys are transforming from a fully productive workaholic into a dysfunctional workaholic.

Accommodation

Once an at-risk attorney is identified, the next step is to identify the assistance that is

necessary to restore his mental health. Certain techniques, discussed below, should be used in virtually all cases in which either burnout or dysfunctional workaholism is indicated. However, the exact nature of the assistance to the impaired attorney is going to depend upon the nature of the impairment, the severity of the impairment and the willingness of the attorney to participate in the accommodation. For this reason, it is critical that the assisting party (the bar and/or the law firm), should adopt a “flexible, interactive” approach to accommodations. The assisting party should begin by asking the impaired attorney what he/she needs to recover full mental health. Beyond this, the assisting party must be in contact with, and make use of, professionals who are experienced in treating and assisting workaholics. This expertise is critical to designing an effective proactive accommodation in order to take into account the nature of the profession which will reinforce dysfunctional behavior.

I use myself as an example. Once I crashed and burned and was in major depression, I was lucky enough that my neighbor was a psychologist, Dr. Richard Sternloff. He started me on anti-depressants and began sessions with me in which he reminded me that the sum of my career was not all failures. In session, he reminded me of the people that I had helped over the years by application of the very behaviors which were now pulling me into a black hole. Thereafter, as I discussed above, I was lucky enough to have Carl Hughes reach out to me. While Dr. Sternloff helped me become human again, it was Carl, giving me just enough research work to restore some sense of pride, complimenting me on my work and watching over me to ensure I didn’t slip back into blackout depression.

That combination of Dr. Sternloff’s professional assistance and Carl Hughes’ supervision of my work, rather than any standardized template for accommodating a dysfunctional workaholic, is what has worked with me. That is what is meant by a “flexible, interactive” approach.

Supervision

At the heart of dysfunctional workaholism is the inability to modulate work overload. As the workload increases, and the condition becomes more severe, there is a feeling of a lack of support from peers and a resentment that everyone is using the attorney as a “tool” for

their own ends.⁴⁰ As I found out from my experience with Carl Hughes, having someone supervise your work, ensuring that you are not returning to dysfunctional behaviors, provides both a sense of support as well as a stopgap against overworking.

In addition, the source of the assistance must resist the temptation to subject the workaholic to a training campaign on the importance of work life balance. The workaholic has heard all that before and not been able to internalize it. It is their work that they have succeeded with, and it is practicing functional work habits that can return them to full health. This concept was discussed by Dr. Berglas:

Most workaholics do not accept the need for psychotherapy unless or until they are subjected to an event that prevents them from working... As a rule, they cling to their lifestyle with a tenacity befitting someone who fears dissolution if unable to indulge in it. During the process of building a therapeutic alliance with a workaholic, all discussions of balance (e.g. adding recreational pursuits to one's life or cutting down on overtime) should be avoided. I have found that the paradoxical technique of *adding work* that forces a workaholic into collaborative relationships is of far greater value in heightening his awareness of the dynamics of his disorder than seeking to limit his involvement in professional pursuit. When this end can be achieved with the cooperation or collaboration of a patient's employer, the likelihood of successful treatment outcome is enhanced significantly.⁴¹

In short, the use of carefully controlled work assignments will allow the lawyer to restore himself and, at the same time, learn to modulate workaholic behaviors.

CONCLUSION

The burnout pandemic within the legal profession is directly attributable to maladaptive behaviors inherent in the successful practice of law. This article suggests that attempts to cure either "burnout" or "workaholism" have failed because of entrenched societal and professional forces that tend to return lawyers to the same dysfunctional behavior. This article suggests, therefore, that rather than trying to cure the mental illness, the institutions of the profession should take a proactive approach in identifying, accommodating and supervising those

individuals at risk of significant mental illness due to the very nature of the practice of law.

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For 26 years Steven Angel was a labor and civil rights lawyer. In 2003, he resigned from the practice of law. Thereafter, he formed a human resources consulting firm. He holds a B.S. in personnel and labor relations; a M.S. in human resources management, a J.D. and an LL.M in labor law.



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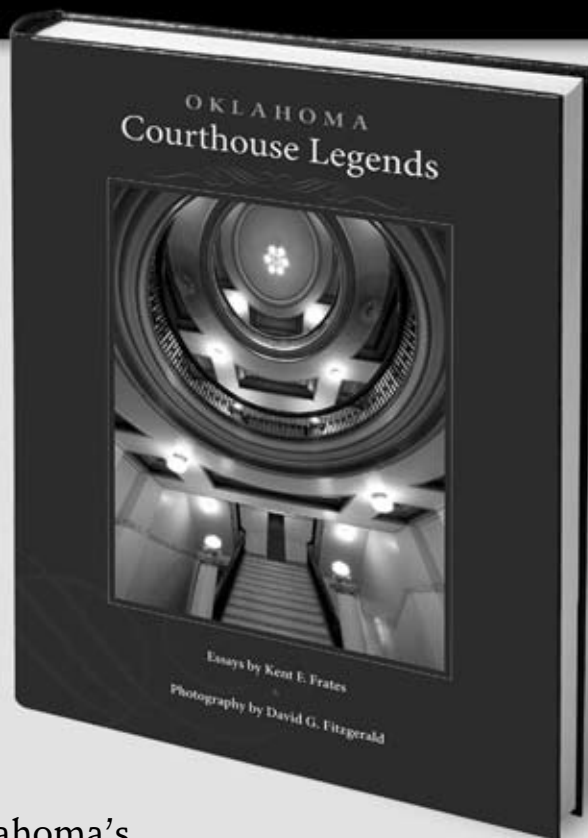
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Ethics

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Why Manners Matter

By Travis Pickens

I have heard many a Southerner disparage, fairly and unfairly, the comparative “bad manners” of a Northerner. Manners are not the same as character, and broad exposure to different regions of the country confirms that people are generally more or less the same all over. But manners do matter. Manners may not tell you the full quality of a person’s soul, but they are far more than social niceties. They manifest courtesy and respect for other people, and significant institutions. They signal sophistication and tolerance. They will tell you with whom you would rather share a trying experience. And barring other evidence, they will certainly tell you whom you would prefer your children imitate.

Traditional notions of good manners sometimes rub up against what some may see as good lawyering. If you are a man of a certain age, you may have wrestled with reconciling an upbringing that counseled courtly behavior and deference to women with the modern day reality that a woman may be on the other side of your high-stakes lawsuit and she is coming at you with everything she has. Conversely, if you are a woman of a certain age, you may sometimes struggle to reconcile traditional conceptions of “ladylike” behavior with the duties you have to your client. Lawyers often have a duty to press for not just fair results, but favorable results. Sometimes you have to say “yes” and “no,” when personally you would much rather say “no” and “yes.” And for women, taking the hard position sometimes unfairly earns them an unpleasant name, instead of the adjective “aggressive” more often used describing men.

Striking the balance between good behavior and effective representation is difficult for many. The path one takes as a lawyer often has to do with how you see your role. Some lawyers see their role as a “warrior,” and that they are duty bound to do everything in their power, and for an especially unpleasant few, everything within their personality, to wrest the result desired by their client. For others, being a lawyer has a certain regal quality to it. The clients are in some ways just the pieces the attorney moves around in a royal game of legal chess. They regard their reputations (read regard by others) to such a degree that one wonders whether they will go to all lengths to earn the approbation of the opposing lawyer, to the detriment of their own client. There is also a good sized group of lawyers, male and female, that strike that perfect balance between soldier and diplomat. They represent their clients well, generally achieve good results and honor their colleagues and the legal system along the way. The key to this delicate balance

is to understand that courtesy does not mean weakness and client-injuring deference.

Take speech for example. What we say and how we say it matters. Abusive language does not enhance your efficacy as an advocate. Judges routinely make this point every time they have an opportunity. If bombast was an effective tool, then we may as well go back to the day of the grunt and the scream. Proper and courteous speech benefits the legal system and is a benchmark of respect, security and a dignified process. Flip, slang and raggedly informal words do not help. The words we use with each other and in court represents the esteem we hold for not just those immediately present, but the entire justice system. The words should reflect the respect, dignity and value of the court, and each other as officers of it.

Similarly, proper dress is important. We lawyers should maintain a conservative style of dress, not because we are stubbornly old-fashioned or prudish, but because the process and institution of justice benefits from a visible reminder that this is serious business that has deep and lasting consequences on people, their property and yes, our state and nation. These uniforms we wear, often in shades of blue, black and gray, remind each of us, our clients and the general public, that we play a role in something larger than our contract negotiation or lawsuit. Conservative dress puts the emphasis where it should be, on the proceedings, not the individual. Flashy, sloppy or provocative dress undermines this. Would Handel's "Messiah" be as majestic or moving if the choir went, say, cabana casual, instead of robed? Would you prefer your health care professionals to dress in shorts and flip-flops? The lawyers and the court are on "stage" so to speak, and they each have their role. If one or the other breaks out of character, through word or wardrobe, there is a risk that the sanctity of the law (not only the participants) will be diminished.

This is not to say that the players in this drama must take themselves as seriously. There can be laughter in the courtroom, but there should never be any mistake that the process is about justice, not entertainment. Similarly, the court-

“Would you prefer your health care professionals to dress in shorts and flip-flops?”

room is not about smack downs or revenge. That is a different kind of drama; one presided over by daytime television or reality show hosts, not judges. Clients and the public should feel they have been to a court of law, not some sort of large and well-funded government complaint department.

Lawyers should require their clients to dress properly as well. The fact that there is a local rule in many courts as to

dress is ample evidence that there have been consistent and dramatic deviations. We have all seen litigants appear in clothes more suited for *Dancing with the Stars*. Clothing does not have to be expensive to be proper. It is about coverage and coloring, not quality of material or fine tailoring. The clients, too, have their role in court. They will behave and react better to whatever happens if they see the justice system and its participants as worthy of respect and decorum.

It should especially be noted by judges that the lawyers before them follow their lead. Respectful, courteous treatment is appreciated and modeled by the lawyers, as to their behavior before the court and among themselves. It sets the overall tone of the litigation. Think of it as trickle-down professionalism. A judge should treat the lawyers and litigants as well in a bench trial, as with a jury watching. The judge should act as an administrator of the law, not as the embodiment of it. The judge is the government's representative and decision maker in this process of justice. For example, indiscriminate use of the phrase "my courtroom" can signal something other than the true role of the judge, which is to apply the law of the land, not impose, even in the slightest sense, a personal code or slant on justice.

Like all manifestations of truth and beauty, professional behavior has many profoundly desirable consequences beyond the relationship between lawyers and their clients. Mannerly behavior inspires professional behavior that exceeds courteous phone calls and temperate e-mails. There are fewer scheduling issues, discovery disputes decrease and settlements often occur earlier in the case, leaving

the clients enough money to pay their fees (and still celebrate).

You are likely to find more professionalism exhibited among lawyers that routinely practice with and against each other. Speak to a lawyer with a busy practice in insurance defense, or at the Oklahoma Corporation Commission, and you will often find a “knights of the roundtable” type quality that makes one long for an earlier day. Those in family or criminal law, whether government lawyers or in private practice, have unique and daunting client challenges, but professionalism still often triumphs. That is, when the lawyers control the client’s expectations and act as their lawyer, not their champion.

The legal profession should not be looked upon as a club by its participants, for the system of justice is for everyone, the rich and poor alike. Legal societies have an important place in developing collegiality and furthering education for lawyers, but the legal system itself must never be seen as a club to be joined or from which to expel the less popular. Lawyers and judges come with many different backgrounds, experiences and abilities and all are valuable and needed in the beautiful mosaic we call the American justice system. We lawyers and judges should remember that like actors, we have an audience, and no jobs without them. We should remember our clients and the general public are paying for all of this.

This sliver of professionalism loosely called “manners” matters a great deal, for reasons far beyond regional mores. As a practical matter, they affect the realization of several key rules of the Oklahoma Rules of Professional Conduct, such as those dealing with diligence, communication, expediting litigation, impartiality and decorum of the tribunal and fairness to the opposing party and counsel. Good manners affect every relationship in the justice system. They affect how well justice is administered and how quickly justice is attained. Good manners affect how justice is perceived by the public. There are few things more important, and by comparison so easily done.

ABOUT THE AUTHOR



Travis Pickens serves as OBA ethics counsel. He is responsible for addressing ethics questions from OBA members, working with the Legal Ethics Advisory Panel, monitoring diversion program participants, teaching classes and writing articles. A former litigator in private practice, he has served as co-chair of the Work/Life Balance Committee and as vice-chair of the Lawyers Helping Lawyers Assistance Program Committee.



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Understanding Key Professional Liability Risks

By Dan Reed

An American Bar Association study of legal malpractice found that claims against lawyers surged 36 percent between 2004 and 2007 when compared to the prior three-year period. Many experts believe that the state of the economy over the past couple of years has only made the situation worse.¹

Understanding liability is a basic legal skill, and lawyers have significant expertise in analyzing liability exposures and understanding legal trends. However, when it comes to their own profession, some may not always be as well versed in the developing professional liability exposures that they may be facing while practicing law. By understanding emerging issues and how to best protect themselves, lawyers can make better insurance choices.

THREE TRENDS AND KEY COVERAGES

The legal profession continues to experience significant changes driven by intense competition, business pressures within the current economy and by newer approaches to practicing law. These changes can be grouped into major trends that appear to be generating new professional liability exposures. Three of these trends are set forth below, along with some of the newest insurance coverages that have been designed to address these potential liabilities.

Technological Advances

As the legal system and law firms continue moving into the electronic age, they are now fully embracing the newer technologies, such as electronic filing (e-filing), mobile technology, storing client data digitally, and communicat-

ing with court systems and opposing counsel and clients in an electronic format.

However, along with these new communications advances come new technology exposures, also known as cyber liability. For example, in a case from 2006, a law firm sued a large information technology company, alleging that one of the company's employees invaded the law firm's database and appropriated confidential information about firm clients. The firm apparently believed they had to bring suit to protect themselves from potential liability to other firm clients. This type of lawsuit serves as an indicator regarding emerging liabilities.

To that end, legal professionals may want to consider cyber liability insurance coverage that protects them in three key areas:

- Inadvertent transmission of a computer virus that causes damages to the recipient.
- Failure to meet a commitment to provide access or to prevent access to the firm's network.
- Violation of privacy laws through the disclosure of confidential information.

In each of these areas, a firm may incur unexpected costs to resolve these problems, be hit

with regulatory fines or even be required to pay damages to other affected parties who relied on the firm to conduct their cyber activities responsibly. Finally, lawyers have a special fiduciary obligation to protect the privacy and confidential information of their clients. Considering all of these potential exposures, law firms would be well served to consider appropriate insurance protection in these areas.

Organizational Reshuffling

According to the Bureau of Labor Statistics, more than 25,000 legal services jobs have been lost since the beginning of the current recession. Additionally, according to an estimate from the “Layoff Tracker” (a joint venture by the law blogs “Above the Law” and “Law Shucks”), more than 5,000 lawyers have lost their jobs during this same time frame at the nation’s largest law firms.

As former large law firm lawyers have moved into new associations with mid-size or smaller firms, or even gone out on their own, the ripple effect from their displacement is being felt throughout the entire profession. Additionally, the newly downsized larger law firms are reorganizing to handle their work differently, and small and mid-size law firms are gearing up to compete with them, sometimes using more independent contractors and “of counsel” arrangements. A number of firms have merged with or acquired former competitors, while yet others have broken into smaller practices. It all adds up to a significant amount of movement and disruption in the marketplace.

These changes can create possible liabilities that need to be carefully addressed. For example, when one firm merges with another to form a new entity, coverage for each predecessor firm becomes very important. Agents should examine whether the new policy provides adequate Predecessor Firm coverage, or whether “Tail” or Extended Reporting Provision (ERP) coverage should be purchased from either terminating policy to ensure the firm is properly covered. Additionally, if an acquisition of a firm is made while an existing policy is in effect, adequate coverage must be arranged as this may be considered a material change in exposure or create other potential coverage gaps if the existing policy doesn’t provide coverage for mid-term acquisitions.

Finally, when a law firm breaks up, or if one insurance policy is terminating and another is being purchased that excludes coverage for the

dissolved firm, it is important to consider “Tail” or ERP coverage which addresses liabilities that can emerge from past cases and actions. Many of these types of organizational change coverages have specific time limits or require affirmative elections and additional premiums in order to put the appropriate coverage in place, so law firms will need counsel from their agents to make sure they have the appropriate protection.

“A number of firms have merged with or acquired former competitors, while yet others have broken into smaller practices.”

Practice Expansion

With economic pressures pushing law firms into new areas to raise their firm profile or generate needed revenue, firms may need support from their insurers in ways they had not considered in the past. This may include taking advantage of risk management expertise, preclaim mitigation advice and coverages not included in traditional legal policies. For example, they may want to address:

Publishing liability if producing books, articles and treatises. Lawyers’ professional liability policies often limit covered professional services to the practice of law, and if such writings are not considered part of legal practice, these activities may be excluded from coverage under a traditional LPL policy. If these activities happen to result in a lawsuit alleging defamation, plagiarism, or the unauthorized use of someone’s name, likeness, or intellectual property, there may be an uncovered exposure, unless publishing liability coverage has been added.

Reputation management. The pervasive, 24-hour news cycle and intense competition within the popular media have created significant demand for anything and everything controversial. Beyond reporting case law and legal decisions, there is now a specific media segment dedicated to reporting on lawyers and law firms. A law firm may want to ensure it is covered for the

expenses of defending itself in the event that a crisis emerges that could have a materially adverse effect on the firm's reputation.

Lost work time and defense costs. Increasingly, clients are more willing today to bring complaints to legal oversight bodies that must be addressed or even bring malpractice claims as a response to a fee collection lawsuits. Protection against loss of earnings related to responding to these complaints or claims, and reimbursement of defense costs in responding to disciplinary proceedings can be an important financial consideration.

ADDITIONAL PITFALLS TO CONSIDER

In addition to understanding the insurance implications of these overarching trends, legal professionals will also want to make sure they avoid two common pitfalls.

The first is when a firm switches from one insurance carrier to another and becomes subject to a "prior knowledge" exclusion that affirms the firm is not aware of any potential claims. This language should be examined carefully, since it may be narrowly defined or be very broad. Under a broad exclusion, a firm where even one person is later found to have knowledge that was not disclosed may be inadvertently exposed to a costly coverage gap. Some policies apply this exclusion to each subsequent renewal, creating potential coverage gaps for known claims or potential claims reported even a single day into the next renewal.

The second potential pitfall involves the degree of variation or the lack of standardization of language employed by legal professional liability insurance carriers. With a slight change of phrasing or sentence construction, what was covered under a prior policy may

completely be excluded under the replacement policy. When changing carriers, not only coverage grants, but also the list of exclusions in the new policy, need to be examined very carefully. Simply presuming that one policy will provide identical coverage to a prior one may cause regret and recriminations later.

Lawyers may deal with liability every day, but when it comes to understanding their own potential exposures, it is good to maintain a relationship with a trusted insurance agent or broker.

A version of this article was published in the Dec. 8, 2009, issue of American Agent & Broker and is reprinted with permission. The original article is available online at <http://tinyurl.com/2b37mcq>.

1. Karen Sloan, "Legal Malpractice Suits May Surge," *The National Law Journal*, Feb. 23, 2009, www.law.com/jsp/article.jsp?id=1202428510900.

ABOUT THE AUTHOR



Dan Reed, of St. Louis, Mo., currently oversees the U.S. underwriting of Lawyers Professional, Real Estate Professional and Accounting Professional liability lines of insurance business for Travelers. In addition to prior underwriting management roles at Travelers and St. Paul Insurance Companies, he has also managed professional liability underwriting at Great American Insurance Co. and The Bar Plan, a state bar-sponsored professional liability insurance carrier based in Missouri. Earlier in his career, he had a brief stint in private legal practice, focusing on domestic relations, estates and trust, and criminal defense.



Trust Account Overdraft Notification

What We Know So Far

By Gina Hendryx

When the Oklahoma Rules of Professional Conduct (ORPC) were amended in 2008, a provision to Rule 1.15 was added requiring lawyers to maintain their trust accounts in financial institutions which agree to notify the Office of the General Counsel in the event any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. Trust Account Overdraft Notification (TAON) agreements were mailed to approximately 220 banks throughout the state. Most have signed and returned the forms acknowledging they will advise the general counsel's office directly if there is an overdraft in a trust account.

Oklahoma joins a majority of jurisdictions that employ some form of overdraft notification. When a financial institution sends notice of an overdraft, an inquiry is mailed to the lawyer requesting an explanation for the negative balance. It is important to note that this is an "inquiry" and not a "grievance." Notification does not automatically equate with a bar complaint. The lawyer is asked to respond and include any documents which might be of assistance in understanding the error.

From Jan. 1, 2010, through Sept. 15, 2010, the Office of the General Counsel has received 247 notices of trust account overdrafts. In most cases, the explanation is sufficient and the inquiry closed. In others, such as where a lawyer has had multiple overdrafts, a more detailed examination of the trust account records may be necessary. One option available for a lawyer

with multiple overdrafts is a trust account review course taught by the OBA Ethics Counsel. Records of funds in the trust account must be kept in accordance with generally accepted accounting procedures. The trust account program employs these practices and trains lawyers to keep proper records of account activity.

The most common explanations for trust account overdrafts include:

- **I forgot to make the deposit.** Most leave the bank deposit until the end of the day. Routinely, the deposit is overlooked and doesn't go to the bank until the next day. Set a specific time and person to make bank deposits. It should be a priority and not left until the time of day when other deadlines are looming.

- **I deposited the money into the wrong account.** Depositing trust funds into an operating account is commingling. Care should be taken to use the proper deposit slips. Often the deposit books look similar. Something as simple as color coding the deposit books may solve this problem. A more drastic but effective solution is to have the trust account at a different financial institution from the operating account.
- **I recorded the deposit twice.** Other variations of this include forgetting to subtract a withdrawal. Failure to keep good records often is indicative of serious problems with a trust account. Whether you use a computer program or a Big Chief tablet, it is imperative that the lawyer maintain good trust account documentation. At any given time, at a minimum, the lawyer should be able to identify the source of the funds in the trust account, the names of all persons for whom the funds are held and the amounts attributable to same.
- **The client beat me to the bank.** This occurs most often when a lawyer receives a check made payable to lawyer and client. Client endorses the check and receives his portion in the form of a trust account check made payable to the client. Even though you repeatedly caution the client to wait a few days before negotiating the trust account check, the client will invariably leave your office and drive to the nearest check cashing outlet causing an overdraft of the trust account. You should never disburse funds that are not in the account. Wait for the deposit to clear before writing the client's check.
- **The client's retainer check was returned causing overdrafts in my account.** The same rule applies as in the previous explanation. Do not disburse funds until the deposit has cleared and the funds are available. If you have doubt about the deposit, discuss it with your bank officer. Deposits may be presented for payment in a manner that will ensure the availability of the funds.

If you receive an inquiry regarding an overdraft from the Office of the General Counsel, respond promptly and fully. The likelihood is that the matter will go no further. However, if you continue to have repeated issues with

overdrafts, a more extensive investigation will be undertaken to fully explore the causes for same and to identify remedial solutions.

ABA's Model Standards for Record Keeping in Client Trust Accounts

At a minimum, the following records should be maintained:

- ☐ Receipt and disbursement documentation detailing deposits and withdrawals
- ☐ Client ledger sheets indicating source of client funds, amount of funds, and withdrawals and deposits on behalf of the client
- ☐ Monthly balance sheets for each client
- ☐ Copies of the written retainer agreement with each client
- ☐ Copies of disbursement and/or settlement statements documenting funds disbursed to clients and/or third parties
- ☐ Copies of billing statements sent to the clients
- ☐ Copies of expenses paid on behalf of the clients
- ☐ Check stubs, deposit slips, bank statements and any bank document reflecting activity in the trust account
- ☐ Financial statements and reconciliation documents for the trust account
- ☐ Maintain the financial records for a period of five years after the representation ends.

ABOUT THE AUTHOR



Gina Hendryx is the general counsel for the Oklahoma Bar Association. A licensed attorney for the past 25 years, she received her J.D. and B.S. degrees from OCU. She supervises a staff of 12 and serves as the association's counsel on other legal matters. She works with the Professional Responsibility Commission and serves as a liaison to the OBA Board of Governors, OBA committees, the courts, and other local and national entities concerning lawyer ethics issues.



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On the Horizon: Oklahoma's Unified Case Management System

Connecting Oklahoma Courts

By Chief Justice James Edmondson

BACKGROUND

The state of Oklahoma currently has two older case management systems implemented in the trial courts, the Oklahoma Court Information System (OCIS) and the KellPro System. OCIS is deployed in 13 counties, and the KellPro system is deployed in the remaining 64 counties with no connectivity between these two systems. Due to this lack of integration, judges and court staff cannot view complete case information across jurisdictions, and there is redundant data entry and duplicated effort throughout the system.

THE NEW UNIFIED CASE MANAGEMENT SYSTEM

On Nov. 17, 2010, the Oklahoma Supreme Court announced American Cadastre, LLC of Herndon, Va. (AmCad) as its new Unified Case Management System (UCMS) vendor. AmCad will work with users in the appellate courts, district courts and the Administrative Office of the Courts (AOC) to replace the current OCIS and KellPro case management systems. Oklahoma has long been a leader in technology and was one of the first state courts to have a public website providing free access to public legal documents. The new case management system will continue to provide public access to court dockets and other information through the Supreme Court's website, www.oscn.net.

AmCad and several other vendors participated in an extensive review and evaluation process conducted by a vendor evaluation subcommittee, appointed by me in my role as chief

justice. The subcommittee consisted of appellate judges, district court judges, appellate and district court clerks, and AOC-MIS technical personnel. After a thorough evaluation of all the proposed vendor systems, the subcommittee determined that AmCad's system met the requirements outlined in the court's request for proposal and would be the best fit for the courts. The Supreme Court adopted the subcommittee's recommendation and selected AmCad as its new unified case management system vendor.

AmCad is a full service technology company and solutions provider for state and local government agencies. AmCad was founded in 1986 and is familiar with the complexities of working with state and local government agencies. AmCad's business is devoted to many varied customers, from large commercial clients to some of the largest state and local governments across the country. AmCad has been in business for more than 20 years and has

established a well deserved national reputation for customer service.

UCMS – THE NEXT STEPS

Over the course of the next five years, the Oklahoma Supreme Court will transform trial and appellate court operations through the creation of a unified case management system. The UCMS will improve court processes, provide integration between the trial and appellate courts, and allow court information to be shared with the legal community, other justice associates and the public. The new UCMS will apply electronic court (eCourt) principles and technologies which we believe will have a transformative effect on Oklahoma courts. The UCMS will enable justices, judges, court clerks and court personnel to perform their duties with better information and with greater accuracy, efficiency and effectiveness. The new UCMS as envisioned and designed will:

1. Allow judicial access to updated information to facilitate fully informed decisions
2. Provide authorized personnel with rapid access to electronic documents, case records, dockets and schedules on a single centralized computer system
3. Decrease the use of paper documents in the courts (transition from all paper to paper-on-demand)
4. Enable electronic signatures and automated workflow management in the courts
5. Include customized dashboards for justices, judges and court clerks to assist them in managing their cases, dockets, juries and courts
6. Provide two-way automation between trial courts and appellate courts
7. Include statewide statistics and measurements such as dispositions, caseloads, durations, cost collections, receivables and demographics (business intelligence)
8. Help the court establish and promote uniform electronic court rules, processes, codes and forms in all 77 district courts and the appellate courts
9. Provide standards-based information exchanges with justice associates and agencies
10. Allow data exchanges with executive government branches and other judicial associates.

BENEFITS TO THE LEGAL COMMUNITY AND THE PUBLIC

The public will have access to court information through the UCMS using standard computer and web browsing technology via a "web portal." This will provide a variety of services to attorneys, the business community and the public, as well as to other state and local court users. These will include:

1. Convenient electronic filing for attorneys and other court customers (eFiling). Attorneys will be able to submit filings using the web and a standard computer
2. An easy-to-use online electronic payment process (eCommerce) for making online payments for filing fees, traffic tickets and other court obligations
3. Allow citizens making a payment in one district court to apply the payment across additional cases and counties
4. A centralized online portal for all court information with 24/7/365 availability. This includes specialized searches with information for attorneys and other user groups
5. Easier public access to court records, including fast and flexible searches through specialized websites and services. Users

The UCMS will include 10 major functions:

1. Trial Court Case Management
2. Appellate Court Case Management
3. Content Management System — *a repository for electronic documents*
4. Jury Management System — *all electronic*
5. Electronic Filing — *eFiling*
6. Electronic Commerce — *online payments*
7. Electronic Citations — *eCitations*
8. Internet Websites — *for both public viewing and secured viewing by attorneys and law enforcement*
9. Electronic Warrants — *eWarrants*
10. Integrated Justice Information Exchange — *data sharing with other systems*

may search for people, cases, events and legal issues

6. Authorized access to a statewide arrest warrant system
7. More powerful research tools for real time public access to court records and legal research.

CONCLUSION

Although our two current case management systems may be adequate for individual counties, they are maintained on obsolete technology and cannot serve the increasing needs of the whole state. Once fully implemented, the new UCMS will provide the Oklahoma judiciary, the legal community, government agencies and the public with a well-designed, accessible, uniform, statewide case management system with state-of-the-art technology that will serve us well into the future.



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FOR MORE INFORMATION

Comments and inquiries about the UCMS may be directed to Mike Mayberry or Phylisha Smotherman of the Administrative Office of the Courts at (405) 521-2450 or e-mail them at information@oscn.net.

ABOUT THE AUTHOR



Chief Justice James E. Edmondson was appointed to the Supreme Court by Gov. Brad Henry on Dec. 2, 2003. He had served as district judge for District 15 since 1983. Before serving as district judge, Chief Justice Edmondson was a partner in the Edmondson Law Office (1981-1983). In Oklahoma's Eastern District, he served as acting U.S. attorney (1980-1981) and as assistant U.S. attorney (1978-1980). He also served as Muskogee County's assistant district attorney (1976-1978). He received his B.A. degree from Northeastern State University in Tahlequah and served in the U.S. Navy (1967-1969) before attending Georgetown Law, where he received his law degree.



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January 6, 2011

Time - 5:30-7 p.m.

Location

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- * *Meetings are free and open to male OBA members.*
- * *Reservations are preferred. (We want to have enough space and food for all.)*

For further information and to reserve your spot,
please e-mail stephaniealton@cabainc.com.



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January 13, 2011

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The Oil Center – West Building
10th Floor
2601 NW Expressway, Suite 1000W
Oklahoma City, OK 73112

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- * *Meetings are free and open to female OBA members.*
- * *Reservations are preferred. (We want to have enough space and food for all.)*

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LAWYERS HELPING LAWYERS ASSISTANCE PROGRAM



The New Oklahoma Discretionary and Special Needs Trust Act

By David A. Carpenter

The second session of the 52nd Oklahoma Legislature passed House Bill 2171, The Oklahoma Discretionary and Special Needs Trust Act (the act), which was signed into law by Gov. Brad Henry on May 26, 2010. The effective date of the act was Nov. 1, 2010.

The purpose of the act is to preserve and codify certain common law majority views on discretionary trusts and special needs trusts.

A discretionary trust is one in which the trustee retains full discretion as to the timing and the extent of distributions of income and principal. Thus, the trustee of a discretionary trust is one in which the trustee has discretion to make or withhold a distribution of income or principal.

The act defines a Special Needs Trust as “a trust created for the partial or exclusive benefit of a disabled or incapacitated person, in order to allow the disabled or incapacitated beneficiary to avoid loss of eligibility for government benefit programs, including, but not limited to, Medicaid, Supplemental Security Income, Social Security Disability Income or other state or federal benefit programs . . .”¹

The act primarily follows the Restatement (Second) of Trusts, 1959, which represents the majority view in those jurisdictions which have not adopted the Uniform Trust Code. The Oklahoma Legislature has rejected attempts in recent years to adopt the Uniform Trust Code, which primarily follows the Restatement (Third) of Trusts, 1983.

Section 2 of the act includes 14 definitions of terms, including, among others, “beneficial interest,” “current distribution interest,” “discretion-

ary interest,” “distribution interest,” “exception creditor,” “future distribution interest,” “mandatory interest” and “support interest.”

The act places certain limitations on judicial power with respect to trusts created or modified on or after Nov. 1, 2010. Among these are prohibitions on judicial sale of distribution interests, remainder interests, reserved powers and powers of appointment.²

For trusts created or modified after Nov. 1, 2010, and unless the settlor of a revocable trust is also a trustee, trust property shall not be subject to the personal obligations of the trustee, even if the trustee is insolvent or a debtor in bankruptcy proceedings.³

Subject to the provisions of the Uniform Fraudulent Transfer Act, the act provides for the sole and exclusive remedies that are available to a creditor or other nonbeneficiary claiming an interest in a trust created or modified on or after Nov. 1, 2010.⁴

Under the act, a creditor shall not attach, exercise or otherwise reach an interest of a beneficiary or any other person who holds a power to remove or replace a trustee. A beneficiary’s power to replace trustees is made personal to the beneficiary and may not be exercised by the creditors of the beneficiary, nor may a court direct any person to exercise such a power.⁵

The mere fact that a beneficiary is serving as a trustee or a co-trustee does not permit a creditor to reach an interest of a beneficiary nor otherwise compel a distribution.⁶

Perhaps one of the most important aspects of the act is its declaration that certain factors, either alone or in combination, shall not be considered dominion and control over a trust:⁷

- 1) a beneficiary serving as a trustee or a co-trustee as described in paragraph 2 of this section
- 2) the settlor or a beneficiary holds an unrestricted power to remove or replace a trustee
- 3) the settlor or a beneficiary, as provided in the applicable trust instrument, is:
 - a trust administrator,
 - a trust protector,
 - a special trustee, or
 - a general partner of a partnership, a manager of a limited liability company, an officer of a corporation, or any other managerial function of any other type of entity, and part or all of the trust property consists of an interest in said entity
- 4) a person related by blood or adoption to a settlor or a beneficiary is appointed as trustee
- 5) an accountant of a settlor or a beneficiary, attorney, financial advisor, business associate or a friend is appointed as trustee

The settlor and beneficiaries of a trust shall not be deemed the alter ego of a trustee.⁸

The following factors, alone or in combination, shall not be sufficient evidence for a court to conclude that the settlor controls a trustee or is the alter ego of a trustee:⁹

- 1) any combination of the factors listed in paragraph 3 of Section 3 of the act
- 2) occasional occurrences in which the settlor or a beneficiary may have signed checks, made disbursements or executed other documents related to the trust as a trustee, when in fact the settlor or a beneficiary was not a trustee
- 3) making requests for distributions on behalf of beneficiaries

- 4) making requests to the trustee to hold, purchase or sell any trust property

A spendthrift provision is valid if it restrains either the voluntary or involuntary transfer of a beneficiary's interest. A spendthrift provision restrains both the voluntary or involuntary transfer of the interest of the beneficiary, though drafting of the trust may allow the beneficiary to make voluntary transfers, even if trustee approval is required. A spendthrift provision applies to both current distribution interests, future distribution interests and remainder interests. A spendthrift provision is a material provision of a trust.¹⁰ If a trust does not contain a spendthrift provision, a creditor may attach present and future mandatory distributions from the trust at the trust level.¹¹

An exception creditor is defined in the act as a child of a beneficiary who has a judgment or court order against the beneficiary for support.¹² Except for an exception creditor of a mandatory interest, if a trust contains a spendthrift provision, a creditor or assignee of the beneficiary may not reach an interest in a trust or a distribution by the trustee until such distribution is received by the beneficiary.¹³ Otherwise, a creditor must wait until a distribution is received by a beneficiary before attachment.

A power of appointment (defined in the act as an inter vivos or testamentary power to direct disposition of trust property) in any trust is personal in nature and cannot be attached or forced to be exercised by a creditor or a court regardless of the presence of a spendthrift provision. A power of appointment is not a property interest.¹⁴

Under the act, a distribution interest in a trust is classified as a mandatory interest, a support interest or a discretionary interest. A beneficiary may concurrently hold mandatory, support and discretionary interests. To the extent a trust contains a combination of a discretionary interest, a support interest or a mandatory interest, the trust shall be a mandatory interest only to the extent of the mandatory language and a support interest only to the extent of the support language. The remaining trust property shall be held as a discretionary interest.¹⁵

The following provisions apply only to trusts with one or more beneficiaries holding support interests:¹⁶

- 1) The fact that a court would have exercised the distribution power under a support interest differently than the trustee is not sufficient reason for interfering with the exercise of the distribution power by the trustee. However, a court may review the distribution discretion of a trustee if the trustee acts unreasonably;
- 2) A support interest relies on spendthrift provisions for protection of a beneficial interest as well as the additional protection provided by protective or restrictive distribution language under Section 10 of the act;
- 3) The only exception creditor under the act is a child of a beneficiary who has a judgment or court order against the beneficiary for support;
- 4) Under the act, the sole and exclusive remedy of an exception creditor is the attachment of the beneficiary's support interest at the trust level. The court may limit the amount subject to attachment as appropriate under the circumstances to provide for the needs of the beneficiary and the family of the beneficiary; and
- 5) A beneficiary holding a support interest has an enforceable right to a distribution pursuant to court review. This does not raise the interest of the beneficiary to the level of a property interest.

The following provisions apply only to trusts with one or more beneficiaries holding discretionary interests:¹⁷

- 1) A discretionary interest is neither a property interest nor an enforceable right to a distribution; it is a mere expectancy. No creditor (including an exception creditor), shall attach, require the trustee to exercise the trustee's discretion to make a distribution or cause a court to judicially sell a discretionary interest;
- 2) Regardless of whether a beneficiary has any outstanding creditor, a trustee may directly pay any expense on behalf of the beneficiary and may exhaust the income and principal of the trust for the benefit of the beneficiary. A trustee shall not be liable to any creditor or beneficiary for paying the expenses of a beneficiary;

- 3) A creditor, including an exception creditor, of a beneficiary has no greater rights in a discretionary interest than a beneficiary, and shall not compel a distribution that is subject to the discretion of the trustee, nor may a court order a distribution;
- 4) A court may review a distribution discretion of a trustee only if it is proved by clear and convincing evidence that the trustee:
 - acts dishonestly,
 - acts with an improper motive, or
 - fails to act.

The sole factor not to make a distribution does not constitute a failure to act. There is no standard of reasonableness under the above review standard;

- 5) In addition to any limitations of rights of creditors, if the trust contains a spendthrift provision, a current interest in a discretionary trust also receives the benefits of any spendthrift protection; and
- 6) Absent express trust language to the contrary, in the event distribution language, permits unequal distributions between beneficiaries or distributions to the exclusion of other beneficiaries, the trustee may distribute all of the accumulated, accrued or undistributed income and principal to one beneficiary in the discretion of the trustee.

Although it would seem obvious, the act provides that a trustee may only make distributions for the purposes designated by the settlor. A creditor, including an exception creditor, has no greater rights to trust income or principal than a beneficiary. In this respect, a creditor, including an exception creditor, cannot attach present or future distributions if the claim of the creditor does not come within the appropriate distribution standard.¹⁸

A restriction in a trust limiting the distribution powers of a trustee, in order to prevent the loss of a beneficiary's eligibility for participation in a federal or state benefits program, including, but not limited to, Medicaid, Supplemental Security Income, Social Security Disability Income or other state or federal benefits program is valid, and no creditor, including an exception creditor, may attach present or future distributions from such a Special Needs Trust. All other restrictions curtailing the distribution

power of a trustee are void as to exception creditors.¹⁹

Subject to the provisions of the Family Wealth Preservation Trust Act,²⁰ and whether or not the terms of a trust contain a spendthrift provision, the following rules apply:²¹

- 1) during the lifetime of the settlor, the property of a revocable trust is subject to the claims of the creditors of the settlor
- 2) a spendthrift provision is ineffective with respect to the settlor of a revocable trust while the trust is revocable

A creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the benefit of the settlor. If a trust has more than one settlor, the amount the creditor or assignee of a particular settlor may reach may not exceed the interest of the settlor in the portion of the trust attributable to the contribution of that settlor.²²

The Oklahoma Discretionary and Special Needs Trust Act provides clarity in a number of areas in which Oklahoma has no prior statutory or decisional law. It should help lawyers in providing certainty and predictability when advising clients as to their rights under trust law in this state. Most importantly, those beneficiaries of Special Needs Trusts which are created or modified on or after Nov. 1, 2010, will have clearly articulated rights which will

aid in preventing the inadvertent loss of public benefits through inattentive drafting.

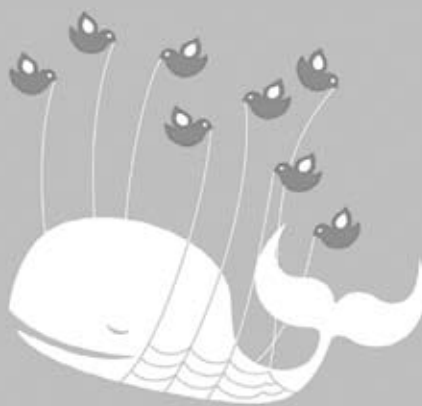
1. House Bill 2171, Section 2(13), to be codified as 60 Okla. Stat. §175.82(13).
2. *Ibid*, Section 3, to be codified as 60 Okla. Stat. §175.83.
3. *Ibid*, Section 3(3), to be codified as 60 Okla. Stat. §175.83(3).
4. *Ibid*, Section 3(5), to be codified as 60 Okla. Stat. §175.83(5).
5. *Ibid*, Section 4(1), to be codified as 60 Okla. Stat. §175.84(1).
6. *Ibid*, Section 4(2), to be codified as 60 Okla. Stat. §175.84(2).
7. *Ibid*, Section 4(3), to be codified as 60 Okla. Stat. §175.84(3).
8. *Ibid*, Section 4(4), to be codified as 60 Okla. Stat. §175.84(4).
9. *Ibid*.
10. *Ibid*, Section 5, to be codified as 60 Okla. Stat. §175.85.
11. *Ibid*, Section 7(B), to be codified as 60 Okla. Stat. §175.87(B).
12. *Ibid*, Section 2(7), to be codified as 60 Okla. Stat. §175.82(7).
13. *Ibid*, Section 7(A), to be codified as 60 Okla. Stat. §175.87(A).
14. *Ibid*, Section 5(F), to be codified as 60 Okla. Stat. §175.85(F).
15. *Ibid*, Section 6(B), to be codified as 60 Okla. Stat. §175.86(B).
16. *Ibid*, Section 8, to be codified as 60 Okla. Stat. §175.88.
17. *Ibid*, Section 9, to be codified as 60 Okla. Stat. §175.89.
18. *Ibid*, Section 10(A), to be codified as 60 Okla. Stat. §175.90(A).
19. *Ibid*, Section 10(B), to be codified as 60 Okla. Stat. §175.90(B).
20. 31 Okla. Stat. §§10, *et seq.*
21. House Bill 2171, Section 12, to be codified as 60 Okla. Stat. §175.92.
22. *Ibid*.

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Aftermath of the SemGroup Case

Oklahoma Enacts the Oil and Gas Owners' Lien Act of 2010

By Fred H. Miller and Alvin C. Harrell

BACKGROUND

SemGroup LP, a limited partnership organized in Delaware, and its various affiliates (together, SemGroup), was in the business of purchasing oil and gas derived from wells in several jurisdictions including Oklahoma.¹ Pursuant to industry custom, SemGroup paid the interest owners (persons owning an interest in oil and gas rights before the first sale of the oil or gas²) for the purchased oil on the 20th day of any given month, and for the gas on the 25th day, as to oil and gas produced in the previous calendar month. For example, payment would occur on June 20 or June 25 for the May production.

SemGroup, as the “first purchaser,” would then resell to subsequent purchasers. In these subsequent resales, the sale price could be paid by an exchange of oil and gas, by set-off and net-out of transactions, or by a cash equivalent or deferred cash payment (*e.g.*, by check or an “account”³). The extracted oil and gas might be stored in temporary, local storage tanks, or delivered to the subsequent purchaser by pipeline. SemGroup incurred debt for financing its purchases, and this debt was secured by the oil and gas inventory owned by SemGroup, and any proceeds from the resales. SemCrude, one of the affiliates, owned a deposit account in Massachusetts with Bank of America and another with a bank in Dumas, Texas, where proceeds were deposited.

SemGroup also was engaged in a variety of hedging and derivatives transactions, including

bets on falling oil prices.⁴ These bets went wrong when oil prices did not fall, and on July 22, 2008, SemGroup filed a petition under Chapter 11 of the U.S. Bankruptcy Code.⁵ The filing occurred immediately before or after payment was due to interest owners for oil and gas purchased in June 2008, and as a result, the interest owners were not paid for June or July. At the time it filed bankruptcy, SemGroup, as relevant, held unsold oil and proceeds, including proceeds in deposit accounts, which became assets of the bankruptcy estate as well as being claimed by interest owners and secured lenders, all of whom then litigated the priority of their claims as to these assets in the bankruptcy case.⁶

Focusing on Oklahoma and ignoring the deposit accounts (which implicate additional issues), and aside from Uniform Commercial Code (UCC) Articles 9 and 2,⁷ there were two

relevant Oklahoma statutes. One, the Oil and Gas Owners' Lien Act,⁸ created a lien, called a "continuing security interest," on extracted oil and gas and its proceeds, and made the lien valid without possession but required a filing in the county in which the well was located. This lien was subordinate to buyers in ordinary course of business as defined in the UCC,⁹ but otherwise had priority from the time of extraction, with modest exceptions, and continued in proceeds for at least a year. Most importantly, however, section 548.6(C) stated that nothing in the Oil and Gas Owners' Lien Act should be construed to impair or affect the rights, priorities or remedies of any person under the UCC.

The other relevant Oklahoma statute was the Production Revenue Standards Act.¹⁰ The most important provision was section 570.10A, which provides essentially that all proceeds from the sale of oil or gas production should be regarded as separate and distinct from all other funds of any person receiving or holding the same, until such time as the proceeds are paid to the owners legally entitled, and that the proceeds are to be held for the benefit of the interest owners legally entitled but that no express trust is created. In the *SemGroup* litigation, the interest owners argued (among other things) that this imposed fiduciary duties in the nature of an implied or resulting trust, giving them a priority claim.¹¹

Most of the *SemGroup* litigation was ultimately settled, before a pending appeal could be completed, but the Delaware Bankruptcy Court first made several findings:

- Notwithstanding an Oklahoma attorney general's opinion issued after the bankruptcy case began, holding that section 570.10A creates an implied trust, the Bankruptcy Court held otherwise.¹²
- In the *SemGroup* litigation relating to Kansas and Texas, the Bankruptcy Court concluded that Delaware law controlled the issues relating to competing claims to the assets (including priority), and not the laws of Kansas or Texas (where the production was located).¹³

The Bankruptcy Court held that the assets were not "as extracted collateral" under UCC Article 9 (and thus Delaware law controlled perfection and priority),¹⁴ and since the interest owners were unperfected under Delaware Article 9 they lost priority to the secured lenders who were so perfected.¹⁵

THE 2009 LEGISLATIVE RESPONSE

Bills were promptly introduced in the 2009 Oklahoma Legislature to address the issues in the *SemGroup* litigation. An initial bill favored by interest owners would have given them a position similar to the result provided in the legislation that ultimately passed in 2010 (SB 1615), but essentially equivalent to that of a purchase money security interest under UCC Article 9. However, as with some of the similar lien acts in other states, an Article 9 solution would be dependent on application of the Oklahoma UCC.¹⁶ This bill failed to pass. Another bill put forward by the purchasers from interest owners would have essentially adopted the Texas non-uniform amendment to Texas UCC Article 9 (essentially giving interest owners the position of a purchase money security interest but without the UCC requirements of filing, notice and the like).¹⁷ This bill likewise failed to pass. In essence, the two bills killed each other.

THE RESULT: SB 1615

Effective Date

Before the 2010 legislative session was underway in Oklahoma, a compromise was negotiated that that basically became Enrolled Senate Bill No. 1615 (SB 1615 or the bill).¹⁸ SB 1615 was signed by the governor on April 19, 2010.¹⁹ Section 14 of the bill carries an emergency clause and therefore it became effective that same date.²⁰ This is critical since the bill follows fairly closely the previous 2009 interest owners' effort, and Section 4 of the bill proclaims in part: "An oil and gas lien exists and is perfected from the effective date of this act."²¹

Overview of SB 1615

SB 1615, the Oil and Gas Owners' Lien Act of 2010, repealed the former Oil and Gas Owners' Lien Act.²² It does not repeal the Production Revenue Standards Act,²³ and thus leaves undisturbed the attorney general's opinion that a trust is created by this provision (as well as the remaining litigation on this issue).²⁴ In Oklahoma, a state court opinion could control the decision of the Delaware Bankruptcy Court to the contrary.²⁵ However, bill Section 6 provides in part that a purchaser (defined under bill Section 2.15. as a person that is not an affiliate of the first purchaser)²⁶ who takes, receives or purchases oil or gas from a first purchaser is relieved of any obligations created by section 570.10A if either 1) the purchaser is

a buyer in ordinary course of business (BIOCOB) as defined in the UCC Article 9²⁷ or 2) the purchaser has paid all the consideration due to the first purchaser, including by exchange of oil or gas, net-out, or set-off, under all applicable enforceable contracts in existence at the time of payment.²⁸ The second category of purchaser above is important since BIOCOB status arguably requires the payment of new value and therefore payment by net-out or set-off may not qualify, and also under the UCC a BIOCOB must have possession or a right to possession.²⁹ A subsequent purchaser from the first purchaser also is protected by the shelter doctrine.³⁰

To the extent that an Oklahoma court might uphold an interest owners' retention of a trust against the first purchaser (e.g., under section 570.10A), that trust is redundant with the idea that the interest owner also has a lien, but retention of the trust concept in the Oklahoma statutes was a necessity in view of the uncertainty on this issue in the ongoing *SemGroup* litigation on the trust fund issue (e.g., relating to claims arising before the effective date of SB 1615).

SB 1615: CHAPTER AND VERSE

Reviewing SB 1615 with an eye to the issues in the *SemGroup* litigation, the most important provisions are noted here. Section 3.A. of the bill grants each interest owner an oil and gas lien (oil and gas lien) to secure the obligations of the first purchaser to pay the sales price, to the extent of the interest owners' interest in oil and gas sales derived from the interest owners' oil and gas rights.³¹ Under bill Section 2.9.a., oil and gas rights include oil, gas, proceeds (proceeds under bill Section 2.14. are what is paid or to be paid from the sale of oil or gas under an agreement to sell, including oil or gas on or after extraction,³² inventory of raw, refined or manufactured oil or gas, rights to products of same, and proceeds, whether cash, accounts, chattel paper, instruments, documents or pay-

“Section 4 also provides that the interest owners' oil and gas lien is automatically perfected without the need to file a financing statement or any other type of documentation...”



ment intangibles), an oil and gas lease, a pooling order and an agreement to sell.³³ Illustrative examples of oil and gas rights are included in bill Section 2.9.b.³⁴ Section 3.A. also states that “[t]he oil and gas lien is granted and exists as part of and incident to the ownership of oil and gas rights.”³⁵

This makes clear that the interest owners' oil and gas lien created by SB 1615 is not a UCC Article 9 security interest but rather arises as part of a real estate interest of the interest owner in the oil and gas; therefore, the governing law (with respect to a choice of law) is the law of the jurisdiction in which the well is located.³⁶ This avoids the UCC Article 9 choice of law rules for personal property that resulted in certain interest owners' claims being determined under Delaware law in the *SemGroup* litigation.³⁷ Indeed, Section 9 of the bill provides that no provision in an agreement to sell or otherwise that would apply the law of another jurisdiction is valid as a matter of public policy (but the protections of SB 1615 may be waived under specified circumstances as

described in Section 9 of the bill, and noted below).³⁸ Section 3 of the bill also provides that the interest owners' lien “exists in and attaches immediately to all oil and gas on the effective date of the act.”³⁹

Bill Section 4 (somewhat redundantly) also says that the oil and gas lien is granted and exists as part of and incident to the ownership of the interest owners' oil and gas rights, and “exists and is perfected from the effective date of this act.”⁴⁰ Section 4 further stipulates that the interest owners' oil and gas lien continues uninterrupted and without lapse in all oil and gas produced, upon and after the extraction (except as qualified elsewhere in the bill); continues uninterrupted and without lapse in and to all proceeds (again, except as qualified in SB 1615); exists until the interest owner or other

person entitled to receive the proceeds has been paid (with some elaboration as to who is entitled to payment and protection for good faith payment); and is not dependent on possession nor is it affected by a change in possession or ownership, and that the lien follows any transfer of the oil and gas rights.⁴¹ Section 4 also provides that the interest owners' oil and gas lien is automatically perfected without the need to file a financing statement or any other type of documentation, and as to existing oil and gas rights is perfected as of the effective date of SB 1615.⁴²

Section 7 of the bill provides that, except for a "permitted lien" (see discussion below), an interest owners' oil and gas lien takes priority over any other lien or any security interest.⁴³ In conjunction with Sections 3.D. and 4. of the bill,⁴⁴ this creates an automatic super-priority without any public notice by a filing or by possession. This is less troublesome than it may seem, because in all probability those affected by it, e.g., in the industry or lending to it, are sophisticated parties who will be aware of this provision of the bill and can act accordingly.⁴⁵ Whether an automatic super-priority always will apply in the face of other laws, which may provide their own priority rules, will be a task for courts to sort out on a case-by-case basis, although perhaps SB 1615, as the later and more specific law, will be effective as stated. Moreover, many of the potential problems of application are avoided by the priority exceptions for BIOCOBs and permitted liens, as noted below.⁴⁶

Under bill Section 2.11., a permitted lien is essentially a mortgage or security interest granted by a first purchaser which "secures payment under a written instrument of indebtedness signed by the first purchaser"⁴⁷ — and is accepted in writing (or in a record) by the secured party (even if the instrument is a promissory note which a payee normally does not accept in writing), *prior to the effective date of SB 1615*, with a fixed amount of principal and maturity date.⁴⁸ A "permitted lien" does not include security devices that do not meet these criteria, or that involve a later modification, amendment or restatement that increases the principal or extends the maturity after the effective date of SB 1615, or does not have first priority (except a statutory or regulatory lien that has first priority by statute or regulation is recognized).⁴⁹ Also, as just noted, included in the protection afforded a "permitted lien" is "a

validly perfected and enforceable lien created by statute or by rule or regulation of a governmental agency for storage or transportation charges" owed by the first purchaser, except one in favor of an affiliate of a first purchaser (unless authorized by the statute, rule or regulation creating the lien) or one for charges in excess of 90 days past due.⁵⁰

Section 5 of the bill deals with the tracing, continuation and priority of the interest owners' oil and gas lien, in relation to other such liens and competing security interests, other liens and permitted liens, in commingled oil and gas.⁵¹

Section 6 qualifies the provision of the bill that provides for the super-priority of an interest owners' oil and gas lien, given the above-referenced continuance of such a lien in extracted oil and gas and in any proceeds, and the priority of such.⁵² Section 6 provides that a "purchaser"⁵³ "takes free" of an interest owners' oil and gas lien on the oil and gas purchased by the purchaser, and the purchaser is relieved of the obligations under 52 Okla. Stat. section 570.10A, if the purchaser qualifies as a BIOCOB as defined in UCC Article 9,⁵⁴ or the purchaser has paid all consideration due to the first purchaser, "including by exchange of oil or gas, net-out or set-off, under all applicable enforceable contracts in existence at the time of payment."⁵⁵ Otherwise, the interest owners' oil and gas lien continues "uninterrupted in the proceeds paid to or otherwise due the first purchaser" (which should be construed to mean not only that the lien continues but also its perfection and priority continue as provided in the bill).⁵⁶ The last sentence of Section 6.2. of the bill, stating the priority of the lien, is again merely a redundancy.⁵⁷

Section 8 of SB 1615 deals with circumstances where the ownership of oil and gas is transferred and is consistent with UCC Article 2 Section 2-401, which is also applicable since extracted oil and gas is a form of "goods."⁵⁸ Section 8 also preserves the right of the first purchaser to take or receive oil and gas under the terms of a division order or agreement to sell, and thus the bill cannot retroactively intrude on prior transactions or relationships.⁵⁹ To the extent they are subject to the bill, other purchasers should be accorded the same treatment.⁶⁰ Interest owners are protected as against such rights under Section 12 of the bill,⁶¹ and the rights of operators are protected as against interest owners under bill Section 11.⁶² It might

have been better to have broadened Section 12 of the bill to include others in addition to interest owners, to provide a comprehensive resolution of competing interests in a single section, instead of using different language (except as required by different rights and status) in different sections of the bill to establish essentially the same policy. In such respects, the bill is not as polished as, *e.g.*, a uniform act. Nonetheless, except as differences need to be recognized due to the context, the different provisions of the bill should be interpreted to reach the common goal of non-impairment of established rights under a prior law or contract.

Section 9 of the bill is titled “Waiver” and states a general rule, that any relinquishment or waiver of rights under the bill by interest owners, under terms other than full payment of the sales price, is void as against public policy.⁶³ However, a waiver or other provision, which would include a subordination of the priority of an interest owners’ oil and gas lien, which is accompanied by the posting of a satisfactory letter of credit or a binding contractual arrangement, satisfactory in form and substance, to prepay or escrow the sales price and to perform all of the first purchaser’s obligations under a satisfactory agreement to sell, is valid.⁶⁴ Two further points may be made as to such a contractual arrangement, agreement to sell or letter of credit. First, there are no concrete statutory criteria in the bill for determining what is “satisfactory.” The purpose was to provide discretion to interest owners, who are in the best position to decide whether a waiver is in their best interests under given circumstances, but at the same time to both place limits on that discretion (by requiring, in essence, a letter of credit or escrow arrangement) and to give interest owners in such matters statutory guidelines to follow. Second, the applicable standards will include the requirements of UCC Article 5 for letters of credit,⁶⁵ a sales agreement will be measured by the provisions of UCC Article 2 and an alternative binding contractual arrangement should be subject to the standards of ordinary contract law.

Finally, Section 10 of the bill provides for the expiration of an interest owners’ oil and gas lien by the passage of time (one year after the last day of the month following the date proceeds from the sale of oil or gas subject to the lien are due as to oil or gas sold during the month) — unless an action to enforce the lien has been commenced.⁶⁶ Section 10 also deals

with what is a proper court, and with bankruptcy and joinder of multiple parties and preserves any right of an interest owner to maintain a personal action on the debt for the sales price.

CONCLUSION

Overall, the bill is not perfect, but if properly construed by the courts it represents a reasonable compromise among interest owners, operators, secured parties and purchasers, and does not put secured lenders to the first or a subsequent purchaser in any worse position than they would occupy under UCC Article 9 if they were subject to a purchase money security interest in favor of interest owners’ claims.⁶⁷ In that sense, it is much like the case with fixtures under UCC section 9-334, where secured parties under UCC Article 9 have to deal with competing real property claims — the difference being that in the case of fixtures, Article 9 sets the accommodation rules (but only after an earlier, false start that ignored real estate interests to too great a degree), and here the Oil and Gas Lien Owners’ Act of 2010 sets the accommodation rules, perhaps again because UCC Article 9 alone does not fully address oil and gas interests.⁶⁸

1. These facts and the background of the Oklahoma-related issues in the litigation involving SemGroup (the *SemGroup* litigation) are described in the June 2009 opinion of the Bankruptcy Court in the *SemGroup* litigation. See *Samson Resources Company, et al. v. SemCrude, LP et al.* (*In re SemCrude LP*), Case No. 08-11525 (BLS), Adversary No. 08-51445, 2009 WL 1740750 (Bankr. D. Del. June 19, 2009) (regarding Oklahoma Law issues). Companion orders were issued relating to Kansas and Texas law. See *In re SemCrude*, 2009 WL 1740747 (Bankr. D. Del. June 19, 2009) (Kansas law); *In re SemCrude*, 2009 WL 1740748 (Bankr. D. Del. June 19, 2009) (Texas law). This article is limited to the issues involving Oklahoma law. The facts and issues in the *SemGroup* litigation have also been described in the media. See, *e.g.*, Rod Walton, “SemGroup to Present Plan,” *Tulsa World*, Oct. 24, 2009, at E1; Rod Walton, “SemGroup Plan OK’d to Repay Producers,” *The Oklahoman*, Sept. 23, 2009, at 1B; Rod Walton, *SemGroup Lenders See Full Payment*, *Oklahoman*, May 7, 2009, at 1B. On related issues, see Rod Walton, “Producers sue SemGroup LP Connections,” *The Oklahoman*, May 18, 2010, at 3B.

2. See the Oil and Gas Owners’ Lien Act of 2010, Oklahoma Enrolled Senate Bill 1615, §2.6. (signed into law by Gov. Henry April 19, 2010) (codified at 52 Okla. Stat. §549.2.6.) (definition of Interest Owner).

3. A “check” is an “instrument” under Uniform Commercial Code (UCC) Articles 3 and 9. See UCC §§3-104(f), 9-102(a)(47). “Account” is defined at UCC §9-102(a)(2). In Oklahoma the UCC is codified at Title 12A of the Oklahoma statutes. UCC citations in this article reference the uniform text, unless otherwise noted.

4. See sources cited *supra* at note 1.

5. *Id.* See also Wade D. Gungoll, “The SemGroup Bankruptcy and the Ramifications for Oklahoma Producers,” 80 *OBJ* 1041 (2009).

6. See *supra* notes 1 and 5.

7. In Oklahoma, Article 9 is codified at 12A Okla. Stat. §§1-9-101 *et seq.*, and Article 2 at §§2-101 *et seq.* Oklahoma law has not adopted the 2003/2005 Official Amendments to Article 2, except to exclude transactions in information. However, as these amendments resolve many ambiguities and splits in the case law, they furnish guidance for interpretation of present law.

8. 52 Okla. Stat. §548 *et seq.* See also Gungoll, *supra* note 5.

9. UCC §1-201(b)(9) (2001 uniform text); 12A Okla. Stat. §1-201(b)(9)(2010 cumm. suppl.).

10. 52 Okla. Stat. §§570.1 *et seq.* See also Gungoll, *supra* note 5.

11. See *SemGroup*, 2009 WL 1740750, and *supra* notes 1 and 5.

12. See *supra* note 11. The Oklahoma attorney general's opinion is 2008 OK AG 31 (Nov. 5, 2008).

13. *E.g.*, pursuant to UCC §9-301. Under §9-301(1), the law of the jurisdiction where the debtor is located governs perfection, the effect of perfection or nonperfection, and priority of a security interest; this is subject to §9-301(3), providing that the effect of perfection or nonperfection and priority as to a security interest in certain types of collateral (including goods, instruments and money) are governed by the law of the state where the collateral is located. UCC §9-307(e) provides that a "registered organization" is located in the state where it is organized. In the *SemGroup* litigation the debtor was deemed to be located in Delaware. In contrast, the Bankruptcy Court's discussion of Oklahoma issues in its June 19, 2009, opinion does not significantly address these issues, being primarily limited to the Oklahoma Oil and Gas Owners' Lien Act and §570.10A of the Production Revenue Standards Act. See *SemCrude*, 2009 WL 1740750 (citing *Arkla Exploration Co. v. Norwest Bank of Minneapolis*, 948 F.2d 656 (10th Cir. 1991)); other authorities cited *supra* at note 1; Gungoll, *supra* note 5. See also *infra* note 14.

14. See *supra* note 13; and UCC §§9-102(a)(6), 9-301(4). See *SemGroup*, 2009 WL 1740750, and other authorities cited *supra* note 1.

15. See UCC §§9-317, 9-322(a); *SemGroup*, 2009 WL 1740750; and other authorities cited *supra* note 1.

16. Which, in the *SemGroup* litigation according to the Bankruptcy Court's opinion, did not apply because the debtor (*SemGroup*) was located in Delaware, pursuant to UCC §§9-301 and 9-307, and because the assets were not found to be "as extracted collateral." See *SemGroup*, 2009 WL 1740750; other authorities cited *supra* note 1; *supra* note 13.

17. See, *e.g.*, Terry I. Cross, "Oil and Gas Product Liens - Statutory Security Interests for Producers and Royalty Owners under the Statutes of Kansas, New Mexico, Oklahoma, Texas and Wyoming," 50 48 (1996). *Consumer Fin. L. Q. Rep.*

18. See *supra* note 2.

19. *Id.* Note, however, that Judge Russell of the Western District of Oklahoma subsequently considered the issue and rejected the attorney general's opinion, instead adopting the reasoning of the Delaware Bankruptcy Court in the *SemGroup* litigation. See *McKnight v. Linn Operating Inc.*, Case No. CIV-10-30-R (W.D. Okla. April 1, 2010). It remains possible, however, that a state court would hold otherwise.

20. SB 1615, §14.

21. SB 1615, §4 (codified at 52 Okla. Stat. §549.4.). See also discussion *infra* this text at notes 39-41.

22. Old 52 Okla. Stat. §§548.1 - 548.6. See SB 1615, §13.

23. 52 Okla. Stat. §570.10A. See Gungoll, *supra* note 5.

24. See *supra* note 12.

25. *Id.*

26. The first purchaser under bill §2.4. (52 Okla. Stat. §549.2.4.) is the person that purchases oil or gas from an interest owner under an agreement to sell.

27. Note that BIOCOB is actually defined in UCC Article 1. See *supra* note 9.

28. SB 1615, §6 (codified at 52 Okla. Stat. §549.6.).

29. See *supra* note 9.

30. See, *e.g.*, PEB Commentary No. 6, March 10, 1990, discussing the "shelter principle."

31. SB 1615, §3.A. (codified at 52 Okla. Stat. §549.3.A.).

32. SB 1615, §2.14. (codified at 52 Okla. Stat. §549.2.14.). SB 1615 uses the term "severance" rather than the more common term "extraction," but defines "severance" essentially as extraction.

33. SB 1615, §2.9.a. (codified at 52 Okla. Stat. §549.2.9.a.) (definition of oil and gas rights).

34. *Id.* §2.9.b. (codified at 52 Okla. Stat. §549.2.9.b.) (illustrative examples of oil and gas rights).

35. *Id.* §3.A. (codified at 52 Okla. Stat. §549.3.A.).

36. See, *e.g.*, Robert A. Leflar, Luther L. McDougal III & Robert L. Felix, *American Conflicts Law* §§165, 170 and 171 (4th ed. 1986) (law of the situs applies). UCC Article 9 recognizes this basic principle with respect to other real estate-related collateral, including as-extracted collateral. See UCC §§9-102(a)(6) (definition of as extracted collateral), 9-301(3), (4) (choice of law). See also *infra* note 69.

37. Pursuant to UCC Article 9 §9-301(1) (location of the debtor controls). See also *id.* §9-307; *supra* notes 1 and 13.

38. See SB 1615, §9 (codified at 52 Okla. Stat. §549.9.). On waiver, see *infra* this text at notes 63-65.

39. SB 1615, §3.B.1. (codified at 52 Okla. Stat. §549.3.B.1.). See also *supra* note 21 (noting SB 1615 §4.).

40. SB 1615, §4 (codified at 52 Okla. Stat. §549.4.). See also *id.* §3 (codified at 52 Okla. Stat. §549.3.); *supra* notes 37-39 and this note 40 and accompanying text. There are a number of redundancies in the bill as well as provisions that are qualified by other provisions, but there are no cross-references. As a result, the bill's provisions must be read *in pari materia* and with the understanding that the redundancy is a result of the political process rather than intending a different meaning.

41. SB 1615, §4 (codified at 52 Okla. Stat. §549.4.).

42. *Id.* See also *supra* notes 39-40 and accompanying text.

43. SB 1615, §7 (codified at 52 Okla. Stat. §549.7.).

44. *Id.* §§3.D. and 4. (codified at 52 Okla. Stat. §§549.3.D. and 549.4.).

45. See also bill §9 on waiver, discussed, *infra* this text at notes 63-65.

46. See also *supra* notes 29-30 and accompanying text.

47. Which (under other law which overrides many writing requirements) may include an electronically-signed record that is stored in an electronic or other medium and that is retrievable in perceivable form, under both the federal ESIGN Act and the Uniform Electronic Transactions Act. The latter is enacted in Oklahoma at 12A Okla. Stat. §§15-101 *et seq.*

48. SB 1615, §2.11.a. (codified at 52 Okla. Stat. §549.2.11.a.). The italicized language in the text above is intended to emphasize that this protects only those security interests created prior to the effective date of SB 1615. See also *id.* §2.11.a. and a.(1) (52 Okla. Stat. §2.11.a. and a.(1) (...a permitted lien does not include a mortgage lien or security interest which 1.) secures payment of any indebtedness incurred from and after the effective date of this act. . . .).

49. *Id.* §2.11.a.(1)-(5) (codified at 52 Okla. Stat. §549.2.a.(1)-(5)).

50. *Id.* §2.11.b. (codified at 52 Okla. Stat. §549.2.11.b.).

51. *Id.* §5 (codified at 52 Okla. Stat. §549.5.). The ability to trace a lien into commingled proceeds of all types is governed by *id.* §3.B.3. (codified at 52 Okla. Stat. §549.3.B.3.) (The lien "[c]ontinues uninterrupted and without lapse in and to all proceeds."). See also *id.* §2.14. (codified at 52 Okla. Stat. §549.2.14.) (definition of proceeds).

52. *Id.* §6 (codified at 52 Okla. Stat. §549.6.). See also *supra* notes 43-46 and accompanying text.

53. For the definition of "purchaser," see SB 1615, §2.15. (codified at 52 Okla. Stat. §549.2.15.); compare the UCC definition at UCC §1-201(b)(30), (31). The term as used in the bill is not to be confused with a UCC Article 9 "purchaser," which includes a secured party, even though the definition in bill §2.15. could be read to include a secured party if not read in the overall context of the bill.

54. Note again the BIOCOB is actually defined in UCC Article 1. See *supra* notes 9 and 27.

55. SB 1615, §6.2. (codified at 52 Okla. Stat. §549.6.2.). See also *supra* notes 26-30 and accompanying text.

56. See SB 1615, §6.2., and *id.* §7. (codified at 52 Okla. Stat. §§549.6.2. and 549.7.).

57. *Id.*

58. *Id.* §8 (codified at 52 Okla. Stat. §549.8.). UCC Article 2 applies to sales of goods. See UCC §2-102 (scope); *id.* §2-105 (definition of goods). See generally *Continental Supply Co. v. Marshall*, 152 F.2d 300 (10th Cir. 1945) (extracted oil and gas becomes personal property); *Octagon Gas Systems Inc. v. Rimmer*, 995 F.2d 948 (10th Cir. 1993) (sale of natural gas in a pipeline is a sale of goods under UCC Article 2); definition of BIOCOB at UCC §1-201(b)(9).

59. See also *id.*

60. *Id.* See also *supra* note 30 (shelter doctrine).

61. SB 1615, §12.A. (codified at 52 Okla. Stat. §549.12.A.) (the rights of interest owners under SB 1615 are cumulative with other rights at law and in equity and are to be "liberally construed" to provide "the most comprehensive protection.") Compare UCC §1-103(a) (UCC is to be liberally construed to promote its underlying purposes).

62. *Id.* §11 (codified at 52 Okla. Stat. §549.11.). (SB 1615 does not impair the rights of an operator to withhold, set-off, or otherwise be paid funds from an interest owner). "Operator" is defined at *id.* §2.10. (codified at 52 Okla. Stat. §549.2.10.), as "a person engaged in the severance [i.e., extraction] of oil or gas...."

63. *Id.* §9. (codified at 52 Okla. Stat. §549.9.).

64. *Id.* §9.1. and 2. (codified at 52 Okla. Stat. §549.9.1. and 2.).

65. 12A Okla. Stat. §5-101 *et seq.*

66. SB 1615, §10 (codified at 52 Okla. Stat. §549.10.).

67. It has been asserted by some observers that interest owners wishing such protection should be required to acquire and assert a purchase money security interest under Article 9, and that remains an alternative to SB 1615 under the law of every state. However, an approach based on the filing of financing statements by interest owners could be complicated because of the extensive fractionalization of oil and gas royalty interests; because of the large number of interest owners, such an approach could be burdensome for all parties

involved. Thus, the transaction costs of that approach exceed those of SB 1615, without any significant compensating benefits.

68. It should also be noted that the 1998 revisions to the uniform text of UCC Article 9, reflecting the report of the American Bar Association, UCC Committee Task Force on Oil and Gas Law (of which one of your authors was chair) contemplated the assertion of interest owner claims under real property law, outside of UCC Article 9, consistent with SB 1615. See Alvin C. Harrell, "Oil and Gas Finance Under Revised UCC Article 9," 33 *Tex. Tech. L. Rev.* 31, 52 (2001) (citing UCC §9-320 cmt. 7 (2001), which also addresses this issue and in turn cites Terry I. Cross, "Oil and Gas Product Liens-Statutory Security Interests for Producers and Royalty Owners Under the Statutes of Kansas, New Mexico, Oklahoma, Texas and Wyoming," 50 *Consumer Fin. L.Q. Rep.* 48 (1996)). As noted in Harrell, *id.*, the uniform text of UCC Article 9 endorses this view. See Harrell, *id.*, and UCC §9-320, cmt. 7 (stating that Article 9 "leaves [this] resolution to other law"). See also Alvin C. Harrell and Owen L. Anderson, "Report of the ABA UCC Committee Task Force on Oil and Gas Finance," 25 *Tex. Tech. L. Rev.* 805, at 830-31 (1994) (same).

ABOUT THE AUTHORS



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OBA 106th Annual Meeting

Nov. 17 - 19, 2010 • Crowne Plaza Hotel, Tulsa



Oklahoma Supreme Court Justice John Reif, OBA President Allen Smallwood, Judge Jane Wiseman and Judge Michael DeBerry at the Oklahoma Judicial Conference reception



OBA President Allen Smallwood addresses the House of Delegates.



2011 Officers: President Deb Reheard, Vice President Reta Strubhar and President-Elect Cathy Christensen



OBA President Allen Smallwood presents Gov. Brad Henry with an OBA Award of Appreciation.



OBA members celebrate a good hand in Blackjack at the YLD Casino Night.



*Annual Luncheon speaker
Michael Wallis*



Reginald Smith, Jeff Trevillion and Selim Fiagome



Attendees socialize at the President's Reception.



*Court of Criminal Appeals Judge David Lewis
and his sister, Judge Martha Oakes*



*Mike Evans, Oklahoma
Supreme Court Justice
Rudolph Hargrave and his wife
Madeline at the Oklahoma
Judicial Conference reception*



Attendees enjoy food and friends at the President's Reception.



2010 YLD Chairperson-Elect Roy Tucker and Chairperson Molly Aspan enjoy Casino Night.



Board of Governors voting at the House of Delegates



Newly elected Governor Scott Pappas and Melissa DeLacerda



Leah White and Rania Nasreddine

2011 President Deb Reheard, Noel Tucker and Family Law Section Chairperson Kimberly Hays



House of Delegates Actions

Actions of the OBA House of Delegates on matters submitted for a vote at the 106th Annual Meeting on Friday, Nov. 19, 2010, are as follows:

RESOLUTION NO. ONE

BE IT RESOLVED by the House of Delegates of the Oklahoma Bar Association that the association adopt, as part of its legislative program, as published in the Oklahoma Bar Journal and posted on the OBA website at www.okbar.org, proposed legislation amending 75 O.S. 2001, Section 318 and 320, Oklahoma Administrative Procedures Act. *(Requires 60% affirmative vote for passage. OBA Bylaws Art. VIII Sec. 5) (Submitted by the Government and Administrative Law Practice Section. Adoption recommended by the OBA Board of Governors.)*

Action: Adopted

ADOPTED

RESOLUTION NO. TWO

BE IT RESOLVED by the House of Delegates of the Oklahoma Bar Association that the Association adopt, as part of its legislative program, as published in *The Oklahoma Bar Journal* and posted on the OBA website at www.okbar.org, proposed addition of Rule 31 to the Rules for District Courts of Oklahoma. *(Requires 60% affirmative vote for passage. OBA Bylaws Art. VIII Sec. 5) (Submitted by the Government and Administrative Law Practice Section. Adoption recommended by the OBA Board of Governors.)*

Action: Adopted

ADOPTED

RESOLUTION NO. THREE

BE IT RESOLVED by the House of Delegates of the Oklahoma Bar Association that the suggested changes to the Oklahoma Code of Judicial Conduct, as published in outline form in *The Oklahoma Bar Journal* and posted in its entirety on the OBA web site at www.okbar.org, be approved and

adopted by the Oklahoma Supreme Court. *(Requires 60% affirmative vote for passage. OBA Bylaws Art. VIII Sec. 5) (Submitted by the Bench and Bar Committee. Adoption recommended by the OBA Board of Governors.)*

Action: Adopted

ADOPTED

RESOLUTION NO. FOUR

BE IT RESOLVED by the House of Delegates of the Oklahoma Bar Association that the suggested adoption of Rules for the Committee on Judicial Elections, as published in *The Oklahoma Bar Journal* and posted on the OBA web site at www.okbar.org, be approved and adopted by the Oklahoma Supreme Court. *(Requires 60% affirmative vote for passage. OBA Bylaws Art. VIII Sec. 5) (Submitted by the Bench and Bar Committee. Adoption recommended by the OBA Board of Governors.)*

Action: Adopted as amended regarding length of terms

ADOPTED

RESOLUTION NO. FIVE

BE IT RESOLVED by the House of Delegates of the Oklahoma Bar Association that the Association adopt, as part of its legislative program, as published in *The Oklahoma Bar Journal* and posted on the OBA website at www.okbar.org, proposed legislation amending 12 O.S. Supp. 2002, Section 990A, Appeal to Supreme Court of Oklahoma – Filing of Petition – Rules – Procedure – Dismissal. *(Requires 60% affirmative vote for passage. OBA Bylaws Art. VIII Sec. 5) (Submitted by the Civil Procedure Committee. Adoption recommended by the OBA Board of Governors.)*

Action: Adopted

ADOPTED

RESOLUTION NO. SIX

BE IT RESOLVED by the House of Delegates of the Oklahoma Bar Association that the Association adopt, as part of its legislative program, as published in *The Oklahoma Bar Journal* and posted on the OBA website at www.okbar.org, proposed amendments to Oklahoma Supreme Court Rule 1.21 relating to computation of time for commencement of an appeal. (*Requires 60% affirmative vote for passage. OBA Bylaws Art. VIII Sec. 5*) (*Submitted by the Civil Procedure Committee. Adoption recommended by the OBA Board of Governors.*)

Action: Adopted

ADOPTED

RESOLUTION NO. SEVEN

BE IT RESOLVED by the House of Delegates of the Oklahoma Bar Association that the Association adopt, as part of its legislative program, as published in *The Oklahoma Bar Journal* and posted on the OBA website at www.okbar.org, proposed legislation amending 12 O.S. Supp. 2009, Section 2056, Motion for Summary Judgment. (*Requires 60% affirmative vote for passage. OBA Bylaws Art. VIII Sec. 5*) (*Submitted by the Civil Procedure Committee. Adoption recommended by the OBA Board of Governors.*)

Action: Adopted

ADOPTED

RESOLUTION NO. EIGHT

BE IT RESOLVED by the House of Delegates of the Oklahoma Bar Association that the Association adopt, as part of its legislative program, as published in *The Oklahoma Bar Journal* and posted on the OBA website at www.okbar.org, proposed legislation amending 12 O.S. Supp. 2009, Section 683, Dismissal without Prejudice. (*Requires 60% affirmative vote for passage. OBA Bylaws Art. VIII Sec. 5*) (*Submitted by the Civil Procedure Committee. Adoption recommended by the OBA Board of Governors.*)

Action: Adopted

ADOPTED

RESOLUTION NO. NINE

BE IT RESOLVED by the House of Delegates of the Oklahoma Bar Association that the Association adopt, as part of its legislative program, as published in *The Oklahoma Bar Journal* and posted on the OBA website at www.okbar.org, proposed legislation amending 12 O.S. Supp. 2009, Section 684, Dismissal before Trial Commenced without Court Order. (*Requires 60% affirmative vote for passage. OBA Bylaws Art. VIII Sec. 5*) (*Submitted by the Civil Procedure Committee. Adoption recommended by the OBA Board of Governors.*)

Action: Adopted

ADOPTED

RESOLUTION NO. TEN

BE IT RESOLVED by the House of Delegates of the Oklahoma Bar Association that the Association adopt, as part of its legislative program, as published in *The Oklahoma Bar Journal* and posted on the OBA website at www.okbar.org, proposed legislation amending 12 O.S. Supp. 2010, Section 3226, General Provisions Governing Discovery. (*Requires 60% affirmative vote for passage. OBA Bylaws Art. VIII Sec. 5*) (*Submitted by the Civil Procedure Committee. Adoption recommended by the OBA Board of Governors.*)

Action: Adopted

ADOPTED

TITLE EXAMINATION STANDARDS

Action: The Oklahoma Title Examination Standards revisions and additions published in *The Oklahoma Bar Journal* 81 2475 (Nov. 6, 2010) and posted to the website at www.okbar.org were approved in the proposed form. The revisions and additions are effective immediately.

ADOPTED

All resolutions are available in their entirety at www.okbar.org/annualmeeting10/business/resolutions

Volunteers Critical to OBA Success

Understand that life is hectic, and you're busy making a living at practicing law. I'm a small town lawyer; I know the challenges of making time for volunteer work. But your association needs you. It's important that we have new people every year take an interest in the many areas in which we try to make a difference. Look at the list below, there's got to be one that's worth your time.

Most meetings utilize videoconference, so if you are located near Tulsa, you are spared the travel time with a connection to the bar center in Oklahoma City. I've got some exciting plans for next year — so I hope I can count on you to get involved.

The easiest way to sign up is online at www.okbar.org. Other sign-up options are to complete this form and either fax or mail it to the OBA.

I need to hear from you by Dec. 17, 2010, so I can begin committee appointments for 2011.



Deborah Reheard, President-Elect

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- Bar Association Technology
- Bar Center Facilities
- Bench and Bar
- Civil Procedure
- Communications
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- Evidence Code
- Group Insurance
- Law Day
- Law-related Education
- Law Schools
- Lawyers Helping Lawyers Assistance Program
- Lawyers with Physical Challenges
- Legal Intern
- Legislative Monitoring
- Member Services
- Paralegal
- Professionalism
- Rules of Professional Conduct
- Solo and Small Firm Conference Planning
- Strategic Planning
- Uniform Laws
- Women in Law
- Work/Life Balance

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

Mail: Deborah Reheard, c/o OBA, P.O. Box 53036, Oklahoma City, OK 73152

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December, Again

By John Morris Williams

Somehow the years go by more quickly now. It is already December, again. While the holidays and festivities bring good times in December, it is also the end of another year here at the OBA. We will welcome some new leaders and say goodbye to some. Perhaps no other season reminds me of the passage of time more than December. It is a time that I look back and reflect and try to look forward and predict. I am better at the looking back deal.

I have had much fun and joy working with President Allen Smallwood and his wife, Barbara. Allen would be the first to admit Barbara adds a lot of class to the territory. They have been kind and wonderful friends. Every president teaches me something. Allen taught me that compassion and toughness need not be mutually exclusive. He is a person of strong convictions on the issues and has a big heart for people. I hope he does not mind my revealing this about him. However, people who know him well already know this.

This December is also a time of additional change. With the passing of Justice Opala and the decision of Justice Hargrave to not seek retention, the Oklahoma Supreme Court will soon have two new members. I will miss both of these

“May each of the remaining days of December give you pause to reflect back and to look forward.”

gentlemen greatly. Both have been good mentors, and I have enjoyed working under their supervision. We all owe them a debt of gratitude for decades of service to our state. To Justice Hargrave, I wish continued good health and much joy in the next phase of his life. It is with sadness that I lose them from my everyday life.

As I am writing this, I just received information that Judge Combs will be the next justice from District 3. In these trying times of shrinking judicial resources, I appreciate his willingness to continue to serve our state and take on this new task in his life. I wish him good health and much joy in the next phase of his life as well.

The looking forward part is more fun. We have many things in the works and more

coming as President-Elect Reheard moves toward her being sworn in as our 2011 president. She has lots of energy and has some exciting initiatives planned. I, too, wish her continued good health and much joy in her time as our president. I hope each of you will join in and participate in at least one of her projects this year. The work is needed and will be rewarding. I have intentionally not given details to entice you to be looking for her first article.

May each of the remaining days of December give you pause to reflect back and to look forward. I hope that your reflections will be a source of wisdom and your forward thoughts will be a source of inspiration. I wish you good health and joy as we move into 2011.

On behalf of your staff at the Oklahoma Bar Association, we wish you the happiest of holiday seasons and look forward to working with you in the coming year.



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

Reviewing 2010 Should Make Lawyers Think About the Future

By Jim Calloway, Director, OBA Management Assistance Program

For many years now, during the OBA CLE Recent Developments program held each December, I have done a presentation called "Law Office Management and Technology Update." Several times I have also done a similar wrap-up in the *Oklahoma Bar Journal*.

So here's a quick look at some of the big trends this year and coverage of forecasts of future trends for the legal industry. Then we will follow up with law office technology trends next month.

Law firm consultants and others who follow the legal industry all agree that there are a host of negative pressures on the legal market. Among these are the lack of jobs for new lawyers while law schools continue to graduate 40,000 new students annually who want to find work, the generally weak economy, corporate general counsel pushing for lower fees, alternative fee agreements (AFAs) and more predictability, the continued impact of new technology tools in the legal marketplace and the probability of more layoffs in the future at the very large law firms.

At the 2010 OBA Annual Meeting in Tulsa, I listened as Chicago family lawyer Steven Peskind discussed future trends in the legal profession

at the OBA Family Law Section meeting. He discussed a lot of concepts, including the idea of virtual law offices, unbundling of legal services, alternatives to the hourly rate and discussed the possibility that there may be a greater need in the future for family lawyers to serve primarily as conflict managers rather than litigators.

Since most family lawyers (and most lawyers) find themselves extremely busy, this is a message that doesn't seem to square up with their reality today. Many managers in large law firms also continue to operate under the assumption that things will snap back to normal after this rough economic patch.

Even though we all hope that is the case, that's not the smart bet at this point. Lawyers who have not been following the national trends probably need to spend some time reading and thinking.

For example, one can visit *The New Normal* online. This is a feature that the *ABA Journal* has been running during the last half of this year at www.abajournal.com/topic/the_new_normal. The editor's note preceding each article in the feature explains, "The New Normal is an ongoing discussion between Paul Lippe, the

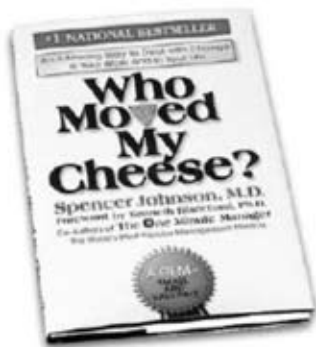
CEO of Legal OnRamp, and Patrick Lamb, founding member of Valorem Law Group. Paul and Pat spend a lot of time thinking, writing and speaking about the changes occurring in the delivery of legal services."

A challenging article was published in the *Connecticut Law Tribune* on Nov. 29, 2010. The article quotes Fairfield attorney Fred Ury's prediction that within a decade, there will likely be 10 percent to 40 percent fewer lawyers than there are today. He outlines his reasons for this rather startling prediction, which largely relate to new technology advances, globalization and shifts in the legal business marketplace. The article is online at www.ctlawtribune.com/getarticle.aspx?ID=38980.

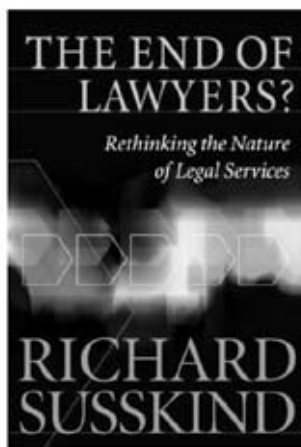
You do not have to buy into this version of the future or you may believe that Oklahoma is not as vulnerable to these trends as other places. But reading up on our challenges is always a good thing.

Let's expand our reading list from brief online articles to traditional books.

Dealing with change is difficult. A classic book on dealing with change is *Who Moved My Cheese* by Dr. Spencer Johnson, who also co-authored *The One*



Minute Manager and many other books. It is available on Amazon.com and according to the website www.whomovedmycheese.com, it has sold over 24 million copies worldwide and has been translated into 42 languages. It was a best seller in 2000.



I also suggest that the lawyer interested in the future of legal practice should buy a copy of *The End of Lawyers? Rethinking the Nature of Legal Services* by Richard Susskind. I certainly do not predict the end of lawyers in the face of the huge need for legal services in our society. But Susskind's message certainly resonates as he does around 50 speaking engagements per year.

Here's what I posted on my blog after hearing Richard

Susskind's keynote address at ABA TECHSHOW 2009:

"[H]e notes that business clients feel their lawyers are quite good at reacting to situations. But the clients wish there was more in the way of proactive legal services. Prevailing in litigation is good, but avoiding it is even better. Or, as Susskind put it, they would rather have a fence at the top of the cliff than great ambulance service at the bottom. (Of course, we all know that clients are more prone to contact their law firms when an ambulance is required rather than fence building.)

"Even after the world economy rights itself, he believes there will be continued pressure of clients wanting more legal services for less money. One of his long-held beliefs is the huge impact that emerging technologies will have on the legal profession. Technology advances can be sustaining or disruptive...Most of us attending ABA TECHSHOW this week agree with Susskind that there is more disruption ahead." *Jim Calloway's Law Practice Tips* (April 2, 2009) www.tinyurl.com/c988bh.

I have received promotional material for a new ABA book that proposes some solutions to these problems. I have not read it yet. But it is called *Law & Reorder: Legal Industry Solutions for Restructure, Retention, Promotion & Work/Life Balance*. The promotional material states:

"The need for change has become clear. Employers need to revamp their traditional models or invent new ones. Lawyers and law students must take charge of their careers and become entrepreneurs.

"*Law & Reorder* provides essential understanding of the new legal world of productivity, work/life balance, transition, leadership, mentoring, promotion, compensation and networking."



OBA members who are not ABA members are reminded that they can receive a 15 percent discount when ordering books from the ABA by using the OBA discount code: **PAB9EOKB** in the "Discount Code Number" field when placing your order on the ABA website.

THE ACC VALUE CHALLENGE

A discussion of changes in the legal industry would not be complete without mentioning the Association of Corporate Counsel (ACC). The ACC members are in-house corporate counsel who select and negotiate with lawyers for businesses. The ACC has over 23,000 in-house counsel members worldwide. The ACC has been quite active in promoting the idea to its members that there should be changes in law firm billing and operating methods. To that end, the ACC has developed and has been promoting the ACC Value Challenge.

"...the ACC Value Challenge is based on the concept that firms can greatly improve the value of what they do, reduce their costs to corporate clients and still maintain strong profitability." Michael Roster, Chairman, ACC Value Challenge Steering Committee.

The online address for ACC Value Challenge is www.acc.com/valuechallenge/. There are many papers for reading and download there. They outline approaches for negotiating with law firms, but also include suggestions for more efficiency within law firms.

But the ACC has gone far beyond just providing information. Just this month they issued a press release titled "Corporate Counsel Name 14 Newly Arrogant Firms" at www.law360.com/topnews/articles/213339. The release begins, "They are inflexible on rates, refuse to discuss alternative fees and delegate high priority communications to associates: they are the law firms considered most arrogant by corporate counsel. And 14 firms have won the designation this year for the first time, according to a new survey."

Before lawyers get too anxious, however, they should recall the famous Yogi Berra quote, "Prediction is very hard, especially about the future."

Enjoy your holidays and try not to read too much about the future at one sitting. Next month we will discuss legal technology trends, which for some of you may seem quite cheery by comparison.



ABA TECHSHOW CELEBRATES SILVER JUBILEE APRIL 11 – 13, 2011

ABA TECHSHOW has been helping lawyers incorporate cutting edge technology into their practices for 25 years. The 25th anniversary of ABA TECHSHOW will be held April 11-13, 2011, at the Chicago Hilton, Chicago, IL.

OBA members who are not ABA Members are entitled to a discount when registering for ABA TECHSHOW at www.techshow.com. Just use the OBA TECHSHOW Event Promoter Code EP1105 when registering.

This year's keynote speaker is professor Larry Lessig. He is the director of the Edmond J. Safra Center for Ethics, and a professor of law at Harvard Law School.

Educational tracks include Cloud Computing, Litigation, two Solo/Small Firm tracks (including one subtitled The Basics), two Smart Phone/Mobility tracks, e-discovery, one Paperless track and two for Power Users. You can see the schedule at www.tinyurl.com/23366q7.

This year's theme is Bringing Lawyers & Technology Together. Early Bird pricing is available until Friday, Feb. 25, 2011. After this date, registration fees will increase up to \$200 per category.

Yogi Berra's Five Apocryphal Tips on Ethical and Effective Attorney Marketing

By Travis Pickens, OBA Ethics Counsel

"Career planning ain't over till it's over."

Why do we stop working on our careers after law school, and merely continue to work *in* them? Largely, because after completing our formal education we stop setting goals. Yogi would elaborate on this by saying, "You gotta have a plan to have a marketing plan." I had a friend once tell me he did not believe in marketing. "Oh really?" I said. "Do you take your clients to lunch?" "Well, yes," "Have you ever sent referring lawyers or clients 'thank you' notes of appreciation?" "Yep." "Do you send out office cards at the holidays?" "Uh huh." Friends, this is a marketing plan — a simple one, but a marketing plan nonetheless. My friend thought marketing meant buying television ads and billboard space.

You have to find the marketing approach that is right for you. Another friend of mine, an engineer, was the chief marketer for a consulting group. He was a disaster. He invited me and other members



of our firm out to dinner to solicit work for environmental cases. He spent the entire time effusing praise of his engineering company, but when the check came, he pulled out his jeweler's loupe and 10-key and proceeded to carve up the tab down to the penny. Then, he worked backwards to apportion our share of the tip, to three decimal places. This is not the best way to woo clients and referrals. He would have been much better off just sending over concert tickets.

Remember that fee splitting is acceptable in Oklahoma under ORPC 1.5 (e). Look for win/win relationships. Perhaps you are fantastic at *getting* great cases, or perhaps instead, *doing* great cases. Team up with the lawyer or firm that complements your talents.

"Having bad work is worse than having no work." Yogi is right. Bad work and/or bad clients cost money in lost time, uncollected bills and unnecessary docu-



mentation, not to mention excess stress. Spend your downtime productively working on your business and marketing plan or learning more about your specialty. Toxic clients and toxic work can destroy your practice. We have all had the client we regret taking, and when we look back, the signs were there — the prior lawyers, the unrealistic expectations, the calls after hours, beating us down on our bills, the emotional reaction to something trivial.

Then of course, there is the piece of work we took that we were not all that qualified to perform. Yes, under the Rules of Professional Conduct we can do this provided we get up to speed with reasonable preparation (ORPC 1.1 Comments [2] and [4]), but it is often not a good idea, especially if we do not plan to do more of this kind of work. Usually what happens is that we spend too much time learning and worrying about it, and then, after we realize our crushing mediocrity in the endeavor, cutting our bill to be fair to the client.

"You can live in the past, but you can't practice in it." When I

arrived at the firm after law school, it had just recently purchased new tape dictation machines. A few days before, the lawyers were using dictation machines that cut tiny records, like an LP. You could only go a few words back to hear what you had dictated. Now, we carry small computers in our pocket called Smart-Phones, which can use voice recognition software to create and communicate text from anywhere.

If you catch yourself searching the office for a phone book, as I did recently, then prepare to be demeaned and ridiculed by anyone under the age of 30. Consequently, I am wondering how long phone book ads will be effective. Websites are the future. For guidance, the ABA's Standing Committee on Ethics and Professional Responsibility recently issued Formal Opinion 10-457. It details what, according to the Model Rules, can and cannot be done in a website. It should be read along with Oklahoma Rules 7.1 et seq. and Formal Ethics Advisory Opinion 320, which dictates when and how jury awards and settlement results may be displayed.

You can choose to keep the large oak desk, fax machine and the fountain pen set, but you had best keep up with a modicum of technological advances. E-mail and the ability to use and produce electronic documents is *de rigueur* these days. You may not see any reason to change because



the old way still works. You would be missing the point. Clinging to styles of practice that were state of the art for, say, Sir Thomas More, sends a signal about you on many levels, many of which are unattractive to younger clients.

"Lunch is an hour, but a bar journal article is forever." For

many, writing an article for the *Oklahoma Bar Journal* on a topic pertinent to your present or future specialty is still the best marketing tool of all. It goes to nearly 16,000 Oklahoma lawyers and lives forever in archived form on the bar website. The article will be referenced by West Publishing in appropriate annotations and other research resources. Hour for hour, this is the best "one-step" marketing plan. Here are some tips with getting started.

- Check the bar journal editorial calendar printed in every bar news issue or on the website (use the search feature to find it quickly) to determine the topics of upcoming issues. Articles on all subjects are published, not just the designated themes.
- Spend the time necessary to make the article detailed, well-researched, insightful and useful to the practitioner.
- "Primer" articles are always helpful because practitioners are frequently looking for a place to get started in approaching a new project.
- Have several colleagues read it for style, grammar, tone and usefulness.



- Strive to make it not only timely, but "timeless." Choose a topic that does not evolve on a month-to-month basis.
- Write your author's bio with your audience in mind.

Then, take that article on the road and start doing presentations to whoever will have you for continuing legal education or just general information. Use and repackage the article for a variety of settings and audiences. Leave copies in your reception area. Mail copies to your clients. Prepare a meaningful, detailed update every few years and resubmit it for publication or reboot your speaking schedule. Writing something is halfway to becoming an expert, at least in people's minds. That's why every political candidate in the modern era writes a book either just before or during their candidacy. The same is true for news anchors and political commentators.

"My family all resemble each other."

Take a look around your law office. Do you like what you see and hear?

If so, perfect, because that is what your client is seeing and hearing. And they are judging you because of it. I remember walking into an attorney's office, and the receptionist had positioned her desk perpendicular to the front door so she was facing 90 degrees away. She was allowed to smoke cigarettes at her desk. (Her boss owned the building, and it was apparently the last "smoke'em if you got'em" facility in the city). This woman could make it as a



circus act with her ability to dangle the smoke-stick from her lips with a three-inch ash miraculously in place before she tapped it off.

When I walked in, she did not turn to face me but rather just sighed and said, "Yes?" Fabulous. I shuddered to think what she was capable of with sensitive clients or delicate phone calls, and the rare odds she could conduct herself compatibly with the Rules of Professional Conduct (see ORPC 5.3 "Responsibilities regarding nonlawyer assistants"). The main point is that I could not imagine this lawyer being any good because this was his choice of support staff. The

people around you reflect upon you.

Similarly, whom you choose to practice with reflects upon you. Before you join up, check out the firm, group or lawyer you may practice with. What kind of reputation do they enjoy in your community? Investigate them like you would a new hire, but even more thoroughly. It is a marriage of sorts, and you have to like and respect these people if it is going to last. Furthermore, your reputation will either be enhanced or diminished because of it.

Yogi's wisdom on this point is perhaps the most important

of all. Because if you work with great people and employ great people, then you can succeed almost despite everything else. I recently ran into a younger lawyer who had wandered around a bit. I asked him if he was happy. He told me that he had finally found his legal "home" (we all have one). "You know," he said, "whom you practice with makes all the difference." Yes, it does.

Have an ethics question? It's a member benefit, and all inquiries are confidential. Contact Mr. Pickens at travis@okbar.org, or (405) 416-7055; (800) 522-8065.

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October Meeting Summary

The Oklahoma Bar Association Board of Governors met at the Oklahoma Bar Center in Oklahoma City on Friday, Oct. 15, 2010.

REPORT OF THE PRESIDENT

President Smallwood reported he worked on details of the Annual Meeting to be held in Tulsa and that he unfortunately failed to attend a swearing-in ceremony for the new members of the Oklahoma Bar Association.

REPORT OF THE VICE PRESIDENT

Vice President Martin reported he attended the Oklahoma County Bar Association Executive Committee meeting, The Missouri Bar convention in Columbus, Cleveland County Bar Association monthly meeting and American Board of Criminal Lawyers annual convention in Phoenix. He also was the moderator at the Oklahoma County candidate forum with Scott Pruitt and Jim Priest as attorney general candidates and Pat Crawley and Cindy Truong as district judge candidates.

REPORT OF THE PRESIDENT-ELECT

President-Elect Reheard reported she attended the September board meeting in Tulsa, Technology Task Force meeting, Women in Law conference and the Southern Conference of Bar Presidents meeting at Point Clear, Ala.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported that he attended the Technology Task Force subcommittee meeting, budget hearing, monthly staff celebration and Southern Conference of Bar Presidents meeting at Point Clear, Ala. He spoke at the Garfield County Bar Association monthly meeting.

REPORT OF THE PAST PRESIDENT

Past President Parsley reported he attended the September board meeting in Tulsa and the Southern Conference of Bar Presidents meeting at Point Clear, Ala.

BOARD MEMBER REPORTS

Governor Brown reported he attended the OBF Board of Trustees meeting and OBA Bench and Bar Committee meeting. **Governor Carter** reported she attended the September board meeting. **Governor Chesnut** reported he attended the September board meeting and the joint BOG/OBF dinner. **Governor Devoll** reported he attended the Board of Governors meeting in Tulsa, Boiling Springs Institute, Garfield County Bar Association meeting and the OBA Mineral Law Social for Northwest Oklahoma. **Governor Dobbs** reported he attended the

September board meeting. **Governor Hixson** reported he attended the board meeting and September Canadian County Bar Association luncheon/CLE presentation. **Governor McCombs** reported he attended the Board of Governors social event, board meeting and McCurtain County Bar Association luncheon. **Governor Moudy** reported she attended the Law Schools Committee visit to the OU College of Law, September board meeting, joint dinner with OBF and the Women in Law conference. **Governor Poarch** reported he attended the September board meeting, joint BOG/OBF dinner in Tulsa and Bench and Bar Committee meeting. **Governor Shields**, unable to attend the meeting, reported via e-mail that she attended the September board meeting, joint BOG/OBF dinner in Tulsa and Women In Law Conference. **Governor Stuart** reported he attended the joint BOG/OBF dinner in Tulsa, board meeting in Tulsa, and he worked on *Oklahoma Bar Journal* Board of Editors matters.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Aspan, unable to attend the meeting, reported via e-mail that she attended the September joint BOG/OBF dinner, September board

meeting, Women in Law luncheon and OBA YLD hosted receptions in Tulsa and Oklahoma City for members and new admittees. The YLD has scheduled a community service project at the Center for Children and Families in Norman at noon after its Board of Directors meeting on Oct. 23, and Governor Aspan extended an invitation to the governors to attend and participate.

REPORT OF THE SUPREME COURT LIAISON

Chief Justice Edmondson reported the memorial service for Justice Marian Opala will be held on Monday, Oct. 18, at All Souls' Episcopal Church. He also reported a new chief justice and vice chief justice will be selected for the next two years at the court's next conference.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported that regarding *Fournierat v. Murdock, et. al.*, her office participated in the preparation of a joint appellees answer brief that was filed Oct. 7, 2010, in the U.S. Court of Appeals for the 10th Circuit. A written status report of the Professional Responsibility Commission and OBA disciplinary matters for September 2010 was submitted for the board's review.

PROFESSIONAL RESPONSIBILITY PANEL ON JUDICIAL ELECTIONS APPOINTMENT

The board approved President Smallwood's appointment of layperson Patricia Houston, Stillwater, to the panel.

2011 OBA BUDGET

President-Elect Reheard presented the 2011 budget. It was noted that the OBF was able to fully fund the High School Mock Trial Program. She explained Oklahoma will host the Southern Conference of Bar Presidents 2013, and a fund needs to be created in 2011 for seed money for expenses that will be incurred until registration fees begin coming in. She reported the Technology Task Force is researching internal technology needs, which will exceed what can be funded in a single year. The project, called Quantum Leap 2.0, will be a multi-year effort. The board held further action until after executive session.

RESOLUTION FOR FRANK JAUQUES

The board voted to issue a resolution honoring Ada attorney Frank Jaques for his 40 years as a member of the Oklahoma Board of Bar Examiners.

YOUNG LAWYERS DIVISION BYLAWS AMENDMENT

Executive Director Williams briefed the board on the YLD's current procedure for conducting its annual elections. He reported the YLD was requesting an amendment to its bylaws to allow electronic voting. The board approved the YLD amendment to allow electronic voting.

TULSA COUNTY TELEVISION FOR VIDEOCONFERENCING

Executive Director Williams reported he heard the Tulsa County Bar Association was not in favor of permanently mounting a television to the

wall, which had been suggested at the previous board meeting. It was noted that the Technology Task Force is looking into improving the quality of videoconferencing, which might change the equipment, as part of the Quantum Leap 2.0 project.

SOUTHERN CONFERENCE OF BAR PRESIDENTS

President-Elect Reheard reviewed the events held at Point Clear, Ala. She shared information about an exciting project the State Bar of Texas is doing to benefit veterans that was made possible by a grant from its bar foundation. She stated that she will make an out-of-cycle grant request from the Oklahoma Bar Foundation to fund a similar program in Oklahoma.

EXECUTIVE SESSION

The board voted to go into executive session to discuss the proposed OBA budget, met in executive session and voted to come out of executive session.

2011 OBA BUDGET ACTION

The board unanimously voted to recommend the proposed 2011 OBA budget for approval by the Oklahoma Supreme Court.

NEXT MEETING

The Board of Governors met in Tulsa on Nov. 17, 2010, in conjunction with the OBA Annual Meeting, and a summary of those actions will be published after the minutes are approved. The next meeting of the Board of Governors will be at 9 a.m. on Dec. 17, 2010, at the Oklahoma Bar Center in Oklahoma City.

Legend Has It...

By Phil Frazier

The Oklahoma Bar Foundation had its beginning in 1946. OBA President Gerald B. Klein appointed a special committee to form the Oklahoma Bar Foundation. The executive director and founders determined the first project which the Oklahoma Bar Foundation should sponsor would be the acquisition of a “home” for the Oklahoma Bar Association. The special committee on the Oklahoma Bar Foundation as appointed at that time were John H. Cain, Bartlesville; Villard Martin, Tulsa; Charles B. Cochran, Oklahoma City; I. J. Underwood, Tulsa; Street-er Friend, Oklahoma City and John G. Hervey, Norman. An excerpt from an *Oklahoma Bar Journal* article published Sept. 28, 1946, titled “Executive Counsel of the Oklahoma Bar Association Creates Oklahoma Bar Foundation” stated, on Sept. 21, 1962, the 60-year dream of Oklahoma lawyers and judges was realized with the completion and dedication of the Oklahoma Bar Center. The bar center was built by lawyers for lawyers.

The Oklahoma Bar Foundation evolved into a charitable arm for Oklahoma lawyers. In early years, the foundation made sizable awards to the University of Oklahoma, Oklahoma City University and the University of Tulsa law schools.

OBF expanded its charitable giving beyond law schools and by 2004, more than \$5.5 million had been awarded to

charitable programs. Through the year 2010, the Oklahoma Bar Foundation will have given grant awards in excess of \$9.5 million.

In spite of the foundation’s legendary beginning and tremendously successful charitable contributions through the years, the Board of Trustees and Past President Renée DeMoss noted in 2008 that the foundation was somewhat curtailed by an identity crisis. Although every lawyer in the state of Oklahoma is automatically a member of the Oklahoma Bar Foundation, very few knew or understood the purpose and activities of the Oklahoma Bar Foundation. Renée DeMoss began efforts with the Board of Trustees to develop a mission plan as well as a mission statement. This program was followed by her successor, Past President Richard Riggs, in 2009. Under Richard Riggs’ leadership, the Board of Trustees began programs to promote awareness about the OBF. Activities continued through this year.

Paula Love was chosen to develop a public relations program. Through her efforts, the public as well as bar association members were made aware of the foundation’s funding of an addition to the Oklahoma County Juvenile Court Building. Through the efforts of Trustees, Judge Valerie Couch and Gabe Bass, assisted by Paula Love, the OBF received recognition for

making improvements to the juvenile court facility possible. Other projects have included Wi-Fi capabilities for the Tulsa and Oklahoma County District Courthouses which have done much to increase access in the state’s two largest counties — in addition to other electronic equipment for courthouses across the state.

This year our Trustees began “site visits” to many of the operational locations of grantees. Trustees devoted substantial time, along with the foundation staff, to arrange and coordinate visits to the site locations. The result of the site visits was an impression upon the Trustees as to the importance of the foundation to the grantees as well as the fulfillment of the OBF mission as undertaken by the grantees. Many, many thanks to all the Trustees and committee chairs for their time and effort so the charitable work of the foundation can continue.

The foundation continued to receive help and support this year from Donita Douglas who has made it possible for the foundation to make presentations at CLE programs in furtherance of the Fellows program. It is through the enrollment of new Fellows that the foundation is able to continue to fund many of our grant programs.

OBA Executive Director John Morris Williams was extremely helpful and sup-

portive throughout the year. The OBF and OBA worked together on several joint projects including the updating of a webpage and a joint meeting of the Oklahoma Bar Association and the Oklahoma Bar Foundation in September.

Stephen Beam came on the board as a Trustee following his 2007 term as OBA president. His ideas and assistance throughout the year were extremely helpful and most appreciated. As foundation president, I could not have had a better Oklahoma Bar Association president with whom to work with than Allen Smallwood. Our discussions regarding joint activities of the bar and foundation were short, sweet and to the point, and Allen never said no. All who know Allen, clients and colleagues alike, have come to expect a lot from him and he never disappoints.

Nancy Norsworthy, our director, has now completed her 25th year with the foundation. I had the experience this year to learn that Nancy is as well thought of throughout the United States as she is in

Oklahoma. Other foundation directors continually call upon Nancy for direction and guidance. She is ably assisted by Tommie Lemaster and Ronda Hellman.

This year was a particularly challenging year for the OBF as well as the charitable organizations which we regularly assist and who continually look to us for support. The economic climate had an adverse effect not only on our charitable grantees, but also upon funds available through the foundation to provide such assistance.

In spite of the tough economic times, the Grants and Awards Committee chaired by Judge Valerie Couch, with the board's approval, was able to award a total of \$478,646 with another \$39,000 in law school scholarships.

The foundation worked with Kent Frates and photographer David Fitzgerald this year, who put together a book titled, "Oklahoma Courthouse Legends." They have generously committed to provide the foundation with a desig-

nated part of the proceeds obtained through book sales. These funds will be used to continue the mission and the legend of your Oklahoma Bar Foundation.

The greatest asset of the foundation during 2010, as it has always been, is our very capable staff and the generous lawyers who enable the foundation to help needy Oklahomans. Thanks to all who enable the Oklahoma Bar Foundation to continue its legend of helping other needy Oklahomans and, thus, help us all to feel even better about being an Oklahoma lawyer. I appreciate the opportunity you have given to me to be a part of the legend for the past 10 years and for allowing me to serve as president of the foundation this year. My special thanks to Renée DeMoss and Richard Riggs for providing the legend of large shoes to fill and seeing to it that I did not slip completely out of them.

Phil Frazier is president of the Oklahoma Bar Foundation. He can be reached at pfrazlaw@swbell.net.

How Do I become an OBF Fellow?

- Fellows make annual charitable contributions to the foundation and in turn the OBF holds a formal grant review and follow-up process each year.
- OBF awarded grant funds to 23 different law-related nonprofit organizations during 2010. The Fellows gift is minimal at \$100 annually for a 10-year period. Helping 23 different organizations for only \$100 is a pretty good bargain.
- To become a Fellow, the pledge is \$1,000 payable within a 10-year period at \$100 each year; however, some may choose to pay the full amount or in greater increments over a shorter period of time.

The OBF offers lesser payments for newer Oklahoma Bar Association members:

- — **First Year Lawyers:** lawyers who pledge to become OBF Fellows on or before Jan. 2 of the year immediately following their admission may pay only \$25 per year for 2 years, then only \$50 for 3 years, and then at least \$100 each year thereafter until the \$1,000 pledge is fulfilled.
- — **Within Three Years:** lawyers admitted 3 years or less at the time of their OBF Fellow pledge may pay only \$50 per year for 4 years and then at least \$100 each year thereafter until the \$1,000 pledge is fulfilled.
- **Sustaining Fellows** are those who have completed the initial \$1,000 pledge and continue their \$100 annual contribution to help sustain grant programs.
- **Benefactor Fellows** is the highest leadership giving level and are those who have completed the initial \$1,000 pledge and pledge to pay at least \$300 annually to help fund important grant programs. Benefactors lead by example.



FELLOW ENROLLMENT FORM

☐ Attorney ☐ Non-Attorney

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

Firm or other affiliation: _____

Mailing & Delivery Address: _____

City/State/Zip: _____

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

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

☐ Total amount enclosed, \$1,000

☐ \$100 enclosed & bill annually

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

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

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

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

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distribution to the Oklahoma Bar Foundation and my
contact information is listed above.*

☐ *General contribution: I need to do more this year and my added
donation in the amount of \$_____ is enclosed.*

Many thanks for your support & generosity!

'Just' Rewards

By Catina R. Drywater

On Oct. 17, 2009, I stood in the Great Hall of the Supreme Court of the United States of America and readied myself to enter the courtroom. I had a feeling so overwhelmingly surreal that I had to take a moment to pinch myself — was I really about to walk into our nation's highest court to receive an award for my work as a lawyer? I was! Did I really just have a conversation with Justice Sandra Day O'Connor? I did! That night was one of the most amazing and joyful experiences of my professional life thus far.

As a recipient of the American Inns of Court Sandra Day O'Connor Award for Professional Service, I was honored at the annual AIC Celebration of Excellence held in Washington, D.C. at the U.S. Supreme Court. The American Inns of Court established the award to honor an American Inn of Court member in practice 10 or less years for excellence in public interest or pro bono activities. It is a national award, selected from many nominations submitted by various inn chapters throughout the United States. To say that I was thunderstruck when I was notified that I had been selected as the 2009 recipient of this award is a gross understatement. Frankly, I found myself

rendered speechless, which for those who know me is no insignificant feat. Even now, a year later, I find it difficult to put into words how incredibly humbled and grateful I am to be recognized and honored for my work in public interest law — work that I truly believe is its own reward. Furthermore, for that honor to be in the namesake of a truly amazing legal pioneer, Justice Sandra Day O'Connor, is utterly divine.

The very core of my existence as an attorney, and as a human being for that matter, is fueled by a sense of responsibility to make a difference in this world. My mission, if you will, has been to make every effort to ensure that those who are touched by the work I do are better for it. I have found the words of Justice O'Connor to ring true for my life. She said:

Ensuring that there is, indeed, "equal justice under law" — not just for the wealthy but also for the poor, the disadvantaged and the disenfranchised — is the sustenance that brings meaning and joy to a lawyer's professional life.¹ I have indeed found joy in helping empower individuals by providing them with the information and materials they need to ensure they have access to

justice. Those are my "just" rewards. They are the rewards I sought as I began my career at Legal Services of Eastern Oklahoma developing pro se materials for individuals who would not otherwise be served due to our limited resources. They are the rewards I continue to pursue today as a state's attorney for Oklahoma Child Support Services, a division of the Oklahoma Department of Human Services.

My chosen career path is most definitely one for the public good, but it is not an entirely selfless path to take. As I stated above, the payoff for doing this kind of work can be quite powerful. And, although an actual career in public interest law is not for everyone, many opportunities to engage in pro bono activities afford every member of the bar a chance to reap the rewards that doing work for the public good sows. If there is anything this past year has taught me, it is that those rewards are more far reaching than even I had imagined. As it turns out, the remuneration is generous and wide ranging.

PRO BONO REWARDS

The most obvious rewards of pro bono activities are, of course, the positive outcomes for those who are on the

receiving end of the help. Individuals who would not otherwise have recourse or access to the justice system are provided with opportunities to be heard with the help of pro bono assistance. There are also those instances when non-profit groups or entities are benefited by pro bono services which, in most cases, helps to further the goals and missions of the group by ensuring that vital resources are directed to the services they provide rather than legal fees.

The list of rewards for those helped by public service work could go on. However, those individuals or groups helped by pro bono activities are not the only recipients of the rewards that come from doing work for the public good. We, as members of the bar, also reap great rewards. One of the most significant rewards is the improvement of community perceptions regarding our profession. Each member of the bar must share in the responsibility for promoting positive public perceptions of the legal profession. Unlike the famous rocker Joan Jett, we really have to give a damn about a bad reputation — and not just our individual reputations.

We must be actively involved in the communities we serve and ensure that with every fiber of our beings we are adhering to our obligations of professionalism, which require us to do more than be receptacles of the law but also to uphold the integrity of our profession. Actively engaging in public service work helps to ensure that public perceptions of the legal system being funda-

mentally unfair or unjust are not perpetuated. Each act of public service fortifies our respectability in our communities. Additionally, those acts of public service and the gained community respect are not lost on fellow members of our legal communities. They will notice. One of the most significant lessons I learned this past year was that other members of my profession were paying attention to what I was doing, and more importantly, they were moved by it. In fact, Tulsa County District Judge Mary F. Fitzgerald was so moved by my activities that she took the time to nominate me for the award that led to an extraordinary moment in my professional career.²

Finally, if helping the professional reputation of the bar is not enough reward, how about the *physical* rewards of doing work for the public good? Yes, you did just read that. There are indeed physical benefits to our brains and bodies as a result of engaging in altruistic endeavors. According to recent research conducted by Dr. Stephen G. Post, founder and director of the Center for Medical Humanities, Compassionate Care and Bioethics at Stony Brook University, there are positive physical reactions related to engaging in good deeds that work to alleviate stress in the body. Stress in the body can ultimately lead to a number of cellular changes, one being premature aging. Post's research indicates that "[u]ltimately, the process of cultivating a positive emotional state through prosocial behaviors — being generous — may lengthen your life."³ In fact, Post's

studies have actually found that older adults who volunteer reap significant benefits in their health and well-being over those who chose not to volunteer. In fact, those who volunteered were living longer than non-volunteers. He found a 44 percent reduction in early death among those who volunteered a lot — a greater effect than exercising four times a week!⁴

Additionally, one of our own, Allen Luks, a New York lawyer known for his many decades of public service work, is famous for having coined the term "helper's high," which is the powerful physical feelings people experience when directly helping others. Luks conducted a study of more than 3,000 male and female volunteers and concluded that regular helpers are 10 times more likely to be in good health than people who don't volunteer.⁵ His book, *The Healing Power of Doing Good*, lists several factors that support the idea that there is a biochemical reaction to altruistic endeavors. Just a few of those factors are as follows⁶:

- Helping others contributes to the maintenance of good health and can diminish the effect of minor and serious psychological and physical diseases and disorders.
- The health benefits and sense of well-being return for hours or even days whenever the helping act is remembered.
- Stress-related health problems improve after performing kind acts.

- Helping others:

- o Reverses feelings of depression.
- o Supplies social contact.
- o Reduces feelings of hostility and isolation that can cause stress, overeating, ulcers, etc.

All of which is further evidence that doing work for the public good and engaging in pro bono activities can have some pretty amazing rewards!

In closing, I hope that my story and passionate remarks for making the case to engage in pro bono activities and public service work has helped to persuade my fellow members of the bar that the rewards of doing this type of work are not just “rewards,” they can be life-changing events. To those who are already partaking in those rewards — my sincere and heartfelt gratitude goes out to you. To those who are not yet partaking — let’s have lunch!

1. Justice Sandra Day O'Connor, *The Majesty of the Law: Reflections of a Supreme Court Justice* 230 (2004).

2. Judge Fitzgerald’s nomination, on behalf of my excellent Inn Chapter, Hudson Hall Wheaton, was also accompanied by wonderful letters of recommendation from Gary Dart, director of Oklahoma Child Support Services, Claudia Arthrell, director of Professional Services at Family and Children’s Services, and Vicki A. Cox, Tulsa County District Court administrator. I am extremely grateful to them for taking the time to supplement my nomination.

3. Jeanie Lerche Davis, *The Science of Good Deeds: The helper’s high could help you live a longer, healthier life* (2005), www.webmd.com/balance/features/science-good-deeds.

4. *Id.*

5. Allen Luks, *The Healing Power of Doing Good*, (2001).

6. *Id.*

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Letter from the YLD Chair

By Molly Aspan, YLD Chairperson

As I write my last letter as the YLD chair, I would like to take this opportunity to reflect back upon the past year and recognize some people who have been involved in making this year such a success. It has been an honor serving as YLD chair, and I sincerely appreciate my colleagues at Hall Estill and my husband Brian for permitting me to make the time commitment and for supporting me along the way.

We started out the year in January with an orientation in Oklahoma City for all members of the YLD Board of Directors, all YLD committee chairs, and YLD liaisons to OBA committees. We also hosted our ABA YLD Chair-Elect Michael Bergmann of Chicago and our ABA YLD District 24 Representative Gwendolyn Rucker from Little Rock at this event.

In February, our board prepared Bar Exam Survival Kits and distributed them to all applicants taking the bar exam in both Oklahoma City and Tulsa. We also had four delegates and an alternate attend and participate in the ABA YLD Assembly at the Mid-Year Meeting, and I also had the opportunity to represent the OBA YLD in the ABA House of Delegates.



YLD Chair Molly Aspan (center) recognizes Debbie Brink (left) and Carol Manning as Friends of the YLD.

In March, our YLD Mock Trial Committee held the Oklahoma State Finals for high school students. I would like to thank the Mock Trial Committee and its Chair, Erin Moore, for their continued efforts and support of this event. In April, we hosted a reception for new admittees after the swearing-in ceremony. We also hosted new attorney receptions in Oklahoma City and Tulsa for existing members of the bar to welcome new admittees.

May was a busy month for us, as we held our inaugural Statewide Community Day of Service for libraries, and, with the assistance of over 70 attorneys,

we performed community service projects for 13 libraries across the state. We were recognized by the ABA with an Award of Achievement for this event and were very proud of that recognition. I would like to thank YLD Community Service Chair Jennifer Kirkpatrick of Hall Estill for her work and efforts in planning and organizing this event, along with the members of the YLD Board of Directors who hosted events at their local libraries.

We also held a Wills for Heroes event in Muskogee in May in conjunction with their Law Day activities. Additionally, we had three representatives attend and participate in the ABA YLD Spring Conference, where we



The YLD recognizes Roy Tucker (left) as Officer of the Year, Jennifer Kirkpatrick (second from right) as Committee Chairperson of the Year and Doris Gruntmeir as Director of the Year.

had the opportunity to highlight our Statewide Community Day of Service event to other states at the Affiliate Showcase.

We held our YLD Mid-Year Meeting in conjunction with the OBA Solo and Small Firm Conference in June. We hosted Missouri YLS Chair Jason Rew to participate in and present at the meeting. Additionally, we hosted a hospitality suite for all YLD and bar members at the meeting and conference.



Gina Hendryx (left), Keri Foster (second from right) and Luke Gaither are inducted as Fellows in the YLD.

In July, our board again prepared Bar Exam Survival Kits and distributed them to all applicants taking the bar exam in both Oklahoma City and Tulsa. In August, we had four delegates and an alternate attend and participate in the ABA YLD Assembly at the Annual Meeting, and I again had the privilege to represent the OBA YLD in the ABA House of Delegates.

Our YLD Disaster Response and Relief Committee was unfortunately busy this summer as Oklahoma had severe storms and flooding during the summer months. Along with the OBA Disaster Response and Relief Committee and OBA staff, the YLD set up and had training

for approximately 15 volunteer attorneys who provided legal services to about 21 individuals needing assistance due to the storms and flooding in the Oklahoma City area.

In September, we hosted a reception for new admittees after the swearing-in ceremony. In October, we hosted new attorney receptions in Oklahoma City and Tulsa for existing members of the bar to welcome new admittees.

November was another busy month, as it started with our YLD Annual Meeting held in conjunction with the OBA Annual Meeting. At this meeting, election results for the YLD Board of Directors were announced, and, for the first time ever, we developed and permitted electronic voting

for these positions. As a result, our voting participation increased by more than 1,000 percent! This was a tremendous success, and

we plan to improve upon and continue the system for future elections.

We also hosted our first Past Chairs Reception at the OBA Annual Meeting for all past chairs of the OBA YLD. In conjunction with this event, we also compiled a complete historical list of our past leadership and award recipients. We also recognized this year's award recipients at this event. There was an excellent turnout for this reception, and the overwhelming response was that we make this an annual event.

In addition to our YLD Annual Meeting and Past Chairs Reception, the YLD also organized a CLE track for young attorneys for the Annual Meeting and hosted Casino Night for all bar members, along with a hospitality suite.

In addition to these activities and events, we have also had other committees actively involved in public service projects. Our Seniors Committee, chaired by Bryon Jay Will of Edmond, prepared and updated a *Seniors Handbook*. The citizens



Past Chairpersons who attended the reception at the Annual Meeting are (from left, top row) Jack Brown, John Morris Williams, Chris Camp, Luke Gaither, Richard Rose, Jon Parsley, John Stuart, Brian Hermanson, Richard Ogden, (bottom row) Keri Foster, Molly Aspan, D. Renée Hildebrandt, Lou Ann Moudy and M. Courtney Briggs.

handbook provides legal advice on a wide array of topics relevant to senior citizens. This *Seniors Citizens Handbook* will be published both in paper form and electronically within the next few months, and this committee is also preparing to roll-out a Serving Our Seniors program.

Next, I would like to thank Doris Gruntmeir, attorney with the VA Hospital and an OBA YLD director for many years, for her continued service and support of the YLD. Doris has co-chaired the YLD New Attorney Orientation Committee (the committee that coordinates the Bar Exam Survival Kits and receptions for new admittees) for the past few years, and was also instrumental this year in coordinating volunteers for the disaster relief services provided during the summer and preparing a historical list of OBA YLD leadership and award recipients. Doris has recently moved to Indianapolis, and I know I am not the only past chair who owes much of my success to her. Doris, you will be missed by many.

In addition to those mentioned specifically above, I would like to thank every member of our Board of Directors and Executive Committee this year.

YLD BOARD OF DIRECTORS

Judge Nathan Johnson of the Lawton Municipal Court

Roy D. Tucker, City of Muskogee

Jennifer Kirkpatrick, Hall Estill in Oklahoma City

Richard L. Rose, Mahaffey & Gore in Oklahoma City

Jacob W. Bibby, Martin, Jean & Jackson in Ponca City

Hannah A. Cable, Oklahoma Department of Mental Health and Substance Abuse Services in Oklahoma City

Robert R. Faulk, Faulk Law Firm in Enid

Amber Peckio Garrett, Garrett Law Center in Tulsa

Doris Gruntmeir, VA Hospital

Kaleb Hennigh, Mitchell Gaston Riffel & Riffel in Enid

Breea D. McCorkle, University of Oklahoma in Norman

LeAnne Z. McGill, McGill & Rodgers in Oklahoma City

Kimberly K. Moore-Waite, Legal Aid Services of Oklahoma, Tulsa Office

Lane Rudder Neal, Oklahoma County District Attorney's Office in Oklahoma City

Javier Ramirez, Moore Law Firm in Okmulgee

Karolina Roberts, Elias Books in Oklahoma City

Briana J. Ross, Oklahoma REO Closing & Title Services in Tulsa

Jeff Trevillion, OG&E in Oklahoma City

Joe Vorndran, Stuart Clover Duran Thomas in Shawnee

Collin R. Walke, Kyle Sweet & Associates in Oklahoma City

Bryon Jay Will, Law Office of Bryon Jay Will in Oklahoma City

It has been a busy year, and it would not have been possible without the hard work and commitment of our directors. Finally, I would be remiss if I failed to thank the OBA staff, who has been supportive on every level and never fails to lend a helping hand. To John Morris Williams, I know it is your job, but you do it well.

Before the music starts, I would like to take a moment to look forward to 2011. I am pleased to leave the YLD in good hands, as Roy Tucker has been busy preparing to take over as chair in January, then Jennifer Kirkpatrick in January 2012. Roy will do an excellent job next year, and I am excited to see what he has in store. I know I am safe saying it will not be boring!

PAST YLD CHAIRS

1966	C.B. Savage, Tulsa (deceased)	1988	Dwight L. Smith, Tulsa
1966	Robert S. Baker, Arcadia	1989	Mark Stonecipher, Oklahoma City
1967	Fred A. Gipson, Oklahoma City	1990	Stephen R. Clouser, Tulsa
1968	Stanley P. Doyle, Oklahoma City	1991	Eric S. Eissenstat, Oklahoma City
1969	Andrew M. Coats, Oklahoma City	1992	Jack L. Brown, Tulsa
1970	David F. James, Tulsa	1993	John Morris Williams, Oklahoma City
1971	Phillip D. Hart, Oklahoma City	1994	James Hicks, Tulsa
1972	Bert C. McElroy, Tulsa (deceased)	1995	Brad Fuller, Tulsa
1973	Gary F. Glasgow, Oklahoma City	1996	Richard Ogden, Oklahoma City
1974	Jim D. Shofner, Tulsa	1997	M. Courtney Briggs, Oklahoma City
1975	Loyal J. Roach III, Muskogee	1998	Robert Sartin, Tulsa
1976	Patrick M. Ryan, Oklahoma City	1999	Pat Cipolla, Tulsa
1977	James E. Pence, Norman	2000	Renée Hildebrant, Oklahoma City
1978	John R. Barker, Tulsa	2001	Lou Ann Moudy, Okmulgee
1979	John J. Griffin Jr., Oklahoma City	2002	Jon Parsley, Guymon
1980	Warren K. Miller, Norman	2003	Leslie L. Lynch, Oklahoma City
1981	John G. Johnson, Del City	2004	Mark W. Osby, Yukon
1982	Brian T. Hermanson, Ponca City	2005	Luke Gaither, Henryetta
1983	Gary W. Pullin, Chickasha	2006	Keri Williams Foster, Stillwater
1984	N. Kay Bridger-Riley, Tulsa	2007	Christopher Camp, Tulsa
1985	John M. Stuart, Duncan	2008	Kimberly Warren, Tecumseh
1986	James E. Golden Jr., Oklahoma City	2009	Rick Rose, Oklahoma City
1987	Richard A. Woolery, Sapulpa	2010	Molly Aspan, Tulsa

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LAWYERS HELPING LAWYERS ASSISTANCE PROGRAM

Calendar

December

- 15 Oklahoma Council of Administrative Hearing Officials;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Carolyn Guthrie (405) 271-1269 Ext. 56212
- 17 OBA Board of Governors Meeting;** 9 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: John Morris Williams (405) 416-7000
- OBA Military Assistance Task Force Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Dietmar Caudle (580) 248-0202
- 18 OBA Young Lawyers Division Board of Directors Meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Molly Aspan (918) 594-0595
- 23-24 OBA Closed** – Christmas Day Observed
- 31 OBA Closed** – New Year Holiday Observed

January



- 5 OBA Law-related Education Law School for Legislators;** 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jane McConnell (405) 416-7024
- 7 OBA Lawyers Helping Lawyers Assistance Program Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact: Tom Riesen (405) 843-8444

- 14 OBA Board of Governors Meeting;** 9 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: John Morris Williams (405) 416-7000
- OBA Board of Governors Swearing-in Ceremony;** 10:30 a.m.; Supreme Court Courtroom, State Capitol; Contact: John Morris Williams (405) 416-7000
- OBA Family Law Section Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Kimberly K. Hays (918) 592-2800
- 17 OBA Closed** – Martin Luther King Jr. Day Observed
- 19 Oklahoma Council of Administrative Hearing Officials;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Carolyn Guthrie (405) 271-1269 Ext. 56212
- 21 Oklahoma Bar Foundation New Trustee Orientation;** 10:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Nancy Norsworthy (405) 416-7070
- Oklahoma Bar Foundation Trustee Meeting;** 1 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Nancy Norsworthy (405) 416-7070
- 22 OBA Law-related Education We the People State Finals;** 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jane McConnell (405) 416-7024
- 27 OBA Legal Intern Committee Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact: H. Terrell Monks (405) 733-8686
- 28 OBA Lawyers Helping Lawyers Assistance Program Training;** 12 p.m.; Tulsa County Bar Center, Tulsa; Contact: Tom Riesen (405) 843-8444

February

- 1 OBA Law-related Education Committee Meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jack G. Clark (405) 232-4271
- 4 Oklahoma Bar Foundation Grants and Awards Committee Meeting;** 8:30 a.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact: Nancy Norsworthy (405) 416-7070
- 9 Ruth Bader Ginsburg American Inn of Court;** 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Donald Lynn Babb (405) 235-1611

- 11 **OBA Family Law Section Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Kimberly K. Hays (918) 592-2800
- 16 **OBA Law-related Education Close-Up Program;** 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jane McConnell (405) 416-7024
Oklahoma Council of Administrative Hearing Officials; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Carolyn Guthrie (405) 271-1269 Ext. 56212
- 17 **OBA Law-related Education Close-Up Program;** 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jane McConnell (405) 416-7024
OBA Law-related Education Close-Up Teachers Meeting; 1:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jane McConnell (405) 416-7024
- 21 **OBA Closed** – President's Day Observed
- 22-25 **OBA Bar Examinations;** Oklahoma Bar Center, Oklahoma City; Contact: Oklahoma Board of Bar Examiners (405) 416-7075



Oklahoma Bar Journal Editorial Calendar

2011

■ January:
Meet Your OBA
 Editor: Carol Manning

■ February:
Tort/Civil Litigation
 Editor: Leslie Taylor
 leslietaylorjd@gmail.com
 Deadline: Oct. 1, 2010

■ March:
Criminal Law
 Editor: Dietmar K. Caudle
 d.caudle@sbcglobal.net
 Deadline: Jan. 1, 2011

■ April:
Law Day
 Editor: Carol Manning

■ May:
Real Estate and Title Law
 Editor: Thomas E. Kennedy
 thomas.kennedy@
 oktax.state.ok.us
 Deadline: Jan. 1, 2011

■ August:
Children and the Law
 Editor: Sandee Coogan
 scoogan@coxinet.net
 Deadline: May 1, 2011

■ September:
Bar Convention
 Editor: Carol Manning

■ October:
Labor and Employment Law
 Editor: January J. Windrix
 janwindrix@yahoo.com
 Deadline: May 1, 2011

■ November:
Military Law
 Editor: Dietmar Caudle
 d.caudle@sbcglobal.net
 Deadline: Aug. 1, 2011

■ December:
Ethics & Professional Responsibility
 Editor: P. Scott Buhlinger
 scott@bwrlawoffice.com
 Deadline: Aug. 1, 2011

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

New Supreme Court Leaders to Take Oath

Justice Steven W. Taylor will take the oath as chief justice and Justice Tom Colbert as vice chief justice during a session of the court at 10 a.m. on Monday, Jan. 3, 2011, in the Supreme Court Courtroom on the second floor of the State Capitol Building.

The Supreme Court of the State of Oklahoma

You are cordially invited
to the ceremony for the
swearing-in of

Douglas L. Combs
as

Justice of the Supreme Court
The State of Oklahoma
Friday, January 7, 2011
2:00 p.m.

Supreme Court Courtroom
Second Floor
State Capitol Building
Reception Immediately Following
State Capitol Rotunda

*For further information, contact
Deby.Berkowitz@oscn.net
or (405) 521-3847*

New Leaders Selected for Court of Criminal Appeals

On Jan. 1, 2011, Judge Arlene Johnson will become presiding judge of the Court of Criminal Appeals, and Judge David B. Lewis will become vice presiding judge. They will serve two-year terms in those leadership positions.



Judge Arlene Johnson



Judge David B. Lewis



Judge Robert Dick Bell



Judge Doug Gabbard

Court of Civil Appeals Elects New Leadership

Judge Robert Dick Bell has been elected to serve a one-year term as chief judge of the Oklahoma Court of Civil Appeals. The court elected Judge Bell during a Nov. 18 meeting and selected Judge Doug Gabbard as vice chief judge. Judge Bell assumes responsibilities from outgoing Chief Judge Jane Wiseman on Jan. 1, 2011. Both Judge Bell and Judge Gabbard have served on the Court of Civil Appeals since 2005.

OBA Member Reinstatement

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

John Arthur Coates
OBA No. 18323
6416 S. Quebec Avenue
Tulsa, OK 74136-1611

Bar Center Holiday Hours

The Oklahoma Bar Center will be closed Thursday and Friday, Dec. 23 and 24, in observance of the Christmas holiday. The bar center will also close Friday, Dec. 31, for the New Year's holiday.

New OBA Board Members to be Sworn In

Nine new officers and members of the OBA Board of Governors will take their oaths of office on Jan. 14, 2011, at 10:30 a.m. in the Supreme Court Courtroom at the State Capitol. The new officers are President Deborah Reheard, Eufaula; President-Elect Cathy Christensen, Oklahoma City; and Vice President Reta M. Strubhar, Piedmont.

To be sworn into the OBA Board of Governors to represent their judicial districts are Gerald C. Dennis, Antlers; Scott Pappas, Stillwater; and O. Christopher Meyers, Lawton. Renée DeMoss, Tulsa, was elected to an at-large position. All will serve three-year terms.

To take the oath for one-year terms on the board are Immediate Past President Allen Smallwood, Tulsa; and Young Lawyers Division Chairperson Roy D. Tucker, Muskogee.

OCU LAW Dean Announces Intention to Step Down in 2011

Oklahoma City University School of Law Dean Lawrence K. Hellman, the longest-serving dean in the law school's history, has announced that he intends to leave the deanship at the end of the current academic year on June 30, 2011.

Dean Hellman will return to teaching and scholarship at OCU LAW, where he has been a member of the faculty since 1977. He became dean in 1998. Along with resuming his teaching duties, Dean Hellman will continue to lead OCU LAW's expanding programs with Chinese legal institutions and the creation of its innocence clinic — projected to begin operations in 2011.

OBA Member Resignations

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

Walter L. Brignon III OBA No. 1133 P. O. Box 241747 Anchorage, AK 99524-1747	Hilary Grace Phillips OBA No. 18294 737 Wellington Ave., No. 3 Chicago, IL 60657	Pamela M. Roach OBA No. 19387 800 S. Kelly Avenue, Apt. 104 Edmond, OK 73003	Julian Stuart Smith OBA No. 20112 500 NW 48th Street Oklahoma City, OK 73118
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Know a Teacher and/or School Who Deserves Recognition?

Nominations are now being accepted for Oklahoma Supreme Court School and Teacher of the Year. Each year the Supreme Court recognizes one school and one teacher for their outstanding contribution to civics education. Honorees are presented with a trophy and \$1,000 during a special session of the Supreme Court. Educators are encouraged to nominate their school, a special teacher, or themselves for the award. Nomination forms are available online at www.okbar.org/public/lre/awards.htm. Submission deadline is Jan. 12, 2011.



Coming Soon – New OBA Membership Cards

Membership cards for all OBA members expire at the end of this year, but new cards will be mailed within the next two weeks. When they arrive, they will be hard to miss because the outside of the envelope will say, "New Membership Card Enclosed."

VOLUNTEERS CRITICAL TO OBA SUCCESS

President-Elect Deb Reheard knows you are busy making a living at practicing law. She's a small-town lawyer herself and knows the challenges of finding time for volunteer work. But the OBA needs you, and she urges you to sign up for a committee or to re-enlist if your term is expiring. Signing up for a committee is easy online (link at www.okbar.org) or use the form in this issue. Deadline has been extended to Dec. 17, 2010.

Kudos

John R. Hargrave was recently inaugurated as East Central University's 8th president. Mr. Hargrave was named president of ECU by the Board of Regents of the University System of Oklahoma. He graduated from ECU with honors in 1977, and then went on to receive his J.D. from the University of Oklahoma in 1980. Prior to his inauguration, Mr. Hargrave was a managing partner of the Edmonds Cole Law Firm in Oklahoma City.

Russell L. Anderson was named Director of Programs for GWACS Defense Inc. in Tulsa. GWACS is a defense technology company that designs and develops acoustical gunshot detection systems for the military and law enforcement. Prior to GWACS, Mr. Anderson served as Tulsa County ADA and Tulsa County Referee. He graduated from TU Law School in 1981.

Brent Wright was recently promoted to the rank of colonel and will serve as the vice chief of the Joint Staff, Air for the Oklahoma National Guard. Col. Wright is currently assigned as the Staff Judge Advocate, 138th Fighter Wing, Oklahoma Air National Guard Base in Tulsa. Col. Wright has extensive experience in the areas of international and operational law. He is a life member of the 45th Division Association,

Harvard Alumni Association, National Guard Association of the United States, National Guard Association of Oklahoma and Veterans of Foreign Wars as well as a member of the Cherokee Nation and the American Legion.

Dennis L. Baker was recently named as the new special agent in charge of the FBI's St. Louis Division. Mr. Baker has been with the FBI since June 1988, and served most recently as special assistant to the deputy director, where he provided assistance with policy and administrative matters. He graduated from the University of Tulsa, where he earned a B.A. in English and a J.D. Mr. Baker is also a former Tulsa police officer.

S. Douglas Dodd of Tulsa, **James E. Green Jr.** of Tulsa, **Laura McConnell-Corbyn** of Oklahoma City and **John Kenney** of Oklahoma City were recently recognized by Legal Aid Services of Oklahoma Inc. with the William G. Paul Oklahoma Justice Award at the Oklahoma Bar Association's 106th Annual Meeting.

Neal R. "Nick" Kennedy was recently recognized by the Intellectual Property Law Section with the 2010 Hall of Fame Induction. Mr. Kennedy was given the award for his contribution to the success of the section and to the practice of intellectual property law in the state of Oklahoma.

Federman & Sherwood of Oklahoma City announces **Sara E. Collier** has been successful in two recent appellate

engagements assisting the Veterans Consortium Pro Bono Programs. Ms. Collier has been working with the VCPBP for over three years volunteering her time to represent Veterans who may not be able to afford attorneys to represent them in appeals, where their VA benefits have been wrongfully denied or curtailed.

Jerry Shiles and **Sara Murphy** of Oklahoma City recently attended the National Academy of Elder Law Attorneys 2010 Advanced Fall Institute in San Diego, Nov 4-6. Sessions included updates on Medicaid laws, Medicare Set Aside Trusts, Medicaid Irrevocable Trusts and Advance Care Planning for persons with dementia.

David A. Trissell, FEMA Attache to the U.S. Mission to the EU, recently delivered a presentation on the use of social media in disasters at the 2nd Ahr Valley Civil Protection Days Conference in Bad-Neuenhar, Germany.

On The Move

Meyer, Leonard & Allison PLLC of Oklahoma City announces **Wayne Allison** as its newest partner. Mr. Allison's practice involves complex federal and state court litigation, employment law, healthcare law, commercial transactions, class actions and whistleblower suits.

Craig E. Brown, formerly of Brown & Roberts PC in Oklahoma City, has now joined the law firm of Wheeler, Wheeler, Faulkner, Donaldson & Brown. The firm is located at 50 Penn Place, Suite 450, Oklahoma City, 73118; (405) 840-5151; cbrown@50pennlaw.com.

Lyons & Clark Inc. of Tulsa announces **Allyson S. Cave** as its newest associate. Her practice focuses on criminal defense and general civil litigation. She graduated from the TU College of Law.

The Law Firm of Field, Trojan & Long PC of Enid announces **Clint A. Claypole** as its newest attorney. His area of practice includes general civil litigation, personal injury, criminal law, family law, business and corporate law, estate planning, probate, trial and appellate practice. He is licensed in the Oklahoma Supreme Court, all other inferior courts of Oklahoma and the U.S. District Court for the Western District of Oklahoma.

Keith Daniels has joined the law firm of Love, Beal & Nixon PC in Oklahoma City. Mr. Daniels most recently was general counsel for Jana Ferrell & Associates LLC. He received his B.A. from the University of Central Oklahoma in 1995 and his J.D. from the University of Oklahoma in 2003.

Gretchen G. Harris, former Oklahoma assistant attorney general, has joined the law firm of Scoggins & Cross PLLC in Oklahoma City. Her practice involves litigation, regulatory, licensure and administrative matters. She is a graduate of the OU College of Law.

Minon M. Frye and **Tiffany A. Huss** of Tulsa have combined practices. Tulsa Metro Law Center PLLC, located at 803A North Elm Place, Broken Arrow, 74012; (918) 615-4944; www.tulsametro.com. The firm concentrates in the areas of family law, juvenile law, estate planning, criminal law, real property and business law.

John Mahoney has joined The Oklahoma Education Association as an associate general counsel. Prior to joining OEA, Mr. Mahoney was assistant general counsel for the Oklahoma Insurance Department.

Titus, Hillis, Reynolds, Love, Dickman & McCalmon of Tulsa announces **J. Miles McFadden** as its newest associate to the firm. He is a graduate of the OU College of Law. While in law school, he was special features/note editor of the *American Indian Law Review*, as well as a member of the First Amendment Moot Court Competition Team.

Looney, Nichols & Johnson of Oklahoma City announces **Todd A. Murray** as its newest associate. His practice will focus on general civil litigation, including insurance defense. Prior to becoming an attorney, Mr. Murray taught debate and theatre courses for 19 years in Oklahoma public high schools. He is a graduate of the OCU School of Law.

GlassWilkin PC of Tulsa announces **Elise S. Neely** as an associate attorney. Her practice involves general business transactions, health-care law, litigation management and real estate. Ms. Neely earned her B.S. in communication sciences and

disorders from Oklahoma State University. She then earned her J.D. from the TU College of Law.

Helms & Greene LLC has recently opened its Oklahoma office. **Brent Olsson** of Oklahoma City, former partner with Huckaby, Fleming, Greenwood & Olsson, will be managing the new office. The firm concentrates in the areas of employment law, insurance defense, construction defect and product liability.

Shena-Rae Dell Schramm of Tulsa has opened her own practice. Shena-Rae Schramm is located at 1776 S. Utica Ave., Suite 200B, Tulsa, 74104; (918) 550-0528 or (918) 289-0528. Her practice involves workers' compensation claims and Social Security disability. Ms. Schramm graduated from the TU College of Law in 2004.

Wyatt, Kingery, Hale & Associates announces **Casey L. Saunders** as an associate. Mr. Saunders has been an adjunct professor of Legal Studies at East Central University. He is a sustaining member of the National Organization of Social Security Claimant's Representatives (NOSSCR) and is licensed to practice before all Social Security Administration offices of Hearings and Appeals, the Western, Eastern and Northern U.S. District Courts of Oklahoma; the Eastern and Northern U.S. District Courts of Texas; the 10th Circuit Court of Appeals and the Court of Veterans Appeals.

Former Tulsa Mayor and **Oklahoma Commerce Secretary Kathy Taylor** has joined the law firm of McAfee & Taft. After eight years of public service, including most recently as

education advisor to Oklahoma Gov. Brad Henry, Ms. Taylor is returning to the practice of law. She will focus her practice on franchising and distribution, corporate and commercial transactions, mergers and acquisitions and the facilitation of public-private partnerships.

Christian (Szlichta) Whitney, former assistant general counsel of the Oklahoma Corporation Commission, has joined the Department of Business, Economic Development and Tourism, Strategic Planning Division for the state of Hawaii as an energy policy analyst. Ms. Whitney will be moving to Honolulu to specifically focus on Hawaii's aggressive renewable portfolio standards and clean energy initiatives.

At The Podium

Eric L. Johnson recently spoke at the annual con-

ferences for the Oklahoma Chapter of the Risk Management Association. Mr. Johnson discussed how the recent enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act will impact the financial services industry. He is a frequent speaker on commercial and consumer financial services law topics. He represents national finance companies and a wide range of business and financial institutions, providing consumer credit compliance advice on complex federal and state laws and regulations. He is also a graduate of the OCU School of Law.

Matt Stump and **Kelli Stump** of Oklahoma City recently participated in a panel discussion at the American Immigration Lawyers Association Texas Chapter Fall Conference in Playa del Carmen, Mexico. Mr. Stump discussed practice advisories and practice alters for the various field offices of the U.S. Citizenship and Immigration Services. He currently serves as AILA's liaison to USCIS'

Oklahoma City field office. Ms. Stump discussed waivers in court and before USCIS Department of State and Customs Border Patrol. She currently serves as section chair for the AILA OKC USCIS field office.

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

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Articles for the Jan. 16 issue must be received by Dec. 27.

IN MEMORIAM

Edwin Wade Ash of Tulsa died Oct. 20. He was born Sept. 18, 1935, in West Virginia. Mr. Ash graduated from West Virginia University and Salem College in 1953. He then went on to receive his J.D. from TU in 1965. After graduation, he began his private practice as the Ash Law firm. He specialized in personal injury. He was a member of the American College of Trial Lawyers, American Board of Trial Advocates and American Inns of Court. He was admitted to all Oklaho-

ma Courts state and federal, the 9th and 10th Circuit Court of Appeals, U.S. Supreme Court, the Tribal Court of Muskogee (Creek) Nation and Pro Hac Vice in Missouri, Kansas, Arkansas and California. Memorial contributions can be made to the John 3:16 Mission at www.john316mission.org or the Catholic Charities of Tulsa at www.catholiccharitiestulsa.org.

Frank William James of Wynnewood died Nov. 30. He was born on Feb. 19, 1953, in McAlester. He graduated

with a degree in accounting from Panhandle State University, he then went on to receive his J.D. from OCU. Upon graduation from law school, he opened a private practice in Oklahoma City. He moved his practice to Wynnewood in 1990 where he practiced law, farmed and ranched. He was a founding member of the Hartshorne Methodist Church and an associate member of the Wynnewood and Paoli Methodist churches. His other memberships include

Wynnewood Chamber of Commerce, Wynnewood Kiwanis, Wynnewood Academics for Excellence, Wynnewood Ambulance Service Board and Garvin County Bar Association. Mr. James served as district chairman for the Washita District of Boy Scouts, and served in leadership roles in his church and community. He was also a proud member of the Choctaw Nation. Memorial contributions can be made to the Wynnewood or the Paoli First United Methodist Churches. Please send condolence to www.dearmanfuneralhome.com.

Joe S. Rolston IV of Oklahoma City died Oct. 19. He was born Feb. 28, 1964, in Oklahoma City. He graduated from OSU and then went on to receive his J.D. from OCU. Mr. Rolston served as general counsel for companies associated with the gaming and construction industries and the Attorney General's Office. He had represented the Nevada Athletic Commission in the revocation of Mike Tyson's license to box. He appeared on Larry King and numerous news networks as the attorney representing the Athletic Commission. His practice also focused on intellectual property and personal injury. He enjoyed writing, history and literature. Memorial contributions can be made to The Education and Employment Ministry at www.teem.org.

Sidney Phelps Upsher of Oklahoma City died Nov. 28. He was born July 31, 1923, in Oklahoma City. He graduated from Old Classen High School in 1941 and then went on to receive his B.A. in 1947 and a law degree in 1948, both from the University of Oklahoma. **His education was interrupted by World War II, when he enlisted in the Army Air Corps, where he earned his pilot's wings and Officer's commission. As the command pilot of a B-17 Flying Fortress, he successfully completed a 50-mission tour of duty in the European Theatre of Operations. As a result of this service, he was awarded the Distinguished Flying Cross, the Air Medal with Four Oak Leaf Clusters, and the European Theater of Operations Ribbon with Four Battle Stars. He was then assigned to the Air Transport Command and, as a First Pilot, flew personnel and cargo across the Pacific until he was discharged in October 1945.** He returned to Oklahoma and the University of Oklahoma to resume his college career, after which he practiced law in Oklahoma City until the outset of the Korean War. At that time, he was recalled to duty with the Air Force in March 1951, where he was assigned to the Office of the Secretary of the Air Force at the Pentagon. When he was released from duty in October 1952, he became general counsel for LeeWay Motor Freight. He left LeeWay in 1977 as a

member of the Board of Directors and executive vice president. From 1977 to 1987, was the chief executive officer of Mistletoe Express. In 1987 he became of counsel to the law firm of McAfee&Taft, retiring in 1999. His participation in community affairs included: The United Way, first as board member, then as president and Trustee; Casady School, as Trustee and vice president; the City of Nichols Hills, first as councilman then as mayor; board member of Will Rogers Bank and The First National Bank and Trust Company. He was a member and president of the Economy Club of Oklahoma City and the Appeals Review Board. Memorial contributions can be made to All Souls' Episcopal Church, 6400 North Pennsylvania Ave., Nichols Hills, 73116.

Martin Edward Wyatt of Tulsa died Nov. 27. He was born June 4, 1933, in Tulsa. He graduated from Cascia Hall Preparatory School in 1951 and received his law degree from the TU College of Law in 1958. He practiced law, assisted with his father's insurance company and had other jobs until semi-retiring. He was a long-time active and devout member of the Church of Madalene. He was an avid reader, server and happily assisted in any way needed. Memorial contributions can be made to the Church of Madalene in Tulsa or the Catholic Charities of Tulsa at www.catholiccharitiestulsa.org.

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- **FAA (AIRCRAFT) SENIOR ASSOCIATE OR OF COUNSEL** (Possible partner track) with 5 or more years experience in FAA title, registry and regulatory matters (some aircraft transactional work would be a plus).

All inquiries will be treated confidentially. Please submit resume and law school transcript to Judy Cross, Director of Human Resources Recruiting at McAfee and Taft A Professional Corporation, Tenth Floor, Two Leadership Square, 211 N. Robinson, Oklahoma City, OK 73102. No e-mails or phone calls, please.

POSITIONS AVAILABLE

ROBERTSON & WILLIAMS, an AV-rated law firm, searching for a self-sufficient, and financially supportive, knowledgeable, experienced, compatible and skilled attorney practicing civil law, with own clients, to join the firm at our new offices in northwest Oklahoma City. Send resume and history by e-mail to djtl@robertsonwilliams.com.

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IN-HOUSE LEGAL COUNSEL. Love's Travel Stops and Country Stores Inc. seeks full-time attorney for OKC transactional position. 3 to 8 years corporate or transactional experience preferred; real estate experience a plus. Must have strong drafting, negotiation and oral communication skills and be comfortable managing large number of projects. Salary commensurate with qualifications and experience. Eligible for full benefits package and long-term incentive plan. Submit resume by e-mail or U.S. Mail (to be held in confidence) to: Amy Guzzy, Director of Legal Services, 10601 N. Pennsylvania Ave., Oklahoma City, OK 73120, amy.guzzy@loves.com. Company information at www.loves.com.

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TITLE EXAMINATION ATTORNEY position available. Commercial and residential examination experience required. Underwriting experience a plus. Send resume to Jennifer Moradi at 701 N. Broadway Ave., Suite 300, Oklahoma City, OK 73102 or jmoradi@stewart.com.

NORTHEASTERN OKLAHOMA LAW FIRM seeks attorney with 2-5 years experience in real property law, real estate transactions, or oil and gas and appearing in court. Landman experience is also helpful, but not required. Send resume and writing sample to "Box V," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

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The Estate Planning Emergency in Nigeria

By Jeff Nix

Although my practice is pretty much limited to representing employees in employment law matters, I recently appear to be among a select small group of lawyers being contacted by e-mail from Nigeria. I am being asked to branch out and represent various widows of various heads of state, physicians to presidents, secretaries to treasurers and other big shots. These grieving widows have remarkably similar plights...their husbands died suddenly, leaving millions and millions in U.S. currency, securities, gold coins or bullion.

Sadly, as if the sudden loss of a spouse were not tragedy enough, the currency/ securities/ gold is hopelessly "tied up." Perhaps I was selected because I know how difficult it can be to deal with bureaucracies, Red tape, import/export and bank regulations. All of this on top of the tragedy of sudden widowhood. And they turn to me in their despair. Can I help?

Well of course the first lawyerly thought I have is how can men of such importance and wealth fail to have a good estate plan? I suppose that, like men everywhere, they thought they would

well, that is the past and this is the present.

So, I am drawn to these widows, because, after all, although I have no known presence in Nigeria, or even the African continent,

the U.S. to "run the money/securities/gold through," and I will be rich. Say...why not my bank here in Tulsa? Splendid and simple. Give them my account number, and they will make a huge deposit.

They will have tens of millions of U.S. dollars to help them face the future without their dear departed, and I will have millions to save or fritter. That yacht I have always wanted to dream of. Perhaps a castle near Grand Lake, or perhaps in the south of France I don't know anything about. Imagine

going to the ATM and seeing that my balance is \$15,674,328.73. So, by the time you other lawyers read this, I'll be in tall cotton, and you will be wondering, "How can I get in on a deal like this?" Sorry, but I am one of the chosen.

Mr. Nix practices in Tulsa.

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



live forever and put off getting with an estate planner or probate lawyer to make a plan that would kick in when they kicked off. And, in their defense, they were relatively young when they died, and young and fiery Nigerian movers and shakers rarely do think of the future without them. I admit I am momentarily struck by the high mortality rate for Nigerian bigwigs. Who would have thought their particular exalted position would be so dangerous? Oh

nonetheless, my reputation as a good and honest, compassionate lawyer somehow made it across whatever seas and continents separate Tulsa from Nigeria. And, since they have gone to such lengths to research lawyers all over the world, and settled on little old me, I am flattered and want to help. Oh, alright. They do promise me millions in exchange for my services.

All I have to do is provide them with a banking relationship in

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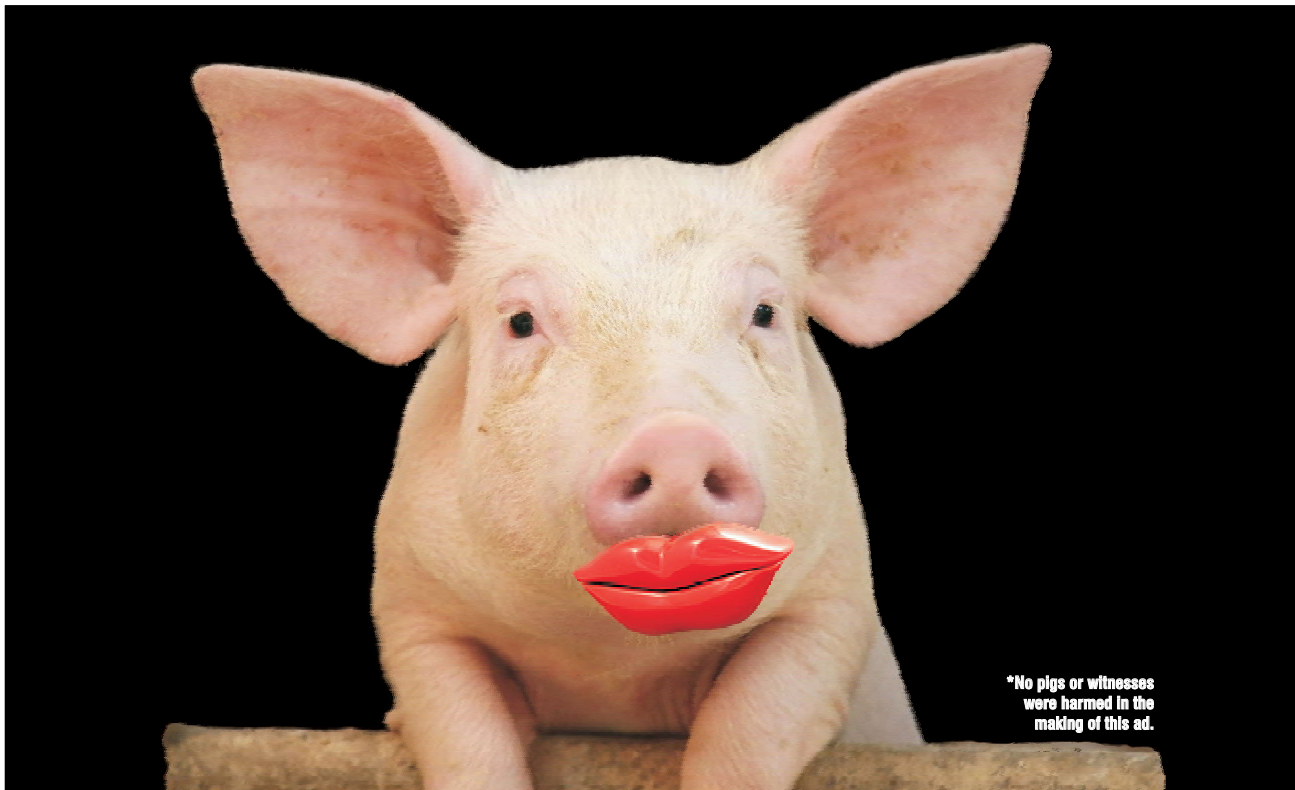
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