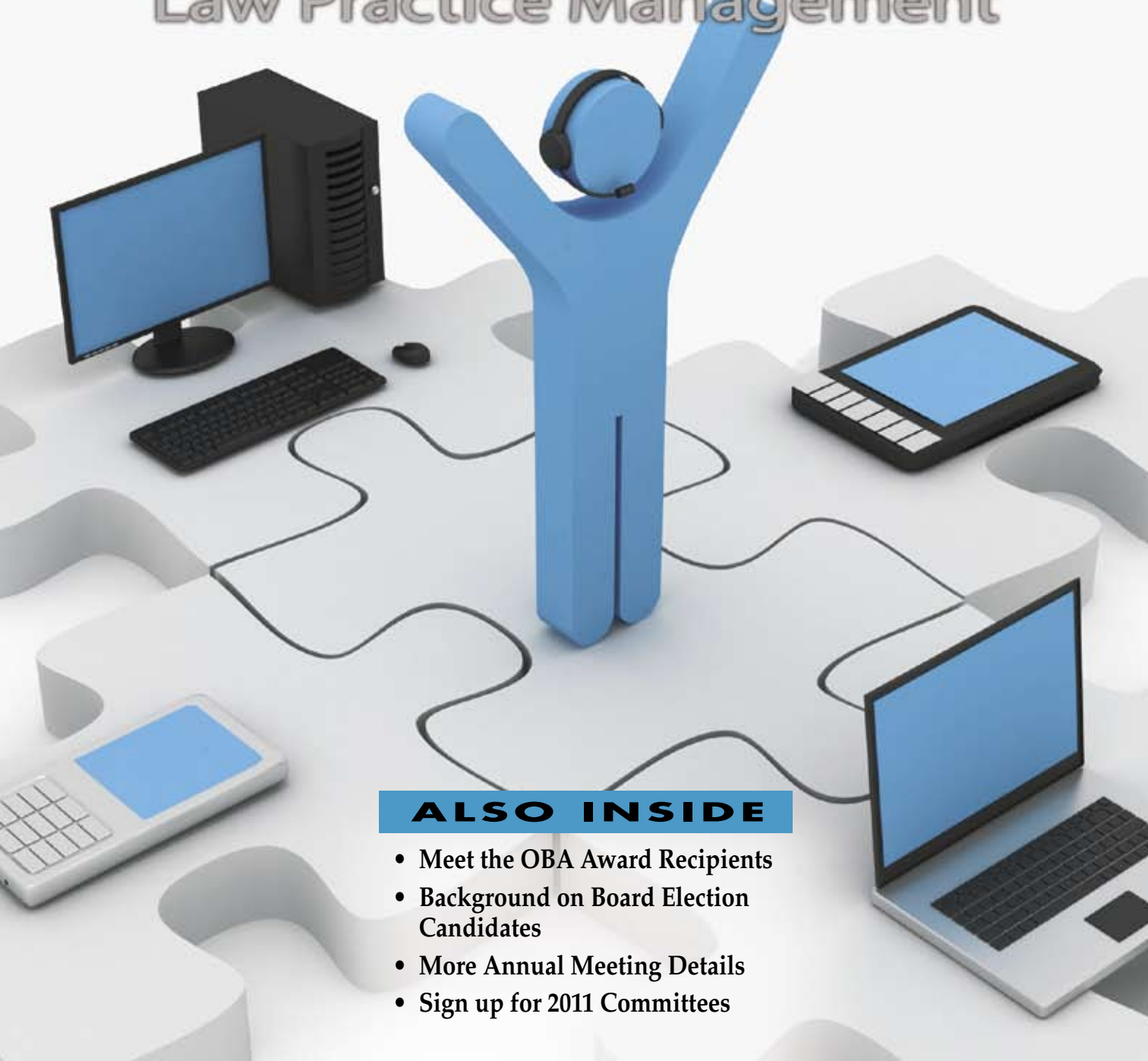
THE Oklahoma Bar JOURNAL
Volume 81 ◆ No. 29 ◆ November 6, 2010

Technology & Law Practice Management



ALSO INSIDE

- Meet the OBA Award Recipients
- Background on Board Election Candidates
- More Annual Meeting Details
- Sign up for 2011 Committees

Eyewitness Testimony: How Eyewitness Accounts Can Lead to False Accusations

OBA/CLE Plenary Session
Thursday, Nov. 18, 2010
Crowne Plaza Hotel, Tulsa

Jennifer Thompson was raped at knife point by a man who broke into her apartment while she slept. She was able to escape, and eventually positively identified Ronald Cotton as her attacker. Ronald insisted that she was mistaken - but Jennifer's positive identification was the compelling evidence that put him behind bars. After eleven years, Ronald was allowed to take a DNA test that proved his innocence. He was released, after serving more than a decade in prison for a crime he never committed. Two years later, Jennifer and Ronald met face to face - and forged an unlikely friendship that changed both of their lives.

Program runs from 8:30 a.m.- 11:50 a.m.
Approved for 3 hours MCLE/0 hours ethics

Registrants will receive a copy of Picking Cotton: Our Memoir of Injustice and Redemption by Jennifer Thompson-Cannino and Ronald Cotton.

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Incarceration of Women in Oklahoma

OBA Annual Meeting
Thursday, Nov. 18, 2010
Crowne Plaza Hotel, Tulsa

Oklahoma ranks first in the nation in female incarceration. Currently, Oklahoma stakeholders are developing strategies to address prevention, intervention and diversion, and re-entry and recidivism. Attend this session and learn what is being done about this serious social issue, and learn what you need to know if you represent a female criminal defendant.

This program is FREE! No MCLE credit given. Starts at 2:15 p.m.

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THEME:
TECHNOLOGY & LAW PRACTICE MANAGEMENT
EDITOR: JANUARY WINDRIX

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Judicial Elections: There Must Be a Better Way

By Allen Smallwood

It's that time again. The quadrennial bloodletting we call campaigning for judicial positions. An upfront disclaimer — I am currently the chairman of the Judicial Nominating Commission and, as this is my sixth and last year, I will be chairman until October of 2011. This article will be published after the elections, but it is being written during the first week of October 2010. As of that time the campaigning in Tulsa has been rather low key, civil and responsible. However, we in Tulsa County (and I believe our brethren in Oklahoma County) can remember the nastiness of the 2006 campaigns and those of us as long in the tooth as I am can remember other campaigns no less acrimonious. While ostensibly judicial campaigns are non-partisan, we all know how with a nod and a wink political affiliations can be conveyed and make judicial elections almost as partisan as normal political elections.

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I don't know about you, but I have found myself in numerous situations at various non-legal social gatherings having to admit to non-lawyers that I make financial contributions to sitting judges before whom I practice. The look such admissions generates is worse than embarrassing. The problem, of course, is that at least in the larger counties (Oklahoma and Tulsa counties) a fully energized campaign for judicial district judgeship can cost as much as $100,000.

There is, however, a better way.

As we are all aware, there are several ways to select judges. Some states, Texas, I believe for example, have partisan judicial elections which involve, in many instances, as much negative campaigning as straight-up political elections for political positions. Oklahoma has at least backed away from those contests and for many decades, while still having popular elections, the rules and regulations governing those elections require them to be not only non-partisan, but to a great extent, back out the judges and judicial candidates from direct fundraising. However, as most of us experience during election time, the sitting judges and candidates for judicial positions select surrogates or representatives to raise money for them. This hardly improves the situation.

As some of you may be aware, there is a compromise known as the "Missouri Plan," which gives the larger communities or districts in Missouri an appointment and retention process. It leaves direct popular voting for the rural counties. I am not necessarily in favor of a bifurcated selection process, but any improvement would be better than the one we have now. As is invariably the case, such changes to the election process must come from the Legislature. My sense of the sentiment for the imposition of such a substantial change in the election process breaks down for and against based on rural urban locations. It

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NOTICE of change of address (which must be in writing and signed by the OBA member), undeliverable copies, orders for subscriptions or ads, news stories, articles and all mail items should be sent to the Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152-3036.

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EVENTS CALENDAR

NOVEMBER 2010

10 **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

Ruth Bader Ginsburg American Inn of Court; 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Donald Lynn Babb (405) 235-1611

11 **OBA Closed** – Veteran's Day Observed

15 **OBA Alternative Dispute Resolution Section Meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Andrea Braeutigam (405) 640-2819

17-19 **OBA 106th Annual Meeting;** Crowne Plaza Hotel, Tulsa

25-26 **OBA Closed** – Thanksgiving Day Observed

30 **OBA Uniform Laws Committee Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Fred Miller (405) 325-4699

DECEMBER 2010

2 **OBA Law-related Education Committee Meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Jack G. Clark (405) 232-4271

7 **OBA Appellate Practice Section Meeting;** 2:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Allison Thompson (405) 840-1661

10 **OBA Family Law Section Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Kimberly K. Hays (918) 592-2800

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

16 **OBA Access to Justice Committee Meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Kade A. McClure (580) 248-4675

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

17 **OBA Board of Governors Meeting;** 9 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: John Morris Williams (405) 416-7000

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

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

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Social Media for the Reticent Attorney

By Shawn J. Roberts

Social networking websites such as Facebook, Twitter and LinkedIn offer the user the opportunity to participate in a community. However, blogging and podcasting allow the creator the opportunity to speak directly to anyone with access to the Internet, without any filter.

BLOGGING

A blog (a contraction of the term "web log") is a type of website, usually maintained by an individual, with regular entries of commentary, descriptions of events or other material such as graphics or video. Entries are commonly displayed in reverse-chronological order.[1] Blogging is writing, on the Internet.

Sometimes attorney-blogs or blogs about law are referred to as "blawgs." A blog or blawg is designed to allow the dissemination of information and participation by readers of the blog through commenting and sharing the information. Blawgs are numerous among attorneys. Well-done blawgs are, however, less numerous.

Matt Silverman writes on Mashable.com that "[o]ne of the best ways to put a face and voice on your legal expertise is to blog. Building a credible discussion resource on topics in your practice area can serve as the foundation for your professional presence on the social web."[2]

Consider attorney Roy Ginsburg and his blog, Quirky Employment Questions. He has been blogging weekly for three years, and earlier this year he hit over 10,000 unique visitors. He attributes landing a six-figure client to the blog and has won the Author of the Year award from Lexology.[3] All through simply sharing interesting employment issues that he came across in his practice.

PODCASTING: SPEAK DIRECTLY TO YOUR AUDIENCE

Podcasting is often associated with Apple's iTunes software, the world's largest repository of podcasts (as well as Apple's ubiquitous iPod and iPhone). However, a podcast is any:

- Digital media file(s) (either audio or video);
- That is subscribeable;
- Released episodically; and
- Often downloaded through web syndication (RSS).[4]

Consider a podcast like radio, only it is more focused and can be listened to at any time, at the convenience of the listener. Podcasts are overwhelmingly free and cover a variety of topics; if it interests someone, there is probably a podcast covering the topic. For an example of a podcast related to law, check out Jim Calloway's podcast with Sharon Nelson called "The Digital Edge."

There is a tremendous amount of variety in podcasting. Consider this description of podcasts from Microsoft's Zune store: "Some podcasts are as short as five minutes per episode; others can go on for an hour or more. They range from professionally produced podcasts to others that are more than a bit rough around the edges. Podcasts are usually produced on a regular basis, either as episodic programs (like newscasts) or as serial programs (like entertainment dramas). To automatically download each new episode of a podcast when it's released, subscribe to it using your Web browser or podcast managers like the one in Zune software."

A person either downloads podcasts and listens to them through a podcatcher (such as iTunes or the Zune Store) or listens directly by going to the website where the podcast is loaded and streaming the audio and/or video. A podcatcher is useful because it automatically downloads the latest episode of each podcast to which you are subscribed. You can listen to a podcast on your portable media player (iPod, iPhone, Zune, other MP3 player), your computer and many other devices. You can get podcasts through software, like iTunes (which will download the newest episodes automatically) or on your computer or listen to them directly from web.

Podcasts are surprisingly easy to create with only a few tools, many of which you probably already own. Basically, you can create a podcast with a USB microphone,[5] a computer and audio recording software. A USB microphone cost $20 at Best Buy or RadioShack and most readers already have a computer that comes with audio recording software. On a Macintosh computer you have GarageBand. Even if you have no native audio recording software, you can download the free audio recording program Audacity which works on a PC or a Mac.

The podcast is created by you recording audio about something interesting or helpful, saving the audio and then publishing a "feed" which allows other people to subscribe and listen to the podcast. Podcasters usually submit their podcast to software such as iTunes so it is available and easy to subscribe to for millions of people. There is no cost to add a podcast to iTunes and you do not need to own an Apple computer to do so.

There are many opportunities along the way in podcast creation to optimize your audio and content and promote the podcast, however, the bar to getting started is low. What might you podcast about? Maybe provide information on technology for lawyers, a series of questions and answers shows about a legal issue on which you work or perhaps a general discussion of legal issues listeners would find interesting.

Since a podcast is an audio file that the listener hears unfiltered, an attorney can speak directly to potential clients and influencers. Contrary to the radio, the listener does not have to tune in at a certain time but can listen at any convenient time. The attorney has the opportunity to project herself as someone who is reasonable, trustworthy and useful by communicating valuable information through a podcast.

BECOME A RELIABLE NEWS SOURCE

An attorney can use a blawg to become a news source in a given practice area. In addition to creating your own content, aggregating and curating news about your industry is important. Twitter is ideal for this, and using it effectively to share pertinent information can help attorneys brand themselves as subject matter experts, said Adrian Dayton, an attorney, author and social media strategist for major global law firms.

According to Dayton, a great example of using social media to be a news source "Bob White, a partner-level attorney in Florida [who] uses Twitter to share the best tech articles he finds each week. After a few months of finding and sharing great tech articles, Bob was able to bring in a couple of tech companies as new clients," Dayton notes. "They came to recognize, by the quality of his research and the articles he shared, that he really gets it."[6]

PRACTICAL TIPS FOR SOCIAL MEDIA SUCCESS

Getting Started in Social Media

Choose a few services that are a good fit for you. There are hundreds of services you could use and many that have gained a lot of traction. Pick out one or two that you are comfortable with. In general, for an attorney, I recommend starting with LinkedIn because it is business focused and Twitter because it is easy to get started.

Create your account and fill in your profile. After setting up your accounts, on most services, you are offered a chance to create your profile and a description of what you do. Do not miss out on this opportunity. A blank profile section is a signal to many people that the user does not understand the service and/or has not taken the time to learn it or invest in it. Describe what you do and how what you do can provide value to people who might want to work with you. Share some personal information; even mentioning you are married with three children gives other users comfort in approaching you.

Research how other users use the service. Consider how other attorneys and people who are doing well in social media are using it. Also, keep an eye out for what you do not like and try to avoid those things.

Look for guidance from trusted sources. You can hire a "social media expert" to help you get started. However, the proliferation of self-appointed social media "experts" makes it difficult. I recommend looking at trusted sources first, such as blogs that are widely read, books and other attorneys.

Start posting and participating. All the planning in the world is for naught if you never execute. If your network of choice is Twitter, send out a few tweets: say hello to a colleague or friend, describe something you are doing, compliment a user on a well-done article or project or share a website you find useful.

Look for ways to add value. While social media is about conversation and not broadcasting, sharing usual and interesting information is often acceptable. For instance, sharing information about a change in the law, resources to improve a law practice, technology tips, good deals on goods and services (with some moderation), an article you wrote or activities you are involved in that might interest others.

Six Rules of Social Media Success

I created these "rules" as guidelines for my use of social media because I found it was easy to lose focus without them.

1) Keep it positive. The world is full of negative events and people. For an example, follow any major news stream. There is no reason to add to it. Emphasizing negative points and people's perceived "failings" does not add any value; it simply poisons the atmosphere.

2) Respond to messages (particularly "@" messages and direct messages on Twitter). If someone talks to you in "real" life, you usually answer. Why should it be different in social media? It should not. Acknowledge people when you are singled out through a Facebook wall posting or Twitter "@" message. It only takes a couple of seconds.

3) Post value. Common sense dictates people will want to follow if you offer something valuable to them. It might be a tip, an interesting news story or interesting local events. There are millions of messages to read; the ones that stand out add value.

4) Provide links that work. This is a minor item, but clicking on links to interesting content that are broken is annoying. If it happens more than once or twice with a particular source, I'm not inclined to keep clicking.

5) If you understand it, leave it alone. No one likes a nitpicker: in social media or in life. It's easy to mistype or leave out a word. Usually it is clear what the poster meant; if it is, there is no need to correct or question the post. If there is a legitimate question about the post, ask the question in a way that is not smug or condescending.

6) Be real. This phrase means different things to different people. When I use it, I'm talking about allowing all of the content I generate on this site to be a reflection of who I am. Where I am going wrong? Where I am getting it right? I would love to hear your comments.

Beware the Social Media "Expert"

If you know more than five people, chances are you now know someone who declares themselves a social media expert.[7] However, many so-called social media "experts" are nothing more than frequent users of social media services who have a mechanism to charge people to learn the basics. This is not to say there cannot be a social media expert or that it is always wrong to pay someone to learn social media. Instead, the attorney new to social media should exercise caution asking

some or all of the following questions to determine if the expert is going to provide the expected value:

1) Do you have a blog?

2) When did you start in social media?

3) What is social media?

4) What's a social media campaign?

5) How do you monitor social media for a client?[8]

These queries are designed to flush-out the critical question in evaluating any expert: whether the person can provide knowledge, information or skill that an ordinary person does not possess.

Success in social media is defined more often by numbers of Twitter followers, blog mentions or YouTube hits than by traditional measures, such as return on investment. Beware of the social media "snake oil" salesman.[9]

Monitor the Conversation about You with Google Alerts

What if you had your own personal Google search engine that searched the far corners of the web for the very things that interested you, automatically and then delivered the results to you at regular intervals each day or even as the terms appeared? Does this sound awesome? Well, you can almost have all of that with Google Alerts.

> "Beware of the social media 'snake oil salesman.'"

Google Alerts are e-mail updates of the latest relevant Google results (web, news, etc.) based on your choice of query or topic. Enter the topic you wish to monitor, then click preview to see the type of results you'll receive. Some handy uses of Google Alerts include:

- Monitoring a developing news story
- Keeping current on a competitor or industry
- Getting the latest on a celebrity or event
- Keeping tabs on your favorite sports teams

Google Alerts are a valuable tool to monitor what people are saying about you (reputation management), what people are saying about your clients and what is being said about topics that interest you (the iPhone 4 for instance). All that is required to get started is a Google account.

AVOIDING ETHICAL ISSUES IN THE USE OF SOCIAL MEDIA

This article is not about legal ethics nor the ethical implications of social media for the attorneys. However, since very few, if any, public actions of an attorney are devoid from ethical considerations, I will mention a few.

First and most obvious, all the rules that apply to online activity covering confidential information apply equally online. An attorney would not disclose confidential information while at lunch so do not do it on Facebook or Twitter. Be particularly careful to not even provide information which would allow someone to figure out who your clients are unless you have pre-written approval from clients for this type of disclosure. While one might tweet about working on a difficult motion for summary judgment response, one would not go any further and say "for a case in Oklahoma County District Court." There is just no reason to go there.

Second, if you cannot directly solicit a potential client offline then you should not be doing it online. Not only is it bad form to ask a Facebook "friend" who has been in a car accident if she needs an attorney, it might violate the rules on direct solicitation. Attorneys are mining social media sites for information, particularly in divorce cases.[10]

Finally, watch for going too far in information gathering. Debra Bruce, guest blogging in Solo Practice University, warns of the dangers of "pretexting":

> Many lawyers find useful information about a litigation party or witness in their postings on social media. Due to privacy settings, sometimes valuable information would not be visible to the public in general, but would be visible to hundreds of "friends" of the target on Facebook or other media. Lawyers may be tempted to disguise their identity in order to friend the target, or to ask someone else to friend the target and share what they see.

> In March 2009, the Philadelphia Bar Association issued an opinion that such pretexting would involve dishonesty, fraud, deceit or misrepresentation on behalf of the lawyer, or the encouragement of such behavior, in violation of the Pennsylvania ethics rules.[11]

If you are not monitoring and managing your reputation in the social media sphere, someone else will define it. Mining social media for data useful in your lawsuit — I have not had it work for me, but there are many examples of it being useful.

What are Some of the Social Media Outlets?

Social media outlets come in a variety of forms, including those that simply broadcast information and those that are focused on networking:

- Networking and friendship sites such as Twitter, Facebook, MySpace, Google's Buzz and LinkedIn
- Photo sharing such as Flickr, Picasa and Photobucket
- Video sharing sites such as YouTube, Blip.tv and Vimeo
- Social bookmarking sites such as Delicious
- Location-based networking and games sites such as Foursquare and Gowalla
- Blogs (or "Blawgs")
- Podcasts

CONCLUSION

Social media has permeated the culture. It is not a fad that will slowly wane and then completely disappear. While individual social networking sites may come and go (remember MySpace?), this medium of interaction is solid. Clients and potential clients are using social media. Attorneys' reputations are being shaped through the conversation in social media. Join the conversation, start telling your story and sharing value with others.

1. Blogging, from Wikipedia, the free encyclopedia, http://en.wikipedia.org/wiki/Blog (http://bit.ly/zpVI).

2. "How Lawyers Are Using Social Media for Real Results," Matt Silverman, http://mashable.com/2010/06/01/lawyers-social-media/ visited July 26, 2010 (http://bit.ly/bLu7vP).

3. *Id*.

4. Podcast, from Wikipedia the free encyclopedia, http://en.wikipedia.org/wiki/Podcast (http://bit.ly/cMneOA).

5. Technically, you could use the built-in microphone in your computer, but the audio quality is consistently poor enough using this microphone that it is worth a $20 investment in a USB microphone.

6. "How Lawyers Are Using Social Media for Real Results," Matt Silverman, http://mashable.com/2010/06/01/lawyers-social-media/ visited July 26, 2010 (http://bit.ly/bLu7vP).

7. "10 Questions to Evaluate a Social Media 'Expert,'" Ian Lurie, *Conversation Marketing*, www.conversationmarketing.com/2009/07/10-questions-for-social-media-experts.htm#ixzz0u08Gs5y1 visited July 26, 2010 (http://bit.ly/bFvhvc).

8. *Id*.

9. "Beware Social Media Snake Oil," Stephen Baker, *Bloomberg Businessweek*, www.businessweek.com/print/magazine/content/09_50/b4159048693735.htm visited July 26, 2010 (http://bit.ly/7kyASH).

10. "Divorce attorneys turn to social-networking sites for dirt," Kim Komando, *USA Today*, http://bit.ly/b2fSU9 visited July 27, 2010.

11. "12 Social Media Ethics Issues for Lawyers," Debra Bruce, *Solo Practice University*, http://buildasolopractice.solopracticeuniversity.com/2010/03/11/a-dozen-social-media-ethics-issues-for-lawyers/ (http://bit.ly/9HZnS7) visited July 26, 2010.

ABOUT THE AUTHOR

Shawn J. Roberts is an attorney working with small businesses and individuals in the Oklahoma City area to help build and grow businesses by addressing a wide variety of legal issues including contracts, employment law, litigation and many other things. Mr. Roberts is a social media enthusiast who sees social media as a largely untapped resource for attorneys to communicate with and add value to people's lives.

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∗ Class size is limited to the first 20 registrants ∗

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The Judicial Nominating Commission seeks applicants to fill the following judicial office:

Justice of the Supreme Court
District Three

[To be appointed to the office of Justice of the Supreme Court, an individual must have been a qualified elector of the applicable Supreme Court Judicial District, as opposed to a registered voter, for one year immediately prior to his or her appointment, and additionally, must have been a licensed attorney, practicing law within the State of Oklahoma, or serving as a judge of a court of record in Oklahoma, or both, for five years preceding his/her appointment.]

Application forms can be obtained online at www.oscn.net under the link to Judicial Nominating Commission or by contacting Tammy Reaves at (405) 521 2450. Applications must be submitted to the Chairman of the Commission at the address below **no later than 5 p.m., Friday, November 19, 2010. If applications are mailed, they must be postmarked by midnight, November 19, 2010.**

Allen Smallwood, Chairman
Oklahoma Judicial Nominating Commission
Administrative Office of the Courts
1915 North Stiles, Suite 305
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Hall Estill, one of the premier law firms in Oklahoma, is actively searching for an Office Administrator in our Oklahoma City office. Hall Estill has offices located in Tulsa, Oklahoma City, Fayetteville, AR, and Washington, D.C. While our home office is located in Tulsa, Oklahoma City is the second largest office with over 50 employees.

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STATE OF OKLAHOMA, DEPARTMENT OF HUMAN SERVICES
CHILD SUPPORT SERVICES ANNOUNCEMENT # 10-C106BU

Oklahoma Child Support Services has an opening for a full-time attorney, preferably with experience in child support enforcement. This position will be located at the OKDHS-OCSS Tulsa East Office 3840 S 103rd East Ave., Tulsa, Oklahoma.

The position involves preparation and trial of cases in child support related hearings in district and administrative courts. Duties will also include consultation and negotiation with other attorneys and customers of the Division. The position will assist office staff with preparation of legal documents and ensure their compliance with ethical considerations.

Active membership in the Oklahoma Bar Association is required. This position is a Child Support Enforcement Attorney IV (beginning salary $4669.79 monthly) and may be under-filled as a Child Support Enforcement Attorney III (beginning salary $4067.52 monthly), a Child Support Enforcement Attorney II (beginning salary $3711.05 monthly) or as a Child Support Enforcement Attorney I (beginning salary $3354.59 monthly). Interested individuals must send a cover letter noting announcement number 10-C106BU, resume, and a copy of current OBA card to: Department of Human Services, Attn.: Human Resource Management Division, P.O. Box 25352, Oklahoma City, OK 73125. Application must be received no earlier than 8 a.m. Friday, Nov. 5th, 2010, and no later than 5 p.m. on Monday, Nov. 29, 2010. For additional information, please contact Faye Scott at faye.scott@okdhs.org.

THE STATE OF OKLAHOMA IS AN EQUAL OPPORTUNITY EMPLOYER

Ethics up in the Clouds

By Travis Pickens

Cloud computing may as easily be called "Internet" computing. The idea is that all your law practice data and software platforms and services are operated, maintained and stored offsite by a vendor up in the "cloud," and you are allowed to access it from any location through the Internet. Also generally known as SaaS (software as a service), it has been defined as:

> [S]oftware that's developed and hosted by the SaaS vendor and which the end user customer accesses over the Internet. Unlike traditional packaged applications that users install on their computers or servers, a SaaS vendor owns the software and runs it on computers in its data center. The customer does not own the software but effectively rents it, usually for a monthly fee.[1]

The outside vendor provides ongoing technical operation, maintenance and support for the software provided to the lawyer, and it all takes place outside of your office. Sometimes the related concepts of IaaS (infrastructure as a service) and PaaS (platform as a service) are used in discussions of cloud computing, but the grand idea of all these concepts and how they interrelate to form the cloud computing methodology is that the lawyer is not storing information on his or her own computer and server, nor maintaining it. Someone else is, and the lawyer is simply accessing all of it through the Internet. Online services now available to attorneys include law practice management systems, document management and storage platforms, document and information exchange services, e-mail networks, digital dictation services and billing/timekeeping services.[2]

Cloud computing options offer extraordinary flexibility to the practice of law. Imagine being able to practice from any location that is Internet accessible, anywhere in the world, whenever you want. Then, imagine no loss of time or function; all of your files are accessible, and all of your client documents are available. You can work, manage and even bill your time as if you had driven to your office.

The software programs you use are continually, seamlessly updated by the vendor. There are no new patches or updates to install in your office, no incompatibility issues, and no scheduling hassles or surprise costs with the IT department or contractor. You typically pay a set monthly subscription fee.

This is what cloud computing proposes to bring to the table for consideration. There is no reasonable question that cloud computing in

some form has a place, if not now then shortly, in the practice of law. The key concern however for us, now and in the future, is how do we ethically use it?

Cloud computing raises ethical issues in at least the following areas of ethics:

- maintaining confidentiality of client information[3]
- safekeeping client property[4]
- competence[5]
- diligence[6]
- expediting litigation[7]
- communication[8]
- supervisory responsibilities[9]

All these ethical issues must be carefully considered.

SEVERE WEATHER

Confidentiality and Safekeeping Property

The most fundamental precepts of the attorney-client relationship are confidentiality and safekeeping of client property and information.[10] What happens when an outside vendor/third party enters the equation, at a remote location — maybe in another country, with virtually all of your client information stored on their equipment?

Trusting third parties outside the law office with client information is a not a novel idea and has passed ethical scrutiny, *e.g.*, the U.S. Postal Service, experts, court reporters, graphic artists and independent IT consultants, so the fact that third parties are involved is not in itself an insurmountable barrier. But cloud computing ramps up the involvement of third parties to an entirely new level. Almost all of the lawyer's data and files that mattered to his or her practice would be stored and maintained by someone else, somewhere else.

To varying degrees, ethics opinions from a handful of other states indicate that cloud computing systems, in some form, may be utilized, but at least at this point, there is not an Oklahoma Supreme Court decision or an opinion from the Oklahoma Legal Ethics Advisory Panel.

In December 2009, the Arizona State Bar Committee on the Rules of Professional Conduct issued an opinion which held that with reasonable precautions to safeguard security and confidentiality, firms may use an online file storage and retrieval system that enables clients to access their files over the Internet.[11] The committee had previously determined that electronic storage of client files is permissible as long as lawyers and law firms "take competent and reasonable steps to assure that the client's confidences are not disclosed to third parties through theft or inadvertence."[12] The Arizona committee also said "[i]n satisfying the duty to take reasonable security precautions, lawyers should consider firewalls, password protection schemes, encryption, anti-virus measures, etc."[13] This opinion followed opinions issued by the ethics committees of the states of New Jersey[14] and Nevada.[15] Generally, these states' opinions permitted use of an outside server provider to store client files in digital format, provided the attorney exercised reasonable care. The Arizona committee approved a system in which documents would be converted to a password-protected PDF format and stored in folders with unique, randomly generated alphanumeric names and passwords.

The Ethics Committee of the North Carolina State Bar issued a "proposed" ethics opinion that states a law firm may contract with a vendor of software as a service for apparently a multitude of purposes, provided the risks that confidential client information may be disclosed or lost are effectively minimized.[16] The committee reasoned that a lawyer must take reasonable precautions, but it noted that no particular mode of use (*i.e.*, computing use) is dictated by the Rules of Professional Conduct. The opinion has not been adopted and the issue has been directed to a subcommittee for further study.

More recently, the New York State Bar Association Committee on Professional Ethics has issued Opinion No. 842 on Sept. 10, 2010, holding lawyers may store clients' confidential information online with a third-party provider so long as they take reasonable care to vet and monitor the provider's security measures and stay abreast of technological advances and the changing law of privilege.

Cloud computing does introduce a heightened risk, at least in theory, in the sense that it outsources all, or nearly all, of a lawyer's data to an off-site location. Thus, the information is perhaps more vulnerable to hackers, snoops and governmental investigations.

But rock-solid certainty is not required. Significantly, in the few ethics opinions that have addressed it, the consensus appears to be that

the law firm is not required to *guarantee* that the system will be *invulnerable* to unauthorized access. In fact, one way to consider the integrity of cloud computing security is to contrast it to what is commonly done now. It is not a particularly compelling argument to say that an office with a light wooden or glass door in an executive suite, with a simple door handle lock, completely accessible by all office personnel, cleaning crews and the landlord, is the vanguard of security. An argument can be made that cloud computing is *more* secure than traditional methods precisely because it is offsite in what is almost certainly a more secure facility with redundant backups and superior electronic protection.

It makes sense that you seek and obtain your clients' "informed consent" to a cloud computing arrangement if you choose to use it. Should cloud computing become an attractive option for your law practice, provisions regarding the use of cloud computing should be included in your fee agreements.[17]

One aspect of cloud computing your clients will likely appreciate is the ability to go, through their own passwords, directly to their file in the cloud and retrieve copies or new documents posted by your firm, all without a call or e-mail to your office.

Competence, Diligence and Expediting Litigation

Comment to Rule 1.6 of the Oklahoma Rules of Professional Conduct states:

> A lawyer must act *competently* to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision.[18] (emphasis added)

> "When you place this amount of information in the hands of an outside provider, you introduce a different type of risk."

Ethics committees have emphasized that law firms without the requisite expertise should consult with their own IT professionals in evaluating these decisions and arrangements. Many lawyers shy away from technical expertise and need independent advice not only to understand the technical terms of the underlying deal, but to fully investigate the privacy and use concerns raised in evaluations for purposes of compliance with the Rules of Professional Conduct.

One perspective that is sometimes lost in these discussions is the impact of technology in *remaining* competent to practice. Comment [6] of Rule 1.1 of the Oklahoma Rules of Professional Conduct states:

> To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law *and its practice*, …[19]

This language ("and its practice") was likely written to address substantive law and procedural matters, but there may be a day when competence in the current technology is a factor in assessing disciplinary matters. For example, the Canadian Bar Association's rule on attorney competence includes the following comment:

> 4. Competence involves more than an understanding of legal principles; it involves an adequate knowledge of the practice and procedures by which those principles can be effectively applied. To accomplish this, the lawyer should keep abreast of developments in all areas in which the lawyer practises. The lawyer should also develop and maintain a facility with advances in technology in areas in which the lawyer practises to maintain a level of competence that meets the standard reasonably expected of lawyers in similar practice circumstances.[20]

The ABA's Commission on Ethics 20/20, appointed in 2009, is now reviewing the impact of advances in technology on the Model Rules of Professional Conduct and how they should be adapted to reflect those advances. A law office need not be a studio of technological wizardry, but it should not be mistaken for a Luddite village. Clients now expect a certain level of technological savvy. Perhaps your practice is one that can still manage using hard-copy letters, three-ring notebooks and brown expansion folders in gray metal file cabinets, but the sun is setting on this charming but moribund style of practice. If the mode of practice completely forsakes technological

progress, there may well be a day in the future when that practice becomes "incompetent," at least presumptively.

Related to competence are the duties of diligence and expediting litigation.[21] These requirements clearly present the "availability" component of computer security. If the information is not available, the lawyer can be neither diligent nor expedite litigation. Any cloud system utilized must be evaluated in terms of remaining constantly available and providing adequate and timely backup. These should of course be areas of careful inquiry of a vendor (and contractual responsibility).

Communication and Supervisory Responsibilities

A lawyer must keep a client reasonably informed about matters being handled by the lawyer.[22] This obligation imposes a duty to communicate with a client in order to: 1) avoid causing inconvenience and unnecessary expense to the client; 2) keep a client informed about the status of a matter entrusted to the lawyer; and 3) enable the lawyer to respond to a client's requests for information.

The information must be available to the client. When you place this amount of information in the hands of an outside provider, you introduce a different type of risk. Whether it will be on balance, a more significant risk remains to be seen. There are risks with every level of technology. Presently, office computer hard drives crash, software malfunctions and computers get stolen. It is clear that lawyers may not wholly delegate security concerns. The firm will be held responsible for overseeing how the sensitive data is being collected and stored.

Finally, and equally important, lawyers have responsibilities for non-lawyer assistants.[23] The managing lawyer must put measures in place that ensure the assistants' conduct will be compatible with the responsibilities of the Oklahoma Rules of Professional Conduct. The prudent attorney will be careful to contractually require vendors with whom they deal for cloud computing to have protocols that meet these standards.

OKLAHOMA FORECAST

At the time of this article, there is no indication that Oklahoma will approach this issue much differently than the states that have already weighed in. But, it remains to be seen.

What are the "best practices" that a law firm should follow when evaluating cloud computing and an appropriate vendor? First of all, many questions should be asked. As gleaned from the articles and opinions on cloud computing (*see* Endnotes), the questions should include at least the following areas:

- The track record and financial stability of vendor
- Your own understanding of the vendor agreement. Do you truly understand it in all of its technical complexity? Should an independent IT consultant be retained for the analysis of security, backup and negotiation of terms?
- Confidentiality generally, as it is addressed by the vendor agreement and regarding its employees (and employees that may leave the vendor's employment)
- The specific physical and electronic safeguards and security, preserving confidentiality of stored data, including the specific types of encryption and passwords used
- The vendor's history with security audits
- The host country and related search and seizure laws
- The persons with access to the data
- The ownership of the data — vendor or lawyer?
- The protocols and access to information once the use of the product is terminated, or if the vendor goes out of business
- The compatibility of vendor's software with similar vendors
- The ability of the lawyer to retrieve data from the server to use or back up
- How frequently are backups performed?
- Is information backed up to more than one server?
- The safeguards against natural disasters
- Whether there is direct access to the data by clients, and related confidentiality risks
- The lawyer's own backup in case something goes wrong
- Will the vendor contractually agree to protocols compatible with the requirements of the Oklahoma Rules of Professional Conduct?
- What happens when there are "temporary" power outages?
- How are the risks allocated?
- Indemnification and insurance considerations

In addition to these questions, prudent practitioners considering cloud computing should:

- Seek and/or rely upon a written ethics opinion from the Oklahoma Legal Ethics Advisory Panel prior to wholesale, unqualified transition to and investment in the "cloud."
- Use programs recommended by law-related technology experts, such as the OBA's Management Assistance Program Director Jim Calloway, or those "certified" or endorsed by bar associations, law-related organizations and groups.
- Carefully document your due diligence in evaluating cloud computing products.
- Consider a "hybrid" approach to computing, slowly and carefully incorporating cloud computing as it evolves as a technology. It may be the best computing system for you is a bit of both.
- Disclose your use of cloud computing in your written fee agreement with your clients and get their informed consent.

CONCLUSION

Barring unforeseen challenges, cloud computing should be welcomed as a valuable technological advance that will provide an entirely new level of freedom and convenience for the lawyer and the client. However, it must not be wholly embraced without deliberate analysis, discussion, testing and time to evaluate its complexities in the field.

It may be the future, but we will get there one day at a time.

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18. Ethics Committee of North Carolina State Bar proposed 2010 FEO 7.
19. ORPC 1.1 Comment [6].
20. Canadian Bar Association Rules of Professional Conduct, "Competence and Quality of Service," Comment [4].
21. ORPC 1.3 and 3.2.
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The Traveling Lawyer

By Jim Calloway

Technology today makes it possible to have virtually the entire set of tools that one would have in the law office almost anywhere one travels — except for your staff, of course.

Operating virtually works extremely well for lawyers. The major issue is devoting the time to learn about the available tools. While some amount of training may be needed for the lawyer to become an accomplished remote user, remote access is really more about advance planning and knowing the options than any superior level of technological expertise.

Let's examine the various methods of working on the computer while away from the physical law office environment.

E-MAIL ONLY

For most traveling lawyers, the basic tool for working on the road is having Internet access to login to check e-mail. Generally all that will be required for this arrangement is Internet access and a small laptop, perhaps even an extremely affordable netbook.

And, of course, it seems like every day new smart phones and smart phone apps are released, adding to the number of tasks one can now do from a smart phone. By definition, a smart phone should have e-mail access.

It appears that most lawyers now already check their office e-mail remotely from a home computer, a laptop and/or their phone. Since e-mail is the most popular method of electronic communication in our industry, a lawyer who does not have remote access to his or her e-mail is handicapped.

While the preferred method is to have some amount of remote access to office files by laptop computer, some lawyers have become so proficient at responding to their e-mail via their iPhone, Blackberry or other smart phones that this may meet their complete needs for accessing their e-mail outside the office.

Other lawyers will rely on web-based e-mail with either an account provided by their Internet service provider or online services like Gmail and Yahoo Mail. Some security experts have cautioned against the use of webmail, on security concerns or the terms of service of the user agreement. Other lawyers use Gmail regularly. Some lawyers even use Gmail for their primary office e-mail account.

The reason why many lawyers are satisfied with "e-mail only" access is that their staff back at the office can accomplish what cannot be done remotely with just e-mail, be it printing a document or scanning correspondence just received so that it can be sent to the lawyer as an e-mail attachment.

Of course, this only applies during business hours and if certain tasks could be done remotely without the need for staff intervention, it would free up the staff to do other tasks.

SECURITY

Internet security should always be a concern.

Wireless access over a WiFi network is only as good as the security applied by the individual who set up the wireless network. Generally speaking, you are always at risk when you logon to an unencrypted wireless network that

does not require you to have a password to access it. At the large national chain stores and coffee shops where free WiFi is offered, the risk is small if you have antivirus and firewall updated and running. I still would not do online banking on these connections.

For example, we have an unsecured network at the Oklahoma Bar Center that guests here can use. There is no need to login and a firewall offers protection from our guests being compromised externally over the Internet. Theoretically, one guest user with technical expertise might access another guest user's machine. There are safeguards against that and if our IT department didn't feel good about the service we wouldn't offer it. But it could not be considered perfect.

At the other end of the spectrum, if you are at an airport and notice a "Free WiFi" available on your laptop, there is a great likelihood that it is not a wireless access point but another computer somewhere in the airport broadcasting the signal. It is probably nothing dangerous, but could be waiting to capture credit card numbers, bank login information and other personal data. The airports that offer free WiFi will normally have signs all over touting it and explaining how to log in. Most airport WiFi access will be through a paid provider. (But at least it is safe to give the provider your credit card number.)

Anyone can go online or to a local store and pick up a wireless router for $50 or less. So, to repeat, you are at the mercy of both the competence and the pure motives of the person who set it up. These WiFi hotspots, if left unsecured, could be a significant risk or a minimal one.

Many people now have home WiFi networks that may be used by a computer or two, an Xbox, or an iTouch. A lawyer does not want to host an unsecured home network even if no legal business is done via the network. Most lawyers might want to use their home WiFi network to log into the office from time to time.

I will pass along some advice I gave a lawyer a while back. He has an old wireless G router he had set up years ago without security at home and wanted to secure it but didn't know where the documentation was and how to proceed. I told him to stop by the big box store on the way home and buy a nice new fast N Wireless router ($70 - $110) and set it up with appropriate security and to give the (long) password to everyone in the household and tell them their devices couldn't connect to the Internet without the password. After a little setup time, they now had faster, secure wireless Internet and when the parents forget the password, they can just go ask one of the children.

More secure wireless connections are available by purchasing a cellular modem with a plan from a cell phone provider. These will allow a subscriber Internet access anywhere one can get a cell phone signal, at 3G broadband speeds in urban areas and at somewhat slower speed in more remote areas. See "How to Buy a Cellular Modem," *PC Magazine* (March 27, 2009) at tinyurl.com/2325su4 and "Logging onto the Internet from (Almost) Anywhere" by Jim Calloway, *The Oklahoma Bar Journal*, Aug. 9, 2008 — Vol. 79; No.20 and at tinyurl.com/2cjabxk.

"Even placing a USB Flash drive into a photo kiosk to get pictures printed could be a security risk."

What about those computer kiosks you see set up at conferences or using the computers provided in hotel business centers? For their main purposes, they are fine. You should feel free to use them for Internet searches, locating places to go for dinner, getting driving directions and printing off boarding passes for airlines. Many use them for e-mail access. Again, I personally would never enter credit card or banking information into these. In fact, I have stopped using them for checking e-mail. My best guess is that the computers set up for conferences are safer than those that sit unattended in hotel business centers. The danger is that someone will install a keystroke logger device (either hardware or software) to record every

keystroke typed into the machine. Studies have shown that a high percentage of the hotel business centers have such malware installed.

Even placing a USB Flash drive into a photo kiosk to get pictures printed could be a security risk. See "Photo Kiosks Spread Malware via USB Sticks" *SPAMfighter News* — July 19, 2010, at tinyurl.com/27wx3jb.

Security is even more of a concern when the remote user is not just checking e-mail but logging into a virtual office environment.

REMOTE ACCESS TO THE OFFICE NETWORK

Logging into the office to enjoy the full office experience from anywhere virtually is a different matter than just checking your e-mail. You can access all of your files of the network and, depending on the tool used, run applications or operate the remote computer to print and do other things. Larger firm lawyers depend on their IT departments to set up this arrangement for them. Small firm lawyers will login to a remote desktop situation using commercial remote access tools.

One of the secure tools for doing this is a Virtual Private Network or VPN. If your firm has IT support, you probably already have this option.

If you are a small firm lawyer or a lawyer whose firm is not going to set up a VPN anytime soon, consider using commercial remote access products like GoToMyPC (www.gotomypc.com), LogMeIn (www.logmein.com), or Symantec's PCAnywhere (http://bit.ly/PCAnywhere). LogMeIn is free for basic operations. There are various levels of potential access.

Logging into a computer remotely means that computer will be left on all of the time. This means a good surge protector/uninterruptible power supply/battery backup is required.

Of course, you can only access what is on the computer or computer network. Remote access to files is a significant reason why more law firms are going to digital client files. If it is on the network, even just as a scanned image, it can be set up to be accessed remotely. Documents sitting in physical file folders cannot, absent assistance from your staff.

I predict the majority of lawyers will have complete remote access and not just "e-mail only" access fairly soon, if that is not already true.

CLOUD COMPUTING

Travis Pickens' article in this *Oklahoma Bar Journal* — "Ethics up in the Clouds," covers the emerging area of cloud-based law office computing applications. The practice of using software provided by (and storing data with) an online third-party provider has become a reality for many lawyers. Many are rightfully concerned about the security and propriety of hosting confidential client data online.

Clearly, if all confidentiality concerns were addressed, this practice has huge implications for the traveling lawyer. If on a day-to-day basis, the lawyer works on remote applications via a web browser, then assuming good Internet access, the "working on the road" experience will differ little from the "in the office" experience.

THE GOOGLIZED OFFICE

As previously noted, many lawyers say that Google apps are not an appropriate method of a lawyer running an office. Meanwhile, other lawyers say that they can run their entire office using Google tools. Certainly the allure of the great Google products is apparent. Gmail, Google Calendar, Google Reader, Google Docs and Spreadsheets and other Google products (both now and those in the future) provide powerful tools, either for free or at a nominal expense.

One can certainly run a law office exclusively on Google, but the question remains, should you? At this point, all that can be said is that lawyers and security experts disagree. Some use Gmail and other apps without concern and others say it is not appropriate to do so.

Google has upgraded its security. See "Google Upgrades Security on Gmail," *New York Times* (Jan.13, 2010) at tinyurl.com/2cyu8mq.

ONLINE DOCUMENT REPOSITORIES

The mention of Google Docs leads to a discussion of online document repositories generally.

An online repository for client files is one thing, but what about your own document repository for documents you might need or want to be able to grab from your smart phone?

Think of populating a document repository with new client information sheets that clients

Tips for Using Public Wi-Fi

By John Brewer

It is preferable to access a wireless device when encryption is enabled. The most common forms of wireless encryption are known as WEP and WPA. WPA is better than the WEP, but WEP is better than no encryption. WEP and WPA require the use of a "key" that must be entered on the mobile wireless device in order to permit a connection to the access point. If encryption is not used, then data that is sent over the wireless connection is "visible."

* * *

Many computer users utilize webmail (e.g., Hotmail, Gmail and Yahoo). It is prudent to use a webmail service on a wireless basis that utilizes the SSL/TLS protocol. The web uses a protocol called HTTP (hypertext transfer protocol). One can see HTTP as the first letters in the URL of a website. HTTPS indicates that the transmissions are encrypted with the SSL/TLS protocol. Users of webmail should look at the URL for their service to see if the URL includes HTTPS as the first letters of the URL. The main idea of HTTPS is to create a secure channel over an unsecure network. A HTTP connection is not secure. Users of these webmail applications should look for a secure login and once logged into the application, that the application maintains a secure connection and does not revert to a HTTP connection.

* * *

Windows 7 has additional security options when using a public network. It can block all incoming connections, including those in the list of allowed programs. This setting blocks all unsolicited attempts to connect to one's computer. One should use this setting when maximum protection is prudent, such as when connecting to a public network in a hotel or airport, or when a computer worm is spreading over the Internet. With this setting, the user is not notified when Windows Firewall blocks programs, and programs in the list of allowed programs are ignored. When blocking all incoming connections, one can still view most web pages, send and receive e mail, and send and receive instant messages. There are other settings available in Windows Firewall.

* * *

iPhone users should be cautious of AT&T Wi-Fi hot spots. It is reported that iPhones are configured to recognize AT&T Wi-Fi connections by the name "attwifi." One article stated that iPhone users can protect themselves by disabling the Wi-Fi, or by

complete, informative packets that you send prospective clients, all of your attorney client contracts and a few other basic documents that would be handy if your office network was down and/or physically inaccessible. Some can be set to automatically sync with a folder on the office network, making them an additional backup.

There are many choices. Among the leaders are Dropbox, Drop.io and SugarSync. Dropbox is now widely used by many. It is one of my favorite applications because it is free and easy to use. It just installs a folder under My Documents called My Dropbox. Any documents saved there are available on all other computers I have synchronized with Dropbox as well as on my smart phone. Up to two gigabytes of storage is free and you can add to that by referring others to Dropbox.

VIRTUAL ASSISTANTS

Some lawyers who are on the road more than in the office have opted to dispense of staff and rely on virtual assistants. I know of one Oklahoma City lawyer who decided to try that when the best assistant he ever had moved across the country. He has been pleased with the results. With most virtual assistants, one can pay either by the project or by the hour.

A virtual assistant is one who works outside of your office from their home or office. Typically they are paid by the project, but some are paid hourly. E-mail is used for project assignment and communication. Logically, it might seem that a virtual assistant would be an independent contractor, unless used on a full-time basis, but each law firm needs to make that decision working with their tax advisor.

TETHERING

Tethering refers to connecting a laptop computer to the Internet via your mobile phone. Why should you have to pay for a data plan for both your computer and your laptop when you can tether?

Suffice it to say that the big telecom companies are going to do everything possible to prevent users from tethering, including convincing them that it is just a bad idea. Tethering may be barred by your current service provider's contract or require "jailbreaking" a mobile phone. And many do not feel like 3G service is consistently good in some of the areas that they frequent anyway.

Nevertheless, it seems to be a matter of time before tethering becomes more common and perhaps even a "tethering friendly plan" may be marketed by the big telecoms.

For some step-by-step instructions to tethering with some phone service providers go to tinyurl.com/dh3dbm.

See also, for example, AT&T's data plans at www.wireless.att.com/businesscenter/.

Those AT&T data plans that allow tethering also have a per KB charge for the bandwidth.

THE TRAVELING LAWYER'S BAG

Some traveling lawyer bags look like a traditional briefcase. But a lawyer who spends much time in airports may soon opt for either a wheeled bag or a backpack. Don't be penny-wise and pound foolish here. It may make sense to have two (or more) computer bags: a light briefcase style for day-to-day use and the wheeled or backpack version for overnight road trips.

A real road warrior who wants to take a complete office setup on the road will definitely need a separate wheeled bag. This can carry the full "law office to go" with the portable printer, portable scanner, paper and some other office supplies. Generally speaking, a portable scanner and a portable printer, along with a laptop and paper, will give you complete document production and management capabilities. A word of warning: If you are going to make much use of portable printers, you may want to travel with spare ink cartridges as it seems that ink runs out at the very worst time.

For those lawyers who go through airport security frequently, checkpoint friendly bags can save time and reduce aggravation. See *PC World's* 2008 review of "8 Checkpoint-Friendly Laptop Bags" for the products and an overview of the regulations at tinyurl.com/6xkchf.

What's in the computer bag besides the laptop?

I never travel without a stash of several USB flash drives. You never can tell when you will need one of them, and I have made more than one friend by having an extra to give away. Even if you do not carry several flash drives, you must carry at least two — one that is encrypted and one that is not encrypted. On the encrypted drive you can have your credit card numbers and 800 numbers for each company, medical insurance and other important personal information. Think of the encrypted flash drive as the "I lost my wallet" backup, although it is great for carrying confidential client documents, too.

turning off the automatic joining of AT&T networks, but only if the device is within range of the existing AT&T hot spot. iPhone users should investigate this issue more fully.

Instant messaging is popular with many people. Most instant messaging services transmit communications as clear (unencrypted) text. One can check with the instant messaging service provider to learn more about the specific instant messaging service and its security features, if any. Such clear text communications are unencrypted whether instant messaging is used on wired or wireless devices and networks. Unencrypted instant messaging is vulnerable to illicit attempts to intercept and read the content of messages sent and received. If one chooses to use instant messaging on a public Wi-Fi connection, it is recommended that one avoid using it to transmit information deemed confidential.

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At a minimum, heed the following (especially if using a laptop/net book computer):

1) Use a firewall. The operating system should have a firewall included with the OS. Make sure it is turned on. Third-party firewalls are also an option.

2) Hide your files. When you use public Wi-Fi, network encryption is often out of your control. Check the privacy statement on the network's website to learn about the type of encryption in use. If there is no privacy statement, that is a warning sign. Consider encrypting sensitive folders on your hard drive.

3) Do not type in credit card numbers or passwords unless there is a secure connection.

4) Turn off your wireless network if not needed. If one is not surfing the Internet or sending e-mail, but still using the computer in an area where there is a public wireless network, disable the wireless connection. If using an external Wi-Fi card, it can be removed. If the computer has an internal card, disable the card.

Common sense and caution are both essential when using a public Wi-Fi connection. The consequences of ignoring security issues could be damaging to the health of one's computer and/or bank account.

If you don't want to learn do-it-yourself encryption, there are many USB flash drives that come with it preinstalled. A favorite among many is the Ironkey brand at www.ironkey.com. Taking a cue from the *Mission Impossible* series and movies, this can be set to delete your data if it is lost and the finder enters the wrong password a set number of times.

If you need to carry a lot of data safely or just want to have a backup of your data to carry with you, look at portable hard drives which are designed for rough treatment like the Hitachi SimpleTOUGH. Amazon offered these at a price of $65.93 for 320 GB and $107.29 for 500 GB at the time I was preparing this paper.

If weight is a big concern, the Seagate FreeAgent Go (http://bit.ly/FreeAgentGo) is one of the thinnest and lightest hard drives available - it only weighs 5.6 ounces! It comes in 250GB, 320GB and 500GB models.

A portable wireless mouse – Usually I can deal with the touchpad for most computer work. But sometimes I want the control of a regular mouse. A corded mouse creates more clutter in my bag, so a portable wireless mouse is the perfect solution. Just plug in the small USB antenna and your mouse is ready to go. My current wireless portable mouse is the Logotech VX Nano Cordless Laser Mouse (tinyurl.com/2enc5gt, $69.99).

"No fly" bag — In the olden days of flight I used to travel with a little kit that included several small screwdrivers, scissors and a pocket knife. Now I try never to toss anything into my computer bag that cannot pass an airport screening. One way is to keep all of the banned carry-on items in one "no fly" bag that could easily be transferred into one's checked bag when flying. You never know when you are going to be really glad you had a screwdriver (or a corkscrew) with you when traveling.

Another bit of information for the road warrior to carry is the Help Desk numbers for your software applications and the serial numbers just in case you need help.

Chargers and cords — If the traveling lawyer isn't careful, he or she may find the computer bag full of cords and chargers for a variety of devices. Some consolidation may be in order and you might consider a setup that will charge more than one device. Chargers that have tips for a number of different devices are now inexpensive and compact. See The "Octopus Cable Charges 10 Devices (via USB) for Just 10 Dollars" at tinyurl.com/kjhhke.

A similar setup to charge with AC power is found at www.igo.com. These products are reasonably inexpensive and leave you carrying a lighter computer bag through the airport.

Although many laptops have built-in surge protection, a small portable surge protector is a wise investment. For example, here's an inexpensive combination of surge protector, "power strip" and USB charger, a Belkin Mini Surge Protector (www.belkin.com, $24.99). It offers two convenient USB power ports as well as three AC outlets and has a very good 918 joule rating.

> "A corded mouse creates more clutter in my bag, so a portable wireless mouse is the perfect solution."

Along the same line, I know I'm not "supposed" to use them, but I carry one of the little two-to-three prong electrical adaptors in my bag. Most big city hotels have all upgraded to grounded three-prong AC outlets, but every now and then in the hinterlands, you will find a hotel room with only two-pronged outlets. I wouldn't use this for working on my laptop for long stretches.

I will also note that I have just started using my new iPad for travel. It is clear that it is a superior traveling tool, being very light and easy to read.

TRAVEL PLANNING

There are a number of online services and resources related to travel. For more information, check out an article that I co-authored with colleague, Courtney Kennaday, that reviews trip planning and deal sites, "Sites For Sore Eyes — The Travel Site Less Visited." The article, published in the September 2009 ABA *GP|Solo eTechnology Newsletter* is available online at tinyurl.com/m8l8j9.

If you are not familiar with websites and services like Kayak.com, TripAdvisor.com, Chowhound.com, SeatGuru.com and TripIt.com, you really need to review this article. These services are critical for the traveling lawyer.

CONCLUSION

Hopefully, this article has given you some new tools that you can use when you find yourself thrust into the role of the traveling lawyer. Our tools for the road continue to evolve as smart phones get smarter and online tools become more secure and more powerful. Whether you carry all the tools you need with you or rely on a remote connection to your office network, I hope you find these tips to help you become more productive on the road.

ABOUT THE AUTHORS

John Brewer is a solo practitioner in Oklahoma City. He graduated from the OU College of Law in 1974 and has been active in technology issues pertaining to the OBA and other nonprofit organizations. He has presented numerous presentations regarding technology as it relates to the practice of law for the OBA and other organizations. He has a particular interest in mental health issues and the role that lawyers can play in improving the lives of those challenged with mental health issues.

Jim Calloway is the director of the OBA Management Assistance Program and manages the OBA Solo & Small Firm Conference. He served as the chair of the 2005 ABA TECHSHOW board. His Law Practice Tips blog and Digital Edge podcast cover technology and management issues. He speaks frequently on law office management, legal technology, ethics and business operations.

Welcome to the Future: The Paperless Law Office and E-filing

By Adrienne N. Cash

A law practice without mountains of paperwork; is that even possible? Indeed it may be a very real possibility. A growing trend among law offices and courts is to become paperless and rely on technology instead of the old reliable paper file. "Paperless" does not mean having no paper in your office. It simply means not relying on paper as the sole means of keeping information.[1]

Becoming paperless is not only a growing trend and a tool to allow a law office to run more efficiently, it is also likely the way of the future and someday will likely be almost mandatory.

Courts across the country, including the three federal courts in Oklahoma, are no longer accepting paper filing and requiring attorneys to electronically file documents. This is a growing requirement and in all probability will reach the Oklahoma district courts sooner rather than later. The U.S. District Court for the Western District of Oklahoma made electronic filing (e-filing) mandatory on May 1, 2004.[2] The U.S. District Court for Northern District of Oklahoma made e-filing mandatory on June 1, 2005.[3] Finally, on Sept. 15, 2007, the U.S. District Court for the Eastern District of Oklahoma mandated e-filing.[4] The first state to implement statewide e-filing was Colorado. Beginning in late 1999, the Colorado judicial branch began analysis and development of e-filing, with the program being piloted in the spring of 2000. By February 2001, the program was statewide in all general jurisdiction civil, domestic relations, probate and water cases. E-filing was expanded to limited jurisdiction money and FED cases in 2006 and by 2008, the Court of Appeals came online with civil, agency, probate, and domestic cases. Today, approximately 96 percent of all civil documents are e-filed in the district courts throughout Colorado.[5] Currently, e-filing is used in Alabama, Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, New Jersey, New York, North Carolina, Ohio, Texas and Washington.[6] North Dakota currently has a pilot program in place for e-filing.[7] The majority of states, even those that have not implemented e-filing, have rules governing the electronic filing of documents.[8] Oklahoma is no exception.[9] 20 O.S. §3004 provides "The Supreme Court is authorized to provide for electronic filing of documents in the Supreme Court and the district courts. The Administrative Office of the Courts shall promulgate rules for the filing of documents transmitted by electronic device. Rules for electronic filing must have the approval of the Supreme Court."[10]

E-filing has multiple benefits to all involved. It allows the court and all other parties to have immediate access to the documents. Additionally, it prevents documents from being misplaced. It also permits those last min-

ute changes to be made with less risk of missing the filing deadline. E-filing can lead to monumental cost savings, by reducing courier and copying fees, use of paper and staff time.

Aside from putting a lawyer in a better position to adapt to mandatory e-filing when it reaches Oklahoma, the paperless office has many other benefits which are far reaching. A paperless law office increases productivity and efficiency. Time spent shuffling papers and hunting documents decreases significantly. Attorneys and paralegals are able to access and work with documents away from the office via the Internet, allowing for productivity even during travel. One of the most important benefits is protection from permanent data loss through digital copies of documents.[11] There is software available which permits an attorney to type in a key word and almost instantaneously access the document containing that word. Document management software has many benefits. It is an electronic system that makes use of various systems for electronic production, storage and retrieval of files. In addition to handling paper documents and text files, data management software also effectively manages data capture of video, audio, faxes, reports, e-mails, fonts, photos and various images via electronic scanning and electronic imaging.[12] Additionally, document management software can streamline docketing with document entry. As a case progresses, prompt updates to a legal database and automated document management allows for easy access to documents and specific categorization of case materials. Deposition transcripts, pleadings, discovery and medical documentation can be maintained in the case database and cross-referenced for easy access.[13] While this is obviously helpful in the day to day operations of a law firm, the benefits during trial preparation and trial are innumerable. All documents are available at the touch of a button and could be easily imported into a trial presentation software without the need for hours of needlessly digging through boxes and papers. Important documents can easily be placed on a PowerPoint slide with key information highlighted, thus bringing the jury's attention directly to the immediate issue.[14]

"As a case progresses, prompt updates to a legal database and automated document management allows for easy access to documents and specific categorization of case materials."

One of the best features of becoming a paperless office is that it is relatively simple to get started. You must first obtain some basic necessities: a high quality scanner; Adobe Acrobat Pro; a document management system; a server and out of office backup. This equipment is remarkably accessible to everyone, even solo practitioners who are just starting out.

Speed dominates when shopping for an office scanner. In order to be most productive you'll need a scanner that processes at least 20 pages per minute with an automatic document feeder (adf) that takes a minimum of 25 pages at once.[15] A quality medium or high-speed scanner will prominently display its page per minute (ppm) scanning speed. Scanners that are very fast, high volume, can run several thousands of dollars, but in reality most small to medium size offices do not need that kind of speed. Locating a scanner that will be a perfect fit for your practice is not nearly as daunting of a process as one may think. In fact, in a matter of minutes I found a scanner that has a speed of 25 ppm with an adf of 50 pages for less than $800 from Hewlett Packard.[16] While a scanner with adf is essential, it cannot process all of the documents which need to be processed. Some documents, such as legal-size documents and photographs, require a flatbed scanner. These too can be picked up relatively inexpensive.

Adobe Acrobat is available online through Adobe.com or available at most office stores such as Best Buy, Office Max or Office Depot. The software varies in price from around $450 for the pro version to $300 for the standard version. There are a multitude of benefits to the pro version; it not only allows you to access and view pdf documents, it will allow you to edit the documents, create form-filled pdfs and bates label documents all electronically.

A document management system is essential to operating a paperless law office. A simple Google search will turn up numerous options. Some of the software will do more for you than

just managing your documents, it is essentially an assistant in a box.

One of the most critical features of a paperless law office is storage. An internal server as well as an external backup source are essential to ensuring the safety and integrity of your documents. There are numerous companies that perform backup services both in hard form and online for a nominal fee.

While the thought of giving up the trusty old red rope folder, boxes, stacks of paper in the corner and the frantic law clerk running to make the filing deadline before the court doors close may sound like a work of fiction or a nightmare, depending on your personality, it is definitely advantageous and the way of the future.

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Adrienne N. Cash is a 2003 graduate of the University of Tulsa College of Law. She is admitted to practice before the Oklahoma Supreme Court and the U.S. District Court for the Northern District of Oklahoma, Western District of Oklahoma, Eastern District of Oklahoma, Western District of Arkansas and Eastern District of Arkansas. She is a member of Phi Delta Phi legal honors fraternity. Her practice focuses primarily on insurance law with the firm of Gibbs, Armstrong, Borochoff, Mullican & Hart, PC in Tulsa.

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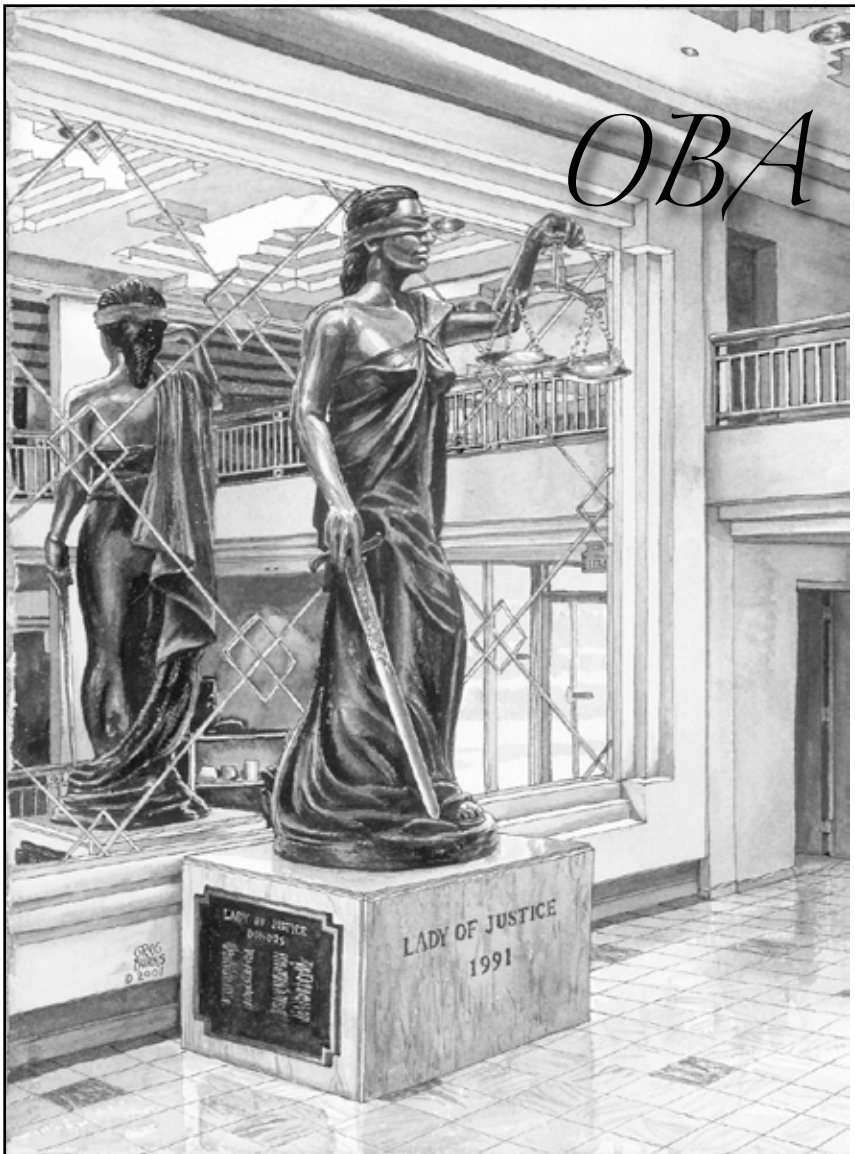

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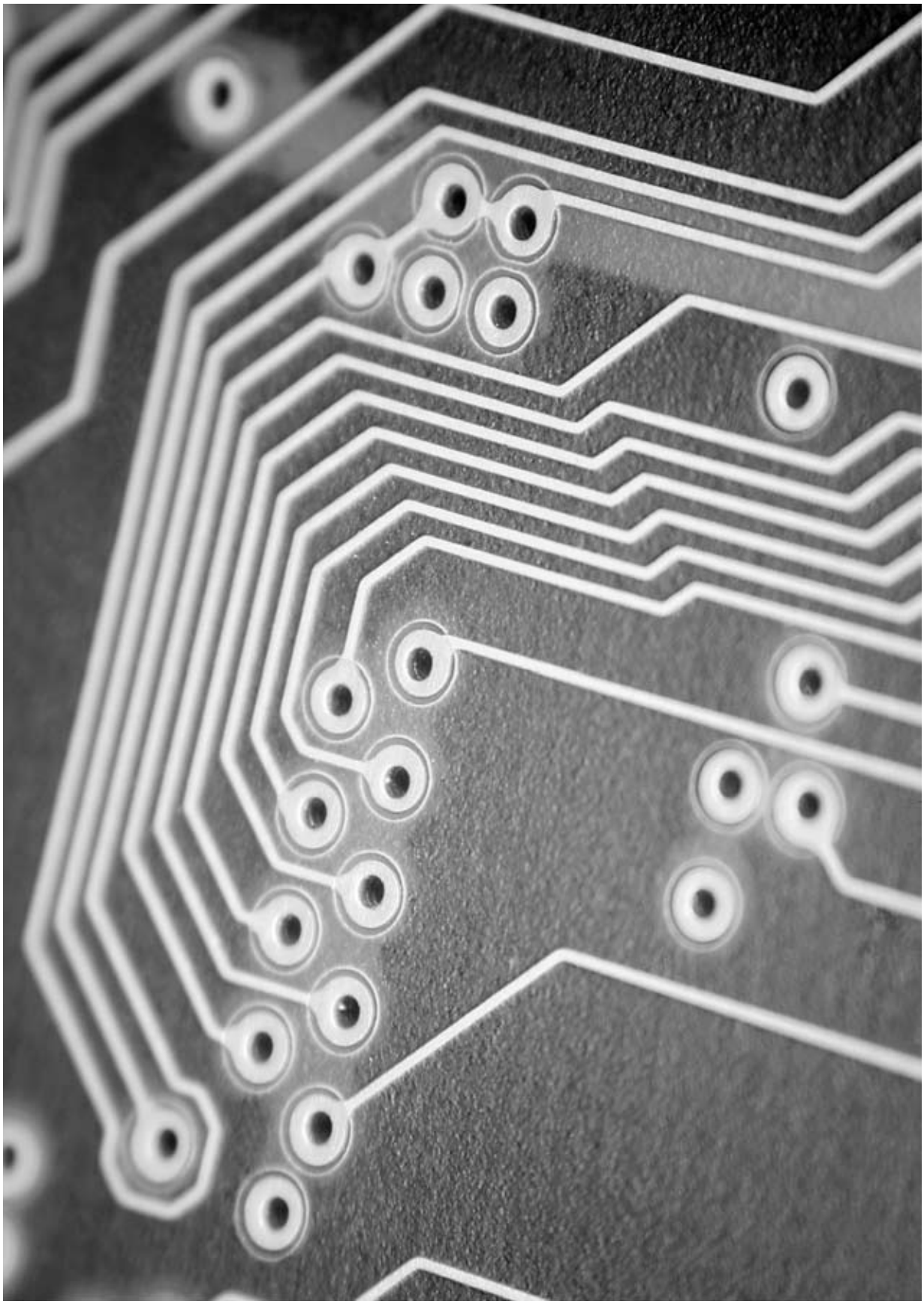

Oklahoma's New E-Discovery Rules

By Steven S. Gensler

E-discovery has officially arrived in Oklahoma. Unofficially, it has been here for many years. In 2008, for example, the Oklahoma Supreme Court decided a case involving sanctions against a party for deliberately destroying computer files.[1] And since at least 2003, the *Oklahoma Bar Journal* has been keeping readers up-to-date on many aspects of e-discovery.[2]

This year, however, marks the official beginning of the e-discovery era in Oklahoma. Recent work by the OBA Civil Procedure Committee has led the Oklahoma Supreme Court and the Oklahoma Legislature to adopt new e-discovery rules. On Feb. 9, 2010, the Oklahoma Supreme Court amended District Court Rule 5 to address the scheduling and management of e-discovery.[3] And on Nov. 1, a package of e-discovery amendments to the Oklahoma Code, passed and signed earlier this year, took effect.[4] With that, Oklahoma will join the federal courts – and approximately 28 other states – in having rules written specifically to address the discovery of electronically stored information (ESI).

This article presents the content of the new e-discovery rules and discusses how they will affect discovery practice in Oklahoma. Along the way, it explains various choices that the OBA Civil Procedure Committee made when developing the proposals that the House of Delegates approved and forwarded to the Legislature and the Supreme Court. It is essential to emphasize an obvious point — the committee did not enact the proposals into law; the Legislature and (for Rule 5) the Supreme Court did. Ultimately, all that matters is what those bodies intended. Nonetheless, the background behind the committee's choices hopefully sheds light on why the proposals emerged in the form that they did, and those insights may prove useful in understanding and applying the new e-discovery rules as they were enacted.

OVERVIEW OF THE CHANGES

The new e-discovery rules have three components. The main component consists of amendments to the discovery code. These amendments are, not surprisingly, the heart of the e-discovery rules. They contain the amendments that speak to core issues like the scope of e-discovery, the methods for seeking ESI, and the mechanics of producing it. The second component consists of amendments to Section 2004.1 of the pleading code governing subpoenas. These changes extend some of the practices and protections developed for party-to-party e-discovery to third-party e-discovery. The third component consists of amendments to District Court Rule 5 governing pretrial proceedings. These changes add e-discovery to the list of topics that the trial

judge can manage pursuant to the judge's scheduling and case-management powers.

For lawyers experienced with the e-discovery provisions of the Federal Rules of Civil Procedure, the Oklahoma e-discovery rules will be very familiar. Each of them parallels some part of the e-discovery amendments to the Federal Rules that took effect in 2006. The reason for the similarity is simple — all of the code provisions in question and District Court Rule 5 are modeled after analogous provisions in the Federal Rules. We did not need to write e-discovery rules from scratch. The 2006 e-discovery amendments to the Federal Rules already showed us the path forward.

But this was no simple cut-and-paste job. First, while the relevant code provisions and District Court Rule 5 are modeled after various Federal Rules, they occasionally depart from the Federal Rules in significant ways. One of the challenges for the project was to integrate the federal e-discovery provisions into Oklahoma's pretrial scheme. Second, each of the federal e-discovery amendments was considered on its own merits. As discussed in more detail later, not all of them made the cut. For those that did, however, the e-discovery case law that has been developing in the federal courts since 2006 should provide a valuable source of guidance for lawyers and the Oklahoma courts.[5]

CHANGES TO THE DISCOVERY CODE

Given that we are dealing with rules for e-*discovery*, it should come as no surprise that the primary amendments are to provisions of the discovery code. Four sections are affected: 1) Section 3226 addressing discovery generally; 2) Section 3233 addressing written interrogatories; 3) Section 3234 addressing document requests; and 4) Section 3237 addressing discovery sanctions.

12 O.S. 3226

The section that contains the greatest number of changes is Section 3226. At first blush, it may appear that Section 3226 was overhauled in its entirety. Subdivisions (A) and (B) certainly look quite changed. In reality, the changes to Section 3226, while important, are much more modest than they seem. Rather, the changed appearance results mostly from the reorganization of the existing content of subdivisions (A) and (B) and from the inclusion of explicit "proportionality" provisions in subdivision (B).

The Scope of Discovery: The changes to Section 3226 flow from a foundational question: Should the scope of e-discovery be different than the scope of traditional paper discovery? That question was prominent in the federal e-discovery rulemaking process. Many argued that the scope of e-discovery should be narrowed because of the sheer volume of ESI available and the resulting costs and burdens associated with e-discovery.

Ultimately, the federal rulemakers decided not to alter the general scope of discovery for ESI. But they did create a special provision to deal with one problem that is unique to e-discovery — the fact that some ESI is stored away in forms or systems that require considerable cost and effort to access. The classic example is information stored on back-up tapes or other systems that are designed for disaster recovery rather than regular use. The information is still there, but it can be very costly to access it.

The solution adopted by the federal rulemakers was to create a special tier for discovery from "inaccessible" sources of ESI. Under Federal Rule 26(b)(2)(B), a party that has inaccessible ESI is not required to search it initially, but instead may simply describe the inaccessible sources, say that they have not been searched, and then leave it to the court to determine whether there is good cause for them to be searched and under what conditions. (It is important to emphasize that this scheme does not affect discovery from accessible sources of ESI. For accessible sources — *e.g.*, active computer files and active email files — the scope of discovery is unchanged.) Our committee elected to incorporate the "two tier" scheme in our proposal. But there were two obstacles to integrating it into Section 3226.

First, the federal rulemakers had added the "inaccessible ESI" provision to the version of the Federal Rules that existed in 2006. We would be adding the provision to Section 3226, which is based on the *1980* version of Federal Rule 26. Federal Rule 26 had been significantly amended in 1983, 1993 and 2000, and most of those changes had not been incorporated into Section 3226.[6] Indeed, because of these differences, the place in Federal Rule 26 where the "inaccessibility" provision was added did not even exist in the version of Section 3226 we were working with.

That was not all. In 2009, the tort reform bill, HB 1603, amended Section 3226 to add a

provision requiring the automatic disclosure of damage calculations and supporting materials.[7] Keeping with the 1980 structure of the rule, however, the damage calculation provision was added to Section 3226(B) right where the "inaccessibility" provision would best fit if we followed the current federal structure. In short, differences between the structure and content of the 2006 version of Federal Rule 26 and the 2009 version of Section 3226 meant that we could not simply cut-and-paste the inaccessibility provision into Section 3226.

The committee decided to overhaul Section 3226(B) to have it track the current structure of Federal Rule 26(b). That entailed doing two things. First, it required moving the new damage calculation disclosure provisions to Section 3226(A) and making some changes there to get it to fit just right. Second, the committee updated Section 3226(B) to bring it in line with the current version of Federal Rule 26(b). That process began by updating Section 3226(B) to have it resemble the 2006 version of Federal Rule 26(b), which largely entailed added the changes from 1983 and 1993 that dealt with discovery limits and proportionality. Having done that, the committee could then follow the federal lead and fit the "inaccessibility" provision into Section 3226(B)(2)(b). The end result is that the content of Section 3226(B)(2) is now effectively the same as the content of Federal Rule 26(b)(2).

In doing these things, however, the committee did not believe that its proposal made any substantive change to Section 3226 apart from the addition of the "inaccessibility" provision. Obviously, the meaning of the 2009 damage calculation disclosure provision did not change upon being relocated to Section 3226(A). And while Section 3226(B)(2) now expressly includes the undue burden and proportionality limits in the rule, those concepts have long been an established part of Oklahoma discovery practice.[8] Indeed, the concepts have long been featured in the Oklahoma Discovery Code. Under Section 3226(G), lawyers already have a duty to make sure that their discovery requests, responses and objections do not impose undue burden or expense. Undue burden and expense are already grounds for the issuance of a protective order under Section 3226(C).[9] And Section 3226(F) already authorizes judges to regulate discovery by entering discovery plans, expressly stating that, when doing so, the court must protect the parties from "excessive or abusive" discovery.

In summary, while the new version of Section 3226 looks quite different from the former version, in substance the changes are modest. The only new concept is the creation of a two-tier scheme that distinguishes between accessible and inaccessible sources of ESI. All of the other changes are either organizational or, in the case of the "new" proportionality provisions, restate well-established norms. The result is that the content and structure of Section 3226(B)(2) will once again track that of Federal Rule 26(b)(2). Lawyers and judges alike will benefit by being able to draw more directly from the guidance provided by the case law applying the parallel federal provisions.

Post-production Claims of Privilege: The only other part of Section 3226 to be substantively amended was subdivision (B)(6) governing the process for claiming privilege or work-product protection. There are several changes. First, it was renumbered as Section 3226(B)(5). Second, it was divided into subparts (a) and (b). The content of the old rule located at subdivision (B)(6) now comprises subdivision (B)(5)(a). What is new is the content of subdivision (B)(5)(b).

In 2006, Federal Rule 26(b)(5) was amended to address the steps the parties should take in the event that a party has inadvertently produced material that it thinks qualifies for privilege or work-product protection. The producing party may notify the receiving party, at which point the receiving party may not use or disclose the material until such time as a court rules on the claim of privilege or work-product protection. Either side may bring the issue to the court and seek a ruling. New Section 3226(B)(5)(b) incorporates this provision.

It is crucial to appreciate that this new provision is procedural only. It does not speak to whether the material in question ever qualified for privilege or work-product protection. Nor does it speak to whether any applicable privilege or work-product protection was waived when the material was produced. (Readers should note that this question is now addressed, at least in part, by 12 O.S. 2502(E).[10]) Rather, the sole function of this provision is to allow the producing party to place a "hold" on the use of that material until the privilege, protection and waiver issues are resolved by the court.

Discovery Planning: Finally, it is necessary to identify and discuss an e-discovery amendment that was *not* made. Since 1993, Federal Rule 26(f) has required the parties to hold a discovery planning conference and submit a discovery planning report to the court. The purpose of the conference is to get the parties thinking about — and talking about — their discovery needs early in the case, with the hope that doing so will reduce confusion, increase cooperation and spotlight areas where there may be problems. The purpose of the report is to ensure that the court is fully-informed about the discovery needs and issues in the case when it enters the case management order.

> "If we have learned anything from the last four years of e-discovery in the federal courts, it is that most e-discovery problems are preventable."

As part of the 2006 federal e-discovery amendments, Federal Rule 26(f) was amended to add several e-discovery topics to the list of topics to be addressed at the planning conference. The federal rulemakers considered this to be a critical part of the new scheme. They realized there were no "silver bullet" rule changes that could solve the many and evolving issues associated with e-discovery. Rather, the key would be sound judicial management. But even the best judicial management would fall short if the parties blundered about blindly and only brought e-discovery issues to the court's attention after they had festered into serious problems. In the world of e-discovery, an ounce of prevention is truly worth a pound of cure. The Advisory Committee notes to the 2006 amendment to Federal Rule 26(f) read like a sermon on the benefits of early planning and regular communication (not to mention the need for lawyers to approach e-discovery in the spirit of cooperation rather than knee-jerk adversarialism).

On the surface, the question of whether to add e-discovery to the list of topics for discussion might seem like a small one, if not an obvious one. But it was neither. That is because nothing in the current version of Section 3226 requires the parties to confer about discovery. Section 3226 does have a subdivision (F), but it is based on the 1980 version of Federal Rule 26(f) and simply provides that a party may *ask* another party to engage in discovery planning, and then ask the court to intervene if the overture is rebuked. So, for our committee, the question was not whether to *update* the early discovery planning rule to include e-discovery, it was whether to *have* an early discovery planning rule in the first place.

The members of the committee debated this question at length. Some, including myself, were strong believers in the benefits of discovery planning and urged that Section 3226(F) be amended to require it. Others resisted, concerned that a discovery planning requirement would increase expense and conflict with existing scheduling and case management practices in many counties, especially if it required the parties to submit a report in advance of the court issuing a case management order. The committee reached a compromise — our proposal would require the parties to confer about discovery but would not require a report unless the court so ordered. Ultimately, however, the committee withdrew the Section 3226(F) proposal after it failed to receive the support of the OBA Board of Governors.

Speaking only for myself, I think the absence of an early planning requirement significantly weakens the impact of the e-discovery amendments. If we have learned anything from the last four years of e-discovery in the federal courts, it is that most e-discovery problems are preventable. And when genuine e-discovery disputes do arise, they cause far less damage when detected and resolved early.

It is critical that lawyers not view the absence of a mandatory discovery planning provision as signaling that e-discovery planning is not important. The committee did not withdraw its Section 3226(F) proposal because people disputed the value of early communication and cooperation in discovery. The proposal was withdrawn because some people questioned whether we needed to enshrine a fixed conference requirement into the rules in order to achieve it. Indeed, the main argument raised against the Section 3226(F) proposal — both within the committee and at the Board of Governors — was that Oklahoma lawyers already "pick up the phone" and work things out before serious problems arise.

I hope that is an accurate description of practice in all parts of the state. Moreover, I hope that litigation culture will lead Oklahoma lawyers to make sure that they give serious thought early in their cases to whether there is likely to be e-discovery, and then to talk with each other and try to either resolve potential issues or at least identify them early for the court to resolve. The surest way to create an e-discovery disaster is to put off dealing with it until it's too late. Going forward, I would expect judges to become less and less patient and understanding with lawyers who present thorny e-discovery problems that never would have arisen if the lawyers had simply looked ahead and talked to each other.

12 O.S. 3233

Section 3233 deals with interrogatories. While most e-discovery does not involve interrogatories, the two can intersect. If the answer to an interrogatory can be derived from business records, and the burden of deriving the answer would be no greater for the requesting party than for the answering party, then Section 3233(C) allows the answering party to tender the business records in lieu of writing an answer.

Section 3233(C) is amended to make clear that this procedure applies to ESI as well as paper records. While the principle is the same for ESI, the application of the rule to ESI does raise new issues. Foremost is that the usability of ESI may require access to a particular operating system or to proprietary software. Depending on the circumstances, a party that wanted to invoke Section 3233(C) might have to make its operating system or software available to the requesting party, and might even have to provide technical support, in order to satisfy the condition that the burden of deriving the answer be no greater for the requesting party. This does not in any way require any party to provide access to its operating systems or proprietary software. If a party does not wish to do that, it always remains free to derive the answer itself and answer the interrogatory as asked.

12 O.S. 3234

Section 3234 is another section that looks like it has been amended extensively. In part, it has. The new version includes several important provisions designed to clarify and streamline the use of "document requests" to obtain ESI. But, like Section 3226, much of the difference is due to the fact that the existing content was reorganized to improve clarity and understanding.

"ESI Requests": Section 3234(A) authorizes "document requests" and defines what they can be used to obtain. It has been amended to specifically list ESI among the materials that can be requested. This is not a change in practice; courts and lawyers long have construed Section 3234(A) to reach computer files and e-mail and the like. The listing of ESI simply confirms well-established practice.

It is important to note that the amendment does not refer to any particular forms of ESI or to any particular information storage technology. One of the lessons learned during the federal rulemaking process was that information technology continues to expand and evolve at a pace that makes it futile to try to capture current technology in the rule. Technology-specific rules would become outdated very quickly. Thus, the phrasing of Section 3234(A) is deliberately open-ended and inclusive in order to capture future information technologies.

Reorganized By Topic: Section 3234(B) is the part that looks the most different. In part, this is because the existing content was reorganized. Previously, Section 3234(B) had no subparts, and the contents bounced back and forth between topics. It is now divided into five subparts that are organized around particular topics. For example, subpart (3) now contains all of the provisions governing the content of requests to produce, while subpart (4) now contains all of the provisions governing the response to the request to produce. The e-discovery provisions have been integrated into the new subparts, appearing in subparts (3) through (5).

The Mechanics of Requesting and Producing ESI: Probably the most important issue in using "document requests" to obtain ESI is the form in which the ESI is to be produced. Consider a request that required the production of e-mail. In what form would the e-mail be produced? Would it be printed out and produced as paper? Would it be produced as an electronic file? If produced as an electronic file, would it be produced as an "imaged" document like a pdf file or in its so-called "native format"?

The choice between those forms can be very important for two reasons. First, paper copies

are not computer searchable, but most native format materials are. Second, paper copies and electronic files that only provide images of the documents contain nothing but what appears on the face of the page. In contrast, electronic documents produced in their native format often include additional types of hidden information automatically retained by the software, including "metadata" (information about the creation and history of the document, like when it was created, who created it, who viewed it and when) and embedded data (*e.g.*, a tracking of any revisions). Thus, parties who receive paper productions or imaged electronic files may be missing out on information that would have been available from the native format document. It should come as no surprise, then, that when parties get into e-discovery disputes it is often because of a disagreement over form of production.

> "Given the importance of the issue, one might expect the new e-discovery provisions to specify what form of production is to be used. But they do not, and with good reason."

Given the importance of the issue, one might expect the new e-discovery provisions to specify what form of production is to be used. But they do not, and with good reason. During the federal rulemaking process, form of production was one of the most hotly-debated issues. Some wanted a rule that said that native format production was always required if requested. Others wanted a rule that allowed the producing party to produce in whatever form it wanted. Like Federal Rule 34(b), Section 3234(B) eschews either extreme and adopts a middle path. It does not require parties to produce ESI in any particular form. Rather, it allows the requesting party to specify the form of production it wants. In response, the producing party can object and state the form of production it intends to make. Ultimately, disagreements about the form of production are for the court to resolve.

There are two reasons why Section 3234(B) does not mandate any particular form of production. First, the question of form of production overlaps with the scope of discovery. Much of the fighting over form of production is really a proxy fight over whether the requesting party will receive the hidden metadata that details the document's history. This can be important information. Indeed, parties often seek discovery of this type of information, usually by deposing witnesses familiar with the document. But document history is not always relevant to the issues in the case. It would make little sense to mandate that ESI be produced in a form that would contain all of the metadata all of the time, including in cases where it would be irrelevant. Second, in some cases (*e.g.*, routine cases with only a few, simple documents) a party might prefer to get hard copies rather than computer files.

In short, there is no one-size-fits-all approach to form of production. Accordingly, the new provisions do not try to provide one. Rather, they are designed to flag the issue for the parties early in the case so that if there is going to be a disagreement it can be spotted quickly and either worked out privately or presented to the court. The best way to avoid costly "do-overs" is to make sure that any disagreements are resolved before the first production is made.

Finally, Section 3234(B)(5) defines what constitutes an appropriate manner of production, setting default rules that can be altered by party agreement or court order. Subpart (a) contains the familiar language governing paper productions. Subpart (b) is new; it addresses electronic productions and provides that they must be made in either a form in which the ESI is ordinarily maintained or in a form that is reasonably usable. The principal purpose of this language is to make clear that a party may not select a form of production intended to degrade the usability of ESI. Subpart (c) then provides that a party need not produce ESI in more than one form. This means, for example, that a party could not ask for ESI to be produced in paper format (printed out) and also ask for the same ESI as a computer file.

12 O.S. 3237

The e-discovery issue that probably gets the most attention in the legal press is that of sanctions. Lawyers and clients are exposed to a

seemingly never-ending stream of horror stories involving e-discovery sanctions ranging from monetary sanctions to the dreaded "adverse inference instruction." The worst stories often involve not the deliberate destruction of evidence but spoliation that resulted from a party's failure to take appropriate steps to preserve ESI after litigation was reasonably anticipated.

The subject of sanctions was discussed at length during the federal e-discovery rulemaking process. Many participants urged the Advisory Committee to develop rules that would clearly define the duty to preserve ESI. Others emphasized the need for a rule limiting e-discovery sanctions to cases of reckless or intentional conduct, and not for ordinary negligence in preservation or production. Ultimately, the federal Advisory Committee declined to write general rules governing preservation or spoliation, at least at that time.[11] But it did create the so-called "safe harbor" provision of Federal Rule 37(e), which provides that a party may not be sanctioned under the Federal Rules for the loss of ESI if the loss resulted from the routine, good faith operation of an electronic information system. Federal Rule 37(e) is directed at situations where ESI is lost, even though the party took appropriate steps to preserve its ESI, because the party's computer system nonetheless deleted it in the ordinary course of business. It is critical to understand, however, that Rule 37(e) does not mean that parties may sit back and idly watch their document retention programs purge discoverable files. Rather, the "routine" and "good faith" operation of the party's information system presumes that the party will take reasonable steps to intervene and prevent the loss of discoverable files once the duty to preserve ESI is triggered. In many situations, that means the party must implement an appropriate "litigation hold" in order to seek shelter in Federal Rule 37(e)'s safe harbor.

Our committee agreed with the idea of having a "safe harbor" from sanctions when parties act reasonably. We also agreed that it was appropriate to condition the availability of the safe harbor provision on parties taking reasonable steps to intervene, such as by implementing reasonable litigation holds once the duty to preserve attaches. Without that, parties could set up aggressive "retention" (*i.e.*, destruction) programs and stand by while important ESI was purged until a formal document request was made or a court entered a preservation order.

Our committee took the concept of the safe harbor one step further, however. Due to the limits on what the federal rulemakers can address under the Rules Enabling Act,[12] Federal Rule 37(e) applies only to *rules-based* sanctions. It does not preclude courts from issuing sanctions under other authority. Because our committee makes proposals to the Legislature, however, our proposals can address any topic within the Oklahoma Legislature's power. Thus, our proposal departed from Federal Rule 37(e) in a subtle but important way. Under Section 3237(G), the safe harbor covers sanctions generally, not just sanctions under Section 3237.

Because it covers all sources of sanctions, Section 3237(G) provides greater protection than Federal Rule 37(e). That makes the harbor "safer," but it does not make the harbor bigger. It is still a small harbor. It only applies to the loss of ESI. It only applies to the routine and good-faith operation of an electronic information system. And it is subject to the party implementing a sufficient litigation hold once a lawsuit is filed or becomes likely. When ESI is lost as a result of a non-routine or a bad-faith operation of an electronic information system, or when ESI is lost because the party should have but failed to implement a reasonable litigation hold, Section 3237(G) provides no protection. Nor will Section 3237(G) provide protection to people who deliberately destroy ESI.

CHANGES TO THE PLEADING CODE

When most people think of e-discovery, they think of it, quite naturally, in its party-to-party form. But e-discovery often involves non-parties. To be precise, parties often seek ESI from non-parties by subpoena.

Most of the e-discovery reforms that were adopted for party-to-party discovery have been incorporated into non-party discovery under Section 2004.1. The principal amendments 1) make clear that ESI may be sought by subpoena; 2) incorporate the provisions of Section 3226(B)(2)(b) regarding "inaccessible" ESI; 3) incorporate the provisions of Section 3226(B)(5)(b) regarding the process for making a post-production assertion of privilege or work-product protection; and 4) incorporate the provisions of Section 3234(B) regarding the form of production of ESI.

No special amendments were made to address the cost or burden that requests for ESI might impose on non-parties. That may seem curious. If anyone needs special protection

from the costs and burdens associated with the abuse or overuse of e-discovery, it would seem to be strangers to the suit. While that may be true, the committee determined that the existing rule already provides non-parties with ample protection. For example, Section 2004.1(C)(1) already instructs the parties to not make requests that would impose undue cost or burden on non-parties and authorizes sanctions against parties who do. Section 2004.1(C)(2)(B) lets a non-party avoid compliance with an objectionable subpoena simply by making a timely objection to it. Finally, a non-party may seek to quash or modify an objectionable subpoena under Section 2004.1(C)(3)(a). Non-parties should look to these existing protections to deal with any special problems of undue cost or burden that e-discovery subpoenas may generate.

CHANGES TO THE RULES FOR DISTRICT COURTS

In 2006, Federal Rule 16(b)(3) was amended to add e-discovery to the list of topics the court might address in the case management order. That makes eminent sense, and our committee voted to propose a similar change. In Oklahoma, however, case management is addressed not in the code but in Rule 5 of the Rules for District Courts. Accordingly, this aspect of the committee's proposal was formulated as an application to the Oklahoma Supreme Court for an order amending Rule 5.

The Oklahoma Supreme Court agreed with the proposal and granted the application. The amended version of Rule 5 took effect on Feb. 9, 2010. It bears emphasizing that the new version of Rule 5 does not mandate that parties conduct e-discovery at all, let alone establish any fixed terms regarding when or how it is to be done. Rather, the sole change is to add e-discovery to the list of subjects to be addressed, as needed, at any scheduling or other pretrial conferences that the court might wish to conduct.

CONCLUSION

Discovery has never been easy, or cheap. With the advent of e-discovery, both the difficulty and the cost of discovery can quickly get out of control. The new e-discovery rules are meant to *help*. They are meant to help make the process more manageable. They are meant to help contain the cost. They are no panacea. But they do represent progress in the right direction.

Still, rules alone cannot solve all of the challenges that e-discovery presents to the modern civil litigation system. The issues are too complex. The volume is too great. The technology moves too fast. The solutions that work in one case will not necessarily work in the next.

The message underlying the e-discovery rules — sometimes set forth in black letter and sometimes written between the lines — is that the best way to deal with e-discovery problems is to prevent them from happening in the first place. That requires sound judicial case management. But it starts with good lawyering. In this context, that means lawyers who understand the issues, who understand their clients' needs and capabilities, and who communicate with each other to prevent the avoidable problems and to identify and resolve the real problems before they get out of control.

Author's Note: I have been a member of the OBA Civil Procedure Committee since 2006 and served as the chair of the E-Discovery Subcommittee that developed these proposals. I have also served as a member of the Advisory Committee on the Federal Rules of Civil Procedure since 2005. In preparing this article I have drawn on my experiences as a participant in these various activities. However, any opinions expressed herein are my own and are not to be taken as the views of the federal Advisory Committee or the OBA Civil Procedure Committee.

1. *Barnett v. Simmons*, 2008 OK 100 (2008).

2. Sarah Jane Gillett and Matthew A. Sunday, *Ethical Considerations and Consequences in the Realm of Electronic Discovery*, 79 Okla. B.J. 2767 (Dec. 2008); Jim Calloway, *Metadata – What Is It and What Are My Ethical Duties?*, 79 Okla. B.J. 2529 (Nov. 2008); Eric S. Eissenstat, *Making Sure You Can Use the ESI You Get: Pretrial Considerations Regarding Authenticity and Foundation*, 79 Okla. B.J. 525 (March 2008); Drew T. Palmer and Cherish K. Ralls, *The Duty to Notify: The Ethical Use of Metadata in Oklahoma*, 78 Okla. B.J. 3141 (Dec. 2007); Elliot Paul Anderson, *What Lies Beneath: Native Format Production and Discovery of Metadata in Federal Court*, 78 Okla. B.J. 999 (April 2007); Jerry Green and Susan F. Carns, *E-Discovery: The New Federal Rules*, 77 Okla. B.J. 3093 (Nov. 2006); Stephen P. Friot, *Discovery of Electronic Documents and Other Digital Data*, 74 Okla. B.J. 1463 (May 2003); Jim Calloway, *Tools for Electronic Discovery*, 74 Okla. B.J. 1529 (May 2003).

3. Order Amending Rule 5 of the Rules for District Courts, 2010 OK 8.

4. SB 2039 (2010).

5. See *Crest Infiniti II LP v. Swinton*, 2007 OK 77, ¶ 2 ("We may look to discovery procedures in the federal rules when construing similar language in the Oklahoma Discovery Code."); *Scott v. Peterson*, 2005 OK 84, ¶ 22 ("The Discovery Code was adopted from the federal scheme and we have looked to federal authority construing federal Rule 26 for guidance when applying our similar provision.").

6. To give one example, the required initial disclosure provisions of Federal Rule 26(a)(1) were added in 1993 and amended in 2000. Until last year, none of those provisions had been incorporated into Section 3226, though that did change when HB 1603 added the provision requiring parties to disclose damage calculations and supporting materials.

7. See https://www.sos.ok.gov/documents/legislation/52nd/2009/1R/HB/1603.pdf.

8. See *Crest Infiniti II LP v. Swinton*, 2007 OK 77, ¶ 16 ("Discovery may be limited or denied when discoverable material is sought in an excessively burdensome manner."); *Farmers Ins. Co. Inc. v. Peterson*, 2003 OK 99, ¶ 3 (same).

9. See *YWCA of Oklahoma City v. Melson*, 1997 OK 81, ¶ 25 (stating that courts should enter protective orders if discovery "is needlessly or excessively intrusive, burdensome, or oppressive").

10. Section 2502(E) of the Evidence Code was added in 2009 as part of HB 1597. See https://www.sos.ok.gov/documents/legislation/52nd/2009/1R/HB/1597.pdf. It is modeled after Rule 502 of the Federal Rules of Evidence, which took effect in September 2008. Section 2502(E) provides that an inadvertent disclosure of a communication covered by the attorney-client privilege or the work-product rule does not waive those protections so long as the holder of the privilege or protection took reasonable steps to prevent the disclosure and took reasonable steps to rectify the error. 12 O.S. 2502(E).

11. In light of experience since 2006, and at the near-unanimous urging of the practicing bar, the federal Advisory Committee has begun a new project to consider amendments to the Federal Rules that would directly address preservation duties and spoliation sanctions.

12. 28 U.S.C. §2072.

ABOUT THE AUTHOR

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The Acra was a fortified compound in Jerusalem of the 2nd century BCE. Built by Antiochus Epiphanes, ruler of the Seleucid Empire, following his sack of the city in 168 BCE, the fortress played a significant role in the events surrounding the Maccabean Revolt and the formation of the Hasmonean Kingdom. It was destroyed by Simon Maccabeus during this struggle. The exact location of the Acra, critical to understanding Hellenistic Jerusalem, remains a matter of ongoing discussion. Historians and archaeologists have proposed various sites around Jerusalem, relying mainly on conclusions drawn from literary evidence. This approach began to change in the light of excavations which commenced in the late 1960s. New discoveries have prompted reassessments of the ancient literary sources, Jerusalem's geography and previously discovered artifacts. Yoram Tsafrir has interpreted a masonry joint in the southeastern corner of the Temple Mount platform as a clue to the Acra's possible position. During Benjamin Mazar's 1968 and 1978 excavations adjacent to the south wall of the Mount, features were uncovered which may have been connected with the Acra, including barrack-like rooms and a huge cistern. (more...)
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The Lawyer's Guide to Using and Citing Wikipedia

By Lee F. Peoples

A wiki is a webpage created through collaborative effort. The most famous wiki is Wikipedia, an online encyclopedia that contains over 15 million articles in 270 languages. Anyone can create or edit Wikipedia content at any time. Wikipedia makes no guarantees about the validity of the information it contains and warns users that articles may contain false or debatable information. Wikipedia articles have been purposely falsified by pranksters, and as a result, changes to articles about living people must be verified by Wikipedia editors before going live. The citation of Wikipedia in papers and exams has been formally banned at several colleges, and Wikipedia's founder has publicly warned college students not to cite it in their papers.

Surprisingly Wikipedia has been cited in over 400 judicial opinions.[1] Many of these references are harmless citations used for background information or dicta. But in some instances courts have taken judicial notice of Wikipedia content, decided important motions on the basis of Wikipedia entries and relied on Wikipedia to support judicial reasoning.

USING WIKIS

In spite of its deficiencies, Wikipedia can be a useful starting point for research. Wikipedia can be used for gathering search terms before beginning research in an area that you are unfamiliar with. A few minutes spent mining a Wikipedia entry for relevant search terms can save considerable time and produce more relevant search results when using LexisNexis or Westlaw. Some Wikipedia entries are carefully footnoted with references to reliable sources of information. A few moments spent reviewing the footnotes may lead you to a relevant source. For example, in a recent opinion, the 7th Circuit referenced the Wikipedia entry on shell corporations and noted that the Wikipedia entry was quoting from *Barron's Finance & Investment Handbook*.[2]

A wiki created or edited by a noted expert in a particular area of law could potentially be superior to a law review article or book by the same expert. The wiki could be updated instantly and reflect the most recent changes in the law. In contrast, it would take the expert months or years to publish a treatise or law review article discussing the latest developments in the law. Examples of these types of wikis include:

- Workers' Compensation Law, www.workerscompensationok.com/, is a useful wiki that contains an "unofficial summary and analysis of issues that are frequently addressed by the Oklahoma Workers' Compensation Court."[3] The wiki is authored by Oklahoma Workers' Compensation Court Judge Tom Leonard and is updated frequently.
- ScotusWiki, www.scotuswiki.com, focuses on the U.S. Supreme Court. It was launched by the highly-respected Supreme Court specialist Tom Goldstein who is famous for his SCOTUSblog. Only "regular SCOTUSblog contributors, top law students, and leading experts in various legal fields" are permitted to edit the content of ScotusWiki.[4]
- Cornell Law School's Wex, http://topics.law.cornell.edu/wex, is a wiki about law that only allows "qualified experts" to write or edit content. Boasting over 5,000 entries, Wex is currently the most robust wiki about law written by experts.
- Many lawyers and legal academics who share their expertise on the Internet do so using a blog instead of a wiki. Two useful resources for locating blogs about law are Justia's BlawgSearch, http://blawgsearch.justia.com/blogs, and Blawg.org.

Several other wikis are worth mentioning for their efforts to tap into the collaborative nature of the wiki platform.

- The 7th Circuit Court of Appeals launched a wiki in 2007, http://www.ca7.uscourts.gov/wiki/index.php?title=Main_Page. The main feature of the wiki is the *Practitioners Handbook* which may be edited by attorneys who complete an online registration form. Chief Judge Frank H. Easterbrook explained the decision to open the handbook up for revision "As a group, the attorneys practicing before our court know more about appellate practice than any single person. With our wiki, we're drawing on that wisdom."[5]
- Spindle Law, www.spindlelaw.com, was recently launched by several Columbia law graduates as a wiki-style treatise that "assembles rules of law together with the authorities to back up those rules. Structurally, it organizes the law into a tree, with each branch leading to ever-narrowing branches."[6] Registered users can create or edit content on Spindle Law and editors review the submissions to ensure quality. Spindle Law is still very much a work in progress and currently only contains content on evidence, the Clean Air Act and securities law.
- Judgepedia, www.judgepedia.org/index.php/Main_Page, is a wiki about judges that any registered user can contribute to. It has nearly 100,000 entries on federal and state court judges. Judgepedia has the potential to be a valuable source of information about the judiciary. Unfortunately, many of the entries about Oklahoma judges have yet to be developed.

WHEN CITING A WIKI MAY BE APPROPRIATE

The agility of wikis gives them an advantage over print resources in certain situations. Wikipedia entries have been cited in judicial opinions to define new slang terms, popular culture references, and to explain jargon, lingo and technology terms.[7] Many of these terms are so new that they are not yet included in more traditional reference sources like encyclopedias or dictionaries. For example, Judge Alex Kozinski of the 9th Circuit Court of Appeals recently turned to Wikipedia to define a term related to the Internet in a dissenting opinion. Judge Kozinski criticized the majority opinion for defining the term using a print dictionary published in 1963, more than 20 years before the Internet came into existence.[8] Similarly, the Western District Court of Oklahoma[9] cited a wiki to define the technology term "data-carving," and the 10th Circuit Court of Appeals[10] cited Wikipedia for a list of computer file formats.

The collaborative process through which Wikipedia entries are created makes them particularly useful in certain situations. Courts interpreting insurance contracts have turned to Wikipedia for evidence of the common usage or ordinary and plain meaning of a contract term. For example, a Wikipedia entry has been relied on to define the terms "recreational vehicle"[11] and "car accident"[12] in the context of insurance contracts. It is conceivable that in the future courts may turn to Wikipedia to determine public perception in trademark infringement or dilution cases or to establish community standards in the context of prosecutions for obscene material.[13]

EVALUATING A WIKIPEDIA ENTRY

Wikipedia entries should be evaluated to determine if they meet basic standards of quality before they are cited. Wikipedia editors include editorial notes in Wikipedia entries to indicate the quality of the entry. Entries bearing a small gold star in the upper right hand corner are "featured articles"[14] and have been recognized for being accurate, neutral and complete. At the other end of the spectrum are "stubs," articles containing only a few sentences. Additional editorial notes appearing at the top of some articles include "missing footnotes," "requires authentication by an expert," or "requires cleanup." One-hundred and fifteen of the Wikipedia entries cited in the opinions I examined included editorial notes alerting the reader to something negative in the Wikipedia entry, but none of the 401 judicial opinions I examined mentioned these rankings when citing a Wikipedia entry.

Editorial notes can be helpful in evaluating a Wikipedia entry. But the analysis of the quality of an entry should not rest entirely on a note made by a volunteer Wikipedia editor. Any Wikipedia entry cited in a brief or judicial opinion should be evaluated for authority, completeness, accuracy and bias.[15] The authority of a Wikipedia entry is difficult to determine. Wikipedia entries are the products of collaboration, and no one individual author can be identified. The only clue to the author's identity comes from the "View History" tab at the top of every Wikipedia entry. It reveals the user name or IP address of every user who edited the article. Completeness, accuracy and bias can be evaluated by watching for editorial notes appearing in the Wikipedia entry and by comparing the Wikipedia entry to a reliable source like a treatise or scholarly article.

CITING WIKIPEDIA ENTRIES

The purpose of legal citation is "to allow the reader to efficiently locate the cited source."[16] The constantly changing nature of Wikipedia entries makes them challenging sources to cite. Every Wikipedia entry cited in the 401 cases that I examined had changed since the date the court cited it. Some of the changes were minor and improved the entry. In other cases, the entry changed significantly and no longer contained the information it was cited for in the judicial opinion.[17]

Changes in Wikipedia entries may be of little concern to researchers if the initial citation was for a trivial point or collateral matter. But if the Wikipedia entry was cited to support an assertion made in a judicial opinion, or was otherwise relied upon by the court, then the inability to examine the entry as the judge saw it has more severe consequences. Future researchers may not be able to completely comprehend the point the judge was making if they cannot retrieve the exact Wikipedia entry as the judge viewed it. This may ultimately lead to uncertainty and instability in the law.[18]

Specific information must be included in the citation to allow the reader to view the Wikipedia entry as it appeared at the time it was cited. The rules on citing Internet sources in the recently released 19th edition of *The Bluebook* are a vast improvement over the previous edition's rules. Rule 18.2.2 covers direct citations to Internet sources. Under this rule, Wikipedia entries should be cited as follows:

> *Wear and Tear*, WIKIPEDIA (Mar. 26, 2009, 2:15 PM), http://en.wikipedia.org/w/index.php?title=Wear_and_tear&oldid=237134914.

Rule 18.2.2 requires a citation to include the title of the page viewed, the date and time it was viewed and a permanent link to the page viewed. Wikipedia provides a permanent link under the toolbox section on the left-hand side of each entry. This link will take future researchers to the entry exactly as it looked when it was cited.

The Judicial Conference of the United States recently released guidelines on the citation of Internet sources that provide additional safeguards against disappearing Internet sources.[19] The guidelines urge judges to capture Internet sources when citing a source that is "fundamental to the reasoning of the opinion and refers to a legal authority or precedent that cannot be obtained in any other format"[20] or if there is reason to expect that the source may "be removed from the website or altered."[21] The guidelines are a positive development but are not mandatory and do not apply to state courts. In my study, 26 percent of the citations to Wikipedia were found in state court opinions.[22] The National Center for State Courts should follow the lead of the Judicial Conference in this area and develop similar guidelines for state courts.

WHEN NOT TO CITE WIKIPEDIA

Wikipedia should not be cited as the only source to support reasoning or analysis. One of the most egregious examples comes from the 7th Circuit Court of Appeals in the case of *Rickher v. Home Depot*[23] where the court relied on the Wikipedia definition of "wear and tear" to refute a claim central to the appellant's case that wear and tear encompassed damage that would occur during the proper use of a rental tool. Blogger and law professor Eugene Volokh was troubled by the use of Wikipedia as a "substantial authority"[24] and cautioned that because the accuracy of Wikipedia had not been demonstrated, courts should rely on more traditional sources when deciding important and controversial matters.

> "The 8th Circuit's opinion contained several paragraphs critiquing the reliability of Wikipedia."

Wikipedia has been used in disturbing ways in immigration cases. In *Badasa v. Mukasey*[25] the 8th Circuit wisely remanded a Board of Immigration Appeals decision denying an asylum request because it was based solely on a definition taken from Wikipedia. The 8th Circuit's opinion contained several paragraphs critiquing the reliability of Wikipedia. One blogger noted that the use of Wikipedia in this case "would almost be humorous if it weren't for the dire consequences of rejecting a valid asylum application and returning a refugee to a country in which they face torture and possibly death."[26]

In *Tandia v. Gonzales*,[27] the 10th Circuit Court of Appeals cited a Wikipedia entry to support an attack on the credibility of an asylum seeker. According to the asylum seeker, the population of his hometown Kaedi was 800. The court found that this claim undermined the asylum seeker's credibility. This finding was supported by a quotation from the Wikipedia entry on Kaedi which states that "it is presently a city of over 60,000 people."[28] A more reliable source of population information should have been used when questioning the credibility of the asylum seeker. The U.S. Department of State background notes contain detailed information about all countries in the world.[29] The background note on the city of Kaedi located in the African country of Mauritania puts the city's population at only 34,000.[30] The court should have turned to a more reliable source of information for this important fact instead of unreliable information obtained from Wikipedia.

Courts should not take judicial notice of Wikipedia content because it does not meet the evidentiary requirements for judicial notice. Courts may take judicial notice of a fact that is "not subject to reasonable dispute in that it is either 1) generally known within the territorial jurisdiction of the trial court or 2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned."[31] Wikipedia entries are often the subjects of dispute, and Wikipedia has an elaborate process in place to settle disputes over entries. Additionally, Wikipedia is a source whose accuracy can be reasonably questioned. It can be edited at any time by anonymous editors. Wikipedia entries are often marked with editorial notes including "missing footnotes," "doesn't cite any sources," "requires authentication by an expert" and "neutrality disputed."[32] In the majority of cases,[33] courts have wisely refused to take judicial notice of Wikipedia content. However, courts have taken judicial notice of Wikipedia content in a small handful of cases.[34] No Oklahoma or 10th Circuit opinion has spoken to this issue yet.

Wikipedia entries should not be accepted to demonstrate the presence or absence of a material fact in the context of a motion for summary judgment. Anyone can edit a Wikipedia entry at any time to support their version of the facts at issue in a case. Courts should be wary of any such "opportunistic editing"[35] of Wikipedia and should not trust it in the context of a motion for summary judgment. In several cases courts have relied on a Wikipedia entry along with other sources to grant or deny a motion for summary judgment.[36] But so far courts have wisely rejected attempts to show the presence or absence of a material fact based only on a Wikipedia entry.[37] No Oklahoma or 10th Circuit case has addressed the use of Wikipedia in the context of a motion for summary judgment.

CONCLUSION

In James Surowiecki's book, *The Wisdom of Crowds*, he argues that "under the right circumstances, groups are remarkably intelligent, and are often smarter than the smartest people in

them."[38] Oklahoma judges and lawyers should be cautious when relying on the wisdom of the crowds who create and edit Wikipedia content. Wikipedia has only been cited in a handful of judicial decisions in Oklahoma but citations will likely increase in the future.[39] Wikipedia's rapidly updated crowd-sourced content makes it particularly useful in limited situations. But the impermanent nature and questionable quality of its content should give lawyers and judges pause before citing Wikipedia.

Author's Note: I would like to thank Emma Rolls for her careful editing of this article.

1. Lee F. Peoples, "The Citation of Wikipedia in Judicial Opinions," 12 *YALE J.L. & TECH.* 1, 6 (2009-10) (reporting the results of my exhaustive survey of every judicial opinion citing a Wikipedia entry).
2. *Nautilus Ins. Co. v. Reuter*, 537 F.3d 733, 737 (7th Cir. 2008).
3. "About This Site," *Workers' Compensation Law* (Sept. 29, 2010, 10:37 a.m.), www.workerscompensationok.com/about-this-site.
4. *About*, SCOTUSWIKI (July 16, 2010, 9:35 a.m.), www.scotuswiki.com/index.php?title=ScotusWiki:About.
5. "7th Circuit's Wiki Lets Practitioners Contribute," Vol. 39 No. 6 *The Third Branch 2* (June 2007).
6. Robert J. Ambrogi, "Crowdsourcing the Law: New Sites Rely on the Community to Gather and Refine Expertise," *Law Tech. News*, Aug. 1, 2010, www.law.com/jsp/lawtechnologynews/PubArticleLTN.jsp?id=1202463905267.
7. See *People v. Rodriguez*, 860 N.Y.S.2d 859 (Crim. Ct. 2008) turning to Wikipedia for a definition of how MySpace works; *People v. Hawlish*, No. G036077, 2007 WL 915149, at *6 n.5 (Cal. Ct. App. March 27, 2007) using Wikipedia to define slang drug terms; and *Healthcare Advocates Inc. v. Harding, Earley, Follmer & Frailey*, 497 F. Supp. 2d 627, 630 (E.D. Pa. 2007) referring to Wikipedia to define a technology related term.
8. *Fair Housing Council v. Roommates.com, LLC*, 521 F.3d 1157, 1168-69 (9th Cir. 2008).
9. *US v. Haymond*, 2009 WL 3029592 (N.D. Okla. 2009).
10. *US v. Welch*, 291 Fed. Appx. 193, 203-04 (10th Cir. 2008).
11. *Fergison v. Stonebridge Life Ins. Co.*, No. 271488, 2007 WL 286793, at *3 (Mich. Ct. App. Feb. 1, 2007).
12. *Laasmar v. Phelps Dodge Corp. Life, Accidental Death & Dismemberment and Dependent Life Ins. Plan*, No. 06-cv-00013-MSK-MJW, 2007 WL 1613255, at *4 n.5 (D. Colo. June 1, 2007).
13. *Peoples, supra* note 1, at 32-33.
14. For a thorough explanation of editorial notes included in Wikipedia articles see *About*, WIKIPEDIA (July 16, 2010, 9:20 a.m.), www.en.wikipedia.org/w/index.php?title=Wikipedia:About&oldid=329127169.
15. Diane Murley, "In Defense of Wikipedia," *100 Law Libr. J.* 593, 599 (2008).
16. "*The Bluebook:* A Uniform System of Citation 1" (*Columbia Law Review* Ass'n et al. eds., 19th ed. 2010).
17. See the specific examples from the *Helen of Troy* and *Murdick* cases discussed in *Peoples, supra* note 1, at 39-40.
18. This paragraph originally appeared in my article "The Citation of Wikipedia in Judicial Opinions," *supra* note 1, at 39.
19. "Judicial Conference of the U.S., Guidelines on Citing to, Capturing, and Maintaining Internet Resources in Judicial Opinions/Using Hyperlinks in Judicial Opinions" (2009) [hereinafter guidelines], *available at* www.inbar.org/LinkClick.aspx?fileticket=hptDW9DIhFY%3D&tabid=356. For more information on disappearing Internet sources *see* Mary Rumsey, "Runaway Train: Problems of Permanence, Accessibility, and Stability in the Use of Web Sources in Law Review Citations," *94 Law Libr. J.* 27, 30 (2002).
20. Guidelines, *supra* note 19, at 2.
21. *Id*. at 3.
22. 103 out of 401 cases citing Wikipedia.
23. 535 F.3d 661 (7th Cir. 2008).
24. Eugene Volokh, "Questionable Use of Wikipedia by the Seventh Circuit?," *Volokh Conspiracy* (July 30, 2008, 1:02 p.m.), http://volokh.com/2008/07/30/questionable-use-of-wikipedia-by-the-seventh-circuit.
25. 540 F.3d 909 (8th Cir. 2008).
26. Jaya Ramji-Nogales, "Citing Wikipedia—Harmless Error?," *Concurring Opinions* (Sept. 3, 2008, 9:26 a.m.), www.concurringopinions.com/archives/2008/09/citing_wikipedi.html.
27. 236 Fed. Appx. 455, 457 (10th Cir. 2007).
28. *Id*.
29. "Background Notes," www.state.gov/r/pa/ei/bgn/index.htm (last visited July 16, 2010).
30. *Mauritania*, "Background Notes" (July 16, 2010, 9:20 a.m.), www.state.gov/r/pa/ei/bgn/5467.htm#geo.
31. *Fed. R. Evid*. 201(b).
32. *About*, WIKIPEDIA, *supra* note 14.
33. *Steele v. McMahon*, No. CIV S-05-1874 DAD P, 2007 WL 2758026 (E.D. Cal. Sept. 21, 2007), *Flores v. State*, No. 14-06-00813-CR, 2008 WL 4683960 (Tex. Ct. App. Oct. 23, 2008), and *Capcom Co. v. MKR Group Inc.*, No. C 08-0904 RS, 2008 WL 4661479, at *4 (N.D. Cal. Oct. 20, 2008).
34. *Helen of Troy L.P. v. Zotos Corp*., 235 F.R.D. 634, 639 (W.D. Tex. 2006) and *Aquila v. Nationwide Mutual Insurance Co*., No. 07-2696, 2008 WL 4899359 (E.D. Pa. Nov. 13, 2008).
35. Noam Cohen, "Courts Turn to Wikipedia, but Selectively," *N.Y. Times*, Jan. 29, 2007.
36. *C & R Forestry Inc. v. Consolidated Human Resource AZ Inc.*, No. CV 05-381-N-EJL, 2008 WL 4000161 (D. Idaho Aug. 28, 2008), *Randy Disselkoen Properties LLC v. Charter Township of Cascade*, No. 1:06-cv-141, 2008 WL 114775 (W.D. Mich. Jan. 9, 2008), *General Conference Corp. of Seventh-Day Adventists v. McGill*, 624 F. Supp. 2d 883 (W.D. Tenn. 2008), and *Murdick v. Catalina Marketing Corp*., 496 F.Supp.2d 1337, 1350 -51 (M.D. Fla. 2007).
37. *Davage v. City of Eugene*, No. 04-6321-HO, 2007 WL 2007979 (D. Or. July 6, 2007).
38. James Surowiecki, *The Wisdom of Crowds:* "Why the Many Are Smarter Than the Few and How Collective Wisdom Shapes Business, Economies, Societies, and Nations," at xiii (2004); *see also* Cass R. Sunstein, *Infotopia:* "How Many Minds Produce Knowledge" (2006).
39. A search of Westlaw's Oklahoma State and Federal Civil Trial Court Filings (OK-FILINGS-ALL) database revealed 10 filings citing Wikipedia or another wiki.

ABOUT THE AUTHOR

Lee F. Peoples is director of the Law Library and associate professor of law library science at the Oklahoma City University School of Law. He received his B.A., M.L.I.S. and J.D. degrees from the University of Oklahoma. His research and scholarship focuses on comparative law and the impact of technology on legal research, the judiciary and the law.

Mark Your Calendar and Register Today

Annual Criminal Law Section Luncheon

Crowne Plaza Hotel, Tulsa, Oklahoma
Wednesday, November 17, 2010

Newly appointed Judge Clancy Smith of the Oklahoma Court of Criminal Appeals has graciously accepted our invitation to deliver the keynote address for the Annual Luncheon and Professional Advocate Awards Presentation of the Criminal Law Section of the Oklahoma Bar Association, to be held in the Crowne Plaza Hotel on Wednesday, November 17, 2010, during the OBA Annual Meeting.

Judge Smith served as a Tulsa County Special Judge for 11 years and as District Judge for 5 years prior to her appointment by Chief Justice James Edmondson, and took the Court of Criminal appeals bench in early September. Please join us in welcoming Judge Smith to the Oklahoma Court of Criminal Appeals.

A gourmet plated luncheon will be served. The luncheon is open to all OBA members, whether or not members of the Section. **PLEASE register on or before November 12, 2010 if possible, so that we may ensure adequate luncheon plates are provided. However, walk-in registration is accepted at no extra cost**.

Registration Form

First Name (Print) _____ Last Name (Print)_____

Address _____

City _____ State _____ Zip _____

E-mail _____

Phone (____) _____ Fax (____) _____

OBA Number: _____

Registration (Check appropriate boxes):

[ ] $15 — Criminal Law Section Member attending the luncheon

[ ] $20 per guest if accompanied by a member. Guest Name: _____

[ ] $30 — Nonmember (includes section membership for 2011)

$_____Total Enclosed

Payment (Select One):

Check ___ Visa ___ Master Card ___ Card # _____ Exp. Date _____

Signature required: _____

Remit form and payment to Tracy Sanders, Membership Coordinator
OBA, P.O. Box 53036, Oklahoma City, OK 73152 or fax to (405) 416-7001

OBA
ANNUAL MEETING

2010 Award Recipients

OBA Awards:
Individuals for Whom Awards are Named

NEIL E. BOGAN — Neil Bogan, an attorney from Tulsa, died unexpectedly on May 5, 1990 while serving his term as president of the Oklahoma Bar Association. Mr. Bogan was known for his professional, courteous treatment of everyone he came into contact with and was also considered to uphold high standards of honesty and integrity in the legal profession. The OBA's Professionalism Award is named for him as a permanent reminder of the example he set.

HICKS EPTON — While working as a country lawyer in Wewoka, attorney Hicks Epton decided that lawyers should go out and educate the public about the law in general, and the rights and liberties provided under the law to American citizens. Through the efforts of Mr. Epton, who served as OBA president in 1953, and other bar members, the roots of Law Day were established. In 1961 the first of May became an annual special day of celebration nationwide designated by a joint resolution of Congress. The OBA's Law Day Award recognizing outstanding Law Day activities is named in his honor.

MAURICE MERRILL — Dr. Maurice Merrill served as a professor at the University of Oklahoma College of Law from 1936 until his retirement in 1968. He was held in high regard by his colleagues, his former students and the bar for his nationally distinguished work as a writer, scholar and teacher. Many words have been used to describe Dr. Merrill over the years, including brilliant, wise, talented and dedicated. Named in his honor is the Golden Quill Award that is given to the author of the best written article published in the *Oklahoma Bar Journal*. The recipient is selected by the OBA Board of Editors.

(cont'd on page 2454)

OUTSTANDING LAW SCHOOL SENIOR STUDENT AWARD

Daniel Correa, Oklahoma City University School of Law

Daniel Correa is a third-year law student at Oklahoma City University School of Law. He received an associate's degree in arts general education from Sacramento City College in California and received his bachelor's in American literature and culture from the University of California, Los Angeles. At OCU law, he ranks first in his class.

This fall, he serves as a research assistant for Judge Robert H. Henry, OCU president and former chief judge of the 10th U.S. Circuit Court of Appeals. During the summer of 2010, he was a research assistant at OCU law for professor Marc Blitz, in which he researched neuroscience, neuro-ethics and the law of privacy, and free speech. In 2005, he served as an officer candidate for the U.S. Marine Corps.

Mr. Correa was on the OCU Faculty and Dean's Honor Roll in fall 2008, spring 2009, fall 2009 and spring 2010. He was a 1L Moot Court Competition champion; Merit Scholarship Recipient; Computer-Assisted Legal Instruction (CALI) Excellence for the Future Award Recipient and member of the ABA Moot Court Team.

OUTSTANDING LAW SCHOOL SENIOR STUDENT AWARD

Christa Evans, University of Oklahoma College of Law

Christa Evans is a third-year law student at the University of Oklahoma. Originally from Cherokee, she completed her undergraduate coursework in English with an emphasis in Shakespeare at Oklahoma Baptist University and Oxford University. She then studied Spanish at La Universidad Autonoma de Guadalajara.

Ms. Evans served two terms as president for the class of 2011 before becoming president of the OU Student Bar Association. She volunteers as a certified mediator for the Oklahoma Supreme Court Early Settlement Program and sits on the Provost's Integrity Council.

She has been listed on the Dean's Honor Roll and received the Cheadle Scholarship for leadership and community service. The Luther Bohanon Inn of Court selected her as a student member. Ms. Evans also interns for Preston Trimble and OU Legal Counsel.

OUTSTANDING LAW SCHOOL SENIOR STUDENT AWARD

Philip H. Tinker, University of Tulsa College of Law

Philip Tinker is a third-year law student at the University of Tulsa College of Law and is pursuing a certificate of specialization in Native American law. He is articles research editor for the *Tulsa Law Review* and president of TU's Native American Law Student's Association.

Mr. Tinker was a member of the 2010 class of the Udall Foundation Native American Congressional Policy Internship Program, through which he worked at the White House Council on Environmental Quality. In August 2011, he will begin a clerkship with the Chief Judge William Jay Riley of the U.S. Court of Appeals for the 8th Circuit.

Mr. Tinker is an enrolled member of the Osage Nation and a member of the Deer Clan of the Osage people. He is interested in helping to secure and expand the sovereign rights of Indian tribes and in promoting the social well-being of Native American peoples.

EARL SNEED CONTINUING LEGAL EDUCATION AWARD

Justice John F. Reif, Skiatook

During most of his 30 years in judicial service, Justice John Reif has contributed his time and teaching talent to meet the continuing legal education needs of Oklahoma lawyers. In addition to presentations for OBA programs held in Tulsa and Oklahoma City, Justice Reif regularly travels to make CLE presentations for county bar associations at their monthly meetings. To date, Justice Reif has made more than 70 presentations (all with accompanying written materials) and has authored or co-authored eight articles published in the OBA and Tulsa County bar journals. His CLE topics range from practical subjects, such as summary judgment and appellate standards of review, to professional ethics and civility.

Justice Reif also contributes to education programs for Oklahoma state judges and tribal court judges — making CLE presentations for the Oklahoma Judicial Conference, serving as the ethics presenter for Sovereignty Symposium and teaching at the National Judicial College Tribal Judges program. Known for bringing a sense of humor to sometimes dry CLE topics, Justice Reif describes his work in continuing legal education as "doing something for lawyers instead of doing something to them."

AWARD OF JUDICIAL EXCELLENCE

Judge Bryan C. Dixon, Oklahoma City

Judge Bryan Dixon was appointed as a special judge in 1983 and was first sworn-in as a district judge two years later. Currently, he serves as the senior district judge in Oklahoma County.

He commands the utmost respect from the members of the bar and the public fortunate to appear before him. He does not have the luxury of a law clerk to do research for him or to assist in the review of pleadings. However, Judge Dixon comes to the bench fully prepared. His preparations demonstrate his devotion to the important role as a member of the judiciary.

Judge Dixon has presided over more than 550 jury trials. At one point, he presided over 40 jury trials in one year. His hard work and dedication to the citizens of the state is unquestioned.

Judge Dixon currently serves as a chair member to the Civil Subcommittee for Installation of New Integrated Court Computer Systems, which will shape how Oklahoma courts manage ever-increasing technology and electronic data. He also served as a presiding judge for the 7th Administrative District.

Active in the legal community, Judge Dixon serves as immediate past president of the Oklahoma County Bar Association. He has been active in the Bench and Bar Committee and Civil Procedure Committee for many years. For six years, he served on the board of directors for the Mid-Del Youth and Family Center and is an active member of the Del City Kiwanis.

AWARD OF JUDICIAL EXCELLENCE

Judge James H. Payne, Muskogee

Judge James Payne is known for his thorough decisions and treating all who come before him with dignity and grace.

After graduating from the University of Oklahoma College of Law in 1966, Judge Payne served in the military for 26 years, retiring in 1992 as a lieutenant colonel, USAFR. His belief in serving was so great that when Desert Storm was starting, all JAG officers were called to active duty to get the troops ready for overseas duty. While Judge Payne was already a federal judge and could have easily gotten out of such duty, he stepped away from the bench and performed his duty as a lawyer in accordance with his obligations as a soldier.

When Judge Payne returned from active duty in 1970, he joined the U.S. Attorney's Office in Muskogee and was an assistant U.S. attorney until 1973 when he went into private practice. In 1988, Judge Payne became the first full-time magistrate judge for the Eastern District.

In 2001, he was appointed as a district judge for the Western, Eastern and Northern Districts of Oklahoma. Judge Payne presently serves as head judge for the Eastern District, although his time is split nearly evenly between the Eastern and Northern Districts. He is a former committee member to the Judicial Conference Committee on the Judicial Branch, Judicial Council of the 10th Circuit and the District Court Advisory Council. He also frequently speaks with the Association of Christian Athletes and encourages young athletes to remain faithful to their religious values.

"The Eastern, Northern and Western District Courts are blessed to have a judge with the highest judicial temperament, a judge whose ethics are implacable and a judge who is both wise in the law and how to deal with people," his nominator said.

LIBERTY BELL AWARD

Sherri Carrier, Tulsa

"Sherri Carrier is the embodiment of selfless giving for the betterment of citizens in Tulsa County through her interaction in the court system," reads her nomination. Ms. Carrier serves as the director of court services for Tulsa County, dedicating her personal time and money to citizens in the criminal system who have never had a mentor.

She has been a strong force behind the Women in Recovery Program. She is a strong advocate and hands-on worker for more than 25 women in the program. She has personally helped launch the Women in Recovery Program through her

tireless efforts and keen insight into the issues surrounding women offenders. She is also a relentless volunteer and a dedicated mentor to offenders who have entered the court-sponsored therapeutic programs. Her one-on-one mentoring has resulted in one success after another.

One of her greatest successes was when one former addict announced 22 months of sobriety. Thanks to Ms. Carrier's dedication, Jesse James regained her life back. Ms. James is one of many people that Ms. Carrier personally took under her wing and helped her soar out of the darkness of alcohol/drug abuse, depression, unemployment and emotional instability.

When attorneys in Tulsa County need their clients to participate in a therapeutic court-sponsored program, they turn to Ms. Carrier as a source of knowledge and information. Although it takes a great deal of money and many other people to help make the Women in Recovery Program successful, it also takes leadership and relentless personal dedication. Ms. Carrier's efforts are a priceless benefit to the community.

JOE STAMPER DISTINGUISHED SERVICE AWARD

R. Forney Sandlin, Muskogee

Forney Sandlin has been a quiet leader, a friend of lawyers, a man who knew how to make things happen and has served the Oklahoma Bar Association well and long. He was president of the association in 1991, having previously served on the board of governors and for eight years on the Board of Bar Examiners.

He was a charter member of the Labor Law Section of the OBA and served as its chairman in 1981 and 1982. He served on the Judicial Nominating Commission, including serving as its chairperson. He also served in the House of Delegates representing Oklahoma at the American Bar Association.

Mr. Sandlin has always been a supporter of the bar at the local, state and national levels. Through his work at the OBA, he was able to become an advocate for women in OBA leadership positions. In his support of women in law, Mr. Sandlin helped assist and support Jayne Montgomery from Purcell in becoming vice president of the OBA and supported Mona Lambird in becoming the first female president of the OBA.

Mr. Sandlin practices with the highest level of excellence, professionalism and ethical awareness. His contributions to the bar association are well chronicled, from achieving its highest rank to serving on any committee as requested and participating in section membership.

He is a mentor to many young lawyers. Among those attorneys who Mr. Sandlin mentored was Judge James H. Payne, who started his private practice as a partner to Mr. Sandlin.

ALMA WILSON AWARD

Judge C. William Stratton, Lawton

Judge William Stratton has been the associate district judge overseeing Comanche County's Juvenile Bureau since he was elected in 1998. He will begin his third term in January 2011 because he was unopposed in July 2010.

Judge Stratton is well known in his community for his efforts to improve the lives of children in his community and throughout Oklahoma. He has the difficult task of placing children in deprived cases on a daily basis. In addition to overseeing the juvenile bureau, his duties also extend to the Teen Court Program and the Regional Juvenile Detention Center.

Judge Stratton is dedicated to improving the lives of children in his community. He is a two-time past president of Lawton Community Theatre, a former board member of the Arts for All and former YMCA wrestling, little league football and baseball coach.

Whoever walks into his office will surely know that his focus is with children. His walls are aligned with paintings and portraits of healthy, happy children as well as those of his family – six children, 14 grandchildren and his wife of 36 years.

NEIL E. BOGAN PROFESSIONALISM AWARD

R. Clark Musser, Oklahoma City

Clark Musser has practiced law in Oklahoma since completing his duties as a captain in the U.S. Air Force Judge Advocate General Corps in 1974. His nominator said there can be no doubt that Mr. Musser's "conduct, honesty, integrity and courtesy represents the highest standards of the legal profession," as required for this award.

Early in his career, Mr. Musser established the reputation and distinction of being at the very top of the energy law bar in Oklahoma and beyond. He has taught energy law as an adjunct professor at the University of Oklahoma College of Law.

He formed his own law firm in 1979 and practiced for many years in the private sector. He also worked in the public/government sector as general counsel for the Oklahoma Corporation Commission and finally as an in-house counsel in the business sector as a general counsel to Alpine Inc. He devotes countless hours volunteering and speaking to various legal seminars and professional groups as a leader in the oil and gas industry.

He has been active in the OBA Real Property Law Section, OBA Energy and Natural Resources Law Section and the Oklahoma City Mineral Lawyers Society. Perhaps one of Mr. Musser's greatest passions has been his involvement in the American Inns of Court. He also was a founding member and master of the bench of the William J. Holloway Jr. American Inn of Court and served as its president from 1998-1999. More importantly, he established a mentoring program for young lawyers for the Inn.

JOHN E. SHIPP AWARD FOR ETHICS

Retired Judge Milton Craig, Chandler

Judge Milton Craig is an active retired judge who continues to serve Oklahoma's legal profession and the citizens of this state through his participation in mediations in appellate cases, service on the Judicial Ethics Advisory Panel and the Professional Responsibility Panel on Judicial Elections (PRP).

His service on the PRP has required Judge Craig to jump into action in short notice as the PRP functions almost exclusively during judicial elections, which occur on a four-year cycle and complaints typically come on the eve of an election.

His own judicial experience, as well as his keen sense of fairness and knowing what is the "right thing to do," has made him a valuable member of the PRP. As he has said on more than one occasion, if a candidate has to ask, that generally means the judge/candidate cannot do it.

During his days on the bench, he was a highly respected and well-liked judge who controlled his courtroom, maintained dignity and treated all with respect.

TRAILBLAZER AWARD

Reggie Whitten, Oklahoma City

First in his family to go to college, Reggie Whitten is co-founder and partner of the Whitten Burrage Law Firm, Fellow of the American College of Trial Lawyers, and past president of the Oklahoma Association for Justice. Mr. Whitten's law practice focuses on insurance bad faith and litigation.

Mr. Whitten's professional accomplishments, however, pale in comparison to his charitable work. After the death of his son, he formed the Whitten-Newman Foundation in honor of his son in May of 2007. The foundation's mission is to fund and support programs which enhance the education, health and well-being of young people from all walks of life.

As part of that mission, the Whitten-Newman Foundation, in partnership with the Sam Noble Oklahoma Museum of Natural History, funded and created a program called ExplorOlogy, a science education program which makes science exciting and relevant to Oklahoma youth by engaging them in authentic science experiences. Mr. Whitten also spends countless hours sharing the powerful story of his son's addiction and tragic death with students and parents, informing them of the dangers of drug and alcohol abuse as well as providing resources to help those who already suffer from addiction. Mr. Whitten is also the current president of Community Health Charities and serves on the board of many organizations, including Health Alliance for the Uninsured, the Foundation for Oklahoma City Public Schools, RAM Oklahoma and Pros for Vets.

Mr. Whitten has a passion for Africa as well. As co-founder of PROS FOR AFRICA, he took a group of NFL players, doctors and volunteers to Uganda to provide much needed assistance to men, women and children affected by war and civil strife. PROS FOR AFRICA is set to return to Africa in March of 2011 to continue drilling water wells and providing much needed food and medical services to hundreds.

OUTSTANDING COUNTY BAR ASSOCIATION AWARD

Muskogee County Bar Association

The Muskogee County Bar Association has a long and distinguished history that has been reinvigorated during recent years. Membership involvement has grown, and Muskogee County bar members are interacting in bar meetings, activities and social events.

In January, an electronic survey was conducted to determine the needs of the membership. From that survey, regular meetings and dates were established, membership practice areas and size were ascertained and membership interest in CLE, social activities and unified efforts were identified.

Through the efforts of various bar members, the association developed a website at www.muskogeecountybar.org, which will include a searchable member directory of dues-paying members to assist individuals in locating attorneys by location and area of practice.

In addition, the Muskogee County bar had a successful Law Day agenda. On April 27 and April 29 from 10 a.m. – 4 p.m., local lawyers volunteered in two-hour shifts to draft wills for Muskogee County first-responders under the Wills for Heroes Program. Twelve Muskogee County attorneys volunteered throughout both days and executed 13 wills. In addition to providing a much-needed service, this project engaged a number of attorneys who had not been active in recent months and years.

Muskogee attorneys also participated in the statewide Ask A Lawyer program April 29 from 6 - 8 p.m. Seven volunteer attorneys fielded calls during the two-hour period. In addition to answering calls, the volunteer attorneys were able to discuss local issues relating to their practice of law.

Finally, on May 1 from 10 a.m. - 3 p.m., Muskogee County young lawyers volunteered as part of a YLD statewide community service project to benefit local libraries. Young lawyers assisted at the Muskogee Public Library with landscape cleanup and prepared the ground for a new sidewalk for benches. Four law-related books also were donated.

Other activities throughout the year included the annual golf tournament, followed by a cruise on the McClellan-Kerr Arkansas River Navigation System and dinner to honor Chief Justice Edmondson; a courthouse bowling league; and enhanced CLE offerings.

HICKS EPTON LAW DAY AWARD

Comanche County Bar Association

The Comanche County Bar Association is committed to ensuring that local deserving students are able to afford a higher education. That

is why the Comanche County bar regularly donates over half of its annual budget to sponsor scholarships for exceptional local high school students to attend the Oklahoma university or college of their choice. During Law Day 2010, CCBA awarded five scholarships to deserving local students. These scholarship recipients were recognized along with the local OBA Law Day writing contest winners at the CCBA annual Law Day luncheon.

The 2010 CCBA Law Day event was covered extensively by local television and print media outlets. The CCBA hosted the Law Day luncheon with keynote speaker Oklahoma Supreme Court Justice James Winchester. Lawton Mayor Fred Fitch joined the festivities and presented CCBA President Irma Newburn with a municipal proclamation in which the city of Lawton officially recognized and celebrated Law Day 2010. Ms. Newman and Justice Winchester were featured in interviews for local television and newspapers at the luncheon.

CCBA used Law Day to recognize the efforts of its members throughout the year. CCBA awarded its annual Pro Bono Award to Susan Bates-Ward and awarded the Professionalism Award to Charles Wade.

The Lawton Constitution featured front-page coverage of Law Day events with special focus of Justice Winchester's promotion of the 2010 Law Day theme, "Our History: Milestones in the Law."

Media coverage was also extensive in getting the word out to the community about CCBA's annual Ask A Lawyer event. Every year, attorneys from all areas of practice in Comanche County volunteer answering phone calls from the community and offer free advice on legal issues. One caller followed up weeks later to provide feedback that he was actually able to get his case against him dismissed, because of the advice he received from the volunteer attorneys.

The association is committed to promoting literacy in and beyond Comanche County. That is why this year, members of the CCBA banded together to clean up the exterior of the Lawton Public Library. Judges, prosecutors and private practice attorneys washed windows, cleared bushes and swept pavement to restore an inviting entrance to one of Lawton's landmarks to literacy.

The 2010 Law Day concluded with the annual CCBA golf tournament and barbecue picnic. CCBA had nearly 100 percent cumulative participation from its members during the various 2010 Law Day events. Many local attorneys expressed this was the best Law Day celebration Comanche County has had in a long time.

GOLDEN GAVEL AWARD

OBA Family Law Section
Kimberly H. Hays, Chairperson

The OBA Family Law Section consistently performs with a high degree of excellence. The OBA/FLS began in 1986 and has since grown to over 1,100 members and is the largest section of the OBA.

The OBA/FLS provides its members with great value for the $25 yearly dues. The section offers free yearly membership to members of judiciary. The section offers nearly 12 free hours of continuing legal education each year. Membership in the section also offers monthly business meetings and monthly one-hour CLE presentations. Members are also encouraged to attend a social/mentoring session following each monthly meeting.

The OBA/FLS is fortunate to have the support of professor Robert G. Spector, who is the Glenn R. Watson chair and centennial professor of law at OU. Mr. Spector annually presents a CLE on "Recent Developments" and the "Hidden Law," a summary of the unpublished family law cases. His research provides attorneys with the most up-to-date family law decisions for use in everyday practice.

The section has created the *Family Law Practice Manual*, which is authored by more than 40 Oklahoma family law attorneys. The manual is used by more than 250 trial and appellate judges in Oklahoma who deal with family law issues. In 2009, the manual's editors worked with the OBA to convert the printed manual to an online version. The online version is expected to be available by the end of 2010.

In 2010, the section created an incentive to increase business meeting attendance. First, the business meeting time was changed to 4:30 p.m., after the monthly CLE presentation. Second, the section leadership created an attendance appreciation prize. Each time an FLS member attends the monthly business meeting, his or her name is recorded by the FLS membership co-chair. The section will hold a special prize drawing during the Annual Meeting. The goal is to encourage

members to stay and learn about the section's projects and encourage participation. As a result, monthly business meeting attendance has increased.

The OBA/FLS also financially supports other committees and sections as well as various OBA projects, including the Lawyers Helping Lawyers Assistance Program project and the OBA Women in Law Conference. Additionally, the executive committee holds an annual leadership retreat.

OUTSTANDING YOUNG LAWYER AWARD

Doris L. Gruntmeir, Muskogee

Doris Gruntmeir has been in practice for nine years, most recently serving as a staff attorney for the U.S. Department of Veterans in Muskogee. During her time as an attorney, Ms. Gruntmeir has not only served the profession well through her works, but she has been very active in the state and local bar association and her community.

Ms. Gruntmeir began her career in 2000 at Fagin, Fagin, Nixon & Reed in Oklahoma City in the area of small business and family law. In 2006, she was hired to serve as a staff attorney for the VA in Muskogee. Her success was evident in the position, as she was promoted to assistant regional counsel of the VA and will be moving to Indianapolis later this year. Even though she may be starting her new venture in Indianapolis, she intends on remaining an OBA member in good standing.

Ms. Gruntmeir has been on the board of directors for the OBA/YLD since 2004 and has been very active and involved during that time, winning the director of the year twice. Ms. Gruntmeir has chaired the New Attorney Orientation Committee and the Disaster Response and Relief Committee. In an effort to preserve history of the YLD and to promote continued contact, she has recently undertaken a project to gather the names and information of past chairs, friends and fellows of the division.

She is also the current president of the Muskogee County Bar Association and has shown great leadership in transforming the MCBA into a more useful tool for its members. Ms. Gruntmeir created a monthly CLE, which provided one free hour of CLE per month for dues-paying members and also led her members to facilitate Muskogee County's most successful Law Day. She was also involved in the Oklahoma County Bar Association during her time in Oklahoma City, where she served as a director in 2002-2006 and chair in 2004-2005. She served as ABA/YLD District Representative for Oklahoma and Arkansas from 2007-2009 and has been active as a YLD state representative at the ABA/YLD Assembly. She currently serves on the OBA Budget Committee of President-Elect Deb Reheard.

OUTSTANDING YOUNG LAWYER AWARD

Richard L. Rose, Oklahoma City

Rick Rose currently holds the position of past chair of the OBA/YLD, having served as its chair in 2009. Mr. Rose worked his way through school, receiving a bachelor of science from Southern Nazarene University and a J.D. from OCU School of Law, graduating magma cum laude in 2003.

Upon graduating, Mr. Rose began working at Miller Dollarhide. In 2008, he began working for Mahaffey & Gore and now practices in the area of general civil litigation, including contract disputes, insurance coverage, products liability, real estate transaction and employment disputes. In addition to serving as chair of the OBA/YLD and sitting on the OBA Board of Governors during 2009, he also served as chair-elect, treasurer and secretary of the YLD and is currently the chair of the YLD Nominating Committee.

Mr. Rose also served on the OBA Disaster Response and Relief Committee as a member and as vice chair. He also participated in the 2007 OBA Leadership Conference and is a graduate of the 2009 OBA Leadership Academy. Mr. Rose was also a member of the House of Delegates for Oklahoma County in 2008 and 2009. He currently serves as chair of the YLD for the Western District Chapter of the Federal Bar Association.

Mr. Rose serves as a positive representation of the profession, as he is involved in many different aspects of his community. He is an active member of the Downtown Exchange Club, an organization that helps underprivileged chil-

dren, Lawyers for Children and the Western District Pro-Bono Civil Panel. He is a regular volunteer at OCU and adjunct faculty member in American government at OSU-OKC.

OUTSTANDING SERVICE TO THE PUBLIC AWARD

Richard L. McKnight, Enid

Richard McKnight graduated from the OU College of Law in September 1963 after having served two years in the U.S. Army as a lieutenant in Army intelligence. He was a member of the *Oklahoma Law Review*, Phi Delta Phi legal fraternity and the Order of the Coif.

Mr. McKnight then worked as an assistant county attorney for Garfield County and at the same time worked for his father and Harold Gasaway in the firm of McKnight and Gasaway of Enid. In 1965, he left the county attorney's office and formed a partnership with his father and Mr. Gasaway to be known as McKnight, Gasaway and McKnight. In his early professional years, he specialized in oil and gas laws and then mainly in wills, probate, trust and real estate matters.

Mr. McKnight has made many contributions to the legal profession. He served as president of the Garfield County Bar Association in 1976 and as a member of the board of governors in 1977 through 1979. In 1989, he served as president of the Oklahoma Bar Foundation. He was a member of the Oklahoma Judiciary Nominating Committee from 1991 through 1997 and he then served as chairman to the committee in 1997.

He is a member of the American Bar Association, the American Bar Foundation and the American College of Trust and Estate Counsel. In 1997, he became a life member of the fellows of the American Bar Association. Additionally, Mr. McKnight has been extremely active in his community. He served as president of the Enid Chamber of Commerce and the American Business Club in Enid, as well as a member of the Rotary OBA Awards Committee. He has been on numerous boards of First United Methodist Church of Enid. He is currently a member of the Oklahoma Board of Ordained Ministry of the United Methodist Church. He was a trustee of the Oklahoma United Methodist Foundation for 16 years and chancellor for three years. He served as campaign chairman of Enid's United Way in 1999 and currently serves as a trustee for the Enid Community Foundation.

AWARD FOR OUTSTANDING PRO BONO SERVICE

Ana Basora-Walker, Lawton

Ana Basora-Walker has been providing pro bono services since the start of her career 10 years ago. She has used her practice areas of family law and immigration law as well as her bilingual ability of Spanish and English to help the unfortunate in the community.

She provides pro bono services throughout the year, not just on Law Day. She also volunteers her time to serve on the board of directors of Legal Aid Services of Oklahoma.

Ms. Basora-Walker's presence in her community promotes a positive image for members of the Comanche County Bar Association and demonstrates the legal community's influence in other areas of society. Her extensive efforts have been recognized by both local news media and the Comanche County bar.

She is well respected by attorneys as professional, courteous and a worthy adversary. She and her husband, Jay Walker, who is also an attorney, are known for their support of other community activities and events such as Lawton Community Theatre and triathlons. She received her undergraduate degree from Cameron University in Lawton and her law degree from Texas Tech University School of Law. She is licensed both in Oklahoma and Texas.

AWARD FOR OUTSTANDING PRO BONO SERVICE

James J. Proszek, Tulsa

Mr. Proszek is a shareholder in the firm of Hall Estill Hardwick Gable Golden & Nelson PC. Mr. Proszek's practice involves primarily corporate/commercial litigation and telecommunications law. Mr. Proszek has been aggressively involved in various pro bono projects since 2007, when Assistant Gen-

eral Counsel Craig Rainey of The Williams Cos. approached Hall Estill to team up in support of Legal Aid Services of Oklahoma, a nonprofit law firm serving low-income and the elderly individuals in Oklahoma.

Through his and Steve Soulé's leadership, more than 40 lawyers and paralegals received training by Legal Aid and became active volunteers to support Legal Aid's services to the underserved of the Tulsa area.

As a result of his experience and collaboration with Wendy Brooks, TWC senior counsel, Mr. Proszek was instrumental in visualizing and implementing the Courthouse Assistant Program, which provides short-term legal assistance by volunteers to individuals who cannot afford counsel. Volunteers are made available to meet with unrepresented, underserved persons who are on the cusp of losing their residences.

Mr. Proszek is an AV-rated attorney through Martindale-Hubbell and was selected a Best Lawyer in America in Communications Law. He graduated from the TU College of Law in 1983.

AWARD FOR OUTSTANDING PRO BONO SERVICE

Steven W. Soulé, Tulsa

Steve Soulé is a shareholder in the firm of Hall Estill Hardwick Gable Golden & Nelson PC. His practice involves bankruptcy litigation and transaction, reorganization, creditor's rights and commercial transaction. Mr. Soulé has been aggressively involved in various pro bono projects since 2007, when Hall Estill and The Williams Cos. formed a partnership in support of Legal Aid Services of Oklahoma.

Through his and Jim Proszek's leadership, more than 40 lawyers and paralegals were trained by Legal Aid and became active volunteers for Legal Aid.

As a result of his experience and collaboration with The Williams Cos., Mr. Soulé was instrumental in developing the Courthouse Assistant Program, in which volunteers provide short-term legal assistance to individuals who cannot afford counsel.

Mr. Soulé serves on Hall Estill's board of directors and as the firm's marketing partner. He has an individual AV rating through Martindale-Hubbell and was selected a Best Lawyer in America in Bankruptcy and Creditor/Debtor Rights Law. In addition, he was named to the 2006 bankruptcy law "dream team" by the *Tulsa Business Journal*. He graduated from the OU College of Law in 1989.

MAURICE MERRILL GOLDEN QUILL AWARD

Klint C. Cowan, Oklahoma City

Klint Cowan receives the Maurice Merrill Golden Quill Award for his article titled, "Tribal Sovereignty vs. State Court Jurisdiction: Whatever Happened to Federal Indian Law?", which appeared in the Feb. 13, 2010, issue of *The Oklahoma Bar Journal.*

Mr. Cowan practices in the Oklahoma City office of Hobbs, Straus, Dean & Walker LLP, a national law firm dedicated to the representation of Indian tribes and tribal entities. His practice focuses on federal Indian law, gaming and litigation. He graduated from Antioch College in 1998 and worked as a geologist before attending law school. In 2004, he earned a J.D. with highest honors from the University of Tulsa. In 2005, he acquired a master of laws degree (BCL) from Oxford University. The Oxford law faculty awarded his BCL dissertation a distinction. As a law student, he served as associate editor of the *Oxford Commonwealth Law Journal* and executive articles editor for the *Energy Law Journal*.

Since 2006, he has served as vice chair of the ABA Native American Resources Committee. Mr. Cowan is involved in cases ranging from the representation of Indian tribes in negotiations with the National Indian Gaming Commission to federal actions for the protection of tribal sacred sites to complex litigation involving gaming matters.

MAURICE MERRILL GOLDEN QUILL AWARD

Micheal Salem, Norman

Micheal Salem receives the Maurice Merrill Golden Quill Award for his article titled, "Plausible Pleading – New Trends in Federal Pleading Requirements," which appeared in the April 10, 2010, issue of *The Oklahoma Bar Journal*.

Mr. Salem is a solo practitioner from Norman. His primary interest in the law is federal constitutional law and civil rights, including First Amendment law. He received a bachelor of science in electrical engineering (1971), a master's in public administration (1975), and a J.D. (1975) all from the University of Oklahoma.

He is the recipient of: Solo Practitioner of the Year Award from the American Bar Association General Practice, Solo, and Small Firm Section (2002); The Oklahoma Courageous Advocacy Award from the OBA (1984); Angie Debo Civil Liberties Awards of the American Civil Liberties Union of Oklahoma (1983 and 1994); Golden Gavel Award of the OBA (1998); Nominee for the Community Interest Award of The Law and You Foundation (1994).

He is the current chair and has been a member of the OBA Clients' Security Fund Committee since 1989; a member of the Legal Ethics Advisory Panel since 2006; and a member of the OBA House of Delegates each year since 1989. He is a member of the Judicial Conference of the 10th Circuit, a life member of the 10th Circuit Historical Society, and a life member of the University of Oklahoma College of Law Association, as well as a sustaining Fellow of the Oklahoma Bar Foundation.

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JOHN E. SHIPP — John E. Shipp, an attorney from Idabel, served as 1985 OBA president and became the executive director of the association in 1998. Unfortunately his tenure was cut short when his life was tragically taken that year in a plane crash. Mr. Shipp was known for his integrity, professionalism and high ethical standards. He had served two terms on the OBA Professional Responsibility Commission, serving as chairman for one year, and served two years on the Professional Responsibility Tribunal, serving as chief-master. The OBA's Award for Ethics bears his name.

EARL SNEED — Earl Sneed served the University of Oklahoma College of Law as a distinguished teacher and dean. Mr. Sneed came to OU as a faculty member in 1945 and was praised for his enthusiastic teaching ability. When Mr. Sneed was appointed in 1950 to lead the law school as dean, he was just 37 years old and one of the youngest deans in the nation. After his retirement from academia in 1965, he played a major role in fundraising efforts for the law center. The OBA's Continuing Legal Education Award is named in his honor.

JOE STAMPER — Joe Stamper of Antlers retired in 2003 after 68 years of practicing law. He is credited with being a personal motivating force behind the creation of OUJI and the Oklahoma Civil Uniform Jury Instructions Committee. Mr. Stamper was also instrumental in creating the position of OBA general counsel to handle attorney discipline. He served on both the ABA and OBA Board of Governors and represented Oklahoma at the ABA House of Delegates for 17 years. His eloquent remarks were legendary, and he is credited with giving Oklahoma a voice and a face at the national level. The OBA's Distinguished Service Award is named to honor him.

ALMA WILSON — Alma Wilson was the first woman to be appointed as a justice to the Supreme Court of Oklahoma in 1982 and became its first female chief justice in 1995. She first practiced law in Pauls Valley, where she grew up. Her first judicial appointment was as special judge sitting in Garvin and McClain Counties, later district judge for Cleveland County and served for six years on the Court of Tax Review. She was known for her contributions to the educational needs of juveniles and children at risk, and she was a leader in proposing an alternative school project in Oklahoma City, which is now named the Alma Wilson SeeWorth Academy. The OBA's Alma Wilson Award honors a bar member who has made a significant contribution to improving the lives of Oklahoma children.

OBA
ANNUAL MEETING

OBA Governance
2011 Transitions

2010 President
Allen M. Smallwood, Tulsa

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

2011 President
Deborah Reheard, Eufaula

Ms. Reheard has been in private practice in Eufaula since 1991, litigating in the areas of family law, criminal defense and bar disciplinary defense. Prior to her private practice, she served as an assistant city attorney in Tulsa and an assistant district attorney in Craig, Mayes, Rogers, Ottawa and Delaware counties. She was the first woman elected to the Oklahoma Judicial Nominating Commission, serving as its chair in 2003-2004. Her OBA involvement includes serving on the board of governors for four years and membership on numerous committees. She served as chair of the Women in Law Committee in 2002, 2003 and 2009 and served on the Professionalism and Civility Task Force and the Administration of Justice Task Force. She currently serves on the Military Assistance Task Force and the Unauthorized Practice of Law Special Committee. She served on the Oklahoma Criminal Defense Lawyers Association Board of Directors and as its vice president was the recipient of the OCDLA President's Award in 2005. She was also a recipient of the Mona Salyer Lambird Spotlight Award in 2003 and the Earl Sneed Award for Continuing Legal Education in 2009. She is a frequent presenter of CLE topics on professionalism, civility, ethics and criminal law. She graduated from the University of Tulsa College of Law in 1987.

2011 Nominees

President-Elect

Cathy Christensen, Oklahoma City

Ms. Christensen was born in Norristown, Penn., and moved to Oklahoma in 1973. She received her undergraduate degree from Oklahoma State University in 1982 and J.D. from the Oklahoma City University School of Law in 1986. She was admitted to the bar in 1987. She practices in Oklahoma City for the Law Office of Cathy M. Christensen PC. She served as OBA vice president in 1994 and on the OBA Board of Governors from 2007-2009. She was appointed to the board in 2006 to serve the unexpired term of Judge Jerome Holmes after his appointment to the federal bench. Ms. Christensen has been actively involved with and held offices in numerous organizations including serving as chairman for the Law-related Committee in 1989-1995, OBA Facilities Committee, OBA Bench and Bar Committee, OBA Family Law Section member since 1990, in 1992 served as secretary and 1993 as social chairman; OBA High School Mock Trial Committee member, National Mock Trial Task Force Member, Solo and Small Firm Committee, OBA Women in Law Committee member since 1995, OBA Audit Committee, OBA Budget Committee, OBA Unauthorized Practice of Law Committee, OBA Strategic Plan Committee and OBA Awards Committee. She is also a Benefactor Fellow of the Oklahoma Bar Foundation, and served as the OBF-IOLTA Committee chairman in 1996-1998; OBF Personnel Committee member in 1997-1998; OBF Grants and Awards Committee; Strategic Plan Revenue and Enhancement Task Force member in 2009-2010; Development Committee and IOLTA and Revenue Enhancement. She received the Distinguished Service Award from the OBF for service as a Trustee from 1994-2000. She is currently in her second term as OBF Trustee, 2006-2011. She served as the OBA Board of Governors liaison to the Oklahoma County Bar Association Board of Directors from 2006-2009. Ms. Christensen received the 2008 OBA President's Award; 2006 OBA Women in Law Mona Salyer Lambird Spotlight Award; Oklahoma City University School of Law 2009 Award for Community Service and the 2010 OCBA Professional Service Award. She was rated BG Distinguished – Very High from LexisNexis in 2010. She is a member of Phi Delta Phi, Oklahoma City University School of Law Alumni Association and the Oklahoma City University School of Law Executive Board.

Vice President

Reta M. Strubhar, Piedmont

On July 6, 1993, Judge Strubhar was appointed as the first woman to sit on the Oklahoma Court of Criminal Appeals since the formation of the court in 1907. In 1999, she became the first woman to be presiding judge of the court. She attended Phillips University, University of Central Oklahoma and Oklahoma City University School of Law, obtaining her bachelor's degree in business education, her master's degree in English and her J.D., respectively. She attended the Straus Institute at Pepperdine University for her mediation/arbitration training. She, and her husband, worked for the FBI in Washington, D.C., and she taught high school English and business for 13 years in the Oklahoma City and Mustang Public School systems. After graduating from law school in 1980, she worked as an assistant attorney general, an assistant district attorney and was in the private practice of law. She taught as an adjunct professor for Southern Nazarene University and was the associate district judge of Canadian County from 1984-1993. In 1999, she was appointed by U.S. Chief Justice William Rehnquist to serve as the only state judge on the Federal Criminal Rules Committee. During her extensive judicial career, she handled numerous bench and jury trials in both civil and criminal cases. She has tried oil and gas, personal injury, products liability and medical malpractice cases. She served as a judge in family court, probate court and juvenile court handling divorce trials, guardianships and contested probates. Judge Strubhar is a member of the National Association of Women Judges. She is the chairperson for the retired judges of Oklahoma and has been successful in the passage of legislation for retired

judges. She has been very active in the Judges Helping Judges Committee, OBA Law-related Education Committee, American Inn of Court and served on the Juvenile Justice Oversight Committee. Judge Strubhar has retained her senior status and serves as an appellate settlement conference judge for the Oklahoma Supreme Court and serves on the three-judge panel for the Oklahoma Workers' Compensation Court.

Supreme Court Judicial District Two

Gerald C. Dennis, Antlers

Mr. Dennis received his undergraduate degree from Southeast State College in 1969. He received his law degree from Oklahoma City University School of Law in 1975. He has practiced in Antlers in the firm of Dennis & Branam since 1975. Mr. Dennis served in the U.S. Army from 1969-1971 and served as an infantry first lieutenant in Vietnam in 1971. From 1980-1988, he served in the Oklahoma State Senate. He has served as the president of the Pushmataha County Bar Association from 1990 to present and has also served as president of the Tri-County Bar (McCurtain, Choctaw and Pushmataha counties) since 1986.

CONTESTED ELECTION:

Supreme Court Judicial District Eight

Scott Pappas, Stillwater

Ms. Pappas is a sole practitioner in Stillwater and focuses primarily on family law in Payne, Logan, Pawnee, Lincoln, Noble and Kay counties. She is trained as a mediator and in collaborative law. She has served on the Logan County Juvenile Deprived, Mental Health and Guardianship Contract since January 2004 and has provided the same services in Pawnee County since February 2004. She received her B.A. from Oklahoma State University and her J.D. from Fordham University School of Law. She was a graduate of the first OBA Leadership Academy in 2009, where she was recognized as a future OBA leader to guide the association and as a lawyer who possesses the ability to inspire and challenge others. She was OBA Law Day Committee co-chairperson from 2004-2006, during which time she petitioned the OBA Board of Governors for and received increased spending that was used to revamp the Ask A Lawyer television show and to improve the school-aged contests/activities and publicity, which increased overall participation. Because of these efforts, the committee won the 2005 Golden Gavel Award from the OBA and the 2005 Law Day Outstanding Activity Award from the ABA. As a member of the Payne County Bar Association since 1997, she served as president in 2004 and the Law Day co-chairperson in 1999, at which time the PCBA won the OBA's Hicks Epton Law Day Award. She continues to provide pro bono representation through Legal Aid Services of Oklahoma and was cited as their Volunteer for Justice in 2004. She has participated as a volunteer mediator for the Early Settlement Mediation program and was named the 1998 John R. McCune V Volunteer Mediator of the Year. Currently, Ms. Pappas serves as chair of the Stillwater Community Endowment Fund, board of directors member for The Saville Center and is very active in her church, St. James Orthodox Mission in Stillwater. She completed a two-year term as president of Chapter U, P.E.O. in 2009.

Supreme Court Judicial District Eight

Gregg W. Luther, Shawnee

Mr. Luther is an attorney with The West Law Firm in Shawnee, where he practices in the area of litigation and trial advocacy. He is admitted to practice in Oklahoma and before the U.S. District Courts for the Northern, Eastern and Western Districts of Oklahoma, in addition to the 10th Circuit U.S. Court of

Appeals. His accolades include Phi Delta Phi Honorary Fraternity, Kerr Foundation scholar, Law Review editor, Luther Bohannon American Inns of Court (1994-2007) and Oklahoma Association for Justice Advisory Board. He earned his B.S. degree from Oklahoma State University and his J.D. degree from Oklahoma City University School of Law. Mr. Luther is a member of the Oklahoma Association for Justice.

Supreme Court Judicial District Nine

O. Christopher Meyers, Lawton

O. Christopher Meyers was born in Shawnee, May 6, 1944. He graduated from the University of Oklahoma with a B.B.A. (finance and accounting) 1966; University of Oklahoma — J.D. 1969; Georgetown University — L.L.M. (in taxation) 1972; certified public accountant. Mr. Meyers is admitted to practice before the Oklahoma Supreme Court and all other Oklahoma courts; U.S. Tax Court, U.S. Court of Claims; U.S. District Courts in Oklahoma, Texas and Arkansas, 10th and 8th U.S. Circuit Courts of Appeal and U.S. Supreme Court. He is a member of the Comanche County Bar Association (president 1980); OBA (president Taxation Law Section 1988); Founding Board of Directors of Oklahoma Bar Professional Liability Insurance Co.; American Bar Association; Oklahoma Trial Lawyers Association and Oklahoma Society of Certified Public Accountants.

CONTESTED ELECTION:

Member-At-Large

Renée DeMoss, Tulsa

Ms. DeMoss is a shareholder in the Tulsa law firm GableGotwals. She received a B.A. from Oklahoma City University in 1980 summa cum laude; J.D. from OU, 1984, with honors where she was Order of the Coif. Ms. DeMoss served as Tulsa County Bar Association president 2006-2007, president-elect 2005-2006, vice president 2004-2005, treasurer 2003-2004, budget director 2002-2003, Membership Committee chair 2003-2004 and 1999-2000, Law Day Committee chair 1998-1999, Lawyer Referral Services Committee chair 1992-1993, member of the Long Range Planning Committee, Grievance Committee, Legal Aid/Pro Bono Committee, Community Outreach Committee, Animal Law Committee, Nominations and Awards Committee and CLE Committee. Ms. DeMoss was awarded the 1993 TCBA President's Award as chair of Lawyer Referral Services Committee, 1999 TCBA President's Award as chair of Law Day Committee, 1999 OBA Hicks Epton Law Day Award, 1999 ABA Outstanding Law Day Award, 2000 TCBA President's Award as chair of the Membership Services Committee, 2004 TCBA President's Award as treasurer and chair of the Membership Services Committee and 2010 TCBA President's Award for the Fundraising Committee. She is involved with the Tulsa County Bar Foundation as a Charter Fellow and served as president 2007-2009, board of trustees 2010-2011, treasurer 2003-2004, chair of Long Range Planning Committee and Retreat 2009 and received the TCBF 2005 Award for Tulsa Attorneys Supporting Kids and TCBF 2004 Award for co-chair of Food Drive. She has served the Oklahoma Bar Association as a Tulsa County delegate to Annual Meeting, co-chair of the Women in Law Committee 2010, Litigation Section chair 2007-2010, Long Range Financial Planning Task Force 2009, Investment Committee, Budget Committee, Rules and Bylaws Committee, Professionalism Committee and Law Schools Committee member. Other awards received were the 2008 OBA Alma Wilson Award and the 2007 OBA Mona Salyer Lambird Spotlight Award. Ms. DeMoss is an Oklahoma Bar Foundation Charter Benefactor Fellow and served as its president in 2008, president-elect 2007, vice president 2006, secretary/treasurer 2005, Investment Committee chair 2006, OBF Trustee 2001-2009 and OBF 2003 President's Award recipient. She is active in the National Conference of Bar Foundations as a member of board of trustees 2008-present, secretary 2010-2011 and Membership Committee chair 2009-2010. Ms. DeMoss is also a member of American Inns of Court, Council Oak Chapter, Oklahoma Attorneys Mutual Insurance Company Board of Directors 2007-present, Oklahoma Law School Alumnae Advisory Board, 2010 Journal Record "One of Fifty Women Making a Difference in

Oklahoma." Her areas of practice are commercial litigation, ERISA and insurance law.

Member-At-Large

Kimberly K. Hays, Tulsa

Ms. Hays began practicing law with her father, James R. Hays, in 1993. After his death, she joined the firm of Savage, O'Donnell, Scott, McNulty, Affeldt and Gentges, where she concentrated her practice in family law. In 1998, she established her solo practice in which she continues to practice exclusively in the area of family law. She was born in Tulsa and attended Oklahoma State University, where she received her B.A in philosophy with honors in 1990. She graduated from the University of Kansas School of Law in 1993. She is currently chairperson of the OBA Family Law Section, which is the 2010 recipient of the Golden Gavel Award for OBA committees and sections performing with a high degree of excellence. She has also served as the OBA Family Law Section CLE chair (2009), secretary (2008) and CLE Committee (2007). Ms. Hays has been an active member of numerous OBA committees, including the OBA Professionalism Committee (2009-2011; secretary 2009); OBA Bench and Bar Committee (2009-2011); Leadership Academy Task Force Committee (2007) and OBA Women in Law Committee (2010). She was selected as a participant to the inaugural OBA Leadership Academy (2008-2009). She has also enjoyed her participation in the Tulsa County Bar Association as a member of the TCBA Professional Responsibility Committee (2009-2010); TCBA Professionalism Committee (2009-2010) and as a Tulsa delegate to the OBA House of Delegates (2009-2011). In addition, she is serving as the TCBA Family Law Section chair (2010-2011). She is a member of the American Bar Association, ABA Family Law Section, Tulsa County Family Law Section, Tulsa County and Creek County Bar Associations and a Fellow of the Oklahoma Bar Foundation. In addition to her service with the OBA, Ms. Hays frequently presents/moderates CLEs for organizations including the OBA, OBA Family Law Section, Oklahoma Child Support Services and the Oklahoma Paralegal Association. She has been a pro bono volunteer since 1996 for Legal Aid Services of Oklahoma. She is a resident of Tulsa, where she is a lifelong member of St. John's Episcopal Church. She and her husband, Alan, have been married since 1993, and they have two children.

Member-At-Large

Mack K. Martin, Oklahoma City

Mr. Martin has been practicing law since 1979, when he graduated from Oklahoma City University School of Law. During his entire career, he has focused on criminal defense and has represented clients and tried cases throughout Oklahoma and in approximately 16 different states in state and federal courts. He has been actively involved with and held offices in numerous organizations. Currently he serves as OBA vice president, Oklahoma County Bar Association president and vice president and Fellow of the American Board of Criminal Lawyers. He is the former president of the Oklahoma Criminal Defense Lawyers Association, former president of the Oklahoma City Federal Bar Association and former advisory board member of the Oklahoma Trial Lawyers Association. He is also a life member of the National Association of Criminal Defense Lawyers, Fellow of the America College of Trial Lawyers, master of the William J. Holloway Jr. American Inns of Court and a member of the American Bar Association. In 2000, he was the recipient of the Oklahoma Criminal Defense Lawyers Association Lord Erskine Award for lifetime achievement in criminal defense, and in 2006, the recipient of the Criminal Law Section's Professional Advocate Award.

OBA
ANNUAL MEETING

2010 House of Delegates

COUNTY	DELEGATE	ALTERNATE
ADAIR	Jeff Jones	Judge Jeff Payton
ALFALFA	Marcus Jungman	Kyle Hadwiger
ATOKA		
BEAVER	Todd Trippet	Jerry L. Venable
BECKHAM	Chip Eeds Jr.	Brian Henderson
BLAINE	Daniel G. Webber	F. Douglas Shirley
BRYAN	Pat L. Phelps	Matt B. Mickle
CADDO		
CANADIAN	A. Gabriel Bass	Michael D. Denton Jr.
	Suzanne Heggy	Emily J. Hufnagel
	W. Mark Hixson	
	Nathan D. Richter	
CARTER	Michael C. Mordy	Judge Thomas K. Baldwin
	Judge Thomas S. Walker	John S. Veazey
CHEROKEE	N. Cheryl Hamby	
	Jerry S. Moore	
CHOCTAW	J. Frank Wolf III	Alan M. Perry
CIMARRON	Stanley Ed Manske	Ronald L. Kincannon
CLEVELAND	Holly R. Iker	Judge Michael D. Tupper
	Michael D. Johnson	Blake Virgin Jr.
	Don Pope	R. Blaine Nice Jr.
	Judge Lori M. Walkley	Craig Sutter
	Micheal C. Salem	James E. Pence
	Peggy Stockwell	Cindee Pichot
	Gary A. Rife	David E. Ponder
	Sandee Coogan	John H. Sparks
	David A. Poarch Jr.	David Swank
	Dave Stockwell	Richard H. Wall
	Henry N. Herbst	Roger O. Housley
	Debra D. Loeffelholz	Amy Pepper
	Golda R. Long	Christal D. Adair
	Judge Stephen W. Bonner	Gregory T. Tontz
	Richard D. Stevens	Tyson T. Stanek
	Janis Grant-Johnson	J.D. Loftis
	Jan Meadows	Cheryl Farnsworth
	Robert L. Pendarvis	Jamie J. McGraw
	Ben Odom	Rebekah C. Taylor
COAL	Trae Gray	Judge D. Clay Mowdy

COMANCHE	Nathan M. Johnson	Shon T. Erwin
	Irma J. Newburn	David J. Kanehl
	Mark R. Stoneman	Lisa E. Shaw
COTTON	Kathleen Flanagan	Michael C. Flanagan
CRAIG	Leonard M. Logan IV	Kent Ryals
CREEK	Charles D. Watson Jr.	Laura S. Farris
	Judge Richard A. Woolery	J.V. Frazier
CUSTER	Richard J. Phillips	Dennis A. Smith
DELAWARE	Lee Griffin Eberle	Kay Lyn Beauchamp
DEWEY	Judge Rick M. Bozarth	Julie D. Strong
ELLIS	Laurie E. Hays	Judge Joe L. Jackson
GARFIELD	Michael C. Bigheart	Robert R. Faulk
	Tim E. DeClerck	Kaleb K. Hennigh
	Douglas L. Jackson	Randy J. Long
GARVIN	Daniel T. Sprouse	John A. Blake
GRADY	Ryland L. Rivas	Judge Richard VanDyck
GRANT	Judge Jack D. Hammontree Jr.	Steven A. Young
GREER	Judge Danny R. Deaver	Eric G. Yarborough
HARMON		
HARPER	Judge G. Wayne Olmstead	M. Marcus Holcomb
HASKELL		
HUGHES	Robert L. Irby	Candice M. Irby
JACKSON	John H. Weigel	John M. Wampler
JEFFERSON	Carrie E. Hixon	Phillip R. Scott
JOHNSTON	Dustin P. Rowe	Laura J. Corbin
KAY	Brian T. Hermanson	Jacob W. Biby
	Rick Johnson	Michael P. Martin
KINGFISHER	E. Edd Pritchett	Judge Susie Pritchett
KIOWA	Thomas W. Talley	
LATIMER		
LEFLORE		
LINCOLN		
LOGAN	Jeff Hirzel	Megan Morgan
LOVE	Kenneth L. Delashaw Jr.	Richard A. Cochran Jr.
MAJOR	Mitchell A. Hallren	John W. McCue II
MARSHALL	Judge Richard A. Miller	Jeffrey S. Landgraf
MAYES	Randall Elliott	Larry J. Paden
MCCLAIN	Sara L. Bonnell	Suzanne Woodrow Snell
MCCURTAIN	Judge Michael D. DeBerry	Jerry L. McCombs
MCINTOSH	C. Brendon Bridges	Brecken A. Wagner
MURRAY	Phil S. Hurst	Judge John H. Scaggs
MUSKOGEE	Doris L. Gruntmeir	
	Roy D. Tucker	
	Betty O. Williams	
NOBLE		
NOWATA		
OKFUSKEE	Jeremy T. Pittman	Bruce A. Coker
OKLAHOMA	Mack K. Martin	Judge E. Bay Mitchell III
	John B. Heatly	Kieran D. Maye Jr.
	Laura H. McConnell-Corbyn	James R. Webb
	Judge Timothy D. DeGiusti	W. Todd Blasdel
	Judge Glenn M. Jones	Judge Barry L. Hafar
	James A. Kirk	John H. Edwards III
	Larry M. Spears	Angela Ailles Bahm

	Benjamin J. Butts	David W. VanMeter
	David W. Kisner	M. Courtney Briggs
	J. David Ogle	Judge Page P. Morgan
	Michael A. Rubenstein	Evan B. Gatewood
	Charles F. Alden III	Brandon P. Long
	Michael W. Brewer	Tim Rhodes
	Judge Bryan C. Dixon	Linda L. Samuel-Jaha
	Judge Vicki L. Robertson	Steven T. Horton
	Judge Barbara G. Swinton	Daniel J. Morgan
	David B. Donchin	Leanne T. Burnett
	Judge Lisa K. Hammond	Richard L. Rose
	Reggie N. Whitten	Amy S. Fischer
	G. Calvin Sharpe	J. Kelly Work
	Daniel G. Webber Jr.	Celeste T. Johnson
	Michael L. Mullins	Collin R. Walke
	Don G. Holladay	Jeff L. Todd
	Judge J. Lynne McGuire	Janna Dunagan Hall
	Nancy S. Parrott	Jeffrey E. Tate
	D. Lynn Babb	Maurice G. Woods II
	Amy Jo Pierce	Daniel G. Couch
	Leslie L. Lynch	Lawrence E. Schneiter IV
	Bradley A. Gungoll	Cherish K. Ralls
OKMULGEE	Javier Ramirez	Dawn M. Rahme
OSAGE	Jesse J. Worten III	Lou Ann Moudy
OTTAWA	Charles W. Chesnut	John M. Weedn
PAWNEE	Jeff Steven Jones	Pat Pickerill
PAYNE	Drew M. Ihrig	David W. Bryan
	Brenda Nipp	Jill M. Ochs-Tontz
	Susan C. Worthington	Cory T. Williams
PITTSBURG	Mindy M. Beare	Trevor J. Furlong
	Ellen C. Quinton	Michael D. Parks
PONTOTOC	J. Wes Billingsley	Preston S. Draper
	T. Walter Newmaster	Ash E. Mayfield
POTTAWATOMIE	James T. Stuart	Matthew L. Thomas
	Joseph M. Vorndran	George J. Wright
PUSHMATAHA	James T. Branam	Jacqueline Jo Perrin
ROGER MILLS	Kelly Tice Roberts	Judge F. Pat VerSteeg
ROGERS	C. Noah Sears	
	Melinda D. Wantland	
SEMINOLE	R. Victor Kennemer III	William D. Huser
SEQUOYAH	Kent S. Ghahremani	John T. Cripps III
STEPHENS		
TEXAS	Douglas D. Dale	Cory B. Hicks
TILLMAN	Clyde H. Amyx II	John P. Kent
TULSA	Robert S. Farris	Fred H. Demier
	Judge Charles R. Hogshead	Gale G. Allison
	Leonard I. Pataki	Michael Scott Ashworth
	Renée DeMoss	Kenneth G. Miles
	William G. LaSorsa	Kimberly K. Moore-Waite
	Paul D. Brunton	David M. Thornton Jr.
	C. Michael Zacharias	Amber N. Peckio Garrett
	Kenneth L. Brune	Shelton L. Benedict
	Bruce A. McKenna	Jeremy K. Ward

	Tony W. Haynie	William "Bill" Sanders
	Paul B. Naylor	Michael "Mike" Esmond
	Vivian C. Hale	Nathan Harley Mayenschein
	Jack L. Brown	Martha Rupp Carter
	Catherine M. Cullem	Robert B. Sartin
	Molly A. Aspan	John R. Woodard III
	Patrick D. O'Connor	D. Kenyon Williams Jr.
	D. Faith Orlowski	Georgenia A. Van Tuyl
	James R. Gotwals	Judge E. Mark Barcus
	James C. Milton	Martin A. Frey
	Ron Main	
	Phil Frazier	
	Julie A. Evans	
	John T. Hall	
	Robert P. Redemann	
	Trisha L. Archer	
	Christopher L. Camp	
	Kimberly Hays	
	Melissa F. Cornell	
	Blake R. Givens	
	Judge Millie E. Otey	
WAGONER	Judge Douglas A. Kirkley	
WASHINGTON	Gaylene F. McCallum	Remona K. Colson
	Michael A. Shiflet	Linda S. Thomas
WASHITA	Judge Christopher S. Kelly	Skye D. Shephard-Wood
WOODS	Jeremy T. Bays	Jesse D. Kline
WOODWARD	Bryce L. Hodgden	Christopher M. Boring

JUDICIAL CONFERENCE

	DELEGATE	*ALTERNATE*
Dist. Judge	Judge P. Thomas Thornbrugh	Judge M. John Kane IV
Assoc. Dist. Judge	Judge Mickey J. Hadwiger	Judge Mark A. Moore

PAST PRESIDENTS

Jon K. Parsley
J. William Conger
Stephen D. Beam
William Robert Grimm
Michael Devere Evans
Harry Arthur Woods Jr.
Melissa Griner DeLacerda
Gary Carl Clark
Charles Donald Neal Jr.
M. Joe Crosthwait Jr.
Douglas W. Sanders Jr.
John A. Gaberino Jr.
William J. Baker
James Duke Logan
Sidney George Dunagan
Bob Warren Rabon
Andrew M. Coats
Robert Forney Sandlin
Michael Burrage
Anthony M. Massad
Burck Bailey
David K. Petty
James R. Eagleton
Judge Paul Miner Vassar
William George Paul
Clarence D. Northcutt
Judge Thomas R. Brett
Winfrey David Houston

OBA

ANNUAL MEETING

Program of Events

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

All events will be held at the Crowne Plaza Hotel unless otherwise specified.

Tuesday, Nov. 16

OBA Registration ..... 4 – 7 p.m.
Lobby Lounge

Oklahoma Fellows of the American Bar Foundation ..... 7 – 9 p.m.
Summit Club
15 W. 6th St.

Wednesday, Nov. 17

OBA Registration ..... 8 a.m. – 5 p.m.
Promenade D Foyer

OBA Hospitality ..... 8 a.m. – 5 p.m.
Lobby Lounge

Oklahoma Fellows of the American Bar Foundation ..... 8:30 – 9:30 a.m.
Oklahoma Room

Board of Bar Examiners ..... 8:30 a.m. – Noon
Executive Room

OBA/CLE Seminar Registration ..... 8:30 – 9 a.m.

OBA/CLE Seminar ..... 9 a.m. – 5 p.m.

See seminar program for speakers and complete agenda

Nuts & Bolts	*Promenade A*
Criminal Law	*Promenade B*
How Good Lawyers Survive Bad Times	*Promenade C*
Family Law	*Promenade D*

Fastcase Training:
Nuts and Bolts ..... 10 – 11 a.m.
Directors Row 5

Fastcase is a free member benefit for online legal research.

OU College of Law Alumni Reception and Luncheon ..... 11:15 a.m. – 1:30 p.m.
Tulsa Ballroom South

Outstanding Senior Law School Student Award
Christa Evans

Speaker: *Joseph Harroz Jr.*, Dean, OU College of Law, Norman

OCU School of Law Alumni Reception and Luncheon ..... Noon – 1:30 p.m.
Summit Club
15 W. 6th St.

Outstanding Senior Law School Student Award
Daniel Correa

Speaker: *Rebecca Brown,* Policy Advocate Innocence Project, New York City

Topic: *Leading the Way: OCU Law's Role in Addressing Wrongful Convictions in Oklahoma*

TU College of Law Alumni Reception and Luncheon.....Noon – 1:30 p.m.
Tulsa Ballroom North

Outstanding Senior Law School Student Award
Philip H. Tinker

Speaker: *Jamie McDonald,* TU Visiting Assistant Professor of Law, Former Clerk for U.S. Chief Justice John G. Roberts Jr., Tulsa

Topic: *The Supreme Court: An Overview from a Law Clerk's Perspective*

Criminal Law Section Luncheon .....Noon – 1:30 p.m.
Tulsa Ballroom Central

Speaker:

Judge Clancy Smith
Oklahoma Court of Criminal Appeals

OBA Board of Governors Meeting.....2 – 4 p.m.
Executive Room

Indian Law Section.....2 – 4 p.m.
Oklahoma Room

Fastcase Training: Nuts and Bolts .....3 – 4 p.m.
Directors Row 5

Fastcase is a free member benefit for online legal research.

OBA Military Assistance Task Force .....3 – 5 p.m.
Diplomat Room

Friends of Bill W.....5 – 6 p.m.
Directors Row 2

Law Day Committee.....5 – 6:30 p.m.
Directors Row 4

President's Reception .....7 – 9:30 p.m.
Tulsa Ballroom Central

(Free for everyone with meeting registration)

Celebrate the Annual Meeting Tulsa style with President Allen Smallwood. Each attendee receives two drink tickets.

Past Presidents' Dinner .....8 – 10 p.m.
Oklahoma Room

Thursday, Nov. 18

Legal Aid Services Pro Bono Breakfast.....7:30 – 9 a.m.
Oklahoma Room

CLE Speaker Breakfast .....7:30 – 9 a.m.
Directors Row 3

American College of Trust and Estate Counsel.....8 – 9:30 a.m.
Executive Room

American College of Trial Lawyers.....8 – 9:30 a.m.
Diplomat Room

Professionalism Committee Breakfast.....8 – 9:30 a.m.
Tulsa Ballroom North

OBA Registration.....8 a.m. – 5 p.m.
Promenade D Foyer

OBA Hospitality ..... 8 a.m. – 5 p.m.
Lobby Lounge

Annual Insurance, Tort & Workers' Compensation Update..... 8:30 a.m. – 5 p.m.
Promenade C

(Program offered by the Oklahoma Association for Justice)

Family Law Section ..... 8:45 a.m. – 5 p.m.
Promenade D

Keynote Speaker: *Steven N. Peskind,* Family Lawyer, St. Charles, Ill.

Topic: *Redefining Family Law: Embracing the Future of the Practice*

Credentials Committee..... 9 – 9:30 a.m.
Directors Row 1

Legal Intern Committee ..... 9 – 10:30 a.m.
Directors Row 2

Barbara Smallwood's Spouses Brunch..... 9 – 10:30 a.m.
Suite 1506

(All OBA spouses are invited)

OBA/CLE Plenary Session ..... 9 a.m. – Noon
Promenade A

Earl Sneed Award
Justice John F. Reif, Skiatook

Speakers:

Jennifer Thompson-Cannino
Salem, N.C.

Ronald Cotton
Mebane, N.C.

Topic: *Picking Cotton: Our Memoir of Injustice and Redemption*

Speaker*: Gary D. Wells, Ph.D.,* Professor of Psychology, Iowa State University, Ames, Iowa

Topic: *The Science of Eyewitness Identification*
Panel:

Ms. Thompson-Cannino

Mr. Cotton

Mr. Wells

Micheal Huff, Tulsa Police Department, Homicide Division, Tulsa

Douglas E. Drummond, Tulsa County First Assistant District Attorney, Tulsa

Stephen Kunzweiler, Assistant District Attorney, Tulsa

Topic: *Eyewitness Identification in Oklahoma*

Estate Planning, Probate and Trust Section..... 10 a.m. – Noon
Tulsa Central Ballroom

Speaker*: William H. Frazier,* ASA, Senior Managing Director/Owner, Howard Frazier Barker Elliott Inc., Dallas

Topic: *FLP Valuations: Where Are We Now?*

OBA Rules and By-Laws Committee..... 10 – 10:30 a.m.
Directors Row 1

MCLE Commission ..... 10:30 – 11:45 a.m.
Directors Row 3

OBA Resolutions Committee.....10:45 a.m. – 11:45 a.m.
Directors Row 1

OBA Annual Luncheon
For Members, Spouses
And Guests ..... Noon – 1:45 p.m.
Tulsa Ballroom South

($30 with meeting registration)

Award of Judicial Excellence
Judge Bryan C. Dixon, Oklahoma City
Judge James H. Payne, Muskogee

Liberty Bell Award
Sherri Carrier, Tulsa

Joe Stamper Distinguished Service Award
R. Forney Sandlin, Muskogee

Alma Wilson Award
Judge C. William Stratton, Lawton

Neil E. Bogan Professionalism Award
R. Clark Musser, Oklahoma City

John E. Shipp Award for Ethics
Retired Judge Milton Craig, Chandler

Featuring:

Michael Wallis
Historian, Biographer & Author
Tulsa

Topic: *Lawless Oklahoma: The Epicenter of the Wild West*

Sponsor:
Thomson West

Michael Wallis Book Signing.....2 – 3 p.m.
Diplomat Room

(Books available for purchase)

Fastcase Training:
Advanced Tips for Fastcase.....2 – 3 p.m.
Directors Row 5

Fastcase is a free member benefit for online legal research.

Real Property Law Section .....2 – 3:30 p.m.
Promenade A

Judicial Diversity Forum .....2 – 4 p.m.
Tulsa Ballroom Central

(Program of the OBA Diversity Committee)

Council on Judicial
Complaints .....2 – 4 p.m.
Directors Row 2

Bankruptcy and Reorganization
Section .....2 – 4 p.m.
Tulsa Ballroom North

Speakers:

Richard A. Wieland
U.S. Trustee
Region 20

Jim Keeley, Representing the Debtors

Layla Dougherty, Representing the Creditors

Moderator: *Paul Thomas,* Trial Attorney, U.S. Trustee

Topic: *Creditor Abuse, Mortgage, Fraud and other National Issues*

(Approved for 2 hours of CLE credit)

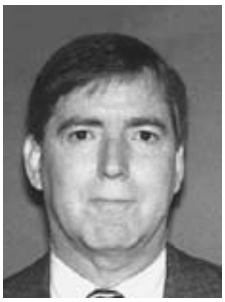
Oklahoma Criminal Defense
Lawyers Association.....2 – 4 p.m.
Promenade B

The Incarceration of
Women in Oklahoma
Seminar .....2:15 – 3:30 p.m.
Oklahoma Room

(Annual Meeting registration not required for admission)

PROGRAM MODERATOR:

Chief Justice James E. Edmondson
Oklahoma Supreme Court



FEATURING: *Laura J. Pitman, Ph.D.,* Director of Female Offender Operations, Oklahoma Department of Corrections, Oklahoma City

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OKLAHOMA BAR FOUNDATION
BOARD OF TRUSTEES .....3 – 5 P.M.
Executive Room

BOARD OF EDITORS.....3 – 5 P.M.
Directors Row 3

OBA/CLE: LIVES IN BALANCE: LAWYERS HELPING LAWYERS.....3:45 – 5:15 P.M.
Oklahoma Room

(Annual Meeting registration not required for admission)

PROGRAM
MODERATOR: *Clif Gooding,* The Gooding Law Firm, A PC, Oklahoma City

PANELISTS: *Tom Riesen*, Chair, Lawyers Helping Lawyers Committee; Law Office of Thomas Riesen, Oklahoma City
Cecil G. Drummond, Boettcher & Drummond Inc., Tulsa
*David R. Widdoe*s, City Prosecutor, Sapulpa
Tom Taylor, Executive Director & CEO, Heartline, Oklahoma City
Rebecca Williams, LPC, CEAP, CABA Employee Assistance Services Director, Oklahoma City
*Travis A. Picken*s, OBA Ethics Counsel, Oklahoma City
Terry O. Tottenham, President, State Bar of Texas; Of Counsel Fulbright & Jaworski LLP, Austin

(Approved for 1.5 hours of CLE credit)

ACCESS TO JUSTICE
COMMITTEE .....3:45 – 5:15 P.M.
Directors Row 4

WOMEN IN LAW
COMMITTEE .....4 – 5 P.M.
Directors Row 1

TAXATION LAW SECTION.....4:30 – 6 P.M.
Diplomat Room

LAW OFFICE MANAGEMENT AND TECHNOLOGY SECTION. .....4:30 – 6 P.M.
Promenade A

SPEAKERS: *Jim Calloway*, OBA Management Assistance Program Director, Oklahoma City

Jody Nathan, Stauffer & Graves, Tulsa

TOPIC: *Technology Tips & Tricks 2010*

FRIENDS OF BILL W.....5 – 6 P.M.
Directors Row 2

OBA LEADERSHIP ACADEMY
RECEPTION.....5:30 – 6:30 P.M.
Suite 1506

OKLAHOMA BAR FOUNDATION
FELLOWS RECEPTION. .....6 – 7:30 P.M.
GableGotwals
100 W. 5th St., 11th Floor
Transportation between the Crowne Plaza and ONEOK Plaza is provided.

ENERGY AND NATURAL
RESOURCES LAW SECTION.....6 – 7:30 P.M.
Promenade B

HEALTH LAW SECTION .....6 – 8 P.M.
Promenade C

YOUNG LAWYERS DIVISION
BOARD OF DIRECTORS
ANNUAL MEETING.....6:30 – 7 P.M.
Executive Room

Young Lawyers Division
Past Chairs' Reception.....7 – 8 p.m.
Oklahoma Room

Music through the Years
Featuring Jessica Hunt .....8 – 9 p.m.
Tulsa Ballroom North

Enjoy the best songs from numerous decades with lawyer and OBA Idol champ Jessica Hunt

(Free for everyone with meeting registration - complimentary dessert and two drink tickets.)

Casino Night.....9 p.m. – Midnight
Tulsa Ballroom South

(Free for everyone with meeting registration)

Prize drawing at end of the event

Sponsor:
OBA Young Lawyers Division

Friday, Nov. 19

President's Breakfast.....7:30 – 9 a.m.
Promenade A

($20 with meeting registration)

Speaker: *Michelle Place,* Business Manager, Tulsa Historical Society

Topic: *Art Deco 101*

OBA Registration and
Hospitality.....8 – 10 a.m.
Promenade Foyer

Oklahoma Bar Association
General Assembly .....9 – 10 a.m.
Promenade D

Trailblazer Award
Reggie Whitten, Oklahoma City

Outstanding County Bar Association Award
Muskogee County Bar Association

Hicks Epton Law Day Award
Comanche County Bar Association

Golden Gavel Award
OBA Family Law Section
Kimberly K. Hays, Chair

Outstanding Young Lawyer Award
Doris L. Gruntmeir, Muskogee
Richard L. Rose, Oklahoma City

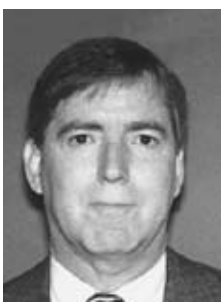
Outstanding Service to the Public Award
Richard L. McKnight, Enid

Award for Outstanding Pro Bono Service
Ana Basora-Walker, Lawton
James J. Proszek, Tulsa
Steven W. Soulé, Tulsa

Maurice Merrill Golden Quill Award
Klint A. Cowan, Oklahoma City
Micheal Salem, Norman

General Assembly
Speakers:

Chief Justice James E. Edmondson
Oklahoma Supreme Court



Presiding Judge Charles Johnson
Oklahoma Court of Criminal Appeals

Allen M. Smallwood
President
Oklahoma Bar Association

Deborah A. Reheard
President-Elect
Presiding

OKLAHOMA BAR ASSOCIATION
HOUSE OF DELEGATES ..... 10 A.M. – NOON
Promenade D
Election of Officers & Members of the Board of Governors
Approval of Title Examination Standards
Resolutions

BALLOT COMMITTEE ..... 11 A.M. – NOON
Directors Row 1

OBA/CLE Annual Meeting 2010

Crowne Plaza Hotel, Tulsa

November 17, 2010 — DAY ONE

	Family Law *Promenade D*	*Criminal Law* *Promenade B*	*How Good Lawyers Survive Bad Times* *Promenade C*	*Nuts and Bolts* *Tulsa Ballroom*
WEDNESDAY *Registration* *8 - 9 a.m.*	**Program Planner/ Moderator** Lori Pirraglia	**Program Planner/ Moderator** Ben Brown Charles Sifers	**Program Planner/ Moderator** Jim Calloway	**Program Planner/ Moderator** Collin Walke
Session 1 *9 - 9:50 a.m.*	**Client Intake: Starting Out on the Right Foot/Making Good Client Choices** Jon Ford	**Immigration & Criminal Law: A Practical Explanation in Light of *Padilla v. Kentucky*** Joan Lopez Campbell Cooke	**50 Tips for Tough Times** Jim Calloway	**Administrative Law Trials: We Aren't in Kansas Anymore** Gary Payne
Session 2 *10 - 10:50 a.m.*	**Temporary Order Hearing: Exhibits Needed and Preparing Your Clients** Phil Tucker	**The Practical & Advance Use of the Science of Eyewitness Identification in the Courtroom PART I** Professor Gary Wells Ph.D.	**Marketing on a Budget** Mark A. Robertson	**Get Your Ethics!** (ethics) Gina Hendryx
Session 3 *11 - 11:50 a.m.*	**Finding Expert Witnesses - Business Valuators and Mental Health Professionals** David Echols Eileen Echols	**The Practical & Advance Use of the Science of Eyewitness Identification in the Courtroom PART 2** Professor Gary Wells Ph.D.	**The Thrifty Lawyer** L. Michele Nelson	**Your Solo Shopping List** Jim Calloway
12-2 p.m. LUNCH (On your own)				
Session 4 *2 -2:50 p.m.*	**Dissolution Depositions: Taking and Defending** Donelle H. Ratheal	**Criminal Law Motions Practice** Cindy Danner Jim Drummond Brian Hermanson	**Free, Cheap and Easy Technology Tools** Jim Calloway	**Your Job as a Criminal Law Attorney** Garvin Isaacs

OBA/CLE Annual Meeting 2010

cont'd	Family Law	Criminal Law	How Good Lawyers Survive Bad Times	Nuts and Bolts
Session 5 *3 - 3:50 p.m.*	**Trial Exhibits and Witness: Choosing and Preparation** Kimberly Hays	**Representing Persons Charged with Driving Under the Influence** Josh D. Lee Charles Sifers	**Your Law Firm Finances** Ted Blodgett	**Bankrupty Chapter 7: The Ins and Outs** Jennifer Kirkpatrick
Session 6 *4 - 4:50 p.m.*	**The End/Beginning: Drafting the Decree/ Pre-Nups for New Beginnings** Bill LaSorsa	**Working with the Media** **Moderator** Doug Dodd **Panel** Mike Arnett Jon Epstein Mark Hanebutt Dick Pryor Travis Pickens	**Cutting Costs & Coralling Clients without Compromising Ethics** (ethics) Gina Hendryx Travis Pickens	**Mastering the Art of the Deposition** Ronald Walker

4:50 p.m. ADJOURN

November 18, 2010 DAY TWO

THURSDAY *Registration* *8:30 - 9 a.m.*	*Topic*	*Program Moderator:* **Judge Thomas C. Gillert,** District Judge, Tulsa
9 a.m.	**Picking Cotton: Our Memoir of Injustice and Redemption**	**Speakers:** **Jennifer Thompson-Cannino,** Salem, NC **Ronald Cotton,** Mebane, NC
9:50 a.m.	**The Science of Eyewitness Identification**	**Speaker:** **Gary D. Wells, Ph.D.,** Professor of Psychology, Iowa State University, Ames
10:40 a.m.	**Break**	
10:50-11:50 a.m.	**Eyewitness Identification in Oklahoma**	**Panelists:** **Michael Huff,** Tulsa Police Department, Homicide Division, Tulsa **Douglas E. Drummond,** Tulsa County First Assistant District Attorney, Tulsa **Stephen Kunzweiler,** Assistant District Attorney, Tulsa **Jennifer Thompson-Cannino** **Ronald Cotton** **Gary Wells, Ph.D.**

OBA

ANNUAL MEETING

2010 Registration Form

Please complete a separate form for each registrant.

Name _____

E-mail _____

Badge Name (if different from roster) _____ Bar No. _____

Address _____

City _____ State _____ Zip _____ Phone _____

Name of Non-Attorney Guest _____

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

Check all that apply:

❑ Judiciary ❑ OBF Fellow ❑ OBF Past President ❑ OBA Past President ❑ YLD Officer ❑ YLD Board Member ❑ YLD Past President

❑ Board of Bar Examiner ❑ 2010 OBA Award Winner ❑ Delegate ❑ Alternate ❑ County Bar President: County _____

❑ **YES! Register me for the 2010 Annual Meeting, November 17, 18 & 19, in Tulsa.**

Events will be held at the Crowne Plaza Hotel. Registration fee includes continental breakfast in hospitality area, President's Reception ticket(s), convention gift, Vendors Expo, Music through the Years and Viva Las Vegas Casino Night.

❑ MEMBER: ❑ $50 through Nov. 3; $75 after Nov. 3 ..... $ _____

❑ NEW MEMBER (Admitted after Jan. 1, 2010): ❑ Free through Nov. 3; $15 after Nov. 3..... $ _____

❑ LAW STUDENT DIV. ❑ $25 through Nov. 3; $35 after Nov. 3 ..... $ _____

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

❑ WED. & THURS.: CLE Multitrack (___ [0 or 1] ticket @ $150 through Nov. 3; $175 after Nov. 3;
and Plenary $50 for new members through Nov. 3, $75 after Nov. 3) ..... $ _____

❑ WEDNESDAY: CLE Multitrack only ($125/$150) ..... $ _____

❑ THURSDAY: CLE Plenary only (___ [0 or 1] ticket @ $75 through Nov. 3; $100 after Nov. 3;
$25 for new members through Nov. 3, $50 after Nov. 3)..... $ _____

❑ THURSDAY: Annual Luncheon (___ number of tickets @ $30 each) ..... $ _____

❑ FRIDAY: President's Breakfast (___ number of tickets @ $20 each)..... $ _____

❑ Please check here, if under the Americans with Disabilities Act you require specific aids or services during your visit to the OBA Annual Meeting. ❑ Audio ❑ Visual ❑ Mobile (Attach a written description of your needs.)

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

❑ WEDNESDAY: Law School Luncheon – (check one) ❑ OCU ❑ OU ❑ TU

(___ number of tickets @ $30 each..... $ _____

TOTAL $ _____

I will be attending the free event(s) below that do(es) NOT require Annual Meeting registration:

❑ Lives in Balance: Lawyers Helping Lawyers

❑ Incarceration of Women in Oklahoma

THREE WAYS TO REGISTER

■ **MAIL** this registration form with payment or credit card info to:
OBA Annual Meeting
P.O. Box 53036
Okla. City, OK 73152

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

■ **ONLINE** at www.okbar.org

CANCELLATION POLICY Full refunds will be given through Nov. 10. No refunds will be issued after that date.

PAYMENT OPTIONS:

❑ Check enclosed: Payable to Okla. Bar Association

Credit card: ❑ VISA ❑ Mastercard ❑ Discover ❑ American Express

Card #_____

Credit Card CVV/CVC # (on back of card)_____

Exp. Date_____

Authorized Signature

_____

HOTEL ACCOMMODATIONS:

Fees do not include hotel accommodations. For reservations contact: Crowne Plaza Tulsa Hotel at (800) 227-6963. Call by Oct. 26 and mention hotel code: Oklahoma Bar Association 2010 Convention for a special room rate of $105 per night. For hospitality suites, contact Craig Combs at (405) 416-7040 or e-mail: craigc@okbar.org.

OBA ANNUAL MEETING

2011 OBA Board of Governors Vacancies

Nominating Petition Deadline was 5 p.m. Friday, Sept. 17, 2010

OFFICERS

President-Elect
Current: Deborah Reheard, Eufaula
Ms. Reheard automatically becomes OBA president Jan. 1, 2011
(One-year term: 2011)
Nominee: Cathy Christensen, Oklahoma City

Vice President
Current: Mack K. Martin, Oklahoma City
(One-year term: 2011)
Nominee: Reta M. Strubhar, Piedmont

BOARD OF GOVERNORS

Supreme Court Judicial District Two
Current: Jerry L. McCombs, Idabel
Atoka, Bryan, Choctaw, Haskell, Johnston, Latimer, LeFlore, McCurtain, McIntosh, Marshall, Pittsburg, Pushmataha and Sequoyah Counties
(Three-year term: 2011-2013)
Nominee: Gerald C. Dennis, Antlers

Supreme Court Judicial District Eight
Current: Jim T. Stuart, Shawnee
Coal, Hughes, Lincoln, Logan, Noble, Okfuskee, Payne, Pontotoc, Pottawatomie and Seminole Counties
(Three-year term: 2011-2013)
Nominee: Scott Pappas, Stillwater
Nominee: Gregg W. Luther, Shawnee

Supreme Court Judicial District Nine
Current: W. Mark Hixson, Yukon
Caddo, Canadian, Comanche, Cotton, Greer, Harmon, Jackson, Kiowa and Tillman Counties
(Three-year term: 2011-2013)
Nominee: O. Christopher Meyers, Lawton

Member-At-Large
Current: Jack L. Brown, Tulsa
(Three-year term: 2011-2013)
Nominee: Renée DeMoss, Tulsa
Nominee: Kimberly K. Hays, Tulsa
Nominee: Mack K. Martin, Oklahoma City

Summary of Nominations Rules

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

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

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

If no one has filed for one of the vacancies, nominations to any of the above offices shall be received from the House of Delegates on a petition signed by not less than 30 delegates certified to and in attendance at the session at which the election is held.

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

Vacant positions will be filled at the OBA Annual Meeting Nov. 17-19. Terms of the present OBA officers and governors listed will terminate Dec. 31, 2010. Nomination and resolution forms can be found at www.okbar.org.

OBA
ANNUAL MEETING

Title Examination Standards

2010 Report Of The Title Examination Standards Committee Of The Real Property Law Section

Proposed Amendments to Title Standards for 2010, to be presented for approval by the House of Delegates at the Oklahoma Bar Association Annual Meeting, Nov. 19, 2010. Additions are underlined, deletions are indicated by ~~strikeout~~.

The Title Examination Standards Sub-Committee of the Real Property Law Section proposes the following revisions and additions to the Title Standards for action by the Real Property Law Section at its annual meeting in Tulsa on Thursday, Nov. 18, 2010.

Proposals approved by the section will be presented to the House of Delegates at the OBA Annual Meeting on Friday, Nov. 19, 2010. Proposals adopted by the House of Delegates become effective immediately.

An explanatory note precedes each proposed Title Standard, indicating the nature and reason for the change proposed.

Proposal 1.

The committee recommends a change to the first comment of Title Standard 7.2 to more accurately reflect that the legal authority on which the standard is based.

Standard 7.2 MARITAL INTERESTS AND MARKETABLE TITLE

Except as otherwise provided in Standard 7.1, no deed, mortgage or other conveyance by an individual grantor shall be approved as sufficient to vest marketable title in the grantee unless:

A. The body of the instrument contains the grantor's recitation to the effect that the individual grantor is unmarried; or

B. The individual grantor's spouse, identified as such in the body of the instrument, subscribes the instrument as a grantor; or

C. The grantee is the spouse of the individual grantor and that fact is recited by the grantor in the body of the instrument.

Comments:

1. There is no question that an instrument relating to the homestead is void unless husband and wife subscribe it. *Grenard v. McMahan*, 1968 OK 75, 441 P.2d 950 ~~(Okla. 1968)~~, *Atkinson v. Barr*, 1967 OK 103, 428 P. 2d 316, but also see *Hill v. Discover Bank*, 2008 OK CIV APP 111, 213 P.3d 835. It is also settled that husband and wife must execute the same instrument, as separately executed instruments will be void. *Thomas v. James*, 1921 OK 414, ~~84 Okla. 91,~~ 202 P. 499 ~~(1921)~~. It is essential to make the distinction between a *valid conveyance* and a conveyance vesting *marketable title* when consulting this standard. 2.
2. While 16 O.S. §13 states that "The husband or wife may convey, mortgage or make any contract relating to any real estate, other than the homestead, belonging to him or her, as the case may be, without being joined by the other in such conveyance, mortgage or contract," joinder by husband and wife must be required in all cases due to the impossibility of ascertaining from the record whether the property was or was not homestead or whether the transaction is one of those specifically permitted by statute. *See* 16 O.S. §§4 and 6 and Okla. Const. Art. XII, §2. A well-settled point is that one may not rely upon recitations, either in the instrument or in a separate affidavit, to the effect that property

was not the homestead. Such a recitation by the grantor may be strong evidence when the issue is litigated, but it cannot be relied upon for the purpose of establishing marketability. *Hensley v. Fletcher*, 172 Okla. 19, 44 P.2d 63 (1935).

3. If an individual grantor is unmarried and the grantor's marital status is inadvertently omitted from an instrument, or if two grantors are married to each other and the grantor's marital status is inadvertently omitted from an instrument, a title examiner may rely on an affidavit executed and recorded pursuant to 16 O.S. §82 which recites that the individual grantor was unmarried or that the two grantors were married to each other at the date of such conveyance.

4. A non-owner spouse may join in a conveyance as part of a special phrase placed after the habendum clause, yet be omitted from the grantor line of a deed, and still be considered a grantor to satisfy paragraph B. of this title standard. *Melton v. Sneed*, 188 Okla. 388, 109 P.2d 509 (1940).

Proposal 2.

The committee recommends amendment to Standard 8.1 and 15.4 to reflect the effect of the repeal in the Oklahoma Estate Tax.

STANDARD 8.1 TERMINATION OF JOINT TENANCY ESTATES AND LIFE ESTATES

A. The termination of the interest of a deceased joint tenant or life tenant may be established on a conclusive basis by one of the following methods:

1. By proceeding in the district court as provided in 58 O.S. §911,

2. By a valid judicial finding of the death of the joint tenant in any action brought in a court of record, or

3. By filing documents that satisfy 58 O.S. §912C.

B. The termination of the interest of a deceased joint tenant or life tenant may be established on a prima facie basis by one of the following methods:

1. By recording certified copies of letters testamentary or letters of administration for the estate of the deceased joint tenant or life tenant or

2. by recording an affidavit from a person other than those listed in 58 O.S. §912C which:

   a. has a certified copy of the decedent's death certificate attached;

   b. reflects that the affiant has personal knowledge of the matters set forth therein;

   c. includes a legal description of the property;

   d. states that the person named in the death certificate is one and the same person as the deceased joint tenant or life tenant named in a previously recorded instrument which created or purported to create the joint tenancy or life tenancy in such property, and identifying such instrument by book and page where recorded.

C. A waiver or release of the Oklahoma estate tax lien for the joint tenant or life tenant must be obtained unless:

1. A district court has ruled pursuant to 58 O.S. §282.1 that there is no estate tax liability,

2. The joint tenant or life tenant has been dead more than 10 years, or

3. The sole surviving joint tenant or remainder interest holder is the surviving spouse of the deceased joint tenant or sole life tenant:, or

4. The date of death of the joint tenant or life tenant is on or after Jan. 1, 2010.

Authority: 16 O.S. §§53 A (10); 82-84; 58 O.S. §§23, 133, 282.1, 911 and 912; 60 O.S. §§36.1 and 74, and 68 O.S. §§811 and 815.

Comment: Title 58 O.S. §912 is a procedural statute, and may be applied retroactively because it does not affect substantive rights; See Opin. Atty. Gen. 74-271 (Feb. 10, 1975), *Texas County Irr. & Water v. Okla. Water*, 803 P.2d 1119 (Okla. 1990), and *Shelby-Downard Asphalt Co., v. Enyart*, 67 Okla. 237, 170 P. 708 (1918). The death of a joint tenant or a life tenant may be conclusively established under §912 regardless of the date of death and regardless of the date of filing of the affidavit.

A retained life estate [e.g., Mom conveys Blackacre to Son, reserving a life estate to herself] is included in the life tenant's taxable estate at death, 68 O.S. §807 (A) (3). However, a non-retained pure life estate, unaccompanied by a general power of appointment, is not subject to Oklahoma estate tax, and an estate tax lien release is not required in such instance. For

example, if Mom conveys Blackacre for life to Son, remainder over to Granddaughter, Son has a pure life estate which is not included in his gross estate at his death and is not taxable nor subject to the estate tax lien. An estate tax lien release is not required in such a case. But if Mom were to have given Son not only the life estate but also a general power of appointment [as specially defined at 68 O.S. §807 (A) (9)] over the remainder, such a life estate with a power *would be included* in Son's taxable estate, and a lien release would be required.

The marketability of title may also be impaired by the lien of Federal estate tax. See Title Standard No. 25.2.

STANDARD 15.4 ESTATE TAX CONCERNS OF REVOCABLE TRUSTS.

Where title to real property is vested in the name of a revocable trust, or in the name of a trustee(s) of a revocable trust, and a subsequent conveyance of such real property is made by a trustee(s) of a revocable trust, who is other than the settlor(s) of such revocable trust, a copy of the order of the Oklahoma Tax Commission releasing or exempting the estate of the non-joining settlor(s) from the lien of the Oklahoma estate tax, and a closing letter from the Internal Revenue Service, if the estate is of sufficient size to warrant the filing of a Federal estate tax return, should be filed of record in the office of the county clerk where such real property is located unless evidence, such as an affidavit by a currently serving trustee of the revocable trust is provided to the title examiner to indicate that one of the following conditions exists:

A. the non-joining settlor(s) was alive at the time of the conveyance; or

B. the settlors were husband and wife and:

1. one settlor is deceased, and
2. the sole surviving settlor is the surviving spouse of the deceased settlor, and
3. the assets of the trust, pursuant to the terms of the trust, pass to the benefit of the surviving settlor spouse, upon the death of the deceased settlor spouse; or

C. the sole settlor is deceased and the assets of the trust, pursuant to the terms of the trust, pass to the benefit of the surviving spouse of the deceased settlor, upon the death of the settlor; or

D. more than ten (10) years have elapsed since the date of the death of the non-joining settlor(s), or since the date of the conveyance from the trustee(s), and no estate tax lien against the estate of the non-joining settlor(s) appears of record in the county where the property is located. **or**

E. the date of death of the non-joining settlor(s) is on or after Jan. 1, 2010.

Proposal 3.

The committee recommends a change in Title Standards 12.3 and 12.5 to reflect that the standards apply to all legal entities.

12.3 CONCLUSIVE PRESUMPTIONS CONCERNING ~~CORPORATE~~ INSTRUMENTS RECORDED FOR MORE THAN FIVE YEARS

The following defects my be disregarded after an instrument from a ~~corporation~~ legal entity has been recorded for five years:

A. the instrument has not been signed by ~~a proper officer of the corporation~~ the proper representative of the legal entity,

B. The representative is not authorized to execute the instrument on behalf of the legal entity,

~~B.~~C. the instrument is not acknowledged, and

~~C.~~D. any defect in the execution, acknowledgment, recording or certificate of recording the same.

Authority: 16 O.S. §§1 & 27a.

12.5 ~~CORPORATE~~ POWERS OF ATTORNEY BY LEGAL ENTITIES

A. If a recorded instrument has been executed by an attorney in fact on behalf of a ~~corporation,~~ legal entity, the examiner should accept the instrument if:

1. the power of attorney authorizing the attorney in fact to act on behalf of the ~~corporation~~ legal entity is executed in the same manner as a ~~corporate~~ conveyance by a legal entity,
2. the power of attorney is recorded in the office of the county clerk,
3. the power of attorney shows that the attorney in fact had the authority to execute the recorded instrument, and
4. the power of attorney was executed before the recorded instrument was executed.

B. Notwithstanding paragraph A above, if a recorded instrument has been executed by an attorney in fact on behalf of a ~~corporation,~~ legal entity, the examiner should accept the instrument if the instrument has been of record for at least five (5) years even though a power of attorney has not been recorded in the office of the county clerk of the county in which the property is located.

Authority: 16 O.S. §§1, 3, 20, 27a, 53, 93.

Proposal 4.

The committee recommends amendments to the comments to Title Standard 17.4 to reflect unanswered issues created by the statute and the repeal of the Oklahoma Estate Tax.

17.4 TRANSFER-ON-DEATH DEEDS

A deed appearing of record executed in accordance with the "Nontestamentary Transfer of Property Act" should be accepted as a conveyance of the grantor's interest in the real property described in such deed effective upon the death of the grantor, provided that an affidavit evidencing the death of such grantor has been recorded, as specified in the act, and no evidence appears of record by which:

A. the conveyance represented by such deed has otherwise been revoked, disclaimed* or has lapsed pursuant to the provisions of the act, or

B. the designation of the grantee beneficiary or grantee beneficiaries in such deed has been changed via a subsequent transfer-on-death deed pursuant to the provisions of the act.

Authority: 58 O.S. §1251, *et seq*.

*The examiner should be aware of the fact that a disclaimer under the provisions of the act may be executed within a period of time ending nine (9) months after the death of the owner/grantor.

Comment: Pursuant to the provisions of the act, releases for Oklahoma estate taxes and, if applicable, federal estate taxes for the deceased grantor, together with a death certificate, shall be attached to the affidavit evidencing the death of the grantor, except no tax releases or death certificate are required in instances in which the grantor and grantee were husband and wife. No Oklahoma estate tax release is required for the estate of a grantor who died on or after Jan. 1, 2010.

Comment: The examiner should be aware that the grantor's interest may be subject to the homestead rights of a surviving spouse pursuant to Article 12, Section 2 of the Oklahoma Constitution. The examiner should be provided with satisfactory evidence which must be recorded, such as an affidavit as to marital status or death certificate of the grantor showing no surviving spouse. If the evidence provided to the examiner reveals that the grantor had a spouse at the time of death, the examiner should require a quit claim deed from the surviving spouse, showing marital status and joined by spouse, if any.

Comment: The examiner should be aware that an ambiguity will arise in 58 O.S. §1254 (B) if the grantor records more than one transfer-on-death deed ("TOD deed") conveying fractional interests, unless the owner/grantor has expressed an intent in the subsequent deed or deeds not to revoke the previous deed or deeds. For instance, if X owns Greenacre and conveys 50% to A by TOD deed, and later X conveys 50% to B by a TOD deed, the conveyance to B would create uncertainty as to whether A and B each had 50%, for a total of 100%, or only B had 50% with the remaining 50% being vested in the grantor's estate.

Comment: In instances in which the TOD deed lists multiple grantee/ beneficiaries as joint tenants, the death of one or more of such grantees prior to the death of the grantor in the deed precludes the creation of the estate of joint tenancy for the surviving grantees under the precepts of the requisite unities for a joint tenancy estate. A question remains as to whether the interest of the grantor vests, via the TOD deed, in the surviving grantees as tenants-in-common or fails to vest in such grantees due to the fact the estate of joint tenancy was not created in such surviving grantees at the time of death of the grantor.

Comment: Commencing Nov. 1, 2010, pursuant to 58 O.S. §1252 (C), the grantee/beneficiary, in order to accept the real estate pursuant to a TOD deed, shall record an affidavit with the County Clerk unless such grantee/beneficiary has recorded a timely executed disclaimer. It is an unsettled point of law as to whether or not the requirement for an acceptance applies ret-

roactively to TOD deeds recorded prior to Nov. 1, 2010.

Proposal 5.

The committee recommends the comments of Title Standards 30.3, 30.4, 30.5, 30.6, 30.7, 30.8, 30.9 and 30.10 be amended to make the current effect of the Marketable Record Title Act more apparent to examiners.

30.3 UNBROKEN CHAIN OF TITLE OF RECORD

"An unbroken chain of title of record," within the meaning of the Marketable Record Title Act, may consist of 1) A single conveyance or other title transaction which purports to create an interest and which has been a matter of public record for at least thirty (30) years; or 2) A connected series of conveyances or other title transactions of public record in which the root of title has been a matter of public record for at least thirty (30) years.

Authority: 16 O.S. §71(a) & (b); L. Simes & C. Taylor, Model Title Standards, Standard 4.3, at 25 (1960).

Similar Standard: Mich., 1.3.

Comment: Assume A is the grantee in a deed recorded in ~~1915~~1975 and that nothing affecting the described land has been recorded since then. In ~~1945~~2005 A has an "unbroken chain of title of record." Instead of a conveyance, the title transaction may be a decree of a district court or court of general jurisdiction, which was entered in the court records in ~~1915~~1975. Likewise, in ~~1945~~2005, A has an "unbroken chain of title of record."

Instead of having only a single link, A's chain of title may contain two or more links. Thus, suppose X is the grantee in a deed recorded in ~~1915~~1975; and X conveyed to Y by deed recorded in ~~1925~~1985; Y conveyed to A by deed recorded in ~~1940~~2000. In ~~1945~~2005 A has an "unbroken chain of title of record." Any or all of these links may consist of decrees of a district court or court of general jurisdiction instead of deeds of conveyance.

The significant time from which the 30-year record title begins is not the delivery of the instrument, but the date of its recording. Suppose the deed to A is delivered in ~~1915~~1975 but recorded in ~~192~~51985. A will not have an "unbroken chain of title of record" until ~~1955~~2015.

Decrees of a court in a county other than where the land lies do not constitute a root of title until recorded in the county in which the land lies.

For a definition of "root of title" see Marketable Record Title Act, 16 O.S. §78(e).

30.4 MATTERS PURPORTING TO DIVEST

Matters "purporting to divest" within the meaning of the Marketable Record Title Act are those matters appearing of record which, if taken at face value, warrant the inference that the interest has been divested.

Authority: 16 O.S. §72(d); L. Simes & C. Taylor, Model Title Standards, Standard 4.4, at 26-27 (1960).

Similar Standard: Mich., 1.4.

Comment: The obvious case of a recorded instrument purporting to divest is a conveyance to another person. A is the grantee in a deed recorded in ~~1915~~1965. The record shows a conveyance of the same tract by A to B in ~~1925~~1975. Then B deeds to X in ~~1957~~2007. Although B had a 30-year record chain of title in ~~1945~~1995, the deed to X purports to divest it, and B, thereafter, does not have a title.

A recorded instrument may also purport to divest even though there is not a complete chain of record title connecting the grantee in the divesting instrument with the 30-year chain. Suppose A is the last grantee in a recorded chain of title, the last deed of which was recorded in ~~1915~~1975. A deed of the same land was recorded in ~~1925~~1985, from X to Y, which recites that A died intestate in ~~1921~~1981 and that X is A's only heir. There is nothing else on record indicating that X is A's heir. The deed recorded in ~~1925~~1985 is one "purporting to divest" within the terms of the act. This is the conclusion to be reached whether the recital of heirship is true or not.

Or suppose, again, that A is the last grantee in a chain of title, the last deed of which was recorded in ~~1915~~1965. A deed to the same land from X to Y was recorded in ~~1925~~1975, which contains the following recital: "being the same land heretofore conveyed to me by A." There is no instrument on record from A to X. This instrument is nevertheless one "purporting to divest" within the terms of the act.

Suppose that in ~~1915~~1975, A was the last grantee in a recorded chain of title, the deed to A being recorded in that year. A deed of the same land was recorded in ~~1925~~1985, signed:

"A by B, attorney-in-fact." Even though there is no power of attorney on record, and even though the recital is untrue, the instrument is one "purporting to divest" within the terms of the act.

Suppose that A is the last grantee in a recorded chain of title, the last deed of which was recorded in ~~1915~~1935. In ~~1955~~1975 there was recorded a deed to Y from X, a stranger to the title, which recited that X and X's predecessors have been "in continuous, open, notorious and adverse possession of said land as against all the world for the preceding thirty years." This is an instrument "purporting to divest" A of A's interest, within the terms of the act.

On the other hand, an inconsistent deed on record, is not one "purporting to divest" within the terms of the act, if nothing on the record purports to connect it with the 30-year chain of title. The following fact situations illustrate this.

A is the last grantee in a recorded chain of title, the last deed of which was recorded in ~~1915~~1965. A warranty deed of the same land from X to Y was recorded in ~~1925~~1975. The latter deed is not one "purporting to divest" within the terms of the act.

A is the last grantee in a recorded chain of title, the last deed of which was recorded in ~~1915~~1965. A mortgage from X to Y of the same land, containing covenants of warranty, is recorded in ~~1925~~1975. The mortgage is not an instrument "purporting to divest" within the terms of the act.

Although the recorded instruments in the last two illustrations are not instruments "purporting to divest" the 30-year title, they are not necessarily nullities. The marketable record title can be subject to interests, if any, arising from such instruments, 16 O.S. §72(d).

30.5 INTERESTS OR DEFECTS IN THE THIRTY-YEAR CHAIN

If the recorded title transaction which constitutes the root of title, or any subsequent instrument in the chain of record title required for a marketable record title under the terms of the act, creates interests in third parties or creates defects in the record chain of title, then the marketable record title is subject to such interests and defects.

Authority: 16 O.S. §72(a) & (d); L. Simes & C. Taylor, Model Title Standards, Standard 4.6, at 28-29 (1960).

Similar Standard: Mich., 1.8.

Comment: This standard is explainable by the following illustrations:

1. In ~~1915~~1975, a deed was recorded conveying land from A, the owner in fee simple absolute, to "B and B's heirs so long as the land is used for residence purposes," thus creating a determinable fee in B and reserving a possibility of reverter in A. In ~~1925~~1985, a deed was recorded from B to C and C's heirs "so long as the land is used for residence purposes, this conveyance being subject to a possibility of reverter in A." In ~~1945~~2005, C has a marketable record title to a determinable fee which is subject to A's possibility of reverter.

2. Suppose, however, that, in ~~1915~~1975, a deed was recorded conveying a certain tract of land from A, the owner in fee simple absolute, to "B and B's heirs so long as the land is used for residence purposes"; and suppose, also, that in ~~1918~~1978 a deed was recorded by B to C and C's heirs, conveying the same tract in fee simple absolute, in which no mention was made of any special limitation or of A's possibility of reverter. There being no other instruments of record in ~~1948~~2008, C has a marketable record title in fee simple absolute. C's root of title is the deed from B to C and not the deed from A to B; and there are no interests in third parties or defects created by the "muniments of which such chain of record title is formed."

A general reference to interests prior to the root of title is not sufficient unless specific identification is made to a recorded title transaction, 16 O.S. §72(a).

30.6 FILING OF NOTICE

A marketable record title is subject to any interest preserved by filing a notice of claim in accordance with the terms of Sections 74 and 75 of the Marketable Record Title Act.

Authority: 16 O.S. §§74 & 75; L. Simes & C. Taylor, Model Title Standards, Standard 4.7 at 29-30 (1960).

Comment: Suppose A was the grantee in a chain of record title of a tract of land, a deed to which was recorded in ~~1900~~1960. In ~~1902~~1962, a mortgage of the same land from A to X was recorded. In ~~1906~~1966, a mortgage of the same land from A to Y was recorded. In ~~1918~~1978, a deed of the same land from A to B in fee simple absolute was recorded, which made no mention of the mortgages. In ~~1947~~2007, Y recorded a notice of Y's mortgage, as provided in Sections 74 and 75 of the act. X did not record any notice. In ~~1948~~2008, B had a marketable record

title, which is subject to Y's mortgage, but not to X's mortgage. B's root of title is the ~~1918~~1978 deed. Therefore, X and Y had until ~~1948~~2008 to record a notice for the purpose of preserving their interests. If X had filed a notice after ~~1948~~2008, it would have been a nullity, since X's interest was already extinguished.

The filing of a notice may be a nullity not only because it comes too late, but also because it concerns a subject matter not within the scope of the statute. Thus, recorded notices of real estate commissions claimed or other charges which do not constitute liens on the property have no effect under the act, 16 O.S. §72(b).

30.7 THIRTY-YEAR POSSESSION IN LIEU OF FILING NOTICE

If an owner of a possessory interest in land under a recorded title transaction 1) has been in possession of such land for a period of thirty (30) years or more after the recording of such instrument, and 2) such owner is still in possession of the land, any Marketable Record Title, based upon an independent chain of title, is subject to the title of such possessory owner, even though such possessory owner has failed to record any notice of such possessory owner's claim.

Authority: 16 O.S. §§72(d) & 74(b); L. Simes & C. Taylor, Model Title Standards, Standard 4.8, at 30-31 (1960).

Comment: The kind of situation which gives rise to this standard is suggested by the following illustration. A was the last grantee in a chain of record title to a tract of land, by a deed recorded in ~~1915~~1975. There were no subsequent instruments of record in this chain of title. A has been in possession of the land since ~~1915~~1975 and continues in possession, but has never filed any notice as provided in Section 74 of the Marketable Record Title Act. A deed of the same land, unconnected with A's chain of title, from X to Y, was recorded in ~~1916~~1976; no other instruments with respect to this land appearing of title. On the other hand, A had a marketable record title in ~~1945~~2005, but in ~~1946~~2006, according to Section 72(d), it is subject to Y's marketable record title. Thus, the relative rights of A and of Y are determined independently of the act, since the interest of each is subject to the other's deed. A's interest being prior in time, and Y's deed being merely a "wild deed," under common law principles A's title should prevail.

Under 16 O.S. §74(b), possession cannot be "tacked" to eliminate the necessity of recording a notice of claim.

30.8 EFFECT OF ADVERSE POSSESSION

A marketable record title is subject to any title by adverse possession which accrues at any time subsequent to the effective date of the root of title, but not to any title by adverse possession which accrued prior to the effective date of the root of title.

Authority: 16 O.S. §§72(c) & 73; L. Simes & C. Taylor, Model Title Standards, Standard 4.9, at 31 (1960).

Comment: (Assume the period for title by adverse possession is 15 years.)

1. A is the grantee of a tract of land in a deed which was recorded in ~~1900~~1950. In the same year, X entered into possession claiming adversely to all the world and continued such adverse possession until ~~1916~~1966. In ~~1917~~1967, a deed conveying the same land from A to B was recorded. No other instruments concerning the land appearing of record, B has a marketable record title in ~~1947~~1997, which extinguished X's title by adverse possession acquired in ~~1915~~1965.

2. Suppose A is the grantee of a tract of land in a deed which was recorded in ~~1915~~1965. In ~~1941~~1991, X entered into possession claiming adversely to all the world and continued such adverse possession until the present time. No other instruments concerning the land appearing of record. In ~~1945~~1995, A had a marketable record title, but it was subject to X's adverse possession and when X's period for title by adverse possession was completed in ~~1956~~2006, A's title was subject to X's title by adverse possession.

30.9 EFFECT OF RECORDING TITLE TRANSACTION DURING THE THIRTY YEAR PERIOD

The recording of a title transaction subsequent to the effective date of the root of title has the same effect in preserving any interest conveyed as the filing of the notice provided for in Section 74 of the act.

Authority: 16 O.S. §72(d); L. Simes & C. Taylor, Model Title Standards, Standard 4.10, at 32-33 (1960).

Comment: This standard is operative both where there are claims under a single chain of title and where there are two or more indepen-

dent chains of title. The following illustrations show how it operates.

1. Suppose A is the grantee of a tract of land in a deed which was recorded in ~~1900~~1960. A mortgage of this land executed by A to X was recorded in ~~1905~~1965. In ~~1910~~1970, a deed conveying the land from A to B was recorded, this deed making no reference to the mortgage to X. In ~~1939~~1999, an instrument assigning X's mortgage to Y was recorded. In ~~1940~~2000, B had a marketable record title. But it was subject to the mortgage held by Y because the assignment of the mortgage was recorded less than 30 years after the effective date of B's root of title. If, however, Y had recorded the assignment in ~~1941~~2001 the mortgage would already have been extinguished in ~~1940~~2000 by B's marketable title; and recording the assignment in ~~1941~~2001 would not revive it.

2. Suppose a tract of land was conveyed to A, B and C as tenants in common, the deed being recorded in ~~1900~~1960. Then in ~~1905~~1965, A and B conveyed the entire tract in fee simple to D and the deed was at once recorded. In ~~1925~~1985, D conveyed to E in fee simple, and the deed was at once recorded. No mention of C's interest was made in either the ~~1905~~1965 or ~~1925~~1985 deeds. Nothing further appearing of record, E had a marketable record title to the entire tract in ~~1935~~1995. This extinguished C's undivided one-third interest.

3. Suppose the same facts, but assume also that, in ~~1936~~1996, C conveyed C's one-third interest to X in fee simple, the deed being at once recorded. This does not help C any. C's interest, having been extinguished in ~~1935~~1995, is not revived by this conveyance.

4. Suppose A, being the grantee in a regular chain of record title, conveyed to B in fee simple in ~~1900~~1960, the deed being at once recorded. Then, in ~~1905~~1965, X, a stranger to the title, conveyed to Y in fee simple, and the deed was at once recorded. In ~~1925~~1985, Y conveyed to Z in fee simple, and the deed was at once recorded. Then suppose in ~~1927~~1987 B conveyed to C in fee simple, the deed being at once recorded. In ~~1935~~1995, Z and C each has a marketable record title, but each is subject to the other. Hence, neither extinguishes the other, and the relative rights of the parties are determined independently of the act. C's title, therefore, should prevail.

5. Suppose, however, that the facts were the same except that B conveyed to C in ~~1937~~1997 instead of ~~1927~~1987. In that case, Z's marketable record title extinguished B's title in ~~1935~~1995, 30 years after the effective date of Z's root of title, and B's title is not revived by the conveyance in ~~1937~~1997.

30.10 QUITCLAIM DEED OR TESTAMENTARY RESIDUARY CLAUSE IN THIRTY-YEAR CHAIN

A recorded quitclaim deed or residuary clause in a probated will can be a root of title or a link in a chain of title, for purposes of a 30-year record title under the Marketable Record Title Act.

Authority: 16 O.S. §§71 & 78(e) & (f); L. Simes & C. Taylor, Model Title Standards, Standard 4.11, at 33-34 (1960).

Related Standards: Mich., 1.3; Neb., 52.

Comment: The Marketable Record Title Act defines "root of title" as a title transaction "purporting to create the interest claimed." See section 78(e). "Title transaction" is defined to include a variety of transactions, among which are title by quitclaim deed, by will and by descent. See Section 78(f).

A quitclaim deed can be a root of title to the interest it purports to create. Suppose there is a break in the chain of title, and the first instrument after the break is a quitclaim deed. Assume that the first recorded instrument in the chain of title is a patent from the United States to A, recorded in 1890, and that the next is a warranty deed from A to B in fee simple, recorded in ~~1910~~1940. Then, in ~~1915~~1975, there is a quitclaim deed from C to D purporting to convey "the above described land" to D in fee simple. Further assume that there are no other recorded title transactions or notices after this deed and that D is in possession, claiming to be the owner in fee simple. Under the Marketable Record Title Act, the ~~1915~~1975 deed is the root of title and purports to create a fee simple in D. Therefore, in ~~1945~~2005, D has a good title in fee simple.

Clearly the quitclaim deed can be a link in a chain of record title under the provisions of the act. See sections 71 and 78(f). If it can be an effective link, it must necessarily follow that it can be an effective "root" to the interest it purports to create.

Volunteers Critical to OBA Success

I 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. 1, 2010, so I can begin committee appointments for 2011.

Deborah Reheard, President-Elect

Standing Committees

- Access to Justice
- Awards
- Bar Association Technology
- Bar Center Facilities
- Bench and Bar
- Civil Procedure
- Communications
- Disaster Response and Relief
- Diversity
- 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

Note: No need to sign up again if your current term has not expired. Check www.okbar.org/members/committees/ for terms

Please Type or Print

Name _____ Telephone _____

Address _____ OBA # _____

City _____ State/Zip_____

FAX _____ E-mail _____

Committee Name	Have you ever served on this committee?	If so, when? How long?
1st Choice _____	❑ Yes ❑ No	_____
2nd Choice _____	❑ Yes ❑ No	_____
3rd Choice _____	❑ Yes ❑ No	_____

❑ Please assign me to only one committee.
❑ I am willing to serve on (two or three - circle one) committees.

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

_____

Mail: Deborah Reheard, c/o OBA, P.O. Box 53036, Oklahoma City, OK 73152
Fax: (405) 416-7001

2010 EMPLOYMENT LAW SEMINAR

presented by the Oklahoma Employment Lawyers Association

Date:	Friday, December 3, 2010 at 9 a.m. to 5 p.m.
Location:	Crabtown in Bricktown, Okla. City
CLE CREDIT:	CLE credit proposed for 8.0 hours including 1.8 hours of ethics.
Tuition:	$200 for registration by Nov 29, 2010. ***(Buffet lunch included)***
	$225 for registration Nov. 30 and after.
	$ 25 discount for OELA members & government/public service attys
CANCELLATION POLICY:	There will be a $25 charge for cancellations prior to Nov. 30. No refunds after Nov. 30, however written materials will be provided. Materials may be purchased for $75
REGISTRATION:	Make checks payable to: OELA Send registrations to OELA, 325 Dean A. McGee, Okla. City, OK 73102 Fax No: (405) 235-6111 For more information contact Lori Lanon at 235-6100

9:00-10:30 **Ethics for the employment lawyer**

Ethical issues for the corporate counsel:	Nathan Whatley
Ethical issues for the employee's counsel:	Mark Hammons
Ethical issues for the government lawyer	David Lee
Ethical issues from a mediator's perspective	Steve Boaz

Presentation, panel discussion, question and answer session

10:30-10:40 Break

10:40-Noon Gavin W. Manes, Ph.D, President Avansic

Strategies for processing and reviewing emails

Bad corporate decisions on emails

Noon to 1:00 pm Lunch Buffett (included in seminar cost)

1:00-3:00 **Intersecting Leave Rights**:

FMLA, ADA, Worker's Compensation, USERRA and State Law

State Employee Leave Rights	Daniel Gamino
Job Protection Under Worker's Compensation	Joe Biscone
ADA/FMLA Leave Rights	Stephanie Manning
USERRA: Leave Rights Under The New Law	Amber Hurst

Presentation, panel discussion, question and answer session

3:00-3:10 Break

3:10-4:05 **New Developments in Federal Employment Law** Leonard Court

4:05-5:00 **New Developments in Oklahoma Employment Law** Mark Hammons

Crabtown is located at 303 E. Sheridan. Parking is available at ***Bricktown/Hampton Inn Parking***, 222 E. Sheridan at a $5 per day (excluding special evidence) parking rate.

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appears that the most support for such a "Missouri Plan" would come from the urban areas (Oklahoma County, Tulsa County and perhaps Comanche, Muskogee and Washington). The remainder of the state, based upon my anecdotal experience, still clings to a desire to have a more direct effect on selection of judges, at least in the legal community.

Now for the better way.

Oklahoma has had in place for more than 40 years a system which has proven extraordinarily effective in selecting judges who are qualified for their positions and have, to the best of my knowledge, all served successfully and with distinction. The Judicial Nominating Commission was created as part of the judicial reform package of 1968-69, and provides for a membership of 13 people (six lawyers and seven lay persons) who select from a slate of applicants three individuals to be sent to the governor for his or her selection to fill the position. Currently, the selection process is limited to those vacancies created by death, disability or retirement. All appellate court and workers' compensation court judges are selected through this process, but the trial judiciary (which in my view is the most important part of the judiciary) is still selected by popular vote, whether on an at-large basis, or selected by districts in the larger counties or districts.

The Judicial Nominating Commission could easily accommodate selecting all judges, both trial and appellate. After the initial selection process of the district judges was complete, the judges would then stand for retention ballot as all appellate judges do currently. Over the last five years, I can attest to the fact that politics, at least openly, has never reared its ugly head in any of the discussions or interviews I have been involved in while selecting over 50 judicial openings from associate district judge to Supreme Court positions.

We have all watched (most with dismay) the televised nomination hearings for Supreme Court justices, at least from the Justice Clarence Thomas hearings onward. Politics certainly has been apparent in the acrimonious debate there.

I urge all of you to consider a judicial nomination process with a retention ballot to be substituted for the popular vote of district judges. As we are all aware, most non-lawyers have little sense of who to vote for regarding judges, and if your experience is similar to mine, most of your family and friends invariably ask you, "Who do I vote for judge?," which gives us significant input in reforming the current system. We need to take the lead in this and do our best to not only retain the Judicial Nominating Commission in its present form, but to enlarge it as needed to take politics out of the courtroom.

More Than a Convention

By John Morris Williams

It's time for the OBA Annual Meeting! Our Annual Meeting is more than a "convention." While there are some aspects of the Annual Meeting that would be similar to a trade association gathering, there is so much more. Pursuant to the Oklahoma Supreme Court Rules Creating and Controlling the Oklahoma Bar Association, "The policy-making powers of the Association are vested in a House of Delegates..." Pursuant to the OBA bylaws, the House of Delegates is to meet at least once a year at the Annual Meeting. Thus, we come together as an association pursuant to an order of the Oklahoma Supreme Court to attend to the governance and policy making of the association.

While many bar associations have cut back or eliminated their annual meetings, we have continued to have a strong Annual Meeting. Our elected leadership and the OBA staff continually strive to provide an enriching experience leading up to the time the House of Delegates meets. This year, the House of Delegates has some very important business regarding our legislative agenda and judicial ethics and elections. The decisions made by the House of Delegates have a real impact on our profession and the day-to-day practice of law. In short, it's not just a convention. It is a working meeting where important business is conducted. Many committees and sections also meet and conduct important business at that level.

This year the CLE, Annual Luncheon and a myriad of other programs are top notch. The Thursday morning plenary session promises to be thought provoking. The presentation includes someone wrongfully convicted by a faulty eyewitness. This is a stark reminder of how important our work is and how important it is that we are proactive in maintaining a fair and just system. From what I have seen, this presentation alone is worth coming to the Annual Meeting.

Additionally, in this age of electronic communications, our profession is not immune from moving toward less personal contact. The value of coming together with your peers and spending some "face time" is, in my opinion, invaluable. Research shows that generations X and Y are less likely to be involved in these kinds of endeavors. However, I personally see plenty of our members from those generations involved in our association. I am thankful for them and those from other generations. I am counting on them to be at the Annual Meeting and taking up the banner to preserve our association.

For us as an association to maintain self-governance under the "superintendent control" of the Oklahoma Supreme Court, we must continue to come together in significant numbers to tend to the business of the association. Otherwise, we risk losing the opportunity to have a significant voice in both the operation of our association and in matters of public policy that influence our profession. Our gathering is more than a convention. I submit it is our duty as members of the legal profession to come together at the Annual Meeting.

I know the press of business and costs are factors in attending. We try to keep the meeting as inexpensive as possible and to give great value in the programs. Given the importance of the business conducted, the great programs and many fun events, there is really no excuse to not come to Tulsa this year and participate in the Annual Meeting.

The Annual Meeting is not just a convention. It is where you, as an important part of the legal community, can have a voice in how your association is run. It is where you can make significant contacts. It is where you can get exceptional professional training. It is where your attendance matters to the future of our profession. I hope I can count on you being at the Annual Meeting!

It's time to get registered for the annual…

Insurance, Tort & Workers' Compensation Update

Program Moderator: Rex Travis, Oklahoma City

Sponsored by the Oklahoma Association for Justice

November 18 – Tulsa
(During OBA Convention)
Crowne Plaza Hotel

December 3 — Oklahoma City
Waterford Marriott
6300 Waterford Boulevard

Registration: 8:30 a.m.

Tuition: $150 for OAJ members and $195 for non-members if registration is received by November 11th. Add $30 for registrations received after November 11th.

Member Benefit Options

President's Club Members may select this program as their complimentary 6 hour CLE. Please check the **"President's Club"** box on the registration form to use this benefit option.

Sustaining Members may attend this program for $120, a savings of more than 15%.

CLE Credit:
Participants will earn 6 hours of mandatory CLE credit, including 1 hour of ethics.

Register Online:
WWW.OKFORJUSTICE.ORG

Registration: ☐ Nov. 18 Tulsa ☐ Dec. 3 OKC
Name_____ OBA # _____
Firm_____
Address_____
City _____ State ___ Zip_____
Phone _____Fax _____ Email _____

Registration Category:

☐ **$150 OAJ Member** ☐ **$195 Non-member**
☐ **$120 OAJ Sustaining Member** ☐ **$0 OAJ President's Club**
Add $30 per attendee for registrations sent after November 11, 2010.

Best Value for Law Firms: ☐ $350 – 3 Member Registration
(Send three OAJ Members from your firm and save $100!)
Name_____ OBA # _____
Name_____ OBA # _____

Method of Payment: ☐ Check Enclosed ☐ Visa ☐ MC ☐ AmEx

Cardholder name _____
Card number _____Exp. Date_____
Signature _____

Return Registration Form & Payment to:
OAJ, 323 NE 27th Street, Oklahoma City, Ok. 73105
Fax: 405-528-2431

Improving Client Satisfaction Improves Your Practice and Your Life

By Jim Calloway, Director, OBA Management Assistance Program

Lawyers spend their professional lives serving their clients.

But client service today means more than just accomplishing the required legal work for which the lawyer was retained.

A very important aspect about running a law practice today (right after competency to do the work well and doing so) is providing superior client service to produce satisfied clients. These clients will then return if more legal services are needed in the future and may well serve as a source of referrals for new clients.

One thing that the recession should have driven home to members of the legal profession is that solo and small firm lawyers have one thing in common with lawyers at the very large firms. If you don't have clients — your own clients — your future is uncertain. When large law firms had to lay off lawyers and make difficult decisions, there were likely many brilliant and accomplished lawyers who lost their employment. When there were layoffs, certainly the lawyers who were unlikely to get terminated were the lawyers whose clients brought in a lot of revenue to the firm and those who likely would have taken a lot of well-paying clients with them upon leaving the firm. In fact, some firms saw those lawyers leaving for greener pastures.

And we all understand that the small firm lawyer who does not have sufficient paying clients may soon no longer have a law practice at all.

Today's economic environment has focused the attention of many businesses on basic business concepts. It is certainly an appropriate time for lawyers to refocus on ways to improve client satisfaction in an increasingly competitive legal marketplace.

We have created systems in law offices to make sure that deadlines are properly calendared, documents are proofed carefully, witnesses are subpoenaed in a timely manner before trial and legal projects are generally managed. Lawyers are generally good at keeping up with their legal projects, even if that often means working a fair number of nights and weekends to meet deadlines.

For future success, lawyers should examine the systems and processes that they have in place to assure client satisfaction with the firm's services. We live in a very service-oriented society, and it is important to deliver good service in response to client inquiries and timely communication practices generally. Other industries call this customer service, and even though we have clients instead of customers, good customer service practices are critical.

For example, we all hear the warning that failure to return client phone calls is the number one complaint that is made about lawyers to others. Sometimes the failure to return phone calls may signal other problems. It is difficult to return the call when the matter the client is calling about is past the deadline for completion.

But often the failure to return phone calls is one of those "not enough hours in the day" problems — an emergency on another client's matter, a court hearing that takes much longer than anticipated, a wreck in front of the lawyer that slows traffic or any number of things that impact the lawyer's schedule.

So if we know the delayed phone call return issue can make clients unhappy, can the lawyer develop a system to deal with this and head off problems in advance? Today's lawyer will look at expectations, policies and systems.

EXPECTATIONS, POLICIES AND SYSTEMS

The lawyer will want to establish appropriate client expectations beginning in the initial interview process with the new client. Let them know that you believe in good service and intend to deliver that to them. But also explain that your work has busy periods and sometimes returning phone calls quickly is challenging. Many clients have no idea what it is like to get 30 or 40 phone messages during a day. Let them know this is sometimes challenging for busy lawyers. If there is a legal assistant assigned to their matter, this may be a good time to introduce them and explain that part of the legal assistant's job is to help with client communications. If you want the client to communicate with staff, you need to encourage the client to do so.

Then let the client know your policy on returning phone calls.

So hopefully, the client will have the expectation that your policy is to return phone calls within 48 hours or by the close of the next business day. But the client will hopefully also have some understanding that sometimes this is one of your real business challenges.

A business policy is a rule for how the business is run. Make certain your staff understands your return call policy. Policies should be in writing and kept in the office policies and procedures manual. In a well-run office, this manual will be referred to frequently and regularly updated. Hopefully, the majority of calls will be returned with the stated policy time frame.

> "...explain that your work has busy periods and sometimes returning phone calls quickly is challenging."

By taking the time to make clear that this is an important office policy, your staff will know if the policy is to return calls within 48 hours.

A system or procedure helps us implement the policy. Staff knows this is important and if you get delayed at court, it is their duty to jump in and return the calls from the day before even if they can only let the client know that there's been an unexpected delay and it may be tomorrow before they hear from you. A part of that system may be that someone checks every day at 4 p.m. to see the status of returned calls. Another part of that system may be that the lawyer is careful to note in the practice management system that he or she has returned the call. Another part may be that the lawyer has to be gently reminded near the end of the day of his or her policy if there are unreturned calls.

Often a frustration for the lawyer in returning those phone calls is that the client has simple questions that the staff could have handled like "I just wanted to confirm my court date." So another part of the system is that staff should try and get the reason for the call and not just the phone number. A good response is "She's not available now. Can I take a message or is there anything we can help you with?" The specific response would vary between a solo lawyer with one staff person and a large law firm with a busy full-time receptionist, but the attitude of customer service should not.

Ultimately all of this would be contained in the office policy and procedures manual. This is an example of how the line between policies and procedures becomes blurred. It makes little sense to have both a policy and a procedure in the manual on returning client phone calls. Rather, there would be a page or two that might be summarized as, "Our policy is to return all client phone calls within 48 hours and here is how we do it."

Some readers may be thinking, "Instead of investing all of that time and effort in policies and documents on returning

client calls, I'd be better off actually returning calls or doing other billable work." But this is one step along the path to superior client service. It will actually save time when a new staff person is hired. And, as noted previously, it deals with what is said to be one of the greatest customer service problems about lawyer firms.

The process of managing expectations, setting policies and implementing systems will serve you well in many client service areas.

When you have completed this step and are ready for another one, your attention is directed to "Form Letters You and Your Clients Will Love," which was originally published in the *Oklahoma Bar Journal* way back in March 7, 1998, 69 OBJ 802 at tinyurl.com/26jv5a.

Lawyers are trained to focus on the client's legal issues in a narrow and objective way. This is a part of our training and a good thing.

But, as has been written in this column before, it is the client's perception that will result in either future referrals or unhappiness. It is sometimes hard to recognize and appreciate that the skill of a lawyer or even an outstanding result may not weigh as heavily in a client's positive or negative perception as other matters. The tone of the receptionist's voice, the amount of time left on hold, the promptness of returned phone calls, the appearance of an attorney's office, or whether copies of pleadings and correspondence are mailed to the client; all of these factors may contribute more to your client's attitude than the matters we are trained to consider important.

Try to set realistic deadlines for completion of projects. But when a deadline cannot be met, make sure the client is informed of the delay as soon as possible.

GETTING FEEDBACK

Another way to improve client satisfaction is to ask your clients (and former clients) how you are doing. Taking good clients to lunch periodically is a good informal way to do this.

Another tool for gathering feedback is the client survey. The client survey can also be an excellent training tool in the law office, whether it is a small or large firm. If your office staff members all know that clients are going to be receiving a survey, they may govern their behavior in order to get high marks from the clients. Thus, you serve an in-house training function with the survey as well.

As far as the effect on the clients of receiving a survey, most people are pleased when they are asked for their opinion. Hopefully, this will give the clients a final positive time to reflect both on the good services that they received from your firm and upon how nice it was that you asked them their opinion.

Be sure and give space for clients to write their comments and suggestions. Including stamped pre-addressed reply envelopes will increase your response rate. You may be surprised at the amount of input and feedback that you receive.

CONCLUSION

Most lawyers are very good at client service. But striving for improvements in client services and satisfaction is a good business practice for every lawyer.

Judicial Disqualification

By Gina Hendryx, OBA General Counsel

The Code of Judicial Conduct states that a judge should disqualify in a proceeding where his or her impartiality might reasonably be questioned. Examples in the code include instances where:

1. The judge has a personal bias or prejudice concerning a party or a party's lawyer, or personal knowledge of disputed evidentiary facts concerning the proceeding;
2. The judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;
3. The judge knows that he or she, individually or as a fiduciary, or the judge's spouse, parent or child wherever residing, or any other member of the judge's family residing in the judge's household, has an economic interest in the subject matter in controversy or has an interest more that *de minimis* that could be affected by the proceeding;
4. The judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person;

   (i) is a party to the proceeding, or an officer, director or trustee of a party;

   (ii) is acting as a lawyer in the proceeding;

   (iii) is known by the judge to have an interest more than *de minimis* that could be substantially affected by the proceeding;

   (iv) is to the judge's knowledge likely to be a material witness in the proceeding.

5 O.S. 2001 Ch.1, App.4, Code of Judicial Conduct, Canon 3E(1).

Before filing a motion to disqualify, the district court rules require specific procedural steps be taken by the attorney:

1. An in camera request **shall** be made to the judge to either disqualify or to transfer the cause to another judge.
2. If the request is not satisfactorily resolved, not less than **10 days** before the case is set for trial a motion to disqualify or to transfer may be filed and a copy delivered to the judge.
3. If disqualification or transfer is not granted, interested party may re-present the motion to the chief judge or to the presiding judge by filing in the case within **five days** from the date of said refusal a written request for a rehearing. A copy of the request shall be mailed or delivered to the chief judge or presiding judge, to the adverse party and to the judge who entered the original order.
4. If the hearing before the second judge results in an adverse order to the movant, he shall be granted not more than **five days** to institute a proceeding in the Supreme Court or the Court of Criminal Appeals for a writ of mandamus.

12 O.S. 2001 Ch.2, App.1, Rules for District Courts of Oklahoma, Rule 15.

Failure to follow the procedure set forth in Rule 15 will result in the issue being waived on appeal. In the appeal of a divorce matter, the appellant argued that the trial judge erred in failing to recuse. The appellant claimed that because the appellee had been a paralegal in the community and had professional contacts with the judge, that the court's impartiality might

be questioned. The appellant also claimed that the ends of justice would be served if the case were transferred to another judge who did not have knowledge of certain members of the local bar who were listed as witnesses. The appellate court held that appellant waived these issues when he failed to follow the procedures set forth in Rule 15.

Appellant followed the first two steps, that is, speaking with the judge in chambers then filing his motion to disqualify. After the hearing on the motion and the judge's denial, however, Appellant failed to re-present his motion to the Chief Judge of the county. Had Appellant re-presented his motion and still not received the relief he desired, Rule 15 provides him an opportunity to go forward by an original proceeding in mandamus to the Supreme Court of Oklahoma. Having opted not to avail himself of two more chances to argue his position, Appellant cannot bring his complaint to this court and expect relief. *Ward v. Ward*, 1995 OK CIV APP 51, 896 P.2d 749.

Disqualification of the judge must be timely pursued and based upon proper standards. The case law, codes, statutes and ethics opinions are quite instructive as to when disqualification is proper, required and waivable.

The OBA Family Law Section is a Presumptive Oklahoma MCLE Provider. This course has been approved by the Oklahoma Bar Association Mandatory Continuing Legal Education Commission for 5 hours of mandatory CLE Credit, including 0 hours Ethics Credit. Attendance at the FLS Annual Meeting is free for all OBA Family Law Section members. You need not register for the OBA Annual Meeting to attend the FLS Annual Meeting. **PRE-REGISTRATION IS NOT REQUIRED for Thursday**. Non-FLS members may attend by paying the $25 dues for 2010 at the door. Attendance for members of the judiciary is free. FLS members are also welcome to attend the Thursday night FLS-sponsored dinner at Blue Dome Diner, 313 E. 2nd St., Tulsa. Plan to attend the OBA General Assembly on Friday, Nov. 19, 2010, at 9 a.m. to celebrate in the OBA FLS's receipt of the 2010 OBA Golden Gavel Award.

Date/Time	Event/Topic	Location/Speaker
Wednesday, 11/17/10	OBA/CLE Family Law Track (Registration for OBA Annual Meeting Required to Attend)	Crowne Plaza Hotel, 100 E. 2nd St, Tulsa, OK
9 a.m. – 4:50 p.m.	OBA CLE presentation	Crowne Plaza Hotel Promenade D
8 p.m. – midnight	OBA FLS Hospitality Suite Open	Crowne Plaza Hotel Suite 1234
Thursday, 11/18/10	OBA FLS Annual Meeting (Open to all OBA FLS Members; **No Registration required**) Non-Members can pay $25 at the door.	Crowne Plaza Tulsa Hotel Promenade D- 2nd floor
8:15 – 8:45 a.m.	Breakfast and Sign In	Crowne Plaza Tulsa Hotel Promenade D- 2nd floor
8:45 – 9:15 a.m.	• Welcome/ Chair Comments • FLS Annual Business Meeting • Committee Reports & Door Prizes	Kimberly Hays, Chair
9:15 – 10:35 a.m.	Recent Developments in Family Law	Professor Robert G. Spector
10:35 – 10:45 a.m.	Break	
10:45 – 11:35 a.m.	Keynote Address: "Redefining Family Law: Embracing the Future of the Practice"	Keynote Speaker Steven Peskind, Illinois
11:35 – 11:55 a.m.	Grand Prize Drawing 1; Award Presentations for Outstanding Law Student, Outstanding Family Law Judge, Outstanding GAL Award and Outstanding Family Law Attorney	Kimberly Hays and David Tracy
11:55 a.m. – 2:15 p.m.	Lunch	OBA Annual Luncheon or your own
2:15 – 3:25 p.m.	Hidden Law: Unpublished Family Law Cases	Professor Robert G. Spector
3:25 – 4:15 p.m.	Keynote Address: "Redefining Family Law: Embracing the Future of the Practice"	Keynote Speaker Steven Peskind, Illinois
4:15 – 4:35 p.m.	Practice Manual Update & Door Prizes	Virginia Henson
4:35 – 4:45 p.m.	Door Prizes, Grand Prize Drawing 2 and Attendance Appreciation Prize Drawing	Kimberly Hays
4:45 p.m.	Adjourn	
6:30 – 8:00 p.m.	Dinner (Sponsored by FLS for members)	Blue Dome Diner, 313 E. 2nd St.
8 p.m. - midnight	Hospitality Suite Open	Crowne Plaza Hotel Room 1234
Friday, 11/19/10 9 a.m.	OBA General Assembly- Awards Presentation **OBA FLS 2010 Golden Gavel Award**	Crowne Plaza Hotel Room Promenade C meeting room

Keynote Speaker: Steven N. Peskind
Steven N. Peskind is the principal of the Peskind Law Firm, a matrimonial and family law firm practicing in the Chicago area. Mr. Peskind currently serves as a legislative appointee on the Illinois Family Law Study Committee, working to refine and improve Illinois' family laws. He is an elected member of the American Law Institute and a fellow of the American Academy of Matrimonial Lawyers. Mr. Peskind is active with the American Bar Association family law section where he chairs the practice management committee and serves on the publication board. Also, he is an editor of the Journal of the American Academy of Matrimonial Lawyers. He blogs on family law matters at www.peskindfamilylawinsights.com.

September Meeting Summary

The Oklahoma Bar Association Board of Governors met at the Tulsa County Bar Association in Tulsa on Friday, Sept. 24, 2010.

REPORT OF THE PRESIDENT

President Smallwood reported he has worked on details for the Annual Meeting to be held in Tulsa, and he is scheduled to speak against State Question 752 at a forum in Tulsa.

REPORT OF THE VICE PRESIDENT

Vice President Martin reported he attended the Oklahoma County Bar Association Lunch with the Thunder at the Ford Center, OCBA Attorney Placement Service Committee meeting, OCBA annual banquet/dinner/dance at the Skirvin Hotel, William J. Holloway Jr. Inn of Court meeting at the Oklahoma History Center, Rose State College Constitutional Day luncheon at Rose State College Student Center and Lawyers for Children Evening of Hope dinner at the Oklahoma History Center.

REPORT OF THE PRESIDENT-ELECT

President-Elect Reheard reported she attended the August board meeting, several Budget Committee meetings, Solo and Small Firm Committee meeting, Technology Task Force Subcommittee meeting, Military Assistance Task Force meeting, Unauthorized Practice of Law Special Committee meeting, Family Law Section meet and greet at the Petroleum Club for a nationally recognized military law speaker, OBF Board of Trustees meeting, Court of Criminal Appeals Judge Clancy Smith's swearing-in ceremony and Muskogee County Bar Association dinner honoring one 50-year and three 60-year OBA members.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported that he attended the Technology Task Force Subcommittee meeting, Unauthorized Practice of Law Special Committee meeting, Military Assistance Task Force meeting, Budget Committee meetings, Annual Meeting meeting with staff, planning meeting with President-Elect Reheard, meeting with Dick Beale on the group health insurance plan, Boiling Springs Institute, staff celebration, joint OBA/OBF dinner, swearing-in of Judge Smith to the Court of Criminal Appeals and swearing-in of new attorneys.

REPORT OF THE PAST PRESIDENT

Past President Parsley reported he attended the Professional Responsibility Commission meeting, Budget Committee meeting, joint OBA/OBF dinner and September board meeting.

BOARD MEMBER REPORTS

Governor Carter reported she attended the August board meeting and OBA Budget Committee meeting. **Governor Chesnut** reported he attended the OBA/OBF dinner, September board meeting and monthly meeting of the Ottawa County Bar Association. **Governor Devoll** reported he attended the August board meeting, Garfield County Bar Association meeting, and he worked on an effort for the Garfield County Bar Association to host a 2011 Board of Governors meeting. **Governor Dobbs** reported he attended the August board meeting and participated in a Children's Miracle Network charity event. **Governor Poarch** reported he attended the OBA swearing-in ceremony for the new attorneys, OBA/OBF dinner and September board meeting. **Governor Stuart** reported he attended the OBA/OBF dinner, September board meeting, Access to Justice Committee meeting and reviewed bar journal articles.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported the Office of the

General Counsel has received and begun investigations of 22 allegations of the unauthorized practice of law. In four of these matters, the respondent or entity has complied with the office's request to cease and desist. The OGC filed suit in two matters and continues the investigation of the others.

She attended a reception at Legal Aid Services of Oklahoma, UPL Special Committee meeting, PRC monthly meeting, admission ceremony for new attorneys and OBA/OBF Board of Governors joint dinner.

A written status report of the Professional Responsibility Commission and OBA disciplinary matters for August 2010 was submitted for the board's review.

RESOLUTION NO. 5: CONFORMING STATUTORY LANGUAGE REGARDING SERVICE OF JUDGMENTS, DECREES OR APPEALABLE ORDERS

OBA Civil Procedure Committee Chairperson Jim Milton reviewed proposed amendments presented as six resolutions and provided background on the committee's recommendations. The board voted to send the resolution amending 12 O.S. Supp. 2002, Section 990A, Appeal to Supreme Court of Oklahoma – Filing of Petition – Rules – Procedure – Dismissal to the House of Delegates for consideration and to recommend it be adopted.

RESOLUTION NO. 6: CONFORMING RULE REGARDING SERVICE OF JUDGMENTS, DECREES OR APPEALABLE ORDERS

The board voted to send the resolution amending Oklahoma Supreme Court Rule 1.21 relating to computation of time for commencement of an appeal to the House of Delegates for consideration and to recommend it be adopted.

RESOLUTION NO. 7: ELIMINATING STATUTORY TEXT THAT CREATES CONFLICTING DEADLINES ON SUMMARY JUDGMENT PROCEEDINGS

The board voted to send the resolution amending 12 O.S. Supp. 2009, Section 2056, Motion for Summary Judgment Proceedings to the House of Delegates for consideration and to recommend it be adopted.

RESOLUTION NO. 8: CLARIFYING STATUTORY LANGUAGE REGARDING INTERRELATION OF STATUTES DEALING WITH DISMISSAL

The board voted to send the resolution amending 12 O.S. Supp. 2009, Section 683, Dismissal without Prejudice to the House of Delegates for consideration and to recommend it be adopted.

RESOLUTION NO. 9: CLARIFYING STATUTORY LANGUAGE REGARDING INTERRELATION OF STATUTES DEALING WITH DISMISSAL

The board voted to send the resolution amending 12 O.S. Supp. 2009, Section 684, Dismissal before Trial Commenced without Court Order to the House of Delegates for consideration and to recommend it be adopted.

RESOLUTION NO. 10: EXTENDING WORK-PRODUCT PROTECTION TO MOST COMMUNICATIONS BETWEEN AN ATTORNEY AND A TESTIFYING EXPERT

The board voted to send the resolution amending 12 O.S. Supp. 2009, Section 3226, General Provisions Governing Discovery to the House of Delegates for consideration and to recommend it be adopted.

OKLAHOMA JUSTICE COMMISSION

OCU Law School Dean Larry Hellman reviewed a proposal by J. William Conger, OCU general counsel and past OBA president, to create an Oklahoma Justice Commission to enhance the reliability and accuracy of convictions. Josh Snavely, a recent law school student, OCU staff member and new OBA member, reported on a 50-state study conducted by OCU students, and he reviewed the resolution. It was noted the proposed commission is supported by Attorney General Drew Edmondson and Oklahoma County District Attorney David Prater. Funding was discussed. The board approved the resolution creating the Oklahoma Justice Commission with amendments to 1) limit distribution of required reports to the OBA Board of Governors, 2) remove publication of the resolution on www.oscn.net since that website is outside OBA jurisdiction and 3) change the date of the resolution adoption to Sept. 24, 2010.

INVESTMENT POLICY

Past President Parsley reviewed the proposed

amendments to the OBA investment policy. The board approved the amendments.

LEGAL INTERN COMMITTEE ANNUAL REPORT

As liaison to the Legal Intern Committee, Governor Hixson reviewed the report required annually. The board voted to accept the report.

RESOLUTION NO. 4: PROPOSED RULES FOR THE COMMITTEE ON JUDICIAL ELECTIONS

Governor Brown, as Bench and Bar Committee co-chairperson, reviewed the most current amendments to the proposed rules for the Committee on Judicial Elections. The board approved the resolution and voted to send it to the House of Delegates for consideration with a recommendation that it be adopted. It was noted that if this resolution is approved by the House of Delegates and the Supreme Court that the Committee on Judicial Elections will replace the Professional Responsibility Panel on Judicial Elections, commonly known as the Baker Commission.

AWARDS COMMITTEE RECOMMENDATIONS

As Awards Committee vice chairperson, Governor Stuart reviewed the process by which the committee solicits nominations and decides upon recommendations for OBA award recipients. The board approved the recommendations of the Awards Committee.

EXECUTIVE SESSION

The board voted to go into executive session, met in executive session and voted to come out of executive session.

AWARDS COMMITTEE

The board voted that in the future when the Awards Committee submits its recommendations to the OBA Board of Governors that nominations for the recipients be included.

JUDICIAL CAMPAIGN PRT APPOINTMENT

The board tabled this agenda item until the October meeting.

CLE FINANCIAL HARDSHIP POLICY

Executive Director Williams reported the OBA has had an informal financial hardship policy to waive full or partial fees for continuing legal education seminars for OBA members experiencing financial hardship. Educational Programs Director Donita Bourns Douglas has formalized the policy with the creation of a form. The board approved the policy and the form.

BOARD OF MEDICOLEGAL INVESTIGATIONS

The board approved President Smallwood's appointment of Thomas A. Mortensen, Tulsa, as his designee to replace Wes Johnson, who resigned.

NEXT MEETING

The board met on Oct. 15, 2010, 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 2 p.m. at the Crowne Plaza Hotel in Tulsa on Wednesday, Nov. 17, 2010, in conjunction with the OBA Annual Meeting.

OBF 2010 Grants

By Phil Frazier

The Oklahoma Bar Foundation recognizes its primary mission, the very reason for its being, is to help others. Our mission statement, "Lawyers Transforming Lives through the Advancement of Education, Citizenship and Justice for All," is more important now than ever.

If we are to continue our service to those organizations and enable the bar foundation to perform this mission, we must have more Oklahoma lawyers participating as Fellows.

Oklahoma lawyers choosing to become Fellows with the foundation number slightly over 10 percent. A small financial commitment one makes in choosing to become a Fellow, approximately $8.50 per month for a period of 10 years, is small in comparison to the satisfaction you will receive in knowing that you are a part of the advancement of the foundation's mission.

All lawyers agree that we choose this profession not just to make a living or to gain stature or reputation within our community but to truly help others and to fulfill the obligation of the profession.

Your Oklahoma Bar Foundation is the lawyer's best vehicle enabling us to assist others and at the same time, promote the generosity and great work of Oklahoma lawyers.

It is through membership with the Oklahoma Bar Foundation and becoming a Fellow that we are able to continue the work of the foundation and to fulfill the purpose. The stated purpose of the foundation is "to promote justice, fund essential legal services, and to advance public awareness of the law." This year, even in these tough economic times, the foundation was able, with our OBF Fellows' generous help to fund the following:

2010 OKLAHOMA BAR FOUNDATION GRANT AWARDS

Center for Children and Families Inc. of Cleveland County

Court ordered supervised visitation and family exchange legal assistance services

$7,500

Community Crisis Center Inc. of Ottawa, Delaware & Craig Counties

Civil legal services for victims of domestic violence

$5,000

Domestic Violence Intervention Services Inc.

Civil legal services and educational programming in Tulsa and surrounding counties

$12,500

Family Shelter of Southern Oklahoma Inc.

Civil legal services for victims of domestic violence in Southern Oklahoma

$5,000

Legal Aid Services of Oklahoma Inc.

Maintenance of free statewide legal service provision to the poor and elderly

$246,646

Marie Detty Youth and Family Services Center of Comanche County

Civil legal services and educational programming in Comanche County area

$12,500

OBA LRE We the People National Competition

Enid High School participation in national finals

$2,000

OBA YLD Oklahoma High School Mock Trial Program

Statewide program presentation through national competition

$45,000

Oklahoma Indian Legal Services, Low-Income Taxpayer Legal Clinic

Support staff maintenance for the provision of free legal tax services, matched funds

$20,000

Oklahoma CASA Association Inc.

Statewide conference to provide mandatory training for Court Appointed Special Advocates staff and volunteers for abused and neglected children

$5,000

Oklahoma CAAVA Association Inc.

Court Appointed Advocates for Vulnerable Adults program maintenance and training

$15,000

Oklahoma Judicial Historical Project

Public educational panels for new Judicial Center

$2,000

Oklahoma Lawyers For Children Inc.

Funding to provide legal representation for abused, neglected and deprived children in Juvenile Court and at emergency show cause hearings through volunteer pro bono lawyers

$40,000

Senior Law Resource Center Inc.

Free educational outreach program to promote informed, thoughtful incapacity planning and prevention of elder exploitation

$12,500

Teen Court Incorporated of Comanche County

Program maintenance funding for teen court presentation serving first time juvenile offenders and their peers

$10,000

Trinity Legal Clinic of Oklahoma Inc.

Case management for the provision of free legal services

$2,500

Tulsa Lawyers For Children Inc.

Funding to provide legal representation for abused, neglected and deprived children in Juvenile Court and at emergency show cause hearings through volunteer pro bono lawyers

$25,000

Tulsa University College of Law Boesche Legal Clinic

Immigrant rights legal clinic project utilizing law-student interns in provision of free civil legal services

$4,500

William W. Barnes Children's Advocacy Center

Presentation of free workshops to be able to recognize, respond and report child abuse training in Rogers, Mayes and Craig counties

$4,000

YMCA Oklahoma Youth and Government Program

Officer leadership training program and the junior high Model Legislative Day

$2,000

Total 2010 OBF Grant Awards: $474,646

SCHOLARSHIP AWARDS

Chapman-Rogers OBF Law School Scholarships **$7,500**

Maurice H. Merrill Memorial Scholarship Award **$500**

W.B. Clark Kay County Law-Student Memorial Scholarship **$15,000**

Thomas L. Hieronymus Memorial Oil & Gas Law Award **$500**

Oklahoma Bar Foundation Fellows Scholarships **$15,000**

Phillips Allen Porta Memorial Legal Ethics Award **$500**

Total 2010 OBF Scholarship Awards: $39,000

(Grand Total to Date = $517,646)

Your foundation board of trustees and all grant recipients sincerely appreciate the generosity of the Fellows of the foundation and other donors who have enabled the OBF to perform its mission.

The foundation will recognize the Roger R. Scott Memorial Award winners at the general assembly of the OBA Annual Meeting Friday, Nov. 19 at 9 a.m. The award recipients are shown on the next page.

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

2010 Oklahoma Bar Foundation Roger R. Scott Memorial Awards

The Roger R. Scott Memorial Award is given to individuals who best exemplify Roger Scott's unqualified dedication to the Oklahoma Bar Foundation and the good work it does in the name of Oklahoma lawyers. The 2010 awards recognize those who have recruited more than 50 new Fellows each for the foundation, adding to the OBF's ability to fund charitable law-related programs and services throughout Oklahoma.

The 2010 Roger R. Scott Memorial Award recipients are:

Mike C. Mayhall, Lawton

Mr. Mayhall has been an influence for justice in Lawton and throughout the state volunteering on some 25 different organizational boards. He became a Fellow of the Oklahoma Bar Foundation in 1988, was a member of the Board of Trustees from 1996 through 2003 and served as president during 2002. He is currently recognized as a Charter Benefactor Fellow and member of the OBF Past President's Counsel. He has recruited 53 new Fellow members following a November 2001 OBF bylaws change making reduced giving levels available to newer lawyers.

Richard "Rick" L. Riggs, Oklahoma City

Mr. Riggs has represented the Oklahoma Bar Foundation as a Trustee and officer since 2002 and lead as president during 2009. He has been a Fellow of the foundation since 2001. His day job is with McAfee & Taft where his practice concentrates in real estate and commercial transactions. He has published papers and presented many continuing legal education seminars so that others might benefit from his experience. He has been a tremendous asset to the Oklahoma Bar Center Facilities Committee. He is currently recognized as a Charter Benefactor Fellow and member of the OBF Past President's Counsel as the immediate past president. He has recruited 51 new Fellow members and continues making OBF presentations to help meet grant award levels during challenging economic times as the need for legal services grows.

Mart Tisdal, Clinton

Mr. Tisdal has made an impact across Oklahoma through his involvement in many service and volunteer activities. His regular practice of law with Tisdal & O'Hara deals primarily with oil and gas litigation, where he serves on various organization boards and speaks to educate others in this area. He became a Fellow of the Oklahoma Bar Foundation in 1988, was on the Board of Trustees from 1996 through 2004 and served as president during 2003. He is currently recognized as a Charter Benefactor Fellow and member of the OBF Past President's Counsel. He has recruited 75 new Fellow members and was a key leader in bringing mandatory IOLTA to Oklahoma so that more might receive civil legal services.

Fellow Enrollment Form

❍ Attorney ❍ Non-Attorney

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

Firm or other affiliation: _____

Mailing & Delivery Address:_____

City/State/Zip: _____

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

__ I want to be an OBF Fellow **now** – Bill Me Later!
__ Total amount enclosed, $1,000
__ $100 enclosed & bill annually
__ *New Lawyer 1st Year*, $25 enclosed & bill as stated
__ *New Lawyer within 3 Years*, $50 enclosed & bill as stated
__ I want to be recognized as a ***Sustaining Fellow*** & will continue my annual gift of ***at least $100*** – *(initial pledge should be complete)*
__ I want to be recognized at the leadership level of ***Benefactor Fellow*** & will annually contribute ***at least $300*** – *(initial pledge should be complete)*

Lawyers Transforming Lives through education, citizenship and justice for all. Join the OBF Fellows today!

Signature & Date: _____ **OBA Bar #:** _____

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

OBF SPONSOR:_____

❍ ***I/we wish to arrange a time to discuss possible cy pres 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!

OKLAHOMA CORPORATION COMMISSION
2010 OIL AND GAS INSTITUTE
"OKLAHOMA'S ENERGY FUTURE: NEW CENTURY ~ NEW CHALLENGES"

Sponsored by:
Oklahoma Corporation Commission Oil and Gas Conservation Division
Office of Administrative Proceedings • Office of General Counsel
Oklahoma Bar Association Energy and Natural Resources Law Section

Friday, November 19, 2010 • 8:30 a.m. to 4:00 p.m.

Emerson Hall • Oklahoma Bar Center
1901 N. Lincoln Boulevard • Oklahoma City, Oklahoma

8:00 - 8:30	Registration	
8:30 – 9:00	*Welcome*	**The Honorable Dana Murphy, Corporation Commissioner**
9:00 – 10:00	*Panel: The Rulemaking Process, Oil and Gas Conservation Rules, Horizontal Drilling and Spacing Regulations, the OCC's Rules of Practice*	
	Moderator: The Honorable Dana Murphy, Corporation Commissioner; Panel: Angela Burckhalter, Vice President Regulatory Affairs, Oklahoma Independent Petroleum Association; Ron Dunkin, Manager, Technical Services, Oil and Gas Conservation Division; Chad McDougall, Vice President, JMA Energy Company; John Reeves, Attorney at Law; Terry Stowers, Attorney at Law and National Association of Royalty Owners	
10:00 – 10:15	Mid-Morning Break	
10:15 – 11:15	*Panel: Oklahoma Perspective on Current National Issues -- Horizontal Drilling, Hydraulic Fracturing; Water Use, Recycling, Disposal, Oil Spill Prevention and Carbon Capture and Storage*	
	Moderator: Lori Wrotenbery, Director, Oil & Gas Conservation Division; Panel: Paul Hagemeier, Vice President, Environmental Compliance, Chesapeake Energy Corp.; Barbara Rauch, Supervising Attorney, Oklahoma Department of Environmental Quality; Keith Tracy, Attorney/CO2 Business Development, Chaparral Energy, L.L.C.; Michael Zumwalt, Chief Financial Officer, 212 Resources Corp.	
11:30 – 12:30	Catered Lunch	Emerson Hall
12: 00 – 12:30	*Mock OCC Environmental Permit Hearing*	
	ALJ David Leavitt, ALJ Michael Norris, ALJ William Peterson, ALJ Michael Porter, ALJ Paul Porter, Office of Administrative Proceedings; Connie Moore, Senior Assistant General Counsel, Office of General Counsel; Lee Levinson, Attorney at Law; Russell Walker, Attorney at Law	
12:30 - 1:30	*Ethics Presentation*	**AndrewTevington, General Counsel, and Jim Hamilton, Senior Assistant GeneralCounsel, Office of General Counsel**
1:30 - 2:30	*Panel: Horizontal Drilling, Hydraulic Fracturing, and the OCC's Environmental Permitting Process*	
	Moderator: The Honorable Jeff Cloud, Corporation Commissioner; Panel: Professor Christopher A. Tytanic, Oklahoma City University School of Law; Tim Baker, Manager, Pollution Abatement Dept., Oil and Gas Conservation Division; Dale Cottingham, Attorney at Law; Dean Couch, General Counsel, Oklahoma Water Resources Board; Brad Gungoll, Attorney at Law; Keith Thomas, Senior Assistant, General Counsel, Office of General Counsel	
2:30 – 2:45	Mid-Afternoon Break	
2:45 – 3:45	*Panel: Update on the Oil and Gas Conservation Adjudication Process*	
	Moderator: ALJ Michael Decker, Director, Office of Administrative Proceedings; Panel: ALJ Patricia MacGuigan, Oil and Gas Appellate Referee; ALJ Curtis Johnson; ALJ Susan Osburn; ALJ Michael Porter; Office of Administrative Proceedings; Richard Books, Attorney at Law; Eric King, Attorney at Law; Gregory Mahaffey, Attorney at Law; John Moricoli, Attorney at Law; Sally Shipley, Deputy General Counsel, Office of General Counsel	
3:45 - 4:00	*Evaluation and Acknowledgements*	**ALJ Michael Decker**

Please checkout the Oklahoma Corporation Commission's information booth in the lobby for demonstrations of the Commission's new website and current online oil and gas forms and reports. Guidance about online filing of forms and reports with the Oil and Gas Conservation Division will be available from 8 a.m. - 4 p.m.

Fee: $65 (pre-registration by COB Wednesday, November 17, 2010) or $75 (registration at the door). Please make checks payable to: "Oklahoma Corporation Commission, 2010 Oil and Gas Institute." No credit cards please. The seminar is approved by the Oklahoma Bar Association's Mandatory Continuing Legal Education Commission for 6.5 hours of MCLE credit, with 1 hour ethics credit included.

Please register online at www.occeweb.com "Hot Topics" menu. Register by mail or fax: c/o Ms. Snooks Campbell, Office of Administrative Proceedings, Oklahoma Corporation Commission, P.O. Box 52000, Oklahoma City, Oklahoma 73152-2000, Telephone: (405) 521-2756, Facsimile: (405) 522-6397. Seating is limited so please register promptly. Please follow-up with a telephone call if you fail to receive a confirmation e-mail response to an online registration. Additional inquiries to: ALJ Michael Decker, OAP Director (405) 521-2241, m.decker@occemail.com. Thank you.

NOTICE OF HEARING ON THE PETITION FOR REINSTATEMENT OF ROBERT SCOTT SCROGGS, SCBD #5668 TO MEMBERSHIP IN THE OKLAHOMA BAR ASSOCIATION

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

Any person desiring to be heard in opposition to or in support of the petition may appear before the Professional Responsibility Tribunal at the Oklahoma Bar Center at 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma, at 9:30 a.m. on **Friday, December 10, 2010**. Any person wishing to appear should contact Gina Hendryx, General Counsel, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, Oklahoma 73152, telephone (405) 416-7007, no less than five (5) days prior to the hearing.

PROFESSIONAL RESPONSIBILITY TRIBUNAL

NOTICE OF HEARING ON THE PETITION FOR REINSTATEMENT OF JOHN MATTHEW WHITWORTH, SCBD #5667 TO MEMBERSHIP IN THE OKLAHOMA BAR ASSOCIATION

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

Any person desiring to be heard in opposition to or in support of the petition may appear before the Professional Responsibility Tribunal at the Oklahoma Bar Center at 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma, at 9:30 a.m. on **Thursday, December 2, 2010**. Any person wishing to appear should contact Gina Hendryx, General Counsel, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, Oklahoma 73152, telephone (405) 416-7007, no less than five (5) days prior to the hearing.

PROFESSIONAL RESPONSIBILITY TRIBUNAL

A Calling to Help the Homeless

By Lindsey Vanhooser

In high school, I was exposed first-hand to the reality of the homeless and needy population within our community. When I was about 15, I began volunteering at an inner-city ministry sponsored by my church. As I formed a relationship with the families and children, their stories had a great impact on me. The children were so charismatic regardless of their difficult situation, and their zeal and need for positive influence was simply inspiring. These relationships made me determined to help the families, and specifically, the children, learn how to beat the cycle of poverty, addiction and homelessness.

Throughout college, I continued to work intimately with the needy families within the ministry, and in 2005, I had an epiphany. I needed to go to law school. I realized that if I wanted to help the families, I had to do more than talk with them about their problems. They needed someone who could use the power of the law to make a permanent change in their specific circumstances that would consequentially affect other aspects of their life.

At OCU law school, the Public Interest Law Group (PILG) was the perfect opportunity to gain some insight on how my passion and the law could fit together. Through my involvement with PILG, I could see a clear picture on what a life dedicated to the law and the needy looks like. PILG meetings made me aware of the great need for free or low cost legal services for the poor in the community, and more importantly, PILG refuted the inaccurate but commonly-held belief that serving the poor and running a successful law practice are polar opposites and cannot be mixed.

The experiences from PILG have shaped how I practice law today. I have been given the opportunity to work as the co-executive director of Trinity Legal Clinic, an organization exclusively committed to bringing justice to the poor and needy. While working for Trinity, I have been blessed to have gained several mentors who continually show me by example how to manage a successful legal career while also maintaining a commitment to the community. I mimic these concepts in my own law firm, and I have committed to make pro bono work a priority and a permanent part of my career and future.

Attorneys are able to help the poor and needy in a way that allows clients to regain control of their lives and their freedom. For one client, this control over her life means obtaining a divorce from an abusive husband. For another, it means receiving assistance with an arrest warrant from a minor traffic violation, which has kept the client on the run for more than 10 years. While the fact pattern changes, the bottom line remains the same. Attorneys have a unique ability to change the course of a client's life in a way that even the most determined client simply cannot do alone.

This epiphany of mine – to attend law school — was clearly the most expensive one of my life. However, having the opportunity to see the full-scale transformation of a needy client once his or her legal burden is overcome is well worth the cost.

Ms. Vanhooser is the founder of the Vanhooser Law Firm and co-director of the Trinity Legal Clinic in Oklahoma City.

Join in the Fun!

By Molly Aspan, YLD Chairperson

I would like to take this opportunity to congratulate the new attorneys that were admitted to the OBA this fall. On Sept. 23, the OBA swore in 307 new bar members, and the YLD was on hand to welcome them to the association. During the admission ceremony, remarks

A newly admitted OBA member signs the roll of attorneys after the swearing-in ceremony.

were made to the new admittees by Oklahoma Supreme Court Chief Justice James E. Edmondson, OBA President Allen Smallwood and YLD Chairperson Molly Aspan. Following the swearing-in ceremony, the YLD hosted a reception for all new admittees and their families. Informal receptions were also held for members to welcome the new admittees. The receptions were held on Oct. 5 at Mickey Mantle's Steakhouse in Oklahoma City and Leon's Restless Ribbon in Tulsa. I would like to invite all new admittees to become involved in the YLD and look forward to meeting and working with you in the future.

I would also like to invite all members, including the new admittees, to join us at the YLD Annual Meeting, which is held in conjunction with the OBA Annual Meeting on Nov. 17-19 at the Crowne Plaza Hotel in Tulsa. Election results will be announced at the YLD Annual Meeting.

Registration for the conference can be found in this bar journal as well as on the OBA website. There are wonderful CLE and programming opportunities available to YLD members, as well as great networking opportunities — including a YLD hospitality suite on both Wednesday and Thursday nights. As in the past few years, the YLD will be sponsoring what in recent years has become the Annual Meeting's entertainment centerpiece on Thursday night — Casino Night. Admission to Casino Night is free with Annual Meeting registration.

Additionally, if you are a past YLD chair, we hope that you will be joining us at a reception at the Annual Meeting honoring all our past chairs and this year's Friends and Fellows of the YLD.

Casino Night is one of the most popular events at the Annual Meeting. Join in the fun and try your hand at blackjack, roulette or Texas hold 'em poker.

Calendar

November

10 **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

Ruth Bader Ginsburg American Inn of Court; 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Donald Lynn Babb (405) 235-1611

11 **OBA Closed** – Veterans Day Observed

15 **OBA Alternative Dispute Resolution Section Meeting**; 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Andrea Braeutigam (405) 640-2819

17-19 **OBA 106th Annual Meeting**; Crowne Plaza Hotel, Tulsa

25-26 **OBA Closed** – Thanksgiving Day Observed

30 **OBA Uniform Laws Committee Meeting**; 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Fred Miller (405) 325-4699

December

2 **OBA Law-related Education Committee Meeting**; 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Jack G. Clark (405) 232-4271

7 **OBA Appellate Practice Section Meeting**; 2:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Allison Thompson (405) 840-1661

10 **OBA Family Law Section Meeting**; 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Kimberly K. Hays (918) 592-2800

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

16 **OBA Access to Justice Committee Meeting**; 10 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Kade A. McClure (580) 248-4675

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

17 **OBA Board of Governors Meeting**; 9 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: John Morris Williams (405) 416-7000

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

20 **OBA Alternative Dispute Resolution Section Meeting**; 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Andrea Braeutigam (405) 640-2819

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

14 **OBA Board of Governors Meeting**; 9 a.m.; Oklahoma Bar Center, Oklahoma City; 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

Oklahoma Bar Journal Editorial Calendar

2010

■ December:
Ethics & Professional Responsibility
Editor: Pandee Ramirez
pandee@sbcglobal.net
Deadline: Aug. 1, 2010

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
kennedy@gungolljackson.com
Deadline: Jan. 1, 2011

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

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

■ September:
Bar Convention
Editor: Carol Manning

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

■ November:
Environmental Law
Editor: Emily Y. Duensing
emily.duensing@oscn.net
Deadline: Aug. 1, 2011

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

Ceremony to Honor Justice Hargrave

In honor of the retirement of Oklahoma Supreme Court Justice Rudolph Hargrave

You are invited to a brief ceremony in the Supreme Court Courtroom followed by a reception in the Grand Hallway of the Supreme Court

Monday, Dec. 13, 2010

2 – 4 p.m.

OBA Member Reinstatements

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

Ronald Christopher Kaufman
OBA No. 17657
5307 4582 Kingwood Dr., Ste. 197
Kingwood, TX 77345

Austin Smith
OBA No. 17902
35 Fraiser Fir Place
The Woodlands, TX 77389

New OBA Membership Cards to be Mailed

Your current card expires Dec. 31, 2010. New bar cards will be mailed separately and not included with your 2011 dues statement. Look for the new cards in early December.

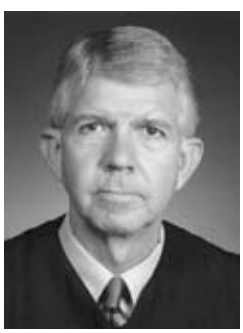
Know a Creative Kid?

Oklahoma students in pre-kindergarten through 12th grade are invited to enter the OBA's Law Day art and writing contests with the opportunity of winning cash prizes up to $500. The theme for this year's contest is "The Legacy of John Adams: Defending the Rights of the Accused," and the contest deadline is Dec. 17. Maybe your child's teacher would be interested in making this a class project? Complete details online may be found at www.okbar.org/lawday.

Bar Center Holiday Hours

The Oklahoma Bar Center will be closed Nov. 11 for Veterans Day and Nov. 25 and 26 for the Thanksgiving holiday.

Supreme Court Elects New Leadership



Justice Steven Taylor

Justice Steven Taylor has been elected to serve a two-year term as chief justice of the Oklahoma Supreme Court.

The justices elected Justice Taylor during a meeting Nov. 4 and selected Justice Tom Colbert as vice chief justice. Justice Taylor takes over from outgoing Chief Justice James Edmondson on Jan. 1.

Justice Taylor served as a judge in McAlester for 20 years before being appointed to the state Supreme Court in 2004. He practiced law in McAlester from 1978-1984. In 1980, he was elected to the McAlester city council and in 1982 was elected mayor of McAlester.

Justice Colbert was appointed to the Supreme Court in 2004. He was an assistant district attorney in Oklahoma County from 1984-1986, before entering private practice from 1986-2000 when he was appointed to the Oklahoma Court of Civil Appeals.

Justice Tom Colbert

Kudos

Several Oklahoma attorneys were honored by the Oklahoma Child Support Enforcement Association (OCSEA) at the recent Child Support Appreciation Day in Norman. Recognized as Attorney of the Year was **Sharon Sitzman**, assistant district attorney, Norman, who oversees the Norman and Pauls Valley child support offices. Her office in Pauls Valley also received the "Office of the Year" award. The OCSEA Member of Year award went to **Clay Pettis**, assistant district attorney, Wewoka. Receiving a President's Award was **John M. Sharp**, managing attorney, Tulsa West Child Support. Special guest speakers included **Howard Hendrick**, Oklahoma Department of Human Services director.

Congratulations to the Ada High School mock trial team and their attorney coach **Frank Stout**, who traveled to New York City, where they were invited to compete in the Empire City International Mock Trial Tournament at New York University in October.

The American Inns of Court recently appointed **Judy Hamilton Morse** to serve on the executive committee of its national Leadership Council, which is made up of former members of the Board of the American Inns of Court Foundation, which fosters and supports local inns.

Theodore Haynes recently published a new book titled *Growing Up Stories*. The book is a quartet of humorous stories depicting life as seen through the eyes of the African American author during his preschool years in Ponca City during the 1930s and 1940s.

Jonathan R. Grammer of Grammer Land & Exploration Corp. in Amarillo, Texas, was recently appointed to the Board of Directors for the Texas Alliance of Energy Producers. The board serves 3,000 members across the United States and represents the oil and gas industry at both the state and federal levels.

Walter Echo-Hawk Jr. recently received a Governor's Commendation of Excellence Award in recognition of his professional contributions to indigenous cultures throughout the nation. For three decades, he has sought to empower Native Americans through his legal work on tribal sovereignty and civil liberties.

Tulsa lawyer **Robert P. Redemann** has been elected to the American Bar Association Tort Trial & Insurance Practice Section's Council. The council is the governing body for the section. He will serve a three-year term, which began in August.

Roger A. Grove and **Carrie S. Hulett** have been recognized by Chambers and Partners as outstanding energy and natural resources lawyers in Oklahoma.

Gerald E. Durbin has become a fellow of the American College of Trial Lawyers.

On The Move

Mark Green was recently sworn in as the U.S. attorney for the Eastern District of Oklahoma. Mr. Green was an assistant U.S. attorney in the Muskogee-based office from 1978 to 1982. In addition to his time as a federal prosecutor, he has been an alternate judge for the city of Muskogee since 2006 and a public defender. He and an uncle, former U.S. Attorney Robert "Bruce" Green, formed the Green and Green law partnership, which operated from 1983 to 1991. He was a part-time prosecutor for the Bureau of Indian Affairs in Oklahoma from 1991 to 1994 and an assistant district attorney for Muskogee County in 1978. Mr. Green received his J.D. from OU in 1978.

Attorney General **Drew Edmondson** announced he will join GableGotwals as a shareholder in the firm's Oklahoma City office after his term in public office ends in January 2011. Mr. Edmondson has served as the state's attorney general since his election in 1994 and served as the president of the National Association of Attorneys General from 2002-2003. Before his election as attorney gener-

al, Mr. Edmondson was elected to three consecutive terms as Muskogee County District Attorney in 1982, 1986 and 1990. He served as president of the Oklahoma District Attorneys Association and was selected as Outstanding District Attorney for the State of Oklahoma in 1985 and the Outstanding Death Penalty Prosecutor in the 9th and 10th Circuits. He served one term in the Oklahoma Legislature before entering the TU College of Law in 1976. His undergraduate teaching degree is from Northeastern State University in Tahlequah.

GableGotwals announces **John T. Synowicki** and **Brandon M. Watson** have been named associates in the firm's Tulsa office. Mr. Synowicki is a 2010 graduate of the Vanderbilt University Law School, where he received the Thomas C. Banks Award. While at Vanderbilt, he was a member of Phi Delta Phi, chief justice of the law school's moot court board and a member of the Jessup Moot Court traveling team. He received his bachelor of arts in Spanish, history and international studies from Dana College in Blair, Neb. Mr. Watson is a 2010 graduate of the OU College of Law. He was a member of Phi Delta Phi and graduated with honors. He was awarded an American Jurisprudence Award in oil and gas practice, and was elected to the editorial board for the *Oklahoma Law Review*. He served as a judicial extern for Judge Timothy D. DeGiusti, U.S. district judge for the Western District of Oklahoma. Prior to attending law school, Watson was employed with a Fortune 500 oil and gas exploration and production company, working in acquisitions and divestitures. He graduated with a B.B.A. in finance with distinction from OU.

Jennings Cook & Teague of Oklahoma City announces **W. Brett Willis** has joined the firm. Mr. Willis earned his B.B.A. from OU in 1990 and his J.D. from OU in 1993. He will practice in the areas of products liability, insurance bad faith and complex civil litigation.

The Oklahoma Heritage Association and Gaylord-Pickens Museum in Oklahoma City announces that **Tony A. Scott** has joined as chief finance officer and in-house counsel, where he is responsible for the implementation and monitoring of all accounting practices and procedures for the association and museum. He earned an undergraduate degree in accounting from East Central University and law degree from OCU.

Pray Walker PC of Tulsa named **Robert Mitchener III** as an associate. Mr. Mitchener graduated from the TU College of Law with honors in 2010. He served as a notes and comments editor of the *Energy Law Journal*, was a member of Phi Delta Phi and participated as a member of the award-winning American Association of Justice Trial Advocacy Team. Originally from Colorado, he graduated from Colorado State University in 2006 where he majored in finance and minored in political science. He will work primarily in the firm's trial law group.

Perrine, McGivern, Redemann, Reid, Berry and Taylor PLLC of Tulsa announces the addition of **Laura E. Miller** and **Antonio L. Jeffrey** as associates. Ms. Miller's practice areas include general litigation and insurance defense with her current focus in workers' compensation. She graduated magna cum laude from OU with an undergraduate in finance and earned her J.D. from OU in 2009. She was the recipient of several competitive awards and became a qualified mediator in Texas. Mr. Jeffrey focuses his practice on civil litigation and has expanded his work to include the representation of employers and insurance companies before the Workers' Compensation Court. Prior to joining the firm, Mr. Jeffrey practiced with two other Oklahoma firms where his practice included medical malpractice, health care litigation and representing automotive manufacturers in products liability claims. He completed his undergraduate education at Howard University and obtained an M.B.A. in 2003 from the University of Phoenix. He earned his J.D. in 2006 from TU while also completing his M.P.A. from OU. While in law school, Mr. Jeffrey served as the executive editor of the *Tulsa Journal of Comparative and International Law* and was vice president of the Black Law Student Association.

Carol J. Rolke has rejoined the firm of Alberts & Associates located at 211 N. Robinson, Suite 350N, Oklahoma City, 73102. She will be focusing on compliance and regulatory affairs for the credit union industry as well as assisting in all areas of a general practice firm.

McAfee & Taft announces that **Michael K. Avery** has joined the firm as a litigation associate. His practice focuses on general civil litigation, including complex commercial litigation and appeals, as well as labor and employ-

ment law. Prior to joining McAfee & Taft, he served as a law clerk for Judge Mary Beck Briscoe, chief judge of the U.S. Court of Appeals for the 10th Circuit. Mr. Avery earned his bachelor's degree from OU, graduating summa cum laude. He then attended Boston College Law School where he served as articles editor for the *Boston College Law Review*, graduated magna cum laude, and was named to the Order of the Coif. McAfee & Taft also announces that recent law school graduates **Jared M. Burden, Brian A. Burget, John R. Chubbuck, Sasha Legere, Jared W. Mashaney, Terra Lord Parten** and **Emily D. Wilson** have joined the firm as associates. Mr. Burden's practice focuses on commercial litigation, including complex business litigation, and the counseling and defense of employers in labor and employment disputes. He graduated with highest honors from the TU College of Law, where he was named to the Order of the Curule Chair and served as editor in chief of the *Tulsa Law Review*. He holds a bachelor's degree and a master's degree in classics from Texas Tech University. Mr. Burget's practice encompasses a broad range of business and commercial litigation, including construction litigation, personal injury, products liability defense and Native American relations. He received both his undergraduate degree and J.D. from OU and served as business development editor for the *American Indian Law Review* while in law school. Mr. Chubbuck is a transactional attorney in the firm's aviation practice group. He is a certified pilot and flight instructor who holds a bachelor's degree in aviation management and a J.D. from OU. Ms. Legere is a registered patent attorney whose practice focuses on all aspects of intellectual property law. She earned a J.D. from OU and graduated cum laude with a bachelor's degree in electrical engineering from OSU. Mr. Mashaney's practice includes commercial transactions, business law, real estate, and healthcare regulatory and transactional matters. He graduated with highest honors from the TU College of law, where he was named to the Order of the Curule Chair and served as editor of the *Tulsa Law Review*. He also holds a bachelor's degree in political science-legal studies from the University of Central Oklahoma. Ms. Parten's practice includes commercial transactions, corporate and securities, real estate and healthcare law. She holds a bachelor's degree in economics and Spanish from the University of Kansas and graduated with highest honors from the OU College of Law, where she served as note editor of the *Oklahoma Law Review.* Ms. Wilson's practice is concentrated in the areas of family wealth planning and general business transactions. She graduated summa cum laude with a B.B.A. in finance and a B.A. in advertising from Southern Methodist University and with high honors from the OU College of Law. She was assistant managing editor of the *Oklahoma Law Review*.

Rainey Martin LLP of Oklahoma City announces that **Jill Tsiakilos** has joined the firm as an associate. Ms. Tsiakilos received her J.D. from the University of Arizona in 2003. She previously worked as an assistant attorney general in the Litigation Division of the Office of the Oklahoma Attorney General. Ms. Tsiakilos focuses her legal practice on civil litigation, real estate, business organizations and transactions, estate planning, probates and guardianships.

Phillips Murrah of Oklahoma City announces the addition of **Andrew R. Chilson** to its litigation department. A graduate of OCU School of Law, Mr. Chilson's law practice focuses on business and bankruptcy litigation. Prior to becoming an attorney, he worked in the electronics and radar technology field, first as a member of the U.S. Air Force and then for the NEXRAD Weather Radar Operations Center in Norman.

Tulsa law firm Norman Wohlgemuth Chandler & Dowdell has named **Isaac R. Ellis** and **Cullen D. Sweeney** as associates with the firm. Mr. Ellis graduated with honors from the OU College of Law in 2010, where he served as articles editor for the *American Indian Law Review*. Mr. Sweeney graduated from the OU College of Law in 2010, where he served as managing editor for the *American Indian Law Review*.

Taylor Cortright, formerly senior attorney in the IRS Office of Chief Counsel, has joined KPMG's Washington National Tax group as senior manager. She will focus on excise tax consulting. Ms. Cortright holds an LL.M. in taxation from Georgetown University Law Center and a J.D. from the OU College of Law.

H. **Duane Riffe** has moved his practice. The new address is Riffe & Associates, Executive Center East, 4606 S. Garnett, Suite 300, Tulsa, 74146; Telephone and fax numbers did not change.

Hornbeek Vitali & Brown PLLC of Oklahoma City announces that **Amber Brock** and **Matthew Dowdell** have become associates with the firm. Ms. Brock received her bachelor of science from OSU in 2006 and her J.D. from TU in 2009. Mr. Dowdell received his bachelor of arts from Christian Brothers University in 1998 and his J.D. from TU in 2004. They will both focus their practices in the firm's civil litigation department. They may be reached at brock@hvblaw.com and dowdell@hvblaw.com.

Mark D. Brown and **Margo M. Brown** of Brown & Brown PC have relocated their practice and joined the firm of Ramsey & Gray PC as of counsel.

Pignato, Cooper, Kolker & Roberson PC announces that **Dearra R. Godinez** and **Molly E. Raynor** have joined the firm as associates. Ms. Godinez is a 2010 graduate of OCU School of Law. Ms. Raynor is a 2010 graduate of Southern Methodist University Law School. Both will practice in the area of general insurance defense.

The U.S. Equal Employment Opportunity Commission announces two new additions and a promotion in its St. Louis district, Oklahoma area office. **Patrick J. Holman** recently accepted a position as a trial attorney. A 2006 graduate of OCU School of Law, he was an associate attorney for the Eddy Law Firm PC before accepting employment with the EEOC. He may be contacted at (405) 231-4363 and patrick.holman@eeoc.gov. **Jeff A. Lee** has been named a trial attorney. He will represent the EEOC in cases filed in a geographic region that includes Oklahoma, Kansas, Nebraska, Missouri and southern Illinois. A 1989 graduate of OCU law school, Mr. Lee was a senior trial attorney for the Oklahoma Education Association before moving to the EEOC. He may be reached at (405) 231-4375 and jeff.lee@eeoc.gov. **Michelle M. Robertson** has accepted a position as an administrative judge. She will hear federal employee EEO cases in Oklahoma, Kansas, Nebraska, Missouri and southern Illinois. A 1991 graduate of the OU College of Law, Ms. Robertson was a senior trial attorney for the EEOC before moving to the hearings unit. She may be contacted at (405) 231-5843 and michelle.robertson@eeoc.gov.

At The Podium

David A. Trissell recently participated in a panel debate at the Belgian Ministry of Defence with European Union military and disaster/civil protection officials. He discussed how FEMA coordinated the use of the military in support of civilian operations for disasters and other emergencies. He currently serves as FEMA/DHS Attaché to the U.S. Mission to the EU in Brussels, Belgium.

Chris A. Paul of Tulsa made a presentation titled, "Case Study: Incident Preparedness" at the Association of Oil Pipe Lines 2010 Annual Business Conference in Atlanta in September.

John D. Rothman of Tulsa presented to the Association of Attorney-Mediators Advanced Mediator Training Meeting held in September in Houston on the topic of "Thorny (and Common) Ethical Dilemmas in Mediation."

Herbert Joe of Dallas, Texas, was a guest speaker at the eighth annual Forensics Seminar in Dallas last month. His topic was "The Forensic Analyses of Audio and Video Evidence."

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 Dec. 11 issue must be received by Nov. 22.

IN MEMORIAM:
Justice Marian P. Opala

1921 - 2010

Oklahoma Supreme Court Justice Marian P. Opala of Warr Acres died Oct. 11. He was born Jan. 20, 1921, in Lodz, Poland.

When World War II began in 1939 with the German invasion of his country, he was an 18-year-old law student at the University of Warsaw. **During the war, he joined the Polish Home Army, and later served as an infantryman and interpreter in the British Army-Polish Forces in Turkey, Palestine, Egypt, Ethiopia, Italy, England and Poland. He was captured during the Battle of Warsaw in 1944, and subsequently interned by the German army in a prisoner-of-war camp in Bavaria.**

Shortly after American forces liberated the camp in the spring of 1945, he met U.S. Army Captain Gene Warr of Oklahoma City, who was a member of the 45th Infantry Division. Justice Opala and Captain Warr quickly developed a strong friendship, which both described as something more akin to brotherhood. This relationship eventually led to a new life for Justice Opala in the United States.

After the war ended in 1945, he continued to serve in the British Army. In 1947, he immigrated to the U.S. with the help of Gene and C.B. Warr. U.S. Sen. Mike Monroney agreed to help him at the request of the elder Warr, and as a longtime friend of President Harry Truman, Sen. Monroney was able to secure an immigrant's visa for Justice Opala. He settled in Oklahoma City to be near the family that sponsored him and became an American citizen in 1953.

Justice Opala earned two degrees from OCU, one in law in 1953, and another in economics in 1957. OCU later awarded him an honorary doctorate in law in 1981. He earned a master's in law in 1968 from New York University, and later attended many summer conferences on the history of Anglo-American law in universities throughout Great Britain.

He served as an assistant county attorney for Oklahoma County from 1953-1956. He was in private practice in Oklahoma City from 1956-1960, and he served as a referee of the Oklahoma Supreme Court from 1960-1965. He practiced law with the firm of Fenton, Fenton, Smith, Reneau & Moon from 1965-1967, and worked as a staff lawyer for Oklahoma Supreme Court Justice Rooney McInerney from 1967-1968. Justice Opala became the first administrative director of the Oklahoma Court System in 1968 and served in that capacity until 1977.

The same year, Gov. David Boren appointed him to the Oklahoma Workers' Compensation Court, and then to the Oklahoma Supreme Court in 1978. He served as chief justice from 1991-1992. When he passed away, Justice Opala had served on the court for 32 years.

Justice Opala taught law on a part-time basis for 50 years in the state's three law schools. He was also frequently invited to speak at law schools and various legal forums throughout the country.

He was the author of numerous legal papers, and he was the recipient of many awards and honors. He was inducted into the Oklahoma Hall of Fame in 2000.

Justice Opala is known for his devotion to the First Amendment, which he attributed to his experiences in Nazi-occupied Europe. Freedom of Information Oklahoma presents the "Marian Opala First Amendment Award" each year to an Oklahoman who has defended the freedom of speech.

Memorial donations may be made to All Souls' Episcopal Church at 6400 N. Pennsylvania Ave., Oklahoma City, 73116, or to the Justice Marian P. Opala Endowed Scholarship Fund at the OU College of Law.

Eugene Dale Daubert of Tulsa died Oct. 11. He was born July 26, 1941, in Greatbend, Kan. He graduated from the TU College of Law in 1969 and was a longtime resident of Tulsa before he moved to North Dakota, Montana and Colorado.

John William Howard of Tulsa died Aug. 19, 2010. He was born May 12, 1916. An early career as a reporter for the *Brattleboro Daily Reformer* in Vermont was interrupted in 1942 by World War II. **He was assigned to a theater headquarters communication team, subsequently serving as a communications officer in Hollandia, New Guinea, and later at Manila, Philippines. He was honorably discharged from the Army in 1946 with the rank of first lieutenant.** He graduated with a B.A. in political science and economics from the University of Vermont in 1949. In 1952, he received his juris doctorate degree from Yale Law School, and he completed the Advanced Management Program Graduate School of Business at the University of Virginia in 1969. He joined Standard's Exploration and Production subsidiary in Tulsa in 1952, becoming its general attorney in 1970. He served on Amoco Production's Board of Directors and its Management Committee. In 1973, he transferred to Standard Oil, the parent company in Chicago, as general attorney, retiring in 1981. An avid adventurer, he traveled to all seven continents, visiting more than 100 countries. He also loved skiing and sailing. Memorial contributions may be made to the John W. Howard Scholarship Fund at the University of Vermont, attention: Joan Cook, Development and Alumni Relations, 411 Main St., Burlington, Vt., 05401.

Frank J. Kamas of Wichita, Kan., died Aug. 24. He was born Dec. 11, 1954, in Wichita, and he graduated from Wichita High School East in 1972. He earned his bachelor's degree in political science from Fort Hays State University and went on to earn a law degree from Oral Roberts University in 1985. He practiced law in Wichita for the last 25 years. His passions included hunting, fishing, flying and being with his friends. He was a fun-loving, free spirit who lived to help people. Memorial contributions may be sent to the American Heart Association, 3816 Paysphere Circle, Chicago, Ill., 60674.

Thomas Richard Mayer of Tulsa died Oct. 20. He was born Oct. 28, 1941, in Clinton, Iowa. He received his bachelor of arts in Russian from the University of Iowa. **He served the U.S. Air Force in intelligence.** In 1971, he received a law degree from the University of Iowa. He was state ombudsman in Iowa and had law practices in Iowa and Oklahoma. He also graduated from Victory Bible Institute in Tulsa and Victory World Mission Training. He taught Russian at Oral Roberts University and taught at the worship school at Victory Bible Institute. He also taught law classes for Kaplan University. Mr. Mayer and his wife were involved in many charitable causes and missions, and the family asks that memorial contributions be sent to Yvonne Mayer at P.O. Box 702035, Tulsa, 74170-2035.

Roger McCoin of Oklahoma City died Oct. 8. He was born March 23, 1951. He graduated from the OU College of Law in 1984.

Jack E. Naifeh of Tulsa died Aug. 31. He was born Feb. 11, 1921. He was raised in Broken Arrow, graduating from high school in the late 1930s. **He served in the Army Air Corps during World War II where he received two purple hearts as well as other commendations.** He owned Naifeh's Grocery on Main Street in Broken Arrow with his brothers after World War II. He received his bachelor's degree in business administration and his law degree from the University of Tulsa. As a proud TU alumnus as well as a contributor and supporter of TU athletics, he attended TU football and basketball games for over 60 years. At last year's TU/OU football game in Norman, he was recognized on the field at halftime for his decades of loyalty and support. He was a lifelong member of the VFW where he held local, state and national offices including state commander and national judge advocate. Memorial contributions may be made in his name to VFW Post 577, 1109 E. 6th St., Tulsa, 74120.

Kirk Baxter Pyle of Tulsa died Aug. 12. He was born May 12, 1926, in Eufaula, graduating from Eufaula High School in 1944. **He enlisted in the U.S. Navy and was honorably discharged in 1946.** He then attended the University of Missouri, later transferring to OU and received a degree in

engineering. **He joined the U.S. Army Air Corps in 1948, and subsequently transferred to the newly established U.S. Air Force where he gained the rank of major. As a pilot he flew military personnel around Europe and to and from the United States. He retired as a major from the Air Force in 1966.** For the next 13 years he worked for the Department of Defense as a program analyst in Washington, D.C. During that time, he graduated from George Mason School of Law and was licensed to practice law in Virginia in 1978. He was a practicing attorney in Virginia and Oklahoma until his appointment as a district judge for Pittsburg and McIntosh counties in Oklahoma. After 16 years, he retired from judicial service in 1994. Memorial donations may be made to Tulsa Boys' Home or the Alzheimer's Association.

Spiros (Spike) J. Sakelaris of Tulsa died May 2. He was born May 18, 1920, in Lowell, Mass. **He joined the U.S. Army Air Corps, serving in World War II as an aircraft mechanic in the Pacific.** He returned to Lowell then enrolled in the Spartan School of Aeronautics in Tulsa. He earned an art degree and a law degree from TU. He practiced family law in downtown Tulsa for decades. He was a great dancer and loved music (be-bop, Sinatra, Herb Alpert), wine, fine meals, baseball (Red Sox) and good friends. For years he took his family to Oilers (later Drillers) games, and he had a monthly poker party with his buddies. He was active in the Tulsa Greek community. Memorial contributions may be made in his memory to the John R. Sakelarios Scholarship Fund, which benefits Lowell High School graduates in remembrance of Spike's nephew in Lowell. Contributions may be sent to the attention of Angelo Sakelarios, 4 Robin Hill Road, Chelmsford, Mass., 01824.

John (Jack) W. Sund of Oklahoma City died Oct. 22. He was born March 29, 1928, in Chicago. His family lived in Chicago, Wisconsin and Omaha, Neb., before moving to Oklahoma City in 1946. He earned a bachelor's degree and law degree from OU. **He served his country as a member of the U.S. Army in Germany in the early 1950s.** After returning from service overseas, he worked for Phillips Petroleum, and later joined the Travelers Insurance Co. as a staff attorney specializing in workers' compensation. He worked for Travelers until his retirement in 1990. In retirement, he enjoyed spending time with his children and grandchildren and traveling the country and globe.

Nelda Jean Niehaus (DoRemus) Torkelson of Tulsa died Oct. 3. She was born Nov. 20, 1927, in Enid. She was an educator in the Tulsa Public School system from 1959 until she was the first person hired when Tulsa Junior College, now TCC, was established. She changed many lives in her role as developer of the "Second Flight" program for older students at TJC. She received her law degree from TU in 1982. She was athletic as an avid skier, runner and bicyclist, and played softball and basketball in school and was a wonderful cook.

The University of Oklahoma College of Law is excited to launch an extensive hiring campaign to recruit top-flight faculty in the next several years. Over the past decade, the law school has built world-class facilities, attracted exceptional students, and dramatically increased endowed faculty positions and resources. With a new dean, we are committed to building on this momentum and this year seek to hire up to three faculty candidates for tenure-track or tenured positions. We have particular curricular needs in Contracts, Criminal Law and Procedure, International Law, Skills, and upper-level courses in these areas. In addition, we invite highly-qualified applicants regardless of field. As an equal opportunity employer, the University of Oklahoma encourages applications from women, members of minority groups, and others who would further diversify our faculty. Applicants should possess a J.D. or equivalent academic degree, strong academic credentials, and a commitment to excellence in teaching and scholarship. Application review will begin immediately but the positions will remain open until filled. Please contact Katheleen Guzman, Chair of Faculty Appointments Committee, University of Oklahoma College of Law, 300 Timberdell Rd., Norman, OK 73019 [kguzman@ou.edu].

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- An advocate who has practiced before the Trial Court on a regular basis for more than two (2) years as member of the Court bar.

Contact Information:

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The Crash

By A. Donald Mileur

In January 1956, I joined the appellate section, lands division of the Department of Justice in Washington, D.C. That fall, I had written the brief and was to go to Richmond, Va., to present my first appellate argument. It was before that most gracious of all courts, the U.S. Court of Appeals for the 4th Circuit. Southern hospitality shone through in the way they handled oral arguments.

Among other things, as each attorney rose to make his presentation, a water glass of the finest crystal was placed on a small table next to the podium. At the end of oral argument, the appellate judges came down from the bench to shake hands with counsel.

I was representing the United States as appellee. My turn came, and I approached the podium with all the seriousness of a young lawyer making his first argument. Two-thirds of the way through the argument, I became so impressed with the power of my delivery that I made a sweeping gesture with my right hand and struck the water glass.

The water glass tumbled to the floor and splintered in a hundred pieces. Somewhat subdued, I managed to finish my oral argument.

When the judges came down from the bench, I was fully apologetic and made offers to get a broom and mop to clean up the mess, and pay for the broken crystal. With true southern hospitality my offers were refused, and I was told not to concern myself. It would be taken care of.

If you want to see the result of the case, it can be found in *Nunnally v. United States*, 239 F. 2d 521.

Mr. Mileur is retired and lives in Rush Springs.


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