

WIT Oklahoma Bar JOURNAL

Volume 82 ♦ No. 20 ♦ August 6, 2011

Children and the Law

ALSO INSIDE

- Oklahoma Justice Commission
- Board of Governors 2012 Vacancies

OBA Boot Camp: Oklahoma Lawyers Representing America's Heroes Aug. 19 - Enid OK

NWOSU Campus, 2929 E. Randolph

www.okbar.org/cle

Cosponsored with
the OBA Military
Task Force



8:30

Registration and Continental Breakfast

8:50

Welcome Remarks

Deborah Reheard, 2011 President,
Oklahoma Bar Association, Eufaula

9

The Military and Family Law Issues

Phil Tucker, Tucker Law Firm, Edmond

9:50

Break

10

The Military and Criminal Law Issues

Catherine Burton, Oklahoma County District
Attorney's Office, OKC

Tim "Tarzan" Wilson, Oklahoma County Public
Defender's Office, OKC

10:50

The Service Members Civil Relief Act and
Consumer Transactions

Kaleb Hennigh, Mitchel, Gaston, Riffel & Riffel,
PLLC, Enid

11:40

Oklahoma Lawyers for America's Heroes

Susan Carey, OLAH Coordinator, OKC

11:45

Lunch

(Sponsored by PROS4VETS)

12:15

Oklahoma Bar Foundation Presentation
and Military Assistance Task Force
Presentation

Dietmar K. Caudle, Chair, OBA
Military Assistance Task Force, Lawton

12:20

Military Disability Law and How it Interacts
with Social Security, ERISA, and Private
Disability Policies

Amy Hart, Hart Law Office, P.C., Tulsa

1:10

The Military and Estate Planning

Jandra Jorgenson, Premier Legal, Tulsa

2

Break

2:10

Post Traumatic Stress Disorder

Dr. Dan Jones, Combat Stress Recovery Emphasis
Coordinator, Oklahoma City VA Medical Center, OKC

3

Ethical Considerations with Pro Bono Public Service
(ethics)

Gina Hendryx, General Counsel, Oklahoma Bar
Association, OKC

3:50

Adjourn

Planner/Moderator:

Dietmar Caudle, Chair, OBA Military Assistance
Task Force, Lawton

Visit

www.okbar.org/heroes/
for more info on the
Oklahoma Lawyers for
America's Heroes
Program



Visit
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opportunity



U.S.S.C. Update on the Confrontation Clause of the Sixth Amendment



Aug. 30, 2011

Noon - Your Computer

Presenter: David McKenzie
Oklahoma County Public Defender's Office,
Oklahoma City

The United States Supreme Court, over the past seven years, has expanded an accused's right to confrontation via the Sixth and Fourteenth Amendments to the United States Constitution. This program will analyze those cases with proceedings in Oklahoma State Court.



Credit: 1 hour
MCLE/EDUCATION
1 hour (XMCLE/EDUCATION)
Tuition: \$50

How to Get More Business



Aug. 31, 2011

Noon - Your Computer

Presenter: M. Joe Crosthwait, Jr.
The Crosthwait Law Firm, Midwest City

Increase your business by learning how to attract clients both the old-fashioned way and the new-fashioned way. Marketing yourself isn't taught in law school and for many of us is an uncomfortable thing to do. In today's market, it isn't enough to hope the business just happens to come our way.



Credit: 1 hour
MCLE/EDUCATION
1 hour (XMCLE/EDUCATION)
Tuition: \$50

Taxation of the Gambler



Sept. 7, 2011

Noon - Your Computer

Presenter: Reece B. Morrel, Jr.
Morrel Saffa Craig, PC, Tulsa

Since 1934, the proper tax treatment of gambling income and losses has been one of confusion, misinformation and much litigation. In this special 2-hour webcast, Reece B. Morrel, Jr., attorney, CPA and author of the Lady Luck Gambling Diary, dispels many of the gambling tax myths and shares with us his insight into and extensive experience with this complex area.



Credit: 2 hours
MCLE/EDUCATION
Tuition: \$100

Ethics Online: Technology and Social Media Concerns for the Modern Lawyer



Sept. 21, 2011

Noon - Your Computer

Presenter: Carrie Palmer
Palmer Wantland and Forecast Discovery
Group, Oklahoma City

Learn to navigate the ethical minefields surrounding social media discovery and use, ethical considerations for the technology being used by lawyers and law firms, and other emerging issues in the field. Using case law and ethics opinions from around the country, discussion will center upon discovering and using social media evidence, employing tips and tactics, and avoiding the snares presented by the technology we rely on every day!



Credit: 1 hour
MCLE/EDUCATION
1 hour (XMCLE/EDUCATION)
Tuition: \$50

ADAAA Regulations Update



Sept. 28, 2011

Noon - Your Computer

Presenter: Stephanie Johnson Manning
Titus Hillis Reynolds Love Dickman &
McCalmon, Tulsa

Finally! The long awaited regulations addressing the Americans with Disabilities Act and Americans with Disability Amendments Act (ADAAA) are here. This webcast will address the significant revisions to the regulations, and how these regulations will affect employees and employers alike.



Credit: 1 hour
MCLE/EDUCATION
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The American Bar Association Members/Northern Trust Collective Trust (the "Collective Trust") has filed a registration statement (including the prospectus therein (the "Prospectus")) with the Securities and Exchange Commission for the offering of Units representing pro rata beneficial interests in the collective investment funds established under the Collective Trust. The Collective Trust is a retirement program sponsored by the ABA Retirement Funds in which lawyers and law firms who are members or associates of the American Bar Association, most state and local bar associations and their employees and employees of certain organizations related to the practice of law are eligible to participate. Copies of the Prospectus may be obtained by calling (800) 826-8901, by visiting the website of the ABA Retirement Funds Program at www.abaretirement.com or by writing to ABA Retirement Funds, P.O. Box 5142, Boston, MA 02206-5142. This communication shall not constitute an offer to sell or the solicitation of an offer to buy, or a request of the recipient to indicate an interest in, Units of the Collective Trust, and is not a recommendation with respect to any of the collective investment funds established under the Collective Trust. Nor shall there be any sale of the Units of the Collective Trust in any state or other jurisdiction in which such offer, solicitation or sale would be unlawful prior to the registration or qualification under the securities laws of any such state or other jurisdiction. The Program is available through the Oklahoma Bar Association as a member benefit. However, this does not constitute an offer to purchase, and is in no way a recommendation with respect to, any security that is available through the Program.

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How I Spent My Summer Vacation

By Deborah Reheard

The summer vacation of a bar president is a unique experience. Four different states and a foreign country in eight weeks, airports, rental cars, cab rides, awards banquets, hotel conference food and speeches. The purpose of the travel-filled summer? To attend neighboring states' and the American Bar Association's annual meetings.

In June, July and August, I attended the Arkansas, Texas and Louisiana State Bar Association meetings and the ABA annual meeting in Toronto, Canada. The travel schedule was so intense, I woke up a few times wondering where I was. I have a new found appreciation for those who make their living on the road. And I think someone could make a lot of money inventing a cell phone wake-up alarm app that says, "Good morning. It is 6 a.m., and you are in San Antonio at the State Bar of Texas Annual Meeting."



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President Reheard
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*The rewards of
my travels
should be evident
in this year's
OBA Annual
Meeting to be
held in Tulsa
Nov. 2-4.*

The rewards of my travels should be evident in this year's OBA Annual Meeting to be held in Tulsa Nov. 2-4. The newly remodeled and rebranded Hyatt Regency will be our host hotel. The Annual Meeting will be bigger and better, and I hope will rekindle attendance at the yearly gathering of our association.

I have missed a few annual meetings in my nearly 25 years of practicing law — but not many. I found myself on many of the flights and during airport downtime thinking of why my mentors encouraged me to go, why I went and why I think you should go, too. The main reason for the Annual Meeting is to do to the association's business — elect officers, and pass resolutions that often eventually become legislation and new laws. And then there is the added

benefit of seeing friends from across the state and getting required CLE credit.

But times have changed and some no longer believe the Annual Meeting is a must-attend event. We can now get most of our CLE online. We can stay in touch with friends across the state with Facebook, Twitter and Skype. We are busy people, and it is difficult taking two or three days out of our practices and our lives.

So, we surveyed lawyers, borrowed ideas from other states and have taken the extracurricular activities up a notch or two! We will have great tracks of CLE on Wednesday including a charm school for lawyers and an ethics follies musical. A trial college for lawyers of all experience levels has been added this year and will run from Thursday afternoon through Friday. We have also added a tech fair to the Friday schedule. Come to Annual Meeting this year, and you can get ALL of your CLE for the entire year at a great price.

Thursday morning we will begin with another new event — the Bench and Bar Breakfast. Judges attending the annual judicial conference just a few blocks away will join us for breakfast and the joint plenary session featuring the real

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EVENTS CALENDAR

AUGUST 2011

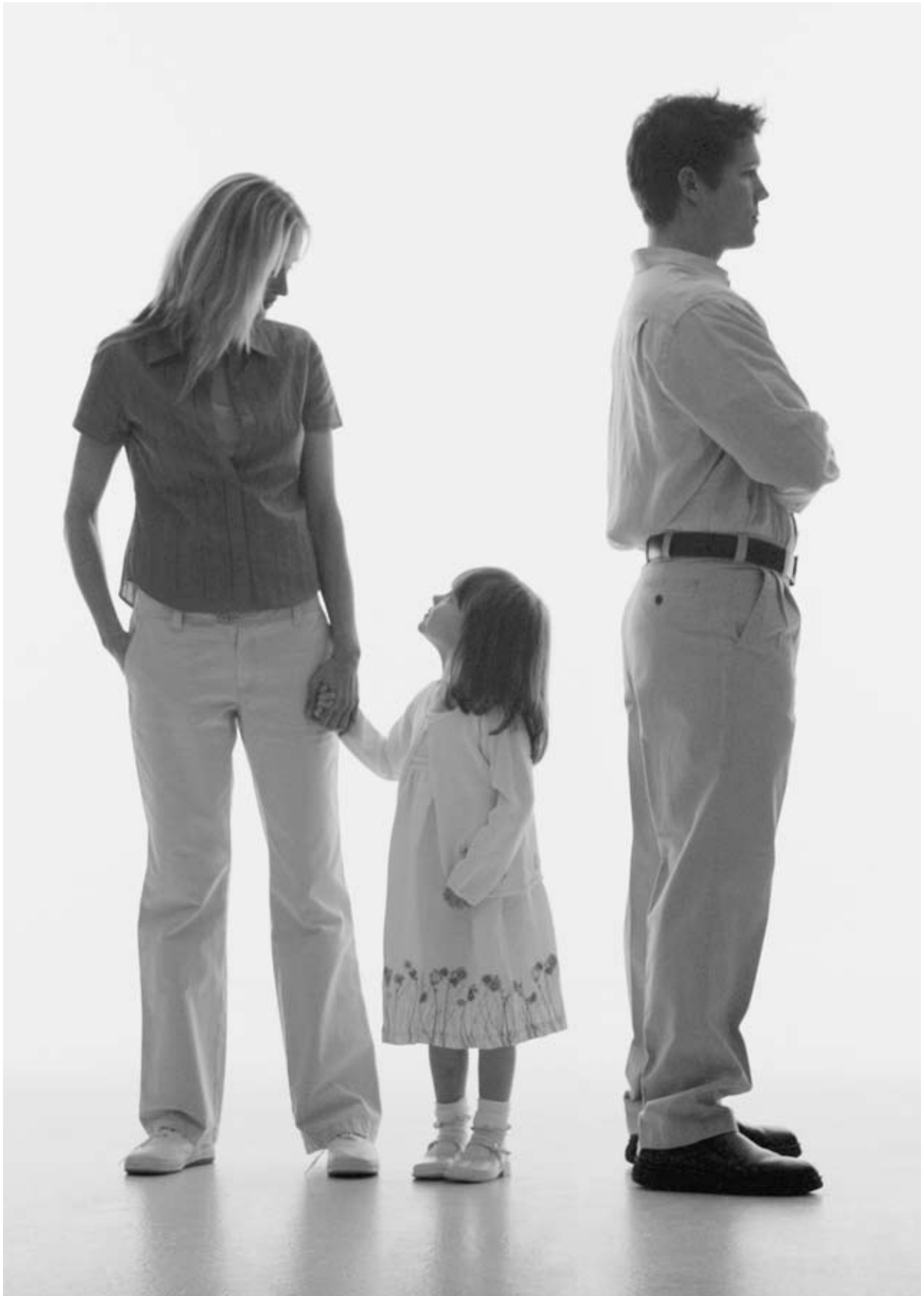
- 8 **OBA Rules of Professional Conduct Subcommittee Meeting;**
3 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Paul Middleton
(405) 235-7600
- 9 **OBA Law-related Education Task Force Meeting;** 3 p.m.; Oklahoma
Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact:
Reta Strubhar (405) 354-8890
- OBA Rules of Professional Conduct Subcommittee Meeting;**
3 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Paul Middleton
(405) 235-7600
- 10 **OBA Diversity Committee Meeting;** 12 p.m.; Oklahoma Bar Center,
Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Jeff Trevillion
(405) 778-8000
- OBA Government and Administrative Law Practice Section
Meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County
Bar Center, Tulsa; Contact: Bryan Neal (405) 522-0118
- 11 **OBA Appellate Practice Section Meeting;** 12 p.m.; Oklahoma
Bar Center, Oklahoma City and OSU Tulsa; Contact: Rick Goralewicz
(405) 521-1302
- OBA Solo and Small Firm Committee Meeting;** 3:30 p.m.;
Oklahoma Bar Center, Oklahoma City with teleconference; Contact:
Jim Calloway (405) 416-7051
- OBA Women Helping Women Support Group;** 5:30 p.m.; The Oil
Center – West Building, Suite 108W, Oklahoma City; RSVP to: Kim Reber
(405) 840-3033
- 12 **Oklahoma Association of Black Lawyers Meeting;** 12 p.m.;
Oklahoma Bar Center, Oklahoma City; Contact: Donna Watson
(405) 721-7776
- OBA Family Law Section Meeting;** 3:30 p.m.; Oklahoma Bar Center,
Oklahoma City and OSU Tulsa; Contact: Kimberly Hays (918) 592-2800
- 16 **OBA Civil Procedure and Evidence Code Committee Meeting;**
3:30 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact:
James Milton (918) 591-5229
- 18 **OBA Justice Commission Meeting;** 2 p.m.; Oklahoma Bar Center,
Oklahoma City; Contact: Drew Edmondson (405) 235-5563

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

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

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Children and Divorce: A 31-Year Retrospective

By Robert G. Spector

I arrived in Oklahoma over 30 years ago to join the faculty of the University of Oklahoma College of Law after 13 years of teaching at Loyola University of Chicago. At that time the course in family law was looking for a teacher and I was looking for a permanent home in the curriculum.¹ It turned out that it was one of the better marriages. Like all marriages it changed significantly over time. The course that I teach now bears almost no relationship to the one that I taught back then.² There have been extraordinary developments in all aspects of family law. For example back in 1980, pensions, now the largest asset of most marital estates, were not even considered marital property.³ However, the largest changes have come in the area of children's law, particularly the law applicable to children in divorce cases.

THE WAY IT WAS THEN

There were significant discrepancies in interstate child custody cases. The Uniform Child Custody Jurisdiction Act had yet to be enacted in Oklahoma. And no one had any conception that there could be custody problems with international developments.

Child custody in cases involving parents was based on the "tender years" presumption which provided that, all things being equal, a child of tender years was to be given to the mother.⁴ Fathers usually only received custody if the mother was unfit.⁵ However, if the child was old enough to learn a trade, custody was to be given to the father, an aspect of the tender years presumption that was rarely applied. Because of the presumption, custody battles between parents were extremely rare.⁶ The major custody con-

tests concerned third-parties in situations where parents had abandoned their children and wished to retrieve them at a later time.⁷

Child support was thought of as an adjunct to the alimony determination. It was based on the child's needs and the non-custodial parent's ability to pay. The award was so discretionary that there were very few appeals. The federal government had yet to be heard from, in any area of family law, and the thought that child support would ultimately be dictated from Washington, D.C., was not in anyone's mind.⁸

During those first few years of teaching family law, I could cover all the children's issues in divorce in two or three weeks and spend most of my time on various procedural issues, wondering whether this course actually deserved three credits.

All this has now completely changed. It takes a full six hours to cover family law and even then it is not possible to cover everything that should be covered. There never seems to be quite enough time to talk about adoptions or deprived children.

THE WAY IT IS NOW: JURISDICTION AND PROCEDURE⁹

Some regularity was brought into the interstate custody mess when Oklahoma finally adopted the Uniform Child Custody Jurisdiction Act.¹⁰ Its enactment did not totally solve the problem of the interstate child due to the fact that states construed the act differently. Congress, for only the second time in our history, implemented the Full Faith and Credit Clause by enacting the Parental Kidnapping Prevention Act¹¹ to require interstate enforcement of custody determinations that were consistent with the jurisdictional principles of that act. The relationship between the PKPA and the UCCJA was extremely complicated and there was the possibility that the PKPA actually preempted some of the UCCJA.¹² To help solve this problem, the Uniform Law Commission drafted a replacement for UCCJA, called the Uniform Child Custody Jurisdiction and Enforcement Act, under the leadership of the late Justice Marian Opala. Oklahoma became the second state to enact the UCCJEA.¹³

The federal government also recognized that custody disputes can cross international boundaries. It ratified the 1980 Hague Convention on the Civil Aspects of International Child Abductions, requiring, under certain circumstances, children to be returned to the country of their habitual residence who would make the custody determination.¹⁴ Work in this area continues with the United States signing the 1996 Convention on Jurisdiction, Applicable Law, Recognition and Cooperation with Regard to Measure for the Protection of Minors. This Convention will be implemented through a revision of the UCCJEA, which is already underway. The United States Senate also ratified the 2007 Hague Convention on the International Recovery of Family Maintenance. This convention will be implemented by requiring states to adopt the 2008 version of the Uniform Interstate Family Support Act. It is becoming clear that the future of family law will involve a considerable amount of international practice.

A Tribute to Retiring Professor Robert G. Spector

By Ginny Henson

Robert Spector has been an invaluable resource for Oklahoma lawyers during his tenure at the University of Oklahoma. In addition to his contributions to the Family Law Section of the Oklahoma Bar Association, including yearly updates of Oklahoma appellate decisions at the OBA Annual Meeting, and countless CLE presentations, Bob has helped to advance national and international family law. He has been active in the ABA's Family Law Section, serving on the governing council. He authored *Oklahoma Family Law* published by Imprimatur Press and has authored more than 100 articles on family law. He serves as the associate editor of the *Family Law Quarterly* and is a member of the Board of Editors of *Divorce Litigation* and the *American Journal of Family Law*. Bob is the reporter for the Uniform Child Custody Jurisdiction and Enforcement Act and the Family Law Joint Editorial Board for the National Conference of Commissioners on Uniform State Laws. He was also a member of the U.S. delegation which participated in the drafting of the Hague Convention on International Child Abduction and other Hague Conventions dealing with family issues. Both the U.C.C.J.E.A. and the Hague Conventions have helped strengthen family law in Oklahoma, the United States and the world.

Bob has made us all better family lawyers. From his legislation and case law updates at the OBA-FLS monthly meetings, to his current case updates which are emailed to all Family Law Section members, he insures that we all have current information and advance warning about objectionable legislation. He has trained a legion of future family lawyers as the Glenn R. Watson Centennial Chair in Law at the University of Oklahoma.

But most of all, Bob loves family law. Although family law is an area of law that is often overlooked and maligned, Bob believes passionately that nothing in the law is as important as the protection of children and families. He has devoted his career to education, not only as a law professor, but also as an educator of practicing lawyers and judges. We are all better lawyers because we knew Bob, professionally and personally.

Norman attorney Ginny Henson is former chairperson of the OBA Family Law Section.

THE WAY IT IS NOW: SUBSTANTIVE CUSTODY LAW

Substantive custody law has changed radically in Oklahoma over the last 31 years. The tender years presumption was repealed in 1983 and replaced by a “best interest of the child” standard.¹⁵ Almost immediately it was realized that this standard allowed the courts almost unlimited discretion in determining custody. Since 1983 Oklahoma law has exhibited two tendencies. First, the discretion of the trial court, within certain boundaries, is almost unlimited. I have been following the decisions of the Court of Civil Appeals, both published and unpublished, for more than 25 years. During this time, appeals of the original custody determination have been affirmed more than any other subject of an appeal in a family law case.¹⁶ The mere fact that on a particular record the trial court may have been justified in arriving at a different conclusion is not a reason for reversal.

Attempts on the part of the appellate court to reign in the trial court’s discretion have been few and far between. The most notable was the decision of the Supreme Court in *Gorham v. Gorham*¹⁷ requiring a “nexus” between parental misconduct and an effect on the child. Since then there have been fewer and fewer cases which emphasize misconduct of a sexual nature in determining custody. Some of the attempts to limit the trial court have come from the Legislature.¹⁸ Most recently there has been the enactment of a number of statutes warning trial courts that domestic violence must be seriously considered before making a custody determination.¹⁹

Secondly, there have been numerous attempts to improve the process, both procedurally and substantively. Substantive reforms focused primarily on the concept of joint custody,²⁰ which entered Oklahoma law at almost the same time that the tender years presumption disappeared. However, the statute does not distinguish between joint legal and joint physical custody. This has meant that most joint custody decrees simply say that the parties have joint custody without attempting to spell out the responsibilities of each parent. This has resulted in considerable confusion which most often has to be worked out in post-decree motions.²¹ It also has resulted in a large number of modification of custody motions alleging that the parents cannot cooperate and therefore the joint custody should be terminated.²² This

seems to indicate that the use of a generic joint custody to settle cases has produced more post-decree problems than might be the case if sole custody were awarded in the first place. One of the reforms that should be tackled in the immediate future is a total revision of the joint custody statute to modernize it with regard to the differences between joint legal custody and joint physical custody.

Procedurally there have been a number of innovations that it was hoped would alleviate the bitterness often involved in custody battles. This has often involved a cast of characters that were rarely, if ever, seen 31 years ago. It is now common for there to be guardians *ad litem* for children,²³ as well as parenting coordinators for the parents.²⁴ Mediation is now often seen as a preferred alternative for deciding custody cases, especially for post-decree problems involving visitation.²⁵ And, parents may be sent to school to learn how to be good divorced parents.²⁶ All of these innovations have helped to reduce the number of custody cases that are actually litigated. However, none of them have proved to be a panacea and some of them have caused problems that were not envisioned at the time of their enactment.²⁷

The law with regard to modifications of custody has not changed very much during the last 31 years. The court had arrived at the *Gibbons*²⁸ test back in 1968, and the law since then has been mostly involved with working out the parameters of the test.²⁹ However, a potential substantial change of direction came about in the case *Stephen v. Stephen*³⁰, where Justice Simms, in a concurring opinion that garnered five votes, concluded that the decision of the custodial mother to home school the child could not be challenged by the noncustodial father. The constitutional rights of the custodial parent, said Justice Simms, are extensive and run against the noncustodial parent in the same way they run against the state. This means that unless there is an affirmative showing of harm, the custodial parent, at least with regard to ordinary parenting decisions, is entitled to make decisions that may not be in the child’s best interests, without fearing a motion to modify by the custodial parent. The court appeared to confirm all this in *Kaiser v. Kaiser*³¹, where it held that a custodial parent has the right to move with the child absent proof of harm to the child from the place where the custodial parent planned to move.

However, it has now been 10 years since the *Kaiser* decision and the court has yet to follow up on these opinions. This has left the bench and bar in somewhat of a quandary concerning a number of issues. For example, the Legislature attempted to overrule the *Kaiser* decision when it enacted 43 O.S. §112.3. If the *Kaiser* decision is constitutionally based, then the statute is probably unconstitutional.³² In the absence of any guidance from the court, lower courts and lawyers are applying the statute.³³ Guidance on the effect of *Stephen* and *Kaiser* is desperately needed.

One of the most dramatic developments of the last three decades has been the rise and fall of third-party problems concerning both custody and visitation. Third-party custody issues have always been a part of the court's docket and were the most prevalent custody issue during the early part of Oklahoma's history.³⁴ During the early 80s, the Supreme Court was very clear that custody could be awarded to a third party only if the parent was shown to be affirmatively unfit by clear and convincing evidence.³⁵ The Legislature, however, attempted to add to the reasons for allowing third-party custody by adding provisions concerning the failure to pay child support and failure to visit.³⁶ The ensuing years were marked by a failure of the courts to acknowledge the legislation. This tendency was exacerbated when the Supreme Court in *McDonald v. Wrigley*,³⁷ ignored a long history of cases and determined that all third-party custody was meant to be temporary and that the parent could always seek to modify third-party custody by showing that the conditions that lead to the custody determination had been corrected.³⁸ Ultimately the Legislature straightened this area out when it revised Title 10 in 2009 by clearly delineating when third parties could receive custody and that the *Gibbons* test was applicable to modifications unless the third-party custody had been specifically denominated as temporary.³⁹

The decrease in third-party custody cases was helped by the court's ruling in third-party, particularly grandparent, visitation cases. From 1980 through 1988, the Legislature greatly expanded the situations where grandparents could receive visitation in response to opinions by the Supreme Court which tended to restrict grandparent visitation.⁴⁰ By 1988 the statute allowed "each and every grandparent" to petition to receive visitation. Then in 1988 a series of decisions by both the Oklahoma Supreme

“Parentage was totally revamped at the same time. Originally these were “bastardy” proceedings that were quasi-criminal, brought by the district attorney and tried to a jury. Now juries have been abolished in parentage cases and the development of DNA has made most paternity cases easy to determine.”

Court⁴¹ and the United States Supreme Court⁴² decided that allowing trial courts to grant visitation to grandparents over the wishes of a fit parent violated that parent's constitutional right to raise their children.⁴³ Third parties, apart from grandparents, who sought visitation were given very short shrift by the courts.⁴⁴ The result has been a substantial decrease in both grandparent custody, as well as visitation, cases.

THE WAY IT IS NOW: CHILD SUPPORT

There is no question that the most radical changes affecting children of divorce have come in the area of child support. It is not going too far to say that there is almost nothing left of the law of child support as it existed in 1980. When Congress determined that its role in providing welfare funds for the states was affected by the amount of support that parents were providing their children, it completely revamped child support through its use of the spending power.⁴⁵ The first major reform came when Congress, as a condition of federal funding, required the states to enact laws providing for income assignments.⁴⁶ More reforms followed, including the establishment of child support guidelines based on quantitative, rather than qualitative, factors,⁴⁷ automatic liens,⁴⁸ the judgment as a matter of law statute,⁴⁹ the Uniform Interstate Family Support Act,⁵⁰ and

the payment registry.⁵¹ The IV-D agency became the major player in handling child support cases, dwarfing the number of cases handled by the private bar.

Parentage was totally revamped at the same time. Originally these were “bastardy” proceedings that were quasi-criminal, brought by the district attorney and tried to a jury. Now juries have been abolished in parentage cases and the development of DNA has made most paternity cases easy to determine.⁵² However, parentage cases still present problems of presumptions, preclusion and estoppel, that can make some of them very difficult indeed.⁵³ There is also the entire problem of artificial reproductive technology. While Oklahoma was ahead of most states in providing statutes to deal with artificial insemination, they are now substantially out of date.⁵⁴ There are also no statutes dealing with surrogacy, either gestational or traditional, or the problem of what to do with frozen zygotes left over from in vitro fertilization.

THE FUTURE

I have become convinced over the last 30 years that Oklahoma needs a well thought out family law code. Since I have been in Oklahoma there has been only piecemeal reform in the Legislature. Statutes tend to be enacted without anyone examining the relationship of the new statutes to other legislation, or with regard to the overall picture.⁵⁵

There was one attempt that produced, for its time, an extremely good codification. It was produced by the family law section pursuant to a legislative proposal.⁵⁶ However, after two acrimonious public meetings, the legislative sponsors of the codification abandoned the project. The recent revision of the Children’s and Juvenile Codes indicates that with strong legislative leadership⁵⁷ and a dedicated membership, comprehensive reform can be accomplished. Hopefully, another attempt will be in our future.⁵⁸

Finally, I would be remiss if I did not mention that the family law issue of our times relating to children, is the interstate and international movement of children of same-sex marriages and civil unions.⁵⁹ Although Oklahoma has amended our constitution to limit marriage to a man and woman and has indicated that we will not recognize same-sex marriage from other states, we will not be immune to children of these families moving to and through Okla-

homa. We will face issues as to whether to recognize custody decrees from places like Vermont and Washington awarding custody of, and visitation to, children of same-sex couples.⁶⁰ Child support in these cases will also be an issue. Should a Massachusetts same-sex spouse be able to relocate to Oklahoma to escape support obligations?⁶¹ If no support order had been established in Massachusetts, should Oklahoma establish one? Just how strong is our policy against any recognition of same-sex status relationships?

These and other issues that have not even been thought about will be in our future. One thing I have learned over the last 31 years is whatever family law is today, it will not be the same tomorrow.

1. At that time the course was called Domestic Relations and taught by Professor Elmer Million and was only two credits. It had historically low enrollment. Since then the course changed its name to Family Law, became a topic for the bar examination and a “menu” course for College of Law graduation. The number of students enrolling in the course has increased dramatically.

2. The course has also expanded from a three-hour family law course to six hours with the addition of a three-hour course called Children and the Law which covers custody, visitation and parentage.

3. See *Carpenter v. Carpenter*, 1983 OK 2, 657 P.2d 646, overruling, for all practical purposes *Holeman v. Holeman*, 1969 OK 152, 459 P.2d 611.

4. 30 O.S. §11, repealed by Laws 1983, c. 269, § 4.

5. For examples see *Miracle v. Miracle*, (I) 1961 OK 55, 360 P.2d 712; *Miracle v. Miracle*, (II) 1963 OK 259, 399 P.2d 9.

6. As as I look through cases in my Statutes Annotated book, there are only a handful of pre-1980 appellate cases that are still viable precedents in the area of child custody.

7. See e.g., *Ex Parte Parker*, 1945 OK 61, 156 P.2d 584.

8. See Robert G. Spector, “The Nationalization of Family Law: A Manual for the Coming Age,” 27 Fam. L. Q. 1 (1993).

9. One of the major reasons for the development and change in the practice of family law was the resurrection of the Family Law Section of the Oklahoma Bar Association in the mid-80s. The section did incredible work in law reform under the early leaders John Hester, Chris Szlichta, Kit Peterson, Rees Evans and Carolyn Thompson. One of the most satisfying aspects of my life over the last 30 years has been serving as the consultant to the section.

10. Formerly codified as 10 Okl.St. Ann. §§1601 to 1628, and recodified by L.1990, c. 188, as 43 Okl.St. Ann. §§501 to 527).

11. 28 U.S.C. §1738A.

12. The relationship between these two statutes became “technical enough to delight a medieval property lawyer.” Homer H. Clark, DOMESTIC RELATIONS §12.5 at 494 (2d ed. 1988).

13. See 43 O.S. §551-101 et seq.

14. The treaty was implemented in this country by the International Child Abduction Remedies Act, (ICARA) 42 U.S.C. §11601 et seq.

15. Laws 1983, c. 269, §3.

16. For example last year all appeals from the original custody determination, but one, resulted in an affirmance. The one that did not was an appellant’s brief-only case. Previous years show the same pattern.

17. 1984 OK 90, 692 P.2d 1375.

18. See e.g., 43 O.S. §§112; 112.2.

19. See e.g., 43 O.S. §§109(I); 109.3; 111.1.

20. 43 O.S. §109.

21. See *Le V. Nguyen*, 2010 OK CIV APP 104, 241 P.3d 647 which attempted to work out the relationship between joint custody and relocation.

22. The most recent case is *Foshee v. Foshee*, 2010 OK 85, 247 P.3d 1162, where the motion to modify out of joint custody was filed only nine months after the entry of the final decree.

23. 43 O.S. §107.3(A).

24. 43 O.S. §§120.1-120.7.

25. 43 O.S. §107.3(B).

26. 43 O.S. §107.2.

27. For example, while parenting coordinators have proven useful in high-conflict child custody cases, the appellate courts have had to insist that the parenting coordinator keep to their appointed role and not attempt to take over the judicial function. See e.g., *Kilpatrick v. Kilpatrick*, 2008 OK CIV APP 94, 198 P.3d 406 (parenting coordinator cannot change custody); *Dilbeck v. Dilbeck*, 2010 OK CIV APP 142, 245 P.3d 630 (parenting coordinator cannot recommend a custody change).

28. *Gibbons v. Gibbons*, 1968 OK 77, 442 P.2d 482.

29. See e.g., *Carter v. Carter*, 1982 OK 123, 653 P.2d 207 (temporary relinquishments); *Hoog v. Hoog*, 1969 OK 174, 460 P.2d 946 (interference with the visitation of the non-custodial parent); *Cooper v. Cooper*, 1980 OK CIV APP 12, 460 P.2d 929 (drug and alcohol use); *Fox v. Fox*, 1995 OK 87, 904 P.2d 66 (custodial parent's sexual orientation had no effect on the children)

30. 1997 OK 53, 937 P.2d 92.

31. 2001 OK 30, 23 P.3d 278.

32. In *Mahmoodjanloo v. Mahmoodjanloo*, 2007 OK 32, 160 P.3d 951, Justice Kauger in a concurring opinion joined by Justice Hargrave noted that: "The constitutionality of 43 O.S. Supp.2002, §112.3 was clearly raised, and because the question of the constitutionality of the statute is a recurring problem of great public concern, the Court should address it."

33. For the case setting out the definitive analysis of the relocation statute see *Harrison v. Morgan*, 2008 OK CIV APP 68, 191 P.3d 617.

34. See e.g., *Lynch v. Poe*, 1916 OK 562, 157 P. 907; *Zink v. Miller*, 38 OKL. 751, 135 P. 342 (1913).

35. See e.g., *Grove v. Phillips*, 1984 OK 20, 681 P.2d 81.

36. See 10 O.S. §21.1 amended and recodified in 2009 as 43 O.S. §112.5

37. 1994 OK 25, 870 P.2d 777.

38. See e.g., *Johnson v. Johnson*, 1984 OK 19, 681 P.2d 78.

39. See 43 O.S. §112.5 effective Nov. 1, 2009.

40. The entire history is set out in *In re Baumgardner*, 1983 OK 59, 711 P.2d 92

41. *In re Herbst*, 1998 OK 100, 971 P.2d 395; *Neal v. Lee*, 2000 OK 547; *Scott v. Scott*, 2001 OK 9, 19 P.3d 273; *Ingram v. Knippers*, 2003 OK 58, 72 P.3d 17.

42. *Troxel v. Granville*, 530 U.S. 57 (2000).

43. The entire area of grandparent visitation has been recodified in 43 O.S. §109.4 to comply with the constitutional decisions.

44. See e.g., *Steinberg v. Frentz*, 2002 OK CIV APP94, 61 P.3d 907(step-father); *Barger v. Brown*, 2006 OK CIV APP 47, 134 P.3d 905 (sibling).

45. See Robert G. Spector, "The Nationalization of Family Law: An Introduction to the Manual for the Coming Age," 27 Fam.L. Q. 1 (1993).

46. 12 O.S. §§1171.2; 1171.3

47. 43 O.S. §§118 - 118I. The Family Law Section played a crucial role in writing the first child support guidelines.

48. 43 O.S. 135

49. 43 O.S. §137.

50. 43 O.S. §§601-101 *et seq.*

51. 43 O.S. §413.

52. Oklahoma has adopted the Uniform Parentage Act (2000). 10 O.S. §§7700-101 *et seq.*

53. For earlier cases that probably come out differently under UPA, see *Deloney v. Downey*, 1997 OK 102, 944 P.2d 312 (presumptions and preclusion); *Barber v. Barber*, 2003 OK 52, 77 P.3d 576 (estoppel).

54. 10 O.S. §551 *et seq.* The statutes refer to a married couple. If a single person can adopt is there still a reason why he or she cannot conceive a child through artificial insemination?

55. For example, in 2010 the Legislature amended the guardianship statutes to create something called custody by abandonment in which certain qualified relatives can obtain custody of a child who has been left with the relative. See 30 O.S. §2-107. The Legislature apparently gave no consideration as to how this procedure relates to the third-party custody provisions of 43 O.S. §112.5.

56. Kit Peterson, Carolyn Thompson and Rees Evans played pivotal roles in the drafting process. I was the reporter.

57. In this case the work of Rep., now Speaker of the House, Kris Steele cannot be underestimated.

58. All of the prior codification is still languishing on my computer. As I reread it, some parts sound somewhat dated while others would be a clear improvement over current law. Particularly helpful would be the part dealing with property division, which currently exists solely as judicial gloss on three sentences in 43 O.S. §121.

59. Six United States jurisdictions recognize same-sex marriage and another eight recognize civil unions which are legally indistinguishable from marriage for state family law purposes. A large number of countries have recognized same-sex marriage including two on our borders: Canada and Mexico.

60. In this area the federal legislation will play a dominant role, particularly the Parental Kidnapping Act, 38 U.S.C. §1738A. See the discussion of the act in the important cases of *Miller-Jenkins v. Miller-Jenkins*, 912 A.2d 951 (Vt. 2006) cert.den. 127 S.Ct. 1127 (U.S. 2007) and *Miller-Jenkins v. Miller-Jenkins*, 637 S.E.2d 330 (Va. Ct. App. 2006) cert. den. 129 S.Ct. 726 (U.S. 2008).

61. In this context see the Full Faith and Credit to Child Support Orders Act, 28 U.S.C. §1738B.

ABOUT THE AUTHOR



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In accordance with the Bylaws of the Oklahoma Bar Association (5 OS, Ch. 1, App. 2), "The House of Delegates shall be composed of one delegate or alternate from each County of the State, who shall be an active or senior member of the Bar of such County, as certified by the Executive Director at the opening of the annual meeting; providing that each County where the active or senior resident members of the Bar exceed fifty shall be entitled to one additional delegate or alternate for each additional fifty active or senior members or major fraction thereof. In the absence of the elected delegate(s), the alternate(s) shall be certified to vote in the stead of the delegate. In no event shall any County elect more than thirty (30) members to the House of Delegates."

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Competency in Juvenile Delinquency Proceedings

By Mary Sue Backus

INTRODUCTION

As a matter of due process under the 14th Amendment, a criminal defendant has a constitutional right to be competent to stand trial.¹ In fact, at all stages of the criminal justice process, a defendant must be able to understand the proceedings and be capable of consulting with and assisting his lawyer with his defense.² Although the U.S. Supreme Court has held that the Due Process Clause requires that criminal defendants must be competent, the Supreme Court has never addressed whether that competency requirement applies to juvenile proceedings. Left to their own devices on this issue, an overwhelming majority of states have established, either through statute or case law, a right to competence in juvenile proceedings.³ In fact, experts in the field consider the question to be “settled” and cite Oklahoma as the lone exception.⁴

In contrast to the overwhelming majority of states, the Oklahoma Court of Criminal Appeals has found that extending the right of competency to juveniles is neither appropriate nor necessary.⁵ That conclusion was based on the rehabilitative nature of juvenile proceedings and the court’s confidence in the juvenile system’s capacity to consider and accommodate issues of mental health in adjudicating young Oklahomans as delinquent. Over two decades have passed since the court staked out what is now an atypical approach to juvenile competency. It may be time to re-evaluate Oklahoma’s outlier position.

THE RIGHT TO COMPETENCE

The doctrine that a criminal defendant should not be tried while mentally incompetent is

firmly entrenched in English and American legal history with roots dating at least to mid-17th century England. Blackstone, who recognized that a defendant should neither plead nor be tried if mentally defective, wrote that a defendant who became “mad” after the commission of an offense should not be arraigned “because he is not able to plead ... with the advise and caution that he ought,” and should not be tried, for “how can he make his defense?”⁶ In the 19th century, U.S. federal courts adopted these British common law rules virtually intact. Federal courts cited common law authority, for example, to hold that “it is not due process of law to subject an insane person to trial upon an indictment involving liberty or life.”⁷ Early American decisions also echoed Blackstone’s concern about the inability of an incompetent defendant to mount

a defense, framing the question as whether a defendant is able “to properly and intelligently aid his counsel in making a rational defense.”⁸

Thus, the central rationale underlying the right to competency is that the fairness and accuracy of the criminal process require the lucid participation of the accused in his own defense. Incompetent defendants are unable to provide meaningful assistance to their attorney because they may be incapable of discussing strategy, explaining their side of the case, providing the names of witnesses, meaningfully confronting witnesses at trial or rationally testifying on their own behalf. Of course, rationales other than fairness support the right to competency, such as maintaining the dignity and decorum of the criminal justice system by not having incompetent defendants disrupt the proceedings. In addition, several justifications for punishment of offenders are weakened if punishment is inflicted on those who cannot comprehend why they are being punished. There is little in the way of specific deterrence or retribution if a defendant does not understand what is happening to him and why. While these other valid justifications support a right to competency, the primary significance of competence is the key role it plays in ensuring a fair trial.

With its landmark decision in *Dusky v. United States*,⁹ the U.S. Supreme Court crafted a test of incompetence to stand trial that confirmed the key role competence plays in ensuring a fair trial: “[T]he test must be whether [a defendant] has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding — and whether he has a rational as well as factual understanding of the proceedings against him.”¹⁰ Since the standard established in *Dusky*, the court has repeatedly and consistently recognized that the criminal trial of an incompetent defendant violates due process, emphasizing that this basic requirement is the foundation for a host of other rights essential to a fair trial.¹¹ Competence is required to exercise vital trial rights such as effective assistance of counsel, confrontation of witnesses and the right to testify or remain silent without penalty.¹²

In Oklahoma, this fundamental constitutional right is embodied in a general competency statute which mirrors the *Dusky* standard. The statute states: “No person shall be subject to any criminal procedures after the person is determined to be incompetent...”¹³ and defines

incompetence as the “present inability of a person arrested for or charged with a crime to understand the nature of the charges and proceedings brought against him or her and to effectively and rationally assist in his or her defense.”¹⁴

All of the U.S. Supreme Court’s jurisprudence on the right to competency has been in the context of adult criminal defendants. Despite its unequivocal insistence that fairness dictates that incompetent defendant may not be tried, the Supreme Court has never addressed the question of whether juveniles are afforded that same due process right. Likewise, the Oklahoma general competency statute does not explicitly address whether it applies to juveniles. Oklahoma, however, flatly rejected the right to competency in juvenile proceedings in the 1989 case of *G.J.I. v. Oklahoma*.¹⁵

Thirteen-year-old G.J.I. claimed that he was incompetent to aid his defense attorney at his delinquency hearing for attempted second degree rape and that he was entitled to a competency hearing. The Oklahoma Court of Criminal Appeals endorsed the trial court’s view that the state’s general competency statutes simply are not applicable to juvenile proceedings. Despite the fact that G.J.I. had a “demonstrable mental illness,” a low I.Q., suffered from major depression and conduct disorder of adolescence, the court held that it was neither appropriate nor necessary to extend the protections of the competency statutes to his jury trial, where he was found delinquent. The court based its reasoning on the nature of the juvenile proceedings, which they characterized as “specifically not criminal” and “directed toward rehabilitation.” Because G.J.I.’s mental disorders were considered by the court and presumably would be a factor in his disposition plan, the court found the juvenile procedures were “a comprehensive substitute for the competency statutes.”

Oklahoma is the only state to reject explicitly the doctrine of adjudicative competence in juvenile court.¹⁶ Doing something solely because everyone else does it is never a good reason to change course — just ask your mother to review the traditional “if-all-your-friends-jumped-off-a-cliff” lesson! But, as the only state to explicitly reject the right, it is reasonable to re-examine the Oklahoma approach to juvenile competency in the face of the overwhelming consensus of virtually every other state and in

light of the trends impacting the evolution of the modern juvenile system.

THE EVOLVING JUVENILE COURT

The concept of the juvenile court as a separate legal institution is only a little over a century old.¹⁷ First established in Chicago in 1899, the separate juvenile court concept spread rapidly across the United States taking hold in virtually every state by 1925. Based on the notion that juveniles are developmentally different than adults and more amenable to treatment and rehabilitation, juvenile courts embodied a *parens patriae* philosophy. Juvenile courts were to act as a benevolent parent in the best interests of the child and the central tenets guiding the court were protection, treatment and rehabilitation rather than punishment and retribution. Issues of juvenile competency had little relevancy in a system where informal proceedings were designed to take into account a juvenile's immaturity and incompetence and reach a rehabilitative result.

The question of a juvenile competency right has emerged with the modern evolution of juvenile courts. Three significant changes have fueled this evolution and resulted in the increased salience of juvenile competence — the due process revolution, the increasing punitive nature of the system and new scientific research on adolescent brain function and development. It is primarily these changes that have prompted a majority of states to establish a right to competency in juvenile proceedings.

The Juvenile Due Process Revolution

In the 1960s and 70s, the U.S. Supreme Court addressed the concern that the actual performance of juvenile courts was failing to fulfill their original laudable purposes and stepped in to curb perceived shortcomings and abuses of this informal system. Disturbed that "the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children,"¹⁸ the Supreme Court ushered in an era of due process requirements for juveniles. Through a series of decisions, the court transformed the informal, highly discretionary juvenile justice system into a more adversarial, more formalized structure. In perhaps its most famous decision, *In re Gault*, the court questioned the legitimacy and efficacy of the *parens patriae* rationale and noted "that unbridled discretion, however benevo-

lently motivated, is frequently a poor substitute for principle and procedure."¹⁹

Gerald Gault was a 15-year-old boy charged with making an obscene phone call to a female neighbor. He was convicted by an Arizona juvenile court and committed to a juvenile facility for an indeterminate time not to extend beyond his 21st birthday. In finding that young Gault's due process rights had been violated, Justice Fortas writing for the court proclaimed that "it would be extraordinary if our Constitution did not require the procedural regularity and the exercise of care implied in the phrase 'due process.' Under our Constitution, the condition of being a boy does not justify a kangaroo court."²⁰ The due process rights extended to juveniles as a result of the *Gault* decision included written notice of the charges, right to counsel, right against self incrimination and the right to confront and cross examine witnesses. In subsequent cases, the court also established that juveniles must be proven guilty beyond a reasonable doubt²¹ and that juveniles enjoy the protections of the Double Jeopardy Clause.²²

Although the *Gault* decision heralded a due process revolution for juveniles, the U.S. Supreme Court has stopped shy of extending the full panoply of criminal procedural rights to juveniles. The court has rejected, for instance, that the right to trial by jury in juvenile proceedings is constitutionally mandated²³ and has upheld pretrial detention of juveniles prior to a probable cause hearing.²⁴ Convinced that "the Constitution does not mandate elimination of all differences in the treatment of juveniles,"²⁵ the court has recognized that a juvenile proceeding is fundamentally different than an adult criminal trial. Although there is no question that juveniles are entitled to due process protections, the court has sought to balance the informality and flexibility that characterize juvenile proceedings with their mandated constitutional standard that the proceedings be fundamentally fair.²⁶

A More Punitive and Adversarial Juvenile System?

The second dramatic change in the juvenile justice system came as a response to the increase in the rate of violent juvenile crime in the late 1980s and early 1990s. Fueled by public concern over a perceived epidemic of violent juvenile crime,²⁷ all but a few states instituted reforms which tended to treat juveniles more like adults.

Signaling a shift away from traditional notions of individualized dispositions based on the best interests of the juvenile, several states amended their juvenile code purpose statements to replace the goal of rehabilitation with punishment or accountability as the primary goal for the juvenile justice system. By the end of the 1997 legislative session, 17 states had redefined their juvenile court purpose clauses to emphasize public safety, certain sanctions and/or offender accountability.²⁸

More substantive reforms included changes designed to make it easier to prosecute juveniles in adult criminal court, including lowering the age at which a juvenile can be tried as an adult and broadening the range of felonies that can result in adult prosecution. Other common reforms included adding the existence of a prior record as a factor in waiver to adult court, increasing the maximum age beyond the normal age of majority for juvenile commitment, revising traditional confidentiality provisions in favor of more open proceedings and records and including victims of juvenile crime as “active participants” in the juvenile justice process. The result of these changes to the traditional juvenile court jurisdiction has been an erosion of the boundary between the adult and juvenile systems.²⁹

Juvenile Brains Are Different

A third variable prompting more attention to juvenile competency issues is the growing scientific understanding of the differences between adolescent and adult brain function. New research has disproven the long-held assumption that brain development is complete by puberty. Rather, neurologists have found that adolescence is a critical time for brain development, with dramatic changes to the brain’s structure and function. These enormous changes impact the way adolescents process and react to information and, as a result, teenagers are more likely to be short-sighted, have poor impulse control, be driven by emotions and be susceptible to peer pressure. These factors reduce adolescents’ ability to make rational decisions about their actions and contribute to poor decision making.³⁰

“New research has disproven the long-held assumption that brain development is complete by puberty.”

In two recent cases, the U.S. Supreme Court has relied upon, at least in part, this newly understood neuroscientific distinction between adult and adolescent brains to abolish both the juvenile death penalty³¹ and juvenile sentences of life without the possibility of parole for non-homicide crimes.³² The court has acknowledged the growing scientific evidence that young brains are simply not fully mature in their judgment, problem-solving and decision-making capabilities. In finding that the death penalty is not appropriate for youth under age 18 in *Roper v. Simmons*, Justice Anthony Kennedy noted that scientific and sociological studies have confirmed significant differences between adults and juveniles in maturity and responsibility

and other traits.³³ Writing again for the majority in *Graham v. Florida* in striking down juvenile life without parole sentences, Justice Kennedy was even more explicit about scientific findings on adolescent brain development: “[D]evelopments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence.”³⁴

Building on this new scientific understanding of brain development, the MacArthur Juvenile Competence Study³⁵ was the first large scale study to explore how these brain differences affect juvenile competency to stand trial. Its conclusions are startling. The results strongly suggest that about one-third of 11-13 year olds and one-fifth of 14-15 year-olds probably are not competent to stand trial. The study found that many adolescents lack the capacities needed to be a competent defendant, exhibiting significant deficits in knowledge and understanding of the judicial process, an inability to put facts together and draw logical conclusions and are less able than adults to think about the consequences of their decisions. In matters related to trial understanding and reasoning about important information, 30 percent of 11-13 year olds and 19 percent of 14-15 year olds performed at the level of mentally ill adults who have been found not competent to stand trial.³⁶ Thus, even setting aside the more traditional issues of juvenile mental illness and mental retardation, which current

research also suggests are likely significant and undoubtedly affect competence,³⁷ policymakers and state legislators must grapple with developmental immaturity as a relevant factor for assessing juvenile competence.

WHAT ABOUT OKLAHOMA?

The trends shaping the modern juvenile justice system — the expansion of juvenile due process rights, the punitive juvenile justice reforms and the growing understanding of the unique features of the adolescent brain — have propelled other states to acknowledge a right of competency in juvenile proceedings. In the 22 years since the Oklahoma Court of Criminal Appeals rejected that right as unnecessary, have those trends changed the landscape of juvenile justice in Oklahoma enough to warrant a second look at our outlier position on juvenile competency? The answer is not a simple one, but the discussion is worth having.

Oklahoma has not been immune to the trends sweeping the juvenile justice system and propelling the near universal move toward a right to juvenile competency across the nation. Questions remain, however, on whether their impact reaffirms or undermines Oklahoma's refusal to recognize the right. First, the latest scientific research on adolescent brain development actually reconfirms the core rationale for a separate juvenile system, specifically that children and young adults are developmentally different than adults and should be treated so under the law. Hard science now reaffirms the historic justification for juvenile rehabilitation over punishment as the focus of juvenile dispositions. The highly elastic and malleable adolescent brain may leave teenagers more vulnerable to negative influences and compromise rational decision making, but it also provides a window of opportunity where appropriate guidance and support will help them become responsible members of society. If the Oklahoma juvenile system has truly remained rehabilitative rather than become punitive like the adult criminal system, the MacArthur Study findings may be irrelevant. The MacArthur conclusion that a significant number of juveniles are likely incompetent to participate in their own trials (either in an adult or juvenile court) because of developmental immaturity, does not invalidate a system that takes into account a juvenile's immaturity and incompetence and constructs an individualized plan to reach a rehabilitative result. The relevance of these findings on juvenile competence, then,

turns on how much Oklahoma juvenile proceedings resemble a criminal trial and impose adult-like consequences.

The juvenile due process expansion transformed juvenile proceedings in Oklahoma just as it did across the nation. The rights flowing from *Gault* and its progeny are fundamental constitutional rights protected by both the federal constitution and the Oklahoma state constitution and recognized by our state and federal courts at all levels.³⁸ In fact, Oklahoma has not only upheld and endorsed the due process protections recognized by the U.S. Supreme Court, but has expanded those rights to include a right to trial by jury.³⁹

Although due process is a flexible concept which "calls for such procedural protections as the particular situations demands"⁴⁰ the U.S. Supreme Court has endorsed "fundamental fairness" as the applicable due process standard for juvenile proceedings.⁴¹ The due process rights accorded juveniles from *Gault* — notice, right to counsel, right against self incrimination, right to confront witnesses — are thus fundamental to a fair proceeding. In the context of adult criminal trials, the U.S. Supreme Court has made clear that competence is required to exercise the very rights that are fundamental to a fair juvenile proceeding:

Competence to stand trial is rudimentary, for upon it depends the main part of those rights deemed essential to a fair trial, including the right to effective assistance of counsel, the rights to summon, to confront, and to cross-examine witnesses, and the right to testify on one's own behalf or to remain silent without penalty for doing so.⁴²

If competence is a prerequisite to exercising essential adult trial rights, is competence also a prerequisite to exercising those same rights in a juvenile proceeding? In other words, are the due process rights from *Gault* meaningless without competency? Like the question raised by the scientific findings on juvenile competency, the answer to that question may also depend on how much a juvenile proceeding resembles an adult criminal trial and imposes adult-like consequences.

As discussed above, whether juvenile brain science discoveries and expanded due process rights mandate a right to competency for juveniles in Oklahoma is dependent in part upon the extent to which the punitive trend of juvenile justice reforms has impacted the nature of

juvenile proceedings in the state and overshadowed the rehabilitative model. Consistent with the more punitive trend, Oklahoma has crafted policies that subject more juveniles to adult proceedings and sanctions, where competency issues are undeniably relevant and only partially addressed. For youth who remain subject to a traditional juvenile adjudication, where dispositions still result in an individualized treatment plan geared to the best interest of the child,⁴³ competency issues arise less from the proceeding and disposition itself and more from the consequences of being adjudicated delinquent.

When a child under 18 years old commits a crime in Oklahoma, the state can treat that individual in three different ways depending on the age of the child and the seriousness of the offense. Although the default standard for a child under the age of 18 is juvenile adjudication,⁴⁴ Oklahoma's Juvenile Code also provides for prosecuting and sentencing children as adults or as youthful offenders, a status designed to avail the juvenile of the rehabilitative services of the juvenile system, but where an adult sentence is possible.

In theory, a child of any age who is charged with an act which would be a felony if committed by an adult may be certified as an adult and treated as an adult in every way by the criminal justice system, including being incarcerated with adults upon conviction.⁴⁵ More specific provisions of the Juvenile Code require that children as young as 13 who are charged with first degree murder may be treated as adults, based on court certification, and youths who are 15-17 years old charged with first degree murder must be treated as adults. In addition, under the Youthful Offender Act, juveniles are subject to adult sentences through a certification process or if the juvenile fails to comply with the treatment plan ordered by the court or engages in other prohibited behavior. The Youthful Offender Act, which elevates public safety and accountability over rehabilitation in dealing with juveniles who commit more serious crimes,⁴⁶ is applicable to juveniles 15-17 years old who are charged with a statutory list of serious felonies. In addition, Oklahoma has an once-an-adult-always-an-adult provision such that once a child has been certified to stand trial as an adult or for the imposition of an adult sentence, that child will always be treated as an adult and will not be subject to juvenile court jurisdiction for any future proceedings.⁴⁷

These provisions reflect the national trend of a more punitive juvenile system and raise questions of juvenile competency to stand trial. Of course, once a juvenile is certified to stand trial as an adult or as a youthful offender, the child has all the statutory and constitutional rights and protections of an adult accused of a crime,⁴⁸ including the right to competency. What remains uncertain in Oklahoma is whether a juvenile's developmental immaturity and resulting lack of capacity to assist effectively in her defense would render her incompetent to stand trial under the *Dusky* standard or the state competency statute. Given the conclusions of the MacArthur Study, the question is worth an answer.

The certification process itself — where a court determines whether a child will be tried as an adult or a youthful offender or subject to an adult sentence — raises a more troubling competency concern. The consequences of being certified as an adult or a youthful offender and subject to an adult sentence are obviously significant and potentially severe. Nevertheless, a child has no right to be competent to participate in the certification process that may ultimately result in an adult criminal trial or sentence. The decisions that juveniles have to make with their attorney in a certification hearing are no less complex than in a criminal trial and certainly require that the juvenile be able to effectively and rationally assist their attorney. If the central rationale that animates the right to competency is fairness, is it fair to certify a juvenile to the adult court if she is incompetent to provide assistance to her attorney in the hearing that makes that determination?

It is true that the court is bound to consider something akin to competency in making the certification decision itself even though the juvenile need not be competent to participate in the certification hearing. Among the statutory factors that the court is required to consider in order to certify a juvenile as an adult⁴⁹ or youthful offender,⁵⁰ or impose an adult sentence⁵¹ is an assessment of the sophistication and maturity of the accused and their capability of distinguishing right from wrong. Typically, the court has the benefit of a psychological evaluation as part of the investigation that accompanies such a motion, but that does not address the problem of a juvenile being competent enough to assist counsel in the hearing

itself, which could lead to a significant deprivation of liberty.

Children who remain in the juvenile system and are not subject to adult courts nevertheless are subject to an increasingly punitive system. While the system remains individualized and focused on rehabilitation at its heart, juvenile adjudications increasingly resemble criminal convictions because of their serious consequences, both direct and collateral. At the outset, a juvenile adjudication can result in a loss of liberty: the juvenile can be made a ward of the state, be placed on probation, be required to undergo counseling, be removed from home and placed in the custody of a private institution or group home, or placed in the custody of the Office of Juvenile Affairs for an indeterminate period of time.⁵² As the U.S. Supreme Court recognized in *Gault*: “A proceeding where the issue is whether the child will be found to be ‘delinquent’ and subjected to the loss of his liberty for years is comparable in seriousness to a felony prosecution.”⁵³ Even rehabilitation sanctions can involve a major loss of a child’s liberty.

A juvenile’s loss of liberty may be an incidental cost of a rehabilitative disposition, but other serious ramifications of a delinquency adjudication resemble a criminal conviction and may be motivated more by punishment (and perhaps public safety) than rehabilitation. For instance, juvenile adjudications are predicates for the filing of adult felony charges,⁵⁴ are used in certification determinations for youthful offender⁵⁵ and adult⁵⁶ status, may require registration as a juvenile sex offender,⁵⁷ or possible transfer from the juvenile sex offender registry to the adult sex offender registry.⁵⁸ Juvenile records are no longer as private as they once were⁵⁹ and may be used to enhance future adult sentences.⁶⁰ These serious consequences are generally unrelated to the rehabilitative function of the juvenile process and thus raise issues of competency.

CONCLUSION

The U.S. Supreme Court has held that the right to be competent to stand trial is a fundamental right essential to fairness and due process about which there is no question.⁶¹ The significance of the right is the key role it plays in ensuring a fair trial. The shifting landscape of the juvenile justice system raises a number of questions about juvenile competency that warrant the attention of the Oklahoma courts

and Legislature. What role should developmental immaturity play in assessing the competence of a child facing trial in the adult criminal court? Should competency be a requirement for the certification process itself? Should juveniles be entitled to be competent when facing a juvenile adjudication that carries significant punitive consequences? As the only state to explicitly reject the right, it is reasonable to re-examine the Oklahoma approach to juvenile competency in the face of the overwhelming consensus of virtually every other state, in light of emerging scientific understanding of adolescent brain function and the increasing severity of consequences of juvenile adjudications.

Joining the rest of the states in guaranteeing a right to competency in juvenile proceedings would not, however, answer all the questions and uncertainties surrounding the right. Establishing the right would raise even tougher questions of the appropriate standards for competency, procedures for restoration to competency, and the appropriate disposition for unrestorably incompetent juveniles. Despite agreement on the fundamental right itself, states vary widely in their answers to these difficult questions of implementation. However, these questions lie at the heart of our juvenile justice system and warrant the thoughtful, informed, consideration of the Oklahoma courts, Legislature and legal community.

1. *Pate v. Robinson*, 383 U.S. 375, 378 (1966).

2. *Dusky v. United States*, 362 U.S. 402 (1960).

3. Elizabeth S. Scott & Thomas Grisso, “Developmental Incompetence, Due Process and Juvenile Justice Policy,” 83 N.C. L. REV. 793, 801 (2004-2005).

4. *Id.* at 833-34. See also, Ivan Kruh and Thomas Grisso, “Evaluation of Juveniles’ Competence to Stand Trial,” *Oxford University Press* 19 (2009) (“it is now a ‘virtually inescapable conclusion’ that CST [competence to stand trial] is required in juvenile court”).

5. *G.J.I. v. State*, 1989 OK CR 45.

6. 4 W. Blackstone, *Commentaries* 24 (9th ed. 1783).

7. *Youtsey v. United States*, 97 F. 937 (6th Cir. 1899).

8. *United States v. Chisolm*, 149 F. 284, 286 (C.C.D. Ala. 1906).

9. 362 U.S. 402 (1960).

10. *Id.* at 402.

11. *Cooper v. Okla.*, 517 U.S. 348, 354 (1996) (internal citations omitted).

12. *Id.*

13. OKLA STAT. TIT. 22, §1175.2(A).

14. OKLA STAT. TIT. 22, §1175.1(2).

15. 1989 OK CR 45.

16. Richard E. Redding & Lynda E. Frost, “Adjudicative Competence in the Modern Juvenile Court,” 9 Va. J. Soc. Pol’y & L. 353, 372 (2001).

17. For a general description of the history of juvenile courts in the United States, see “A Celebration or a Wake? The Juvenile Court After 100 Years,” *Coalition for Juvenile Justice Annual Report* (1998).

18. *Kent v. United States*, 383 U.S. 541, 556 (1966).

19. *In re Gault*, 387 U.S. 1 (1967).

20. *Id.* at 27-28.

21. *In re Winship*, 397 U.S. 385 (1970).

22. *Breed v. Jones*, 421 U.S. 519 (1975).

23. *McKeiver v. Pennsylvania*, 403 U.S. 528 (1971). Interestingly, Oklahoma has extended the right to a jury trial in juvenile adjudications by statute. See OKLA STAT. TIT. 10A, §2-2-401.

24. *Schall v. Martin*, 467 U.S. 253, 256-257 (1984).

25. *Id.* at 263.

26. *Id.*

27. Although there was a spike in violent juvenile crime in the early 1990s, the juvenile crime rate actually peaked in 1993 and declined during the second half of that decade. Public alarm, and the resulting legislative reaction, was stimulated at least in part by the excessive hype of the media. See Elizabeth S. Scott and Laurence Steinberg, "Blaming Youth," 81 *Tex. L. Rev.* 799, 807-808 (2003); see also, "False Images? The News Media and Juvenile Crime," *Coalition for Juvenile Justice Annual Report* (1997).

28. Torbet, P., & Szymanski, L., "State Legislative Responses to Violent Juvenile Crime: 1996-97 Update," Office of Juvenile Justice and Delinquency Prevention (1998).

29. For a comprehensive analysis of the trends in the states' response to the escalating serious crime by juveniles in the 1990s see Torbet, P., Gable, R., Hurst, H., Montgomery, I., Szymanski, L., & Thomas, D., "State Responses to Serious and Violent Juvenile Crime," U.S. Department of Justice, Office of Juvenile Justice & Delinquency Prevention (1996).

30. For a summary of the scientific research on adolescent brain development and possible implications for the juvenile justice system, see "Putting The Juvenile Back In Juvenile Justice," *Action for Children North Carolina*, December 2007, found at www.ncchild.org/sites/default/files/Juvenile_Justice_Raising_The_Age_Brief_final.pdf.

31. *Roper v. Simmons*, 543 U.S. 551 (2005).

32. *Graham v. Florida*, 120 S.Ct. 2011 (2010).

33. *Roper v. Simmons*, 543 U.S. 551, 569 (2005).

34. *Graham*, 130 S.Ct. at 2026 (citing Brief for the American Medical Ass'n & the American Academy of Child & Adolescent Psychiatry as Amici Curiae Supporting Neither Party).

35. Thomas Grisso, Lawrence Steinberg, Jennifer Woolard, Elizabeth Cuffman, Elizabeth Scott, Sandra Graham, Fran Lexcen, N. Dick-on Repucci & Robert Schwartz, "Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants," 27 *Law & Hum. Behav.* (2003) [hereinafter MacArthur Study].

36. For a summary of the MacArthur Juvenile Competence Study, see Laurence Steinberg, "Juveniles on Trial MacArthur Foundation Study Calls Competency into Question," *Criminal Justice Magazine*, Fall 2003, Vol. No. 3.

37. See David R. Katner, "The Mental Health Paradigm and the MacArthur Study: Emerging Issues Challenging the Competence of Juveniles in Delinquency Systems," 32 *Am. J. L. and Med.* 503, 508-519 (2006).

38. For Oklahoma state cases and statutes recognizing the rights established in *Gault*, see for example, *Crandell v. State*, 539 P.2d 398, 401 (1975 OK CR 127) and OKLA STAT. TIT. 10A, §2-2-107 (notice of charges); *J.T.P. v State*, 544 P.2d 1270 (Okla. Crim. App. 1975) and OKLA STAT. TIT. 10A, §2-2-301(A)(C) (right to counsel); *J.T.P. v State*, 544 P.2d 1270, 1276 (Okla. Crim. App. 1975) and OKLA STAT. TIT. 10A, §2-2-402(B)

(right against self incrimination); and *D.M.H. v State* 136 P.3d 1054, 1055 (Okla. Crim. App. 2006) and OKLA STAT. TIT. 10A, §2-2-402(C) (right to confrontation and cross examination); *In re J.E.S.*, 585 P.2d 382, 383 (Okla. Crim. App. 1978) (right to beyond a reasonable doubt standard); and, *D.M.H. v. State*, 136 P.3d 1054, 1055 (Okla. Crim. App. 2006) and OKLA STAT. TIT. 10A, §2-2-401 (right to a trial).

39. See OKLA STAT. TIT. 10A, §2-2-401.

40. *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976).

41. *McKeiver v. Pa.*, 403 U.S. 528, 543 (1971).

42. *Drope v. Missouri*, 420 U.S. 162, 171-172 (1975).

43. OKLA STAT. TIT. 10A, §2-5-501-504.

44. OKLA STAT. TIT. 10A, §2-5-203(A).

45. OKLA STAT. TIT. 10A, §2-5-204(F).

46. OKLA STAT. TIT. 10A, §2-5-202(B).

47. OKLA STAT. TIT. 10A, §2-5-204(G).

48. OKLA STAT. TIT. 10A, §2-5-204(C).

49. OKLA STAT. TIT. 10A, §2-2-403(A)(3).

50. OKLA STAT. TIT. 10A, §2-5-205(E)(4).

51. OKLA STAT. TIT. 10A, §2-5-208(C)(2)(d).

52. OKLA STAT. TIT. 10A, §2-2-503.

53. *In re Gault*, 387 U.S. 1, 36 (1967).

54. Possession of a Firearm after Former Adjudication, OKLA STAT. TIT. 21, §1283(D).

55. OKLA STAT. TIT. 10A, §2-5-101.

56. OKLA STAT. TIT. 10A, §2-2-403.

57. OKLA STAT. TIT. 10A, §§2-8-102 to 2-8-107.

58. OKLA STAT. TIT. 10A, §2-8-108.

59. OKLA STAT. TIT. 10A, §2-6-108.


60. 18 USCS Appx §4A 1.2.

61. *Cooper v. Oklahoma*, 517 U.S. 348, 354 (1996).

ABOUT THE AUTHOR



Mary Sue Backus is a professor of law at the University of Oklahoma College of Law. She teaches criminal law, evidence and education law. She serves on the OBA Civil Procedure and Evidence Code Committee and the Court of Criminal Appeals Committee for Uniform Jury Instructions.



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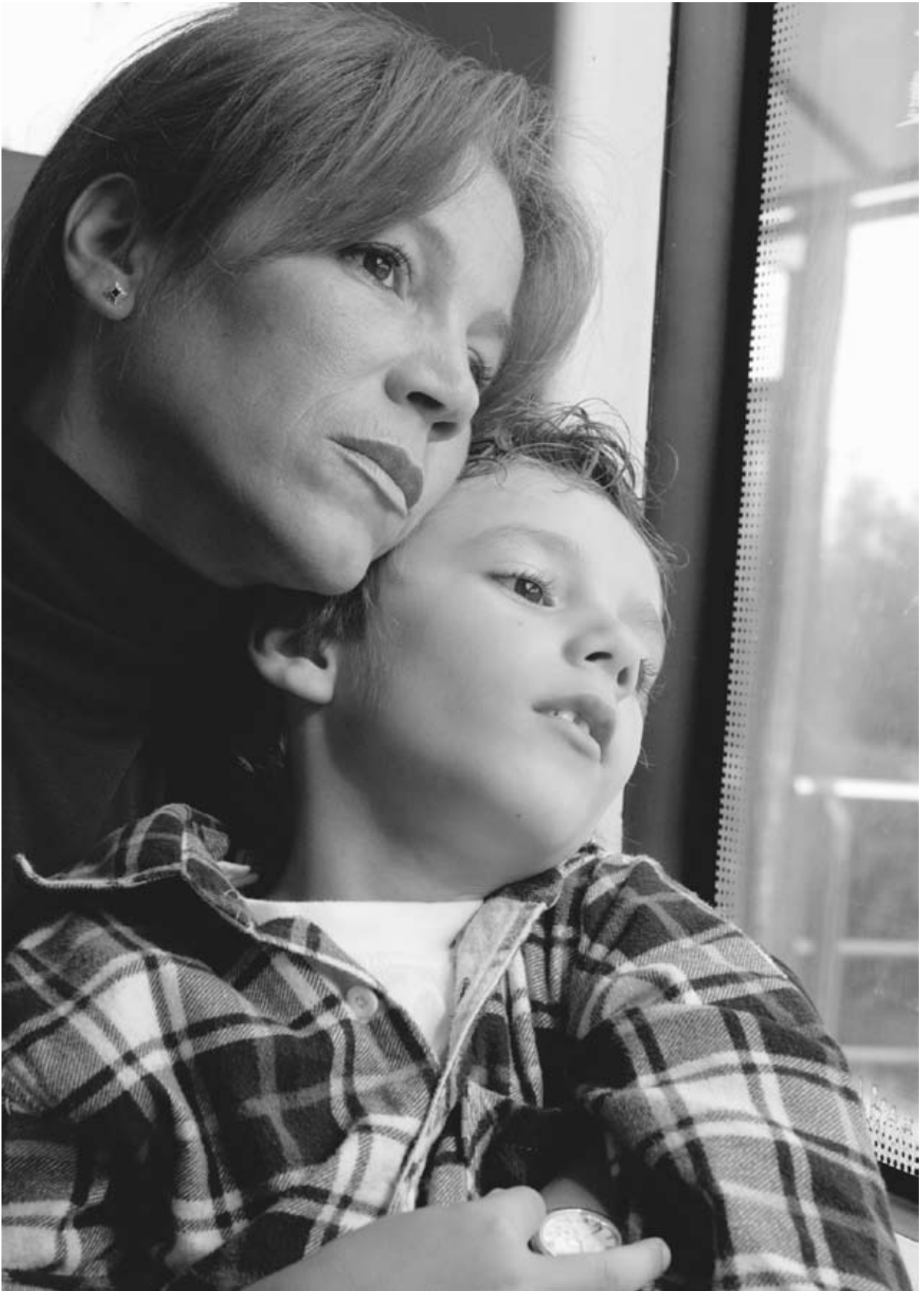
*Oklahoma Bar Association
Energy & Natural Resources
Law Section*

Friday, Sept. 23, 2011, 8:30 a.m. to 4 p.m.
Perkins Auditorium, Schusterman Learning Center, Schusterman Center,
University of Oklahoma – Tulsa, 4502 East 41st Street, Tulsa, Oklahoma

AGENDA

- 8:00 – 8:30 Registration in the Perkins Auditorium
- 8:30 – 8:45 ***Welcome***
The Honorable Dana Murphy, Chair, Corporation Commission; The Honorable Jeff Cloud, Vice Chair, Corporation Commission; The Honorable Bob Anthony, Commissioner, Corporation Commission; L. Vance Brown, Attorney at Law, Chair, OBA Energy & Natural Resources Law Section
- 8:45 – 9:45 ***The Shale Reservoir Development Act of 2011 (HB 1909)***
Moderator: The Honorable Dana Murphy, Chair, Corporation Commission; Panel: John R. Reeves, Attorney at Law; Terry Stowers, Attorney at Law & National Association of Royalty Owners; Loyd Tinsley, Senior Land Advisor, Devon Energy Production Corp.; Mark Fisher, Southern Region Land Manager, Continental Resources Inc.
- 9:45 – 10:00 Mid-Morning Break
- 10:00 – 10:30 ***Mock OCC Hearing – Multi-unit Horizontal Well Application***
David E. Pepper, Attorney at Law; Staff from Continental Resources Inc.; ALJ Paul Porter, Senior ALJ, Oklahoma City; and OCC Staff
- 10:30 – 11:30 ***Update on Environmental Issues – Hydraulic Fracturing, Earthquake Clusters, OCC Rulemaking and Other Current Developments***
Moderator: Lori Wrotenbery, Director, Oil & Gas Conservation Division; Panel: Angela Burckhalter, Vice President, Regulatory Affairs, Oklahoma Independent Petroleum Association; Austin Holland, Seismologist, Oklahoma Geological Survey; Dr. Mark Layne, Vice President, ALL Consulting; Kevin Fisher, General Manager, Pinnacle, a Halliburton Service
- 11:30 – 12:30 Catered Lunch in Founders Hall
- 12:30 – 1:30 ***Ethics Discussion – Putting Your Best Foot Forward in Presenting Orders and Appearing Before the Commissioners En Banc***
Moderator: The Honorable Jeff Cloud, Vice Chair, Corporation Commission; Panel: Andrew Tevington, General Counsel, Jim Hamilton, Deliberating Counsel for Oil and Gas and Assistant General Counsel, Office of General Counsel; William H. Huffman, Attorney at Law; Richard A. Grimes, Attorney at Law
- 1:30 – 2:30 ***Where Does the OCC’s Jurisdiction Begin and End? – Current Issues Impacting Mineral Owners, Surface Owners, Petroleum Land Managers and Operators***
Moderator: Michael D. Stack, Attorney at Law; Panel: Ronald M. Barnes, Attorney at Law; H.W. “Dub” Peace, National Association of Royalty Owners; Hamel Reinmiller, Petroleum Land Manager, Eagle Rock Mid-Continent Asset LLC.; Eric R. King, Attorney at Law
- 2:30 – 2:45 Mid-Afternoon Break
- 2:45 – 3:45 ***Review and Comment – Current Issues Impacting the OCC’s Oil and Gas Conservation Adjudication Process***
Moderator: ALJ Michael Decker, Director, Office of Administrative Proceedings; ALJ Panel: ALJ Patricia MacGuigan, Oil & Gas Appellate Referee; Deputy ALJ Curtis Johnson, Tulsa; Senior ALJ Kathy McKeown, Tulsa; Deputy ALJ David Leavitt, Oklahoma City; Attorney Panel: Charles L. Helm, Attorney at Law; Richard K. Books, Attorney at Law; J. Fred Gist, Attorney at Law
- 3:45 – 4:00 ***Evaluation and Acknowledgements***
ALJ Michael Decker

Please find the registration form online at www.occeweb.com - “Hot Topics” menu. Send completed registration form and check: c/o Ms. Snooks Campbell, Office of Administrative Proceedings, Oklahoma Corporation Commission, P.O. Box 52000, Oklahoma City, OK 73152-2000, Telephone: (405) 521-2756, Facsimile: (405) 522-6397, s.campbell@occemail.com. Seating is limited, so register promptly; telephone if you fail to receive confirmation email in response to registration. Fee: \$75 (pre-registration by COB Wednesday, Sept. 21, 2011) \$85 (registration at the door). Please make checks payable to: Oklahoma Corporation Commission, 2011 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. An application is pending for continuing education credits through the American Association of Petroleum Landmanagers (AAPL).* Please visit the Oklahoma Corporation Commission’s information booth in the lobby for demonstrations of the commission’s 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. Additional inquiries to: ALJ Michael Decker, OAP Director (405) 521-2241, m.decker@occemail.com.



‘Child Preference’ When, How and Why it Should be Considered

By Noel K. Tucker

Parents, courts and family law attorneys struggle with understanding the impact of custody litigation on children. There is little question that some emotional trauma and imbalance in a child’s life are natural byproducts of their parents’ custody and visitation litigation. Even when a divorce is amicable and the impact on the child(ren) is lessened with focused attention on the child(ren)’s best interest, the impact of divorce on a child can be lessened by amicable negotiations. However, a child will likely experience a major adjustment to his or her understanding of family, security and stability and may affect a child’s perspectives and perceptions through childhood and likely throughout life. There is no disputing this fact, just the severity of the impact.¹ The emotional toll on children is magnified when the parents choose to use the children as pawns in their legal battleground. When parents attempt to influence a child to support their side of the battle through manipulation or direct sabotage of the other parent’s relationship, the effect on the child’s emotional trauma is obviously accentuated. One way a parent compounds this effect is by encouraging or demanding that the child express his or her custody and or visitation preference directly to the judge or a guardian *ad litem* appointed to represent the child’s best interest in the litigation.

Children are impacted even without parental influence when the child forms his or her own independent opinion and desires to have his or her voice heard regarding his or her custodial or visitation preference. This is true even if there is no influence or coaching by either parent. Whether a child expresses a custodial and/or visitation preference to a judge as a result of either of these avenues or something in-between, the court must make every effort to protect the emotional toll that choosing one parent over another takes on a child.

HISTORICAL DEVELOPMENT OF CHILD PREFERENCE

Oklahoma has a long history of allowing a child of sufficient age to express an intelligent preference for his or her custody placement.² Oklahoma has had a procedural statute on a child’s custodial and/or visitation preference testimony since 1975.³ Although limited to divorce actions, the 1975 statutory framework allowed the court to consider a child’s custodial preference. The child preference provisions were

moved out of Title 12, the procedure code and codified in Title 43 with marriage and divorce in 1989. This recodification also expanded the court's discretion to include consideration of a child's custodial preference in legal separation or annulment actions.⁴ It would not be until 2002 until another statutory revision would occur.

The 1989 recodification of the statute allowed the court to determine whether the best interest of the child would be served by allowing the child to express a preference as to his or her custody or limits of or periods of visitation. The court was not required to follow the preference of the child but was specifically instructed to take other facts into consideration.⁵

The second paragraph of the 1989 statute revision instructed how the child's preference was to be received. The child's preference or testimony was to be taken by the court in chambers. Whether or not the parents were present was left to the discretion of the court. However, if the attorneys were excluded, the court was required to state for the record the court's reasons for the exclusion. Further, if either party requested the child's preference or testimony be recorded, the court was required to accommodate the request.⁶

The Oklahoma Legislature made significant changes to the child preference statute in 2002, which is our current statutory framework until Nov. 1, 2011.⁷ These revisions were not likely driven by case law due to the fact there were only a couple of cases citing the previous preference statute, *Nazworth v. Nazworth*, 1996 OK Civ App 134, 931 P.2d 86 and *In re Adoption of M.C.D.* 2002 OK Civ App 27, 42 P.3d 873.⁸ Neither case raised issues presented in the 2002 legislation which established three primary objectives:

1. the court shall determine whether it is in the child's best interest to express a preference;
2. if the child is of sufficient age to form an intelligent preference and, if so, the court shall consider the child's expression of preference but shall not be bound by it; and,
3. established a rebuttable presumption that a child who is 12 years of age or older is of sufficient age to form an intelligent preference.⁹

CHILD PREFERENCE APPLICATION AND STANDARDS

The idea that a child of sufficient age can form a well-thought-out, intelligent preference was the subject of the *Nazworth v. Nazworth*, 1996 OK Civ App 134, 931 P.2d 86, decision. In *Nazworth*, father sought a change of custody of the parties 13-year-old son based upon the child's expression of desire to live with father. Since the request for change of custody was based solely on preference, the trial court granted mother's directed verdict that no "substantial, material and permanent" change of condition existed to warrant a change in custody. The COCA reversed the trial court stating that the child's best interest must be served by a "serious consideration" of the child's preference and the reason for it. ¶6 Based on that holding, *Nazworth* is most commonly cited for the proposition that a well-thought-out and intelligent preference by a child is sufficient by itself to change custody from one parent to another.¹⁰ See also *Nelson v. Nelson*, 2004 OK Civ App 6, 83 P.3d 911.

Two years after the *Nazworth* decision, the case of *Coget v. Coget*, 1998 OK Civ App 164, 966 P.2d 816 ruled a child's preference does not have to be followed if the child's preference is not well-thought-out and intelligent. [emphasis added] *i.e.*, if not well-thought-out and intelligent it will be an insufficient ground for a change in custody. In *Coget*, father obtained a change of custody of the parties 9-year-old daughter based on her preference and that mother was living with a paramour. However, father could not show mother's living arrangement was permanent and adversely affected the child as required by *Gibbons*. Further, it appears the child's preference was testified to by father of the child and not obtained by court interview. Note the child was under the age of rebuttable presumption that she was of sufficient age to form an intelligent preference.¹¹ In *Nazworth*, the appellate court reasoned that where a change in custody is sought because a child has asked for the change, the child's interests are best served by "serious consideration" of the preference and the reasons for it. Therefore, an in-depth judicial assessment of the current custodial arrangement should be made. *Id.* at ¶6. Obviously, in conjunction with the statute, the appellate court believed the expressed interest of the 13-year-old child in *Nazworth* had evidentiary significance to the best interest determination, but not the nine-

year-old in *Coget*. This appears to be where the courts start considering at what age a child's preference can be intelligently sufficient to merit judicial consideration. However, as noted above, the rebuttable presumption that a child who is 12 years of age or older was of sufficient age to form an intelligent preference was not codified until June 4, 2002.¹²

It should be noted the decisions discussed above all involved initial custody or custody modification determinations that would normally require a *Gibbons* analysis.¹³ These decisions seem to have established another standard for modification based on preference, *i.e.*, a child of sufficient age who formulates an intelligent, well-thought-out custodial or visitation preference is a sufficient change in circumstances that satisfies the *Gibbons* analysis.¹⁴ These cases did not address the issue of breaking a joint custody plan via a child's preference. It was not until the 2004 case of *Eimen v. Eimen*, 2006 OK Civ App 23, 131 P.3d 148, that the analysis was applied to a joint custody arrangement... sort of. The moving party did not seek to break the joint custody plan. In *Eimen*, the parties were in a joint custody plan, and father moved to change the equal time share to him having the primary physical custody of the children. Neither party requested to break the joint custody plan, and the trial court ruled that the *Gibbons* test was **not** satisfied and denied father's motion. The appellate court reversed citing *Nazworth* and *Nelson*, *supra*, in that when a change in custody is sought because a child has asked for the change, then the child's interests are best served by a serious consideration of the child's preference. *Id.* at ¶14. Further, it found that the children's stated reasons were not unfounded, juvenile or lacking in merit. *Id.* at ¶15. The appellate court ruled applying the "change of circumstances" test was error and remanded to apply a best interest determination.

The same result was reached in *Hogue v. Hogue*, 2008 OK Civ App 63, 190 P.3d 1177. Although not a change of physical custody within a joint custody plan, the husband moved to gain custody of the daughter from a split custody arrangement. The daughter was 15 and expressed a well-reasoned position for her desire to live with her father. *Id.* at ¶18.

As is the case with many Oklahoma Court of Civil Appeals (COCA) decisions, opinions differ from one division to another. Child preference is no exception. The Oklahoma City

Division III COCA decision of *Buffalo v. Buffalo*, 2009 OK Civ App 44, 211 P.3d 923 somewhat contradicts the *Nelson* Division IV and *Nazworth* Division I decisions. *Buffalo* held "the child's preference does not allow the court to bypass the obstacles articulated in *Gibbons* but that the child's preference and the reasons underlying it can be considered and evaluated to determine if the *Gibbons* requirements have been met." In *Buffalo*, father moved the court to modify custody of the minor child from mother to himself. He plead a long list of allegations including, but not limited to, school performance, multiple moves, physical abuse by a sibling and the child's preference. *Id.* at ¶9. The court interviewed the 10-year-old child in chambers, who specifically stated a preference to live with father. The court ruled that father's evidence, "aside from the testimony of the minor child," did not support a permanent, substantial and material change of circumstances. ¶3. However, the trial court, citing *Nelson*, changed custody based upon the child's preference along with the child's dislike of his sister. On appeal, the COCA reversed stating preference alone is not sufficient to satisfy the *Gibbons* requirement of a material, substantial and permanent change of circumstances, affecting the child's welfare to a material extent and a showing that the child's overall welfare would improve in order to remove the child from the custodial parent. ¶18.

So how do we reconcile *Buffalo*? This COCA Division III decision did not specifically overturn the prior preference decisions of *Nazworth*, *Hogue* and *Nelson*. It could be argued that the *Buffalo* decision simply explains how the child's well-reasoned preference is required to trigger the *Gibbons* standard. In *Buffalo*, the appellate court specifically stated that the child's testimony and preference was not sufficiently articulated to form an "intelligent preference." *Id.* at ¶23. The child's expressions were inconsistent and not a product of a long, thought-provoking analysis. He simply preferred to live with father and did not like his sibling. *Id.* at ¶21.

With the exception of the 2009 Division III opinion of *Buffalo*, the decisions seem to repeat the mantra that a child's preference is a sufficient enough basis to change custody and satisfies a *Gibbons* analysis. With these decisions in place instructing when the court shall consider a child's well-thought-out preference, now the question should be asked, "what is a well-thought-out intelligent expression of prefer-

ence by a child?" Unfortunately, the decisions provide little guidance as to the specifics needed to answer this question. Perhaps the trial court is left in a position akin to Justice Potter Stewart's description of the threshold test for pornography, being "I know it when I see it."¹⁵

We can look at *Nazworth* and the prodigy of child preference cases that follow in an attempt to answer the question of what is a well-thought-out, intelligent expression of preference. *Nazworth* actually gives little to no guidance because the lack of the child's interview was the reason the decision was reversed. In *Nelson*, the court even considered the preference of a 7-year-old. However, the 12-year-old sibling expressed "an intelligent determination" supporting his reasons for his preference and included his desire not to be separated from his younger brother with whom he shared a strong bond. The younger brother acknowledged the strong bond with his older brother and his preference not to be separated. The court cited *Nazworth* stating that "where the preference is explained by the child and good reasons for the preference are disclosed, the preference and supporting reasons will justify the change of custody. *Id.* at ¶2.

In *Eimen v. Eimen*, 2006 OK Civ App 23, 131 P.3d 148, the appellate court reasserted that a child's preference was a sufficient circumstance enough to warrant a change of custody to the father. The children's interview revealed that they did not want to continue to shift back and forth between both houses; that they had more privacy and comfort at father's home because they did not have to share a bedroom, they were more familiar with father's home because that is where they had always lived; father worked close so it was convenient for him to come home for lunch and facilitate extracurricular activities. *Id.* at ¶s 4, 5.

Then in *Hogue v. Hogue*, 2008 OK Civ App 63, 190 P.3d 1177, the appellate court upheld the trial court's decision to change custody out of a split custody arrangement based solely on the child's preference, now that the child was of sufficient age to express a preference. Mother was awarded sole custody of two children in the divorce. Father subsequently sought and was granted custody of the oldest child. Later, father moved for a change of custody of the remaining child in mother's custody based upon the child's preference. The court again said that a child's preference was sufficient grounds for a change in circumstances and

granted the change of custody based upon the child's expression of preference to live with father because the child did not get along with his mother. There was also testimony that mother did not foster a good father-son relationship. *Id.* at ¶2. Hogue did cite the 1960 case of *Davis v. Davis*, 1960 OK 196, 355 P.2d 572, for the converse position that the whims, wants and desires of a minor child are not the criteria for determining which parent should be granted custody of a minor. *Id.* at ¶7.

Foshee v. Foshee, 2010 OK 85,¹⁶ was not only the first joint custody plan that considered preference, but it was also the first case decided after the *Ynclan v. Woodward*, 2010 OK 29, decision that provided specific direction to the court regarding obtaining child preference testimony. In *Foshee*, the parties entered an agreed joint custody plan to which mother filed a motion to break the plan nine months later stating the parties could not work together. The trial court interviewed all three children of which two preferred to stay in the joint custody plan and one preferred to live primarily with father. The trial court ruled to break the joint custody plan and grant custody to mom due to ongoing conflict between the parties and father's anger management issues. The COCA affirmed the trial court's decision. The court properly considered the children's preference but did not follow their preference ¶19 finding the joint custody plan should be broken because the parties could not communicate effectively regarding the children's best interest and dad's unresolved anger issues. ¶20 So, the *Foshee* court broke a joint custody plan not due to the children's preference, but because the parties could not cooperate in making joint parenting decisions.¹⁷ The children's preference was primarily to spend equal time with each parent and not break the joint custody plan. The trial court determined that the children's preference could be dealt with by the visitation schedule and ruled to break the joint custody plan, granting sole custody to mother.

After an analysis of these decisions, we have a short list of sufficient reasons to satisfy the well-thought-out, intelligent preference standard. Based on the published decisions, the intelligent, well-thought-out reasons sufficient to change custody have been:

- 1) preference and desire to remain with a sibling(s);

- 2) preference and inability to get along with one parent; and,
- 3) preference and evidence of convenience and comfort.

CURRENT STATUTE ANALYSIS

The current statute breaks down the process into four factors or steps. First, note the statute makes no distinction between determinations of sole custody or joint custody, but applies to any case which the court must determine custody or limits of or period of visitation.¹⁸ Then the court **shall** determine if it is in the best interest for the child to even express a preference.¹⁹ Next, if the child is of sufficient age the court **shall** consider the expression of preference but the court shall not be bound by the preference. If the court does not follow this preference it shall make specific findings to support its findings, if requested by either party.²⁰ Remember, if it is in the best interest for the child to express a preference and the child is 12 years old or older, there **shall** be a rebuttable presumption that the child's expression is an intelligent preference.²¹ Lastly, the child may testify in chambers, without the parents present. The attorneys may also be excluded, but if either attorney objects, the court **shall** state reasons for their exclusion. Finally, either party may request a record be made of the child's testimony.²² It was access to the child's testimony transcripts that resulted in the March 2010 Oklahoma Supreme Court decision providing specific guidelines for an **in camera** interview of children in *Ynclan v. Woodward*, 2010 OK 29.

HOW YNCLAN EXPANDS THE CHILD PREFERENCE STATUTE

Ynclan expands the statutory provisions of 43 O.S. §113 in several areas:

- 1) It adds the requirement that the court has to state on the record its preliminary determination whether a child's best interest is served by expressing a preference;
- 2) It requires the court to put on the record if it believes a child of sufficient age is not mature enough to make an intelligent, well-reasoned decision. Also, the requirement that the preference shall be recorded

but only available to the parties if the decision is appealed; and,

- 3) Provides a more detailed procedure to determine what role the attorneys will have **in camera**, (ask questions or provide a list of questions) if at all and if not then, as the statute also requires, the court must specifically state why they were excluded.

Ynclan looked to multiple jurisdictions to comprise a list of reasons why everyone, other than the child, court reporter and judge should be excluded from an **in camera** interview of children in paragraph 12:

"1) elimination of the harm a child might suffer from exposure to examination and cross-examination and the adversarial nature of the proceedings generally;

- 2) reduction of added pressure to a child in an already stressful situation;
- 3) enhancement of the child's ability to be forthcoming;
- 4) reduction of the child's feeling of disloyalty toward a parent or to openly choose sides;
- 5) minimization of the emotional trauma affecting the child, by lessening the ordeal for the child;
- 6) protection of the child from the tug and pull of competing custodial interests; and,
- 7) awarding custody without placing the child in an adverse position between the parents."

The *Ynclan* decision also stresses the point that a child should never be asked directly to answer the ultimate question of where the child would rather live, reasoning that, if the parents know that this question cannot be asked, then the prospect of parental manipulation is minimized, and the child will not feel like the expressed preference is "the" deciding factor.¶13.

The *Ynclan* decision carefully balanced the parental due process rights with the child's right to be heard while keeping the child's best interest intact. The opinion provides detailed

“...the child may testify in chambers, without the parents present.”

instructions for the trial court to achieve this balance in a four step process:

- 1) If the court or parties are to consider an **in camera** interview of the child(ren), the court must make and state on the record its preliminary determinations concerning whether the child's best interest is served by conducting such an **in camera** interview **and** whether the child is of sufficient age to form an intelligent preference;
- 2) If the parents consent to the interview or waive their presence, the court can proceed with the interview;
- 3) If one or both parents object to being excluded, the trial court must consider whether the parents want counsel present, and if so, make a determination how counsel will or will not be excluded. (One would presume that the seven factors to support a private interview would make good arguments to exclude counsel.) If the court allows counsel to be present, which is totally discretionary, the court must also determine if counsel may question the child or submit questions. If counsel is excluded then the court must state reasons for the exclusion. (Again, presume facts to support one of the seven reasons for a private interview.); and,
- 4) The final instruction regards the transcript of the **in camera** interview. If either parent requests a court reporter, a record shall be made.

In the interest of due process the decision also instructed that the in camera interview, if made, must be made available to the parties if the decision is appealed.

POST YNCLAN DECISIONS

Ynclan v. Woodward, 2010 OK 29 was decided on March 23, 2010. There have been two subsequent child preference decisions since that time — *In re the Marriage of Crouch*, 2010 OK Civ App 144 decided Nov. 5, 2010, and *Foshee v. Foshee*, 2010 OK 85, decided Dec. 7, 2010.

In *Crouch*, the parties were divorced in Comanche County, Okla., with mother being awarded custody of the parties' three children. Subsequently, father moved to Ft. Smith, Ark., and mother and the children moved to Oklahoma City. The material change of circumstances was moving and each party requested a change in the visitation schedule. Because

Crouch was simply a visitation modification, the judge refused to interview the 12-year-old child stating that it was the court's practice to only interview children when custody was at issue. The appellate court reversed with specific instructions to follow the guidelines in *Ynclan* in conjunction with the child preference statute, which specifically applies to visitation as well as custody.

In *Foshee*, the trial court broke a joint custody plan finding the parties were unable or unwilling to execute parenting duties jointly, which is a material change in circumstances requiring joint custody to be modified. *Id.* at ¶2. The court conducted **in camera** interviews of the children, in which two of them desired to remain in the joint custody plan, spending equal time with each parent, and one desired to stay with the father. The trial court broke the joint custody plan and awarded sole custody to the mother based on other evidence presented by the parties, and not the children's preference. In upholding the trial court's decision, the Oklahoma Supreme Court cited the *Ynclan* decision to support the proposition that the child's preference is only one factor to consider when determining custody or period of visitation.¶13.

Neither of these two decisions shed any light on the unanswered questions of what weight should be given to a child's preference and whether a well-thought-out, intelligent preference is sufficient to overcome the *Gibbons* standard to modify custody in reconciliation with *Buffalo*. However, there may be an indication hidden in the footnotes of *Foshee*. Footnote 6 specifically cites to *Hogue*,²³ *Nelson*²⁴ and *Eimen*,²⁵ which could have been specifically overturned based upon *Buffalo*. However, they were cited in this subsequent decision without any mention of conflict with the prior ruling in *Buffalo*. It also stated that the *Hogue* and *Nelson* decisions were cases modifying custody and not breaking a joint custody plan, and, therefore, altogether different. The footnote went on to say "we have not addressed the appropriate weight to be given to a child's preference when the child's change in preference is the only change which has occurred, nor do we do so today."

NEW STATUTE EFFECTIVE NOV. 1, 2011

Effective Nov. 1, 2011, HB 1607²⁶ will become law.

First. The court **shall** determine if the best interest of the child will be served by allowing the child to express a preference.

Second. Rebuttable presumption remains that a child 12 years of age will form an intelligent preference.

Third. The court **shall** consider the preference but the child's preference does not diminish the discretion of the court to determine the child's best interest. (The requirement that the court make specific findings regarding its ruling in opposition to the child's preference has been removed. This is also a departure from *Ynclan*.)

Fourth. The interview may be conducted without parents or attorneys, but they can provide questions or topics...of which the court is not bound to ask or explore. (This provision is a departure from *Ynclan* in that *Ynclan* requires the court to give specific reasons why the parents and/or attorneys are excluded.) Further, if the court rules the parties are to be excluded, the attorneys then have the right to submit questions. However, the guardian *ad litem*, if any, shall be present.

Fifth. Either party can request a record of the interview be made but access to this record only be available to the parties if the custody or visitation decision is appealed.

CONCLUSION

The analysis of statutory and case law on child preference gives the family law practitioner very few client guidelines but significant judicial guidance. The child's well-thought-out, intelligent preference shall be considered by a trial court, but only as a single factor in the total analysis. If the child is 12 years of age or older, it is presumed his or her preference is well-reasoned. *Ynclan* provides a specific roadmap to follow when deciding whether or not to interview a child and what procedure should be followed — but when read in conjunction with the new statute to become effective later this year — the court must interview the child.

It is a likely analysis that a child's well-thought-out expression of preference may be sufficient to satisfy the *Gibbons* standard for a modification of custody. We also know that *Ynclan* took the discretion of the court away to determine best interest of whether or not the child should express a preference and ruled that the child's best interest will be served by expressing a preference. Again, the new statute

takes this discretion away if the child is old enough to presume to have the ability to make an intelligent preference. However, the weight that preference is to be given is still within the discretion of the trial court. Until the new statute goes into effect the court must make specific findings as to why or why not a child is interviewed and why or why not attorneys and/or parents are excluded from the interview. After the statute goes into effect the court does not have to make specific findings regarding exclusions but must allow the parties to provide questions and topics to be explored. However, the court has discretion to explore these requests. The guardian *ad litem*, if appointed, will also be present in any interview.

Most family law clients and their teenage children are under the mistaken belief that once a child reaches the age of 12 they have the sole power to make a custody or visitation determination. A review of the recent case and statutory law does not support that belief and the first step in these cases will be to educate the client and determine the legal validity of the child's preference before a thorough analysis of the client's case can be made.

1. Philip M. Stahl, *Complex Issues in Child Custody Evaluations*, Chapter 6 "Child Considerations in Custody Recommendations."

2. *Davis v. Davis*, 1960 OK 196, 355 P.2d 572. See also the detailed footnote 5 of *Foshee v. Foshee*, 2010 OK 85.

3. 12 OS §1277.1.

4. 43 O.S. §113.

5. 43 O.S. §113, paragraph 1 — "In any action for divorce, legal separation or annulment in which a court must determine custody or limits of or period of visitation, the child may express a preference as to which of its parents the child wishes to have custody. The court may determine whether the best interest of the child will be served by the child's expression of preference as to which parent should have custody or limits of or period of visitation rights of either parent. If the court so finds, the child may express such preference or give other testimony. The court may consider the expression of preference or other testimony of the child in determining custody or limits of or period of visitation. Provided, however, the court shall not be bound by the child's choice and may take other facts into consideration in awarding custody or limits of or period of visitation."

6. 43 O.S. §113, paragraph 2 — "If the child expresses a preference or gives testimony, such preference or testimony may be taken by the court in chambers, with or without the parents or other parties present, at the court's discretion. If attorneys are not allowed to be present, the court shall state, for the record, the reasons for their exclusion. At the request of either party, a record shall be made of any such proceeding in chambers."

HB 1607 amending 43 O.S. §113 was passed and signed by Gov. Fallin on May 13, 2011. Basically, the bill codifies the teachings of *Ynclan v. Woodward* 2010 OK 29 with the exception the guardian *ad litem* would be allowed to be present in the in camera interview. HB 1607 will become effective Nov. 1, 2011.

8. *In Re Adoption of M.C.D.* is hardly informative since the child in question was only 3 years old at the time of trial. Further, the child's counselor testified the child would say what she thought the husband would want her to say rather than express any independent preference. *Id.* at ¶33.

9. 43 O.S. §113.B.3.

10. *Nazworth v. Nazworth*, 1996 OK Civ App 134, 931 P.2d 86, is also precedential for the determination of including social security disability income as part of the recipient's gross income for the purposes of calculating child support. Further, that the dependent portion of the

disability payment offsets the payor's child support obligation. *Id.* at ¶9-12.

11. 43 O.S. §113.B.3.

12. 43 O.S. §113.B.3.

13. *Gibbons v. Gibbons*, 1968 OK 77, 442 P.2d 482 requires the moving party to prove a substantial, material and permanent change of circumstances in the custodial home such that a change of custody would operate in the best interest of the child.

14. An exception would be an Oklahoma Court of Civil Appeals (COCA) decision of *Buffalo v. Buffalo* 2009 OK Civ App 44, 211 P.3d 92. [Decision to be discussed in detail later.] As a COCA decision is only considered persuasive and not binding authority. Further, *Buffalo* was decided before *Ynclan v. Woodward*, 2010 OK 29, *Foshee v. Foshee* 2010 OK 85 and *In Re Marriage of Crouch*, 2010 OK Civ App 144. See Sup. Ct. Rule 1.200 (c)

c) Effect of Publication of Formal Opinion.

(1) Opinions of the Supreme Court designated For Official Publication when adopted will be published in the unofficial reporter (*Oklahoma Bar Journal*) on the Oklahoma Supreme Court website, and published after mandate in the official reporter (*Pacific Reporter* 2d). Such opinions may not be cited as authority in a subsequent appellate opinion, nor may they be used as authority by a trial court until the mandate in the matter has been issued.

(2) Opinions of the Court of Civil Appeals which resolve novel or unusual issues may be designated for publication, at the time the opinion is adopted, by affirmative vote of at least two members of the division responsible for the opinion. Such opinions shall remain unpublished until after mandate issues, after which time they shall be published in the unofficial report (*Oklahoma Bar Journal*) the Oklahoma Supreme Court World website, and in the official reporter (*Pacific Reporter* 2nd). Such opinions shall bear the notation "Released for publication by order of the Court of Civil Appeals" and shall be considered to have persuasive effect. Any such opinion, however, bearing the notation "Approved for publication by the Supreme Court" has been so designated by the Supreme Court pursuant to 20 O.S.1991 §30.5, and shall be accorded precedential value. The Supreme Court retains the power to order opinions of the Court of Civil Appeals withdrawn from publication.

15. *Jacobellis v. Ohio*, 378 U.S. 184 (1964).

16. Interesting note in *Foshee* is the *Petition for Dissolution of Marriage* was filed Dec. 14, 2006, and the *Joint Custody Plan and Agreed Decree of Dissolution of Marriage* was filed only seven days later on Dec. 21, 2006. Although not an Oklahoma County case, if it had been, the order may have violated the Oklahoma County District Court Rule 27(c) statute requiring 10 days (if no children) and 43 O.S. §107.1 which requires a 90-day waiting period between filing the petition and entering a decree (if minor children are involved.)

17. *Daniel v. Daniel*, 2001 OK 117, 42 P.3d 863, joint custody of a child is not proper where the parents are unable to cooperate. The party moving to terminate the joint custody plan must prove that the parties cannot sufficiently work together to reach joint decisions regarding the child. Further, upon the determination that the parties cannot cooperate, the court must break the joint custody plan and make an initial custody determination based upon the best interest of the child. See also *Rice v. Rice*, 1979 OK 161, 603 P.2d 1125.

18. 43 O.S. §113.A.

19. 43 O.S. §113.B.1.

20. 43 O.S. §113.B.2.

21. 43 O.S. §113.B.3.

22. 43 O.S. §113.C.

23. *Hogue v. Hogue*, 2008 OK Civ App 63, 190 P.3d 1177.

24. *Nelson v. Nelson*, 2004 OK Civ App 6, 83 P.3d 911.

25. *Eimen v. Eimen*, 2006 OK Civ App 23, 131 P.3d 148.

26. 43 O.S. §113

A. In any action or proceeding in which a court must determine custody or limits to or periods of visitation, the child may express a preference as to which of the parents the child wishes to have custody or limits to or periods of visitation.

B. The court shall first determine whether the best interest of the child will be served by allowing the children to express a preference as to which parent should have custody or limits to or periods of visitation with either parent. If the court so finds, then the child may express such preference or give other testimony.

C. There shall be a rebuttable presumption that a child who is 12 years of age or older is of a sufficient age to form an intelligent preference.

D. If the child is of a sufficient age to form an intelligent preference, the court shall consider the expression of preference or other testimony of the child in determining custody or limits to or periods of visitation. Interviewing the child does not diminish the discretion of the court in determining the best interest of the child. The court shall not be bound by the child's choice or wishes and shall take all factors into consideration in awarding custody or limits of or period of visitation.

E. If the child is allowed to express a preference or give testimony, the court may conduct a private interview with the child in chambers without the parents, attorneys or other parties present. However, if the court has appointed a guardian ad litem for the child, the guardian ad litem shall be present with the child in chambers. The parents, attorneys or other parties may provide the court with questions or topics for the court to consider in its interview of the child; however, the court shall not be bound to ask any question presented or explore any topic requested by a parent, attorney or other party.

F. At the request of either party, a record shall be made of any child interview conducted in chambers. If the proceeding is transcribed, the parties shall be entitled access to the transcript only if a parent or the parents appeal the custody or visitation determination.

ABOUT THE AUTHOR



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Grandparental Visitation: In a Child's Best Interest?

By Maren Minnaert Lively

Grandparental visitation has been a statutorily recognized right in Oklahoma since 1971. When it was first enacted, Title 10, Section 5 of the Oklahoma Statutes (§5) afforded grandparents and their grandchildren the right to visitation upon the death of a parent, if it was in the child's best interest. The statute was subsequently expanded over the years to apply in situations involving divorce and other circumstances that disrupted a minor child's nuclear family. As the Oklahoma Supreme Court recognized in some of its opinions, substantially all of the amendments were enacted in response to court rulings that denied grandparental visitation. Despite the continual expansion of the statute, the standard for granting visitation remained based on the best interest of the child.

By 1996, the statute had evolved to the point that any and all grandparents were entitled to visitation with their minor grandchildren based on a child's best interest, even in situations where a child's nuclear family remained intact and both parents objected to such visitation. In reviewing a lower court's denial of a maternal grandfather's request for visitation, the Oklahoma Supreme Court determined in 1998 that §5 was unconstitutional because it authorized grandparental visitation without any showing of harm to the child or disruption to the child's nuclear family. Likewise, in 2000, the United States Supreme Court ruled a Washington statute similar to §5's 1996 version as unconstitutional because it violated parents' liberty and privacy rights to determine the best interests of their children without state interference.

As a result of the United States and Oklahoma Supreme Court rulings, the statute currently in effect, which is located under Title 43, Section 109.4 of the Oklahoma Statutes (§109.4), minimizes the courts' abilities to award grandparental visitation based simply on the best interest of a child. Instead, a grandparent must show not only that visitation is in the best interest of a child, but that a parent is unfit or the minor child would suffer harm if visitation is not granted, and prove that the child's nuclear family has been disrupted by any of the statutorily defined occurrences. Rather than the child's best interest being the focal point, a court must first decide parental unfitness, harm to the child, and disruption to the nuclear family before it determines whether visitation is in a child's best interest. Nonetheless, cases interpreting and applying §109.4 reveal an appreciation for grandparent

visitation and an interest in promoting a child's relationship with his or her grandparent.

The following article reviews the history and evolution of grandparental visitation under Oklahoma law and analyzes two of the Oklahoma Supreme Court's most recent decisions involving §109.4. Its focus is on situations where one or both parents have objected to grandparental visitation, as opposed to cases where orders have been entered or modified based on parents' agreements to afford grandparents visitation rights.

ORIGINS AND HISTORY OF GRANDPARENTAL VISITATION

Enacted in 1971, §5 provided the initial statutory basis, albeit a limited one, for awarding court-ordered grandparental visitation.¹ Before its enactment, grandparental visitation was dependent solely on parents' consents.² After 1971, however, grandparents (and their grandchildren) were entitled to reasonable visitation when one or both parents were deceased.³ The standard for awarding such visitation was based on the best interest of a child.⁴

Over the years, the statute was repeatedly amended in response to a number of court rulings denying grandparental visitation.⁵ As the Oklahoma Supreme Court noted in the case, *In re Bomgardner*, "[t]he manifest objective of the series of amendments was to make alienation from grandparents remediable in all the described circumstances."⁶

For example, in the case, *In re Fox*, the Oklahoma Supreme Court interpreted §5, then existing in 1977, to be inapplicable in cases involving adoptions.⁷ Specifically, the court reversed an order granting the maternal grandmother visitation after the paternal grandparents had adopted the minor child due to the mother's death and the father's consent to terminate his parental rights.⁸ A year after the court's decision, the Oklahoma Legislature amended §5 to protect grandparents' visitation rights in adoption proceedings where their child was deceased and the surviving parent had remarried.⁹

Nevertheless, with each amendment, the statutory standard for awarding grandparental visitation remained focused on the best interest of a child.¹⁰ Consequently, the parental interest was deemed to be subordinate to the child's, and it was recognized that visitation was not granted solely for the grandparent's benefit.¹¹

Despite the numerous amendments, the Oklahoma Supreme Court remained steadfast in protecting a parent's fundamental right to the "companionship, care, custody and management of his/her child."¹² With each opinion, the court reiterated that a grandparent does not have a constitutional right to exercise visitation with his or her grandchild, but rather, such right is limited to statute.¹³ It further emphasized that "[a] grandparent's right to visitation is not co-equal with that of a parent."¹⁴ Accordingly, the court posited that any conflict between a parent's right to rear his or her child and a grandparent's desire for visitation "must be reconciled in favor of the preservation of the parents' constitutional rights," as the "relationship between parent and child must be held paramount."¹⁵

State Constitutional Concerns

Regardless of the court's concern for the parents' rights, §5 eventually came to mandate in 1996 that "any grandparent of an unmarried minor child shall have reasonable rights of visitation to the child if the district court deems it to be in the best interest of the child."¹⁶ In considering whether to grant a paternal grandfather visitation over the objections of a child's married parents, the Oklahoma Supreme Court ruled in the case, *In re Herbst*, that the statute's current wording violated the parents' constitutionally protected liberty and privacy rights.¹⁷ The court determined that without any requirement of showing parental unfitness or harm to the child, the statute "clearly divest[ed] parents of the right to decide what is in their child's best interest and [gave] that determination to the district court."¹⁸ The court further explained, "without the requisite harm or unfitness, the state's interest does not rise to a level so compelling to warrant intrusion upon the fundamental rights of parents."¹⁹

Despite vacating the appellate court's decision, the *Herbst* court recognized the importance of a stabilizing relationship between a grandparent and grandchild, especially in circumstances when one of the parents has died or the parents are divorced.²⁰ Nonetheless, the court stated that "a vague generalization about the positive influence many grandparents have upon their grandchildren falls far short of the necessary showing of harm which would warrant the state's interference with this parental decision regarding who may see a child."²¹ As a result, grandparental visitation cannot be ordered over the objection of a fit parent with-

out a showing of harm or potential harm to the child.²²

Federal Constitutional Concerns

In 2000, the U.S. Supreme Court ruled in *Troxel v. Granville* that a Washington statute similar to the 1996 version of §5 violated the 14th Amendment.²³ The statute at issue granted “any person” at “any time” the right to visitation when it was deemed to be in the child’s best interest.²⁴ The facts in *Troxel* involved the paternal grandparents seeking visitation with their minor grandchildren, over the mother’s objection, after the father had committed suicide.²⁵ Based on the broad language of the statute, the Washington court had awarded the grandparents’ request.²⁶

In reviewing the state court’s decision, the Supreme Court determined that the statute impermissibly interfered with a parent’s federal constitutional right to privacy under the 14th Amendment.²⁷ The court based its holding on the following:

- 1) The grandparents had not made any allegations of parental unfitness;
- 2) The lower court had failed to give due weight to a parent’s determination of his or her children’s best interests;
- 3) The burden had been wrongly placed on the mother to demonstrate that grandparental visitation was not in her children’s best interests;
- 4) The lower court had not been guided by the presumption that a fit parent acts in his or children’s best interests; and
- 5) The lower court had given undue weight to the mother’s willingness to let her minor children visit the paternal grandparents on a few occasions.²⁸

In his concurring opinion, Justice Souter explained that “when the granting of visitation is ‘subject only to the State’s particular best-interests standard, the state statute sweeps too broadly and is unconstitutional on its face.’”²⁹

Unlike the Oklahoma Supreme Court, however, the *Troxel* court avoided considering whether a showing of harm or potential harm to the child was a necessary factor in granting grandparental visitation.³⁰ As the Oklahoma Supreme Court specified in subsequent opinions, however, the Oklahoma Constitution requires such a showing before the state can

interfere with a parent’s right to determine the best interest of his or her child.³¹

CURRENT OKLAHOMA LAW AND RECENT DEVELOPMENTS

Title 43, Section 109 of the Oklahoma Statutes

In 2009, §5 was renumbered and is now found under §109.4.³² Due to the numerous amendments and court decisions interpreting its application, Section 109.4 greatly differs from its previous versions, which were centered on the best interest of a child.³³ Pursuant to §109.4, a grandparent³⁴ may be afforded court-ordered visitation with his or her unmarried, minor grandchild if:

- 1) Visitation is in the minor child’s best interest;
- 2) The minor child’s parents are unfit or the grandparent has introduced clear and convincing evidence to a) rebut the presumption that a fit parent acts in a child’s best interest and b) demonstrate that without grandparental visitation the child would suffer harm or potential harm; and
- 3) There has been a disruption to the minor child’s intact nuclear family due to any of the circumstances specifically identified by the statute.³⁵

The Oklahoma Supreme Court has ruled that only when the statutorily defined circumstances in §109.4 exist may a court divest parents of their constitutional right to determine their child’s best interest in favor of grandparents’ desires to exercise visitation with their grandchildren.³⁶

With respect to the first factor, the burden is on the grandparent to show that visitation is in the minor child’s best interest.³⁷ In evaluating a child’s best interest, the court must consider and evaluate the 14 factors listed in the statute and, if requested, make specific findings of fact regarding such factors.³⁸

Despite its prominent position in the statute, however, the Oklahoma Supreme Court has held that the elements of parental unfitness or harm to the child and a disruption to the nuclear family must first be proved before a court may consider a child’s best interest.³⁹ Therefore, the statute has evolved from centering on the child’s interest to preserving the parent’s constitutional rights.

Decided on April 12, 2011, *Craig v. Craig* effectively overruled two appellate court decisions, *Sicking v. Sicking*⁴⁰ and *Hartness v. Hartness*,⁴¹ and reiterated that grandparental visitation can only be granted when the statutory requisites of §109.4 are satisfied.⁴² The facts in *Craig* involved a divorce action in which the mother had been granted custody of her minor child, and the father had received visitation, to be supervised by the paternal grandparents.⁴³ Although the father was not permitted overnight visitation with his child until he completed a parenting program, the minor child had spent a few overnights with the paternal grandparents.⁴⁴ Controversy developed between the mother and grandparents when the grandmother permitted the child to stay overnight with a paternal aunt who lived in Arkansas without the mother's knowledge or consent.⁴⁵ Problems further escalated when the grandmother refused to inform the mother of the minor child's activities while in the grandparents' care or acquire the mother's consent before engaging the child in activities of which the mother disapproved.⁴⁶

A year after the divorce decree was entered, the grandparents filed a motion in the divorce action, requesting court-ordered visitation with the minor child.⁴⁷ Because the father had failed to exercise his visitation, the grandparents' access to the minor child had been significantly hindered.⁴⁸ Arguing against the grandparents' efforts, the mother testified that the grandparents were too controlling and refused to follow the mother's wishes with respect to her child.⁴⁹ Ultimately, the lower court ruled in favor of the grandparents by granting them court-ordered visitation.⁵⁰

In response, the mother appealed, arguing that the grandparents had failed to satisfy the requirements of §109.4.⁵¹ The grandparents, on the other hand, asserted that the statute was inapplicable and instead relied on the holdings of *Sicking* and *Hartness*.⁵² The grandparents argued that a) it was the father's desire for them to exercise his visitation rights and b) court-ordered grandparental visitation was in the minor child's best interest.⁵³ The grandparents did not allege that the mother was unfit or that the child would suffer harm without grandparent visitation, but rather asserted that it was in the child's best interest to "maintain a strong and healthy relationship with her paternal family."⁵⁴ Even though the grandparents

“...the burden is on the grandparent to show that visitation is in the minor child's best interest.”



relied on the best interest standard, they failed to reference or rely on any of the factors identified in §109.4(E) for determining a child's best interest.⁵⁵

In vacating the appellate court's opinion and reversing the trial court's decision, the Oklahoma Supreme Court emphasized that “[g]randparents have no constitutional right to custody of or visitation with their grandchildren” and that “[v]isitation rights in the absence of a statute derive from a right to custody.”⁵⁶ Therefore, grandparental visitation can only be granted by statute.⁵⁷

The court further explained that an order permitting grandparental visitation without requiring satisfaction of §109.4 was tantamount to state action.⁵⁸ “[A] non-custodial non-parent third-party may not use the power of the state to compel a custodial parent to relinquish custody and control over that par-

ent's child and submit to court-ordered visitation without satisfying the non-parent's burden of showing harm or potential harm in the absence of such visitation."⁵⁹

Because the grandparents had failed to show parental unfitness or prove that the child would suffer harm, the court never addressed the minor child's best interest.⁶⁰

Murrell v. Cox

In the 2009 case, *Murrell v. Cox*, the Oklahoma Supreme Court overturned a trial court's decision to award grandparental visitation, even though the mother had regained her status as a fit parent.⁶¹ Prior to the lower court's final decision, the paternal grandparents had previously been granted a temporary guardianship of their grandchild based upon its finding that the mother was unfit.⁶² In making its ruling, the trial court set forth a list of directives for the mother to complete in order to become a fit parent and thus terminate the guardianship.⁶³

A few months later, the mother filed a petition to terminate the guardianship, alleging that she had completed the court-ordered program to regain fitness.⁶⁴ At the hearing, the court applauded the mother on her improvements, but noted that the child would most likely suffer anxiety from "being ripped from the living quarters where he is currently living and, apparently has been living for a period of time."⁶⁵ Accordingly, the court continued the matter without ruling on the mother's fitness.⁶⁶ Several months later, another hearing was held at which time the court again continued the matter without making any fitness determinations.⁶⁷

Approximately a year after the mother had filed her petition to terminate the guardianship, the guardian *ad litem* appointed to the case issued a report, finding that both parents were fit and recommending immediate termination of the guardianship.⁶⁸ Nonetheless, the case was continued for several more months while the temporary guardianship remained in effect.⁶⁹

Eventually, the parents and grandparents reached an agreement outside of court to terminate the guardianship.⁷⁰ The parties further agreed to joint custody and visitation after a three-month transition period during which time the parents would exercise custody alternating weeks for two consecutive days. At all other times, the minor child was to remain in the custody of his grandparents until the end

of the transition period.⁷¹ The court memorialized the parties' agreement into an order, but made no findings as to parental fitness.⁷²

Less than a month later, the father committed suicide, spurring the mother to request immediate physical custody of the minor child.⁷³ Despite noting that custody had immediately become vested in the mother upon the father's death, the trial court enforced the three-month transition period.⁷⁴

Upon the completion of the transition period, another hearing was held wherein the child's counselor testified that it was imperative for the child to resolve his grieving for his father before custody transitioned to the mother.⁷⁵ The counselor was unable to state any time frame regarding the child's grieving process.⁷⁶

After expressing its disagreement with the *Troxel* holding, the trial court ultimately found that the grandparents had met their burden and thus were entitled to grandparental visitation.⁷⁷ The court based its ruling on the mother's unwillingness to afford grandparental visitation without a court order and a moral comparison of the mother's and grandparents' homes.⁷⁸

In overturning the decision, the Oklahoma Supreme Court determined that the lower court should have ruled on the parents' fitness when the parties agreed to terminate the guardianship and especially once the father had committed suicide.⁷⁹ If the mother had been deemed to be fit, then she would have been the sole custodian of the child upon the father's death.⁸⁰ "Absent [the m]other's continued unfitness, the trial court was duty bound to transition the child into [the m]other's physical custody and to permit her to make decisions regarding the child's welfare including his education."⁸¹

The court acknowledged the lower court's motivations to protect the child's best interest, but explained that "[c]oncerns for the child's separation anxiety and the fact that he will continue to grieve the loss of [the f]ather cannot justify the continuing deprivation of [the m]other's fundamental right to the care and custody of her child if she has regained fitness."⁸² In order to protect parents' constitutional rights, parental unfitness or harm to the child must first be proved before the best interest of the child is evaluated.⁸³ "This Court has consistently held that the right of a parent to the care, custody, companionship and management of his or her

child is a fundamental right protected by the federal and state constitutions.”⁸⁴

CONCLUSION

Over the life of Oklahoma’s grandparent statute, the legislature and courts have battled between whether the standard for granting visitation should be based on the best interest of the child or focused on protecting a parent’s fundamental rights under the United States and Oklahoma Constitutions. While the original statute and subsequent amendments focused on the best interests of the child, the current statute requires a finding that a parent is unfit or that the child will suffer harm without visitation before grandparental visitation may be granted. These requirements protect parents’ fundamental rights to care for their children and determine their best interests without state interference. Yet, as *Craig* and *Murrell* reveal, the lower courts, which are intimately familiar with the parties and facts of each case, find it difficult to decide cases based solely on parental fitness or harm to the child without giving due regard for the positive impact that a grandparent can have on a child’s life.

1. *In re G.D.L.*, 1987 OK 115, ¶4, 747 P.2d 282, 283.
2. *Julien v. Gardner*, 1981 OK 54, ¶2, 628 P.2d 1165, 1166.
3. *In re G.D.L.*, 1987 OK at ¶4, 747 P.2d at 283; *In re Bomgardner*, 1985 OK 59, ¶4, 711 P.2d 92, 94; *Julien*, 1981 at ¶2, 628 P.2d at 1166.
4. *Julien*, 1981 at ¶2, 628 P.2d at 1166.
5. *In re Herbst*, 1998 OK 100, ¶7, 971 P.2d 395, 397; *In re Bomgardner*, 1985 OK at ¶¶4-8, 711 P.2d at 94-95.
6. *In re Bomgardner*, 1985 OK ¶9, 711 P.2d at 95; see *In re Herbst*, 1998 OK at ¶7, 971 P.2d at 397; *In re G.D.L.*, 1987 OK at ¶3, 747 P.2d at 283.
7. *In re Fox*, 1977 OK 126, ¶7, 567 P.2d 985, 987.
8. *Id.* at ¶¶3, 7, 986-87.
9. *In re Bomgardner*, 1985 OK at ¶6, 711 P.2d at 94; *Leake v. Grissom*, 1980 OK 114, ¶7, 614 P.2d 1107, 1109-10.
10. See *In re Bomgardner*, 1985 OK at ¶16, 711 P.2d at 97.
11. *Id.*
12. *Leake*, 1980 OK 114, ¶8, 614 P.2d at 1110; see *In re Grover*, 1984 OK 20, ¶¶9-18, 681 P.2d 81, 83-84.
13. *Craig v. Craig*, 2011 OK 27, ¶16, ___ P.3d ___, available at 2011 WL 1366493, at *4 (Apr. 12, 2011); *Murrell v. Cox*, 2009 OK 93, ¶25, 226 P.3d 692, 698.
14. *Murrell*, 2009 OK 93, ¶25, 226 P.3d 692, 698.
15. *Id.* (quoting *In re Herbst*, 1998 OK at ¶17, 971 P.2d at 399).
16. *In re Herbst*, 1998 OK at ¶8, 971 P.2d at 397.
17. *Id.* at ¶¶10, 12-19, 397-99.
18. *Id.* at ¶9, 397.
19. *Id.* at ¶13, 398.
20. *Id.* at ¶15, 399.
21. *Id.* at ¶16, 399; *Craig*, 2011 OK at ¶25, 2011 WL 1366493, at *7.
22. *In re Herbst*, 1998 OK at ¶16, 971 P.2d at 399.
23. *Neal v. Lee*, 2000 OK 90, ¶6, 14 P.3d 547, 549.
24. *Id.*
25. *Id.* at ¶5, 549.
26. *Id.*
27. *Id.* at ¶6 549.
28. *Craig*, 2011 OK at ¶21, 2011 WL 1366493, at *5; *Neal*, 2000 OK at ¶7, 14 P.3d at 549.
29. *Craig*, 2011 OK at ¶21, 2011 WL 1366493, at *5 (quoting Justice Souter’s concurring opinion in *Troxel v. Granville*, 530 U.S. 57, 76-77 (2000)).
30. *Neal*, 2000 OK at ¶¶7, 9, 14 P.3d at 549-550 (citing *In re Herbst*, 1998 OK at ¶18, 971 P.2d at 399).

31. *Id.* at ¶9, 550.
32. Okla. Stat. tit. 43, §109.4.
33. Compare *Murrell*, 2009 OK at ¶26, 226 P.3d at 698 (applying the 2009 version of grandparent-visitation statute) with *In re G.D.L.*, 1987 OK at ¶¶3-6, 747 P.2d at 283-84 (analyzing 1971, 1978, 1981, and 1984 versions of the statute).
34. The term, “grandparent,” includes a great-grandparent. *Id.* at §109.4(j).
35. §109.4(A)(1); *Murrell*, 2009 OK at ¶26, 226 P.3d at 698.
36. *Murrell*, 2009 OK at ¶26, 226 P.3d at 698.
37. See §109.4.
38. §109.4(E). Such factors specifically include:
 - a. the needs of and importance to the child for a continuing pre-existing relationship with the grandparent and the age and reasonable preference of the child pursuant to Section 113 of Title 43 of the Oklahoma Statutes,
 - b. the willingness of the grandparent or grandparents to encourage a close relationship between the child and the parent or parents,
 - c. the length, quality and intimacy of the preexisting relationship between the child and the grandparent,
 - d. the love, affection and emotional ties existing between the parent and child,
 - e. the motivation and efforts of the grandparent to continue the preexisting relationship with the grandchild,
 - f. the motivation of parent or parents denying visitation,
 - g. the mental and physical health of the grandparent or grandparents,
 - h. the mental and physical health of the child,
 - i. the mental and physical health of the parent or parents,
 - j. whether the child is in a permanent, stable, satisfactory family unit and environment,
 - k. the moral fitness of the parties,
 - l. the character and behavior of any other person who resides in or frequents the homes of the parties and such person’s interactions with the child,
 - m. the quantity of visitation time requested and the potential adverse impact the visitation will have on the customary activities of the child, and
 - n. if both parents are dead, the benefit in maintaining the preexisting relationship. *Id.*
39. *Neal*, 2000 OK at ¶12, 14 P.3d at 550 (analyzing *Troxel*, 530 U.S. 57 (2000)); *In re Herbst*, 1998 OK at ¶18, 971 P.2d at 399.
40. 2000 Okla. Civ. App. 32, 996 P.2d 471. In *Sicking*, the father had consented to his parents exercising visitation during his court-allotted time. *Id.* at ¶14, 474. Because the paternal grandparents were not being afforded visitation independent of the father’s, but rather were simply using the father’s time, the appellate court determined that satisfaction of §109.4 was unnecessary. *Id.* at ¶¶11-14, 474. The court explained that if the father “chooses to foster a relationship between his parents and [the child] by allowing them to visit with [the child], either with or without [the father, during times when [the father would ordinarily visit with [the child] exclusively and such visitation is in [the child’s] best interest, [the mother] has no constitutional right to prevent it.” *Id.* at ¶14, 474.
41. 1999 Okla. Civ. App. 138, 994 P.2d 1196. Similar to the facts in *Sicking*, the father in *Hartness* had filed a waiver, consenting to his parents exercising visitation with his minor child when he was unable to do so. *Id.* at ¶1, 1197. When the mother objected based on the ruling in *In re Herbst*, the lower court denied the grandparents’ request for visitation. *Id.* Ultimately, the appellate court reversed and remanded the lower court’s decision, stating that the holding in *In re Herbst* was inapplicable. *Id.* at ¶4, 1197.
42. *Id.* at ¶¶16, 21-28; 2011 WL 1366493, at *4-8.
43. *Id.* at ¶3, *1.
44. *Id.* at ¶¶3-4, *1.
45. *Id.* at ¶4 *1.
46. *Id.* at ¶¶4, 6-8, *1-2.
47. *Craig*, 2011 OK at ¶3, 2011 WL 1366493, at *1.
48. See *id.*
49. *Id.* at ¶8, *2.
50. *Id.* at ¶0, *1.
51. *Id.* at ¶11, *3.
52. *Id.*
53. *Craig*, 2011 OK at ¶¶13-14, 2011 WL 1366493, at *4.
54. *Id.* at ¶¶22-24, *6-7.
55. *Id.*
56. *Id.* at ¶16, *4 (quoting *Murrell*, 2009 OK at ¶25, 226 P.3d at 698, and *Barber v. Barber*, 2003 OK 52, ¶9, 77 P.3d 576, 580).
57. *Id.*
58. *Id.* at ¶25, *7.

59. *Craig*, 2011 OK at ¶25, 2011 WL 1366493, at *7.
 60. See *id.* at ¶¶22, 24-28, *6-8.
 61. *Murrell*, 2009 OK at ¶¶31-33, 226 P.3d at 699-700.
 62. *Id.* at ¶4, 694.
 63. *Id.*
 64. *Id.* at ¶5, 694.
 65. *Id.* at ¶6, 694.
 66. *Id.*
 67. *Murrell*, 2009 OK at ¶8, 226 P.3d at 695.
 68. *Id.* at ¶10, 695.
 69. *Id.* at ¶11, 695.
 70. *Id.* at ¶12, 695.
 71. *Id.*
 72. *Id.*
 73. *Murrell*, 2009 OK at ¶13, 226 P.3d at 695.
 74. *Id.*
 75. *Id.* at ¶15, 696.
 76. *Id.*
 77. *Id.* at ¶18, 696.
 78. *Id.* at ¶19, 696-97.
 79. *Murrell*, 2009 OK at ¶28, 226 P.3d at 698-99.
 80. *Id.*
 81. *Id.* at ¶31, 699.
 82. *Id.* at ¶31, 699.
 83. See *id.* at ¶¶30-32, 699.
 84. *Id.* at ¶24, 698 (quoting *In re Grover*, 1984 OK at ¶9, 681 P.2d at 83).

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So You Think You Want to Be a Guardian *Ad Litem*?

The Perils and Pitfalls of an Undefined Area of Practice

By Michael D. Johnson

It's a question that comes to any attorney who practices family law at some time or another. Do I want to take an appointment as a guardian *ad litem*? The initial examination reveals some very positive aspects. You work for the best interests of the kids; everyone loves the kids and wants what is in their best interest, right? You get a chance to work with two attorneys in a situation where they at least start out less adversarial toward you than in a normal petitioner/respondent setting. You get paid for hanging out with some cute kids and in the end, all you have to do is make a few recommendations that the court doesn't even have to follow if you happen to get it wrong. So far this sounds pretty inviting, but if you don't do all of your homework, you could be in for a big surprise.

Often, relatively new practitioners use the court-appointed GAL role to build their resume. This can be a risky proposition and deserves due consideration. The practice of law in the role of guardian *ad litem* is a mine field that could sink one's career before it gets out of the harbor. Word of a poor performance as a GAL spreads much faster than word of a good performance. Production of a logically unsound report will most definitely harm your reputation with the judge and could preclude future appointments.

There are some very serious issues that have not been adequately addressed by the courts or the Legislature. There are differing opinions as to what a guardian *ad litem* should or should not do that vary from court to court and attor-

ney to attorney. Add to all this the fact that the guidance promised by the statutes has never materialized and it makes practice as a GAL very difficult indeed.

The author is concerned about the requirements imposed by the new statutory changes, the lack of a "GAL Handbook" that was supposed to be created by the Administrative Office of the Courts, and the specific expectations of individual judges relative to GALs appointed in cases in different counties or even different courtrooms within the same county.

This article is intended to address issues related to guardian *ad litem* appointments in divorce, paternity and other custody related matters.

Appointments in guardianships, deprived and juvenile cases present different concerns and are outside the scope of this treatise.

WHAT IS THE ROLE OF THE GAL?

The statutes create the dual role of the guardian *ad litem* as an advocate for the interests of the child and as an arm of the court for investigative purposes.

In divorce and custody cases, 43 O.S. §107.3 states “The guardian *ad litem* may be appointed to objectively advocate on behalf of the child and act as an officer of the court to investigate all matters concerning the best interest of the child.”

In adoption proceedings, 10 O.S. §7505-1.2(B)(1) states, “The court may appoint a separate guardian *ad litem* for the minor in a contested proceeding and shall appoint a separate guardian *ad litem* upon the request of a party, the minor, the attorney of the minor, prospective adoptive parent, or a person or agency having physical or legal custody of the child.”

In deprived proceedings, 10A O.S. §1-4-306(B)(1) provides, “After a petition is filed, the court shall appoint a guardian *ad litem* upon the request of the child or the attorney of the child, and may appoint a guardian *ad litem sua sponte* or upon the request of the Department of Human Services, a licensed child-placing agency, or another party to the action.” Subparagraph (3) further provides “The guardian *ad litem* shall be appointed to objectively advocate on behalf of the child and act as an officer of the court to investigate all matters concerning the best interest of the child.”

In guardianship cases the role is controlled by 30 O.S. §1-117, wherein it says, “At any point in a guardianship proceeding, the subject of the proceeding, his attorney, the guardian of the subject of the proceeding or anyone interested in the welfare of the subject of the proceeding may file an application to have a guardian *ad litem* appointed by the court, or the court on its own motion may appoint a guardian *ad litem*. If not precluded by a conflict of interest, a guardian *ad litem* may be appointed to represent several persons or interests.”

There are treatises that address the differences between a guardian *ad litem* and an attorney for the child so that relationship is clear.¹ There is perhaps less clarity when defining the line between a parenting coordinator (PC) and a GAL.² In some courtrooms, guardians *ad litem*

are tasked with many of the same case management issues that are handled by PCs in other courtrooms. This blending of roles varies greatly between jurisdictions.

The parenting coordinator statute requires a finding by the court that the parties can afford a PC.³ There is no such requirement in the GAL statute. Further, there are issues that dictate the appointment of a GAL, not so with a PC. In the adoption and deprived statutes, the appointment of a GAL is mandatory upon request of a party, the state, placement agency, the attorney for the child or other person that has a right to custody. The guardianship statute also requires the appointment of a GAL in cases involving minors and incompetents upon request or *sua sponte*.

The role of a GAL in a custody case varies greatly from courtroom to courtroom. Depending on the specifics of the case and the parties involved, a GAL may be called on to provide many services that are not enumerated in the statute. Often a GAL is called on to provide mediation or arbitration services. Coordination of visitation exchanges, supervision of visitation and facilitation of same are issues that routinely arise which may require considerable after-hours or weekend time commitments. Additionally, the GAL is often asked to propose a custody or visitation structure during settlement conferences.

Determining the existence of a child’s preference, if any, examining the basis of that preference and making recommendations to the court on the reasonableness and relative intelligence of said preference is often a part of the analysis required. The GAL is most definitely tasked with recognizing the existence of abuse or neglect and performing the required reporting should same be indicated.

Some tasks that are enumerated in the statutes present sub-issues that are less clear. For example, the GAL is given the power to request psychological testing or other services that may be needed for the children. They are further given access to all medical and psychological records for the children as well as the parents. An area that is unclear is that of requesting that the parents engage in counseling or other psychological services. Is it appropriate for a GAL to make such a request or should such a filing remain within the purview of the attorneys that represent the parents? Another issue that is raised is the ability of the

parents to afford such services and the apportionment of those costs between the parties.

The GAL is treated as a party as far as the service of pleadings, attendance at all hearings and full participation in same. What is less clear is the level of involvement that is appropriate when it comes to filing motions that might affect the custody or visitation that is currently in place. Certainly such actions could be construed as advocating for the best interests of the children, yet one must take into account that the Supreme Court recently ruled that a GAL did not have standing to appeal and was not “a party to the case.”⁴ The dual role as an agent of the court further complicates this issue.

There is currently a wide range in the variety of services provided by GALs. There is also a wide range in the quality of the services provided by GALs. Appointment of a GAL who is not willing to put forth the effort required or who may be poorly trained can be catastrophic to your case. The wise family practitioner will explore this fully with their client and should develop a short list of acceptable candidates that offer a variety of viewpoints and fee structures. The statute provides for a manual of standards and best practices and a certification of some sort.⁵ None of these items exist and there is currently no ongoing effort to create them. As a result, there are no standards by which to judge the performance of a GAL in a case.

This lack of a standard causes as much concern for a GAL as it does for an attorney representing a parent. Being subject to cross examination, is a GAL open to attack from both sides on the GAL's methods, procedures and training? How about the personal habits or beliefs of a GAL — are they subject to the rigors of cross examination? Do attorneys waive the right to object to the qualifications of a GAL when they agree to the appointment and sign the order appointing GAL?

The new deprived statutes require that an attorney working as a GAL have six hours annually of CLE in child specific subjects. Once again, clarity and direction would be helpful to establish a curriculum that assures every candidate possesses an appropriate basic skill set. As it currently stands, is a GAL open to attack based on their choice of CLE?

An area that needs to be addressed is the propriety of *ex parte* communications between a GAL and the judge. This issue is handled dif-

ferently by judges in different jurisdictions. Many feel that the nature of the appointment as an arm of the court allows such contact, others disagree. Some judges have said that they can spot inappropriate *ex parte* communications and would handle any such communication in the same manner, no matter what the attorney's role. Many attorneys feel strongly about this subject as well. As one might expect, those strong feelings cover a wide range of notice issues and ethical concerns. The answer to this question may also differ based on the type of appointment, the nature of the discussion and the issues addressed.

DISCLOSURE

GALs are currently considered experts under 43 O.S. §120.7.⁶ As such, there are disclosure requirements that GALs must comply with. This requirement creates another list of questions relative to appointment as a GAL such as:

- If the attorneys agree to the appointment of a specific GAL in open court, does that provide the GAL any protection from attacks related to their qualifications?
- Does the signing of an agreed order provide more protection than an oral agreement in court?
- If any such protections might be assumed, would that change the duty of the GAL to provide a resume? List of relationships with each attorney? List of relationships with the judge?
- Might the answer to those questions be different if one attorney had a history with the suggested GAL while the other attorney did not?
- Might the answer be different if the issue is that the GAL has had a reprimand? Should the reprimand be required to be disclosed if it was a non-published reprimand?
- What information or qualifications are appropriate for inclusion on the resume contemplated by the statute?
- Does a general statement that would set forth whether a GAL had ever dealt with one or both attorneys meet the statutory requirements or does the GAL need to state how many cases they may have appeared in as opposing counsel with each attorney and how many times they may have been a GAL in cases involving each attorney? Should a

GAL be required to disclose whether their report favored an attorney's client?

- Do counsels for the parties waive specific objections to the GAL appointment (qualifications, duties, powers and other related issues) when they sign an Order created by the GAL? Is this different if the order is a court provided form?

It is important to know how a failure to comply with the requirements of section 120.7 will impact the GAL. Increased amounts of useless paperwork add costs and headaches that have made some attorney practitioners question whether they will continue to accept GAL appointments.

ISSUES RELATED TO PAYMENT OF FEES

One of the things that can force an attorney to stop taking GAL appointments is the inability to get paid for some cases. A new set of questions arises when one acquires customers who aren't really your clients. When an attorney is appointed as a GAL, neither parent has created an attorney/client relationship that can be the basis of a fee agreement. Some further contractual obligation is obviously necessary to protect the GAL, but the question becomes what is necessary and what is appropriate. Does the GAL appointment order do enough to establish privity of contract between the GAL and the parents, or is a separate contract or engagement letter required between the GAL and each parent separately?

What is the propriety of requesting payment of fees that are overdue prior to completion of the case and preparation of a report that recommends one parent for custody? What is the propriety of requesting a withdrawal based on the non-payment of fees by one or both parents? This question obviously becomes more complicated when one party has fully complied with their obligations while the other has not.

A good solution may be to require an "ever-green" retainer. This would require each party to deposit their initial retainer and then pay for the services rendered each month as reflected on the GAL's billing statement. The result is that the retainer is used to pay the final bill

with the remainder to be refunded. This seems to be an appropriate step to take since the GAL's work is often heavily back loaded with many of the hours in a case spent in preparing a report and appearing at trial.

A payment question that may directly affect the case is the relevance of one party's failure or inability to pay GAL fees as an indicator of the party's ability to provide the necessary support for the children. This raises the sub-question of whether such discussions with a party might subject a GAL to an attack by counsel that such thoughts biased or prejudiced the GAL's recommendations.

The final order in a case can address some of the payment issues. It can establish that the fees were necessary and reasonable based on the particular circumstances of the case. It can order the parties to pay the fees by a date certain, set forth a payment plan, require that the fees be paid from the property settlement and to grant a judgment in favor of the GAL.

“One of the things that can force an attorney to stop taking GAL appointments is the inability to get paid for some cases.”

What other steps should a GAL be expected to take in order to collect on a debt owed by a parent? It is most likely appropriate to use contempt of court to address the failure to pay GAL Fees when included in the final order, but is the initial order of appointment sufficient to support indirect contempt if it merely states that the fees will be split equally

between the parties? In most appointments, this is the only order on file that specifically addresses payment of fees. It is also not clear if it is proper to file an attorney's lien when appointed as a GAL.

WITHDRAWAL ISSUES

An often overlooked issue is that of withdrawal of an attorney at the end of a matter. This is no different in representation as a GAL. There are some additional questions that come into play due to the nature of the representation and the fact that the GAL is appointed to serve.

- Should a final order include a provision that releases the GAL from their duty in the case? If so and no such provision is made, what are the implications?

- Absent some new order, does the GAL have power to act after the journal entry has been filed?
- If the GAL is to have some continuing duties, should the order set a trigger for GAL withdrawal?
- Is such a trigger sufficient to signal the end of the involvement of the GAL?
- Is it necessary to file something with the court to show that the trigger was engaged and the matter is now closed?

PROTECTION FOR THE PRACTITIONER

There may be ways to protect oneself from some of the issues presented. Of course, the order appointing guardian *ad litem* is the best place to start. The practitioner should include a waiver of the disclosure requirements in their order of appointment. Payment terms should be set forth as well. The author believes that a separate agreement or addendum to the order should be provided that clearly sets out the responsibilities for payment. Such an addendum should be signed by each party.

Make sure all the initial provisions are complied with prior to meeting with either party. This can include the return of your questionnaire, signature on releases, payment of a retainer, setting initial appointments and any other item that you feel may be important to have completed before you begin work on the case.

Enlist the help of the parties' attorneys. All practitioners encounter payment problems. Most would assist a fellow attorney if they could. Be aware of the policies of the judges that appoint you. Know what they will do to help you collect fees that are due and what they would like to see in your order of appointment.

In the final order, be sure to include items that are important to you as a GAL. The final order should address whether the appointment should continue or terminate. Payment can be ordered and reduced to judgment if appropriate.

CONCLUSION

The practice of law as a guardian *ad litem* is demanding of one's time and energy. To do the

job properly requires dedication and commitment. If the job is done well, the input of the GAL can be very helpful; done poorly it can severely damage a case. Having a GAL appointed in a divorce case is risky for both parents and their counsels as well. Challenging the findings of a GAL is very difficult even if you can show they were neglectful in their investigation. On the other hand, the best rebuttal to an incorrect GAL report is the presentation of evidence that demonstrates bias or blatant material error in their investigation or analysis.

GALs do not make custody determinations; that is the responsibility of the court. However, judges and attorneys alike recognize the value of a competent and well-trained GAL. Their ability to provide insight and evidence in a non-confrontational manner may enhance the chances of settlement. With the caseloads that the courts are handling, it is likely that they will continue to utilize the services of the GAL in a number of different ways. It is imperative that some of these issues be addressed and clarified. Failure to do so will ultimately be detrimental to the courts, the parties, the attorneys and most of all, the children.

1. For a discussion of the standards and practices in representation of children, see National Association of Counsel for Children, *Legal Representation of Children – Recommendations and Standards of Practice for the Legal Representation of Children in Abuse and Neglect Cases*.

2. See the Parenting Coordinator Act, 43 O.S. §120.3

3. See 43 O.S. §120.5. State assumes no financial responsibility for parenting coordinator.

4. See *Rowe v. Rowe*, 2009 OK 66.

5. 43 O.S. §107.3(A)(4).

6. In this session, there were two bills that addressed the removal of GALs from the application of this statute; HB 1568 and SB 765; neither was successful.

ABOUT THE AUTHOR



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Children and School Law

By Julie Miller, Shelley Shelby, James Murray and Jessica Sherrill

Children arguably spend an equal amount of time at school as they do at home during the school year. Issues that affect children at school might come into play in court in child custody, divorce or guardianship cases, and any court decisions may affect the child at school. There, administrators often must settle disputes of noncustodial and custodial parents as their personal matters spill into the child's school life. As an attorney, there are some practical steps to follow to ensure that your client is covered even when their child gets to school.

WHO CAN PICK UP THE CHILDREN FROM SCHOOL? AND, WHEN?

Ordinarily, a parent or guardian has the right to pick up his or her child from school at any time. But, what is a school to do when two parents are literally pulling the limbs of their child fighting over who "has her" that day? School administrators are often called to parking lots and driveways to figure this out between parents or maybe a parent and other family members. As it is, the school will honor the wishes of whichever parent has custody or visitation of the child on that particular day.

For example, if it is the custodial parent's day to "have" the child, then only the custodial parent can decide who can pick that child up from school that day. The noncustodial parent cannot make demands that only the custodial parent picks up the child; likewise, the custodial parent cannot make those demands on days when the noncustodial parent has visitation. That is, unless the court has ordered otherwise, and the school is aware of such order. Without a court order or visitation schedule on site, the school won't have any guidance and will call law enforcement to handle any familial dispute.

Parents are often upset that schools will not take their word on matters like who may pick up the children from school. Most schools' policies read that parents must provide a court order, divorce decree or other custody order if there are restrictions on the parent's access at school.

As we are to keep in mind the best interests of the child, there might be a benefit to taking the next step in deciding custody matters to determine a list of who can pick up children from school and on which days. Perhaps the parents can come to an agreement as to who can pick up the children from school (e.g. grandparents, step-parents, etc.) no matter who has the child that day.

WHAT ABOUT EDUCATIONAL RECORDS?

Parents are entitled under the Family Educational Rights and Privacy Act (FERPA) to inspect and review their child's educational records.¹ This will include (but is not limited to) the student's grades, class schedule, Individualized Education Program, medical information, discipline records, addresses and phone numbers. Regardless of who has custody, both the custodial and noncustodial parent have the same

right of access under FERPA, unless the court specifically restricts otherwise.²

STEP-PARENTS AND SIGNIFICANT OTHERS

It is interesting to note that either of the biological parents can sign a FERPA release that will allow any person to have access to information regarding the child's educational records. Absent a legal document to the contrary, neither parent can negate the other's choice as to who may have educational records of the child.

As a result, mom could provide her boyfriend, cousin, aunt, etc. with permission to access her child's educational records. And, dad could provide his new wife, girlfriend, etc. with permission to access his child's records. Neither mom nor dad could restrict the other's choice to access records absent a court order. Therefore, it is possible that, in addition to mom and dad, also mom's boyfriend, aunt and friend as well as dad's new wife or girlfriend all have access to the same educational information.

PARENT/TEACHER CONFERENCES

Absent a court order to the contrary, both parents are able to participate in parent/teacher conferences. Most school districts are willing to conduct separate parent/teacher conferences for divorced parents in an effort to eliminate a potentially troublesome situation. If a joint parent/teacher conference is held, and the parent or parents create a disturbance on school premises, the school district superintendent or principal would have the legal authority to prohibit the parent or parents from being on school premises for six months.³

WHAT ABOUT CHILDREN IN DHS CUSTODY?

Outside of typical family law matters, there is the instance that a child is in the care and custody of the Department of Human Services. In these cases, the parents may or may not have visitation rights at all, or visitation opportunities may vary depending on meeting the court's plan and goals at each court date.

For example, a parent might have visitation rights for a while, but then fail a drug test and

lose all unsupervised visitation. In the circumstance that the parent visits the child at school, it would be helpful for school administration to be aware, for instance, if a parent is not allowed by the court to eat lunch with their child at school. And, it might be helpful for the court to know what is happening with the child at school, including who is visiting the child at school.

Attorneys and DHS workers involved in these deprived matters will want to keep the school updated in writing as to how much access, if any, the parents are allowed to have

with the child at school. Whatever the last provided court order provides is what the school will follow. Any subsequent court orders can only be followed, if provided timely.

SCHOOL EMPLOYEES AS WITNESSES

The child's teachers might be a great resource in determining how the child is doing at home or while in the care of a particular parent or guardian. Though, there are some statutory considerations when requesting teachers to testify in court proceedings. State law requires that any person subpoenaing a teacher pay up to \$100 per day to the school district so that it can hire a substitute teacher for that subpoenaed teacher's class.⁴

The intent of this measure is to minimize the disruption of students' class time. In most cases, the teacher will not be able to make a determination as to which parent is the "better" parent for child custody as the teacher interacts with the parent(s) in a very limited setting. It would be very unusual for a teacher to be able to make such a judgment call based upon this limited interaction. But, nonetheless, teachers are sometimes subpoenaed to testify as to a child's educational performance and the parents' involvement at school.

THE OBVIOUS EFFECT OF A TERMINATION OF PARENTAL RIGHTS

Of course, the termination of parental rights will cease all parental involvement and access to the child at school - that is, if the school is provided the Order Terminating the Parental Rights. Again, this all boils down to the school being aware of what happens in court. As prac-

“...dad could provide his new wife, girlfriend, etc. with permission to access his child's records.”

tioners, please keep the school updated on any termination of parental rights.

FINAL PRACTICAL TIPS

The school can be a great resource to attorneys who practice in areas that involve children, but please keep in mind that the school has a primary duty to educate children. Therefore, it is best for the school to focus on educating children rather than on attempting to mediate custodial issues. Please keep school administration aware of any changes in visitation, custodial arrangements, placement changes and so on. The school can only operate to follow its own legal restrictions if it is aware of what is happening with its students. If a school district is not provided with any legal documentation, both parents have equal access to the child.

1. 20 U.S.C. §1232g.
2. 43 O.S. §109.6.
3. 21 O.S. §§1375 & 1376.
4. 28 O.S. §84.1.

5. The termination of parental rights will in effect terminate the parent's right to control the child's education and training. 10A O.S. §1-4-906.

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Guardianship of Minors

By Evan Taylor

If in your practice you deal with the general public, you have probably already received a call from someone who has questions about guardianship of a child. If not, then you soon will. It is a common proceeding used by relatives and even close friends to care for a child when the child's parents cannot or will not do so. The purpose of this article is to describe the mechanics of a guardianship of minor children according to the Oklahoma Guardianship and Conservatorship Act (the act), Title 30 O.S. §1-101 *et seq.*, and related laws. This article does not address guardianships which may be granted pursuant to juvenile deprived proceedings found in the Oklahoma Children's Code, Title 10A O.S. §1-1-101, nor does it address issues which may arise in contested guardianship litigation.

THE PETITION

The guardianship process begins when a person seeking guardianship files a verified petition with the court.¹ The petitioner should set forth in the petition her relationship to the ward, the ward's age, the general grounds for the guardianship, and the names and contact information for the persons who are entitled to notice of the proceeding. If the petitioner is seeking appointment as the guardian of the property of the minor child, then she should also identify any income, property, and the value of the property. As will be discussed in more detail below, if the minor has sufficient income and assets, the court may require the guardian to post a bond.² If the minor does not have sufficient income or property, the petition should request that bond be waived.

If public assistance money, medical support or child support services have been provided for the benefit of the child, the Department of

Human Services is a necessary party to these proceedings, and must be given notice pursuant to Title 12 O.S. §2004.³ Additionally, if the minor child has a living parent or other person legally responsible for the support of the child, the court is required to provide for the payment of child support.⁴ Therefore, the petition should also contain a request that child support be addressed.

Guardianships of children are child custody proceedings under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Title 43 O.S. §551-101 *et seq.*, and the court granting the guardianship must have jurisdiction to initially determine custody or modify an existing custody order.⁵ Therefore, the petitioner should also include with the petition the required statements necessary to establish jurisdiction under the UCCJEA.⁶

Venue over a minor child guardianship is in the district court in which the child resides or in

the county where the proposed guardian resides if the proposed guardian is a member of the minor's family.⁷ The court making the guardianship appointment then has exclusive jurisdiction over the case.⁸

TEMPORARY ORDER

If there is a need for an "emergency" temporary order of guardianship, such as the need to immediately enroll a child in school, obtain medical care, or remove the child from immediate harm, the court may enter a temporary order.⁹ The request for a temporary order must either be included in the petition or by separate application, and the specific grounds must be included in the request.

The court may grant a temporary order of guardianship *ex parte*, but must thereafter set a show cause hearing within 20 days after entering the temporary order.¹⁰ Notice of the show cause hearing must be given to those persons entitled to notice of the guardianship proceedings.

NOTICE

The petitioner must serve notice of the action on the then-living parents of the child or other person who has custody.¹¹ If there are no living parents, then the petitioner must serve one of the then-living grandparents. If there are no living grandparents, then the petitioner must serve an adult relative residing in the county in which the petition is filed. Also, if the child has attained the age of 14, then notice must be provided to the child as well.¹²

The petitioner must mail notice to the person's last-known address 10 days prior to the hearing date.¹³ The act does not require service according to Title 12 O.S. §2004 (except for notice to DHS child support enforcement). The court, however, may direct that notice be given by means other than mailing or may even waive notice.¹⁴ Notice to a minor child who has attained the age of 14 may not be waived.¹⁵ It is advisable to contact the guardianship court to determine the preferred method of service.

GROUNDINGS AND ELIGIBILITY OF THE GUARDIAN

A guardianship may be ordered whenever it is necessary and convenient.¹⁶ In most contested cases when either parent is living, a guardianship proceeding is generally a third-party custody case. In such a case, the petitioner must prove by clear and convincing evidence one or

more of the factors listed in Title 43 O.S. §112.5.¹⁷ The discussion of contested third-party custody cases exceeds the scope of this article.

A legal parent may nominate a guardian for their child in a will or written instrument.¹⁸ One parent may not, however, circumvent the other parent's legal right to guardianship or custody by nominating a person with an inferior right to guardianship or custody.¹⁹ A child 14 years old or older may nominate his own guardian; however the court will determine whether a guardian is necessary and who shall serve as guardian.²⁰

When choosing the guardian, the court should be guided by Title 43 O.S. §112.5, which establishes the order of preference for guardianship or custody of a child.²¹ Generally, the order of preference is a parent, grandparent, a person who was indicated by the wishes of a deceased parent, a relative of a parent, a person who has had custody of the child or any suitable person selected by the court.

The court must further consider whether the proposed guardian is eligible under the act by inquiring whether the proposed guardian 1) is a minor or incapacitated; 2) has a record of criminal conviction, protective order or pending criminal charges; 3) is insolvent or has declared bankruptcy in the preceding five years; 4) has a conflict that would prevent the proposed guardian from acting in the ward's best interests; and 5) is under any financial obligation to the ward.²² If any of these eligibility issues are present, the petitioner should identify them in the petition. The court may order the petitioner to present an Oklahoma State Bureau of Investigation (OSBI) or other background check and make further inquiry into the surrounding circumstances. If eligibility issues are present (other than minority or incapacity), the court may nevertheless appoint the proposed guardian if he or she is able to act in the ward's best interests. The court may also order a home study.²³

If guardianship is based on abandonment of a child, a qualified relative may be able to proceed under §2-117. This section includes model forms and allows for a reduced filing fee.

BOND

The court may order the proposed guardian to post a bond before entering the order appointing the guardian and issuing letters of guardianship. Generally, if the anticipated

annual income to the ward for one year plus the value of the personal property owned by the ward is less than \$40,000, the court may order that a bond is not necessary.²⁴ If bond is not waived, Section 4-201 advises that the bond shall be set in an amount not less than the value of the intangible personal property with sufficient sureties and in such penal sum as determined by the court. The amount of the bond may be adjusted in the future based on the annual accountings and upon the order of the court. Further, the court may also set a bond for the guardian of the person as security that the guardian will fulfill her duties.²⁵

“As a practice note, it is advisable to make sure the court’s reasons for entering the guardianship are noted in the order or clearly in the record.”

PLANS FOR CARE

The guardian may be required to submit a plan for the care of the ward and the ward’s property if the ward’s property is included in the guardianship. If the plan for care of the ward is not filed with the petition, the petitioner may submit it to the court at the time of the hearing or within 10 days of the guardian’s appointment.²⁶ The petitioner may present the plan for care of the property within the same time periods, or the time may be extended by the court for up to two months after the guardian’s appointment.²⁷ The initial plan for care of the property must include an inventory of the ward’s property, including the guardian’s opinion of the value of the estate. The court may not waive the inventory.²⁸ Further, at the request of any interested person the property must be appraised in the same manner as in a probate matter. Model plans are included in the statutes.²⁹

ORDER AND LETTERS OF GUARDIANSHIP

In all guardianships, the court must issue an order and letters of guardianship giving the

guardian the authority to act on behalf of the minor child. In the order, the court must include the conditions of appointment — providing for the care, treatment, education and welfare of the minor.³⁰ Further, in any guardianship of a minor who has living parents, the order must include a provision for child support, which will be collected by income assignment as in other child custody cases.³¹ If the Department of Human Services is a necessary party to the action, Section 2-108(C) requires that the state sign and approve any orders concerning paternity, child support, medical support or the debt due the state.

As a practice note, it is advisable to make sure the court’s reasons for entering the guardianship are noted in the order or clearly in the record. As discussed below, the reasons for granting the guardianship over a parent’s objection, or even by agreement, are important to the subsequent termination of the guardianship once impediments have been removed.

REPORTS

The guardian of a minor may have to file an annual report with the court. If the guardianship is solely over the person of the minor, no report need be filed unless required by the court.³² The court may not waive the filing of any report in excess of five years.³³

If the minor has property, then the guardian must file an annual report.

The annual report shall be mailed to those entitled to notice under Section 2-101 for the initial hearing, as well as the ward’s attorney, if any. The report must contain a statement that objections must be filed within 15 days. Upon receiving the annual report the court may approve the report or set a hearing. The court may order a new bond if there are changes to the ward’s property. Model guardianship reports can be found in Sections 4-305 and 4-306. Although the form in Section 4-305 relates to adult guardianships, it may be tailored for minor child guardianships. The court clerk’s office may also have forms available for use.

Reports are required for children if there is any significant change in the condition of the minor or in the condition of the estate of the minor.³⁴ Additionally, the guardian is required to report to the court if she changes the ward’s place of abode within the county.³⁵ Court approval must be obtained to establish or change the place of abode outside the county.³⁶

TERMINATION

The guardianship of a child ceases upon 1) removal of the guardian, 2) the solemnized marriage of a ward, 3) the ward's attaining majority, or 4) termination by the court.³⁷ The guardian may be discharged by the court one year after the child reaches majority, unless the child, with court approval, discharges the guardian before then.³⁸ A guardian may also be removed for reasons that include misconduct or failure to perform duties, or if the guardianship is no longer proper.³⁹

Should a natural parent seek to terminate the guardianship, the parent must show that the impediments that led to the guardianship no longer exist and the parent is a fit and proper person to have custody.⁴⁰ Upon such a showing, as well as proof that the child's best interest will be served, the parent is entitled to termination of the guardianship.

FURTHER RESOURCES

The Administrative Office of Courts provides some excellent materials on guardianships at www.oscn.net under forms and Administrative Office of Courts. These materials (available in Wordperfect, Word and Adobe Acrobat) include a handbook and many of the model plans and reports included in the statutes. Legal Aid of Oklahoma also offers forms and information at their website www.oklaw.org.

CONCLUSION

As you can see, the mechanics of a guardianship for children are relatively straightforward, even if Title 30 is not. I hope that this brief article will be of use to you next time someone comes to your office asking for guardianship of a child.

1. 30 O.S. §2-101
2. 30 O.S. §4-201
3. 30 O.S. §2-108(C)
4. 30 O.S. §2-108

5. 43 O.S. §551-102(4) "Child Custody Proceeding" means a proceeding in which the legal custody, physical custody, or visitation with respect to a child is an issue. The term includes a proceeding for divorce, separation, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear. The term does not include a proceeding involving juvenile delinquency, contractual emancipation, or enforcement under Article 3 of this act. *S.W. v. Duncan*, 2001 OK 39.

6. See 43 O.S. §551-209. The party must give information about the child's current address, the places the child has lived during the past five years and the names and present addresses of the persons with whom the child lived during that period. The party must further inform the court whether she has participated as a party or witness in any other proceedings concerning custody or visitation, whether she knows of any other proceedings, the identity of those proceedings, if any, and state the names and addresses of any party who has physical custody of the child or claims rights of legal custody or visitation with the child.

7. 30 O.S. §1-115.

8. 30 O.S. §1-114.

9. 30 O.S. §1-114(B)(7).

10. *Id.*

11. 30 O.S. §2-101(D).

12. 30 O.S. §2-101(E).

13. 30 O.S. §2-101(E).

14. *Id.*

15. *Id.*

16. 30 O.S. §2-101(A).

17. See also *Hood v. Adams*, 1964 OK 217, 396 P.2d 483.

18. 30 O.S. §2-102.

19. See generally 43 O.S. §112.5.

20. 30 O.S. §2-103 and §2-104.

21. 30 O.S. §2-103(B).

22. 30 O.S. §4-105.

23. 30 O.S. §2-101.

24. 30 O.S. §4-201.

25. *Id.*

26. 30 O.S. §3-120.

27. 30 O.S. §3-122.

28. 30 O.S. §4-301.

29. 30 O.S. §§3-120, 3-122.

30. 30 O.S. §2-109.

31. 30 O.S. §2-108.

32. 30 O.S. §4-303.

33. 30 O.S. §4-303.

34. 30 O.S. §4-303.

35. 30 O.S. §1-120.

36. *Id.*

37. 30 O.S. §2-113.

38. 30 O.S. §§2-114, 2-115.

39. 30 O.S. §4-801.

40. *Matter of Guardianship of M.R.S.*, 1998 OK 38, ¶ 26, 960 P.2d 357, 364-5.

ABOUT THE AUTHOR



Evan Taylor practices in the area of divorce and family law in Norman. He served for two years in the U.S. Peace Corps and speaks fluent Russian. He plays indoor soccer, has an amateur radio license, studies Tae Kwon Do and is a member of Norman Sooner Rotary Club. He has had some great clients who have taught him a lot about the practice of law and how to do it kindly.

8:00am - 8:45am

Registration, Coffee & Doughnuts

9:00am - 9:50am

Kraettli Epperson - Title Standards Update

10:00am - 10:50am

Ted Sherwood - Tort Reform

11:00am - 11:50am

Susan Conrad - Horizontal Drilling

12:00pm - 1:00pm

Barbeque Lunch (Included in Registration Fee)

1:00pm - 1:50pm

Kraettli Epperson - Transfer on Death Deeds

2:00pm - 2:50pm

Carolyn Thompson - Recent Developments in Family Law

3:00pm - 3:50pm

Travis Pickens - Ethics 2011: Recent Developments & Trends

3:50pm - 5:00pm

Social Hour

5:00pm - 7:00pm

Steak Dinner (Included in Registration Fee) & Recognition of Honored Guests

Approved for Continuing Legal Education of 6.0 hours (including 1 hour of ethics). **Registration fees: \$150.00 for pre-registrations received prior to the Institute date; \$175.00 for walk-in registration. Lunch, Dinner and materials included in Registration Fee.** Pre-registration is required for lunch and dinner. Cancellations will be accepted at any time prior to the Institute date; however, a \$50.00 fee will be charged for cancellations made within three (3) days of the Institute date. No requests for refunds of cancellations will be considered after the date of the Institute.

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NOTICE OF JUDICIAL VACANCY

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

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Seminole County, Oklahoma**

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[To be appointed to the office of District Judge, one must be a registered voter of the respective judicial district at the time (s)he takes the oath of office and assumes the duties of office. Additionally, prior to appointment, such appointees shall have had a minimum of four years experience as a licensed practicing attorney, or as a judge of a court of record, or both, within the State of Oklahoma.]

Application forms can be obtained online at www.oscn.net under the link to Judicial Nominating Commission, or by contacting Tammy Reaves, Administrative Office of the Courts, 2100 N. Lincoln, Suite 3, Oklahoma City, OK 73105, (405) 556-9862. Applications must be submitted to the Chairman of the Commission at the same address **no later than 5 p.m., Friday, Sept. 2, 2011. If applications are mailed, they must be postmarked by midnight, Sept. 2, 2011.**

Allen M. Smallwood, Chairman
Oklahoma Judicial Nominating Commission

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Rod Wiemer, JD, Special Prosecutor, Muscogee (Creek) Nation Attorney General’s Office

COURSE OUTLINE - DAY ONE

August 18, 2011

8:30 Registration and Breakfast
8:40 Opening Ceremony
8:50 Welcome and Introduction – **Honorable Patrick E. Moore**
9:00 State Tribal Compact Update – **Honorable Jerry McPeak**
10:00 Break
10:10 Internet Gaming and Tribal Sovereignty – **Andrew Adams III**
11:00 Internet Gaming and Tribal Implications – **Andrew Adams III**
11:50 Lunch – Visions Buffet
1:15 Due Diligence with Intertribal Relationship and Investments – **Rick Moore**
2:20 Break
2:30 How the OIWA Affects Tribal Relationships with Investors – **Rick Moore**
3:30 Intergovernmental Economic Development – **Dr. Jim Collard**
4:50 Question & Answer Session and Evaluations of Day 1 – **All Faculty and Speakers**
5:00 Supreme Court Swearing in Ceremony - Visions Buffet
5:30 Buffet Dinner provided at the River Spirit Casino in conjunction with the Annual Meeting of the Muscogee (Creek) Nation Bar Association

COURSE OUTLINE - DAY TWO

August 19, 2011

- 8:50 Opening Remarks – **Honorable Patrick E. Moore**
9:00 Implications and Consequences of the Tribal Law and Order Act – **Professor Tim Pleasant**
10:00 Break
10:05 Ethical Dealings with Tribal Governments and Tribal Courts – New Developments – **Professor Tim Pleasant**
10:55 Break
11:00 Tribal Land Acquisitions – Federal Law updates – **Professor Royster**
12:00 Lunch – Visions Buffet
1:30 Green Energy – How Tribes Can Get in on the Action – **John Williams**
2:20 Break
2:30 The Health Care Law's Implications on Tribes – **Alissa Hurley**
3:20 Tribal Court Practice – Working Your Way Around a Tribal Court – **Courtney E. Smith**
3:50 *Cossey v. Cherokee Nation Enterprises* - Implications and other Federal Indian Law Updates – **Rod Wiemer**
4:30 Closing Comments and Evaluations of Day 2

Adjourn

**Scheduled agenda – minor changes may occur

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Best Interest Advocacy in Deprived Court: A Necessity

By Jennifer M. Warren

Every year thousands of children in Oklahoma are removed from their homes due to abuse or neglect. They are taken from everything that is familiar to them, placed into a shelter or foster home, and assigned a case number in deprived court. With the filing of a petition alleging a child deprived due to abuse or neglect, the child's future is swept up into a series of hearings, meetings and judgment calls that will forever change her life. In Oklahoma County alone, more than 2,230 abuse or neglect cases were filed in the 2010 fiscal year. Article 1 of Title 10A of the Oklahoma Statutes, labeled as the "Children's Code," controls these deprived child proceedings and grants jurisdiction over these cases to the Oklahoma District Courts.¹ The court is required to review a deprived case at least once every six months² and is guided by the Legislature's intent that "the paramount consideration in all proceedings within the Oklahoma Children's Code is the best interests of the child."³ But how does the court determine what is actually in a child's best interest? Who represents this viewpoint in a deprived case? In the majority of deprived child cases in Oklahoma, the answer is no one.

ROLES AND RESPONSIBILITIES IN DEPRIVED COURT

At every hearing in a deprived case, the district attorney, child's attorney and a child welfare worker from the Department of Human Services (DHS) are present to speak for their respective positions. Each of these parties has its own defined role and agency policies to represent. Initially, it is DHS that conducts the investigation into abuse or neglect allegations and reports its findings to the district attorney's

office.⁴ If a deprived case is filed, a DHS child welfare worker is assigned to oversee the case. While the child welfare worker is guided by the general mandate to act in the best interests of the child, her role is invariably more complex and nuanced. They work not only with the child in mind, but also with the parents involved and the familial interests at issue. Additionally, as a unit of the state, DHS child welfare workers have numerous policies, procedures and guidelines that influence their actions and limit their discretion.

Also present at every deprived hearing is an assistant district attorney. The district attorney's office is responsible for determining whether to file a petition alleging the child to be deprived and it acts as the petitioner on behalf of the state throughout the case.⁵ The child is also assigned counsel — typically a public defender or volunteer counsel.⁶ Importantly, the child's attorney is required to represent "the child and any expressed interest of the child."⁷ Thus, it is the attorney's responsibility to advocate for a child's stated requests regardless of whether the attorney believes that is in the child's best interest. The appointment of counsel to represent the child's expressed interests is essential since the child's future is determined by the outcome of these proceedings. In addition to these parties, the "informal" hearings in a deprived case may involve any number of people, including parents, counsel for the parents, placement providers, service providers, therapists and more.

With all of these individuals present, a judge's bench can quickly become crowded with conflicting opinions. If the "paramount concern" in all proceedings within the Children's Code is truly supposed to be the child's best interests, there is clearly a crucial party missing from most deprived cases. In the vast majority of child welfare cases there is no party charged solely with investigating, discovering and representing a child's best interests. The Children's Code lays out when a guardian *ad litem* may be appointed to represent this position but most cases never have the benefit of this type of advocacy.⁸ In fact, only about a third of cases in Oklahoma County currently have a guardian *ad litem* (GAL) or other advocate appointed to represent the best interests of the child during hearings and other proceedings.

In the event that a guardian *ad litem* is requested and appointed to a deprived case, she is required to "objectively advocate on behalf of the child and act as an officer of the court to investigate all matters concerning the best interests of the child."⁹ Her duties include "advocat[ing] for the best interests of the child by participating in the case...monitor[ing] the

best interests of the child throughout any judicial proceeding, and present[ing] written reports on the best interests of the child that include conclusions and recommendations and the facts upon which they are based."¹⁰ The work of a guardian *ad litem* must be thorough, and in determining "best interests" in a deprived case she should review documents, conduct interviews, observe parent-child interactions, investigate placements and spend time with the child. Oklahoma presumes that permanency is in a child's best interests,¹¹ and much of a GAL's focus will likely be on achieving a permanent home for the child as soon as possible. Notably, when a guardian *ad litem* is requested in a deprived case, priority may be given to the appointment of a court-appointed special advocate (CASA). A CASA is a volunteer adult who is trained and supervised by a local court-appointed special advocate program.¹² The CASA is charged with the same duties

as a GAL, but serves with no compensation.¹³ CASA of Oklahoma County, Inc. has approximately 240 active volunteers serving as a best interest advocate in a deprived case each year, but there are many other children who do not have the benefit of this advocacy.

THE SIGNIFICANCE OF A GUARDIAN AD LITEM

Although limited resources and funding will be a barrier to appointing a GAL/CASA in every deprived case, the significance of having a best interest advocate, especially in the most complex and heinous cases, should not be underestimated. There are several reasons why having a GAL or CASA involved in a child welfare case is beneficial. Perhaps the most important justification for the involvement of a GAL/CASA is that she is the only party who has a duty to represent only the child's best interests. The GAL/CASA is an independent, objective voice that has no agenda to serve but the child's interests and she may zealously advocate for this position without regard to state policies or internal agency procedures. If "best interests" is the paramount concern in deprived cases, it only makes sense to have a trained, independent individual designated to

“The GAL/CASA is an independent, objective voice that has no agenda to serve but the child's interests...”

search out and represent what exactly is in the child's best interests. With the multitude of parties that might be present at a deprived hearing, having a GAL/CASA present to speak up for best interests helps ensure that this crucial position is not overlooked.

The high case loads of the attorneys, social workers and therapists involved in a typical deprived proceeding also justifies the appointment of a GAL/CASA. The number of cases and clients other parties serve, and the nature of deprived court, means that some of the individuals at a typical hearing will have met with the child infrequently — if at all in some cases. While these parties have numerous clients and are often pulled in different directions, a GAL/CASA likely has only a few, or sometimes just one, child welfare case to focus on. This distinction is even more pronounced if a CASA is appointed as she typically takes on only one case at a time. With only a single deprived case, the CASA can devote more time to becoming familiar with the case and getting to know the child and the child's needs. The value of having an individual who has had recent face-to-face contact with the child and the other parties in the case cannot be underestimated when decisions are being made that will dramatically affect the well-being and the future of the child.

The presence of a GAL/CASA on a deprived case can also ensure that the child is receiving all the services she needs and is not deserted in the social services system. A child in a deprived case has invariably been caught in a traumatic, devastating situation. She is often desperately in need of therapeutic services, medical evaluations, educational assistance and protection. A GAL/CASA is another set of eyes on a case to ensure that any services that are needed are actually provided.

The involvement of a court-appointed special advocate in a deprived case brings some additional benefits beyond the functions of an ordinary guardian *ad litem*. While a child welfare case often sees multiple changes in social workers, therapists, placement providers and others, the CASA often stays with a case until it is closed. The consistent presence of a CASA not only brings comfort and stability to the

child involved in the case, but also provides the court with an individual who has valuable, firsthand knowledge of a case's history. Another unique and valuable aspect of a CASA's involvement is her ability to advocate for the child's best interests outside of the confines of the courtroom. If needed, a CASA may advocate for a child's needs with the Department of Human Services, the child's school, the placement providers and the service providers. CASA's goal is to give a voice to a child's best interest, regardless of what that requires.

CONCLUSION

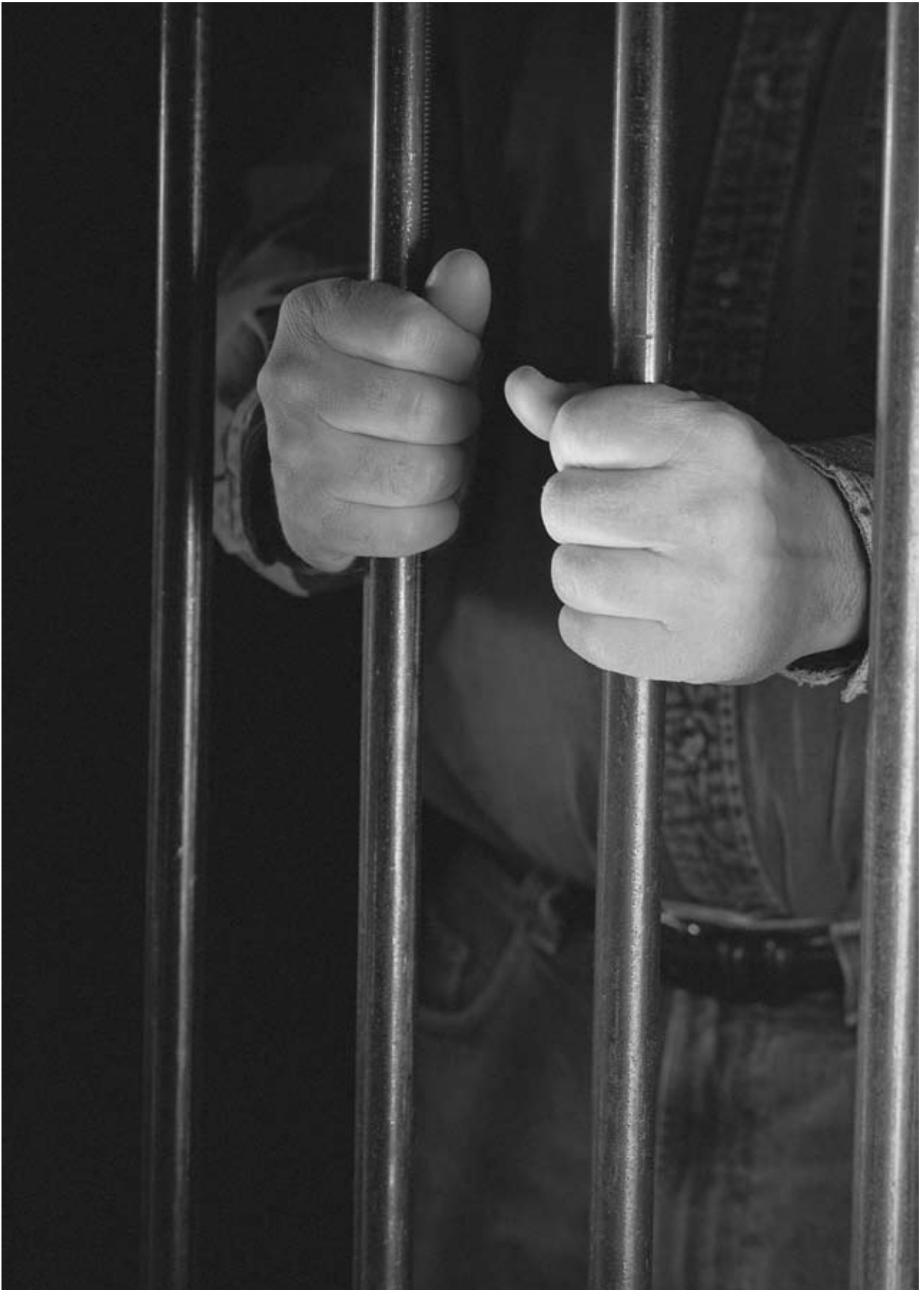
The Children's Code acknowledges that "the state has an interest in its present and future citizens as well as a duty to protect those who, because of age, are unable to protect themselves."¹⁴ In the court cases that influence the lives of the most vulnerable and innocent citizens there is a responsibility to take every precaution available to ensure that they are protected and that their needs are met. Appointing an advocate to represent a child's best interest in a deprived case is a crucial step to fulfilling this responsibility.

1. Okla. Stat. tit. 10A, §1-4-101(A)(1).
2. Okla. Stat. tit. 10A, §1-4-807(A)(1).
3. Okla. Stat. tit. 10A, §1-1-102(E).
4. Okla. Stat. tit. 10A, §1-2-102(A).
5. Okla. Stat. tit. 10A, §1-4-501.
6. Okla. Stat. tit. 10A, §1-4-306(A)(2).
7. *Id.*
8. See Okla. Stat. tit. 10A, §1-4-306(B).
9. Okla. Stat. tit. 10A, §1-4-306(B)(3).
10. *Id.*
11. Okla. Stat. tit. 10A, §1-1-102(B)(6).
12. Okla. Stat. tit. 10A, §1-4-306(C)(1).
13. Okla. Stat. tit. 10A, §1-4-306(C)(2)-(3).
14. Okla. Stat. tit. 10A, §1-1-102(A)(3).

ABOUT THE AUTHOR



Jennifer M. Warren works in child advocacy for the Court Appointed Special Advocates of Oklahoma County. She has a B.A. in politics from New York University and received her J.D. from the OU College of Law in 2010.



Child Advocacy: Helping Children Who Have a Parent in Prison

By Barbara Woltz

INTRODUCTION

One Friday in March, a grade-school age Tulsa girl lost her mother, her older brother and her home. She lost her mother to death, apparently by accidental fatal intoxication. She lost her 19-year-old brother when he was arrested when the police came to investigate the death of the mother and discovered multiple one-pot meth labs. She lost her home when she was removed from the home and placed into DHS custody.

This tragic story is repeated in communities throughout Oklahoma every day – children losing a parent or other family member to incarceration, and, through that loss, losing much more. A September 2010 study estimated that 27,000 children in Oklahoma have a parent in prison. This study, the 2010 *Kids Count Oklahoma Factbook* issued by the Oklahoma Institute for Child Advocacy (OICA), is available at www.oica.org/kids-count. The *Factbook* also said that these children are **five times more likely** to go to prison themselves than their peers.

One thing is different about this girl that will hopefully make her story one of redemption instead of continued tragedy: she attends an after-school program at her elementary school that is offered by New Hope, a Tulsa-based non-profit organization that provides services to children who have a parent in prison. Such programs in this state are few, but lawyers who practice in criminal law should be aware of these resources for referral of their clients' children if that client is or will be incarcerated.

NEW HOPE: SERVICES STATEWIDE AND IN TULSA AREA

The purpose of a child advocacy program such as New Hope is to intervene in the lives of these children to stop the intergenerational cycle of incarceration. Studies show that these children face problems such as being traumatized by separation from their parents, confused by their parents' actions, and stigmatized by the shame of the situation. Deprived of income and guidance, these children are vulnerable to poverty, stressful shifts in caregivers, separation from siblings and other family disruptions. Statistics show that these children are more prone to serious academic and disciplinary problems in school and to use of alcohol and illegal drugs.

All of these theoretical or statistical problems for the population of Oklahoma's children who have a parent in prison are experienced in reality by the children New Hope serves. Children can feel free to express feelings of guilt, anger, and difficulty with school in New Hope after-school programs and summer camps designed

to help them cope with the significant problems they face.

New Hope's residential summer camps are free to Oklahoma children ages 8-17 who have a parent in prison. This summer, New Hope provided a week of summer camp for over 150 children, and the camps are designed to address the issues of these at-risk children. Children have a chance to just be kids as they participate in swimming, boating, games, and arts and crafts, but the children also interact with counselors who had similar experiences growing up and learn about the shared experience of having a parent in prison. This allows them to not feel stigmatized in the safe environment that New Hope provides and gives them many opportunities to talk about their issues in this safe environment. The camps are designed to help the children learn life skills including conflict resolution and anger management while increasing their social and emotional development by participating in and leading group activities, sports and chores.

New Hope also provides weekend retreats for children across the state, including horse retreats where the children learn how to listen, follow instructions, and practice perseverance and patience while learning how to ride and to care for horses. New Hope's after-school services are only available in the Tulsa area at the present time. Two afternoons a week, children ages 4-17 meet at a central downtown Tulsa location. Two afternoons a week, New Hope provides its after-school program at two Tulsa elementary schools. Additional information is available online at www.newhopeoklahoma.org.

OTHER PROGRAMS AVAILABLE

New Hope is not the only nonprofit that is attempting to address the needs of this population. The Tulsa Community Service Council, www.csctulsa.org, convenes a group that meets monthly called Children of Incarcerated Parents (COIP). New Hope is an active participant in this group which includes a dozen organizations. New Hope collaborates with Youth Services of Tulsa, www.yst.org, which provides

mentoring for adolescents who have a parent in prison.

Big Brothers Big Sisters of Oklahoma provides one-on-one mentoring for children with a parent in prison, and New Hope refers its younger clients to BBBS for these services. BBBS calls their program "Amachi," which is a Nigerian word from the Ibo people that means "who knows but what God has brought us through this child." Additional information is available at www.bbbsok.org.

STATE TASK FORCE

In the past legislative session, House Bill 1197 created a 21-member task force that will include seven subcommittees to deal with issues of safety, collecting good information about the number of children with a parent in prison, outreach and education, economic supports and research. The group will also serve as a clearinghouse for resources and review existing legislation that affects children of incarcerated parents. The task force must issue a report by Jan. 1, 2012.

CONCLUSION

Children suffer when a parent is incarcerated. For the practicing lawyer, providing information to clients about programs like New Hope, Youth Services of Tulsa, Tulsa Community Service Council and Big Brothers Big Sisters could make a difference in a child's life and could help reduce Oklahoma's problem with intergenerational incarceration.

“The purpose of a child advocacy program such as New Hope is to intervene in the lives of these children to stop the intergenerational cycle of incarceration.”

ABOUT THE AUTHOR



Barbara Woltz is an attorney in Tulsa. In her 24-year career, she has practiced law in a law firm, in corporate offices and as a federal law clerk. She is an active volunteer with New Hope, a Tulsa-based nonprofit that works with Oklahoma children who have a parent in prison.

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Children and Family Law: A Practitioner's Resource Guide

By Jennifer Stevenson Prilliman

Legal matters involving family members are some of the most difficult to assist our clients through. The situations are often emotionally charged and every case is unique. Navigating these matters when a child is involved becomes even more complicated due to the number of emotional, financial and public policy considerations involved. Knowing where to begin the research process will reduce the time and cost of resolving the matter for both the client and attorney. This article provides an introduction to research resources available for attorneys working with adoption, guardianship, child support, paternity and custody cases. This is not an exhaustive list, but will provide a new or experienced attorney with a basic set of resources to begin proceeding in a family law matter involving children.

OKLAHOMA STATUTES AND RELATED UNIFORM LAWS

- Oklahoma Indian Child Welfare Act, Okla. Stat. tit. 10, §§40-40.9 (2011) — Passed in 1982 in compliance with the federal Indian Child Welfare Act of 1978,¹ this act provides a framework for proceeding when finding placement for a child who is a member of or eligible to be a member of a Native American tribe.

- Oklahoma Adoption Code, Okla. Stat. tit 10, §§7501-1.1 to 7510-3.3 (2011) — The Adoption Code addresses both child and adult adoptions. The Adoption Code provides an outline and specifications for the adoption process in Oklahoma and many of the required basic forms are imbedded in the code itself, such as the “Perma-

nent Relinquishment Form” found at Okla. Stat. tit. 10 §§7503-2.3.

- Oklahoma Uniform Parentage Act, Okla. Stat. tit 10, §§7700-101 to 7800 (2011) — Adopted in 2006² from the *Uniform Parentage Act (2000) (Revised 2002)*³ prepared by the Uniform Law Commission, this act sets out the guidelines for determining and enforcing parentage.

- Oklahoma Children's Code, Okla. Stat. tit. 10A, §§1-1-101 to 1-10-102 (2011) — In the unfortunate circumstance where a child is determined to be deprived, the Children's Code provides advocates, family members and foster parents with “the foundation and process” for intervention.

- Okla. Stat. Title 30 Guardian and Ward — When confronted with a situation where a minor needs to be placed in a new home due to his or her parents' death or inability to continue to care for the child, a guardian will need to be appointed. This title covers both the guardianship of minors and adults and the rules for conservatorship.

- Divorce and Alimony, Okla. Stat. tit. 43, §§101 to 140 (2011) — These statutes set out the basic requirements for divorce, alimony, custody and child support. Experienced family law attorneys are well versed in these statutes. However, if you are taking on your first divorce case or have not worked in family law for a while, you will want to review these statutes carefully.

- Parenting Coordinator Act, Okla. Stat. tit. 43, §§120.1 to 120.7 (2011) — Custody and support agreements are often contentious and difficult to negotiate. The court may appoint, either with or without permission of the parties, a parenting coordinator to facilitate a parenting agreement.

- Oklahoma Uniform Child Custody Jurisdiction & Enforcement Act, Okla. Stat. tit. §§43, 551-101 to 551-402 (2011) — Based on the Uniform Law Commission's Uniform Child Custody and Enforcement Act (1997),⁴ this uniform act replaced the Uniform Child Custody Jurisdiction Act and revised Oklahoma's laws to comply with federal standards, namely the Parental Kidnapping Prevention Act of 1980.⁵ It creates consistent standards for interstate enforcement of child custody and visitation agreements.⁶

- Oklahoma Uniform Interstate Family Support Act, Okla. Stat. tit. §§601-100 to 601-901 (2011) — Similar to the above act, this act was adopted from several of the Uniform Law Commission's uniform acts of the same name.⁷ This act regulates the enforcement of interstate child and family support agreements. In 2008 the Uniform Law Commission finalized a new version of the act. Currently Oklahoma has not adopted the 2008 act.

UNIFORM LAW COMMISSION

The Uniform Law Commission's comments accompanying the Uniform Parentage Act, Uniform Child Custody and Jurisdiction Enforcement Act, and the Uniform Interstate Family Support Act supply a wealth of interpretative information for an attorney. The final-

ized versions of the acts with comments are freely available in HTML and PDF format from the Uniform Law Commission's website.⁸ Thomson West's publication *Uniform Laws Annotated (U.L.A.)* contains the acts with the commission's comments and with added West annotations to law review articles, *Corpus Juris Secundum* and *American Jurisprudence 2nd* articles, notes of decisions, and West Key Number references. The *U.L.A.* also summarizes state adoption practices and language variations from state to state. The print version is updated with an annual pocket part. Depending on your contract, the *U.L.A.* may also be available through Westlaw and WestlawNext. LexisNexis's *Martindale-Hubbell Uniform and Model Acts* database and HeinOnline both carry the uniform laws.

OKLAHOMA SPECIFIC TREATIES, HANDBOOKS, AND STATUTE COMPILATIONS

The books discussed below are Oklahoma specific resources. Most of these resources are available in the OCU School of Law Library, OU College of Law Library, and the TU College of Law Library. Please call any of these libraries or your local county law library for more information.

- Melissa DeLacerda, *Oklahoma Family Law*, Oklahoma Practice Series Vol. 4 (St. Paul, MN: Thomson/West 2007) — *Oklahoma Family Law*, a part of the *Oklahoma Practice Series*, is an excellent resource for experienced and beginning attorneys. It explains the family law statutes, provides sample forms and petitions, provides practice tips and includes valuable case and statute citations. It is available in print and through Westlaw and WestlawNext. Chapters 6-12 explain child custody and visitation, child support, parenting coordinators and the Uniform Interstate Family Support Act. This text is updated with annual pocket parts.

- Michelle C. Harrington, *Oklahoma Family Law: Direct and Cross Examination Suggested Questions, Ideas and Outlines* (Dallas: Imprimatur Press 2004) — This text provides sample examination questions for most matters relating to divorce and custody, including divorce with minor children, custody and suits affecting the parent-child relationship.

- Robert G. Spector, Carolyn S. Thompson and D. Marianne Brower Blair, *Oklahoma Family Law: Divorce and Adoption Statutes and Rules Annotated 2010-2011* (Dallas: Imprimatur Press

2010) — This comprehensive compilation of annotated Oklahoma divorce and adoption statutes and rules is an affordable alternative to purchasing West's *Oklahoma Statutes Annotated* or the *Uniform Laws Annotated*. The annotations include statute cross references, case citations with analysis and related uniform law comments. New editions are printed annually.

- Robert G. Spector, *Oklahoma Family Law: The Handbook 2010-2011* (Dallas: Imprimatur Press 2010) — A complementary text to *Oklahoma Family Law: Statutes and Rules Annotated*, chapters five and six of this resource provide an analysis of child custody, visitation and support. It offers explanation of the policy behind many of Oklahoma's statutes and citations to relevant case law.

- C. Steven Hager, *Indian Child Welfare Act: Case and Analysis* CD-ROM, Colline Meeked (Oklahoma City: Oklahoma Indian Legal Services 15th ed. 2011) — A PDF on a CD-ROM, this resource analyzes both federal and state case law impacting the act. It includes Oklahoma and Federal statutes, Department of Interior rules and basic forms. The PDF is easily searchable and user friendly. This detailed compilation is available from Oklahoma Indian Legal Services for \$35.⁹

- West's *Oklahoma Family Law 2011* (St. Paul, MN: Thomson/ West 2010) — This statute compilation pulls together most of Oklahoma's family law statutes. What is nice about this resource is the combined index which allows you to easily find related statutes in different titles. It is updated annually.

- 2005 OBA/CLE *Formbook* on CD, OBA Continuing Legal Education Department (Oklahoma City: OBA 2005) — This collection of Oklahoma specific forms includes adoption forms, Native American adoption forms and family law forms. The complete index of forms is available on the OBA website.¹⁰

- Archived CLE — There are too many informative CLE programs to list, but often an archived CLE is available for purchase. When you pay for an archived CLE course, you are able to watch the program and download the program materials. This is an excellent way to learn about a new topic directly from a practitioner. Archived CLE may be purchased through the OBA. If you do not want to watch the videos you may elect to purchase only the print materials for a reduced cost.

TREATISES-MULTI JURISDICTION

- Joan Heifetz Hollinger *et. al*, *Adoption Law and Practice* (New York: Matthew Bender & Co. 2010) — This comprehensive treatise covers all aspects of domestic and international adoption. It is available as an annually updated three-volume loose-leaf set or electronically from LexisNexis.

- Sandra Morgan Little, *Child Custody and Visitation: Law and Practice* (Matthew Bender & Co. 2010) — This four-volume loose-leaf set discusses a wide range of custody-related issues including international child custody enforcement, disputes between parties and mediation. It is updated twice a year. It is also available electronically from LexisNexis.

- Sarah H. Ramsey and Douglas E. Abrams, *Children and the Law in a Nutshell* (St. Paul, MN: Thomson/West 3rd 2008) — Providing a general overview of laws related to children and juveniles and the policy and history behind those laws, this *Nutshell* is a good basic text for anyone needing a quick refresher course on children's legal issues. It covers all aspects of children and the law including criminal law, family law, torts and property.

- Laura W. Morgan, *Child Support Guidelines: Interpretation and Application* (New York: Aspen Law and Business 2010) — This guide walks lawyers through the steps of applying child support guidelines and when and how to deviate from those guidelines. It is updated annually and available electronically from *Westlaw*, *WestlawNext*, and *LoisLaw*.

- BNA *Family Law Reporter* (Washington D.C.: Bureau of National Affairs 2011) — This reporter with state family law decisions, news and analysis is available as a weekly updated loose-leaf publication or as a subscription-based online source. The online version is updated daily.

- Barbara Ann Atwood, *Children, Tribes, and States: Adoption and Custody Conflicts Over American Indian Children* (Durham, NC: Carolina Academic Press 2010) — Written by the Mary Ann Richey Professor of Law at the University of Arizona, this text provides an in-depth examination of the Indian Child Welfare Act and the relationship between tribes and states in placement cases.

- Jean Koh Peters, *Representing Children in Child Protective Proceedings: Ethical and Practical Dimensions*, 3rd International Ed. (Newark, NJ:

Matthew Bender & Co. 2007) — This book covers both domestic and international law and examines policy and ethical factors that should be considered by lawyers representing children. The book includes sample ethical problems and solutions.

- B.J. Jones, Mark Tilden and Kelly Gaines-Stoner, *The Indian Child Welfare Act Handbook: A Legal Guide to the Custody and Adoption of Native American Children* with CD-ROM, 2nd ed. (Chicago: ABA Section of Family Law 2009) — Updating the 1995 edition, this work offers a comprehensive overview and discussion of the federal Indian Child Welfare Act. This well-researched handbook includes extensive citations, a table of cases, addresses for the federally recognized tribes and appendices with forms, checklist and other practitioner tools.

- Robert M. Galatzer-Levy, Louis Kraus and Jeanne Galatzer-Levy, *The Scientific Basis of Child Custody Decisions* 2nd.ed. (Hoboken, NJ: John Wiley & Sons Inc. 2009) —Determining the “best interest of the child” is a complicated undertaking. This collection of empirical and psychology-based studies from the legal and mental health communities analyzing methods of determining the best interest of the child offers valuable insight to the process. Topics include the impact of divorce on children, psychological tests for custody evaluations, children and high-conflict divorces, custody evaluation when parents have psychiatric disorders, joint custody and improving and evaluating a child’s attachment to their caregivers.

- Margaret S. Price, *Special Needs Children and Divorce: A Practical Guideline to Evaluating and Handling Cases* (Chicago: ABA Section of Family Law 2009) — Divorcing spouses with children with special and/or medical needs will have additional obstacles when preparing custody agreements and child support determinations. This book offers guidance, forms, case analysis and practice tips.

ADDITIONAL RESOURCES

- ABA Center on Children and the Law¹¹ — The Center on Children and the Law is an ABA community for attorneys representing and advocating for children.

- *Child Law Practice*¹² — Published by the ABA, this monthly publication for lawyers and judges provides policy updates, case law updates and discussions of ethical issues. A subscription is required for this publication.

- Google Scholar¹³ — Google Scholar is a free tool that allows users to search for citations to scholarly publications. It now includes law reviews and court decisions. After finding citations in Google Scholar, you can retrieve them from subscription databases or visit your local law library.

- *Oklahoma Family Law Journal* — The May 2010 and June 2010 editions of this publication are available online.¹⁴ Older editions may be available in your local law library.

- *Oklahoma Bar Journal Forms: Family Law*¹⁵ — Currently this list includes passport alert forms and writ of habeas corpus forms. The forms are available in Microsoft Word, Word Perfect and HTML.

- OKLAW.org¹⁶ — OKLAW.org is sponsored by Legal Aid Services of Oklahoma, the Legal Services Corporation and ProBono.net. The section on family law includes a compilation of important DHS links, tribal court links and relevant forms. This is a great resource to bookmark. Rather than surfing the web for these resources or spending time trying to locate items on the DHS or a county court’s website, OKLAW.org aggregates those links together in one location.

- Tribal Court Clearinghouse: Indian Child Welfare Act Information¹⁷ — The Tribal Court Clearinghouse brings together many primary and secondary web-based resources related to tribal law. The section on the Indian Child Welfare Act includes links to important resources and organizations such as the National Indian Child Welfare Association and the Native American Rights Fund’s *Practical Guide to the Indian Child Welfare Act*.

1. Pub. L. No. 95-608, 92 Stat. 3069; 25 USC §§1901-1963. (Supp. 2009).

2. See OKLA STAT. TIT. 10 §§7700-101 *et. seq.*

3. UNIF. PARENTAGE ACT (revised 2002), 9B U.L.A. 356-505 (Supp. 2010).

4. UNIF. CHILD CUSTODY AND ENFORCEMENT ACT 1997, 9 IA U.L.A. 649-706 (Supp. 2010).

5. Pub. L. No. 96-611, §§6 to 10, 94 Stat. 3568; 28 U.S.C. §1738A (Supp. 2009); 42 U.S.C. §663 (Supp 2009).

6. UNIF. CHILD CUSTODY AND ENFORCEMENT ACT, Prefatory Note 1, 1997 available at www.law.upenn.edu/bll/archives/ulc/uccjea/fin-11997act.pdf (last visited May 9, 2011); 9 IA U.L.A. Prefatory Note 650 (Supp. 2010).

7. UNIF. INTERSTATE FAMILY SUPPORT ACT 1992, 1996 & 2001, 9 U.L.A. 159-802 (Supp. 2010).

8. Uniform Law Commission, THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS, www.nccusl.org (last visited May 9, 2011).

9. The Indian Child Welfare Act, OKLAHOMA INDIAN LEGAL SERVICES, www.oilsonline.org/The_Indian_Child_Welfare_Act.html (last visited May 9, 2011).

10. OBA/CLE 2005 Form Book: Index of Forms, OKLAHOMA BAR ASSOCIATION, www.okbar.org/cle/formbookcontents.htm (last visited May 9, 2011).

11. Center on Children and the Law, AMERICAN BAR ASSOCIATION, www.americanbar.org/groups/child_law.html.

12. Child Law Practice Online, AMERICAN BAR ASSOCIATION, <http://apps.americanbar.org/child/clp/> (last visited May 10, 2011).

13. GOOGLE SCHOLAR, <http://scholar.google.com/> (last visited May 10, 2011).

14. Family Law Journal, OKLAHOMA BAR ASSOCIATION, www.okbar.org/family/journal/ (last visited May 10, 2011).

15. Bar Journal Forms: Family Law, OKLAHOMA BAR ASSOCIATION, <http://my.okbar.org/family.htm> (last visited May 11, 2011)

16. OKLAW.ORG, www.oklaw.org/OK/index.cfm.

17. TRIBAL LAW AND POLICY INSTITUTE, Indian Child Welfare Act Information, TRIBAL COURT CLEARINGHOUSE, www.tribal-institute.org/lists/icwa.htm (last visited May 9, 2011).

ABOUT THE AUTHOR



Jennifer Stevenson Prilliman is the current reference librarian for public, clinical and student services at the OCU School of Law, where she also serves as adjunct faculty. She earned her J.D. from the OU College of Law in 2005 and her masters in information and library studies from OU in 2010. She is a member of the OBA Law Day and Bar Technology committees.

Clerk of the Appellate Courts Relocates to New Oklahoma Judicial Center

The Clerk of the Appellate Courts moved its office to the new Oklahoma Judicial Center on Tuesday, July 5. After July 5, 2011, all appellate filings shall be made at the following address:

**Clerk of the Appellate Courts
Oklahoma Judicial Center
2100 N. Lincoln Blvd., Suite 4
Oklahoma City, OK
73105-4907**

**Also note, the new phone number
will be 556-9400**

**On Monday, July 11, 2011, the Court
of Criminal Appeals moved to the
new Oklahoma Judicial Center.**

The new address will be:

**Court of Criminal Appeals
Oklahoma Judicial Center
2100 N. Lincoln Blvd., 3rd Floor
Oklahoma City, Oklahoma,
73105-4907.**

All the telephone numbers for the Court of Criminal Appeals have changed effective July 11, 2011. The new main line number will be 405-556-9600. For a complete list of telephone and room numbers for the Judges, Staff Attorneys and Employees of the Court of Criminal Appeals, please go to www.okcca.net/online and click the "contact" tab.



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life hero portrayed in the movie "Black Hawk Down," SSgt. Matt Eversmann. And this year being the 10th anniversary of the terrorist attack in NYC, Andrew Card, former chief of staff to George W. Bush, will present his eyewitness account of 9/11 at the annual luncheon.

And to liven it up in the evenings, we have the President's Boots and Bandanas Reception on Wednesday followed by the Red Dirt Rangers Band. The YLD Casino night will move to Wednesday with a western theme. On Thursday,

we will have another new event, the President's Red White & Blue Reception, with more free food and libations prior to the performance of The Capitol Steps, a Washington, D.C.-based political satire musical group.

And then, to top off the whole event, we have secured a limited number of tickets to the Reba McEntire concert at the BOK Center on Friday evening. These tickets are *only* available for purchase by Annual Meeting attendees.

I want to take this opportunity to thank our dedicated staff at the bar center for their hard work. It is easy to do things the same year after year. OBA staff members have rolled up their sleeves and have been the workhorses for this Annual Meeting transformation.

Lots more is being planned, but I hope this sneak preview makes you mark the date on your calendar. Registration will start soon. Come join us and reinvigorate your pride in your profession.

**NOTICE OF HEARING ON THE PETITION FOR REINSTATEMENT
OF STEPHEN F. SHANBOUR, SCBD #5733
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 Stephen F. Shanbour 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 **Wednesday, August 24, 2011**. 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

Still At Work

Edmondson Heads Commission to Improve State's Judicial System

By M. Scott Carter

Former Attorney General Drew Edmondson is still seeking justice.

Out of office, but armed with the backing of the Oklahoma Bar Association, Edmondson has set out to see if justice in Oklahoma can be improved.

Tapped as chairman of the Oklahoma Bar Association's Justice Commission, Edmondson and the 16-member commission are spending the next two years reviewing cases where deoxyribonucleic acid, or DNA, tests have been used to overturn the convictions of several Oklahoma inmates previously convicted of murder.

Edmondson said the commission's goal wasn't to overturn more sentences, but instead to identify forensic methods, trial procedures, judicial processes and attorney techniques that increase the likelihood that an innocent person would be wrongly convicted.

"We're not looking to retry the case," he said. "We're looking at how to improve the process."

State records show that 10 individuals have been exonerated in Oklahoma through post-conviction DNA testing.

Nationwide, more than 258 individuals have been cleared of their crimes through DNA testing; of that figure 17 had been sentenced to death.

Edmondson said the review was needed because technology has rapidly changed the face of forensic investigations.

"We're not living in the same world we were 20 years ago," he said.

A 16-year veteran of the attorney general's office, Edmondson was a leading proponent to streamline the state's death penalty process. And while his critics complain that he made executions faster in Oklahoma, other attorneys, including OBA President Deborah Reheard, said Edmondson was named chairman of the Justice Commission because of his reputation as a fair and honest public servant.

"Drew Edmondson has dedicated his professional career to prosecution, first as a district attorney in Muskogee, and later as the state's attorney general," Reheard said. "His commitment to fairness and truth for all Oklahomans is unquestioned."

Edmondson said his goal was to ensure the right person was convicted of the crime.

"The commission is looking at areas where we can improve," he said. "I think everyone will tell you they want the right person to go to jail."

To do that, Edmondson said, the process must be improved.

"One of the bigger problems is false eyewitness identification," he said. "The witness will swear that a certain person is guilty and DNA tests will prove otherwise."

Oklahoma County Public Defender Bob Ravitz said several processes in the state's criminal justice system need review. Ravitz, a member of the commission, said he hoped it would push for greater accuracy and the use of neutral, science-based testing.

"Scientific evidence should be a neutral process," he said. "I'm a big believer in an independent forensic lab. I think in the long term that makes better sense. The purpose is to identify concerns in criminal justice that could be lessened."

Ravitz, who said he's locked horns with Edmondson on more than one occasion, said he hoped the commission would develop a recommendation that could be used by the law enforcement agencies,



Oklahoma Justice Commission members and visitors convene at the commission's most recent meeting. (Left to Right) Jennifer Miller, Dennis Smith, Co-Chair Retired Judge Reta Strubhar, Pamela Hammers, Jackie Steyn, Danny Honeycutt, John Claro (front), Charles Curtis (back), Chair Drew Edmondson, Dwight Adams, Chad Farmer (back), Tim Dorsey (front), Scott Walton, Christy Sheppard, David Prater, Bob Ravitz and Bill Citty

Oklahoma Justice Commission Members

Note: The OBA resolution creating the commission allows for as many members as the chair deems necessary. Currently 30 members make up the commission.

William A. "Drew" Edmondson, chairperson

Retired Judge Reta Strubhar, co-chairperson, Court of Criminal Appeals

Dwight Adams, forensic specialist

Judge Thomas Alford, trial court judge, Muskogee County

Carrie Bullard, legal secretary

Cathy Christensen, OBA president-elect

Bill Citty, chief of police, Oklahoma City Police Dept.

John Claro, attorney, legal scholar

J. William Conger, OCU School of Law

Rep. Lee Denney, Oklahoma House of Representatives

Tim Dorsey, police captain, Edmond Police Dept.

Steve Emmons, interim director, CLEET

Chad Farmer, police captain, Muskogee Police Dept.

Stan Florence, director, OSBI

Judge Tom Gillert, trial court judge, Tulsa County

Andrea Hamor Edmondson, victims' advocate

Lawrence Hellman, OCU School of Law

Rob Hudson, first assistant Oklahoma attorney general

Sen. Constance Johnson, Oklahoma Senate

Mack Martin, defense attorney

David Prater, Oklahoma County district attorney

Bob Ravitz, Oklahoma County public defender

Judge Clancy Smith, Court of Criminal Appeals

Dennis Smith, District 2 district attorney (Beckham, Custer, Ellis, Roger Mills and Washita counties)

Joshua Snavelly, staff member, OCU Innocence Project

Jackie Steyn, victims' advocate

Scott Walton, Rogers County sheriff

John Whetsel, Oklahoma County sheriff

Vonda Wilkins, defense attorney

Sue Wycoff, defense attorney

John Yoeckel, member of the public

the courts and even the Legislature to make the criminal justice system better.

"Drew Edmondson and I have fought a lot of battles," Ravitz said. "But I'm convinced that Drew wants to get the right guy. I'm convinced that officials like (Oklahoma City Police Chief) Bill Citty want to get the right guy. Anything that would help get the right guy, I support. I think we'll come up with some positive recommendations."

Edmondson agreed.

"The commission is a very diverse group," he said. "We're going through these cases and we're looking at how they were handled, from the arrest to the sentencing. And I think having such a diverse group will make those recommendations stronger."

In addition to former — and current — prosecutors, Edmondson said the commission includes appellate court judges, legal scholars, members of the Legislature, representatives from Attorney General Scott Pruitt's office, members of the general public and several law enforcement officials.

Because the group includes prosecutors and law enforcement officials, Edmondson said the commission's final recommendations will be stronger and may be better received by policymakers.

"I think if this was just a bunch of legal scholars it would be harder to see our recommendations made into policy," he said. "But because we have representatives from those agencies on the front lines, I think our recommendations will get a better reception."

The buy-in from law enforcement, Ravitz said, was vital.

"For this group's recommendations to be accepted, they need to come from law enforcement types like Edmondson, other DAs and police and sheriff. They have to buy into this to make it good public policy."

Still, even with the backing of the state bar and a diverse,

talented group, Edmondson said he expected the commission's work to be difficult.

"I know there will be issues and some things will be difficult," he said. "We'll spend this year looking at cases and next year developing recommendations. That won't be easy, but I believe it needs to be done. I don't think you should ever stop trying to find a better way."

M. Scott Carter is the capitol bureau reporter for The Journal Record. This article originally appeared in the June 29, 2011, edition of that newspaper. Reprinted with permission.

Editor's note: The OBA resolution authorizing the creation of the Oklahoma Justice Commission enables the chairperson to appoint as many members as he deems necessary.

G 
GREEN

Want to save some paper? Go online to my.okbar.org/Login and sign in. Click on "Roster Info" and switch to electronic to receive court issues.



Sovereignty Symposium 2011

Oklahoma City, June 1-2, 2011



Gov. Bill Anoatubby of the Chickasaw Nation and Patrick Redbird of the Kiowa Black Leggings



Justice Doug Combs, Judge Lee West, 2011 Honored One William J. Holloway Jr., Justice Yvonne Kauger and Justice Rudolph Hargrave



Mr. Gary Pitchlynn and Mr. Jess Green



Artist D.G. Smalling presents his artwork to Judge Holloway.

Oklahoma Artist Jeri Redcorn



Justice Joe Watt and Justice Noma Gurich





Mr. Michael Richie, clerk of the Oklahoma Supreme Court, Justice John Reif and Judge Phil Lujan



Keynote speaker the Baroness Emma Nicholson, House of Lords; Oklahoma City University President Robert Henry and Chief Justice Steven Taylor



Gen. Rita Aragon



Jonna Kauger Kirschner, deputy director and general counsel of the Oklahoma Department of Commerce

Callen Clarke, Baroness Nicholson and Kyle Dillingham at the reception



2012 OBA Board of Governors Vacancies

Nominating Petition: 5 p.m. Friday, Sept. 2, 2011

OFFICERS

President-Elect

Current: Cathy M. Christensen, Oklahoma City
Mrs. Christensen automatically becomes
OBA president Jan. 1, 2012
(One-year term: 2012)

Nominee: **James T. Stuart, Shawnee**

Vice President

Current: Reta M. Strubhar, Piedmont
(One-year term: 2012)

Nominee: **Peggy Stockwell, Norman**

BOARD OF GOVERNORS

Supreme Court Judicial District One

Current: Charles W. Chesnut, Miami
Craig, Grant, Kay, Nowata, Osage, Ottawa,
Pawnee, Rogers and Washington counties
(Three-year term: 2012-2014)

Nominee: **Linda S. Thomas, Bartlesville**

Supreme Court Judicial District Six

Current: Martha Rupp Carter, Tulsa
Tulsa County
(Three-year term: 2012-2014)

Nominee: **Kimberly K. Hays, Tulsa**

Supreme Court Judicial District Seven

Current: Lou Ann Moudy, Henryetta
Adair, Cherokee, Creek, Delaware, Mayes,
Muskogee, Okmulgee and Wagoner counties
(Three-year term: 2011-2014)

Nominee: **Vacant**

Member-At-Large

Current: Steven Dobbs, Oklahoma City
(Three-year term: 2011-2014)

Nominee: **Nancy Parrott, 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. 2-4. Terms of the present OBA officers and governors listed will terminate Dec. 31, 2011. Nomination and resolution forms can be found at www.okbar.org.

OBA Nominating Petitions

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

OFFICERS

VICE PRESIDENT

PEGGY STOCKWELL, NORMAN

Nominating Petitions have been filed nominating Peggy Stockwell for election of Vice President of the Oklahoma Bar Association Board of Governors for a one-year term beginning January 1, 2012.

A total of 320 signatures appear on the petitions.

BOARD OF GOVERNORS

SUPREME COURT JUDICIAL DISTRICT NO. 1

LINDA S. THOMAS, BARTLESVILLE

Nominating Petitions have been filed nominating Linda S. Thomas for election of Supreme Court Judicial District No. 1 of the Oklahoma Bar Association Board of Governors for a three-year term beginning January 1, 2012.

A total of 31 signatures appear on the petitions.

A Nominating Resolution has been received from the following county:

Washington



A Long, Hot Summer and Law Office Technology

By Jim Calloway, Director, OBA Management Assistance Program

It has been a long hot summer in Oklahoma. The *Oklahoma Bar Journal* summer publishing hiatus is over and many things of interest in technology transpired over the summer.

As I was trying to resist the temptation to write about miserable heat, an item arrived in my inbox taking me back to the colder days of December. The ABA's *GPSolo* magazine won a 2011 APEX Award for Publication Excellence in the category of Green Magazines & Journals for its December issue, themed "The Greening of Your Law Practice." It explored how the latest technology and law practice strategies can lessen a law firm's environmental impact and save it money. I'll leave the political debate over global climate change to other writers in other venues, but the entire contents of the award-winning publication are online at www.tinyurl.com/3od36z2.

It does include some nice tips.

For example, have you upgraded your office thermostat to a state-of-the-art programmable one? One article in the magazine suggests 60 degrees for the heater, 90 degrees for the air conditioner. My life experience suggests that you have to experiment

with this to get it right. This past July if one had let the office temperature go up to 90 overnight and started the cooling down process 45 minutes before the office opened, one would have never recovered all day.



“...have you upgraded your office thermostat to a state-of-the-art programmable one?”

But a tip I never thought of was to also have a programmable timer for the water heater. That may not save a lot of money, but even small amounts help. Many lawyers who own their own building probably considered adding insulation or having an energy audit when some utility bills were received this summer. Why put that off any longer?

I'd also never thought of using a surge suppressor power strip as an on/off switch. You can plug small electronic devices into it, like calculators, electric staplers, etc. Then the flick of a single switch on the strip turns them off at the end of the day and on at the start of the next day.

Check out the entire issue of the award-winning December 2010 *GPSolo* magazine for more tips, as well as articles ranging from paperless and virtual offices to buying refurbished office equipment.

For those of you who have never gotten used to the curly CFL light bulbs, it now appears there is a better bulb for many uses on the way. GE just announced a complete new line of LED light bulbs. They last much longer and most do not attract bugs when used outdoors. The bulbs are projected to deliver

light for more than two decades based on three hours of use per day. Look for them to be common on store shelves in about 18 months.

There is no doubt the trend is to use less paper in many ways. We're seeing more and more people reading e-books these days. Kindles are pretty common now. Kindles have gotten very inexpensive, with one model priced at \$114 at www.amazon.com/kindle.

I still prefer the iPad and have blogged a bit recently about lawyers and iPads at my blog www.jimcalloway.typepad.com/lawpracticetips. You can read e-books on the iPad and do much more. In June, TrialPad 2.0 for the iPad was released. While \$89.99 sounds like a stiff price for an iPad app, read my review before you make up your mind at www.tinyurl.com/3ebwbtt. This app can be very useful in a courtroom.

Tom Mighell was a guest speaker at our 2011 OBA Solo and Small Firm Conference. He recently published the book "iPad for Lawyers in One Hour." A few weeks after our conference he gave a

webinar titled "60 Apps in 60 Minutes." He then posted the list of apps on his IPAD 4 LAWYERS blog. You can find his list of apps here: www.tinyurl.com/3rqjedv. You should definitely check out his list if you own an iPad.

There are a couple of blogs about smart phones that I want to recommend to you.

"iPhoneJD" is from Jeff Richardson and is a great source of information for lawyers about iPhones (and iPads, as well). It is located at www.iphonejd.com.

Jeffrey Taylor is an attorney from Oklahoma City and he publishes "The Droid Lawyer" blog at www.thedroidlawyer.com. Jeff knows his Droid devices and has a well-written blog.

Google+ launched to a lot of fanfare. Google plans on taking on Facebook in the social media arena, but there's more to Google+ than that. According to legal technology expert Steve Mathews, "Google+, the search engine's recent entry in the social networking sphere, is set to make a big impact on the legal-web ecosystem. You

would be wise to jump ahead of the curve and begin testing now, rather than wait to see how things pan out: Read more at or www.tinyurl.com/3mtaka7.

Not all of the recent technology news is positive, however. Netflix raised prices and angered many users. AT&T confirmed it will start throttling (slowing down) those who it determines are using too much data under its unlimited plans for iPhone and iPad. I think AT&T should check out the definition of unlimited. See www.tinyurl.com/3qdamcf.

This spring I was asked to participate in the traditional closing of ABA TECHSHOW, the 60 Sites in 60 Minutes panel. We had a lot of fun. One of the other panelists was my Digital Edge podcast teammate Sharon Nelson. We decided to reprise our sites for our Digital Edge podcast. You can listen to the podcast and/or see the links for 24 great websites at www.tinyurl.com/3vsxtcu.

I'll see you next month when hopefully we will all be a bit cooler.



Ethics ‘Desiderata’

By Travis Pickens

In 1927, American writer Max Ehrmann wrote a prose poem titled “Desiderata.” It was thought that Ehrmann had written it for his children, and the poem was extremely popular in the ‘60s and ‘70s, especially among young adults. “Desiderata” is Latin for “desired things.” The following is an adaptation of the poem.

*Go ethically amid the noise and haste,
and remember what peace there may be in an office practice.*

*As far as possible, without surrender,
be on good terms with opposing counsel and your client.
Make your argument quietly and clearly;
and listen to others,
even to the dull and ignorant;
they too have practiced law, and are now retired.
Tolerate, but do not emulate, rude and vexatious lawyers;
they depress Lady Justice, but sometimes cannot be avoided.*

*If you compare yourself with others,
you may become vain and bitter,
for always there will be lawyers more or less super than yourself.
Enjoy your successes and find lessons in your defeats.
Keep interested in the law, however routine your practice may be;
it is a real possession in a down economy.*

*Exercise caution in negotiations,
for last-minute bargaining is full of trickery.
But let this not blind you to what virtue there is;
many lawyers strive for high ideals,
and everywhere the law is full of professionalism.
Be yourself. Especially do not feign sincerity.
Neither be cynical about civility,
for in the face of all anger and disenchantment,
it is as calming as a stream.*

*Take kindly the counsel of the years,
gracefully surrendering the clients of youth.
Nurture your investments to shield you in sudden misfortune,
but do not distress yourself with imagined missed deadlines.
Many fears are born of fatigue and insecurity.*

*Beyond enough billable hours to satisfy your partners,
be gentle with yourself.
You are a child of the legal world,
no less than the jurists and the justices;
you have a license to be here.
And whether or not it is clear to you,
no doubt your career is unfolding as it should.*

*Therefore be at peace with the law,
whatever your practice may be.
And whatever your losses and victories,
in the stressful confusion of this demanding life,
keep peace in your soul.*

*With all its dangers, duties and fights,
it is still a beautiful career.
Realize your good fortune. Resolve to be happy.*

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

Meeting Summaries

The Oklahoma Bar Association Board of Governors met at the Five Civilized Tribes Museum in Muskogee on Friday, April 22, 2011.

Museum Executive Director Mary Robinson gave the brief history of the building and the surrounding area. The board thanked **Governor Tucker** for making the arrangements for the Thursday evening event with the Muskogee County Bar Association and the morning meeting.

REPORT OF THE PRESIDENT

President Reheard reported she attended the President's Summit at Post Oak Lodge, Oklahoma Justice Commission inaugural meeting, Southern Conference of Bar Presidents planning meeting, Annual Meeting planning meetings, Garvin County Bar Association zone meeting, ABA Day at the Capitol in Washington, D.C., OBA Day at the Capitol and legislative reception, new lawyer admission ceremony, ceremonial swearing-in and reception for Justice Noma Gurich, retirement reception for Court of Civil Appeals Judge Doug Gabbard, OETA Festival, women and the rule of law history celebration, Tulsa County Bar Foundation roast of Past President Smallwood and "Night for the Innocent," which was an OCU Innocence Clinic fund-raising event. She also filmed a Law Day TV show segment and a segment of "The Verdict," moderated Oklahoma Lawyers for America's Heroes CLE and made a presentation

at the Supreme Court School and Teacher of the Year award presentation.

President Reheard said that while in Washington she and President-Elect Christensen visited with several Oklahoma legislators, who were excited about the OBA's heroes program. They expressed interest in attending the upcoming veteran clinics. She announced a new coordinator has been hired for the Oklahoma Lawyers for America's Heroes program. Susan Carey is working 25 hours a week for now to get case assignments caught up. President Reheard shared a recent success story handled by Robert Manchester. She said we have more than 200 lawyer volunteers and nearly 300 requests for help. Also, she was interviewed recently about the program for a story in the ABA's *Bar Leader* magazine. President Reheard announced that Justice Yvonne Kauger has been named the 2011 Red Earth Ambassador of the Year, an honor presented to individuals who have made a significant contribution in presenting a more positive image of Native Americans.

REPORT OF THE VICE PRESIDENT

Vice President Strubhar reported she attended two Oklahoma Justice Commission meetings, two LRE Committee special meetings, two Annual Meeting coordination

meetings, two bar employees staff meetings, Canadian County Bar Association meeting, Boot Camp for Attorneys and legislative reception. She also presented awards at the Close-Up program and taped "The Verdict" TV show. She said the LRE Committee is moving forward.

REPORT OF THE PRESIDENT-ELECT

President-Elect Christensen reported she attended the President's Summit and January board meeting, Oklahoma Justice Commission inaugural meeting, 2011 Annual Meeting planning meeting, SCBP planning meeting, Oklahoma High School Mock Trial Program finals competition, women and the rule of law history celebration, Bar Leadership Institute, Strategic Planning Committee meeting, "Night for the Innocent" OCU Innocence Clinic event, "A Conversation with Betty Ann Waters" at OCU law school, ABA Day at the Capitol, OBA Day at the Capitol and legislative reception, ceremonial swearing in and reception for Justice Gurich and swearing in and reception for new lawyers.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported that he attended the President's Summit, Bar

Association Technology Committee meeting, Membership Survey Task Force meeting, OBA staff directors meeting, Annual Meeting and SCBP planning meetings, Senate and House Judiciary Committee meetings, Bench and Bar Committee meeting, meeting with the architect on future building remodeling, High School Mock Trial finals, Bar Leadership Institute, Supreme Court Teacher and School of the Year award ceremony, OBA Day at the Capitol and legislative reception, Garvin County Bar Association reception and dinner, monthly staff celebrations, Justice Gurich swearing-in ceremony, new admittee swearing-in ceremony and the board event in Muskogee.

REPORT OF THE PAST PRESIDENT

Past President Smallwood reported he has communicated with board members on various appointments and has maintained surveillance of legislative matters pending relative to the legal profession and the bar association. He also reported a recent event, in which he was roasted, raised \$10,000 for Legal Aid Services of Oklahoma Inc. and the Community Food Bank of Eastern Oklahoma.

BOARD LIAISON REPORTS

Governor Pappas reported the Bar Association Technology Committee met and presented a thorough report. An internal survey will be conducted to assess needs of OBA departments.

BOARD MEMBER REPORTS

Governor Carter reported she attended the President's Summit and January board meeting and March Tulsa

County Bar Association board of directors meeting. She judged TCBA Law Day student entries and participated in TCBA task force meetings. **Governor Chesnut** reported he attended the President's Summit in February, Day at the Capitol and legislative reception, Solo and Small Firm Planning Committee meeting and the February and March monthly Ottawa County Bar Association meetings.

Governor DeMoss reported she attended the February board summit, January board meeting, Tulsa County Bar Foundation board meeting, roast of Allen Smallwood, OBA Law Schools Committee visits at OCU School of Law and TU College of Law. She participated in TCBA task force meetings and in the planning for the trial college at OBA Annual Meeting.

Governor Devoll reported he attended the Garfield County Bar Association meeting and swearing-in ceremony of Justice Gurich. He worked on setting up the Board of Governors May meeting in Enid and arranged for Justice John Reif to speak at the county bar meeting. **Governor Dobbs**, who participated in the meeting via telephone, reported that he is still recovering from back surgery.

Governor Meyers reported he attended OBA Day at the Capitol and the legislative reception, Legal Intern Committee meeting and Comanche County Bar Association meeting.

Governor Moudy reported she attended the President's Summit and Lawyers for America's Heroes CLE and presentation. She also kept up with legislation affecting the practice of law, including contacting legislators.

Governor Pappas reported she attended the board summit, Payne County Bar Association meeting and Bar Association Technology Committee meeting. She also began gathering contact information for attorneys in her district and participated in OBA Day at the Capitol and the legislative reception that followed. **Governor Poarch** reported he attended the swearing-in ceremony of Justice Gurich, swearing-in ceremony of new lawyers and worked with the Legal Intern Committee on revising rules to allow academic interns. **Governor Shields** reported she attended the OBA Day at the Capitol and legislative reception, February and March Oklahoma County Bar Association meetings and swearing-in ceremony of Justice Gurich. She participated in a Strategic Planning Committee meeting and in a Lawyers Helping Lawyers Assistance Program Committee planning lunch.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx said her department is gearing up for a hectic schedule that will be averaging two hearings a week. She reported the *Fournier v. Murdock et al* case was dismissed. General Counsel Hendryx also reported she attended three meetings of the Ruth Bader Ginsburg Inn of Court, UPL Task Force meeting, a presentation at the Western District Federal Courthouse honoring women in the law, reception for Oklahoma legislators, swearing in of Justice Noma Gurich and admission ceremony for newly licensed attorneys. She also took pledges for the OETA Festival, judged the

finals of the ABA National Client Counseling Competition, gave a CLE presentation to the volunteers for America's Heroes and ethics presentation to the professional responsibility class at Tulsa University, legal assistant class at Tulsa University and to OCU law school students.

A written status report of the Professional Responsibility Commission and OBA disciplinary matters for February and March 2011 were submitted for the board's review.

RECONSIDERATION OF AMENDMENT TO THE RULES OF THE SUPREME COURT FOR LEGAL INTERNSHIP

Governor Poarch reported minor errors were found in the materials previously submitted to the board and the committee made changes to address concerns of a clerk by proposing the addition of Rule 2.1(A) regarding the Academic Legal Intern License. The board voted to accept the Legal Intern Committee recommendations and to submit the revisions to the Supreme Court for its consideration.

JUDICIAL NOMINATING COMMISSION APPOINTMENT

The board ratified the electronic vote to appoint Heather Burrage, Durant, to the JNC. She replaces Dan Little, who resigned.

PROFESSIONAL RESPONSIBILITY TRIBUNAL APPOINTMENT

The board ratified the electronic vote to appoint Jeremy J. Beaver, McAlester, to the PRT to replace Judge Martha Rupp Carter, who resigned.

LEGAL SERVICES CORPORATION FUNDING

The board ratified the electronic vote to approve Oklahoma joining other states in urging Congress to fund LSC at last year's level.

PROPOSED AMENDMENT TO RULE 4.1 OF THE RULES OF THE SUPREME COURT FOR LEGAL INTERNSHIP

Governor Poarch reported the Legal Intern Committee is recommending an amendment to Rule 4.1 of the Rules of the Supreme Court for Legal Internship. The board voted to accept the committee's recommendation and to send it to the Supreme Court for its consideration.

MCLE COMMISSION APPOINTMENT

The board voted to reappoint Theodore P. Gibson, Tulsa, to the Mandatory Continuing Legal Education Commission. Health issues forced him to miss several meetings, which required the position to be declared vacant. He is better and able to attend future meetings.

LAW-RELATED EDUCATION REPORT

President Reheard reported that several long-time LRE programs are experiencing low participation, which merits review of current programs. A new task force called the Special Committee on Public Education (SCOPE) is being formed, which Suzanne Heggy, Yukon, has agreed to chair. LRE Committee members have been asked to serve on the task force. Education will be a main initiative for President-Elect Christensen during her year as president. President-Elect Christensen said it was her initial involvement with

the LRE Committee that led her into increased participation on other OBA committees. President Reheard said there have been challenges to the independence of the judiciary, and she has learned from other state bar associations that public education works to combat that problem. It was noted Georgia has a great model and could provide inspiration for a new Oklahoma program.

AWARDS COMMITTEE RECOMMENDATIONS

Awards Committee Chairperson Renée Hildebrandt summarized the process the committee uses to make its recommendations. She said the awards named for individuals were reviewed, and it was decided to retain the names and to communicate the history of individuals honored with an award named for them. She reported the committee recommends giving the same awards as last year with no changes and encouraged board members to promote the submission of nominations. She called attention to the committee guidelines created years ago to create consistency in award recipient selection. The board approved the committee's recommendation.

LAW-RELATED EDUCATION STIPENDS

President Reheard and President-Elect Christensen shared details about stipends paid to district coordinators for LRE programs. Funding for the stipends comes from federal grant money. Questions were asked about the duties performed to merit a stipend. A list of individuals who have received stipends

was reviewed. The board voted to suspend stipend payments unless payments are approved by the LRE Committee chairperson and the SCOPE chairperson.

CANCELLATION OF OKLAHOMA BAR CIRCLE

President Reheard described the member benefit, which has not been utilized. The contract was suppose to be cancelled, but the OBA missed the cancellation period. Executive Director Williams reported that each department was handling its own contracts, and now everything has been centralized. He explained the oversight happened because the contract had an automatic renewal. General Counsel Hendryx negotiated a settlement with the company. May 5 was set as the deadline for directors to submit a complete list of all renewable reoccurring contracts.

TECHNOLOGY REPORT

President Reheard reported there have been technology challenges at the bar center. Executive Director Williams reported the maximum capacity for email set by the OBA's license was exceeding its limit. Employees were instructed to archive email, which has helped. Limits on the size of employee mail-boxes have been set. A problem with messages sent to listserves occurred, and action taken has increased dependability. President Reheard reported the Technology Task Force has been asked to move forward with recommendations for technology improvements. Requests for Proposals (RFPs) for a technology audit have been sent out. It was suggested the OBA might work

with the court and its coming integrated network.

LEGISLATIVE UPDATE

Executive Director Williams reviewed the status of several bills, including OBA bills, one which was pulled. President Reheard said we learned a lesson this year that it would have helped for committee chairs to attend legislative meetings so legislators could have background on the issues.

RESOLUTION FOR HOST BAR ASSOCIATION

The board voted to issue a resolution expressing appreciation to the Muskogee County Bar Association for its hospitality.

RESOLUTION FOR DEAN HELLMAN

The board voted to issue a resolution recognizing the many years of service of OCU School of Law Dean Lawrence Hellman. A reception will be held for him on May 5.

SPECIAL TRIP

President Reheard reported that she and President-Elect Christensen will participate in the final send-off ceremony for the nearly 4,000 Oklahoma armed services members deploying to Afghanistan. They will fly to Camp Shelby in Mississippi.

The Oklahoma Bar Association Board of Governors met at the Oakwood Country Club in Enid on Friday, May 13, 2011.

APPRECIATION EXPRESSED

Board members thanked Glenn and Kim Devoll for making the arrangements for the board's meeting and social event in Enid in addition to

the welcome baskets placed in the hotel rooms.

OBA CLE HAWAIIAN CRUISE

President Reheard announced plans for an OBA cruise Dec. 2-10, 2011. She shared details.

REPORT OF THE PRESIDENT

President Reheard reported she attended the April Board of Governors meeting, OBA Bar Center Facilities Committee meeting, first meeting of the Special Committee on Public Education (SCOPE), planning meetings for Solo and Small Firm Conference and Annual Meeting, Pittsburg County Law Day banquet, McCurtain County Law Day banquet, Oklahoma County Law Day luncheon, Insurance Law Section CLE presentation and a CLE presentation at the 17th Annual Pickens Institute in Ardmore. She was a speaker at the Seminole County Law Day luncheon, presented a Board of Governors resolution to retiring OCU Law School Dean Larry Hellman, presented 50-year pins to two Creek County lawyers at their county bar association meeting, met with President-Elect Christensen and Executive Director Williams on technology issues and traveled to Camp Shelby, Miss. to experience the training of the 45th Infantry as part of "Operation BossLift" sponsored by the Employers Support of the Guard and Reserves.

REPORT OF THE VICE PRESIDENT

Vice President Strubhar reported she attended the Board of Governors April meeting, Law Related

Education Committee meeting, Oklahoma Justice Commission, at which she accepted responsibilities to co-chair the commission. She also met with LRE Coordinator Jane McConnell.

REPORT OF THE PRESIDENT-ELECT

President-Elect Christensen reported she attended the April board meeting, OBA Bar Center Facilities Committee meeting, appreciation reception for OCU Dean Larry Hellman, OCU Law Dean Search Committee meeting, several Law Related Education task force planning meetings to discuss SCOPE, first SCOPE meeting, Pittsburgh County Law Day banquet, Seminole County Law Day luncheon and Oklahoma County Law Day luncheon. She met with President Reheard and Executive Director Williams on technology issues, traveled for a site visit to Thackerville on two occasions with Educational Programs Director Douglas and Management Assistance Program Director Calloway and to Camp Shelby, Miss. with "Operation BossLift."

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reviewed the procedure for dealing with suspension and strike lists of bar members who are not in compliance and the OBA's process of notifying members on the lists. The lists must be submitted to the Supreme Court before its regularly scheduled conferences are temporarily suspended in July. He reported that he attended the board meeting and Muskogee County Bar

Association event, Bar Center Facilities Committee meeting, Law Related Education Task Force meeting, Bar Association Technology Task Force meeting, Pittsburg County Law Day dinner, Seminole County Law Day dinner, Oklahoma County Law Day luncheon, Comanche County Law Day luncheon and monthly staff celebration.

REPORT OF THE PAST PRESIDENT

Past President Smallwood reported via email that he was "roasted" by the Tulsa County Bar Association which raised more than \$10,000 for Legal Aid Services of Oklahoma Inc. and the Community Food Bank of Eastern Oklahoma. He has also continued to monitor legislation, particularly with respect to the Judicial Nominating Commission.

BOARD MEMBER REPORTS

Governor Chesnut reported he attended the Muskogee County reception and dinner, April board meeting and worked on details regarding the Solo and Small Firm Conference. **Governor Devoll** reported he attended the Muskogee County Bar Association function, Board of Governors meeting, Garfield County Bar Association meeting and arranged for Justice Reif to speak to the Garfield County Bar Association. **Governor Meyers** reported via email that he attended the Comanche County Law Day activities, Stephens County Law Day activities and presented OBA membership certificates. **Governor Pappas** reported she attended the April board meeting, Access to Justice Committee meeting,

SCOPE Committee meeting, Seminole County Law Day luncheon, Lincoln County Law Day picnic and Payne County Law Day banquet, honors docket and Ask A Lawyer call-in activities.

Governor Poarch reported he attended the Muskogee County reception and dinner, April board meeting and the Oklahoma County Law Day luncheon. **Governor Rivas** reported he attended the Professionalism Committee meeting at the Oklahoma Bar Center as the board liaison. **Governor Shields** reported she attended the April board meeting, dinner with the Muskogee County Bar Association and the Oklahoma County Law Day luncheon.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reviewed an abbreviated report that included the status of lawyers attending diversion program classes, litigation pending against the OBA and recent Supreme Court actions. She reported she attended a meeting of the Rules of Professional Conduct Committee, Clients' Security Fund Committee, Professional Responsibility Commission and reception for Dean Lawrence Hellman. She gave a CLE presentation at the Opening Your Law Practice seminar and at the Pickens County, I.T. seminar in Ardmore.

OKLAHOMA LAWYERS FOR AMERICA'S HEROES

President Reheard reported the program to assist military personnel and veterans is going well. The coordinator is out temporarily, and Executive Director Williams is helping out until she returns.

SOCIAL MEDIA POLICY AND GENERAL PLAN FOR OBA FACEBOOK

Communications Director Manning said that social media, such as Facebook, Twitter and LinkedIn, are communication tools and require a plan to coordinate efforts with other communication tools, such as the *Oklahoma Bar Journal* and OBA website. She said the proposed policy for board consideration is a work product of an OBA Technology Task Force subcommittee. The policy includes detailed procedures, and she reported that more time is needed to research and develop a plan for the OBA's official Facebook page. It was recommended that the Communications Committee and the Bar Association Technology Committee review any proposed policy. General Counsel Hendryx has not reviewed the proposed policy. The board tabled action for a future meeting. President Reheard asked for any budget considerations, i.e. staffing to be researched. It was noted adoption of a new policy might require amendment to the Guide for Committees and Sections.

LAW DAY REPORT

Law Day Committee Chair Tina Izadi via Skype from the Oklahoma Bar Center summarized the activities that took place. Contest entries totaled 1,544. She reported that 296 lawyers from 28 counties participated in the statewide Ask A Lawyer project to give free legal advice to 2,001 people on April 28 in celebration of Law Day. She said although the public relations results were successful, the committee

observed a continuing decrease in participation by county bar associations.

Governor Devoll reported that although Garfield County did not participate in Ask A Lawyer, they had lawyers in every school. President Reheard and President-Elect Christensen have ideas about increasing participation. One idea is to create a midyear meeting that would provide an opportunity to motivate section and committee leaders and county bar presidents. A Florida program has at least one lawyer associated with a school. It was suggested that perhaps coordination with SCOPE will help. Counties with few lawyers could be encouraged to join with neighboring counties to create tri-county participation, like what is being done in southeastern Oklahoma. Executive Director Williams suggested getting judges involved, and ideas to involve judges were discussed.

RESOLUTION FOR HOST BAR ASSOCIATION

The board voted to issue a resolution of appreciation to the Garfield County Bar Association for its hospitality in organizing the Thursday evening social event and hosting the board meeting.

OKLAHOMA DOMESTIC VIOLENCE FATALITY REVIEW BOARD

The board approved President Reheard's recommendation to send the names of Gail Stricklin, Oklahoma City, Karen Pepper Mueller, Oklahoma City, and Rebecca King Schneider, Oklahoma City, to the attorney general for consideration as nominees to serve on the review board. The new

term will begin 7/1/11 and end 6/30/13.

BOARD OF EDITORS APPOINTMENT

The board approved President Reheard's appointment of Erin Means, Enid, from District 4 to replace Craig Hoehns, who is moving out of the district and has resigned from the board.

APPOINTMENT OF INTERIM GENERAL PRACTICE-SOLO AND SMALL FIRM SECTION CHAIRPERSON

President Reheard reported the section has not been active in the past two years. She said Jim Slayton, Oklahoma City, has agreed to serve as interim chairperson and will hold a meeting at the Solo and Small Firm Conference. The board approved Jim Slayton as General Practice-Solo and Small Firm Section chairperson.

DISTRICT LISTSERVS

Questions were raised about the progress of district listserves being created to allow board of governors representing districts to communicate with bar members in their districts. At-large district representatives will have other duties. The OBA will send out messages on behalf of the governors, and governors were asked to send their message to Executive Director Williams for distribution.

OKLAHOMA BAR CIRCLE

Communications Director Manning, on behalf of Management Assistance Program Director Calloway, shared the plan for notifying members about the demise of

the online member benefit, which was not being utilized.

LEGISLATIVE UPDATE

Executive Director Williams summarized the status of OBA bills. Legislation involving the Judicial Nominating Commission is no longer active. Next year Civil Procedures Committee members will be encouraged to attend legislative meetings to be present to provide background and insight regarding proposals.

JUDICIAL NOMINATING COMMISSION

It was noted Richard Fisher, Tulsa, and Dr. Don Murray, Edmond, are the new laypersons appointed to the JNC. Elections for OBA positions will be held this year for two districts.

LAW-RELATED EDUCATION UPDATE

President Reheard reported the first meeting of SCOPE was held, and President-Elect Christensen reported on what took place. She said that over-18 publications will be rewritten as part of YLD projects next year and stated federal funding for the We the People program was expected to be discontinued. SCOPE will reconvene in June with new programs to review.

TECHNOLOGY UPDATE

President Reheard reported that her technology consultant is talking to the OBA technology manager. Executive Director Williams reported one RFP has been received so far with five or six others expected. He said the proposal was divided into sections, which would allow separate vendors to be selected for different sections. He also said a Technology

Task Force report is coming soon, which will end its work and turn over future action to the committee. One member survey RFP has been received.

BUILDING CONSTRUCTION

Executive Director Williams reported the carpet pattern used in the east wing hallway remodel is no longer available. An alternative pattern has been selected and should work well. A lighter wall color for the west wing remodel than that used in the east wing was suggested. He said the plan does not include remodeling the first floor west wing restrooms, but will be included in next year's project. Work will start in June and be completed by the end of August.

ANNUAL MEETING

President Reheard reported on the keynote speakers planned and shared that entertainment will be the Red Dirt Rangers and The Capitol Steps. **Governor DeMoss** has agreed to chair a new event, a trial college, and she described the plan. Other events planned are a technology fair, art contest and sports championships.

The Oklahoma Bar Association Board of Governors met at the Downstream Resort in Quapaw in conjunction with the OBA Solo and Small Firm Conference on Friday, June 10, 2011.

REPORT OF THE PRESIDENT

President Reheard reported she attended the May board meeting in Enid, Military Assistance Task Force work day, June OBF meeting, Annual Meeting meeting with staff, Red Earth Gala honoring

Justice Kauger, Solo and Small Firm Conference and Arkansas State Bar Annual meeting in Hot Springs. She assisted in implementing disaster relief for tornado victims, gave welcoming remarks at the Sovereignty Symposium opening ceremony, served as a "celebrity" judge at the Barrister Bowl charity event for 12&12 and presented 50- and 60-year pins at the Oklahoma County Bar Association awards luncheon.

REPORT OF THE VICE PRESIDENT

Vice President Strubhar reported she attended the board meeting in Garfield County, Canadian County Bar Association meeting and Law-Related Education Committee meeting. She met with the LRE director on approval of invoices and presented a 60-year membership pin to Harold M. Durall.

REPORT OF THE PRESIDENT-ELECT

President-Elect Christensen reported she attended the May board meeting in Enid and the reception hosted by the Garfield County Bar Association, June OBF meeting, 2011 OBA Solo and Small Firm Conference, Military Assistance Task Force work day, Red Earth Gala honoring Justice Kauger, Arkansas Bar Association meeting with President Reheard, a site visit to Durant with Directors Douglas and Calloway, a conference with OU President Boren to discuss the 2012 Annual Meeting, Oklahoma County Bar Awards luncheon, Sovereignty Symposium opening ceremony and a meeting with Executive Director Williams, Technology Committee

Chairman Gary Clark and CoreVault representative Jeff Cato. She also met with Executive Director Williams to discuss 2012 planning and events.

REPORT OF THE PAST PRESIDENT

Past President Smallwood reported he worked on several judicial openings as chairman of the Judicial Nominating Commission and attended an American College of Trial Lawyers seminar in Santa Fe, NM.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported that he attended the social event hosted by the Garfield County Bar Association, Civil Procedure Committee meeting, Oklahoma County Bar Association annual lunch and Solo and Small Firm Conference. He met with Technology Committee Chair Gary Clark, President-Elect Christensen and Jeff Cato of CoreVault, and also met with President-Elect Christensen on planning for 2012. In addition, he conducted staff evaluations.

BOARD MEMBER REPORTS

Governor Carter reported she attended the eCourts Committee (unified case management system) Trial Court Subcommittee meeting, assisted in judging the Tulsa County Bar Association Law Day art contest and volunteered for Tulsa County Bar Foundation Community Outreach Committee – Day Center for the Homeless Project. **Governor Chesnut** reported he attended the reception and dinner hosted by the Garfield County Bar Association, May board

meeting in Enid and worked on the Solo and Small Firm Conference. **Governor DeMoss**, unable to attend the meeting, reported via email that she attended the May board meeting in Enid, Oklahoma County Bar Association awards luncheon, Tri-County Law Day celebration and Tulsa County Bar Association Law Day luncheon. She also participated in the TCBA Lawyer in the Library event. **Governor Devoll** reported he attended the Garfield County Bar Association meeting and May board meeting. He discussed helping military members with area attorneys. **Governor Dobbs** reported he attended the board meeting in Enid. **Governor Pappas** reported she attended the board meeting in Enid, Payne County Bar Association Law Day bowling event and accepted an OBA military divorce case. **Governor Poarch** reported he attended the Oklahoma County Bar Association awards luncheon. **Governor Rivas** reported he attended the May meeting in Enid. **Governor Shields** reported she attended the May board meeting in Enid, Oklahoma County Bar Association board meeting, OCBA YLD meeting, Red Earth Gala honoring Justice Kauger, June OBF meeting and Solo and Small Firm Conference.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reviewed details of recent high profile discipline cases that have now become public. Professional Responsibility Commission Chairperson Melissa DeLacerda complimented Hendryx on taking quick action. A written

status report of OBA disciplinary matters for May 2011 was submitted for the board's review.

UNAUTHORIZED PRACTICE OF LAW TASK FORCE REPORT

Co-Chairpersons William Grimm and Melissa DeLacerda reviewed information presented in the task force's written report. The report noted that two investigations conducted by the Office of the General Counsel (OGC) resulted in the OBA obtaining permanent injunctions against laypersons providing advice and counseling in judicial foreclosure actions in Tulsa County. The report recommends the OGC be expanded to include a full-time attorney and investigator to handle UPL investigations and enforcement actions and to create a standing UPL Committee. **Governor Dobbs** noted that committee members would need immunity, which will require a rule change.

CONTINUING LEGAL EDUCATION ANNUAL REPORT

Educational Programs Director Donita Douglas reviewed information from the CLE Department's 2010 report. Highlights were: 1) a total of 88 live programs and 175 live webcasts were offered, 2) revenue from online seminars/webcasts has steadily increased over the past five years, 3) budget net revenue was \$184,732.17 and actual net revenue was \$314,877, both increases over 2009, 4) greatest participation continues to occur in December, and 4) greatest growth is in the number of online registrants. Director

Douglas said the biggest CLE challenge is transitioning from live programs to online programs. The department is focusing on training people in how to access the online programming. She reported the CLE Department also supports programs outside of CLE including Leadership Academy, Women in Law Conference and Solo and Small Firm Conference. She noted that Leadership Academy participants are being recruited now and asked board members to encourage young lawyers to submit applications.

PROPOSED AMENDMENT TO THE RULES CREATING AND CONTROLLING THE OKLAHOMA BAR ASSOCIATION

President Reheard pointed out the rules do not include board approval of the annual OBA budget. She proposed adding to Article VII, Section 1 the sentence, "The budget shall be approved by the Board of Governors prior to being submitted to the Supreme Court." This action will enact what has been done traditionally. The board approved the amendment and voted to submit the amendment to the Supreme Court for its consideration.

PROFESSIONAL RESPONSIBILITY TRIBUNAL APPOINTMENTS

The board approved reappointment of Jeremy Beaver, McAlester, and appointment of Kelli Masters, Oklahoma City; Neal Stauffer, Tulsa; Susan Loving, Edmond; and Don Smitherman, Oklahoma City. All terms will expire June 30, 2014.

BUDGET COMMITTEE APPOINTMENTS

The board approved the following Budget Committee appointments:

Board Members: Glenn Devoll, Enid; Steven Dobbs, Oklahoma City; David Poarch, Norman; Deborah Reheard, Eufaula; and Reta Strubhar, Piedmont

House of Delegates Members: Angela Bahm, Oklahoma City; Gabe Bass, Oklahoma City; Ken Delashaw, Marietta; Bill Grimm, Tulsa; Peggy Stockwell, Norman; and James T. Stuart, Shawnee

Additional Attorney Member: Jennifer H. Kirkpatrick, Oklahoma City.

The first meeting will be held Sept. 9, 2011.

APPLICATIONS TO SUSPEND AND APPLICATIONS TO STRIKE

Executive Director Williams reported preliminary lists of

bar members not in compliance with paying OBA dues or with MCLE requirements were emailed to board members yesterday. He encouraged board members to contact people they know on the lists. The final list will be emailed to board members Wednesday and an email vote will be requested authorizing him to submit the applications to the Supreme Court.

He also reviewed the process and requirements for associate membership status.

LUNCHEON WITH CHINESE LAW STUDENTS AND PROFESSORS

President Reheard reported the OBA will host a delegation of Chinese law students and professors attending an institute at Oklahoma City University School of Law on July 22, 2011.

EXECUTIVE SESSION

The board voted to go into executive session, met in session and voted to come out of executive session.

NEXT MEETING

The Board of Governors met at the Oklahoma Bar Center in Oklahoma City on Friday, July 22, 2011. A summary of those actions will be published after the minutes are approved. The next meeting of the Board of Governors will be held August 26, 2011, in Vinita.

OBF 2011 Court Grant Awards

By John D. Munkacsy

The Oklahoma Bar Foundation is pleased to announce the 2011 OBF Court Grant recipients totaling \$119,297. Each year the foundation manages a separate grant cycle for Oklahoma district courts and appellate courts to assist with courtroom technology and other similar needs relating to the administration of justice. The OBF Court Grant Fund was established in 2008 through a generous *cy pres* award; please read on to learn more about *cy pres*. This year grant funds have gone to the following court systems:

2011 OKLAHOMA BAR FOUNDATION GRANT AWARDS

Law Library of the District Court of Oklahoma County **\$5,478**

Six public access computers and software to be located in the Oklahoma County Courthouse Law Library; visitors will be assisted by staff

District Court of Jackson County **\$3,863**

Audio technology equipment for improvements to one courtroom

District Court of Tillman County **\$5,628**

One digital courtroom recording system

District Court of Adair County **\$5,191**

One courtroom sound system

District Court of Kay County **\$8,550**

Courtroom sound system and assisted hearing technology equipment

District Court of Major County **\$4,000**

Courtroom audio/visual technology equipment

District Court of Comanche County **\$9,814**

Two digital stenographic realtime court reporting systems

District Court of Canadian County **\$16,853**

Conference area conversion with computer technology equipment

District Court of Wagoner County **\$11,000**

Video and screen technology equipment for four courtrooms

District Court of Cherokee County **\$11,000**

Video and screen technology equipment for four courtrooms

District Court of Garvin County **\$10,174**

One digital court reporting system and sound technology equipment

District Court of Custer County **\$3,000**

Digital signage for public courthouse information and directions

District Court of Payne County **\$12,746**

Four courtroom sound systems

District Court of Tulsa County **\$12,000**

Security technology equipment for criminal felony entrances, courtroom sound system equipment and juvenile division audio/visual technology equipment

WHAT ARE *CY PRES* AWARDS?

Cy pres awards are final surplus funds in class-action cases, and sometimes other types of court proceedings, that for any number of reasons cannot be distributed to class members or beneficiaries who were the intended recipients. *Cy pres* distribution of surplus funds is utilized when it has become difficult or impossible to identify those to whom damages should be assigned or distributed. In these instances, the court may authorize a *cy pres* distribution to appropriate charitable organizations. The trust doctrine of *cy pres* and the courts' broad equitable powers permit use of such funds for public interest purposes by educational, charitable and other public service organizations. *Cy pres* funds may be used to support current programs or, where appropriate, to constitute an endowment and source of future income for long-range programs that can be used in conjunction with other contemporaneously raised funds.

CONSIDER OBF FOR *CY PRES* AWARDS

The OBF's mission, "to promote justice, fund critical legal services and advance public awareness of the law" makes it a perfect match for class-action *cy pres* awards, as the underlying premise for class actions is to make access to

justice a reality for "the little guy" who otherwise would not be able to obtain the protection of our court system. Through the OBF's comprehensive grant award process, applicants and a panel of diverse individuals with a



wide range of interests and expertise come together to strategically and objectively allocate resources to support dozens of outstanding law-related programs and initiatives, making OBF an attractive charitable investment choice for *cy pres* awards.

CY PRES

The OBF has the flexibility of using *cy pres* awards to expand its comprehensive programs or to target funds toward specific access to justice projects and initiatives. Moreover, the foundation's purpose of advancing education, citizenship and justice for all is as American as apple pie.

Corporate and institutional defendants involved in class-action litigation need not be concerned about *cy pres* funds going to a party that is possibly antagonistic to their corporate or business interests.

The OBF is a proven organization that has been helping people for the more than 60 years. The foundation holds an important place in public interest law and in the philanthropic community, with diverse stakeholders that work to address legal service needs and eliminate systemic barriers to access to justice.

In recent years, the Oklahoma Bar Foundation has been fortunate to receive generous *cy pres* awards. These *cy pres* awards are key components for growth and outreach of OBF's charitable mission and will enable the foundation to provide for increases in overall grant awards and the capacity for new initiatives. *Cy pres* awards to the foundation can and will make a tremendous difference benefiting law-related programs throughout Oklahoma.

Please contact me or the Oklahoma Bar Foundation office to speak with a Trustee about *cy pres* options at 405-416-7070 or foundation@okbar.org.

John D. Muncaksy Jr. is the president of the Oklahoma Bar Foundation. He can be reached at johnmunk@sbcglobal.net.



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: _____ E-Mail Address: _____

The Oklahoma Bar Foundation was able to assist 23 different programs or projects during 2010 and 25 in 2009 through the generosity of Oklahoma lawyers – providing free legal assistance for the poor and elderly; safe haven for the abused; protection and legal assistance to children; law-related education programs; other activities that improve the quality of justice for all Oklahomans. The Oklahoma Bar legend of help continues with **YOU**.

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

___ \$100 enclosed & bill annually

___ Total amount enclosed, \$1,000

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

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

___ I want to be recognized at the higher level of **Sustaining Fellow** & will continue my annual gift of at least \$100 – (initial pledge should be complete)

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

**LAWYERS
TRANSFORMING LIVES**

*Through education,
citizenship and
justice for all.*

*The Oklahoma Bar
legend of help continues
with YOU!*

- ∞ To become a Fellow, the pledge is \$1,000 payable within a 10-year period at \$100 each year; however, some may choose to pay the full amount or in greater increments over a shorter period of time.
- ∞ The OBF offers lesser payments for *newer* Oklahoma Bar Association members:
 - — **First Year Lawyers:** lawyers who pledge to become OBF Fellows on or before Jan. 2, of the year immediately following their admission may pay only \$25 per year for two years, then only \$50 for three years, and then at least \$100 each year thereafter until the \$1,000 pledge is fulfilled.
 - — **Within Three Years:** lawyers admitted three years or less at the time of their OBF Fellow pledge may pay only \$50 per year for four years and then at least \$100 each year thereafter until the \$1,000 pledge is fulfilled.
- ∞ **Sustaining Fellows** are those who have completed the initial \$1,000 pledge and continue their \$100 annual contribution to help sustain grant programs.
- ∞ **Benefactor Fellows** is the highest leadership giving level and are those who have completed the initial \$1,000 pledge and pledge to pay at least \$300 annually to help fund important grant programs. Benefactors lead by example.

Your Signature & Date: _____ OBA Bar# _____

PLEASE KINDLY MAKE CHECKS PAYABLE TO: Oklahoma Bar Foundation • P.O. Box 53036 • Oklahoma City, OK 73152-3036 • (405) 416-7070

Many thanks for your support & generosity!

Military Assistance Program Thrives

Free CLE for New Volunteers

By Deborah Reheard

We are more than halfway through the inaugural year of our Oklahoma Lawyers for America's Heroes project, what we believe will be the first of many years for this important community service program for our association. So far, more than 300 military service members and veterans have requested our assistance with their legal challenges, and we stand ready for action. Hundreds of Oklahoma lawyers have stepped up and are volunteering pro bono representation of American heroes.

We continue to encourage bar members to sign up for the project, because as news of the program spreads, we anticipate the demand for our services will increase dramatically. With that in mind, the OBA Continuing Legal Education Department is offering a free CLE this month for lawyers who volunteer to provide 20 hours of pro bono assistance to service members in need.

The free CLE is set for **8:30 a.m., Aug. 19 at the Northwestern Oklahoma State University – Enid Campus, 2929 E. Randolph**. Participating attorneys will receive seven hours of MCLE including one hour of ethics. The CLE will touch on the prac-

tice areas in which service members are most likely to encounter issues, such as family law, consumer or credit issues, estate planning and disability law.

The program is being co-sponsored by the Garfield County Bar Association. Our partner organization, Pros4Vets, is also sponsoring the event and will provide lunch for attendees. To sign up, visit www.okbar.org/s/7sdpi or call (405) 416-7006.

WHY SHOULD YOU VOLUNTEER?

We have found that younger reservists who are paid the least are often the most at-risk for legal problems. They are in stressful situations and are separated from their families. This stress can lead to trauma, substance abuse and suicide. As an association, our goal is to step in and prevent these problems from spiraling out of control. As attorneys, this program gives us the opportunity to serve those who have served us in defending our freedom. As your president, I encourage you to repay the debt we owe these American heroes for the sacrifices they make on the battlefield and back home.

LEGAL EAGLES

The following is a list of Oklahoma lawyers who have taken a case for an American Hero. We thank them for their service to this program and will be adding to this list in the future!

Cleveland County Bar Association

Tulsa County Bar Association

John Abbamondi, Choctaw

Kevin Adams, Tulsa

Charles F Alden III, Oklahoma City

Chris Arledge, Mustang

Aaron Arnall, Midwest City

Paul Austin, Oklahoma City

Willie Baker, Stillwater

Thad Balkman, Norman

Lagailda Barnes, Oklahoma city

Ana Basora-Walker, Lawton

Gabe Bass, Oklahoma City

Jeremy Beaver, McAlester

Michelle Betchel, Oklahoma City

Cheryl Blake, Norman

Terri Blakley, Enid

Gary Blevins, Oklahoma City

William Blew, Edmond

Kayla Bower, Oklahoma City

Randall Breshears, Oklahoma city

Carson Brooks, Oklahoma City

David Brooks, Sayre

Ryan Brown, Oklahoma City

Paul Brunton, Tulsa

Derek Burch, Oklahoma City

continued

The Aug. 19 CLE in Enid mirrors a similar program that took place in Oklahoma City in February. That “OBA Bootcamp: Oklahoma Lawyers Representing America’s Heroes,” was an amazing event that made me proud to lead this association. In addition to becoming better educated in the best practices for representing our service members, we had a lot of fun. A surprise visitor included NFL standout and former Sooner Roy Williams. While we can’t guarantee football legends at every CLE, we can guarantee that this will be a rewarding and fulfilling experience for lawyers who sign up.

We already anticipate more than \$1 million worth of legal services will be donated to our military members as a result of this program. While that’s a great number, it’s only a start. We hope that OBA members who could not attend the CLE in Oklahoma City will make the trip to Enid and join us in our efforts. Please ask yourself this question: “For those who serve, will you serve?”

Rachel Bussett, Oklahoma City
 Alyssa Campbell, Stillwater
 Jack A. Canon, Tulsa
 Patrick Carlson, Norman
 Ronald Cates, Tulsa
 Kimberly Cathey, Stillwater
 Dietmar Caudle, Lawton
 Samuel Chavers, Oklahoma City
 Paul Choate, Shawnee
 Cathy Christensen, Oklahoma City
 Robert Clark, Oklahoma City
 Clint Claypole, Enid
 Lorenzo Collins, Ardmore
 Remona K. Colson, Bartlesville
 Joshua Copeland, Norman
 Lorrie Corbin, Edmond
 Elliott Crawford, Nichols Hills
 Roger Creecy, Midwest City
 Matthew Crook, Tulsa
 Joe Crosthwait, Midwest City
 Ross Crutchfield, Tulsa
 Dustin Davis, Edmond
 Marcia Davis, Oklahoma City
 Tim E. DeClerck, Enid
 Stephen Dixon, Midwest City
 Elaine Dowling, Oklahoma City
 James Drummond, Norman
 Brandelyn Duden, Oklahoma City
 Jessica Earley, Edmond
 Leslie A. Ellis Kissinger, Claremore
 Bryan Evans, Edmond
 Stanley Evans, Oklahoma City
 Valerie Michelle Evans, Edmond
 Blake Farris, Oklahoma City
 Brenda Fitzpatrick, Edmond
 Jeri Fleming, Stillwater
 John Foley, Oklahoma City
 Kent Frates, Oklahoma City
 Robert C. Fries, Bartlesville
 Robert J. Fries, Enid
 Doug Friesen, Oklahoma City
 Tracey A. Garrison, Tulsa
 Andrew Gass, Oklahoma City
 Sarah J. Gerads, Oklahoma City
 Douglas Gierhart, Choctaw
 Kent Gilliland, Oklahoma City
 Robert Gilliland, Oklahoma City

Debbra Gottschalk, Tulsa
 Robert Grantham, El Reno
 Jan Grant-Johnson, Norman
 Deresa Gray, Ada
 Billy Griffin, Oklahoma City
 Graham Guhl, Oklahoma City
 David Guten, Tulsa
 John Hall, Oklahoma city
 Fletcher Handley, El Reno
 Gretchen Harris, Oklahoma City
 Amy K. Hart, Bartlesville
 Kimberly Hays, Tulsa
 Theresa Hill, Tulsa
 Mark Hixson, Yukon
 Craig Hoehns, Elk City
 Dan Holloway, Oklahoma City
 Sharon Holmes, Tulsa
 Paul D. Hoppe, Edmond
 Thomas Hosty, Oklahoma City
 Chris Hunt, Owasso
 Gregory Jackson, Shawnee
 Stephanie Jackson, Oklahoma City
 Gregory James, Bethany
 Thomas Janer, Bartlesville
 Rita Jencks, Edmond
 A.J. Jones, Edmond
 Ramona Jones, Tulsa
 Kurtis Kennedy, Tulsa
 Pamela Kennedy, Yukon
 Wayne Kennon, Miami
 Todd Kernal, Norman
 Jennifer Kirkpatrick, Oklahoma City
 Tommy D. Klepper, Norman
 Paul Kolker, Oklahoma City
 Paul Kouri, Oklahoma City
 Mary Kathryn Kunc, Oklahoma City
 Charles “Tim” Laughlin, Norman
 David Leavitt, Edmond
 James Lockhart, Norman
 Velia Lopez, Tulsa
 Ginger Maxted, Oklahoma City
 Katherine Mazaheri,
 Oklahoma City
 Becky McDown, Oklahoma City
 LeAnne McGill, Edmond
 Neil McGuffee, Oklahoma City

Waynette McKay, Oklahoma City
 Jan Meadows, Norman
 Erin Means, Enid
 L.A. Mercer, Bethany
 Regina Meyer, Shawnee
 Kenneth Miles, Tulsa
 Tracey Miller, Oklahoma City
 Linda Modestino, Yukon
 John Monnet, Oklahoma City
 Todd Murray, Oklahoma City
 Paul Naylor, Tulsa
 Weldon Nesbitt, Norman
 Donna Nichols, Edmond
 Brenda Nipp, Stillwater
 Scott Pappas, Stillwater
 Kendall Parrish, Oklahoma City
 Kevin Pate, Norman
 Gisele Perryman, Oklahoma City
 Iris A. Philbeck, Tulsa
 Gilbert Pilkington, Tulsa
 Thomas R. Pixton, Elk City

Warren Plunk, Oklahoma City
 Patricia Podolec, Oklahoma City
 Helen Puhl, Tulsa
 Kenneth Rainbolt, Durant
 Kathi Rawls, Moore
 Deborah Reheard, Eufaula
 Richard Riggs, Oklahoma City
 Ryland Rivas, Chickasha
 Faye Rodgers, Edmond
 Timothy Rogers, Tulsa
 Janet Roloff, Edmond
 Charles Rouse, Oklahoma City
 Mitchell Rozin, Oklahoma City
 Amy Sellars, Tulsa
 Sidney Wade Shaw, Cushing
 Jay Silvernail, Oklahoma City
 Parker Smith, Bethany
 Riki Snyder, Oklahoma City
 Alan Souter, Tulsa
 Leslie A. Sparks, Oklahoma City
 Sarah Stewart, Oklahoma City

Peggy Stockwell, Norman
 Justin Stout, Muskogee
 Weldon Stout, Muskogee
 James T. Stuart, Shawnee
 Tara T. Tabatabaie, Oklahoma City
 Mary Travis, Edmond
 Phillip Tucker, Edmond
 Joy Turner, Oklahoma City
 Russell Wallace, Tulsa
 Joseph Walters, Oklahoma City
 Laura Walters, Edmond
 Shamika S. Webb, Oklahoma City
 Daniel White, Oklahoma City
 Betty Williams, Muskogee
 Cassandra Williams, Oklahoma City
 John Williams, Edmond
 Sean Williams, Edmond
 James Willson, Lawton
 Joseph Wolf, Oklahoma City
 C. Michael Zacharias, Tulsa



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A Decision Not to Regret

By Elizabeth Knox

Deciding where to complete your first summer internship in law school can be a difficult decision. Everyone is so focused on surviving the first year that the decision sneaks up on you quickly. People talk about working at large firms, clerking for judges, finding a solo firm in their hometown, and working in public service. Each sector has its own attractiveness, so how do you choose?

I chose based on exposure. I had already accepted a position as a research assistant, so I wanted my internship to go beyond drafting memos and into the courtroom. To me, I needed to find a place where I could interact with clients, observe court proceedings, and learn how the rules and cases I have been living and breathing all year long could have a life-changing effect on people. I needed to work in the public service sector.

So, I went to a pro bono fair and met Sharon Ammon, the volunteer coordinator for Legal Aid Services of Oklahoma. After exchanging information and asking a few simple questions, I knew that this was the perfect internship opportunity for me. And now, nearly a month into my summer, I can say with confidence that I made the right choice.

Walking out of Legal Aid after completing my first day as an intern, I was so relieved. Karl Rysted, my supervising attorney, was so eager to answer my questions and take time out of his day to ensure that I was learning as much as possible. While I was exposed to unfortunate stories of domestic violence, I left feeling uplifted because I was able to help the victims take the first step out of a difficult situation. I couldn't wait to come back the next day.

Within a few days, I was in court observing the Victim's Protective Order docket. A week after that, I was sitting in on an attorney/client interview. The following week, I attended a YWCA training class on domestic violence and was given a tour of their women's shelter. Then, just last week, I was asked by my supervising attorney to handle the intake decisions while he was out of town for a couple of days. Karl, of course, would review my decisions upon his return. Still, I was excited and determined to utilize everything I was learning in order to reach the right decisions. Just as I expected, other attorneys were happy to answer any of my questions while Karl was gone. They even went out of their way to pop in my office and ask how things were going.

Beyond learning the courtroom etiquette and the practical application of the law, I learned one valuable lesson that, unfortunately, many attorneys never learn. I learned that even the most emotionally draining work is easily approached with a positive attitude if you maintain a life outside of work. Being in law school, I heard everyone from professors to practicing attorneys tell me how necessary it is to establish a proper work/life balance. However, it never truly resonated until I was walking through an office filled with low-stress, positive attorneys. The work/life balance that comes with choosing a career in public service is essential in being able to assist clients with stories that would cause anyone's stomach to turn.

Spending my first summer in law school working at Legal Aid was one of the best decisions I have ever made. I strongly encourage everyone to find the time to volunteer with a public service organization by either completing an internship, choosing one as a career path, or simply volunteering to work pro bono on just one case a year. Trust me — you won't regret it!

Ms. Knox is a second year law student at the OU College of Law.

Successful Mid-Year Meeting Offered First-Ever Events

By Roy D. Tucker, YLD Chairperson

The YLD held its mid-year meeting in conjunction with the Solo & Small Firm Conference in June. This year's meeting and coordinated events were intended to draw from YLD members who had not previously been active in the division. The meeting had a number of firsts, including hosting our first ever speed networking event and our first YLD poolside reception. The speed networking event met with great success and enthusiasm from everyone involved. The room was set up with two circles, one inside the other with chairs facing each other. Senior bar leaders were seated inside the smaller circle, with each YLD member seated across in the outer circle. Participants were given five minutes to meet, introduce



YLD members enjoy the festive atmosphere at the Solo & Small Firm Conference. From left: Jeff Trevillion, Javier Ramirez, Amber Peckio-Garrett, Jennifer Kirkpatrick, Bryon Will, Timothy Rogers and Sarah Stewart

themselves and converse on topics ranging from bar involvement, hobbies, employment and future plans. After time was called, the YLD member shifted seats to meet with

the next bar leader and the five-minute timer restarted. The scenario repeated until each YLD member had the opportunity to meet and acquaint with each bar leader. Special thanks are especially due to President Deborah Reheard, President-Elect Cathy Christensen, Judge Martha Rupp Carter, Michelle Nelson, Stephen Beam, TU Assistant Dean Kristine Bridges, OBA Gov. Scott Pappas and OBA Gov. Lou Ann Moudy for their participation in our event. It is with their support that the event met with such success. Plans are already in the works for another YLD speed networking event during the annual meeting.



The Mid-Year Meeting gives YLD members the chance to network and reconnect with old friends. From left: Michael Cooper, Kaleb Hennigh, LeAnne McGill and Joe Vorndran

Last month, the YLD directors gathered to assemble the infamous bar exam survival kits for distribution to those taking the July bar exam. These kits contained items such as ear plugs, stress balls, pens, pencils, aspirin, bottled water and YLD information cards. In tandem, the YLD will also be assembling “Desert Survival Kits” to send to our recently deployed national guardsmen serving abroad. These kits will contain such things as powder, sunscreen, socks, toothbrushes, etc., and are intended as a small token of appreciation on behalf of Oklahoma lawyers.



The first-ever poolside reception helps YLD members beat the heat. From left: Breea McCorkle, Sarah Stewart, Kaleb Hennigh, Robert Faulk, Lane Neal, Roy Tucker and Timothy Rogers

THE HEAT IS ON

“Surviving the Season” is a YLD committee designed to assist Oklahomans residing in homes without working air conditioning. The goal is to help needy families survive the brutal summer heat, and as part of the YLD’s long-standing tradition of public service projects, \$500 of the division’s funding from the OBA was used to fund the committee.

District 7 Director Justin Stout spearheaded this committee in 2011, partnering with Checotah attorney Carmen Rainbolt on the effort. The two worked with Department of Human Services representatives in Muskogee and McIntosh counties to compile a list of those in need, which included families with small children as well as the elderly. Fifteen high-quality box fans were delivered to DHS offices on

July 1. The high temperature in Muskogee was 100 degrees or higher on 22 of the next 24 days. The service was greatly appreciated by Muskogee County DHS Director Mike Jackson, who noted that recent budget cuts have drastically affected his department’s ability to provide this type of service.



YLD Director Justin Stout delivers donated fans to DHS employees in July. The fans are destined for the homes of needy Oklahomans living without air conditioning, as part of the YLD’s “Surviving the Season” project.

IN OTHER NEWS

Finally, the YLD is also pleased to announce that Immediate-Past Chair Molly Aspan participated in ABA/YLD leadership training and FEMA training in June at the ABA headquarters in Chicago. Molly was selected earlier this year to serve as the District 24 representative to the ABA/YLD Executive Council, and she will officially assume her duties at the conclusion of the ABA Annual Meeting in August. District 24 includes Oklahoma and Arkansas and is one of 65 seats on the council, which considers and makes ABA/YLD policy when the assembly is not in session. As district representative, Molly will also implement disaster legal services for FEMA disaster declarations in Oklahoma and Arkansas.

Calendar

August

- 8 OBA Rules of Professional Conduct Subcommittee Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Paul Middleton (405) 235-7600
- 9 OBA Law-related Education Task Force Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Reta Strubhar (405) 354-8890
OBA Rules of Professional Conduct Subcommittee Meeting; 3 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Paul Middleton (405) 235-7600
- 10 OBA Diversity Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Jeff Trevillion (405) 778-8000
OBA Government and Administrative Law Practice Section Meeting; 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Bryan Neal (405) 522-0118
- 11 OBA Appellate Practice Section Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Rick Goralewicz (405) 521-1302
OBA Solo and Small Firm Committee Meeting; 3:30 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact: Jim Calloway (405) 416-7051
OBA Women Helping Women Support Group; 5:30 p.m.; The Oil Center – West Building, Suite 108W, Oklahoma City; RSVP to: Kim Reber (405) 840-3033
- 12 Oklahoma Association of Black Lawyers Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Donna Watson (405) 721-7776
OBA Family Law Section Meeting; 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Kimberly Hays (918) 592-2800
- 16 OBA Civil Procedure and Evidence Code Committee Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: James Milton (918) 591-5229
- 18 OBA Justice Commission Meeting;** 2 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Drew Edmondson (405) 235-5563
OBA Bar Association Technology Committee Meeting; 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Gary Clark (405) 744-1601

- 19 Oklahoma Bar Foundation Trustee Meeting;** 1 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Nancy Norsworthy (405) 416-7070
- 20 OBA Law-related Education We the People Training;** 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jane McConnell (405) 416-7024
- 25 OBA Men Helping Men Support Group;** 5:30 p.m.; The Center for Therapeutic Interventions, Suite 510, Tulsa; RSVP to: Kim Reber (405) 840-3033
Oklahoma Bar Foundation Grants and Awards Committee Reviews; 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Nancy Norsworthy (405) 416-7070
- 26 OBA Board of Governors Meeting;** Vinita, Oklahoma; Contact: John Morris Williams (405) 416-7000
OBA Communications Committee Meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Mark Hanebutt (405) 948-7725

September

- 1 OBA Men Helping Men Support Group;** 5:30 p.m.; The Oil Center – West Building, Suite 108W, Oklahoma City; RSVP to: Kim Reber (405) 840-3033
OBA Women Helping Women Support Group; 5:30 p.m.; The Center for Therapeutic Interventions, Suite 510, Tulsa; RSVP to: Kim Reber (405) 840-3033
- 5 OBA Closed – Labor Day Observed**
- 8 OBA Women Helping Women Support Group;** 5:30 p.m.; The Oil Center – West Building, Suite 108W, Oklahoma City; RSVP to: Kim Reber (405) 840-3033
OBA Awards Committee Meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: D. Renée Hildebrant (405) 713-1423
- 9 OBA Budget Committee Meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Craig Combs (405) 416-7040
OBA Military Assistance Task Force Meeting; 2 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Dietmar Caudle (580) 248-0202

- 15 **Oklahoma Bar Foundation Committee Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Nancy Norsworthy (405) 416-7070
- 16 **OBA Board of Governors Meeting;** Yukon, Oklahoma; Contact: John Morris Williams (405) 416-7000
- 17 **OBA Young Lawyers Division Committee Meeting;** Tulsa County Bar Center, Tulsa; Contact: Roy Tucker (918) 684-6276
- 20 **OBA Law-related Education PROS Elementary Training;** 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jane McConnell (405) 416-7024
OBA Civil Procedure and Evidence Code Committee Meeting; 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: James Milton (918) 591-5229
- 21 **OBA Law-related Education PROS Secondary Training;** 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jane McConnell (405) 416-7024
Ruth Bader Ginsburg American Inn of Court; 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Donald Lynn Babb (405) 235-1611
- 22 **OBA Men Helping Men Support Group;** 5:30 p.m.; The Center for Therapeutic Interventions, Suite 510, Tulsa; RSVP to: Kim Reber (405) 840-3033
New Admittee Swearing In Ceremony; House of Representative Chambers, State Capitol; Contact: Board of Bar Examiners (405) 416-7075
OBA Budget Committee Meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Craig Combs (405) 416-7040
OBA Justice Commission Meeting; 2 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Drew Edmondson (405) 235-5563
- 27 **OBA Legal Intern Committee Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact: Candace Blalock (405) 238-3486
- 28 **OBA Law Office Management and Technology Section Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Kent Morlan (918) 582-5544

October

- 4 **OBA Management Assistance Program Opening Your Law Practice;** 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jim Calloway (405) 416-7051

- 5 **OBA Men Helping Men Support Group;** 5:30 p.m.; The Oil Center – West Building, Suite 108W, Oklahoma City; RSVP to: Kim Reber (405) 840-3033
OBA Women Helping Women Support Group; 5:30 p.m.; The Center for Therapeutic Interventions, Suite 510, Tulsa; RSVP to: Kim Reber (405) 840-3033
- 13 **OBA Women Helping Women Support Group;** 5:30 p.m.; The Oil Center – West Building, Suite 108W, Oklahoma City; RSVP to: Kim Reber (405) 840-3033
- 14 **Oklahoma Association of Black Lawyers Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Donna Watson (405) 721-7776
OBA Family Law Section Meeting; 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Kimberly Hays (918) 592-2800
- 18 **OBA Civil Procedure and Evidence Code Committee Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: James Milton (918) 591-5229
- 20 **OBA Leadership Academy;** 9:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Heidi McComb (405) 416-7027
- 21 **OBA Leadership Academy;** 8 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Heidi McComb (405) 416-7027
OBA Board of Governors Meeting; Oklahoma Bar Center, Oklahoma City; Contact: John Morris Williams (405) 416-7000
OBA Lawyers Helping Lawyers Assistance Program Training; 11 a.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact: Tom Riesen (405) 843-8444
- 22 **OBA Young Lawyers Division Committee Meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Roy Tucker (918) 684-6276
- 26 **Ruth Bader Ginsburg American Inn of Court;** 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Donald Lynn Babb (405) 235-1611
- 27 **OBA Men Helping Men Support Group;** 5:30 p.m.; The Center for Therapeutic Interventions, Suite 510, Tulsa; RSVP to: Kim Reber (405) 840-3033
OBA Justice Commission Meeting; 2 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Drew Edmondson (405) 235-5563

The OBA recently hosted a luncheon for law students from four universities in China. The students were in Oklahoma City to attend the Certificate in American Law Course at the OCU School of law. Among those attending were (from left) OCU Law Dean Emeritus Lawrence Hellman, Andrew Chen, Roxannie Zhang and OBA President Deborah Reheard.



Judicial Nominating Commission Election Results



Weldon W. Stout Jr. of Muskogee and John Tucker of Tulsa have been elected to serve on the state's Judicial Nominating Commission. Each will serve as one of six lawyers on the 15-member commission. Both will take office in October.

Weldon W. Stout Jr. Mr. Stout will represent District Two, comprised of Adair, Cherokee, Craig, Delaware, Mayes, McIntosh, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pawnee, Rogers, Sequoyah, Wagoner and Washington counties. Mr. Tucker will represent District One, comprised of Tulsa and Creek counties.

Mr. Stout has engaged in private legal practice with the firm of Wright, Stout & Wilburn since 1980. Prior to that, he served as an assistant to former Muskogee District Attorney Mike Turpen. He also served as an assistant district attorney in Stephens County. He is a 1974 graduate of OCU School of Law. He is a former president of the Muskogee County Bar Association and served on the OBA Board of Governors from 1989–1991.

Mr. Tucker is a partner in the law firm Rhodes, Hieronymus, Jones, Tucker & Gable PLLC. He is also a senior adjunct settlement judge for special projects in the U.S. District Court for the Northern District of Oklahoma. He is a fellow of the Oklahoma and American Bar Foundations and a member of the Tulsa County, Oklahoma and American Bar Associations. He is a fellow of the International Academy of Trial Lawyers and a member of the American Board of Trial Advocates. He is also a fellow, past regent, committee and state chairman of the American College of Trial Lawyers as well as past Oklahoma chairman of the U.S. Supreme Court Historical Society. He is a graduate of the OU College of Law.



John Tucker

The six lawyer members of the commission each represent districts that mirror Oklahoma's six congressional districts as they existed in 1967, when the commission was created. Elections are held each odd-numbered year for members from two districts. Elections for Districts One and Two took place over the summer. The OBA is charged with conducting the elections of lawyers.

OBA Staffer Named Top Legal Innovator

OBA MAP Director Jim Calloway has been named one of the Fastcase 50, a designation "honoring the law's smartest, most courageous innovators, techies, visionaries and leaders" by the online legal research firm.

Mr. Calloway was one of only three bar association employees from across the country to make the list, which includes some of the heaviest hitters in the legal profession.

Mr. Calloway is co-producer of the monthly podcast, *The Digital Edge: Lawyers and Technology*. He was recognized by Fastcase as "a legal tech Jedi —



Jim Calloway

having chaired the ABA Techshow and spoken about legal technology just about everywhere one can. Legal tech is often intimidating and bewildering to users — and despite (because of?) Jim's mastery, he is still able to explain hardware, software and processes in ways that any lawyer can understand."

More about the
Fastcase 50

and this year's winners
are available at:

www.fastcase.com/fastcase50-winners/

High Court, Appellate Courts, AOC Move to New Offices

The Oklahoma Supreme Court, Court of Criminal Appeals, Court of Civil Appeals and the Administrative Office of the Courts have moved their offices to the new Oklahoma Judicial Center located across the street from the State Capitol building. New mailing addresses and contact numbers for the courts are:

Supreme Court
Oklahoma Judicial Center
2100 N. Lincoln Blvd., Suite 1
Oklahoma City, OK 73105-4907
(405) 556-4000

Court of Criminal Appeals
Oklahoma Judicial Center
2100 N. Lincoln Blvd., Suite 2
Oklahoma City, OK 73105-4907
(405) 556-9600

Administrative Office of the Courts
Oklahoma Judicial Center
2100 N. Lincoln Blvd., Suite 3
Oklahoma City, OK 73105-4907
(405) 556-9300

Clerk of the Appellate Courts
Oklahoma Judicial Center
2100 N. Lincoln Blvd., Suite 4
Oklahoma City, OK 73105-4907
(405) 556-9400

Lawyers Helping Lawyers OKC Meeting Place Has Changed

CABA Inc., with whom the OBA contracts to provide counseling and treatment services to its members, has moved its Oklahoma City offices. They are located in the east building of the Oil Center, now on the first floor. The address is 2601 N.W. Expressway, Suite 104-E, Oklahoma City, 73112-7245. All telephone numbers and email addresses remain the same. This office is the location for separate monthly support group meetings for male and female lawyers. Meetings are also held in Tulsa. As always, confidentiality is a top priority for members participating in Lawyers Helping Lawyers. More information about the program is available on the OBA website at www.okbar.org/members/lhl.

OIDS Relocates Main Office

The main office of the Oklahoma Indigent Defense System has moved. The new physical address is 111 N. Peters Ave., Suite 500, Norman. The mailing address remains the same:

P.O. Box 926
Norman
73070

All phone numbers also remain unchanged.

OBA Member Reinstatements

The following members of the OBA suspended for nonpayment of dues or noncompliance with the Rules for Mandatory Continuing Legal Education have complied with the requirements for reinstatement, and notice is hereby given of such reinstatement:

Soo-Kyung Ahn,
OBA No. 19631
3826 Welwyn St.
Vancouver, B.C. Canada
V5N 3Y9, FO 00001

Lagailda F. Barnes,
OBA No. 19985
7300 N.W. 23rd St., Suite 401
Bethany, OK 73008

Bert L. Belanger,
OBA No. 10205
Urban Works Inc.
P.O. Box 14467
Oklahoma City, OK 73113

Nina Ann Cherian,
OBA No. 19315
9702 Valley Lake Court
Irving, TX 75063

Nathan David Corbett,
OBA No. 21633
217 E. Daws, Apt. A
Norman, OK 73071

Melissa Fair, OBA No. 22136
828 D Street, S.E., Apt. 4
Washington, DC 20003-2143

Kristen Anne Hilty,
OBA No. 21214
P.O. Box 722334
Norman, OK 73070

Timothy Paul Kent,
OBA No. 21527
125 N.W. 15th, Apt. 701
Oklahoma City, OK 73103

Thomas Andrew Mortensen,
OBA No. 19183
1331 S. Denver Avenue
Tulsa, OK 74119

Gregory Allen Mueggenborg,
OBA No. 21760
6508 Clear Creek Loop
Bartlesville, OK 74006-8009

Matthew David Neal,
OBA No. 22660
3110 Oakmount Drive
Edmond, OK 73013

Stephen S. Parker,
OBA No. 12433
416 S.W. 79th St., Apt. A100
Oklahoma City, OK 73143

William John Patterson,
OBA No. 11148
1643 S. Florence Avenue
Tulsa, OK 74104

Shaun Thomas Riley,
OBA No. 21887
228 Robert S. Kerr, Suite 100
Oklahoma City, OK 73102

David Lee Thomas,
OBA No. 8926
3501 N.W. 63rd St., Suite 301
Oklahoma City, OK 73116

Steven W. Vincent,
OBA No. 9237
P.O. Box 701765
Tulsa, OK 74170-1765

Nathan Thomas Weems,
OBA No. 20885
P.O. Box 172
Avon Lake, OH 44012

OBA Member Resignations

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

Monty Scott Austin,
OBA No. 14470
5543 E. Sydney Place
Littleton, CO 80130-7113

Bernard Louis Broderick,
OBA No. 1152
514 Tiffany Trail
Dallas, TX 75081

James C. Burkett,
OBA No. 1333
11701 Teton Road
Oklahoma City, OK 73162

Sharon Kay Womack Doty,
OBA No. 14462
1322 S. Houston
Tulsa, OK 74127

Abbie Michele Fisher,
OBA No. 20694
1451 Bonham Parkway
Argyle, TX 76226

John Mark Gifford,
OBA No. 20491
1003 Acacia Circle
Noble, OK 73068

Josh William Hopkins,
OBA 20590
The Hopkins Law Firm
PLLC
500 N. Water
Corpus Christi, TX 78401

Mitchell David Jacobs,
OBA No. 17183
225 S. Meramec Ave.,
Suite 1021T
Clayton, MO 63105

Julie Muslow Leclercq,
OBA No. 20528
11212 Leaning Elm Road
Oklahoma City, OK
73120-5726

Matthew George Livingood,
OBA No. 5473
6211 S. Jamestown Ave.
Tulsa, OK 74136-1424

Patrick Dane Medina,
OBA No. 12142
329 73rd St., N.W.
Rochester, MN 55901

Holly Gayle Mix,
OBA No. 6280
8927 Carriage Lane
Indianapolis, IN 76256

Janet Brennan Sherry,
OBA No. 11516
P.O. Box 720516
Norman, OK 73070

Courtenay Parrott Sobral,
OBA No. 17116
5030 N. May Ave., PMB 343
Oklahoma City, OK
73112-6010

Kudos

Oklahoma Attorney General **Scott Pruitt** has been elected vice chairman of the Midwestern Region of the National Association of Attorneys General. He was elected by his colleagues at the association's summer meeting.

Oklahoma City Attorney **Geoff Long** pedaled his way to a nearly \$6,000 donation to the Leukemia and Lymphoma Society. He also served as mentor for the Lake Tahoe Team in Training to raise money for the society, requiring him to assist with fundraising, teambuilding and encouraging team members through the cycling event.

John Gaberino will be inducted into the Tulsa Hall of Fame at the annual ceremony set for Oct. 20 at the Tulsa Convention Center. Mr. Gaberino served as OBA president in 1998. He is the former senior vice president of ONEOK, and he has also served as president of the Tulsa County Bar Association. He is a member of the Tulsa Chapter of the National Conference for Community and Justice, served as campaign chairman and chairman of the board of the Tulsa Area United Way and board chairman of the Tulsa Metro Chamber in 2001. Along with his wife, former OBA First Lady Marge Gaberino who is also being inducted, he has supported

Operation Aware, Monte Cassino Middle School and Cascia Hall Preparatory School in leadership roles.

The OU College of Law announces the addition of five new members to serve on the college's Board of Visitors. New members are OU law alumni **Sean Burrage, Glenn Coffee, Tricia Everest, Brad Henry** and **Kathryn Taylor**. Mr. Burrage, class of 1993, serves in the Oklahoma Senate, representing Oklahoma's Rogers and Mayes Counties in District Two. Mr. Coffee, class of 1992, was recently appointed Oklahoma secretary of state by the governor. Ms. Everest, class of 2003, practices at GableGotwals. Mr. Henry, class of 1988, practices at Lester, Loving and Davies. Ms. Taylor, class of 1981, is a former mayor of Tulsa and now practices at McAfee and Taft. The board's mission is to advise the leadership of the OU College of Law as they strive to advance the quality of academic programs and research within the college and increase the stature of the college nationally.

Matt Stump recently served as a conference chair for the American Immigration Lawyers Association Texas Chapter Spring Conference on immigration law, which was held for the first time in Oklahoma City. Mr. Stump practices primarily in the area of employment-based immigration law.

T. Douglas Stump was one of seven immigration attorneys from across the U.S. recently invited by the

Obama Administration to attend a White House meeting addressing the issues of immigration legislation and administration priorities. Mr. Stump is on the executive committee for the 11,500 member American Immigration Lawyers Association and has offices in Oklahoma City and Tulsa.

The TU College of Law Alumni Association honored former Oklahoma Attorney General **Drew Edmondson** and Tulsa attorney **John Woodard III** with awards at the annual TU Law Alumni Gala in May. Mr. Edmondson received the W. Thomas Coffman Community Service Award, given to recipients demonstrating dedication to integrity and service, and Mr. Woodard received the Lifetime Achievement in Law Award. Mr. Edmondson practices with GableGotwals after serving as Oklahoma Attorney General from 1994 to 2010. Mr. Woodard has practiced law in Tulsa for 40 years. He recently chaired TU's Tulsa Undergraduate Research Challenge Advisory Board in 2009 and 2010.

Jim Covington of Springfield, Ill., has been honored with the Award for Excellence by the Illinois Public Defender Association. He received the award for his outstanding efforts in the legislative arena to abolish the death penalty in Illinois and for his commitment to justice. In conjunction with Illinois becoming the most recent state to abolish the death penalty, Mr. Covington was also honored by the Illinois Coalition Against

the Death Penalty at its repeal celebration.

Michael E. Smith has been appointed to the Oklahoma Heritage Association's board of directors. The board of directors is the governing body overseeing the programs and operations of the association which includes the Gaylord-Pickens Museum in Oklahoma City. Mr. Smith is a partner in the Hall Estill Law Firm in the Oklahoma City office.

James Shaw of Oklahoma City has been elected to the Austin Presbyterian Theological Seminary Board of Trustees. He will serve a three-year term beginning fall of 2011 through 2014. Mr. Shaw is a shareholder in the Hall Estill Law Firm.

Sarah Jane Gillett of Tulsa was elected to serve as member of the Oklahoma Fellows of the American Bar Foundation. Membership in the Fellows is limited to one-third of one percent of the lawyers in America. Ms. Gillett serves as a shareholder in the Hall Estill Law Firm.

A. Gabriel "Gabe" Bass of Oklahoma City, **Jason Boesch** of Edmond, **D. Casey Davis** of Monkey Island, **Dana L. Kuehn** of Tulsa, **Kyle D. Lankford** of Norman, **Giannina Marin** of Oklahoma City, **Armando J. Rosell** of Oklahoma City, and **Kimber L. Shoop** have each been named "Achievers Under 40" by the *Journal Record*. The award is presented annually to Oklahomans from a variety of professions who have "accomplished much and contributed significantly to their communities and state."

The Tulsa County Bar Association has elected its officers and directors for 2011-2012. **Faith Orlowski** is the incoming president, and **James R. "Jim" Gotwals Jr.** is president-elect. **Paul Brunton** will serve as past president and **James R. "Jim" Hicks** was elected vice president. Other officers include **Kimberly Moore**, secretary; **Marvin Lizama**, treasurer; **Trisha Archer**, library trustee; and **Kimberly K. Hays** and **Robert "Bob" P. Redemann**, directors-at-large. **Bob Farris** continues to serve as the ABA delegate with one more year remaining on his term.

On The Move

Steven Dobbs, managing attorney for Dobbs & Middleton, is retiring from the firm as of Sept. 1. He will continue serving on the OBA Board of Governors and will maintain a practice limited to contract trial work and defense of attorneys charged with misconduct. He may be contacted at dobbslaw@cox.net. **Paul Middleton** will become managing attorney for the firm, and its name will change to Middleton, Nowakowski & Smith. The firm remains located at 100 N. Broadway, Suite 2500, Oklahoma City, 73102; (405) 235-7600.

The Senior Law Resource Center Inc. announces **Sarah C. Stewart** of Oklahoma City has joined the firm as senior managing attorney. She will assist the firm primarily in its focus on probates, estate planning, guardianships and

other elder law issues. Ms. Stewart received her undergraduate degree from OSU and graduated *cum laude* from OCU School of Law in 2009. She can be contacted at (405) 528-0858, or ssewart@senior-law.org.

Assistant Oklahoma Attorney General **Mykel Fry** has been chosen to lead the Medicaid fraud control unit of the Office of Attorney General. Ms. Fry will lead a unit charged with investigating more than 100 cases of Medicaid fraud throughout the state each year.

Stacy Leeds has been named dean of the University of Arkansas School of Law. She most recently served as the interim associate dean for academic affairs, professor of law, and director of the Tribal Law and Government Center at the University of Kansas School of Law. She also currently serves as chief justice of the Supreme Courts of both the Kaw Nation and the Kickapoo Tribe of Oklahoma. She received her J.D. from the University of Tulsa and her LL.M. from Wisconsin.

Tulsa law firm Pray Walker announces **Randall T. Duncan** has joined the firm as a shareholder and director and **Nik Jones** has joined the firm as counsel. Mr. Duncan has more than 20 years of experience in the areas of general civil litigation, energy law, and oil and gas title work. Mr. Jones has more than 35 years of experience in natural resources and real estate law, with a concentration in oil and gas title work.

Judge Eleanor T. Moser has retired as a judge after serving 31 years on the bench. Since 2001, she has served as

a federal administrative law judge with the Office of Hearings and Appeals, serving as the chief judge of both the McAlester and Oklahoma City hearing offices. She began her career on the bench as an Oklahoma City municipal judge, the first woman appointed to that position.

Esther Bell has joined the Knoxville, Tenn., law firm of Pitts & Brittian PC as an associate. Prior to joining the firm, Ms. Bell was a patent attorney for the U.S. Department of Energy. She has also served as clerk to retired Oklahoma Supreme Court Justice Hardy Summers. She is also admitted to practice before the U.S. Patent and Trademark Office and the U.S. Supreme Court. She is a 2001 graduate of the University of Tennessee College of Law.

Gordon and Gordon Lawyers announces **Patrick Abitbol** has become of counsel to the Claremore firm. Mr. Abitbol will practice general criminal law, personal injury law and domestic relations. He is a 1980 graduate of the TU College of Law.

Graham, Allen & Brown of Tulsa announces **Valerie Dye** and **Shannon Smith** have joined the firm. Ms. Dye will be practicing civil rights litigation, business litigation, probate and employment law. She earned her J.D. at the TU College of Law in 2010. Ms. Smith will focus her practice on family law, mediation, estate planning and social security disability. She is a 2010 graduate of the TU College of Law.

McAfee & Taft announces **Barrett J. Knudsen** of Oklahoma City has joined the firm's Aviation Law Group.

He represents business and commercial aviation clients in a broad range of transactional and regulatory matters. He is a 1998 graduate of the OU College of Law.

Craig Bryant, a Foreign Service officer with the U.S. State Department, is currently serving as consul at the U.S. Embassy in Khartoum, Sudan. Mr. Bryant's previous assignments have been at the embassies in Yaounde, Cameroon, Ottawa, Jerusalem, Bamyan, Afghanistan and as an Afghanistan desk officer in Washington. He has also served on a detail assignment as a legislative assistant to U.S. Sen. Robert Menendez.

Crowe & Dunlevy announces **Jennifer Berry, Alison Howard, Susan Huntsman** and **Doug Tripp** have been elected directors of the firm. Ms. Berry is based in the Oklahoma City office and focuses her practice on commercial real estate, financing and energy matters. Ms. Howard is also based in the firm's Oklahoma City office, where she practices primarily in healthcare law and litigation, with emphasis on ERISA matters, and handles complex appellate litigation in civil disputes. Ms. Hunstman works in the firm's Tulsa office, where she focuses on commercial and appellate litigation. Mr. Tripp is located in the firm's Oklahoma City office and is a member of the firm's commercial transactions and financial institutions practice group and chair of the firm's business and information technology outsourcing practice group, which is his primary area of practice.

GableGotwals announces former Assistant Attor-

ney General **Greg Metcalfe** has joined the firm. His new practice will focus on commercial litigation and the provision of legal services to government agencies. Mr. Metcalfe graduated first in his class from OCU School of Law and earned his undergraduate degree from Southern Nazarene University, graduating *summa cum laude*.

Tulsa firm Shook & Johnson PLLC announces **Sean E. Manning** has joined the firm of counsel. Mr. Manning will be expanding his existing business law practice. He graduated from the TU College of Law in 2000 and holds a certificate in comparative and international Law.

Fellers Snider announces **McKenzie Anderson** and **Klint A. Cowan** are joining the firm in the Oklahoma City offices. Ms. Anderson is returning to Oklahoma from New York City to practice a wide range of complex litigation, including cases involving bankruptcy and related recovery actions based on financial fraud and malfeasance, consumer class actions, and various types of business and commercial disputes. She is a 2007 graduate of the University of Chicago Law School. Mr. Cowan practices in the fields of commercial litigation and arbitration. He earned his J.D. with highest honors from TU in 2004, then attained a BCL with distinction for dissertation from the University of Oxford in 2005.

The Tulsa firm McDaniel Longwell Acord PLLC announces **Andrew M. Conway** has joined the firm as an associate attorney. He graduated *cum laude* with a B.S.B.A. in business management from TU in 2006 and

with honors from the TU College of Law in 2009.

The Tulsa firm of Glass-Wilkin PC announces **Michael S. Linscott** has joined the firm of counsel. Mr. Linscott's practice is concentrated in the areas of business transactions, commercial litigation, corporate, real estate and insurance-related matters. He is also experienced in securities disputes and construction litigation. He holds a B.S. from OU, and he earned his J.D. from TU with highest honors in 1991.

The Law Office of Cindy Allen PLLC announces that **Julia C. Mills** of Norman has joined the firm as associate counsel. She is a 2010 graduate of the OU College of Law. Her practice will focus on family law, estate planning and bankruptcy. She may be contacted on the web at www.normanokattorney.com.

Carroll, Ward & Roberts PLLC announces the firm's new name following admission of Broken Arrow attorney **Loretta "Lori" K. Roberts** as a member. She will focus on corporate matters as well as business and commercial transactions. She has practiced law for 15 years, most recently eight years with Drummond Law PLLC. She may be reached at lroberts@carrollward.com or (918) 906-3199. She is a 1996 *cum laude* graduate of the TU College of Law.

M. A. "Murph" Shelby has joined Ute Energy LLC in Denver as general counsel. He may be contacted at the company's offices at 1875 Lawrence Street, Suite 200, Denver, Colo., 80202; (720) 420-3242.

Doerner, Saunders, Daniel & Anderson LLP announces the addition of Tulsa attorneys **Stuart D. Campbell, David H. Herrold, David J. Hyman** and **Ron W. Little** to the firm. Mr. Campbell has more than 25 years of practice in transportation law, sports and entertainment law, public utility litigation and Indian gaming law. He is a member of the Transportation Lawyers Association and Trucking Industry Defense Association. Mr. Herrold's 15-year body of practice emphasizes commercial litigation, banking, lender liability and commercial law, creditor's rights and bankruptcy law. Mr. Hyman practices extensively in the area of healthcare law, and he is a frequent lecturer who has served as an adjunct professor at the TU College of Law for more than eight years. He is also a member of the American Health Lawyers Association. Mr. Little's nearly 20 years of expertise centers on family law litigation in Oklahoma and Texas, a subject on which he has published numerous articles. He received the American College of Trial Lawyers Medals for Excellence in Advocacy and Outstanding Advocacy Skills.

Tulsa firm Drummond Law PLLC announces **Don Lepp** has joined the firm. Mr. Lepp received his B.B.A. from OU in 1990, and his J.D. from the University of Michigan School of Law in 1993. His practice will focus on commercial litigation and all aspects of banking law. He is also a member of the State Bar of Michigan.

At The Podium

Gary Payne, chief administrative law judge for the Oklahoma State Department of Health, presented a workshop in July on opinion writing at the National Association of Unemployment Insurance Appellate Boards (NAUIAB) Annual Training Conference, held this year in Oklahoma City.

Matt Stump of Oklahoma City spoke on the subject of green card fundamentals at the American Immigration Lawyer's Association Annual Conference in San Diego in June.

Kelli Stump of Oklahoma City recently spoke at the American Immigration Lawyers Association Texas Chapter Spring Conference on Immigration Law. Ms. Stump spoke on citizenship eligibility issues.

T. Douglas Stump of Oklahoma City was recently a speaker at the 8th Annual Federal Bar Association Immigration Law Seminar in Memphis, Tenn. Mr. Stump chaired a panel with officials from the U.S. Department of State on the topic of "Waivers of Inadmissibility and Removal at Consular Posts." He also spoke on the outlook for immigration reform and administration priorities.

Susan Dennehy Conrad, Assistant general counsel for the Oklahoma Corporation Commission Oil & Gas Conservation Division, was recently the guest speaker for the Capital Association Divi-

sion Order Analysts. Ms. Conrad's presentation was on the commission's new rules for horizontal drilling.

Jon Cartledge of Tulsa in May was a keynote speaker at a CLE seminar in Tulsa titled "The Fundamentals of Construction Contracts: Understanding the Issues." He lectured on the topic, "You Owe Me – Indemnity Agreements in Construction Contracts."

Mitchell Cohen, general counsel at the Illinois Department of Natural Resources, recently presented "Ethical Considerations During Parallel Proceedings in Conservation Law" at the Fish and Wildlife Management Issues Seminar for the National Attorneys Training & Research Institute in Denver.

Oklahoma City lawyer Carrie L. Palmer recently spoke at the Trial Attorneys

of America annual meeting in Chicago. The presentation, titled, "Ethics Online: Technology and Social Media Concerns for the Modern Lawyer," educated attending attorneys and corporate representatives regarding ethical minefields surrounding social media discovery and new technology being used by lawyers and law firms.

Leonard Court of Oklahoma City presented a program at the Society of Human Resource Management annual conference and exposition in Las Vegas in June. He illustrated the best methods for implementing employee evaluations and documentation and what happens in a trial when proper documentation has not been completed.

How to place an announcement: The *Oklahoma Bar Journal* welcomes short articles or news items about OBA members and upcoming meetings. 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. Sections, committees, and county bar associations are encouraged to submit short stories about upcoming or recent activities. Honors bestowed by other publications (e.g., Super Lawyers, Best Lawyers, etc.) will not be accepted as announcements (Oklahoma-based publications are the exception.) Information selected for publication is printed at no cost, subject to editing, and printed as space permits.

Submit news items via email to:
Lori Rasmussen
Communications Dept.
Oklahoma Bar Association
(405) 416-7017
barbriefs@okbar.org

Articles for the Sept. 3 issue must be received by Aug. 8.

IN MEMORIAM

John Andrew Akey of Tulsa died May 22. He was born Aug. 14, 1952, in Aurora, Ill. After graduating high school in Illinois, he moved to Tulsa and attended TU, where he earned his undergraduate degree in 1976. He earned a J.D. from the TU College of Law in 1983. He was engaged in the private practice of law until his death. He was a member of Tulsa Opera, Theater of Tulsa and the Gilbert Sullivan Society of Tulsa University. He also enjoyed golfing, fishing and following Chicago and TU sports.

Kenneth Terry "K.T." Anderson of Lawton died June 3. He was born at Fort Sill Aug. 23, 1937, graduating

from Lawton High School in 1955. He earned his J.D. from the OU College of Law in 1962. **He served in the U.S. Army, earning the rank of captain.** He practiced privately as an attorney, having spent his earlier professional career as an assistant administrator of continuing education at OU. He also wrote manuals for the U.S. Postal Service and served as an editor for the OU Press. He was an avid follower of OU sports.

Clifton D. Blanks of Oklahoma City died July 13. He was born Aug. 14, 1929, in McAlester. He held an undergraduate degree in geology from OU, and was a 1954

graduate of the OU College of Law. **He spent most of his professional career as a legal officer in the U.S. Air Force, attaining the rank of colonel.** He was an active and lifelong member of the United Methodist Church, serving in many churches across the country and around the world wherever his military travels took him. Memorial contributions may be made to Alzheimer's Association.

Frederick L. Boss Jr. died June 7. He was born Oct. 15, 1936, in Muskogee. **He served as second lieutenant in the U.S. Army National Guard 45th Infantry Division and was honorably discharged in 1961.** He graduat-

ed with a B.B.A. from the University of Arkansas, and he received his J.D. from the TU College of Law in 1970. He was a member of the Tulsa County Bar Association as well as the Kappa Alpha Order (University of Arkansas), the Delta Theta Phi Legal Fraternity, the Moose Lodge and the Tulsa Ski Club.

John Mack Butler of Tulsa died July 6. He was born Feb. 9, 1938, in Muskogee and graduated from Warner High School. He earned a degree in mathematics from NSU. **After completing Naval Officer Candidate School, he served in the U.S. Navy aboard the USS Enterprise from 1961 to 1963.** He earned a J.D. from TU College of Law in 1968. During his career as an attorney, he served as an assistant district attorney in Cherokee, Wagoner, Sequoyah and Adair counties. He also was a judge in Tahlequah and went on to practice as a trial lawyer. The later part of his 42-year career in law focused on his passion for civil rights, defending the underprivileged in the Tulsa area and other parts of Northeastern Oklahoma.

Retired Judge Edwin R. Carden of Claremore died July 11. He was born in Hot Springs, Ark., on April 14, 1931, and grew up near Benton, Ark. **He served in the U.S. Air Force with the 80th Fighter Bomber Squadron during the Korean Conflict.** After his service he relocated to Tulsa and worked in aviation by day and studied law at night. He received his bachelor's and J.D. degrees from TU. He practiced law in Claremore before becoming assistant district attorney in

1966. He went on to serve as associate district judge for the 12th Judicial District of Oklahoma in 1972 until his retirement in 1991. He was a member of First Baptist Church of Claremore for more than 40 years. In retirement he enjoyed traveling with family, watching the Cardinals play and tending to his garden. Memorial contributions may be made to First Baptist Church Building Fund.

Lyne Witt Drawdy of Choctaw died June 24. She was born in Atlanta on April 28, 1960, and earned her J.D. in 1994 from OCU School of Law. She was the assistant vice president in the compliance department at Vericrest Financial. One of her cherished quotes was, "Real love stories never have endings." Memorial contributions may be made to Hospice of Oklahoma County Foundation Department.

Paul M. Fister of Oklahoma City died May 19. He was born Aug. 23, 1934, in Berwyn, Ill. **He served in the U.S. Coast Guard.** After leaving the service, he attended OU where he received his B.S. in geophysics, and went on to earn a J.D. from the OCU School of Law. He worked for the Securities and Exchange Commission before practicing privately. He loved playing tennis and handball, coaching baseball and officiating basketball. He attended Crossings Community Church. Memorial donations may be made to the Alzheimer's Association or the Parkinson's Association.

David Neal Fox of Midwest City died June 14. He was born Oct. 9, 1930. **He served four years in the U.S.**

Air Force during the Korean Conflict. He later earned a bachelor's degree from OU, and went on to receive his J.D. from OCU School of Law in 1994. He worked for several years as an estate tax attorney for the IRS, retiring to practice law privately from his home. He was an active member of Wickline United Methodist Church, teaching Sunday school and serving on many committees. Memorial contributions may be made to his church or to Rose State College Foundation (David and JoAnne Fox Scholarship Fund).

Kelly L. Gage-Hogan of Edmond died Dec. 29, 2010. She was born Nov. 4, 1963, in Oklahoma City. She attended SWOSU and the OU College of Law, earning a J.D. in 1990. She was a member of Henderson Hills Baptist Church and enjoyed spending time with her family. Memorial contributions may be made to the Oklahoma Christian Schools Foundation Scholarship Fund or to Project 66 of Arcadia.

Retired Court of Civil Appeals Judge Stewart McCallum Hunter died July 2. He was born Nov. 14, 1927, in White Plains, NY. **He enlisted in the U.S. Navy in July 1945, serving until 1946, and later returning to military service during the Korean Conflict, serving as a platoon leader with the 45th Infantry Division.** He attended Oklahoma A&M, later earning his J.D. from OCU School of Law in 1962. He practiced privately until 1968, when he received a direct commission in the U.S. Army JAG Corps, retiring as a military appellate judge in 1985. In 1969, he was

appointed Oklahoma County special judge, and was later elected associate district judge. He was appointed to the Oklahoma Court of Civil Appeals in 1983, retiring in 1996. He was honored three times with the Outstanding Judge Award by the Oklahoma County Bar Association.

Richard Daniel Koljack of Tulsa died May 11. He was born May 10, 1958, in Chicago. He attended TU, receiving a bachelor's degree in 1981 and a law degree in 1985. He joined the Tulsa law firm of GableGotwals and served the firm in many volunteer capacities, including the board of directors. He was a member of the ABA and the Tulsa County Bar Association, and he served his community on the board of directors of Jenks Public Schools Foundation, the Community Service Council of Tulsa and the United Way. He loved sports and coached young athletes. He was an active member of St. Patrick's Episcopal Church in Broken Arrow. Memorial contributions may be made to his church, the Salvation Army or Clarehouse Hospice.

Kenneth Linn of Blanchard died July 20. He was born Jan. 25, 1950, and graduated from U.S. Grant High School in 1968. He served for 20 years as a police officer in Oklahoma City. He graduated from OCU School of Law in 1990 and began working for the Oklahoma County District Attorney's Office, later working for the Department of Public Safety. In his spare time he enjoyed hunting and fishing.

John Q. McCabe of Midland, Texas, died May 24. He was born Jan. 4, 1920, in

Marshall, Ark. **He served in the U.S. Army Air Force during World War II where he was an aircraft engineering officer and a captain for the 43rd Bomber Group. He was a decorated soldier, earning the Asiatic Pacific Theater Service Medal and the Philippine Liberation Ribbon with one bronze star. After discharge, he achieved the rank of major through the Air Force Reserves.** He earned his J.D. in 1953 from the TU College of Law. He moved to Midland, Texas, where he built his career as an oil and gas operator, ultimately acquiring and becoming president of Taurus Minerals, where he attended to business operations until his death. Memorial contributions may be made to Hospice Midland.

Duane Miller of Yukon died July 23. He was born Feb. 2, 1941, and graduated from the OU College of Law in 1965. **He entered the U.S. Navy Jag Corps, retiring as a lieutenant commander.** He was an attorney in private practice in Yukon for several years, prior to that, he was an attorney at the Oklahoma County District Attorney's Office and the U.S. Attorney's Office.

Retired Kingfisher County Associate District Judge **Mary Sue "Susie" Pritchett** died June 22. She was born Oct. 6, 1941, in Houston, graduating from Henryetta High School in 1959. She earned a B.S. in education from OU in 1962, and a master's degree from UCO in 1964. After teaching for a few years, she earned a J.D. from OU College of Law in 1971. She began her legal career as the first female attorney hired

by the Oklahoma County Public Defender's Office, the first female attorney hired by the U.S. Attorney's Office for the Western District of Oklahoma and the first female judge elected in Kingfisher County. She was an advocate for women and children as well as an active volunteer in her church and community. She was a member of numerous civic organizations including Toastmasters, Rotary, Lion's Club, Elk's Lodge and Lyric Theater. She was an avid quilter, and one of her greatest pleasures was driving her old Model A Ford, "Nellie," in her local Christmas and Fourth of July parades.

James Crabtree Reed of Miami died July 2. He was born Oct. 17, 1919, in Kansas City, Mo., and lived nearly all his life in Miami and Ottawa County, graduating from Miami Junior College in 1940. **He entered in the U.S. Army Air Corps in 1941, and was discharged as a first lieutenant in 1946.** He graduated from the OU College of Law in 1948. He began practicing law in Miami and was elected county attorney in 1950, and was later elected the first district attorney for the area. He also served several years as Ottawa County Election Board secretary. He served on many OBA committees, and in 1977 was appointed to the Board of Bar Examiners, where he served for 17 years. He retired from his private law practice in 1994.

Bob Rudkin of Edmond died July 13. He was born Nov. 5, 1930. He was a 1957 graduate of the OCU School of Law. He was devoted to his community, serving as

both former mayor and city judge. He also served 25 years on the Edmond Public Schools Board of Education. Memorial contributions may be made to Boys Ranch Town of Edmond.

James Richard “Jim” Ryan of Tulsa died March 7. He was born June 28, 1923, in Ponca City. He attended OU and received his bachelor’s degree in 1948. **He served in the U.S. Merchant Marines as a ship’s purser and pharmacist’s mate during World War II.** He attended law school at the University of Pennsylvania, earning his bachelor of law degree in 1951. Following graduation, he served as law clerk to Judge Herbert F. Goodrich of the U.S. Court of Appeals for the Third Circuit and then as law clerk to Justice Harold H. Burton of the U.S. Supreme Court. He returned to Tulsa as an attorney with the firm of Conner & Winters. He was an adviser to the Oklahoma Legislature and a member of the ABA. He served as president of the Tulsa County Bar Association, was an adjunct professor of law at the TU College of Law and authored a number of journal articles. He retired from active law practice in 2000. He was a past member of the Young Men’s Club, the Nicholas Club auxiliary of the Tulsa Boys Home and the Tulsa Club.

Shera Shirley of Enid died July 15. She was born Feb. 28, 1956, in Denver and grew up in Colorado and Iowa. She graduated from Phillips University in 1978 with a bachelor’s degree in English and earned a J.D. from Drake University Law School in Des Moines, Iowa, in 1982. She

served in many capacities in the area of law including public defender and Wakita city judge. She served on many boards in the Enid community, including Garfield County Excise Board, Foster Care Review, American Cancer Society, Garfield County Youth Service Shelter, and Pastoral Care Association. She was the first recipient of the Ann Overstreet Pro-bono Award in 2007. She volunteered legal counseling to domestic violence victims at the YWCA and hospice clients unable to afford legal services. She was a member of Central Christian Church. Memorial contributions may be made through the funeral home to YWCA Women’s Crisis Center or Youth and Family Services.

Herbert Dwight Smith of Alva died July 1. He was born Feb. 10, 1926, and graduated from Alva High School. **He served in the U.S. Army during World War II, was captured in Germany and spent more than three months as a prisoner of war.** He returned to Oklahoma after the war, earning a chemical engineering degree from OU in 1950. He served one term in the Oklahoma House of Representatives before enrolling in the OU College of Law, graduating in 1958. He began practicing law in Alva that year, and over the course of his career served as city attorney and Woods County acting attorney and acting judge. He was an active member of the Alva Presbyterian Church, and was also active in several civic organizations and American Legion. Memorial contributions may be made to his church or the Oklahoma Medical Research

Foundation for Parkinson’s disease research.

Larry Joseph Smith of Owasso died May 9. He was born in Fort Scott, Kan., July 8, 1941. He attended Fort Scott Community College and Pittsburg State University prior to earning his degree from Texas Christian University in 1964. He then attended the TU College of Law, earning his J.D. in 1969. He worked in Kansas and Fort Wayne, Ind., for the Western Insurance Company, relocating to Tulsa in 1996, where he established a solo law practice and joined Asbury United Methodist Church. He was also a member of the Kansas Bar Association. He was active in the Parkinson’s Action Network, and memorial contributions may be made to that organization.

G. D. Spradlin of San Luis Obispo, Calif., died July 24. He was born Aug. 31, 1920, in Pauls Valley, and received a bachelor’s degree in education from OU. **He served in the Army Air Forces in China during World War II.** After earning a law degree from the OU College of Law in 1948, he became an attorney for Phillips Petroleum Co. and then became head of Phillips’ legal department in Caracas, Venezuela. His success as an oilman allowed him to retire in 1960. He directed John F. Kennedy’s Oklahoma campaign for president. He ran unsuccessfully for mayor of Oklahoma City and earned a master’s degree in Latin American studies from the University of Miami in 1965. It was shortly thereafter that Mr. Spradlin embarked on a career in show business, moving with his

family to Los Angeles. He achieved success as a character actor in numerous films, and is best remembered for major supporting roles in "The Godfather: Part II" and "Apocalypse Now."

Arthur B. Stevener Jr. of El Reno died March 29. He was born Feb. 10, 1942, in New Orleans, La. and lived in Texas and California before relocating to El Reno in 1958. He was a graduate of OSU and OCU School of Law, earning a J.D. in 1970. He practiced privately for 41 years and was a member of Wesley United Methodist Church. He was involved in a number of civic and community organizations, and he **served in the U.S. National Guard**. He also enjoyed golfing, traveling and supporting the OSU Cowboys. Memorial contributions may be made to El Reno Mobile Meals or Friends of the Library at Carnegie Library.

Gary Swimley of Ripley died June 13. He was born March 8, 1946, in Mooreland and graduated from Norman High School. He earned a degree in physics from OU in 1967, later returning to the OU College of Law where he received his J.D. in 1975. He practiced law in California for five years before returning to Oklahoma to practice law in Stillwater. He worked at Legal Aid and then as a sole practitioner, retiring in 2007. He served on the Legal Aid board of directors for many years. He was a licensed pilot and an active member of the Payne County Experimental Aircraft Association. Memorial contributions can be made to Legal Aid Services of Oklahoma, Inc.

Kenneth Raymond Webster of Edmond died June 27. He was born in Enid on May 14, 1941, graduating from Cascia Hall High School in Tulsa. He earned his undergraduate degree from Notre Dame in 1962 and received his law degree from

the OU College of Law in 1965. **He served in the JAG Corps at the Pentagon during the late 1960s.** After returning to Oklahoma City, he was a trial attorney for more than 20 years with the firm of McKinney, Stringer and Webster. He was a member of the ABA, Oklahoma County Bar Association, Federation of Insurance Counsel, American College of Trial Lawyers and the Oklahoma Association of Defense Counsel. He retired from the practice of law in 1993 and pursued his interests in hunting, competitive shooting, training his dog for field trials, handicapping horse races, golf and travel.

Neil Anthony Whittington of Atoka died Jan. 3. He was born Jan. 15, 1946, in Ada and graduated from Ada High School. He earned his J.D. from the OU College of Law in 1971. He was engaged in the private practice of law, and he was also a former associate district attorney. He was a member of the Atoka Lions Club.

Oklahoma Bar Journal Editorial Calendar

2011

■ September:
Bar Convention
Editor: Carol Manning

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

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

■ December:
Ethics & Professional Responsibility
Editor: Melissa DeLacerda
melissde@aol.com
Deadline: Aug. 1, 2011

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

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My First Jury Trial

By Rex Travis

My career as a trial lawyer began a long time ago somewhat traumatically. My law school classmate, B.J. Brockett, knew I wanted to be a trial lawyer. His brother had the misfortune to have a car wreck during our last semester in law school.

B.J. referred his brother to me to handle what became a fairly serious injury case. The client (B.J.'s brother) was south-bound on Classen Boulevard in Oklahoma City. It was raining. The client saw a pretty girl at a bus stop and (being a gentleman) stopped to offer her a ride.

He was almost immediately struck from the rear by a car, which was struck and knocked into him a second time by a van belonging to the Oklahoma City Blood Bank. The drivers of both of the rear cars got tickets. My client did not.

Negotiations before the suit was filed did not produce much result. The insurance companies were evidently not frightened by a lawyer with the ink not yet dry on his Supreme Court certificate. I filed suit in the Oklahoma County District Court.



The client ended up going to Santa Fe to live and work and had surgery there for his injuries. I ended up flying to Albuquerque and driving up to Santa Fe to depose the surgeon. Still, no meaningful offers of settlement were forthcoming.


We all appeared for trial before Judge Glenn O. Morris, then an ancient-seeming (to me) judge. At the first recess, he said to me "Young man." (I told you this was a long time ago!) "I need to see you in my chambers." In chambers he said "Young man, why have you not settled this case?" Somewhat unnerved, I said "Well, it's because they haven't offered me anything. Why do you ask?"

He said: "Well, I'm afraid if you don't settle it, I may have to direct a verdict against you on the basis of contributory negligence." I gulped and said, "But judge, you can't direct a verdict on contributory negligence because the Oklahoma Constitution says contributory negligence must always be for jury." He responded, "Well, ordinarily that's true but it was raining and your guy shouldn't have stopped so suddenly."

Sort of shell-shocked, I wandered out into the hall. Then a miracle occurred. The two defense counsel approached me in the hall and asked what it would take to settle the case. I soon got with my client for some authority and we settled the case.

After the judge dismissed the jury, I asked defense counsel, "Why did you wait until we were in trial to try to settle the case?" They said "Well, since it's all over, I guess we can tell you. During that first recess, the judge called us in and told us if we didn't settle, he was going to direct a verdict against us."

Mr. Travis practices in Oklahoma City.



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8:30

Registration and Continental Breakfast

9

Managing Client Expectations

Jon Ford, Attorney at Law, Enid

9:50

Break

10

How to Ask For - and Get - What You Want:
Concise and Effective Motion and Brief Writing
Karen Grundy, Attorney at Law, Tulsa

10:50

Getting Paid for Your Work
Brad Grundy, Hall Estill, Tulsa

11:40

Networking lunch
(included in registration)

12:10

Maximizing Your Chances of Success in
Family Law Mediation

Kevin Gassaway, Gassaway Law Firm, Tulsa

1

Using Expert Witnesses

Donelle Ratheal, Donelle H. Ratheal, P.C.,
Oklahoma City

1:50

Break

2

Preparing for an Appeal
Amy Wilson

2:50

Adjourn

Sept. 8, Tulsa - Renaissance Hotel, 6808 S. 107th East Ave.

Sept. 9, OKC - Oklahoma Bar Center, 1901 N. Lincoln Blvd.

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