

OKLAHOMA Bar JOURNAL

Volume 82 ♦ No. 2 ♦ January 15, 2011

Meet Your Bar Association

ALSO INSIDE

- Pledges to a Charity
- Puzzling Predicaments in Probate
- Benefits of OBA Membership
- Meet the New OBF President



OBA President
Deborah A. Reheard

OKLAHOMA BAR CENTER



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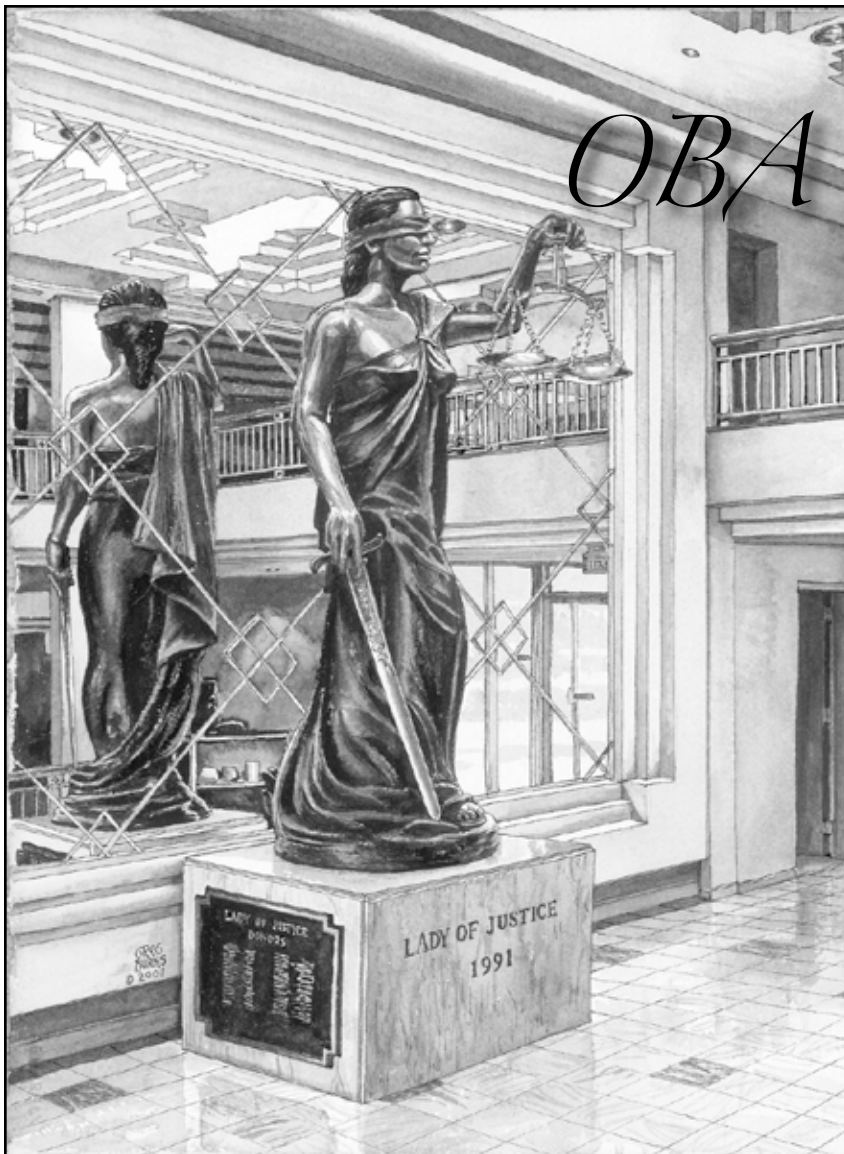
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THEME:
MEET YOUR BAR ASSOCIATION

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PLEDGES TO A CHARITY

Bar to Focus on Military Assistance

By Deborah Reheard

I am proud to be a lawyer.

Our profession remains a noble and honorable one, though tarnished throughout history for a myriad of reasons. But just like charity, pride begins at home. If we are not proud of ourselves and our profession, why should we expect others to be proud of who we are, what we do and our accomplishments?

The best way to show our pride in our profession is to use the unique skills, training and traits we have as lawyers to help where needed. Courage, hope, honor, compassion and sacrifices have been the glory of our profession. It is up to us as lawyers not only to seek justice but to speak it, act it, exemplify it.

In 2011, nearly 4,000 men and women from the great state of Oklahoma alone will be deployed to Afghanistan and other places unknown to fight for those freedoms embodied in that same Constitution that we as lawyers have sworn to uphold. These soldiers need our help now, while they are there and when they return. In addition, there are thousands of soldiers, sailors, airmen and Marines who have served this country selflessly who deserve the benefit of our time and our special skills and training as they reintegrate into society. And we cannot forget those who have fought in previous conflicts and wars who gave no less than our servicemen and women are giving today.

Thus was born Oklahoma Lawyers for America's Heroes. An insert is included in this bar journal explaining more about this program and the OBA's special relationship with Pros 4 Vets, a veterans advocacy group started right here in Oklahoma by an Oklahoma lawyer. It is not only a privilege to come to the legal assistance of this nation's military members, it is the right thing to do.

We as attorneys have a unique opportunity to serve, whether through service to our military members and veterans, the homeless or the hungry. We can serve our communities through civic organizations, service groups, state and local government offices, and volunteer work. We can show our own little corner of the world how proud we are to be lawyers.

"We as attorneys have a unique opportunity to serve..."

As I begin my year as president of this august organization, I do so not only with pride but with great humility. Humility is about maintaining the pride we have in our profession — who we are, what we do and our accomplishments. It is a lack of arrogance, not a lack of aggressiveness nor

a lack of advocacy. Our profession has suffered damage one incident at a time. It can be restored one good work at a time.

We must maintain our pride in who we are, what we do and our achievements. Pride in our work and pride in our service.

I am proud to be a lawyer, proud to serve as your president, and proud to work with you and for you.



Deborah Reheard
President Reheard
practices in Eufaula.
dreheard@reheardlaw.com
(918) 689-9281

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EVENTS CALENDAR

JANUARY 2011

17 **OBA Closed** – Martin Luther King Jr. Day Observed

18 **OBA Bar Center Facilities Committee Meeting**; 2 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Judy Hamilton Morse (405) 235-7759

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

19 **Oklahoma Council of Administrative Hearing Officials**; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Carolyn Guthrie (405) 271-1269 Ext. 56212

OBA Women in Law Committee Meeting; 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Deborah Bruce (405) 528-8625

20 **OBA Bench & Bar Committee Meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Barbara Swinton (405) 713-7109

OBA Bar Association Technology Committee Meeting; 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Gary Clark (405) 744-1601

21 **Oklahoma Bar Foundation New Trustee Orientation**; 10:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Nancy Norsworthy (405) 416-7070

Oklahoma Bar Foundation Trustee Meeting; 1 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Nancy Norsworthy (405) 416-7070

OBA Unauthorized Practice of Law Meeting; 1:30 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact: Deborah Reheard (918) 689-9281

22 **OBA Law-related Education We the People State Finals**; 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jane McConnell (405) 416-7024

24 **OBA Alternative Dispute Resolution Section Meeting**; 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: D. Michael O'Neil Jr. (405) 239-2121

26 **OBA Professionalism Committee Meeting**; 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Patricia Podolec (405) 760-3358

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

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

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President Reheard's Family (from left): nephew Clinton Crane, sister Diane Crane, niece Kristin Crane (holding Sassy the Yorkshire terrier), brother-in-law Rick Crane, brother Don Reheard, nephew Brice Reheard, Dallas the Dalmatian, sister-in-law Tamara Reheard, President Deb Reheard, Shelby the Sheltie, niece Leslie Reheard, husband Dale Gill, Spud the Jack Russell terrier



"I'm your huckleberry!" Deborah Reheard, age five, sporting her favorite outfit and Lone Ranger hat at the family farm.



Deborah Reheard, age two, and her parents, Gladys and Tom Reheard



President Reheard riding the train to Fort Worth for her mom's 65th birthday, with niece Kristin.

While chairing the Judicial Nominating Commission, Deborah Reheard participated in the appointment process for four of the current Oklahoma Supreme Court justices. The four are pictured here with President Reheard, along with Justice Joseph Watt to her right. (From left) Justice James Edmondson, Justice Steven Taylor, Justice Tom Colbert and Justice James Winchester



Meet Your Bar Association

Meet 2011 OBA President Deborah Reheard

Legal Assistance for Military to be Main Emphasis

By Lori Rasmussen

Hardworking” has been a defining characteristic of new OBA President Deborah Reheard since her childhood in Vinita, where she grew up on a dairy farm just outside the Northeastern Oklahoma community. She credits her small-town upbringing, along with her parents, for instilling her with good common sense and the strong work ethic she applies in her law practice and personal life today.

“Dad milked cows everyday at 6 a.m., working a herd of 100 head and farming 2,000 acres,” the Eufaula attorney said. “My parents worked very hard so we would have it better than they did.”

From childhood in a two-room schoolhouse she moved on to Vinita High School, where she was a member of the first ever Blue Pride Drill Team. “We thought we were the Dallas Cowboys Cheerleaders,” she said. It was winning an essay contest and a trip to Washington, D.C., that convinced Ms. Reheard to put pompoms aside and instead pick up a pen to pursue a career in journalism.

Her lifelong love for animals initially sent her to Oklahoma State University where she planned to focus her studies on veterinary medicine and agricultural journalism. Ultimately she completed her studies at Northeastern State University in Tahlequah, working all the while for her small-town newspaper. She wrote and served as editor for a number of community newspapers after graduating, reporting on crime and courts. That was where her interest in the law began to take shape. President



Deborah Reheard, age four, models for a “Miss Easter” calendar page.

Reheard said, “I thought to myself ‘I can do that,’ and realized I would like it. When I was 27 years old, the opportunity came along to go to the TU College of Law full time, so I took it.”

While in school, she interned at the city attorney’s office in Tulsa, eventually landing a full-time job there after graduating and passing the bar exam in 1987. Later she worked as an



Retirement party for former law partner Rocky Boydston, 1995; (from left) Beth Boydston, Justice Alma Wilson, Rocky Boydston, Deborah Reheard

assistant district attorney in Craig, Mayes, Rogers, Ottawa and Delaware counties. "My mentor, Rocky Boydston, gave me the opportunity to take over his solo practice in Eufaula in 1991," she said. "I've been there ever since."

President Reheard says the majority of her practice is focused on family law and criminal defense, but she takes on a wide variety of cases. "In a small town you draw a bit of everything. What draws me to the law is the advocacy work, and what I enjoy most is trial work. What I love about being a lawyer in a small community is that it's about problem solving and helping people."

She believes her nearly two decades in private practice are strong qualifications for her leadership of the Oklahoma Bar Association this year.

"The law is a tough business to be in, so we need to be able to provide our members with the services they need to be effective in their practices," she said. "I travel around the state to work on cases, I don't practice in one county, and I am out of my office a lot in court. I think I've got a good handle on what the vast majority of the attorneys want, need and think about our association."

President Reheard is a self-described "bar junkie," having served on the OBA Board of Governors since 2006. She also served a six-year term on the Judicial Nominating Commission, including serving as its chair-



Rare family photo: (from left) father Tommy, sister Diane, mother Gladys, brother Donnie, Deb

Personal Trivia

Favorite rock song:

"Fooled Around and Fell in Love"

First job:

Summer waitress at the Vinita Country Club

Favorite lawyer in fiction:

Atticus Finch

Natural talent you would like to be gifted with:

Musicality

Favorite late-night snack:

Blue Bell Moo-llennium Crunch

What is the greatest invention of all time:

Electricity

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

Jodie Foster, a cross between her character in "Silence of the Lambs" and her character in "Maverick"

Most prized possession?

My wedding ring, it was my mom and dad's. I've had it for 22 years. It also has the diamond solitaire my dad gave my mom on their 35th wedding anniversary.

Ideal vacation spot:

If not my ranch, then Hawaii

● ● ● ● ● ● ● ●

Favorite movie:

Tombstone — one of the last movies I went to see in the theatre.

Most frequently visited Website:

Okbar.org - mostly to look up members to find people to volunteer!

Best Halloween costume:

I put on a hefty garbage bag, then stuck things like empty hamburger wrappers on the outside, and went as a "trashy woman."

Favorite food:

Anything with chocolate!

Biggest pet peeve:

People who have the ability to work and don't or won't

Favorite restaurant:

Trappers in Oklahoma City

Most marked characteristic:

My laugh!

Best thing about the town where you live:

We just got a Super Walmart in Checotah... and they even do pedicures!

What are the most important qualities a lawyer can have?

Work ethic, honesty and integrity.

● ● ● ● ● ● ● ●

person, and is a frequent CLE presenter on the topic of bar disciplinary proceedings. In fact, she estimates for the last 10 years, almost all of her spare time has been spent on bar activities. "When I am doing trial work, there are clients, there is opposing counsel, people are not always on their best behavior and there are interactions that lead to problems," she said. "There are just a lot of people who are mad at each other. When I am doing bar work, I am around other attorneys who love the profession and the association. It's a way to interact with other attorneys advocating toward a common goal rather than butting heads in a courtroom."

President Reheard says taking a leadership role was important to her personally because she had specific projects she wanted to work on as bar president. Providing legal assistance for military service members and veterans is her top priority.

"I was thinking about things I need to do and my term happened to coincide with a year our state will be sending 4,000 troops to Afghanistan," she said. "So we created

Oklahoma Lawyers for America's Heroes, working with the Pros for Vets organization to provide legal services. I had limited exposure to the military growing up, but I was seeing so many people come through my office that we could trace a lot of their problems to their military service. Service members have made sacrifices for us. We need to do a better job of helping them when they come back.

We have also started a special committee to deal with the unauthorized practice of law. Oklahomans are being taken in by unscrupulous people pretending to be attorneys, and we are going to put a stop to it. It's about protecting the public."



Deb and Dale with "My Lady Diamond" in November 1988. This horse was a world-famous American quarter horse that was the dam (mother) of several world champions.



Deb Reheard ready to cheer on Vinita High School as a member of the Blue Pride Drill Team

With a busy legal practice of her own to maintain in Eufaula, it's natural to wonder whether there are enough hours in day to accomplish all the goals President Reheard has laid out for her term.

"I have great staff and family support," she responds. "I have planned for this. I have a long-time assistant, Kim Wegner, and another very competent attorney in my office, Steve Barnes, plus a part-time secretary, Cindy Bacon. We will adjust and it will all work out."

President Reheard has been married 22 years to Dale Gill, who is originally from Texas. Together they own a working ranch in Checotah, where they breed, train, and show reining and working cow horses. Their work recently extended from the equine to the canine, when they began breeding Fell terriers, hunting dogs originating in England and Ireland. The couple occasionally travels across the Atlantic together to import the dogs to Oklahoma. In addition, President Reheard has four pet dogs of her own. Bruiser is a Fell ter-



President Reheard attending the 2009 Board of Governors "Has Been" party with husband Dale.

rier who was abandoned by his mother. Maxie and Zeb are Jack Russell terriers the couple rescued from owners who were unprepared for the challenges of the rambunctious breed. Then there is the alpha dog, Tater, a rat terrier who came to the couple through a case of mistaken identity.

"I was doing an adoption for a family who raised rat terriers," she explained. "I told the mother that my husband always wanted one of those, even though what he really wanted was a completely different kind of dog. But then this little girl comes into my office with a box of puppies about eight weeks old, so small you could hold them in the palm of

your hand. The little girl tells me she'd like me to have one, because I was the one making her 'daddy' her real father for the rest of her life. And that's how I got Tater, who is the meanest damn dog you've ever seen in your life."

President Reheard believes her competence as an attorney along with her desire to work exceptionally hard is what best qualifies her to lead the OBA. She notes that 2011 is a historic year for the association; for the first time in its 106 years a woman is serving in the three top spots on the Board of Governors: herself as president along with Cathy Christensen serving as president-elect and retired Judge Reta Strubhar serving as vice president.

"I watched Melissa (DeLacerda, 2003 OBA president) and Mona (Salyer Lambird, 1996 OBA president) and saw what they did to promote not just women but promote all attorneys, and I thought we had come a long way. I've never wanted to be the first 'woman' anything. I just go out and do what I need to do. Sometimes because I didn't know any better," President Reheard laughs. "I think we've come to the point where we are taking leadership roles not because we are women, but because we are great attorneys who just happen to be women."



Deborah Reheard, age four, sits atop a stuffed horse at the Buffalo Ranch, a tourist trap in Afton.

Meet Your Bar Association Volunteers Who Guide Your Association



Cathy Christensen
PRESIDENT-ELECT
Oklahoma City

❑ **Background:** Born in Norristown, Penn. and moved to Tulsa in 1973; graduated from Tulsa Memorial, Class of 1975; married to John J. (Jim) Ditmars Jr. since 1994; three sons Blake Christensen, Adam Christensen and John Ditmars III

❑ **Education:** B.S., Oklahoma State University, 1982; J.D., Oklahoma City University, 1986

❑ **First job?** During the summer after eighth

grade, I worked as a camp counselor. After working at the camp, I would walk to a nearby shopping center and work evenings at Baskin-Robbins Ice Cream.

- ❑ **Nobody knows I...** Wish I could sing
- ❑ **Favorite lawyer in fiction?** Atticus Finch
- ❑ **Natural talent you would most like to be gifted with?** Musical talent
- ❑ **Favorite rock song?** "Don't Stop Believing" by Journey
- ❑ **Favorite late-night snack?** Pretzels and cold milk
- ❑ **Greatest invention of all time?** The telephone
- ❑ **Best gift ever received?** My children
- ❑ **Best thing about the town where you live?** The best thing about Oklahoma City has to be the people!
- ❑ **Historical event you wish you could have witnessed?** The end of World War II
- ❑ **Most important qualities a lawyer can have?** A reputation for honesty, compassion and a solid work ethic. A sense of humor and great family and friends are also important.



Reta M. Strubhar
VICE PRESIDENT
Piedmont

❑ **Background:** Graduated from Bartlesville High School; attended college; taught English and business in Oklahoma City and Mustang public school systems; attended law school and then worked as an assistant attorney general, assistant district attorney and was then appointed to the district court bench in Canadian County in 1984; appointed as first woman in Oklahoma to sit on Oklahoma Court of Criminal Appeals in 1993; resigned as an

active judge in 2010 and now conduct mediations and handle a few probates

- ❑ **Education:** Bachelor's of education with minor in accounting, Phillips University; master's in English, UCO; juris doctorate, OCU School of Law
- ❑ **First job?** While attending college I was a waitress in a hotel restaurant. My first "real" job was for J. Edgar Hoover at the FBI in Washington, D.C.
- ❑ **Nobody knows I...** Would love to play the banjo
- ❑ **Favorite lawyer in fiction?** Portia in Shakespeare's "Merchant of Venice" for her high self-esteem, her intelligence and her manipulative abilities
- ❑ **Natural talent you would most like to be gifted with?** Ability to sing on Broadway
- ❑ **Favorite rock song?** "California Girls" by the Beach Boys
- ❑ **Favorite late-night snack?** Peanuts
- ❑ **Greatest invention of all time?** The alphabet (I'm an ol' English teacher!)
- ❑ **Best gift ever received?** Wonderful and perfect — children and grandchildren!
- ❑ **Best thing about the town where you live?** In Piedmont I was able to name several of the residential subdivisions and streets. (My husband does some residential development.)
- ❑ **Historical event you wish you could have witnessed?** The swearing-in of Justice Sandra Day O'Connor to the U.S. Supreme Court in 1981
- ❑ **Most important qualities a lawyer can have?** Truthfulness and honesty above all else



Allen Smallwood

PAST PRESIDENT
Tulsa

- ❑ **Background:** Born and raised in Tulsa; hung out a shingle as a solo practitioner in May 1975 and that's what I've been doing ever since.
- ❑ **Education:** Nathan Hale High School, bachelor's in political science with a minor in history from OSU, law degree from TU College of Law
- ❑ **First job?** Paper boy for the *Tulsa Tribune*
- ❑ **Nobody knows I...** "And nobody ever will."

- ❑ **Favorite lawyer in fiction?** Atticus Finch
- ❑ **Natural talent you would most like to be gifted with?** Foot speed
- ❑ **Favorite rock song?** "Stand By Me"
- ❑ **Favorite late-night snack?** Peanut butter
- ❑ **Greatest invention of all time?** The bicycle
- ❑ **Best gift ever received?** Four grandchildren!
- ❑ **Best thing about the town where you live?** I've lived here all my life.
- ❑ **Historical event you wish you could have witnessed?** The bombing of Pearl Harbor, Dec. 7, 1941
- ❑ **Most important qualities a lawyer can have?** Ability to listen and patience



Martha Rupp Carter

GOVERNOR -
DISTRICT NO. SIX
Tulsa

- ❑ **Background:** After five years of practice with a Tulsa firm doing litigation and oil and gas work, I entered public service with the Tulsa City Attorney's office. I served in that office for 19 years, and as the city attorney for the last four. I am now general counsel with the Tulsa City-County Health Department but will soon become a special judge in Tulsa County.
- ❑ **Education:** Perry High School; OSU - bachelor's of art with honors in English; OU College of Law — juris doctor

- ❑ **First job?** Painting neighbors' garbage cans with flowers and peace signs for \$10. (Why did I give it up?)

- ❑ **Nobody knows I...** Park in Sonic drive-ins to chew ice and play Scrabble on my iPhone
- ❑ **Favorite lawyer in fiction?** Atticus Finch, of course.
- ❑ **Natural talent you would most like to be gifted with?** A great singing voice or speed and strength
- ❑ **Favorite rock song?** "American Pie" or "I Want to Hold Your Hand"
- ❑ **Favorite late-night snack?** Pomegranate fruit bars
- ❑ **Greatest invention of all time?** Printing press
- ❑ **Best gift ever received?** A 10-day hiking trip in British Columbia!
- ❑ **Best thing about the town where you live?** Running water and electricity
- ❑ **Historical event you wish you could have witnessed?** Abraham Lincoln's tenure as president
- ❑ **Most important qualities a lawyer can have?** Integrity, service and intelligence



Charles W. Chesnut

GOVERNOR -
DISTRICT NO. ONE
Miami

- ❑ **Background:** I'm a third-generation Oklahoma country lawyer.
- ❑ **Education:** Miami High School; University of Oklahoma (B.B.A.-1974; J.D.-1977)
- ❑ **First job?** Working in maximum security in a mental hospital
- ❑ **Nobody knows I...** Watch "Swamp Loggers" on television
- ❑ **Favorite lawyer in fiction?** Atticus Finch in "To Kill a Mockingbird"
- ❑ **Natural talent you would like to be gifted with?** The ability to touch my toes when standing upright

- ❑ **Favorite rock song?** Almost anything by The Eagles - "Hotel California," "Take It to the Limit" and "Desperado"
- ❑ **Favorite late-night snack?** Eating Keebler's Grasshoppers (thin mints) and a glass of milk
- ❑ **Greatest invention of all time?** Water purification
- ❑ **Best gift ever received?** My mother teaching me to read
- ❑ **Best thing about the town where you live?** Lack of traffic
- ❑ **Historical event you wish you could have witnessed?** Lincoln's delivery of the Gettysburg Address

- ❑ **Most important qualities a lawyer can have?** Honesty, being forthright and the ability to problem solve



Renée DeMoss
GOVERNOR -
AT LARGE
Tulsa

- ❑ **Background:** Born and raised in Oklahoma; shareholder with GableGotwals
- ❑ **Education:** B.A. summa cum laude from OCU, J.D. with honors from OU
- ❑ **First job?** Babysitting for 25 cents an hour
- ❑ **Nobody knows I...** Really love barbershop quartets
- ❑ **Favorite lawyer in fiction?** Vincent Gambini in the movie, "My Cousin Vinny." He made me laugh.
- ❑ **Natural talent you would like to be gifted with?** Photographic memory
- ❑ **Favorite rock song?** Tie: "Freebird" by Lynyrd Skynyrd (love it or hate it) and "Let's Stay Together" by Al Green
- ❑ **Favorite late-night snack?** Homemade chocolate cookies with milk
- ❑ **Greatest invention of all time?** The wheel
- ❑ **Best gift ever received?** A birthday trip to Ireland
- ❑ **Best thing about the town where you live?** Tulsa's wonderful natural setting complemented by our great architecture and museums
- ❑ **Historical event you wish you could have witnessed?** Signing of the Declaration of Independence
- ❑ **Most important qualities a lawyer can have?** Honesty and humility



Gerald Dennis
GOVERNOR -
DISTRICT No. Two
Antlers

- ❑ **Background:** Married to Rhonda Dennis, three children (Zack, Michael & Katie); Vietnam veteran, served in the infantry, 1971; served in the Oklahoma State Senate from 1980-1988; served on the Eastern Oklahoma State University Board of Regents for 11 years; practiced law at Dennis & Branam since 1975
- ❑ **Education:** Southeast High School, Oklahoma City; Southeastern State College; OCU School of Law
- ❑ **First job?** Worked at a small grocery store when I was 13
- ❑ **Nobody knows I...** "They still don't know."
- ❑ **Favorite lawyer in fiction?** Atticus Finch from "To Kill a Mockingbird"
- ❑ **Natural talent you would like to be gifted with?** Good orator
- ❑ **Favorite rock song?** "Sound of Silence" by Simon and Garfunkel
- ❑ **Favorite late-night snack?** None
- ❑ **Greatest invention of all time?** The computer
- ❑ **Best gift ever received?** My family
- ❑ **Best thing about the town where you live?** The people
- ❑ **Historical event you wish you could have witnessed?** Writing of the U.S. Constitution
- ❑ **Most important qualities a lawyer can have?** Honesty and integrity



Glenn A. Devoll
GOVERNOR -
DISTRICT No. FOUR
Enid

- ❑ **Background:** Born in Altus
- ❑ **Education:** OCU Law School
- ❑ **First job?** Working in a lumber yard
- ❑ **Nobody knows I...** Enjoy building stuff
- ❑ **Favorite lawyer in fiction?** Perry Mason
- ❑ **Natural talent you would like to be gifted with?** I wish I could "moonwalk"
- ❑ **Favorite rock song?** "Born to be Wild," theme song from the movie, "Easy Rider"

- ❑ *Favorite late-night snack?* I don't snack at night.
- ❑ *Greatest invention of all time?* The automobile
- ❑ *Best gift ever received?* A shotgun from a client
- ❑ *Best thing about the town where you live?* The people — the lawyers and judges in particular
- ❑ *Historical event you wish you could have witnessed?* Signing of the Declaration of Independence
- ❑ *Most important qualities a lawyer can have?* Honesty and integrity



Steven Dobbs
GOVERNOR -
AT LARGE
Oklahoma City

- ❑ *Background:* Raised in orphanage in Missouri; USMC/Vietnam veteran with two Purple Hearts; no good conduct medal!
- ❑ *Education:* Bachelor's in sociology; master of public administration, both from Mizzou; J.D. from the OU College of Law
- ❑ *Nobody knows I...* Get beat by my wife in golf on a regular basis
- ❑ *Natural talent you would like to be gifted with?* To be able to sing and play an instrument

- ❑ *Favorite rock song?* "I Need A Hero"
- ❑ *Favorite late-night snack?* My wife's chocolate chip cookies
- ❑ *Greatest invention of all time?* The wheel
- ❑ *Best gift ever received?* A train set
- ❑ *Best thing about the town where you live?* Friendly people
- ❑ *Historical event you wish you could have witnessed?* The birth of Jesus Christ
- ❑ *Most important qualities a lawyer can have?* Honor, courage, commitment, ethics and professionalism



O. Christopher Meyers II
GOVERNOR -
DISTRICT NO. NINE
Lawton

- ❑ *Background:* Born and raised in Shawnee; have lived and practiced in Lawton since 1971
- ❑ *Education:* Graduated Shawnee High School in 1962; OU undergraduate, 1966; OU College of Law, 1969; Georgetown for LLM in tax, 1971
- ❑ *First job?* Delivering newspapers for *The Daily Oklahoman*
- ❑ *Nobody knows I:* Once considered practicing in Texas
- ❑ *Favorite lawyer in fiction?* Atticus Finch
- ❑ *Natural talent you would like to be gifted with?* Photographic memory
- ❑ *Favorite rock song?* "Gimme That Old Time Rock 'n' Roll"
- ❑ *Favorite late-night snack?* Peanut butter and crackers
- ❑ *Greatest invention of all time?* Beer
- ❑ *Best gift ever received?* My first bicycle
- ❑ *Best thing about the town where you live?* Lawton is big enough to have all the conveniences of a large city but small enough to avoid congestion.
- ❑ *Historical event you wish you could have witnessed?* Landing on the moon
- ❑ *Most important qualities a lawyer can have?* A desire to help your client, and the ability and skill to do it effectively.



Lou Ann Moudy
GOVERNOR -
DISTRICT NO. SEVEN
Henryetta

- ❑ *Background:* Family from northeastern Oklahoma — Miami, Commerce, Vinita; raised in Henryetta, returned and opened my practice here in 1996
- ❑ *Education:* East Central University, OU College of Law
- ❑ *First job?* No calls from child labor lawyers, please...I worked in my father's pharmacy starting in at least the third grade.
- ❑ *Nobody knows I...* Would love to be a pilot

- ❑ *Favorite lawyer in fiction?* Definitely no character by John Grisham
- ❑ *Natural talent you would like to be gifted with?* Singing
- ❑ *Favorite rock song?* I have so many — best concert was John Cougar Mellencamp while I was in law school.
- ❑ *Favorite late-night snack?* Pizza
- ❑ *Greatest invention of all time?* Microchip
- ❑ *Best gift ever received?* An education (with no student loans)
- ❑ *Best thing about the town where you live?* Everybody knows me.
- ❑ *Historical event you wish you could have witnessed?* The debates at the Council of Nicaea — you think our debates are important, these people decided what was to be in the Bible.
- ❑ *Most important qualities a lawyer can have?* Integrity and common sense



D. Scott Pappas

GOVERNOR —
DISTRICT NO. EIGHT
Stillwater

Catering Department when I was 14 years old. Had to wear a hairnet!

- ❑ *Nobody knows I...* Am a wonderful tour guide — especially if you want to see all the sites in NYC in a long weekend!
- ❑ *Favorite lawyer in fiction?* Atticus Finch from "To Kill A Mockingbird"
- ❑ *Natural talent you would like to be gifted with?* Peacemaking and diplomacy
- ❑ *Favorite rock song?* Most all from the band, Chicago
- ❑ *Favorite late-night snack?* Microwaved M&Ms
- ❑ *Greatest invention of all time?* Electricity
- ❑ *Best gift ever received?* My daughter
- ❑ *Best thing about the town where you live?* The people

- ❑ *Background:* Born and raised in Stillwater, where my family has had the Ford dealership since 1919; raised my daughter in New York before coming back to marry my husband, whom I have known since sixth grade
- ❑ *Education:* Graduated from C.E. Donart High School in Stillwater; B.A. in history from OSU; J.D. from Fordham University School of Law, New York

- ❑ *First job?* Serving at banquets for the OSU

- ❑ *Historical event you wish you could have witnessed?* The deliberations leading to the U.S. Constitution
- ❑ *Most important qualities a lawyer can have?* A caring nature, honesty, integrity, inquisitiveness, perseverance and respect for all people



David A. Poarch Jr.

GOVERNOR - AT
LARGE
Norman

- ❑ *Background:* I was born in Oklahoma but grew up in the California Bay Area in a small town of 2,500 people about 30 miles east of San Francisco. Went in the Army out of high school; returned to Oklahoma for college and law school after I got out. Been here since 1969. Married, two grown sons and three grandchildren.
- ❑ *Education:* B.A. University of Central Oklahoma 1973; J.D. University of Oklahoma 1977

- ❑ *First job?* When I was in high school, I worked behind the counter at a laundry and cleaners. I closed up at 9 o'clock and made the bank deposit. Amazing what people leave in their clothing when they drop them off at the cleaners! Before that, I was a paper boy. Less intrigue; more dogs, though.
- ❑ *Nobody knows I...* Wear high heels... I'm kidding! Seriously, though, I do wear lifts. Gotcha! (Obviously, I don't have an answer for this question!)
- ❑ *Favorite lawyer in fiction?* Atticus Finch, of course. Horace Rumpole, equally, but for different reasons. And who could overlook Vincent LaGuardia "Vinny" Gambini defending his cousin in a murder trial...wearing a used '77 baby blue tuxedo?
- ❑ *Natural talent you would like to be gifted with?* To sing bass in a quartet, without being sharp. I'm a tenor.
- ❑ *Favorite rock song?* "Bridge Over Troubled Water," among others
- ❑ *Favorite late-night snack?* Popcorn or graham crackers; nothing particularly healthy
- ❑ *Greatest invention of all time?* Microchip technology. But the wheel, fire and air conditioning probably deserve honorable mention.
- ❑ *Best gift ever received?* Unconditional love
- ❑ *Best thing about the town where you live?* The students leave in the summer (and over Christmas break).

- ❑ *Historical event you wish you could have witnessed?* The debate giving rise to, and the signing of, the Declaration of Independence
- ❑ *Most important qualities a lawyer can have?* Honesty and integrity, coupled with a desire to serve others



Ryland L. Rivas
GOVERNOR -
DISTRICT NO. FIVE
Chickasha

❑ *Background:* Born Sept. 13, 1949, in Tipton, Okla.; married to Brenda Kaye Rivas, 42 years; two children, Ryland II, OCU Law, and Meredith Kaye Brockman, OU Law; three grandchildren; member of the Comanche Indian Tribe, first tribal member lawyer; former Magistrate for the Court of Indian Offenses, Chief Justice Cheyenne and Arapaho Supreme Court, 1998-2009; practice in civil, Indian and criminal law, Chickasha City Council 1995-1999; Board of Directors, Bank of Verden

- ❑ *Education:* Lawton High School – 1967; Oklahoma University, B.B.A., majors in economics and finance - 1971; OU College of Law - 1974
- ❑ *First job:* I started working with my dad in the cleaners, washed clothes and ran a press.
- ❑ *Nobody knows...* I listen to classical music
- ❑ *Favorite lawyer in fiction?* Atticus Finch
- ❑ *Natural talent you would like to be gifted with?* Writing music
- ❑ *Favorite rock song?* “Gotta Serve Somebody”
- ❑ *Favorite late-night snack?* Homemade banana milk shake
- ❑ *Greatest invention of all time?* Alphabet
- ❑ *Best gift ever received?* Love and patience of wife and family
- ❑ *Best thing about the town where you live?* I live in the country; it’s quiet.
- ❑ *Historical event you wish you could have witnessed?* A study session with Socrates
- ❑ *Most important qualities a lawyer can have?* Integrity, empathy, mercy, patience and justice



Susan S. Shields
GOVERNOR -
DISTRICT NO. THREE
Oklahoma City

❑ *Background:* I grew up in Bartlesville; went to college and law school in California and worked for a large law firm in San Francisco for several years following graduation from law school. I am married and have two sons, ages 12 and 14. We moved back to Oklahoma in 1991, and I have enjoyed living and practicing law in Oklahoma City since that time.

❑ *Education:* Stanford University and UCLA School of Law

- ❑ *First job?* Worked in the children’s room of the Bartlesville Public Library
- ❑ *Nobody knows I...* Hate black olives
- ❑ *Favorite lawyer in fiction?* Vincent “Vinny” Gambini, from the movie, “My Cousin Vinny”
- ❑ *Natural talent you would most like to be gifted with?* I wish I were a better tennis player.
- ❑ *Favorite rock song?* “Thunder Road” by Bruce Springsteen
- ❑ *Favorite late-night snack?* Popcorn
- ❑ *Greatest invention of all time?* The Internet (and now, my iPad)
- ❑ *Best gift ever received?* Artwork painted by my children
- ❑ *Best thing about the town where you live?* The renaissance of downtown Oklahoma City and Bricktown
- ❑ *Historical event you wish you could have witnessed?* I would like to have been part of the Lewis and Clark Expedition.
- ❑ *What are the most important qualities a lawyer can have?* Integrity and the willingness to work hard to get the best results for your clients



Roy D. Tucker

GOVERNOR -
YLD CHAIR
Muskogee

- ❑ **Background:** I grew up in Lexington, Okla., attending public school there from kindergarten through high school. I played in band and was the only person I knew who had no interest in joining the FFA, despite desperate pleas from my dad.
- ❑ **Education:** Lexington High School (1994); UCO, B.A. in English (1998); TU, J.D. (2003)
- ❑ **What was your first job?** C.R. Anthony's in Norman
- ❑ **Nobody knows I...** Haven't put up a Christmas tree in 10 years
- ❑ **Favorite lawyer in fiction?** Elle Woods, of course
- ❑ **Natural talent you would like to be gifted with?** Being a math genius
- ❑ **Favorite rock song?** "Bad Romance" Yes, Lady Gaga
- ❑ **Favorite late-night snack?** Whataburger fries
- ❑ **Greatest invention of all time?** Air conditioning
- ❑ **Best gift ever received?** My sister was born the day before my fifth birthday.
- ❑ **Best thing about the town where you live?** The people
- ❑ **Historical event you most wish you could have witnessed?** The first ever lecture on the rule against perpetuities
- ❑ **Most important qualities a lawyer can have?** Being able to tell when someone is lying... particularly your witness

Oklahoma Bar Journal Editorial Calendar

2011

- February:
Tort/Civil Litigation
Editor: Leslie Taylor
leslietaylorjd@gmail.com
Deadline: Oct. 1, 2010
- March:
Criminal Law
Editor: Dietmar K. Caudle
d.caudle@sbcglobal.net
Deadline: Jan. 1, 2011

- April:
Law Day
Editor: Carol Manning
- May:
Real Estate and Title Law
Editor: Thomas E. Kennedy
thomas.kennedy@
oktax.state.ok.us
Deadline: Jan. 1, 2011
- August:
Children and the Law
Editor: Sandee Coogan
scoogan@coxinet.net
Deadline: May 1, 2011

- September:
Bar Convention
Editor: Carol Manning
- October:
Labor and Employment Law
Editor: January J. Windrix
janwindrix@yahoo.com
Deadline: May 1, 2011
- November:
Military Law
Editor: Dietmar Caudle
d.caudle@sbcglobal.net
Deadline: Aug. 1, 2011
- December:
Ethics & Professional Responsibility
Editor: Melissa DeLacerda
melissde@aol.com
Deadline: Aug. 1, 2011

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

Meet Your Bar Association

OBA Departments and the Member Services They Provide

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

Executive Director

OBA Bylaws, Article IV, Section 4:

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

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

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

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

(c). He shall supervise the office of the Association and its personnel and shall see that the work of the Association is properly performed. He or she shall also perform such other duties



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

as the House of Delegates, the Board of Governors or the President of the Association may direct.

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

The Executive Director shall perform such duties and services as may be required by these Rules or the Bylaws and as may be directed by the Board of Governors or the President of the

Association. He shall also keep a complete and accurate list of the members of the Association; notify delinquent members and certify the names of delinquent members to the Supreme Court as required by these Rules; certify to the Supreme Court records and other matters as provided by these rules.

Phone: (405) 416-7014



ADMINISTRATION – (Front Row) Roberta Yarbrough, Suzi Hendrix, Tracy Sanders and Wanda Murray; (Back Row) Director Craig Combs and Durrel “Doc” Lattimore

Administration

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

- ◆ scheduling bar center meeting rooms
- ◆ coordinating and scheduling meetings utilizing video conference equipment in Oklahoma City and Tulsa
- ◆ assisting committees and sections with mailings to their members
- ◆ providing mailing labels of bar members to committees and sections
- ◆ tracking expenditures for all committees and sections

- ◆ providing monthly committee and section accounting reports upon request
- ◆ ensuring the bar center interior and exterior facilities are maintained so members can take pride in their building
- ◆ maintaining and updating member roster information

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

Phone: (405) 416-7000

Membership: (405) 416-7080

Communications

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

- ◆ publishing 34 issues of the *Oklahoma Bar Journal* every year



COMMUNICATIONS — Director Carol Manning, Lori Rasmussen and Jeff Kelton

- ◆ assisting the Law Day Committee in accomplishing extensive Law Day statewide activities and community service projects that generate significant positive public recognition for the legal profession
- ◆ publishing the OBA Annual Meeting program and House of Delegates book and promoting award winners, the meeting itself and election results

More specific duties that benefit members are:

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

The department serves as a liaison for one board and several committees and assists in accomplishing their goals. Responsibilities include:

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

- ◆ working with the Law Day Committee to conduct statewide contests for Oklahoma students, provide county Law Day chairpersons with both event and promotion ideas for county celebrations, coordinate the statewide Ask A Lawyer community service project in which volunteer attorneys give free legal advice to people who call in, implement marketing strategies to promote the Ask A Lawyer free legal advice and produce a one-hour, interview-style TV program, in cooperation with OETA (the state's PBS affiliate) that shows how lawyers work to improve the lives of all Oklahomans

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

Phone: (405) 416-7004

Continuing Legal Education



CLE — (Front Row) Heidi McComb, Director Donita Douglas and Stephanie Burke; (Back Row) Mark Schniedewent and Brandon Haynie

OBA/CLE wants to be your continuing legal education provider. Call CLE Director Donita Bourns Douglas at (405) 416-7028 with your ideas.

Department services include:

- ◆ developing and producing over 150 live seminars, webinars and webcasts
- ◆ offering video replays of the live seminars

- ◆ developing and producing online video and audio seminars, including webcast seminars
- ◆ offering recent seminar publications, digital book chapters and CDs for sale to association members
- ◆ developing and producing CLE at the OBA Annual Meeting
- ◆ coordinating with the Management Assistance Program to plan and administer the annual Solo and Small Firm Conference
- ◆ coordinating with the Women in Law Committee to plan the annual Women in Law Conference
- ◆ coordinating with OBA officers to plan leadership training for OBA members
- ◆ coordinating with various OBA sections in the planning of OBA/CLE section cosponsored CLE seminars
- ◆ attracting and securing nationally recognized experts to present continuing legal education programming to OBA members
- ◆ publishing volumes (non-seminar) to members to assist in their practice, including form books, practice manuals and treatises
- ◆ providing online registration for OBA/CLE to members
- ◆ applying attendance credit electronically to enable members to have an up-to-date view of accumulated OBA/CLE credit on My.Okbar

Phone: (405) 416-7006

E-mail: cle@okbar.org

Ethics Counsel

The Office of Ethics Counsel is a membership service available only to OBA members. It was created to assist members with conflict dilemmas, confidentiality questions, communication concerns and other ethical inquiries unique to the profession. The Office of Ethics Counsel is completely autonomous from and independent of the Office of the General Counsel. Members seeking assistance with ethical questions are afforded an “attorney/client” relationship with the full expectation of confidentiality of disclosed information. Through the Office of Ethics Counsel, Oklahoma Bar Association members can obtain informal guidance and advisory interpretations of



***ETHICS COUNSEL –
Ethics Counsel Travis Pickens***

the rules of professional conduct. Responsibilities of the Ethics Counsel include:

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

Phone: (405) 416-7055

E-mail: travis@okbar.org

General Counsel

The Office of the General Counsel is charged with the responsibility of:

- ◆ reviewing and investigating allegations of lawyer misconduct or incapacity
- ◆ reviewing and investigating allegations of the unauthorized practice of law
- ◆ prosecuting violations of the Oklahoma Rules of Professional Conduct
- ◆ administering the Clients' Security Fund

In addition to these enumerated duties, the Office of the General Counsel:

- ◆ serves as liaison to the OBA Board of Governors advising the governing group on legal matters



*SUPPORT STAFF — (Front Row)
Debi Lowry and Misty Hill; (Back Row)
Laura Willis and Manni Arzola*



*GENERAL COUNSEL — Katie Ogden, Loraine Farabow,
Ted Rossier, General Counsel Gina Hendryx and Debbie Maddox*

- ◆ processes and approves the registration for attorneys from other jurisdictions
- ◆ administers the trust account overdraft notification program

Phone: (405) 416-7007

Information Systems

The Information Systems Department is responsible for desktop computer support to staff, network management of internal servers and externally accessible

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

- ◆ providing a mailing list for each committee and section through the list servers to communicate with members easily and in a cost effective manner



*INVESTIGATORS — (Front Row)
Krystal Willis and Dorothy Walos;
(Back Row) Tommy Butler and Sharon Orth*



INFORMATION SYSTEMS –
Manager John Burchell, Matt Gayle and Robbin Watson

- ◆ maintaining a committee chairperson list and a section chairperson list serve to allow communication between the association and the chairs, as well as between the chairs themselves
- ◆ providing a members-only website where members can update roster information, pay dues, register for CLE, review MCLE credits, etc.
- ◆ providing free sign-up for the www.oklahomafindalawyer.com lawyer referral service

Phone: (405) 416-7045

Law-related Education

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

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

LRE aims to join the education and law communities in its mission of fostering civic-



LRE — Coordinator Jane McConnell and Debra Jenkins

mindedness. An understanding of the role of the law in society is essential to informed participation in democracy. Creating active citizens requires active civic education. LRE is under the direction of Jane McConnell, Law-related Education coordinator and Debra Jenkins, administrative assistant. Information about specific LRE programs and resources is available on the OBA website at www.okbar.org/public/lre.

Phone: (405) 416-7024

E-mail: janem@okbar.org

Management Assistance Program

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

- ◆ **Free Telephone Hotline** — The OBA-MAP staff attempts to answer brief questions about management and technology issues. Our number is (405) 416-7008. The toll-free number is (800) 522-8065. Advice provided is confidential.
- ◆ **OBA Solo and Small Firm Conference** — Attend great CLE programs with nationally recognized experts, network with other small firm lawyers from across the state and meet with vendors in a fun family setting. Join us for the 14th Annual Solo and Small Firm



MAP — Director Jim Calloway and Amy Kelly

Conference June 9-11, 2011, at Downstream Casino Resort in Quapaw.

- ◆ OBA-MAP Lending Library — Attorneys can borrow books on law practice management and technology from the OBA-MAP Lending Library. Thanks to a recent grant from the OBA Law Office Management and Technology Section, there will soon be multiple copies of several of the more popular titles.
- ◆ Discounts on practice management books (and other ABA titles) — If you prefer to own a book rather than borrow it, we have partnered with the American Bar Association for a 15 percent discount on ABA publications. Whether or not you're a member of the ABA, your OBA membership entitles you to 15 percent off the list price of any of the ABA's more than 300 titles. Simply enter PAB9EOKB in the Discount Code Number field when placing your order on the ABA website.
- ◆ OBA-NET — This is an online resource that is free to all OBA members. It is our online community for the legal profession. Oklahoma lawyers post questions and brainstorm with other lawyers online. There are many files and forms available that have been uploaded by other OBA members.
- ◆ Jim Calloway's Law Practice Tips Blog — Weekly postings of Internet tips, law practice tips and hot news in law office management and technology are available by visiting the blog website, subscribing to the e-mail alerts or subscribing to the RSS news feed. Visit the blog at <http://jimcalloway.typepad.com>

- ◆ Office "Health Checks" — These consultations take place in the lawyer's office on a fee for services basis. A wide range of management issues can be covered. Typically all staff and attorneys will be involved both in group and individual interviews.
- ◆ Free Consultations at the bar center — Any lawyer who is setting up a new practice or has encountered a difficult issue that cannot be comfortably handled over the telephone is welcome to schedule a free 50-minute appointment with the OBA-MAP director.
- ◆ Your Law Practice — This innovative program consists of a one-day seminar, scheduled in Oklahoma City twice a year (Spring and Fall) and in Tulsa in the fall, to assist attorneys setting up new solo practices. A companion project is the "Starting a Law Practice Web Directory" which is available to any attorney at www.okbar.org/members/map/practice.htm.
- ◆ *Oklahoma Bar Journal* articles — Each theme issue of the *Oklahoma Bar Journal* contains the regular column "Law Practice Tips" by OBA-MAP Director Jim Calloway.
- ◆ Local Bar Presentations — The OBA-MAP director is available to speak at your county bar meetings or other organized lawyer groups at no charge.

Phone: (405) 416-7008

Mandatory Continuing Legal Education

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

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



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

Member services provided include:

- ◆ reviewing seminars for accreditation
- ◆ accreditation of teaching activities
- ◆ responding to requests for clarification of the Rules of the Oklahoma Supreme Court for Mandatory Continuing Legal Education
- ◆ processing the annual reports of compliance
- ◆ helping each member receive all the credit he or she is entitled to for qualified CLE activities
- ◆ keeping a record of the Oklahoma approved seminars attended by members

Phone: (405) 416-7009

E-mail: mcle@okbar.org

Web Services Department

The Web Services Department is headed by Morgan W. Estes, the OBA's Web Services Coordinator. The department promotes the online presence of the association through the OBA website and various social media outlets. Specific responsibilities include:

- ◆ editing and publishing the OBA's official website, www.okbar.org
- ◆ building websites to promote special events of the OBA



WEB SERVICES — *Coordinator*
Morgan Estes

- ◆ coordinating with OBA sections and committees to promote their activities online
- ◆ heading the Web Editorial Board and Web Services Team

Phone: (405) 416-7085



Don't Know Whom to Contact?

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

You are not alone.



Men Helping Men

February 3, 2011

Time - 5:30-7 p.m.

Location

The Oil Center – West Building
1st Floor Conference Room
2601 NW Expressway
Oklahoma City, OK 73112

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

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



Women Helping Women.....

February 10, 2011

Time - 5:30-7 p.m.

Location

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

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

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

LAWYERS HELPING LAWYERS ASSISTANCE PROGRAM



Meet Your Bar Association

OBA Offers a Variety of Member Benefits

Being a member of the Oklahoma Bar Association has its perks – an assortment of services, legal information, opportunities and discounts, many of them free. Take a few minutes to scan the list to make sure you are not missing out. Your association encourages you to take full advantage of these benefits, which are also listed on www.okbar.org and provides links to more information.

ONLINE SERVICES

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



Fastcase — The OBA offers online legal research software as a free benefit to all OBA members. The OBA has contracted with Fastcase to provide this member benefit, which includes national coverage, unlimited usage, unlimited customer service and unlimited free printing – at no cost to bar members, as a part of their existing bar membership. To use Fastcase, go to www.okbar.org. Under the Fastcase logo, to log in enter your username (OBA number) and password/PIN for the myOKbar portion of the OBA website.

www.okbar.org — Main site or front door for the OBA with links to all other OBA web presences and much information for members as well as a great deal of information for the public.

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

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

E-News (okbar.org/newsletter) — Current OBA news and information to assist in your law practice that is sent once a month to members with an e-mail address as part of their official roster information.

Online CLE (legalspan.com/okbar) — Quality OBA/CLE online programming, plus online

seminar programs from other state bar associations. It's a convenient way to get up to six hours MCLE credit.



OklahomaFindALawyer (www.oklahomafindalawyer.com) — The OBA's official lawyer listing service. Free to members and the public. It is also a useful tool for lawyers to identify attorney practice area expertise in specific geographic areas. Sign up through MyOkbar.

Online research (okbar.org/research) — A quick way to find the Oklahoma Supreme Court website to look up Oklahoma cases and statutes online. Can be used to find the online site of the Court of Criminal Appeals or any of Oklahoma's District Courts, hunt a state or federal agency, locate a federal court site, find a municipal ordinance or find the rules from local or federal courts. As a bonus there are many other links to assist in your legal and factual research.

Website design and hosting — Provided by the OBA staff to committees, sections and county bar associations.

Prepared speeches for community/civic groups (<http://bit.ly/publicspeeches>) — Speeches, outlines and handouts prepared by the OBA's Bench and Bar Committee on selected topics for presentation to public groups.

PUBLICATIONS

Oklahoma Bar Journal (okbar.org/obj) — 34 issues annually, contains articles, court opinions, substantive law, state bar news, professional changes, member news (moves, kudos, addi-

tions to firms, etc.), master calendar of judicial and bar events, \$55 annual subscription, free to members. Specially printed binders to keep bar journals organized are provided to members at \$15.95 each.

Continuing Legal Education materials — Seminar materials and form books available for purchase, an affordable way to get quality, state-specific practice aids. Prices start at approximately \$40. A complete list of topics is available online, or come by the CLE Dept. at the Oklahoma Bar Center Monday- Friday, 8:30 a.m. - 5 p.m., and review the books available. CLE materials are also available in an electronic format, by chapter, at www.legalspan.com/okbar/e-pubs.asp.

Consumer information brochures (okbar.org/public/brochures) — Pamphlets on 16 topics covering commonly asked questions to give to clients, sold to OBA members at a minimal cost of \$16 for 100. Brochure topics are: wills, probate, joint tenancy, home buying, tenant rights and duties, landlord rights, divorce, small claims court, employee rights, bankruptcy, trial juror



information, lawyers & legal fees, living wills (brochure and form), criminal law and resolving conflicts and disputes. As a community service, the OBA distributes the brochures free to courthouses and libraries throughout the state.

PRACTICE MANAGEMENT/ PROFESSIONALISM

Young Lawyers Division — YLD is a professional service network offering the chance to participate in community and bar-related programs. Lawyers of any age who have been in practice less than 10 years are automatically members. No dues are required. Information

about YLD programs is available at www.okbar.org/yld.



Continuing Legal Education seminars (okbar.org/cle) — The OBA creates and coordinates live seminars, webcasts, webinars and on-demand programs on a full spectrum of legal topics. OBA/CLE also sells seminar materials and practice aids in hard copy and electronic formats. For more information on all OBA/CLE benefits go to www.okbar.org/cle.

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

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

MAP workshops — Customized day-long presentations on technology and office procedures conducted on-site to a group of attorneys and staff members from different firms using a multimedia approach, may include computer generated presentation, videotapes on such topics as professionalism and trust accounting procedures and workshop exercises, afternoon session devoted to answering specific questions anonymously submitted. This is for firms who wish to share costs and have more general information presented to them.

Book purchasing program — OBA members, whether or not you are an American Bar Association member, receive a 15 percent discount off the list price of any of the ABA’s more than 300 titles. Simply enter PAB9EOKB in the Discount Code Number field when placing your order on the ABA website at www.abanet.org.

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



Ethics Counsel (okbar.org/ethics) — Assists members with ethical inquiries on subjects such as conflicts, confidentiality and client concerns. The Ethics Counsel also presents continuing education programs and writes articles on the topics of ethics and professionalism. Call (405) 416-7055.

Crisis Counseling Services — Need help with stress, depression or addiction? Call the Lawyers Helping Lawyers Assistance Program toll-free at (800) 364-7886. The OBA offers all bar members up to six hours of free crisis counseling. It’s strictly confidential and available 24 hours a day. In addition, separate support groups for men and women lawyers are offered monthly in Oklahoma City – at no charge. Meetings are designed to help cope with life’s pressures and challenges. Dates and more details are available online at www.okbar.org/s/7lw96.

OBA sections (okbar.org/members/sections) — 23 substantive law sections that offer professional development and interaction, experience professional growth by learning from colleagues in your practice area and develop new contacts,

benefits vary by section with a growing number of sections holding midyear or quarterly meetings that offer free or discount CLE to section members, some sections publish member newsletters. For a list of sections and their annual dues, see the story in this issue.

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

NETWORKING

Leadership opportunities — Boards, committees, sections and commissions are some of the volunteer opportunities that offer career development and ways to interact with other attorneys and judges.

Leadership Academy — The OBA offers training to potential OBA and community leaders through its OBA Leadership Academy. Participants for the 2011-2012 OBA Leadership Academy will be selected in the summer of 2011 with programming to begin in the fall of 2011.

Annual Meeting — Participate in CLE programs, section and committee meetings, have a voice in determining the OBA's legislative program and electing future state bar leaders, take advantage of networking opportunities with attorneys and judges from throughout the state. The 2011 Annual Meeting will take place Nov. 2-4 at the Hyatt Regency (former Crowne Plaza Hotel) in Tulsa.

Solo & Small Firm Conference/YLD Midyear Meeting (okbar.org/solo)

— Lawyers have the opportunity to get to know one another and to take advantage of a CLE seminar in a relaxed family setting. The 2011 Solo and Small Firm Conference is scheduled for June 9-11 at Downstream Casino Resort in Quapaw.



OTHER SERVICES

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

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



Legislative services (okbar.org/legislative) — The OBA's executive director works for adoption of legislative issues approved by the House of Delegates, and the Legislative Monitoring Committee provides a periodic legislative report highlighting the status of selected bills during the session.

The report is published in the *Oklahoma Bar Journal* and on the website while the Legislature is in session.

Meeting rooms at Bar Center — Many size rooms to choose from to accommodate small and large group meetings, client conferences and depositions, free to members during weekday business hours, nominal fee for evenings.

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

OPTIONAL MEMBER PURCHASE

Oklahoma Legal Directory — Official directory of OBA members with addresses and phone numbers, roster alphabetical and by county, includes guide to county, state and federal offices plus departments of the U.S. and Oklahoma government, complete digest of courts, professional associations including OBA officers, committees and sections. Published by Legal Directories Publishing Co., the hard bound edition or CD-ROM is \$60 plus shipping and sales tax. Call (800) 447-5375 to request order form or go to www.legaldirectories.com.

Title Examination Standards — Contains all the presently effective Oklahoma Title Examination Standards and reflects all revisions, produced by the OBA Real Property Law Section, \$5 per copy, free to section members. The 2011 Title Examination Standards will soon be available at the bar center or can be mailed for an additional fee. For exact shipping cost, e-mail Wanda Reece-Murray at wandar@okbar.org.

OBA Sponsored Insurance Programs — Keep rates low through group buying power. For information about OBA programs for life, health (employer-group and individual), individual disability, personal umbrella liability, long-term care and other insurance plans, contact Beale Professional Services (405) 521-1600, (800) 530-4863; www.bealepro.com. For information on professional liability and court bonds, contact Oklahoma Attorneys Mutual at (405) 2471-5380, (800) 318-7505; www.oamic.com.

ABA Retirement Funds — The ABA Retirement Funds program is designed to provide unique, full service 401(k) plans to the legal community. It was created over 45 years ago by the American Bar Association. By leveraging the size of the ABA Retirement Funds Program which brings together nearly 4,000 firms, the program offers a fund lineup and services traditionally only available to the largest corporate plans. These services are offered at no out-of-pocket expense to law firms of all sizes with institutionally priced funds for their participants. Couple these benefits with the oversight that the ABA Retirement Funds Board provides over the entire program

and you have a retirement solution that may enable firms to hire and retain quality employees, control expenses and assist them with their fiduciary responsibilities. Contact a program representative at (800) 826-8901 for a program prospectus or visit www.abaretirement.com for more information.

MEMBER DISCOUNTS

NEW FedEx Shipping Services — Members are eligible to receive valuable discounts of up to 26 percent on select FedEx® shipping services. There are no costs and no minimum shipping requirements to take advantage of this great new member benefit. OBA members can save:

- Up to 26 percent on FedEx Priority Overnight® and FedEx Standard Overnight® envelopes.
- Up to 20 percent on FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day® and FedEx Express Saver® paks and packages, and FedEx International Priority® and FedEx International Economy® shipments.
- Up to 12 percent on FedEx Ground® and FedEx Home Delivery® shipments, depending on the weight of the package.
- Up to 70 percent on FedEx Freight® and FedEx National LTLSM services

For more information or to enroll, please go to www.1800members.com/new/oba or call 1-800-MEMBERS/(800) 636-2377 7 a.m.-5 p.m. CST, M-F.

NEW Colcord Hotel — A boutique hotel near Bricktown in downtown Oklahoma City, the Colcord Hotel offers OBA members a discounted rate of \$129 per night for a deluxe king or deluxe double double room. Call the hotel at (866) 781-3800 to make your reservation and mention that you are an OBA member for the special discount or make your reservation online at www.colcordhotel.com utilizing the corporate rate — access code is OKLBar.



LawPay Merchant Account — Credit card processing designed for attorneys that safeguards

and separates client funds into trust and operating accounts. Credit cards attract clients, win business, improve cash flow and reduce collections. To learn more call (866) 376-0950 or visit www.affiniscape.com/oklahomabar for more information.

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

Online Data Backup & Recovery — CoreVault offers bar members data backup and recovery services at a discounted rate. The service is automated and centrally managed to help law firms protect their data. It provides daily offsite protection, fast restores, encrypted data and customer service. In addition, CoreVault's two private data



centers are geographically separated and possess redundant systems. Don't worry about losing your data and not being able to restore it due to virus, hard drive crash, accidental deleting of data, natural disaster, flood and the many other ways that could cause you to lose your data. To sign up or get more information, visit www.corevault.net/oba or call (888) 265-5818.

International Travel — Go Next has been in business for 39 years. They provide high quality, recreational travel to destinations around the



globe. Group rates on trips are available to you, your family and your friends. All trips include airfare from either Oklahoma City or Tulsa, accommodations, transfers, breakfast buffet and other amenities. See highlights of the current trip offerings at www.GoNext.com. Call Go Next toll-free at (800) 842-9023 for more information and/or reservations.

WordPerfect Licensing Program — The OBA has signed on to Corel Corporation's new bar association licensing program, allowing OBA members to purchase licenses of the award-winning WordPerfect® Office 4 at substantially reduced prices. To place an order, go to www.corel.com/barassociation.

your association's websites

www.oklahomafindalawyer.com

People from across Oklahoma visit this website in search of an attorney. How can you get your name on this list for free? Signing up is easy — log into your account at my.okbar.org and click on the "find a lawyer" link.

www.okbar.org/oknewsbar.htm

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

my.okbar.org

You can change your official address, enroll in a CLE course, check your MCLE credits and list your practice areas on the Internet so potential clients can find you. The PIN number required is printed on your dues statement and can be e-mailed to you if the OBA has your current e-mail address.

www.okbar.org

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

www.oba-net.org

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

Fastcase at www.okbar.org

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

www.twitter.com/oklahomabar

www.twitter.com/obacle

Catch the most up-to-date happenings at and around the OBA including bar events and CLEs. You don't even have to register. You can simply read all of our tweets by going to twitter.com/oklahomabar or twitter.com/obacle.

For all other member benefits and resources, visit www.okbar.org/members/benefits.htm.

Meet Your Bar Association

OBA Sections

Want a way to network with other attorneys in your practice area from across the state? The OBA supports 23 substantive law sections that offer professional development and interaction. Experience professional growth by learning from colleagues in your practice area and develop new contacts, benefits vary by section with a growing number of sections holding midyear or quarterly meetings that offer free or discount CLE to section members, some sections publish member newsletters. The following is a list of those who are leading the sections in 2011.



Alternative Dispute Resolution Section

D. Michael O'Neil Jr., Co-Chairperson, OKC
Day Edwards Propester & Christensen PC
210 Park Ave., Suite 2900
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(405) 239-2121
Direct Fax: (405) 228-1133
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dmoneil@dayedwards.com

Michael A. Simpson, Co-Chairperson, Tulsa
Atkinson, Haskins, Nellis, Brittingham, Gladd
& Carwile
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Brian T. Hermanson, Past Chairperson
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Chris A. Tytanic, Immediate Past Chairperson
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LLC
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Environmental Law Section

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Estate Planning, Probate and Trust Section

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Tamera Childers, Chairperson-Elect and CLE
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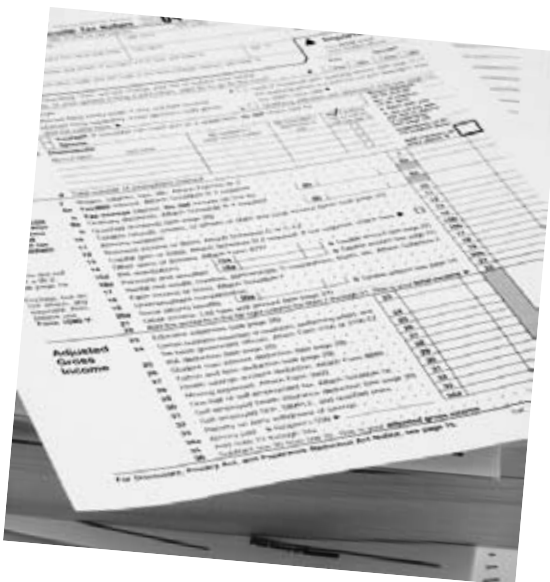
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Pledges to a Charity: Can They Be Enforced and When Should They Be?

By Gary C. Clark and M. Brandon Meyer

INTRODUCTION

In addition to cash and other gifts, charities frequently rely on pledges to make one or more payments in the future to raise the funds necessary to fulfill their charitable purposes. In almost all cases, the pledgor makes the payments in general compliance with the promise. On occasion, however, the death or financial difficulties of the pledgor or a falling out with the charity may result in nonpayment.

In 2001, R.A. Young signed and delivered a form Donor Letter of Intent to the YMCA of Greater Oklahoma City containing, *inter alia*, the following language:

In support of the 2001 Capital Campaign for the YMCA of Greater Oklahoma City, I (we) intend to pledge \$1,000,000 over 5 years. PAYMENT TO BEGIN WHEN CONSTRUCTION BEGINS.¹

Sadly, Mr. Young died prior to commencement of construction which began in 2004. When the first payment was not made in 2005, a creditor's claim was filed in the estate.² It appeared that Oklahoma might have its first reported case on the enforceability of a charitable pledge. However, other issues not pertinent here also arose and, ultimately, the case was settled for \$262,000.³

Had the case not settled, what result might we have expected? This article will provide a brief review of cases from other jurisdictions, discuss Oklahoma contract law principles as they may relate to charitable pledges and offer suggestions that may assist in making a pledge

enforceable. Finally, this article will discuss other issues related to charitable pledges.

WHEN ARE CHARITABLE PLEDGES ENFORCEABLE?

Overview of Case Law Regarding Enforceability of Pledges

Despite considerable efforts, neither we nor other commentators have found any Oklahoma cases determining the enforceability of a charitable pledge.⁴ Even with the passage of almost 20 years and the guidance (?) of subsequent case law, the authors cannot improve upon the overall analysis of pledge enforceability cases provided by Budig authors.⁵ They reviewed a significant number of cases and ultimately concluded that the courts typically apply contract analysis in determining enforceability of a charitable pledge, but often strain to find a basis for upholding the pledge. They divided the cases into the following categories: 1) mutual promises between charity and pledgee (bilateral contract), 2) mutual promises between pledgees, 3) unilateral promise enforceable when accepted, 4) promissory estoppel and

5) public policy enforcement.⁶ Frankly, the lines between and among them are not all that clear.

The *Allegheny College*⁷ case is cited as the prime example of where a bilateral contract was formed. The Budig authors, perhaps with a bit of sarcasm, point out that the court found an implied request that the gift be named to honor the pledgee and determined that an acceptance of payment was an inferred promise “to make the scholarship effective” and, eureka, there was a bilateral contract.⁸ No wonder this case has been a favorite of law professors over the years.

Another theory for enforcing a pledge has been where there are mutual pledgees to the same fund. Despite the fact that these pledgees have not made promises to one another, some courts have found a type of contract while others have not.⁹ The pledge at issue in the *Young* case might have fallen into this category.

In the case decided by the New York appellate division, the court stated that “[i]t is the well established law of this State that charitable subscriptions (pledges) are enforceable on the ground that they constitute an offer of a unilateral contract which, when accepted by the charity by incurring liability in reliance thereon, becomes a binding obligation.”¹⁰ Although the reported facts are sketchy, it appears that the pledge was made as a part of a fund drive to build a new hospital and, after the hospital was apparently built, the pledgor failed to pay his pledge.¹¹ Note how this sounds much like the standard promissory estoppel theory which is discussed in the following paragraph.

We are all familiar with the now well-established doctrine of promissory estoppel as most clearly stated in Section 90(1) of the Restatement (Second) of Contracts which provides, in pertinent part: “[a] promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise. The remedy granted for breach may be limited as justice requires.” The

Maryland Court of Appeals has adhered to what is essentially now the Restatement Section 90(1) and declined to enforce a promise where it found no actual reliance, thus rejecting what is now Section 90(2).¹²

Analysis under General Contract Law

Lest we give the impression that all courts will find substitutes for the general contract principles, there are jurisdictions where “plain” contract law applies. For example, the Virginia Supreme Court has held that “a charitable subscription is governed by the law of contracts and must be supported by an offer, an acceptance and consideration.”¹³

Although Oklahoma does not have a reported case on the enforceability of a charitable pledge, Oklahoma’s statutory law provides some guidance. Oklahoma law requires “1) parties capable of contracting, 2) their consent, 3) a lawful object and 4) sufficient cause or consideration” to create a valid contract.¹⁴ The consideration may include a benefit conferred upon the promisor or any prejudice suffered by a promisee.¹⁵ For example, consideration could include actions on the part of the charity in reliance on a pledge.¹⁶

Numerous exceptions have developed to mitigate the hardships resulting from a strict application of the doctrine of consideration.¹⁷ For example, in *Allegheny College*,¹⁸ Judge Cardozo introduces the idea that consideration is not necessary to support a charitable pledge.¹⁹ Oklahoma has incorporated the concept of promissory estoppel as a part of Oklahoma common law.²⁰ In order to prevail on a theory of promissory estoppel, a charity would need to show 1) a clear and unambiguous promise, 2) foreseeable reliance, 3) reasonable reliance to the promisee’s detriment and 4) hardship or unfairness can be avoided only by the promise’s enforcement.²¹

A typical promissory estoppel argument for a charity may involve a pledge that a charity has reasonably relied upon in constructing a building similar to the facts in *Young*. Attorneys for the YMCA in the *Young* case put forth various arguments in favor of the charitable pledge

“Lest we give the impression that all courts will find substitutes for the general contract principles, there are jurisdictions where ‘plain’ contract law applies.”

being enforceable including a promissory estoppel argument.²² The trial court found, *inter alia*, that the determination of detrimental reliance involved a mixed question of law and fact and denied the motion to dismiss filed by Mr. Young's estate.²³

Restatement (Second) of Contracts Section 90(2)

An effort to bring uniformity to the law regarding enforcing charitable pledges was made by the American Law Institute when it adopted Section 90 of the Restatement (Second) of Contracts (1979) which provides as follows:

§90. Promise Reasonably Inducing Action Or Forbearance

(1)

(2) A charitable subscription . . . is binding under Subsection (1) without proof that the promise induced action or forbearance.

Comment f. to Section 90 explains the rationale behind subsection (2):

American courts have traditionally favored charitable subscriptions..., and have found consideration in many cases where the element of exchange was doubtful or nonexistent. Where recovery is rested on reliance in such cases, a probability of reliance is enough, and no effort is made to sort out mixed motives or to consider whether partial enforcement would be appropriate.

Subsection (2) relieves the pledgee from proving actual reliance (just that reliance would have been reasonable) and makes the pledge fully payable rather than limited "as justice requires." While the adoption of Restatement Section 90(2) would bring some clarity to the law of enforceability of charitable pledges, with the exceptions of Iowa²⁴ and New Jersey,²⁵ we have found no other jurisdictions which have adopted the restatement view regarding charitable pledges. Several courts have considered the possibility and declined to adopt Section 90(2).²⁶

Other jurisdictions have enforced charitable pledges espousing public policy grounds in accordance with the restatement.²⁷ The Oklahoma Legislature has acknowledged the important function served by nonprofit organizations and has encouraged service by individuals on a nonprofit board by limiting the liability of board members.²⁸ It is yet to be seen whether

the Oklahoma judicial branch will recognize the same importance of charitable organizations by enforcing charitable pledges and by what manner of analysis.

Enhancing Enforceability in Drafting Documents

Although the law surrounding enforceability of charitable pledges is not well settled, a practitioner may add language to a pledge agreement to increase the likelihood it will be enforced. This may assist a personal representative of an estate or a successor trustee who is concerned that an estate will not receive an estate tax deduction for payment on a pledge.²⁹

A statement of "I pledge" will be more likely to be enforced than a general statement of "intent" to make a pledge in the future. The pledge signed by Mr. Young contained language stating an intent to act in the future.³⁰ The state of Iowa appears to be the state most likely to enforce a gratuitous pledge;³¹ however, a pledge containing language of intent to make a pledge in the future was not enforced in Iowa.³²

Additionally, a recitation of the consideration provided by each party may assist a charity in showing the presence of "legal" consideration.³³ For example, agreeing to name a building (or perhaps a room within the building after the pledgor) may well be sufficient.

If the charity is engaged in raising funds for a specific project where a number of donors are needed, you might also include language that the charity in consideration of the pledge, will solicit other donors.

While perhaps not determinative, it cannot hurt to include language that the pledge is "legally binding" and is "irrevocable." Certainly such language avoids an argument that the pledge was merely a statement of intent.

Other practical considerations may include asking a donor to provide a special power of appointment to the charity to enforce a pledge upon the donor's death or to include a provision in a donor's will or trust to satisfy any outstanding pledges with an offset for advances made during the life of the donor.

DO TRUSTEES/DIRECTORS HAVE AN OBLIGATION TO SEEK ENFORCEMENT ON A PLEDGE AGREEMENT?

Assuming a charitable pledge is enforceable under one or more of the theories described above, a question that is also unresolved by

Oklahoma courts is whether or not there is the duty of the charitable trustee or director to seek to enforce an unfulfilled pledge.

In the Budig article, the authors make a case that as of the date of their writing (1992) there was a trend, though not strong, toward imposing such a duty on trustees or directors.³⁴ We are not so certain that such a trend is evident today.

Duties of Trustees

With respect to trustees, their case starts with an unarguable statement that a trustee has a fiduciary duty to “exercise reasonable care and skill, take and keep control of trust property, preserve the trust property, enforce claims and prudently invest trust property.”³⁵ The writers then point out that most of the case law dealing with trustee duties have developed with respect to private trusts, but note that the cases indicate that the fiduciary responsibility of a charitable trustee is substantially similar although not owed to a specific beneficiary.³⁶ They also refer to the then recently adopted Restatement (Third) of Trusts §227 which is similar in effect to the provisions of the Oklahoma Uniform Prudent Investor Act.³⁷ Without doing their entire argument justice, in essence they conclude that a trustee has a high standard of care with respect to enforcing charitable pledges.

As noted above, there are no Oklahoma cases dealing with the precise issue nor is there any Oklahoma statute directly on point. There are, however, Oklahoma cases which hold that a charitable trustee’s fiduciary duties are at least on par with a private trustee.³⁸ Certainly, it is the law in Oklahoma that a private trustee may be surcharged for a breach of trust.³⁹ But there are few cases and none really all that helpful in our view to resolve the issue at hand.

Looking to analogous situations, there are cases involving “public trusts” which invoke Title 60 O.S. 2001 §179 to absolve trustees of public trusts from personal liability.⁴⁰ There is a general statutory limitation of trustees which provides as follows:

Liability to third persons for any act, omission or obligation of a trustee or trustees of an express trust when acting in such capacity, shall extend to the whole of the trust estate held by such trustee or trustees, or so much thereof as may be necessary to discharge such liability, but *no personal liability shall*

*attach to the trustee or the beneficiaries of such trust for any such act, omission or liability.*⁴¹

The Oklahoma Court of Appeals recently limited the scope of the forgoing provision somewhat by virtue of the later adoption of what is now 60 O.S. 2001 §175.19 (personal liability of trustee for torts).⁴² Nonetheless, these statutes signal a general legislative intent that trustees not have personal liability except in particular circumstances.

We do not think that a trustee who, in the exercise of the trustee’s good faith judgment considering all relevant factors, such as the likelihood of recovery, the pledgor’s financial situation, the pledgor’s continuing relationship, the possible impact on other future pledges, the cost of litigation, the uncertainty of litigation, etc., determines it is not in the best interest of the charitable trust to pursue a defaulting pledgor should be second-guessed by the courts. If so, how many well-qualified persons would want to be a trustee of such a trust, when they usually serve without pay and with only a genuine desire to help the charity?

Duties of Directors

Even though the Budig authors conceded it had only been adopted in two states (now many more), they analogize to various provisions of the Revised Model Nonprofit Corporation Act⁴³ as their primary argument for a duty to enforce pledges for directors of nonprofit corporations.⁴⁴ A few cases are cited in support of the “corporate standard” for breaches of the director’s duties, which takes into account the good faith of the director and requires something more than mere negligence. They also cite a few cases applying the “business judgment rule” to hold directors liable for gross negligence, but not ordinary negligence.⁴⁵ They do not cite a case that directly holds that there is a duty to enforce a charitable pledge.⁴⁶

We think that a better standard is that established by the Oklahoma Legislature. Directors of nonprofit corporations in Oklahoma are charged with two primary fiduciary duties to the corporation — the duty of care and the duty of loyalty.⁴⁷ The Oklahoma Legislature enacted legislation to provide immunity for directors of nonprofit corporations for any negligent act or omission by an employee or by another director of the corporation.⁴⁸ This immunity does not protect a director from the director’s own intentional misconduct or gross negligence.⁴⁹ Also, Oklahoma statutes provide

that directors of nonprofit corporations are not personally liable to the corporation for money damages for breach of a fiduciary duty, but this protection does not apply to any breach of the duty of loyalty, any acts not in good faith or which involve a knowing violation of the law or acts of self-dealing.⁵⁰ This immunity for directors of nonprofit corporations is based on public policy concerns and a desire to promote the general welfare of Oklahoma.⁵¹

Under the business judgment rule, directors of nonprofit corporations are protected from review and criticism of their decisions on a hindsight basis.⁵² Also, a director is protected for decisions made in good faith reliance on information provided by the corporation's officers or employees, committees of the board or competent advisors.⁵³

Under the Oklahoma statute it is difficult to imagine liability being imposed on a director who makes a good faith decision that pursuing a defaulting pledgor is not in the best interest of the charity. With a different result, charities might well end up with directors who have very little assets or very little understanding of their potential liability (indicating a lack of business acumen generally). As we noted at the end of our discussion regarding potential trustee liability, good faith decisions which take into account many relevant factors should not be a basis for liability.⁵⁴

ARE THERE OTHER ISSUES REGARDING PLEDGES?

Deductibility of a Pledge on the Estate Tax Return

One concern that bears keeping in mind is that the Internal Revenue Service may question the deduction of a charitable pledge paid out of an estate.⁵⁵ The IRS relies on 26 C.F.R. §20.2053-5 which provides as follows:

(a) A pledge or a subscription, evidenced by a promissory note or otherwise, even though enforceable against the estate, is deductible (subject to any applicable limitations in §20.2053-1) only to the extent that:

- 1) Liability therefor was contracted bona fide and for an adequate and full consideration in cash or its equivalent, or
- 2) It would have constituted an allowable deduction under section 2055 (relating to charitable, etc., deductions) if it had been a bequest.

Imagine the pain of a personal representative who feels legally (and morally) obligated to pay a charitable pledge but faces the unenviable position of being unable to deduct the pledge payment on the estate tax return. Depending on the size of the payment, the impact on other beneficiaries of the estate may be significant.

Forgiveness of Pledge of a Disqualified Person

Both a charity and donor must consider federal tax law when a pledge is not fulfilled in accordance with its terms. Congress has acted over the years to remedy perceived abuses associated with tax exempt organizations. Many of the statutory enactments have overly broad implications. For example, penalty taxes can be imposed on both a public charity and certain donors when a pledge is not paid or when a pledge is paid by an affiliate of the donor such as a donor advised fund.

The intermediate sanction rules of the Internal Revenue Code (IRC) impose a penalty on excess benefit transactions between a disqualified person and a public charity. The IRC defines a disqualified person to include any person who has the ability to exercise substantial influence over the charity.⁵⁶ This includes directors and officers of the public charity and may also include substantial contributors to the charity.⁵⁷

An excess benefit transaction is any transaction between a disqualified person and a public charity in which the public charity provides an economic benefit and receives a lesser value from the disqualified person in return. A public charity's forgiveness of a pledge made by a disqualified person could arguably give rise to an excess benefit transaction. The determination of whether an excess benefit transaction occurs is usually a factual determination. Factors that could be considered are whether the donor has incurred financial hardship and cannot afford to pay the pledge or has had a change of heart.

Donors should also be aware that an enforceable pledge agreement between a donor and a public charity may not be satisfied with funds from a private foundation or donor advised fund without the imposition of a penalty tax.⁵⁸ An individual may, however, satisfy with their own funds an enforceable pledge between their private foundation and a public charity without engaging in an act of self-dealing.

FASB Standard Relating to Accounting for Pledges

In 1993, the Financial Accounting Standards Board issued Statement No. 116. Among other things, this statement dramatically changed the manner of accounting for pledges. The statement required that most pledges be treated as assets in the financial statements of charitable organizations. Previously, most charities did not include pledges as assets on their financial reports prior to the receipt of the funds.

The change is significant in that after listing a pledge as an asset of the charity, there may be some heartburn about not pursuing a defaulting pledgor.

CONCLUSION

While the settlement of the *Young* case prevented Oklahoma practitioners from obtaining a clearer picture of the enforceability of a charitable pledge in Oklahoma, there appears to be ample support for enforcing such pledges, at least under the right circumstances which vary somewhat from jurisdiction to jurisdiction. Despite the analytical approaches taken by the various courts, there appears to be a strong inclination to uphold such pledges where possible.

Although charitable pledges generally may be enforceable, we believe that the Oklahoma Legislature signaled its intent that trustees/directors should not be held liable for good faith determinations not to seek enforcement. Personal liability should not attach unless there is gross negligence or self-dealing (a breach of the duty of loyalty).

1. Claim of YMCA filed March 29, 2005, *In the Matter of the Estate of Raymond A. Young, deceased*, Case No. PB-2002-626 in the District Court of Oklahoma County, Oklahoma. The capitalized phrase was interlined on the printed form in two places.

2. *Id.*

3. Order filed April 18, 2007, *In the Matter of the Estate of Raymond A. Young, deceased: YMCA of Greater Oklahoma City v. W. Cheryl Moore*, Case No. PB-2002-626 in the District Court of Oklahoma County, Oklahoma (hereinafter, *In re Estate of Young*).

4. Budig, Butler and Murphy, "Pledges to Nonprofit Organizations: Partly Enforceable and Must They Be Enforced?", 27 U. S. F. L. Rev. 47 (1992).

5. *Id.*

6. *Id.* at 51-66. For another analysis and list of relevant pledge cases, see "Lack of Consideration as Barring Enforcement of Promise to Make Charitable Contribution or Subscription — Modern Cases," 86 A.L.R. 4th 241 (1991).

7. See *Allegheny College v. National Chautauqua County Bank of Jamestown*, 159 N.E. 173 (N.Y. 1927).

8. *Allegheny College* as quoted in Budig, *supra* at 56.

9. See cases cited in *Jordan v. Mount Sinai Hospital*, 276 So.2d 102 (Fla. Dist. Ct. App. 1973), *aff'd* 290 So.2d 484 (Fla. 1974).

10. *Cohoes Memorial Hospital v. Mossey*, 25 A.D.2d 476, 266 N.Y.S.2d 50, 52 (N.Y.A.D. 3 Dept., 1966) (citations omitted).

11. Compare *In re Versailles Foundation Inc.*, 610 N.Y.S.2d 2, 202 A.D.2d 334 (1994) where the court found the pledgee's detrimental reliance of "winning and dining" the pledgor to be insufficient to enforce the promise.

12. *Maryland Nat'l Bank v. United Jewish Appeal Fed'n*, 407 A.2d 1130, 286 Md. 274 (1979).

13. *Virginia School of Arts Inc. v. Eichelbaum*, 493 S.E.2d 510, 512 (Va. 1997).

14. 15 O.S. 2001 §2.

15. 15 O.S. 2001 §106. See also 15 O.S. 2001 §107 (a moral obligation originating in some benefit conferred upon the promisor...is also a good consideration for a promise, to an extent corresponding with the extent of the obligation.)

16. See *Matter of Estate of Hoobler*, 925 P.2d 13, 1995 OK 56 (grandchildren's forbearance to file a will contest action was valid consideration to support a contract).

17. See John D. Calamari and Joseph M. Perillo, *The Law of Contracts*, 255-57 (4th ed. 1998), [hereinafter Calamari].

18. *Supra*, at note 7.

19. Although the authors admit that Justice Cardozo's opinions are open to interpretation and could be considered a case introducing the theory of promissory estoppel to enforcement of charitable contributions.

20. See *Russell v. Board of County Commissioners*, 952 P.2d 492, 503 (1997) (acknowledging that promissory estoppel has become a part of Oklahoma common law).

21. *Id.* The authors question whether it may be more difficult to enforce a charitable pledge on the basis of promissory estoppel than showing consideration as defined in 15 O.S. 2001 §106. Promissory estoppel requires a showing of reasonable reliance by the promisee to its own detriment while consideration under Oklahoma statutory law may be shown by a benefit conferred to the promissory or "any prejudice suffered" (emphasis added).

22. YMCA's Response to Defendant's Motion to Dismiss filed July 22, 2005, *In re Estate of Young*. (Arguing that the YMCA reasonably relied on the pledge of Mr. Young in carrying out and concluding its capital campaign).

23. Memorandum filed Aug. 30, 2005, *In re Estate of Young*.

24. *Salsbury v. Northwestern Bell*, 221 N.W. 2d 609, 613 (1974) (holding that charitable pledges are enforceable under the doctrine of promissory estoppel as a matter of public policy), *supra* at 613.

25. *Jewish Federation of Central New Jersey v. Barondess*, 560 A.2d 1353, 234 N.J.Super. 526 (1989).

26. See, e.g., *King v. Trustees of Boston College*, 647 N.E.2d 1196, 420 Mass. 52 (1995).

27. See, e.g., *Irwin v. Lombard Univ.*, 46 N.E. 63 (Ohio 1897) ("The policy of this state, as so indicated, is promotive of education, religion and philanthropy. [P]romises made with a view to ... establishing endowment funds to give them greater stability and efficiency, and whatever may be necessary or helpful to accomplish their purposes or secure their permanency, must be held valid.")

28. See 18 O.S. 2001 §865 (providing protection to directors for the vicarious liability of corporate officers and other directors).

29. See discussion for deductibility of an enforceable pledge at note 55, *infra*.

30. See note 1, *supra*.

31. See *Salsbury*, *supra*.

32. See *Pappas v. Bever*, 219 N.W.2d 720 (Iowa 1974) (finding that a statement of an intention to do something in the future is not enforceable).

33. Although a charitable pledge agreement may not appear to reflect equal consideration since a donor, by definition, makes a charitable pledge with a donative intent, courts will not usually attack the sufficiency of consideration. See Calamari at 172-75.

34. Budig, *supra*, at pages 85 – 119.

35. *Id.* at 87 (footnotes omitted).

36. *Id.* at 88. In Oklahoma, the cases of *Harrison v. Barton*, 358 P.2d 211, 1960 OK 256, and *Smith v. Baptist Foundation of Oklahoma*, 50 P.3d 1132, 2002 OK 57, are supportive of these general statements.

37. 60 O.S. 2001 §§175.60 *et seq.*

38. See note 36, *supra*.

39. 60 O.S. 2001 §175.23. See, e.g., *Crews v. Willis*, 159 P.2d 251, 1945 OK 174.

40. *Bank of Oklahoma v. Briscoe*, 911 P.2d 311, 1995 OK CIV APP 156, and *McKosky v. Town of Talihina*, 581 P.2d 482, 1977 OK CIV APP 27.

41. 60 O.S. 2001 §174 (emphasis added).

42. *Mamoodjanloo v. Wolf*, 190 P.2d 1170, 2008 OK CIV APP 59. A similar result should obtain for contract liability under 60 O.S. 2001 §175.18 (*prima facie* evidence that personal liability is intended to be excluded if contract signed as trustee).

43. The American Bar Association adopted a further revision in 2008, the Model Nonprofit Corporation Act (Third Edition) (2008).

44. But see, the Utah Revised Nonprofit Corporation Act, based in part on the RMNCA, which absolves directors from liability for breaches of their statutory duties unless the breach constituted willful misconduct or intentional infliction of harm on the nonprofit corpora-

tion or its members, Utah Code subsection 16-6a-822(6)(b), and Iowa Code 504.901 which precludes personal liability for directors except for financial benefits received, intentional infliction of harm on the corporation or the members, unlawful distributions or an intentional violation of criminal law.

45. Budig, *supra*, at 98-101. See also, *Warren v. Century Bancorporation Inc.*, 741 P.2d 846, 848-49, 1987 OK 14 (dictum).

46. In a recent Wyoming case, summary judgment in the board's favor was affirmed where a settlement by a board with the manager regarding a pay dispute rather than pursuing litigation was within their business judgment. *Mueller v. Zimmer*, 124 P.3d 340, at 351-52, 2005 WY 156. See also, *In re Stetson*, 345 A.2d 679, at 689, 463 Pa. 64 (1975) (private trustee may compromise claim if reasonably diligent).

47. *Gantler v. Stephens*, 965 A.2d 695 (Del. 2009). Oklahoma courts interpret the Oklahoma General Corporation Act in accordance with Delaware decisions. See *Beard v. Love*, 173 P.3d 796, 2007 OK CIV APP 118.

48. 18 O.S. 2001 §866.

49. *Id.*

50. 18 O.S. 2001 §867.

51. 18 O.S. 2001 §865 ("providing immunity to directors of [Oklahoma nonprofit] corporations for certain types of liability will promote the general health, safety and welfare of citizens in the state.")

52. See *Smith v. Van Gorkom*, 488 A.2d 858, 872-73 (Del. 1985).

53. 18 O.S. 2001 §1027(E).

54. See discussion at III(a), *supra*.

55. See, e.g., *Arrowsmith v. Mercantile-Safe Deposit and Trust Co.*, 545 A.2d 674, 313 Md. 334 at 355 (1988).

56. I.R.C. §4958.

57. I.R.C. §4958(f).

58. See Treas. Reg. §53.4941(d)-2(f) (providing that it is an act of self dealing for a private foundation to satisfy an enforceable pledge of a disqualified person which generally includes substantial contributors, officers and directors).

ABOUT THE AUTHORS



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OETA FESTIVAL



VOLUNTEERS NEEDED

WHAT: OBA members are asked again this year to help take pledge calls during the OETA Festival to raise funds for continued quality public television. For 32 years OETA has provided television time as a public service for the OBA's Law Day "Ask A Lawyer" program. By assisting OETA, we show our appreciation. It is also a highly visible volunteer service project.

WHEN: Tuesday, March 16 @ 5:45 - 10:30 p.m.

WHERE: OETA studio at Wilshire & N. Kelley, Oklahoma City for dinner & training session

Contact Jeff Kelton to sign up
Phone: (405) 416-7018
E-mail: jeffk@okbar.org
Fax: (405) 416-7089

Determining Heirs-at-Law

Puzzling Predicaments in Probate Part I

By Judge Linda Morrissey and Julie Bushyhead

INTRODUCTION

Puzzling Predicaments in Probate" is a series consisting of three articles discussing challenging issues in probate law. These articles include "Part 1: Determining Heirs at Law;" "Part II: Homestead and Spousal Rights;" and "Part III: Probate and Oil and Gas Development." The first article in the series, "Determining Heirs at Law," discusses the basics of intestate succession, the shift from *per stirpes* to *per capita* methods of intestate distribution, the table of consanguinity, identifying degrees of relatives, determining who is not an heir at law, adoption, the Uniform Simultaneous Death Act, and paternity determination for purposes of heirship.

LAWS OF INTESTATE SUCCESSION

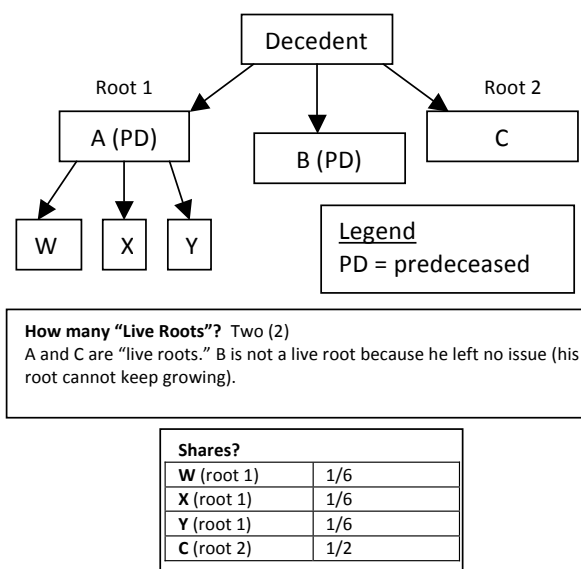
A person dies intestate when he or she dies without a valid will.¹ When a person dies intestate, his/her estate will be distributed to the decedent's heirs at law.² An heir at law is a "person, who, under the laws of intestacy, is entitled to receive a portion of the intestate decedent's property."³ As such, a detailed review of the laws of intestacy, codified in 84 O.S. §213, is necessary to determine a decedent's heirs at law. The heirs at law and the distribution allotted to those heirs will differ depending on whether the decedent left a surviving spouse.⁴ If the decedent left a surviving spouse but no surviving issue, the heirs at law will usually include 1) the decedent's spouse and 2) the decedent's parents or siblings.⁵ If the decedent left a surviving spouse and surviving issue, the heirs at law will only include the decedent's surviving spouse and issue, and

will not include the decedent's parents or siblings.⁶ However, if the decedent did not leave a surviving spouse, the rules of intestacy differ. Where the decedent leaves no surviving spouse, the decedent's heirs at law will be the decedent's issue, parents, siblings, grandparents or grandparents' issue, or next of kin.⁷ If the decedent is not survived by any relative, the estate will escheat to the state.⁸

SHIFT FROM *PER STIRPES* TO *PER CAPITA*

"*Per stirpes*" and "*per capita*" are terms that refer to the methodology used in the distribution of an intestate estate. "*Per stirpes*" is a Latin term meaning "by roots or stocks."⁹ An estate distributed "*per stirpes*" is "proportionally divided between beneficiaries according to their deceased ancestors share."¹⁰ In order to determine the "roots" or initial shares, consider the steps below:

1. Determine the first generation descending from the decedent in which there are "live roots." Ask whether or not the root can continue to grow to determine whether it is a live root. "**Live roots**" occur in two possible situations: a) decedent's issue survived decedent [as in "C" below] or b) decedent's issue predeceased decedent but left surviving issue of his/her own [as in "A" below]. You would not count a share in the situation where decedent's issue predeceased decedent and left no issue of his/her own [as in "B" below].
2. Then count the number of **live roots**.
3. You allocate an equal share to the live roots and divide down where the root predeceased the decedent. This result is described as an heir taking "by right of representation." And in the scenario below, "W", "X", and "Y" take by right of representation.



The "*per stirpes*" ("right of representation") method for distributing an estate is used where a decedent is survived by issue, parents, parents' issue, grandparents or grandparents' issue.¹¹ However, where the only relatives surviving the decedent are great-grandparents, great-grandparents' issue, or a "more remote common ancestor," heirs will **not** take by "right of representation."¹² Instead, the method shifts from "*per stirpes*" to "*per capita*." "*Per capita*" is a Latin term meaning "by the head."¹³ The "*per capita*" method only considers *surviving* relatives as possible heirs.¹⁴ Only those surviving relatives who are "most closely related by degree to the decedent" will share in the decedent's estate as "next of kin."¹⁵

If there is more than one relative within the same degree of relationship, each will take an equal share.¹⁶ But the question remains: "how do you determine degrees of relationship?" The easiest way is to use the Table of Consanguinity.¹⁷ This table illustrates the rules for determining degrees of collateral heirs. The numbers above each box in the chart indicate the degree of relationship to the decedent. See below for directions on counting degrees of relationship without using the Table of Consanguinity:

1. Count the generations up from the surviving relative to the common ancestor. Include the relative in the count.¹⁸
2. Count the generations down from the common ancestor to the decedent's parents. Do not include the decedent in the count. Only count the common ancestor once (in step one).¹⁹

DISTINGUISHING BETWEEN FIRST AND SECOND COUSINS

What in the World is a First Cousin, Twice Removed?²⁰

Cousin (a.k.a "first cousin")

First cousins are the people in your family who have two of the same grandparents as you. In other words, they are the children of your aunts and uncles.

Second Cousin

Your second cousins are the people in your family who have the same great-grandparents as you, but not the same grandparents.

Third, Fourth and Fifth Cousins

Your third cousins have the same great-great-grandparents; fourth cousins have the same great-great-great-grandparents, and so on.

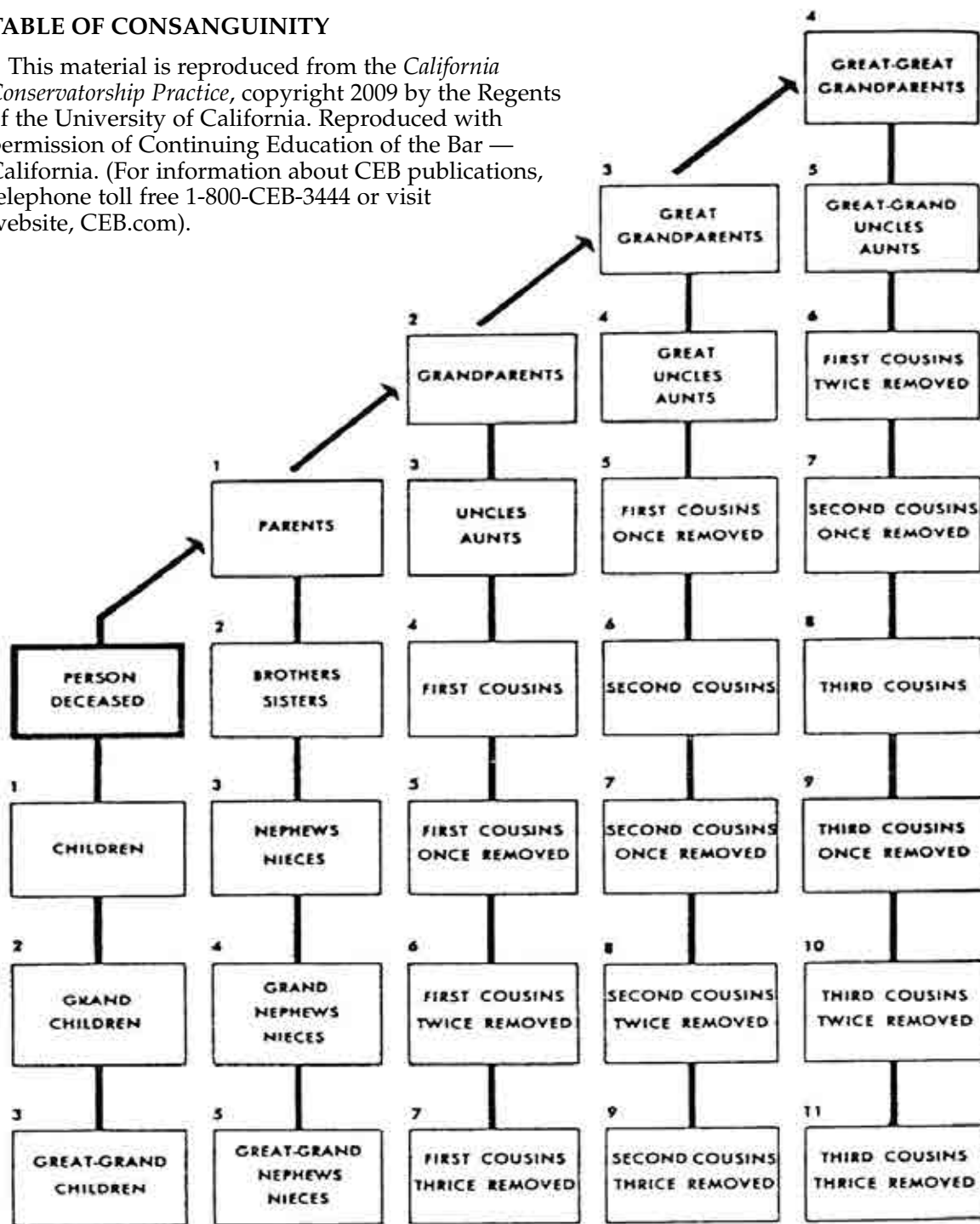
Term "Removed"

When the word "removed" is used to describe a relationship, it indicates that the two people are from different generations. You and your first cousins are in the same generation (two generations younger than your grandparents), so the word "removed" is not used to describe your relationship.

The words "once removed" mean that there is a difference of one generation. For example, your mother's first cousin is your first cousin, once removed. This is because your mother's first cousin is one generation younger than your grandparents and you are two generations younger than

TABLE OF CONSANGUINITY

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your grandparents. This one-generation difference equals "once removed."

Twice removed means that there is a two-generation difference. You are two generations younger than a first cousin of your grandmother, so you and your grandmother's first cousin are first cousins, twice removed.

WHO IS NOT AN HEIR-AT-LAW?

At first glance, intestate succession can be a confusing issue wrought with foreign terminology. For instance, the terms descendant, issue, and heir at law seem as though they are referring to the same individual(s). However, a closer look reveals that a descendant is "one who follows in the blood line of an ancestor,"

in direct (not collateral) descent from a person.²¹ Similarly, a decedent's issue can be described as a person's descendants, lineal descendants, or offspring (includes grandchildren).²² Whereas, an heir-at-law is a person "who, under the laws of intestacy, is entitled to receive [a portion of] an intestate decedent's property."²³ This distinction is important when you have a scenario such as the one listed below:

Decedent, D, dies intestate survived by two children, X and Y. Y dies while D's estate is still in probate. Y is survived by three children. Who are D's heirs-at-law for purposes of distributing D's estate?

D's estate should only be distributed to D's heirs. Both X and Y survived the death of D. Only if Y **predeceased** D would Y's children be considered D's heirs-at-law under the laws of intestate succession.²⁴ Instead, in this scenario, Y's children are D's descendants (grandchildren), but **not** D's heirs-at-law. Even though Y died during the probate of D's estate, determination of heirship is anchored to the date of death of D. Therefore, because Y survived D, Y's share goes to Y's probate estate.

ADOPTION

A decedent's adopted child is treated the same as the decedent's biological child for the purpose of determining heirs-at-law.²⁵

*Effects of Adoption*²⁶

Adopted children are entitled to inherit from and through their adoptive parents.²⁷

- Adoption affects descent and distribution by creating a "right of inheritance."
- However, a subsequent adoption (one adopted a second time) will cut off any right attributable to the previous adoption.²⁸

Adopted parents are entitled to inherit from and through adopted children.

- An adopted child and adoptive parents enjoy all the rights of descent and distribution as if they were biological parents and child. From the date of the decree, adoptive parents are entitled to inherit real and personal property from and through the child.²⁹

Adopted children may inherit from both natural and adoptive parents.

- After adoption, the child is eligible to inherit from their natural and adoptive parents.³⁰

Biological parents are not entitled to inherit from adopted children.

- Upon completion of the adoption process, the law does not recognize a distinction between a naturally born child and an adopted child and all parental responsibilities and rights over adopted children or property of adopted children are relieved.³¹

UNIFORM SIMULTANEOUS DEATH ACT (USDA)

The USDA is relevant to determining heirs-at-law when, for example, a husband and wife die and there is "no sufficient evidence to establish that the persons have died other than simultaneously."³² In this circumstance, the question arises as to how the two estates should be distributed. The USDA, adopted by Oklahoma in Title 58 Ch. 16,³³ states that "the property of each person shall be disposed of as if he had survived."³⁴ However, reading the words of the statute alone confuses the issue as to how the court should distribute the estates of both husband and wife. The easiest way to illustrate the effect of the USDA is with a hypothetical scenario:

Husband and wife die intestate in a car accident and there is no evidence that they died other than simultaneously. Husband and wife have two children together.

If there was evidence to show that either the husband or wife survived the other,³⁵ even by one second, then the surviving spouse's estate would receive a portion of the pre-deceased spouse's intestate estate. However, where the husband and wife die simultaneously as in the hypothetical above, each spouse's estate should pass as if he/she was the survivor and the spouse predeceased him/her. In other words, the husband's estate should pass as if he was the survivor and the wife predeceased him.³⁶ As a result, the husband's estate should be distributed to the surviving two children, not to the wife's estate.³⁷ Similarly, the wife's estate should pass as if she survived and her husband predeceased her — with the estate passing to the two surviving children, not to the husband's estate. Stated differently, the wife would not be considered the husband's heir-at-law because she predeceased him, and the husband would not be considered the wife's heir-at-law because he predeceased her.

The question remains: how do you determine the contents of the husband's estate and

“...the husband's estate should be distributed to the surviving two children, not to the wife's estate.”

the wife's estate at the time of death? The USDA discusses specific rules concerning distribution of a husband and wife's estate when they die simultaneously.³⁸ One-half of the marital “community” property will pass as if the wife predeceased the husband, thereby treating the one-half as the husband's separate property.³⁹ Likewise, the other one-half of the marital “community” property will pass as if the husband predeceased the wife, thereby treating the one-half as the wife's separate property. The result is that each person's estate includes his/her separate property and one-half of the community property as his or her separate property.⁴⁰

PATERNITY DETERMINATION

Currently, Oklahoma law does not reflect the scientific advancement of genetic (DNA) testing for the purpose of determining heirs-at-law. However, the Uniform Parentage Act permits a court, upon a showing of good cause, to order genetic testing of a deceased individual.⁴¹ The Oklahoma statute discussing inheritance by a child born out of wedlock does not include DNA testing as a method for establishing paternity.⁴² Instead, the statute states that a child born out of wedlock may inherit from the putative father whenever:

- a) the father, in writing, signed in the presence of a competent witness acknowledges himself to be the father of the child,
- b) the father and mother intermarried subsequent to the child's birth, and the father, after such marriage, acknowledged the child as his own or adopted him into his family,
- c) the father publicly acknowledged such child as his own, receiving it as such, with the consent of his wife, if he is married, into his family and otherwise treating it as if it were a child born in wedlock, or

d) the father was judicially determined to be such in a paternity proceeding before a court of competent jurisdiction.⁴³

While title 84 does not specify genetic testing as a method for establishing paternity for purposes of determining heirship, it does not prohibit genetic testing. The court must find a showing of good cause to order genetic testing of a deceased individual.⁴⁴ What evidence suffices good cause? The Maine Supreme Judicial Court described “good cause” as having “sufficient reason advanced to justify exercise of such broad power.”⁴⁵ The Court stated, where there is a showing of evidence that creates “at the very least a reasonable probability that genetic testing . . . will reveal [that the movant is the issue of decedent],” there is “good cause.”⁴⁶

CONCLUSION

One must be mindful of the various legal issues that can affect the determination of a decedent's heirs. The determination of heirship is anchored to the date of death of a decedent. Considerations such as adoption into or out of a family, after-deceased heirs, simultaneous deaths, and paternity determinations are all unusual factors that significantly affect the determination of one's heirs at law. Correct determination is important not only in intestate estates but also in testate estates because of the requirement to give notice to heirs at law.⁴⁷

1. *Black's Law Dictionary* 898 (Bryan A. Garner Ed., 9th Ed., West 2009).

2. 84 O.S. §213(B) (2001). For purposes of this publication, the discussion is limited to descent and distribution laws applicable to those who died on or after 7-1-85.

3. *Black's Law Dictionary* at 791.

4. 84 O.S. §213.

5. 84 O.S. §213(B)(1).

6. 84 O.S. §213(B)(1)(c).

7. 84 O.S. §213(B)(2).

8. 84 O.S. §213(B)(3).

9. *Black's Law Dictionary* at 1260.

10. *Id.*

11. Nancy I. Kenderline, *Oklahoma Wills and Intestate Succession* 17 (Butterworth Legal Publishers 1993) (1987).

12. *Id.* at 16.

13. *Black's Law Dictionary* at 1250.

14. Kenderline, *supra* n. 11, at 16.

15. *Id.*

16. *Id.*

17. *Infra* pg 5.

18. 84 O.S. §221 (2001).

19. 84 O.S. §221.

20. Terms copied from the appendix, page xi, in the yellow handbook: *Determining & Locating Heirs at Law*©, (unpublished pamphlet prepared by Judge Linda Morrissey and her judicial interns) (copy on file with Judge Linda Morrissey); Terms retrieved from www.genealogy.com/16_cousin/html on 8/1/2010.

21. *Black's Law Dictionary* at 510.

22. *McCoy v. Lewis*, 1933 OK 640, ¶ 9, 27 P.2d 350, 351.

23. *Black's Law Dictionary* at 791.

24. 84 O.S. §213.

25. R. Robert Huff, 1 Okla. Prob. Law & Prac. §3.7, *Posthumous and Adopted Children*, (3d ed.).

26. "Effects of Adoption" copied from the appendix, page viii, in the yellow handbook: *Determining & Locating Heirs at Law*®, (unpublished pamphlet prepared by Judge Linda Morrissey and her judicial interns) (copy on file with Judge Linda Morrissey).

27. 10 O.S.Supp.2009 §7505-6.5(A).

28. *In re Estate of Moore*, 2001 OK CIV APP 76, ¶ 9, 25 P.3d 305, 307.

29. *Id.*

30. R. Robert Huff, 1 Okla. Prob. Law & Prac. §3.7, *Posthumous and Adopted Children*, (3d ed.).

31. 10 O.S. §7505-6.5(B).

32. 58 O.S. §1001 (2001).

33. 58 O.S. §§1001-1008 (2001).

34. 58 O.S. §1001.

35. *In Re Estates of Perry*, 2001 OK CIV APP 136, ¶ 13, 40 P.3d 492, 497 ("To avoid the implications of the Act, it is necessary to prove only that one party survived the other by at least one second"). It does not appear that Oklahoma has adopted the 1993 USDA amendment redefining "simultaneous" to mean "within 120-hours." Stephen M. Arcuri, note, *Does Simultaneous Really Mean Simultaneous? Interpreting the Uniform Simultaneous Death Act*, 17 Quinnipiac Prob. L.J. 338, 342 (2003-2004).

36. *In re Di Bella's Estate*, 125 N.Y.S.2d 755 (N.Y.Sup. 1953); Rodney Johnson, *The New Uniform Simultaneous Death Act*, 8 PROB. & PROP. 22 (1994).

37. 84 O.S. §213.

38. 58 O.S. §1004 (2001).

39. *Id.*

40. *Id.*

41. 10 O.S.Supp.2006 §7700-509.

42. 84 O.S. §215.

43. *Id.*

44. 10 O.S.Supp.2006 §7700-509.

45. *In re Estate of Kingsbury*, 946 A.2d 389, 394 (Me. 2008).

46. *Id.*

47. 58 O.S. §25.

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Homestead and Spousal Rights

Puzzling Predicaments in Probate Part II

By Judge Linda Morrissey and Julie Bushyhead

Part II of the “Puzzling Predicaments in Probate” series discusses a surviving spouse’s right to elect against the deceased spouse’s will where the deceased spouse devised and/or bequeathed to the surviving spouse less than the statutorily required amount. It also discusses a surviving spouse’s right to occupy the probate homestead and whether his/her right exists when he/she has no ownership interest in the probate homestead. Finally, it discusses whether a surviving spouse’s right to occupy the probate homestead includes the right to receive the oil and gas rents and profits accruing from the probate homestead.

SPOUSE’S ELECTION AGAINST THE WILL

This discussion requires an understanding of the term “property acquired by joint industry of husband and wife during coverture.” R. Robert Huff explains that “distinguishing between the separate property of the spouses, and that which was acquired during the marriage by joint efforts” is required for determining what constitutes “jointly acquired property during coverture.”¹ Separate property includes property owned by either spouse before marriage, property received by gift or inheritance, generally any income from separate property provided said income is not a result of the joint efforts of the parties, and any “changes in the form of separate property” provided the property remains identifiable.² Whereas, property acquired by joint industry during coverture generally includes any property acquired during marriage, separate property that has been “comingled and blended with jointly acquired property as to have lost its identity,” and the

earnings of either spouse earned during the marriage including the property acquired with those earnings.³ Oklahoma case law holds that “all property, not falling within the definition of separate property, acquired after the marriage by the labor either of the husband or the wife, is nevertheless deemed to be acquired by the labor of both the spouses,” and therefore constitutes jointly acquired property.⁴

Where a decedent dies testate devising or bequeathing his/her property to individuals other than his/her spouse, effectively disinheriting that spouse, the law protects the disinherited spouse with an elective forced share against the will.⁵ The spouse may elect to take an undivided one-half interest in the property acquired through joint industry in lieu of any bequests, legacies or devises to the spouse.⁶ The spouse may only elect against the will if the testator devised or bequeathed more than one-half of the property acquired by the joint industry of the husband and wife during coverture away from the spouse. In other words, a surviving spouse

has the right to an undivided one-half interest in the property acquired by the joint industry of the husband and wife during coverture.⁷

There has been some debate as to whether or not a spouse may also take a portion of the property not acquired by joint industry during coverture. W. Thomas Coffman and R. Robert Huff conclude that a surviving spouse is limited to the election of an undivided one-half interest in the property acquired by joint industry during coverture under 84 O.S. §44.⁸ Both authorities conclude that *prior* to the July 1, 1985 amendment to 84 O.S. §44, a surviving spouse who elected to take a forced share could do so under the laws of intestate succession and was therefore not limited to taking a portion of property acquired *only* by the joint industry of the husband and wife during coverture.⁹

Additionally, there are public policy concerns with the 1985 amendment. Both Coffman and Huff interpret the new language of 84 O.S. §44, which applies to testators dying after July 1, 1985, as severely limiting the protection of an elective forced share and disallowing a surviving spouse from electing under the laws of intestate succession enumerated in 84 O.S. §213.¹⁰ Others might view the amendment as an equitable solution to the ongoing battle between the public policy of protecting the surviving spouse and protecting the testator's right to bequeath or devise his property as he wishes. Under Robert Huff's argument, which promotes the protection of the surviving spouse, the testator's intent is thwarted. Oklahoma's amendment to 84 O.S. §44 may be an attempt to balance spousal protection and equitable distribution of a testator's estate in a manner that more accurately comports with his/her intent.

PROBATE HOMESTEAD

Oklahoma law provides, "[u]pon the death of either husband or wife, the survivor may possess and occupy the whole homestead."¹¹ Does this statute apply where the surviving spouse has no ownership interest in the property? It depends. It depends on whether the

decedent's property passed to a joint owner (other than the spouse) with right of survivorship upon the decedent's death, or whether the decedent's property transferred to someone other than the surviving spouse by devise.¹² The

Oklahoma Supreme Court, in *Casey v. Casey*, concluded that while a surviving spouse's right to occupy the homestead is superior to the interests of devisees, no homestead interest exists where property transfers to a joint tenant with right of survivorship upon the decedent's death.¹³ The court reasoned that when the decedent's ownership terminates and vests by operation of law in a surviving joint tenant, neither the spouse nor the decedent's estate had an ownership interest in the property, and therefore the homestead was "not reserved to the family and the widow had no homestead right of possession and occupation."¹⁴ In summary, where the decedent, prior to his/her death, owned property in joint tenancy with right of survivorship with someone other than the surviving spouse, and that property was the couple's principal resi-

dence during marriage,¹⁵ the surviving spouse does not have a right to continued possession of the property upon the decedent's death.

Would a surviving spouse have the right to possess and occupy the homestead where the decedent's property passed to a beneficiary (other than the surviving spouse) using Oklahoma's new transfer-on-death deed? When applying the reasoning used in *Casey v. Casey*, it appears that the transfer of property to a grantee beneficiary of a transfer-on-death deed is similar to the transfer of property to a surviving joint tenant of a joint tenancy with right of survivorship. The court in *Casey v. Casey* reasoned that "a deceased joint tenant's interest passes by operation of law to surviving joint tenants at the instant of the joint tenant's death."¹⁶ Similarly, the grantee beneficiary's interest in property granted in a transfer-on-death deed vests upon the grantor's death.¹⁷ Furthermore, the transfer of property using a transfer-on-death deed is similar to property passing by joint tenancy with right of survivor-

“Would a surviving spouse have the right to possess and occupy the homestead where the decedent's property passed to a beneficiary (other than the surviving spouse) using Oklahoma's new transfer-on-death deed?”

ship in that the property passes outside the decedent's estate and is not subject to probate administration.¹⁸ In addition, a transfer-on-death deed is not similar to a devise in a will. The Nontestamentary Transfer of Property Act states that a transfer-on-death deed "shall not be considered a testamentary disposition."¹⁹ Finally, assets placed in joint tenancy with right of survivorship are not affected by a later will.²⁰ The Nontestamentary Transfer of Property Act states that "a transfer-on-death deed executed, acknowledged and recorded in accordance with the Nontestamentary Transfer of Property Act may not be revoked by the provisions of a will."²¹ If a transfer-on-death deed is determined to transfer property in the same manner as a joint tenancy with right of survivorship, and the decedent's ownership terminates and vests by operation of law in the grantee beneficiary upon the grantor's death, neither the spouse nor the decedent's estate will have an ownership interest in the property, and the surviving spouse will have no right to occupy or possess the probate homestead.²²

PROBATE HOMESTEAD — RIGHTS AS TO OIL AND GAS RENTS AND PROFITS

What homestead rights does a surviving spouse have in addition to his/her right to occupy the homestead upon the decedent spouse's death? Specifically, does a homestead occupant have the right to receive rents or profits or to grant a new oil and gas lease? The law treats homestead occupants analogous to life-tenants.²³ As such, the "open mine doctrine" applies to this analysis.²⁴ The "open mine doctrine" concerns a life-tenant's duty to refrain from committing waste on the property. When a life-tenant opens a mine after he/she takes possession of the property, the law considers such action waste (unless a special exception applies).²⁵ However, the law permits a life-tenant to continue to work mines that existed when the life-tenant took possession.²⁶ In accordance with this doctrine, the homestead occupant is entitled to receive all the rents and profits "which may accrue from the lands by reason of minerals which may be produced from mines or wells existing at the time of the death of the testator."²⁷ In other words, the homestead occupant "takes the land in the condition in which it was when the estate vested" (i.e. on the date of the decedent's death).²⁸ In addition, a homestead occupant may "sell and convey [his/her] right to receive royalties" so long as the land remains the survivor's home-

stead.²⁹ Finally, a homestead occupant may not execute a new lease where the lease existing at the decedent's death terminates according to its terms.³⁰

Do these rights exist as against the owner of the homestead property (devisees), where the surviving homestead occupant does not have an ownership interest in the homestead property? Yes. The Supreme Court in *Lawley v. Richardson* held, "the homestead interest is jointly vested in the husband and wife for the benefit of themselves and family, *without regard to which spouse owns the title to the land*."³¹ The court in the same case held that a homestead occupant is entitled, "as against the heirs of the decedent," to receive the royalties accruing as a result of an oil and gas lease executed prior to the decedent's death.³² In other words, "the property interest of the heirs is suspended during the occupancy of the homestead by the survivor."³³ In summary, Oklahoma law permits a homestead occupant to receive rents and profits arising from the homestead even where such occupant has no ownership interest in the property.

CONCLUSION

An understanding of these issues is useful in developing estate plans. A careful practitioner will explore all the vehicles to accomplish the testator's estate goals, and educate the client about the repercussions of each option.

1. R. Robert Huff, 1 Okla. Prob. Law & Prac. §3.22, *Property Acquired by Joint Industry of Husband and Wife During Coverture* (3d ed.).

2. *Id.*

3. *Id.*

4. *Id.* (citing *In Re Keith's Estate*, 1956 OK 178, ¶ 4, 298 P.2d 423, 425 (quoting *Turner v. First Nat. Bank & Trust Co.*, 1955 OK 369, ¶ 22, 292 P.2d 1012, 1016)) (emphasis added).

5. 84 O.S. §44(B)(2) (2001).

6. *Id.*

7. *Id.*

8. W. Thomas Coffman, *Planning, Will Drafting, and Estate Administration Forms* vol. 2, §II-1.4 (Lexis Nexis 2007); Robert Huff, *Being Married Ain't What It Used To Be Under The New Law of Wills and Succession*, 57 Oklahoma Bar Journal, pt. 3, at 2304.

9. W. Thomas Coffman at II-I-17; Huff, 57 Oklahoma Bar Journal, pt. 3 at 2302.

10. W. Thomas Coffman at II-I-22; Huff, 57 Oklahoma Bar Journal, pt. 3 at 2301-2305.

11. 58 O.S. §311 (2001).

12. *Casey v. Casey*, 2005 OK 13, ¶ 12, 109 P.3d 345, 349-350.

13. *Id.* at ¶ 11, 109 P.3d at 349-351.

14. *Id.* at ¶ 13, 109 P.3d at 351.

15. 31 O.S.Supp.2005 §1.

16. *Casey*, at ¶ 13, 109 P.3d at 350.

17. 58 O.S.Supp.2008 §1255.

18. *Casey*, at ¶ 12, 109 P.3d at 350.

19. 58 O.S.Supp.2008 §1258.

20. R. Robert Huff, 1 Okla. Prob. Law & Prac. §12.4, *Joint Tenancy* (3d ed.) (citing *Matter of Estate of Ingram*, 1994 OK 51, ¶ 14, 874 P.2d 1282, 1286).

21. 58 O.S.Supp.2008 §1254.

22. *Casey*, at ¶ 13, 109 P.3d at 351.

23. *Hembree v. Magnolia Petroleum Co.*, 1935 OK 893, ¶ 15, 56 P.2d 851, 853; *Lawley v. Richardson*, 1924 OK 144, ¶ 13, 223 P. 156, 158.
 24. *See id.* at ¶ 15, 56 P.2d at 853.
 25. *Lawley*, at ¶ 6, 223 P. at 158 (quoting *Cherokee Const. Co. v. Harris*, 122 S.W. 485 (Ark. 1909)).
 26. *Id.*
 27. *Hembree*, at ¶ 15, 56 P.2d at 853 (quoting *Lawley*, at ¶ 13, 223 P. at 159) (emphasis added).
 28. *Hembree*, at ¶ 15, 56 P.2d at 853 (quoting *Lawley*, at ¶ 13, 223 P. at 159) (emphasis added).
 29. *Lusk v. Carter Oil Co.*, 1935 OK 636, ¶ 0, 53 P.2d 656, 657.
 30. *Hayser v. Frankfort Oil Co.*, 316 F.2d 441, 443 (10th Cir. 1963).
 31. *Lawley*, at ¶ 4, 223 P. at 157 (citing *Hawkins v. Corbit*, 1921 OK 345, 201 P. 649 (quoting *Pettis v. Johnston* 1920 OK 224, ¶ 38, 190 P. 681, 693)) (emphasis added).
 32. *Lawley v. Richardson*, 1924 OK 144, ¶ 13, 223 P. 156, 158; *Tarman v. Pierce*, 1934 OK 335, ¶ 38, 33 P.2d 203, 207.
 33. *Lusk*, at ¶ 24, 53 P.2d at 659 (quoting *In Re Gardner's Estate*, 1926 OK 167, 250 P. 490).

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Probate and Oil and Gas Development

Puzzling Predicaments in Probate Part III

By Judge Linda Morrissey and Julie Bushyhead

Part III of the “Puzzling Predicaments in Probate” series concerns the sale of oil and gas assets during probate and discusses two scenarios: 1) estate owns land and the personal representative wants to execute a lease, and 2) estate owns a leasehold interest and the personal representative wants to sell that interest. This article also discusses the inherent unreliability of affidavits of heirship as it relates to oil and gas interests.

ACQUISITION OF AN OIL AND GAS LEASE FROM A DECEDENT’S ESTATE¹

In Oklahoma, personal representatives (not “special administrators” with limited authority pursuant to 58 O.S. §215) of the estates of deceased persons are “authorized to sell and execute oil and gas or other mining leases upon the lands belonging to the [respective] estates... for a term not to exceed 10 years and as long thereafter as oil, gas, or other minerals may be produced in paying quantities.”² If the lease bonus is over \$500, a petition seeking court approval must be filed with the probate court.³ If the bonus does not exceed \$500 the personal representative has the authority to execute all instruments of conveyance of an oil and gas lease on property of the estate in his trust *without notice* or court proceedings other than approval of the conveyance by the judge of the court having jurisdiction of the proceeding endorsed on the instrument of conveyance with a finding by the court that the bonus value of the lease does not exceed \$500.”⁴ The bonus value is the present value of the difference between the economic rental, meaning the fair market value of the leasehold interest, and the contract rental, which is the actual rent paid in accordance with the terms of the lease agreement.⁵

For those transactions in which the bonus exceeds \$500, the district court in which the probate proceedings are pending has jurisdiction to order the sale after filing of a petition.⁶ The petition must allege that the estate of the deceased person is the owner of the land described in the petition, that the land has a probable value for oil and gas or other mining purposes, that the estate is not financially capable or that it is impractical for the estate to explore the land for oil and gas, and that it is in the best interest of the estate to lease the land at public auction to the highest bidder in exchange for cash.⁷ In addition, the petition must include the names and addresses of the heirs⁸ of the deceased person and must be verified by the personal representative.⁹

After the petition is filed and upon showing a benefit to the estate, the court has discretion as to whether to issue an order authorizing and directing the sale of a lease upon the lands described in the petition for oil and gas or other mining purposes.¹⁰ The sale is to be held at public auction to the highest bidder, and is to be held in the courtroom not less than five days from the date this order is issued.¹¹ Notice of sale is to be given by publication one time in a newspaper in the county where the court is situated and in the county where the land is

located, and by mailing to the heirs of a deceased person, at least five days prior to sale.¹² Again, notice to the heirs, devisees and legatees is the better practice.

The personal representative shall file a return of sale showing the land upon which the lease was sold, the term of years of the lease, the name of the purchaser, and the amount received for the lease.¹³ A copy of the form of the lease proposed to be executed shall be attached to the return of sale.¹⁴ The court shall then hold a hearing, without further notice, and if it finds that the sale was properly conducted, shall confirm the sale, and direct the personal representative to execute and deliver the lease.¹⁵

The personal representative need not comply with the requirements of 58 O.S. §§924-928.1 if the decedent's will empowers the personal representative to sell oil and gas or other mineral leases.¹⁶ Instead, the personal representative may sell or otherwise deal with any property of the estate at his or her discretion; but, the personal representative must make return of such sales.¹⁷ Alternatively, if the personal representative obtains consents from all heirs, devisees and legatees, and an order from the court, the personal representative may lease any real or personal property including mineral interests "without further judicial authorization or a return of sale or confirmation of such sale or transaction."¹⁸

ACQUISITION OF AN OIL AND GAS LEASEHOLD FROM A DECEDENT'S ESTATE¹⁹

Personal representatives of the estates of deceased persons are given authority by statute to negotiate for and to sell oil and gas or other mineral leaseholds which are owned by the estate.²⁰ Such sale is not limited to cash sales, but may also include sales made in consideration of a drilling obligation, oil payment, overriding royalty, exchange of oil and gas and mineral leaseholds, or such other consideration as the court determines to be in the best interest of the estate of the decedent.²¹ Personal representatives are also authorized to negotiate and enter into agreements that are "necessary or advantageous to the estate" in the operation and development of any oil and gas leases owned by the estate, "including but not limited to such agreements as joint operating agreements, unitization agreements, re-pressurizing agreements, and water-flooding agreements."²² All of these sales and agreements are subject to

the approval of the district court where the probate proceedings are pending.²³

If the decedent's will empowers the personal representative to sell real property, *it is not necessary for the personal representative to seek court approval*, and the personal representative may sell or otherwise deal with any property of the estate at his or her discretion; *but*, the personal representative must make return of such sales.²⁴ If directions are given in the will as to how the property is to be sold, or what property is to be sold, such directions must be followed.²⁵ Title does not pass unless the sale is confirmed by the court, except that if the sale was made under order of the court, no confirmation of sale by the court is necessary.²⁶

Alternatively, if the decedent's will does not authorize the personal representative to sell real property or the decedent died intestate, the personal representative may file a petition or application accompanied by written consents from all heirs, devisees, and legatees, other than contingent devisees and legatees, requesting the court to "enter an order...authorizing the personal representative to sell, grant, lease, mortgage or encumber any real or personal property, *including mineral interests*, and to execute and issue deeds, leases, bills or sale, notes, mortgages, easements and other documents of conveyance, without further judicial authorization or a return of sale or confirmation of such sale or transaction. Any sale or transaction so authorized shall pass title to the purchaser without being confirmed by the court, notwithstanding any statutory provision to the contrary."²⁷ Waivers and consents may be withdrawn at any time, and all actions following such withdrawal must be in compliance with regular statutory procedures.²⁸ The withdrawal of the waiver or consent must be in the form of a written statement, filed with the court clerk, and served upon the personal representative by certified mail.²⁹

If the decedent's will does not authorize the personal representative to sell real property and the personal representative is unable to obtain consents from all of the decedent's heirs, devisees and legatees, then the personal representative must file a verified application with the court for approval after negotiating the **sale** of any leasehold estate or interest therein.³⁰ The application must set forth the interest of the estate in the leasehold as precisely as possible, the lands covered by that interest, the part of or

interest in the leasehold being sold, the identity of the purchaser, and the consideration tendered for the sale.³¹ The application must also allege that the sale is for the best interest of the estate, and a copy of the proposed contract shall be attached to the application.³²

An application for the approval of an **agreement** must state the interest of the estate in the leasehold, the lands covered by such interest, a statement of the purpose of the agreement and the interest in the leasehold covered by the agreement, and shall allege that the agreement is in the best interest of the estate.³³ A copy of the agreement must be attached to the application.³⁴

If there is a **sale and agreement** pertaining to the same interest in the leasehold, only one application need be filed.³⁵ Once an application is filed, the court is required to fix the date for a hearing.³⁶ Notice of the hearing for the approval of an application must set forth the date and place of the hearing, the purpose of the hearing, and a description of the land involved.³⁷ Notice of hearing is to be given by publication one time in a newspaper in the decedent's county where the court is situated and in the county where the land is located, and by mailing to the heirs, 10 days prior to the hearing.³⁸ Notice by publication may be waived by the court upon a showing of good cause.³⁹

On the date of the hearing specified in the notice, the court shall examine the application and all evidence in support of or in opposition to the application.⁴⁰ "Any interested person may appear and show cause why such application should not be approved."⁴¹ If the court finds that the sale or agreement, or both, is in the best interest of the estate, an order approving the application shall be entered.⁴² "Where an application covers both a sale and an agreement or more than one agreement, the application may be approved in part and denied in part."⁴³ The court must endorse its approval on any assignment, conveyance or agreement confirmed at the hearing.⁴⁴ However, before confirming a sale, the court has discretion to require the personal representative to file an additional bond in an amount prescribed by the court.⁴⁵

ACQUISITION OF OIL AND GAS LEASES AND LEASEHOLDS

Procedural Chart

Sale of Lease by PR

Method 1: Petition 58 O.S. §§924-926

1. File Petition
 - Must state the owner of the land
 - That land has value for oil and gas purposes
 - That estate cannot explore the land itself
 - That it is in the best interest of estate to lease
 - Shall include the names and addresses of decedent's heirs
2. Petition must be verified by PR
3. Court may order sale upon showing of benefit to the estate
4. The Sale
 - Held at public auction
 - To the highest bidder
 - Held in the courtroom not less than 5 days after order of sale is issued
 - Notice by publication in county of presiding court and location of the land **AND**
 - Notice by mailing to decedent's heirs
 - ***Notice must be given at least 5 days prior to the sale***
5. The Return of Sale
 - PR shall file return of sale
 - Show the land upon which the lease was sold
 - The term of the lease
 - The purchaser's name
 - The amount received for the lease
 - Attach a copy of the form of the lease
6. Court Confirmation
 - Court shall hold a hearing without further notice
 - Court must find that the sale was properly conducted
 - Court may confirm the sale
 - Court may direct the PR to execute the lease

Method 2: Bonus value of the lease ≤ \$500

58 O.S. §928.1

1. Only need approval by the judge of the court having jurisdiction
2. The court must find that the bonus value of the lease does not exceed \$500

Method 3: Will Empowers PR – SEE CHART ON NEXT PAGE

Method 4: Written Consent – SEE CHART ON NEXT PAGE

Sale of Leasehold by PR

Method 1: Will Empowers PR 58 O.S. §462

1. Language in the Will
 - If the decedent's will empowers the PR to sell real property, it is not necessary to seek court approval.
2. Return of Sale
 - However, the PR **must** still make a return of sale.
3. Court Confirmation
 - Necessary unless the sale was made under order of the court.

Method 2: Petition w/ Consent by all heirs, devisees, and legatees 58 O.S. §239

1. Petition accompanied by written consents
2. Court Order
 - If PR obtains such consent, court may enter an order authorizing the PR to *sell, grant, lease, mortgage or encumber any real or personal property*
 - Without further judicial authorization
 - Without a return of sale
 - Without court confirmation

Method 3: Verified Application for Approval of Sale 58 O.S. §929.2

1. PR makes an agreement/negotiates a sale
2. File a verified application for the approval of a sale
 - Must state the interest of the estate in the leasehold
 - The lands covered by such interest
 - A statement of purpose of the agreement and the interest in the leasehold
 - Allege that the agreement is in the best interest of the estate.
 - Attach a copy of the agreement to the application
3. Send Notice of hearing on application
 - Shall set forth date, place, and purpose of hearing; and description of land
 - Must send notice **10 days prior to the hearing date**
 - Must be sent by mail AND by publication (one time in newspaper in said county); latter may be waived for good cause shown
4. Upon a finding that the sale of agreement is in the best interest of the estate, the court shall approve said application

THE INHERENT UNRELIABILITY OF AFFIDAVITS OF HEIRSHIP

Oil and gas companies often rely on affidavits of heirship for purposes of procuring oil and gas leases and pooling. Because of the inherent unreliability of these affidavits, the companies rely on them at their peril. The concern with affidavits of heirship stems from the scenario in which the affiant is asked "who are D's heirs-at-law" and no judicial determination of heirship is ever performed. In most cases, the affiant lacks the legal knowledge to correctly identify D's heirs at law. They may not understand the difference between an "heir-at-law" and a decedent's "descendants," "issue" or "devisees and legatees." Further he/she may not understand that the existence of a predeceased child will affect heirship, or that an adopted child (whether adopted into the family or out of the family) is treated the same as a biological child for purposes of heirship determination. In other words, "family members tend to see 'heirship' in a less than legal fashion."⁴⁶

The second problem occurs where the affiant is an interested party.⁴⁷ For instance, if the affiant is an heir at law whose share will be diluted by disclosing the existence of other heirs at law, the affiant's declaration is inherently untrustworthy.⁴⁸ The Texas Law of Evidence provides some guidance where an affiant is an interested party.⁴⁹ The rules state that "the declarant must have been disinterested, i.e. had no interest or motive to deceive, at the time when the declaration was made."⁵⁰ In addition, the rules state that "declarations as to the declarant's heirship or relationship to a certain person, made after descent cast upon him as to property belonging to such person[,] are not admissible on behalf of the declarant or persons claiming that property under him."⁵¹

The combination of an affiant's lack of legal knowledge and potential lack of trustworthiness gives cause for heightened scrutiny when an affidavit of heirship is offered in an evidentiary proceeding such as a quiet title action. However, the trend seems to be that oil and gas companies are willing to assume the risk associated with these affidavits in order to commence drilling a well.⁵²

CONCLUSION

Probate law offers many challenging nuances with regard to the reliability of information offered for notice and estate beneficiary determinations. One should give consideration to the

potential for inaccurate (although unintended) information due to a lack of understanding of probate law. Careful inquiry by the court is essential to ensure that the law is followed.

1. Various portions of this article contributed by attorney Anne Zimmermann in collaboration with Judge Linda Morrissey during her judicial internship as a law student.

2. 58 O.S. §924 (2001).

3. 58 O.S. §928.1 (2001).

4. *Id.*

5. *City of Riverside v. Progressive Investment Club of Kansas City, Inc.*, 45 S.W. 3d 905, 911 (Mo. Ct. App. 2001).

6. 58 O.S. §924.

7. *Id.*

8. A better practice would be to name the “heirs, legatees and devisees” because they are entitled to notice of probate proceedings under 58 O.S. §25 (2001).

9. 58 O.S. §924.

10. 58 O.S. §925 (2001).

11. *Id.*

12. *Id.*

13. 58 O.S. §926 (2001).

14. *Id.*

15. *Id.*

16. 58 O.S. §924.

17. 58 O.S. §462 (2001).

18. 58 O.S. Supp. 2010 §239.

19. Various portions of this article contributed by attorney Anne Zimmermann in collaboration with Judge Linda Morrissey during her judicial internship as a law student.

20. 58 O.S. §929.1 (2001).

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.* See also 58 O.S. §462.

25. 58 O.S. §462.

26. *Id.*

27. 58 O.S. Supp. 2010 §239 (emphasis added).

28. *Id.*

29. *Id.*

30. 58 O.S. §929.2 (2001).

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*

35. *Id.*

36. *Id.*

37. 58 O.S. §929.3 (2001).

38. *Id.*

39. *Id.*

40. 58 O.S. §929.4 (2001).

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

45. 58 O.S. §929.5 (2001).

46. Terry E. Hogwood, *Title Examination: Curing Title With Affidavits*, 2009 Landman 55 (March/April 2009).

47. *Id.* at 56.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.* at 57.

ABOUT THE AUTHORS



Linda G. Morrissey is a Tulsa County district judge currently presiding over a civil docket. She has presided over probate, felony criminal, drug court, mental health and domestic violence dockets as well as family and child support enforcement dockets. During her judicial tenure, she has served as chief judge of the civil, probate and domestic dockets. She received a law degree from OU in 1980 and a master's degree in counseling from OSU in 1977.



Julie Bushyhead graduated from TU Law in May 2009 and has been licensed to practice law since September 2009. She was recently hired as a state's attorney for Oklahoma Child Support Services in Tulsa. During law school, she interned with Judge Morrissey and assisted her with various research projects and presentations on the topic of probate law. She is a member of the Tulsa County Bar Association and Hudson-Hall-Wheaton Inns of Court.



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Reviewing 2010 Technology Trends Should Make Lawyers Think About What They Need in 2011

By Jim Calloway, Director, OBA Management Assistance Program

(Author's Note: This is a follow up to last month's column titled "Reviewing 2010 Should Make Lawyers Think About the Future." There I discussed many general business trends. This month I will focus on technology trends.)

GOING MOBILE

The most significant current technology trend is easily mobile computing.

The *Wall Street Journal* ran a story this month titled "Bye-Bye, PCs and Laptops: Smartphones and tablets will soon handle the majority of our personal computing needs." (www.tinyurl.com/2anhvgs (short URL) Please note that refers to "personal" computing needs. I don't see lawyers preparing lengthy legal briefs on their smartphones this year frequently. (Although somewhere a lawyer reading-will read this who has already edited a brief or pleading on a smartphone when the day didn't go as planned.)

It does seem to me that we have reached the point where every lawyer should invest in a smartphone and learn how to use it. I made that point to

a couple of lawyers just the other day. Then while I was visiting with them, I used my iPhone several times to do what they were asking of me. (I checked my calendar, used Dragon Dictation app to dictate an e-mail to my assistant that was too long for me to phone-type and used Google voice search to locate the URL of a website we were discussing.) To me, the significance of the smartphone is the number of times a day I can just do something instead of making a note (or forgetting) to do it later.

Apps give smartphones an enormous range of flexibility. Take a few minutes to look to the great, award-winning blog iPhoneJD and the list of apps presented at ABA TECH-SHOW's 60 iPhone Apps in 60 Minutes at www.tinyurl.com/yfcb88g. For more details, see the *ABA Journal's* coverage of the presentation at www.tinyurl.com/276e6xw. Lawyers who have iPhones should consider subscribing to (or at least regularly visiting) iPhoneJD at www.iphonejd.com.

Droid phones are one alternative to the iPhone and the HTC Droid Incredible from Verizon gets great reviews. Many of you have already heard that Verizon is moving into the iPhone market as well. I know that many lawyers are quite pleased with their Blackberries as well.

Despite the *WSJ* headline above, lawyers still "go mobile" with their laptops. I think most lawyers now either have access to a laptop or use it as their primary workstation. Certainly desktops will continue to have their places in law offices (e.g. the reception desk), but there are many reasons now why a lawyer's primary workstation should be a laptop. (Note to lawyers who work in larger firms: Your IT staff does have good reasons to disagree with that observation.)

THE IPAD

By now, most readers have seen an iPad (or at least heard of them.) It seems hard to believe that the iPad was just released in April 2010. Apple sold three million of them in the first 80 days. This is truly



magazine to your iPad and carrying it (and several prior editions) everywhere with you may be worth paying for a subscription in a way that password-protected Web access to news has not seemed to be for many.

I'll devote this entire space to iPads a bit later this year.

Meanwhile, those who are interested can visit Websites like Tablet Legal by Josh Barrett (www.tabletlegal.com), Legal iPad by Niki Black (www.legal-ipad.com) and iPad Notebook by Justin Kahn (www.ipadnotebook.wordpress.com.)

DATA PROTECTION

Protection of our data should be a continuing area of focus for all lawyers, both in our personal and professional lives. Because hard drives are so cheap, it simply does not make sense to skimp on backup. At a minimum, the law firm should have two sets of data within the office and one safely stored miles away. A RAID or other redundant system works within the office for those with the ability (or staff) to set it up and maintain it.

No expertise is required for a solo practitioner with one computer to buy a portable hard drive pre-configured with automatic backup software that plugs into a USB port and works quietly in the background after it is set up. For example, our department recently purchased a one terabyte portable hard drive at Walmart for \$119 and I doubt anyone reading this has that

large a hard drive on their workstation. (A terabyte equals 1024 gigabytes.) Then an offsite backup should be done either manually or by using an online backup service like Corevault, which is endorsed by the OBA.

Automated backup processes are very important. Staff time and lawyer's time is valuable and a system that requires a few hours a week to manually do this will be quite costly over the long term. But more importantly, in a busy law firm, it is possible that the backup will not get done in the face of filing deadlines or other tasks.

There are also interesting products like rugged hard drives from ioSafe (www.iosafe.com) that are crush-proof, waterproof and fire-proof (up to 1550°F for half an hour.) The company recently announced a portable rugged hard drive at the Consumer Electronics Show. If you decline to backup data offsite, then this may be a product for you.

WINDOWS 7

In 2010, I moved to Windows 7, which was a great relief. I hated the early versions of Vista with a passion and still do not like it. I really did not care much about operating systems. I just wanted an OS to run my applications. But Windows 7 delivers on the broken promises of Vista. If you have a relatively new computer with Win XP, you can upgrade, but it is not easy because a removal of the old OS and a clean install is required. If you have an old computer with XP, it probably makes more sense just to buy a new PC with Windows 7 preinstalled.

a game-changer in personal technology use. It will not surprise me to see this growth continue and many people carrying iPads or the newly released competitors, instead of laptops or netbooks very soon. I am a bit biased against some of the early competitors for lawyer use because they have seven-inch displays rather than 10-inch displays. A 10-inch display does a much better job of displaying 8 1/2" by 11" documents if you want to hand it to a client or judge.

It is becoming clear to me that trial lawyers are going to appreciate the iPad in the courtroom because it can easily be held in one hand or placed on the podium while questioning a witness as opposed to even the smallest netbook. They provide a digital substitute to the traditional legal pad when apps are installed that lets one do annotations on the fly.

The first time reading an iPad-optimized newspaper or magazine is quite an experience, with videos and links to websites seamlessly woven in. The iPad may be the advance that saves the newspaper industry because downloading the entire newspaper or

I won't go into all of the great features here, but the federated search is really impressive, particularly for those who never used a third party desktop search tool like X1 or Copernic. Pinning the most commonly used applications to the Taskbar is a nice timesaver. Even the old Windows Calculator has received a face lift. Now it does many kinds of unit conversions (temperature, weight, area and eight others), date calculations and amortization of loans.

I might not be using Windows 7 yet if OBA Executive Director John Morris Williams had not asked me to do a presentation on it at the annual meeting of the National Association of Bar Executives in August 2010 with Catherine Sanders Reach of the ABA Legal Technology Resource Center and Nerino J. Petro Jr., the Practice Management Advisor for the Law Office Management Assistance program of the State Bar of Wisconsin. As a result of that presentation Nerino prepared a blog post, Windows 7 Resource Links that are Useful, which is online at www.tinyurl.com/2935cjy. I strongly suggest you visit that resource.

There is also a nice collection of articles in the *PC World* Windows 7 Center (www.pcmag.com/Windows_7) with numerous free articles like "10 Tips That Make Windows 7 Simpler" and "Windows 7: The Top 10 Hidden Features."

Pennsylvania-based practice management advisor Ellen Freedman points us to a free 50-page guide to Windows 7 from Gizmo at www.tinyurl.com/2amvdgl. Those consid-

ering a move to Windows 7 will also want to read Scott Basset's post on why one should probably buy Windows 7 Professional instead of home premium at www.tinyurl.com/3xgjozu.

ADOBE ACROBAT X

The newly-released Adobe Acrobat X was just named Best Business App of the year by *PC Magazine*. See link to the story under "More Products" below. The article said, "Adobe Acrobat is the leading software for creating, reading and managing PDF documents and is now truly the best due to the latest improvements to speed and the interface, not to mention powerful automation features and the ability to gather data from PDF forms."

It won't be too long before many law firms are routinely sending out PDFs to clients for them to complete in Adobe Reader and return. Then the law firms can extract the answer out for uses within the law firm without having to re-enter the information. I have not tried Adobe X, but reviewers say that lawyers will appreciate the improved PDF to Microsoft Word conversion tools.

LOCATION-BASED SERVICES

An interesting issue that will impact our professions is the rise of location-based social networking services like Yelp and FourSquare and the addition of location based services to Facebook and Twitter. We will see lots of interesting situations over the next few years where an individual's location is sought to be proven or disproven by the location of their check-ins, their phones, the cell towers

their phones hit or the geo-tags in photos that they have taken.

With iOS 4 for the iPhone, one no longer has to pay an annual fee for MobileMe to be able to track their lost iPhone from their computer. This will be a great assistance in retrieving lost phones, and there has already been one online account of someone who used this feature to harass a thief into returning the iPhone by sending "I know where you are" messages and using Google Maps to send the phone photos of the apartment complex where the thief apparently lived.

It will not be long before family lawyers start hearing from potential clients who used this feature installed on the home computer to track errant spouses as well.

COMPUTING IN THE CLOUD

Cloud computing is a very hot topic. OBA Ethics Counsel Travis Pickens had a nice article on the ethics of lawyers using cloud computing in the November 2010 *Oklahoma Bar Journal* and we heard from Jack Newton, the CEO of the company that produces the cloud computing law practice management solution Clio at the 2010 OBA Solo & Small Firm Conference.

Dropbox.com is one cool, free tool for online document storage and synchronization that I started using last year, and now I keep asking myself why I took so long to try it out. This article was written partially on my laptop at work and partially on a different laptop at home. It was nice to know that, thanks to Dropbox, I was always working on the current version of

the document, no matter where I was located.

It is easy to predict that we will be hearing a lot more about cloud computing this year.

SOCIAL NETWORKING SERVICES

A popular movie dramatized the birth of Facebook this past year. More and more people are using social networking services for business and pleasure. Many people now post to their social networking accounts from their phones. According to several accounts, based on Website visits, social networking is

now the number one Internet activity. More lawyers now hear from their clients about perceived wrongs and evidence that has been posted online. For the first time last year, I heard a lawyer say in an OBA committee meeting, "I'll take care of that. I'll face-book it."

MORE PRODUCTS

For more technology products that you might find of interest, see *PC World's* "Best Tech Products 2010." The full list of 100 is online at www.tinyurl.com/27n9mbf.

CONCLUSION

By most any measure, 2010 was a year of many developments in how we all use technology and a year that saw many exciting new products released. With the anticipated release of the second generation iPad and a number of new smartphones along with other developments that are anticipated to be announced soon, I would bet on 2011 having even more big news on the technology front.

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File Retention Guidelines

Rules for Document Retention

By Gina Hendryx, OBA General Counsel

A commonly asked question is how long should I maintain a closed file? Unfortunately, there is no hard and fast answer to this question. Most state ethics committees agree that lawyers are not obligated to keep client files indefinitely. However, most jurisdictions concur that “clients and former clients reasonably expect from their lawyers that valuable and useful information in the lawyer’s files, and not otherwise readily available to the clients, will not be prematurely and carelessly destroyed.” ABA Standing Committee on Ethics and Professional Responsibility, Informal Op. 1384 (1977).

The Oklahoma Rules of Professional Conduct (ORPC) does not provide specific direction or guidelines on the subject of file retention. However, ORPC 1.15(a) does require that complete records of client account funds and other client property be kept for five years after termination of the representation. A good general office policy for file retention would be the five year rule imposed on trust account records. However, the length of time that a file should be retained may

depend on the type of case and/or the contents of the file. For example:

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

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

WHAT SHOULD I RETAIN FROM A CLIENT’S FILE?

All lawyers and law firms should implement a written file storage, management and retention policy and should follow the policy uniformly.

Considerations for the retention policy would include:

- 1) Files will be maintained only for a specified period of time.
- 2) Original documents will be returned to the client upon conclusion of the representation.
- 3) The client may have the file upon expiration of the time period.
- 4) If not retrieved by the client, the file will be destroyed once the time period passes.
- 5) Clients should be sent a closing letter notifying them of their right to take any documents not previously furnished to them and advising them of the date that the file documents will be destroyed.
- 6) The law firm’s file retention policy should be set out in the retainer agreement.

HOW SHOULD I DISPOSE OF A CLIENT’S FILE MATERIAL?

A lawyer must protect a client’s confidences when disposing of file contents. This generally means that the file must be shredded or incinerated. Care should be taken if these tasks are contracted to

outside companies. The lawyer should ensure that documents are disposed of without review by the contractor's employees or others. You should consider retaining an index of destroyed files, copies of your retainer agreement as well as a closing letter or other correspondence which notifies the client of your file retention policy.

With office space at a premium and offsite storage costs

ever increasing, a good document retention and destruction policy is a must for today's practitioner. Uniformity and good common sense should provide answers to most dilemmas that arise.

MAY I STORE FILE MATERIAL ELECTRONICALLY?

There is no requirement that you must maintain a "paper" file. If you have gone to a

paperless office or are just trying to cut down on the mountain of paper, it is proper to store file material electronically. The key is to be sure and "back up" your files. It is best to do so offsite. In the case of a computer failure, you will be able to access all electronically stored information.



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November Meeting Summary

The Oklahoma Bar Association Board of Governors met at the Crowne Plaza Hotel in Tulsa in conjunction with the OBA Annual Meeting on Wednesday, Nov. 17, 2010.

REPORT OF THE PRESIDENT

President Smallwood reported that he has worked on the final details of the Annual Meeting to be held in Tulsa.

REPORT OF THE PRESIDENT-ELECT

President-Elect Reheard reported she attended the Lawyers Helping Lawyers Assistance Program training session at the bar center, Military Assistance Task Force meeting, Unauthorized Practice of Law Task Force special committee meeting via teleconference, Tulsa Veterans Day parade and the funeral of Justice Opala. She also met with Executive Director Williams and staff on 2011 presidential initiatives and with representatives of Pros 4 Vets regarding OBA involvement. She launched the "Oklahoma Lawyers for America's Heroes" program on Veterans Day.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported that he attended the Military Assistance Task Force meeting, Unauthorized Practice of Law Task Force meeting, Annual Meeting planning meeting, National Association of Bar Executives board meeting, Board of Bar Examiners dinner, Judge

Worthington's retirement dinner in Stillwater and monthly staff celebration.

REPORT OF THE PAST PRESIDENT

Past President Parsley reported he attended the October board meeting, Professional Responsibility Commission meeting and two meetings of the Texas County Bar Association.

BOARD MEMBER REPORTS

Governor Brown reported he attended the OBA Bench and Bar Committee meeting, Legal Aid Services of Oklahoma Core Services meeting, Access to Justice Committee meeting, ABA Standing Committee on Federal Judicial Improvements meeting in Philadelphia and the OBF Nominations Committee meeting and External Relations Committee meeting. He attended the OBA Pro Bono Summit and served as facilitator for all joint sessions. **Governor Carter** reported she attended the OBA Military Assistance Task Force meeting via video conferencing, October meeting of Tulsa County Bar Association Board of Directors, meeting of coaches of Lakeside Mock Trial Team, Tulsa County Bar Association Community Outreach Committee and Tulsa County Bar Association Judicial Candi-

dates Forum. She also participated in a conference call with the Tulsa County Bar Association Community Outreach Committee, was a panel participant in Johnson/Sontag American Inns of Court — forms of municipal government, gave a presentation to TAPA — topic of "Transparency in Local Government" and worked on the Tellers Committee for the OBA Annual Meeting.

Governor Chesnut reported he attended the October Board of Governors meeting and evening event, OBA Diversity Committee meeting and the Ottawa County Bar Association meeting.

Governor Devoll reported he attended the October board meeting and Garfield County Bar Association November meeting. He worked on the reception for retiring Judge Ron Franklin. **Governor Dobbs** reported he attended the October board meeting and was a guest speaker for District Judge Barbara Swinton's OCU law school class on alternative dispute resolution, professionalism and service to the bar association. **Governor McCombs**, unable to attend the meeting, reported via e-mail that he attended the October social event and board meeting and the McCurtain County Bar Association luncheon and

CLE. **Governor Poarch** reported he attended the Kuntz Oil and Gas Conference, municipal judges meeting and the Bohanon American Inn of Court. **Governor Shields** reported she attended the October board meeting, October Oklahoma County Bar Association meeting that included a presentation of resolutions to OCBA delegates and Justice Opala's funeral service. **Governor Stuart** reported he attended the October board meeting, OBA Pro Bono Summit and the OBA Communications Committee meeting.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Aspan reported the division is holding a past chair reception at the Annual Meeting for the first time in many years and will be honoring YLD friends and fellows. She invited board members to attend.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported the Professional Responsibility Commission

has been busy, and she briefed the board on the activity. Past President Parsley complimented her on doing an excellent job in reorganizing the department. A written status report of the PRC and OBA disciplinary matters for October 2010 was submitted for the board's review.

RENEWAL OF ABA RETIREMENT AGREEMENT

ABA Retirement Fund Representative Jessica Young reviewed information about the membership benefit. Executive Director Williams recommended the three-year agreement be renewed, and the board concurred. It was noted the executive director is authorized to sign contracts.

OBA STRATEGIC PLAN

President-Elect Reheard reviewed the recommendations of the Strategic Planning Committee. She reported the plan will undergo a rewrite in a different format next year with a checklist component and assignments for each governor. The board

approved the committee recommendations.

PROPOSED ALLIANCE WITH PROS 4 VETS

President-Elect Reheard reported Oklahoma City attorney Reggie Whitten is starting an organization to benefit veterans, and she recommended working with them to support each organization's efforts. The board approved entering into an association with the Pros 4 Vets program, which will be an informal association and not a formal, legal partnership.

EXECUTIVE SESSION

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

NEXT MEETING

The Board of Governors met in Oklahoma City on Dec. 17, 2010, and Jan. 14, 2011, and a summary of those actions will be published after the minutes are approved. The next meeting of the Board of Governors will be Feb. 17-19, at the Post Oak Lodge near Tulsa.

Q&A with Oklahoma Bar Foundation President John D. Munkacsy Jr.

WHEN DID YOU FIRST GET INVOLVED WITH OBF?

I became a Fellow of the foundation when invited to join by colleagues during the 1998 Annual Meeting. I was then appointed to the board as a Trustee in 2002. In 2004, I became a Benefactor Fellow, which was the charter year for the new leadership category. In 2008, I became an officer after having chaired the OBA Grants and Awards Committee for three years. I have had the amazing opportunity to personally be involved with grantees and all of the great work they are able to accomplish with minimal resources.

WHY IS OBF SUCH A VALUABLE ASSET TO LEGAL SERVICES AND OTHER LAW-RELATED PROGRAMS IN OKLAHOMA?

A review of the historical roster of the OBF grant recipients is the beginning point to develop an understanding of the foundation's importance in ensuring legal service when there is great need and where law-related education programs help create useful citizens. Oklahoma attorneys are doing great things in Oklahoma through the Oklahoma Bar Foundation and all attorneys should support the good works of the foundation.

WHAT ARE YOUR GOALS AS OBF PRESIDENT?

This year promises to bring OBF the fruition of projects that have been the subject of hard work by the board over the last few years. The OBF will soon be unveiling our own website as well as other social media outlets such as Facebook and Twitter. These attributes will be of great assistance in our communication with members, grant recipients and the public. We proceed to continually implement the OBF's strategic plan. And as always, we will promote greater participation and incentives in our Fellows program with a variety of strategies.

We are fortunate to have a tremendous 2011 Board of Trustees that continue to tirelessly give their time to the OBF.

Members of the 2011 Executive Committee are: John D. Munkacsy Jr., president, Lawton; Shon T. Erwin, president-elect, Lawton; Susan B. Shields, vice president, Oklahoma City; Dietmar K. Caudle, secretary/treasurer, Lawton and Phil Frazier, past president, Tulsa.

Other members of the 2011 Board of Trustees are:



*John D. Munkacsy Jr.
2011 OBF President*

A. Gabriel Bass, El Reno; Stephen D. Beam, Weatherford; Jack L. Brown, Tulsa; Brett D. Cable, McAlester; Cathy M. Christensen, Oklahoma City; Judge Valerie Couch, Oklahoma City; Jack S. Dawson, Oklahoma City; Kevin R. Donelson, Oklahoma City; Robert S. Farris, Tulsa; William E. Farrior, Tulsa; Leonard M. Logan IV, Vinita; Michael C. Mordy, Ardmore; Brooke Smith Murphy, Oklahoma City; Judge Millie E. Otey, Tulsa; Deborah A. Reheard, Eufaula; Briana J. Ross, Tulsa; Alan Souter, Tulsa; Dennis A. Smith, Clinton and John Morris Williams, Oklahoma City.

WHAT DO YOU THINK PEOPLE SHOULD KNOW ABOUT THE OBF THAT THEY PROBABLY DO NOT?

It is a qualified charity that funds services and programs not just for lawyers, but for many diverse organizations

(legal services and law-related programs) benefitting communities statewide in Oklahoma. Each year the OBF is able to maximize our funding through non-profit organizations that utilize pro bono legal services of lawyers and other professionals. Lawyers were able to help 23 different law-related charitable programs this past year through their annual Fellows contribution. OBF should be a favorite charity for any individual or group.

DISCUSS THE IMPORTANCE OF THE FELLOWS PROGRAM AND WHY EVERY OKLAHOMA ATTORNEY SHOULD BECOME A FELLOW.

The Mission Statement of the Oklahoma Bar Foundation is, "Lawyers Transforming Lives through the advance-



Trustees at the feet of "Lady of Justice"

ment of education, citizenship and justice for all." The OBF's stated purpose is to "promote justice, fund essential legal services and advance public awareness of the law." Easily, every Oklahoma lawyer can stand behind OBF's mission and purpose. Indeed, I believe Oklahoma attorneys should personally support these concepts. The cost of becoming a Fellow is \$1,000 payable over

a 10-year period and is discounted for newly admitted attorneys. \$100 per year is an insignificant expense for almost any lawyer and yet only about 10 percent of our attorneys are Fellows. Just think how much more we could accomplish in our grants if every Oklahoma attorney was a Fellow, or even better, a Benefactor Fellow!

Nancy Norsworthy is the director of the foundation and IOLTA programs and is responsible for the daily operation of the OBF. Nancy and staff members Tommie Lemaster and Ronda Hellman are available to answer any questions regarding the OBF 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.



From left: Tommie Lemaster, Ronda Hellman and OBF Director Nancy Norsworthy



FELLOW ENROLLMENT FORM ☐ Attorney ☐ Non-Attorney

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

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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**.

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___ \$100 enclosed & bill annually

___ Total amount enclosed, \$1,000

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

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- ∞ 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# _____

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Many thanks for your support & generosity!

Working Together for Good: Oklahoma Lawyers for Heroes and Pros 4 Vets

Military men and women make sacrifices for their country every day, yet they often face numerous challenges related to their service before, during and after their deployment. "Pros 4 Vets" is an Oklahoma-based organization created to help meet the growing need for resources to help service members with those challenges. The non-profit group, co-founded by Oklahoma City attorney Reggie Whitten, harnesses the power of star professional athletes, musicians and other celebrities to spotlight the difficult issues service members face. The Oklahoma Bar Association will begin working with Pros 4 Vets this year to spread the word about its new legal assistance initiative, "Oklahoma Lawyers for America's Heroes."

Reggie Whitten told the OBA, "In talking with our friends Toby Keith, Roy Williams and Tommie Harris, among others, it became apparent to us that our veterans have significant needs that are not being met. One of the biggest needs we saw was for legal assistance. We as Americans owe it to our veterans to take care of them because they put their lives

on the line to protect our freedoms and as lawyers, we should use our talents to serve the needs of those men and women who keep this country safe."

Mr. Keith, Mr. Williams and Mr. Harris are among the co-founders of Pros 4 Vets. Mr. Keith is best known for his career as a country singer,



and Mr. Williams and Mr. Harris are both former University of Oklahoma football standouts currently playing in the NFL. Mr. Whitten said, "Everyone knows that Toby Keith is a big supporter of our veterans, but I don't think everyone knows how many times he has gone overseas to

visit our men and women in uniform. The man has even taken fire and risked his life to boost morale among our troops. Toby, Roy and Tommie could be doing anything, anywhere, but they are choosing to support this cause. I think it is really incredible." Retired Major General and newly appointed Secretary of Veterans Affairs Rita Aragon and State Senator Steve Russell are also working with the group.

OKLAHOMA LAWYERS FOR AMERICA'S HEROES

OBA 2011 President Deborah Reheard of Eufaula has made assisting military members and veterans with their legal obstacles her top priority for her term as president. She explains it is important to work with organizations like Pros 4 Vets in order to reach as many service men and women as possible.

Ms. Reheard said, "People don't always want to hear attorneys and doctors and dentists talk about what we need to do for our veterans. They want to hear somebody with celebrity status. The football stars and entertainers will be the megaphone, but

we will be the professionals standing behind them ready to assist our veterans with their issues.”

Ms. Reheard believes the bar has done a decent job assisting veterans so far, but says a better effort can be made this year through the alliance with Pros 4 Vets.

“I saw so many people coming in to my office, and you could trace their legal problems back to their military service,” she said. “They sacrifice on so many different levels, dealing with family challenges, their children, even criminal issues. My term as president just happened to coincide with a year Oklahoma will send 4,000 troops to Afghanistan. We need to take care of them while they are there and when they come back. We also need to take care of all those who have gone before them, going all the way back to World War II. It’s just the right thing to do.”

PROS 4 VETS STEPPING UP

Mr. Whitten said, “Pros 4 Vets and the Oklahoma Bar Association share a common interest in helping provide free legal services to our veterans. Pros 4 Vets will bring the media attention needed to the cause through its high profile professional entertainers and will also provide a great deal of support and manpower to the program. The bar has the ability to plug directly into the legal community and get attorneys signed up to help. It really is a win-win situation, and I am so pleased that the bar is willing

to work with us on this important project.”

Mr. Whitten believes Pros 4 Vets and the Bar Association are already working very well together, and says that is due to the leadership of both organizations, including the OBA’s Military Assistance Task Force, the group working to launch Oklahoma Lawyers for America’s Heroes.

“From the beginning, she had the vision of how Pros 4 Vets and the bar would work together on this project, and it has worked beautifully.”

“Deborah Reheard has taken the initiative to get this program up and running,” Mr. Whitten said. “From the beginning, she had the vision of how Pros 4 Vets and the bar would work together on this project, and it has worked beautifully. Pros 4 Vets could not do this without the bar and her leadership and passion. In addition, attorney Lauren Guhl is serving full time as the executive director of Pros 4 Vets. Lauren’s father was a two-time Vietnam vet, who was shot

down over the jungle and survived only to later die in a training exercise in 1987. Lauren had a very successful law practice, but because this cause is so close to her heart, she chose to leave that all behind to make this a priority. In my opinion, Lauren was born and bred to help veterans. She and President Reheard are already working very closely together to make this program a success. Pros 4 Vets is putting a great deal of resources behind this program and will play a major role in the administration and support for the effort.”

In the upcoming year, plans to expand the program include several events as well as a memorial project to honor Oklahoma’s heroes who did not make it home to enjoy their freedoms. With more and more celebrity spokespersons signing on every day, Pros 4 Vets is gaining momentum and will only grow from here. Mr. Whitten said, “I am so excited that we are starting this legal assistance program here in Oklahoma, but I think once we get it up and going, we are going to make Oklahoma the model for the nation. I firmly believe that Pros 4 Vets will become a major player in helping veterans all over the country, and we are proud to work with the OBA to make that happen.”

More information about Pros 4 Vets can be found online at www.pros4vets.org. To volunteer legal services to a military member in need, visit www.okbar.org/heroes.

Pro Bono Summit Produces Ideas

By Judith Maute

On Oct. 29, 2010, the inaugural "Key Stakeholders Pro Bono Summit" gathered together over 50 Oklahoma judges, bar leaders and practitioners to brainstorm about specific ways to improve access to justice in civil matters statewide. By all accounts, it was a grand success, bringing together the wisdom, energy and enthusiasm of many who care deeply about the quality of affordable justice to Oklahomans of low and moderate incomes. After working several years on various issues, the OBA Access to Justice Committee determined that the only way to make real progress was through statewide collaboration with others.

Participating in the summit were representatives of the bench and bar, the executive branch, law schools and low-income legal service providers. The committee gratefully acknowledges the support and assistance of 2010 OBA President Allen Smallwood, Executive Director John Williams, and sponsorship by the Board of Governors, Legal Aid Services of Oklahoma Inc., the University of Oklahoma College of Law and Oklahoma City University School of Law. Further thanks are due each of the committee members who worked tirelessly to make the summit happen and prepare supporting materials, to the

break-out moderators and the student scriveners. The Summit, held at the OU College of Law, was planned in conjunction with the National Celebration of Pro Bono Week.

Colorado Supreme Court Justice Gregory Hobbs delivered the keynote address, "Access to Justice: The Single Most Compelling Reason for a Legal Profession." Justice Hobbs is a leader in pro bono development and access to justice issues; the Colorado Supreme Court has established programs to encourage pro bono and limited scope representation by lawyers and provides statewide forms available for use by pro se litigants. Retired Oklahoma County Judge James Paddleford was honored for his trailblazing pro bono activities, which include preparing easily accessible forms for simple guardianships and appearing weekly at the Oklahoma County Courthouse to provide information about the legal process to obtain guardianships for minor children.

OBA Bench and Bar Committee Co-chair Jack Brown moderated the afternoon's plenary sessions. The opening plenary provided guidance on the summit's objectives, asking the five break-out groups to discuss and formulate concrete action plans on their areas of focus. Following hour-

LEGAL AID LAUNCHES STATEWIDE PHONE LINE TO APPLY FOR LEGAL SERVICES

Legal Aid Services of Oklahoma Inc. has launched its first statewide phone line to better serve the increasing number of low-income and elderly Oklahomans facing civil legal problems.

The number to call to apply for services is (888) 534-5243. Callers need to leave a brief message about their legal issue as well as their name and phone number. Most callers will receive a call back within one day to determine eligibility for services, and all callers will be called back within three days.

Legal Aid's statewide application line (888) 534-5243 is the point of entry for all clients including senior law project applicants. After clients are deemed eligible for Legal Aid's services, based on their income, assets and type of legal problem, their cases will be referred to one of Legal Aid's 21 local offices for service.

Legal Aid Services of Oklahoma is a not-for-profit law firm which provides free civil legal assistance to eligible low-income individuals and their families and to elderly persons in the areas of family, consumer, housing, health and employment. Legal Aid attorneys and staff work through a network of fully-staffed law offices and satellite offices, serving eligible clients in all 77 counties of Oklahoma.

Funding for Legal Aid is from the Legal Services Corporation, the state of Oklahoma, the Oklahoma Bar Foundation, 15 United Way or United Fund organizations and generous attorneys, law firms, foundations, businesses and individuals throughout the state contributing to the Campaign for Justice.

long break-out sessions, the plenary reconvened to hear and process reports from the small groups. A second round of break-out sessions refined those action plans, which are now being finalized by the moderators and their student assistants. Watch for news of electronic posting of these group summaries and the supporting conference materials. The five break-out groups and their tentative action items are summarized below.

Group 1: Educating the public about the law and how to access courts. **Actions:** demystify the legal profession and legal system; create and make readily available public information about the legal system.

Group 2: Permissible judicial encouragement of pro bono work. **Actions:** encourage adoption of proposed Code of Judicial Conduct and Rule 3.7(b) and amendment to Rule of Professional Conduct 6.1; identify permissible innovations by trial and appellate courts; develop mainstream judicial and lawyers' continuing education on access to justice and pro bono activities; pursue malpractice insurance coverage without charge for all lawyers doing pro bono work.

Group 3: Partnering activities by courts, the bar, law schools and civil service providers.

Actions: share databases; improve outreach to generate excitement and information about pro bono work/opportunities/recognition among students, practicing and non-practicing lawyers; reduce cost for out-of-state students to become licensed legal interns and encourage private attorneys to make pro bono work available for interns; improve communication among stakeholders.

Group 4: Ethical and practical consideration of pro se forms and clinics that help with forms.

Goals: produce or update forms for use by unrepresented persons; expedite resolution of uncontroversial issues; streamline for economy of judicial involvement. **Short-term actions:** identify substantive legal issues appropriate for use of forms; identify and involve cooperation of relevant stakeholders in production and guidance for use of forms. **Long-term actions:** monitor and update for quality forms, measure utility.

Group 5: Ethical and practical issues on unbundled legal services (discrete task representa-

tion). **Action:** review and revise draft proposed changes to relevant rules and comments (Rules of Professional Conduct and Rules of Civil Procedure) and user-friendly forms on notice and consent to limited scope representation; develop in conjunction with e-filing proposals, emphasizing benefits of cost-savings to courts, service-providers and consumers; judicial education.

The summit energized many in attendance, who, we hope, will carry forward and work on implementing the goals, short term and long term action items. To make the dreams a reality, more foot soldiers are needed to do the hard work of implementation. If any of the break-out topics and action items trigger your interest, please contact the ATJ Committee, indicating your specific area of interest. Stan Evans and Jim Stuart are the 2011 chairpersons. You can contact them at stanevans@ou.edu and jim@scdtlaw.com

Judith Maute served as vice-chair of the Access to Justice Committee in 2010. She is a professor at the University of Oklahoma College of Law.

YLD to Continue Dedication to Public Service

By Roy D. Tucker, YLD Chairperson

Two of the more important goals of any incoming chairperson of the YLD should be to be an active and able resource for the president in any of her chosen endeavors, and to not embarrass yourself by failing to match the efforts of your predecessors in the YLD legacy. It is from this second goal that I write this article.

2011 promises to be an exciting year, both for our usual fun and frivolity, and for the intense and rewarding work I have planned for the year. I am truly fortunate to have the opportunity to lead so many incredible lawyers — lawyers who serve not only as officers and directors of the YLD, but also as committee chairs and liaisons to OBA committees. They have most certainly risen to the challenges of implementing (and carrying out) our major public service projects this year.

At the onset, we were honored to answer President Reheard's call in assisting the Oklahoma Lawyers for America's Heroes initiative. We are working diligently to prepare legal handbooks to assist volunteer lawyers of the initiative in helping them to provide the highest quality legal advice, and also direct

resource handbooks to be distributed to veterans and active members of the armed services. These handbooks will be first circulated at the Feb. 25 military assistance training CLE, and will be available for further distribution at county law libraries, as well as, the bar center.

“If you want to become involved in the YLD or have any questions or ideas, please do not hesitate to contact me...”

In the face of the Oklahoma National Guard deployment this spring, the YLD will also prepare care packages to send to our servicemen. These “Desert Survival Kits” will be similar to the “Bar Exam Survival Kits” that the YLD has distributed to bar takers over the years, and will contain some of the necessary conveniences of home, such as socks, hand wipes, fingernail clippers and the like. If our efforts can provide even the



Roy D. Tucker
2011 YLD Chair

smallest comfort to our servicemen, our purpose will have been met.

On three “work days” following our March, April and September YLD monthly meetings, members will volunteer their time and skills for the Serving Our Seniors (S.O.S.) project. The S.O.S. is a national public service project created by the ABA YLD which, through affiliates such as the OBA YLD, provides low-income senior citizens with legal advice regarding basic estate plans, such as powers of attorney for health-care and property, living wills and simple wills.

In May, the YLD will host its second statewide community service project. Each director in his or her respective district will be responsi-

ble for sending out the call to other local young lawyers to gather together at homeless shelters across the state to help with a “done in a day” project. These projects can range from cleaning and painting to mowing and landscaping. This type of state-wide project was first implemented by Immediate Past-Chairperson Molly Aspan last year and drew accolades from local libraries who were the first beneficiaries.

Throughout the year, the YLD will also be entering the classroom through our Children and the Law Committee by providing information to teens on the legal responsibilities that come with adulthood. Financial responsibility, landlord-tenant rights and obligations of signing a contract are some of the topics that will be addressed.

A new edition of the *Seniors Handbook* will also be out this year.

Of course, our suites still promise to be unforgettable.

If you want to become involved in the YLD or have any questions or ideas, please do not hesitate to contact me at RTucker@muskogeeonline.org or (918) 684-6276. I am looking forward to working with many of you this year and am excited about what lies ahead.

Family & Divorce Mediation Training

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OKC • February 2 - 5



Approved for 40 hours of MCLE credit

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James L. Stovall, Jr.
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Oklahoma City, OK 73142



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Calendar

January

- 17 OBA Closed** – Martin Luther King Jr. Day Observed
- 18 OBA Bar Center Facilities Committee Meeting;** 2 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Judy Hamilton Morse (405) 235-7759
- 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
- 19 Oklahoma Council of Administrative Hearing Officials;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Carolyn Guthrie (405) 271-1269 Ext. 56212
- OBA Women in Law Committee Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Deborah Bruce (405) 528-8625
- 20 OBA Bench & Bar Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Barbara Swinton (405) 713-7109
- OBA Bar Association Technology Committee Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Gary Clark (405) 744-1601
- 21 Oklahoma Bar Foundation New Trustee Orientation;** 10:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Nancy Norsworthy (405) 416-7070
- Oklahoma Bar Foundation Trustee Meeting;** 1 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Nancy Norsworthy (405) 416-7070
- OBA Unauthorized Practice of Law Meeting;** 1:30 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact: Deborah Reheard (918) 689-9281
- 22 OBA Law-related Education We the People State Finals;** 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jane McConnell (405) 416-7024
- 24 OBA Alternative Dispute Resolution Section Meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: D. Michael O'Neil Jr. (405) 239-2121
- 26 OBA Professionalism Committee Meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Patricia Podolec (405) 760-3358

- 27 OBA Legal Intern Committee Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact: H. Terrell Monks (405) 733-8686
- 28 Association of Black Lawyers Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Donna Watson (405) 721-7776
- OBA Lawyers Helping Lawyers Assistance Program Training;** 12 p.m.; Tulsa County Bar Center, Tulsa; Contact: Tom Riesen (405) 843-8444



February

- 1 Death Oral Argument;** James Allen Coddington; 10 a.m.; Court of Criminal Appeals Courtroom
- OBA Law-related Education Committee Meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Reta Strubhar (405) 354-8890
- 3 OBA Mock Trial Committee Meeting;** 5:45 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact: Contact: Judy Spencer (405) 755-1066
- 4 Oklahoma Bar Foundation Grants and Awards Committee Meeting;** 8:30 a.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact: Nancy Norsworthy (405) 416-7070
- OBA Board of Editors Meeting;** 2 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Carol Manning (405) 416-7016

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

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

15 **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

16 **OBA Law-related Education Close-Up;** 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jane McConnell (405) 416-7024

OBA Bench & Bar Committee Meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Barbara Swinton (405) 713-7109

OBA Women in Law Committee Meeting; 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Deborah Bruce (405) 528-8625

OBA Professionalism Committee Meeting; 4 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Patricia Podolec (405) 760-3358

17 **OBA Law-related Education Close-Up;** 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jane McConnell (405) 416-7024

OBA Law-related Education Close-Up Teachers Meeting; 1:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jane McConnell (405) 416-7024

OBA Bar Association Technology Committee Meeting; 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Gary Clark (405) 744-1601

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

OBA President's Summit; Post Oak Lodge, Tulsa; Contact: John Morris Williams (405) 416-7000

18 **OBA Board of Governors Meeting and President's Summit;** 9 a.m.; Post Oak Lodge, Tulsa; Contact: John Morris Williams (405) 416-7000

Association of Black Lawyers Meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Donna Watson (405) 721-7776

19 **OBA President's Summit;** Post Oak Lodge, Tulsa; Contact: John Morris Williams (405) 416-7000

OBA Young Lawyers Division Committee Meeting; 10 a.m.; Tulsa County Bar Center, Tulsa; Contact: Roy Tucker (918) 684-6276

21 **OBA Closed** – President's Day Observed

22-25 **OBA Bar Examinations;** Oklahoma Bar Center, Oklahoma City; Contact: Oklahoma Board of Bar Examiners (405) 416-7075

25 **OBA Lawyers Helping Lawyers Assistance Program Training;** 12 p.m.; Tulsa County Bar Center, Tulsa; Contact: Tom Riesen (405) 843-8444

28 **OBA Alternative Dispute Resolution Section Meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: D. Michael O'Neil Jr. (405) 239-2121

March

4 **OBA Lawyers Helping Lawyers Assistance Program Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Donita Douglas (405) 416-7028

7 **Supreme Court Teacher and School of the Year Award Ceremony;** 2 p.m.; Supreme Court Courtroom, State Capitol; Contact: Jane McConnell (405) 416-7024

8 **OBA Day at the Capitol;** 8:30 a.m.; Oklahoma Bar Center, Oklahoma City and State Capitol; Contact: John Morris Williams (405) 416-7000

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

15 **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

16 **Oklahoma Council of Administrative Hearing Officials;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Carolyn Guthrie (405) 271-1269 Ext. 56212

OBA Women in Law Committee Meeting; 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Deborah Bruce (405) 528-8625

OETA Festival Volunteer Night; 5:45 p.m.; OETA Studio, Oklahoma City; Contact: Jeff Kelton (405) 416-7018



Gurich Appointed to Supreme Court

Judge Noma Gurich was recently appointed to serve as justice for the Oklahoma Supreme Court. Judge Gurich, who currently serves as a district judge in Oklahoma County, will replace Justice Marian Opala, who passed away late last year.

She is only the third woman in state history to be appointed to the Supreme Court. She was appointed by former Gov. Brad Henry in one of his last official acts before leaving office this month, and she was his record-setting sixth appointment to the high court.

"This was an extremely difficult decision because all of the candidates are well respected and highly qualified," Henry said. "I could not go wrong selecting any one of the nominees, but I could only choose one, and in the final analysis, I felt Noma Gurich had the best qualifications and experience to serve on the state's highest court."

"During her distinguished legal career, Judge Gurich has compiled an exemplary record of service on the bench and has consistently demonstrated the judicial temperament and intellect necessary to be an outstanding Supreme Court justice. I know she will perform her new duties with great professionalism and integrity, and I greatly appreciate her willingness to serve."

Judge Gurich has been a district judge in Oklahoma County since 1998 and acted as presiding judge from 2003-2004. She has also overseen the multi-county grand jury. Additionally, she served on the Oklahoma Workers Compensation Court for 10 years and worked in private practice.

Judge Gurich holds a bachelor's degree from Indiana State University and a law degree from the University of Oklahoma College of Law. She resides in Oklahoma City with her husband.



Judge Noma Gurich



Justice Combs Sworn In

Oklahoma Supreme Court Chief Justice Steven Taylor (left) administers the oath of office to Justice Douglas Combs of Shawnee on Jan. 7. Justice Combs succeeds Justice Rudolph Hargrave in representing Supreme Court Judicial District Eight. (Photo credit: Legislative Service Bureau Photo Dept.)

OBA Member Resignations

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

Jerrold Abramowitz
OBA No. 13963
1 Indiana Square, Suite 1400
Indianapolis, IN 46204

Amy Clarise Ashworth
OBA No. 22390
6 Prospect Ave.
Randolph, VT 05060

Kevin C. Danielson
OBA No. 12258
U.S. Attorney's Office
1000 S.W. Third Avenue
Portland, OR 97204-2902

Karen Sue Evans
OBA No. 13875
P.O. Box 2274
Oklahoma City,
OK 73101-2274

Albert M. Hassler III
OBA No. 20011
1445 N. Loop West, Suite 700
Houston, TX 77008

Linda Cole McGowan
OBA No. 5996
2404 S. Utica Ave.
Tulsa, OK 74114

Cindy Torrance Offutt
OBA No. 11953
8714 Timberland Trail
Boerne, TX 78015

Patrick Michael Phillips
OBA No. 17959
Greenfield Bost & Kliros PC
990 Hammond Dr N.E.,
Suite 650
Atlanta, GA 30328

Bobbie Thomas Shell
OBA No. 8157
1254 Augusta Court
Shawnee, OK 74801

Donald C. Templin
OBA No. 8899
2323 Victory Ave., Suite 700
Dallas, TX 75219

Stanley Alan Thiebaud
OBA No. 22388
1445 Ross Ave., Suite 4800
Dallas, TX 75202-2701

William W. Wheeler
OBA No. 9526
P. O. Box 687
Guthrie, OK 73044

New OBA Board Members Take Oath

Nine new members of the OBA Board of Governors were officially sworn in to their positions Jan. 14. The officers taking the oath in the Supreme Court Courtroom were President Deborah Reheard, Eufaula; President-Elect Cathy Christensen, Oklahoma City; and Vice President Reta Strubhar, Piedmont.

Sworn in to the OBA Board of Governors to represent their judicial districts for three-year terms were Gerald Dennis, Antlers; Renée DeMoss, Tulsa; Christopher Meyers, Lawton; and Scott Pappas, Stillwater.

Also sworn in for one-year terms on the board were Immediate Past President Allen Smallwood, Tulsa; and Young Lawyers Division Chairperson Roy Tucker, Muskogee.

OBA Member Reinstatements

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

David P. Rowland
OBA No. 7795
P. O. Box 1436
Bartlesville, OK 74005

MCLE Reporting Deadline Reminder

If you need to report an exemption for 2010 or you need to report additional credit, the deadline for filing the 2010 Final Annual Report of Compliance is Tuesday, Feb. 15, 2011. There is a \$100 fee when reporting credit earned in the year 2011 to complete your 2010 requirement. Please review your MCLE credit online at <http://my.okbar.org>, keeping in mind that sponsors have 30 days to submit attendance reports. If it has been longer than 30 days since you attended an Oklahoma MCLE-approved seminar that is not reflected on your MCLE record or you have other questions, please contact the MCLE Department at (405) 416-7009, (800) 522-8065 or at mcle@okbar.org.

Holiday Hours

The Oklahoma Bar Center will be closed Monday, Jan. 17 in honor of Martin Luther King Jr. Day. The bar center will also close Monday, Feb. 21 in observance of Presidents Day.

Kudos

Judge John Maley is being honored by the Okmulgee County Bar Association for 44 years of service as district judge and four years as county judge for Okmulgee County. A reception in his honor will be held Friday, Jan. 21 from 5-7 p.m. at the Okmulgee Golf Club, 1400 S. Mission, Okmulgee.

State Rep. Fred Jordan was named chairman of the House Judiciary Committee for the 2011 and 2012 legislative sessions. In addition to his legislative duties, Mr. Jordan maintains an active law practice with Fellers Snider law firm in the firm's Tulsa office.

Tulsa attorney Stanley D. Monroe recently became a fellow of the American College of Trial Lawyers. The organization says fellowship in the college is extended to trial lawyers who have "mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality." Mr. Monroe has been in practice for 32 years. He is a graduate of the TU College of Law.

Jim Banowsky of Redmond, Wash., has been named director of Worldwide Patent Procurement for Microsoft Corp. Mr. Banowsky will oversee in-house personnel and processes while working with more than 30 U.S. and foreign law firms every year.

Michael Emmett Smith of Fairfax, Va., was recently presented with the Secretary's Appreciation Award by U.S. Dept. of Energy Secretary of Energy Steven Chu. Mr. Smith was recognized for his contributions as director of the Global Initiatives, Infrastructure Security and Energy Restoration Division, having served in that capacity since February 2008. The secretary honored Mr. Smith for programs that support U.S. national security missions and foreign policy objectives.

The American College of Bond Counsel recently announced that Oklahoma City lawyer **Earl A. Skarky** has been elected as a fellow of the college. The college recognizes public finance lawyers for their "skill, experience and high standards of professional and ethical conduct in the practice of public finance law and who have contributed substantially to the objectives of the college."

Oklahoma City attorney Bill Smith was recently licensed to practice law in the state of Texas. He continues to focus his practice on criminal defense at both the trial and appellate level. His office remains located in Oklahoma City.

On The Move

John Canavan of Shawnee has been appointed to serve as district judge for the 23rd Judicial District in Pottawato-

mie County. He has served as city attorney for Shawnee since 1991, and he served as an assistant district attorney in Pottawatomie County from 1979 to 1991. He has also served as county attorney for Pottawatomie and Lincoln counties since 1996. He is a graduate of the OU College of Law.

McAfee & Taft has recently named attorneys **Rachel Blue, Vickie J. Buchanan, Spencer W. Haines, Gerald L. Hilsher, Richard P. Hix, Rodney K. Hunsinger II and Rusty N. LaForge** as shareholders to the firm.

Ms. Blue is an intellectual property attorney whose practice is primarily focused on trademark clearance and prosecution, opposition and cancellation proceedings and enforcement, as well as the licensing of all types of intellectual property. A portion of her practice is also dedicated to franchise law, unfair competition matters and entertainment law. Prior to joining McAfee & Taft, Ms. Blue was a partner with a Tulsa-based law firm.

Ms. Buchanan is a trial lawyer whose practice encompasses a wide range of business-related litigation in state and federal courts, as well as in commercial arbitration. Her experience includes representing clients in class action and multiple party lawsuits and disputes involving insurance, banking, bankruptcy, family law, mass torts, products liability, real estate and employment matters. Prior to joining McAfee & Taft, Ms. Buchanan was a

director with another large civil practice law firm in Oklahoma.

Mr. Haines is a tax and family wealth lawyer whose practice includes tax planning for corporations, partnerships, and individuals; wealth transfer tax planning; local, state and federal taxation; Section 1031 tax-deferred transactions; and tax structuring of complex business transactions. He has been a CPA since 1999 and holds a master's degree in taxation from New York University.

Mr. Hilsher is a litigator whose trial and appellate practice is focused on complex commercial and intellectual property litigation, business torts, environmental litigation and select white-collar criminal defense, including environmental crimes, Medicare fraud, bank fraud and violations of the False Claims Act. His career experience includes serving as a criminal prosecutor, deputy assistant secretary for law enforcement at the U.S. Treasury Department, federal adjunct settlement judge and as a lawyer in private practice with another Oklahoma law firm.

Mr. Hix is a trial attorney who has successfully represented clients in major litigation in state and federal courts, as well as arbitration, throughout the United States. In addition to handling all phases of large-scale civil litigation as well as appeals in both the state and federal court systems, he has extensive experience serving as a mediator. Prior to joining McAfee & Taft, Richard was a partner with another Oklahoma-based civil practice law firm.

Mr. Hunsinger is a trial lawyer whose state and federal lit-

igation practice is focused on general civil defense litigation and business and commercial litigation. His experience includes the representation of clients in class action lawsuits, disputes involving mass torts, product liability, aviation, banking and finance, construction, oil and gas, insurance defense litigation, automobile dealership law and regulation, and other general litigation matters. He has developed specific expertise in the areas of aviation defense, automobile dealership defense, and the defense of wrongful death and serious injury claims.

Mr. LaForge is a corporate lawyer whose practice is primarily concentrated on regulatory and transactional matters affecting banks, bank holding companies and other financial institutions. His career experience includes serving as director of investor relations for a large publicly-traded financial services holding company and as director of finance under Oklahoma Gov. Frank Keating.

The law firm of Doerner Saunders Daniel & Anderson LLP has moved. Its new address is: Two W. Second Street, Suite 700, Tulsa, 74103.

OU College of Law Professor Emeritus **Frederick H. Miller** is relocating to Edina, Minn. Professor Miller began teaching at the law school in 1966 and has been a contributor to the *Oklahoma Bar Journal*.

Former State Treasurer **Scott Meacham** will be joining Crowe & Dunlevy in its Oklahoma City office. Mr. Meacham will head the firm's banking and financial institutions practice group. He is a graduate of the OU College of Law.

Cory King has joined the law firm of Foshee & Yaffe in Oklahoma City. Ms. King formerly served as human resources director and labor attorney for the Oklahoma Department of Public Safety and Oklahoma Highway Patrol. Her practice involves employment law, workers' compensation, administrative law, and general civil litigation, and she is also a certified mediator. She is a graduate of the OU College of Law.

Smakal, Munn & Mathis PLLC of Tulsa announces **Elizabeth W. Burden** has joined the firm as its newest associate. Her practice focuses primarily on civil litigation with an emphasis in domestic and probate matters, construction law, estate planning, and corporate transaction and litigation matters. She may be reached at the firm's offices at 320 S. Boston, Suite 718, Tulsa, 74103; (918) 582-3400; www.smakalmunnmathis.com.

Barnum & Clinton PLLC announces **Laurie J. Miller** and **Barbara Coke Reid** have joined the firm as associate attorneys. Ms. Miller will focus her practice in the areas of business and individual representation before all state and federal courts, and before the Oklahoma Workers' Compensation Court. Prior to joining the firm, Ms. Miller was the owner and founder of Miller Law Firm in Oklahoma City. Ms. Reid will focus her practice in the areas of workers' compensation defense and general civil litigation. Ms. Miller and Ms. Reid may be contacted at the firm's offices at 1011 24th Ave. NW, Norman, 73069; (405) 579-7300.

Pasley & Farabough of Ardmore announces **Kimberly**

Farabough Mouledoux has joined the firm as its newest associate. Ms. Mouledoux will focus primarily in the areas of insurance defense, workers' compensation and general civil litigation. She is a graduate of Loyola University School of Law.

The Tulsa law firm of **Graham, Allen & Brown** announces the addition of **Greg Williams** to the firm. Mr. Williams will focus primarily in the areas of medical malpractice, catastrophic personal injury, products liability and sexual abuse cases. He graduated cum laude from the University of Missouri School of Journalism and went on to receive his J.D. from the TU College of Law.

Tulsa attorney **Deirdre Dexter** has joined the law firm of **Barrow & Grimm PC** as a preferred shareholder. Ms. Dexter's practice will focus primarily in the areas of employment law and commercial litigation. Prior to joining **Barrow & Grimm PC**, Ms. Dexter recently served as city attorney for the city of Tulsa. She also served as an arbitrator for the American Arbitration Association, serving both the employment law panel and the commercial panel and as an adjunct settlement judge (mediator) for the U.S. Federal District Court for the Northern District of Oklahoma.

The Duncan law firm of **Leach, Sullivan, Sullivan, & Watkins LLP** announces **Joshua Allen Creekmore** as its newest associate. Prior to joining the law firm, Mr. Creekmore worked as an assistant district attorney for Grady, Stephens, Caddo and Jefferson Counties. He is a

graduate of the OCU School of Law.

Pierce Couch Hendrickson Baysinger & Green LLP announces **Jason A. Robertson** has joined the Tulsa office as of counsel and **Darin S. Rohrer** has joined the Oklahoma City office as an associate attorney. Mr. Robertson's practice will focus primarily in the areas of insurance defense law, medical malpractice and premises liability. He was formerly a partner in the **Glendening McKenna Prescott & Robertson** law firm in Tulsa. Mr. Rohrer's practice will include insurance and bad faith defense and medical malpractice.

The Tulsa law firm of **Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile** announces **Michael A. Simpson** as its newest partner. His practice areas include commercial and contract litigation, construction law, insurance defense, insurance coverage, negligence and Native American law, with particular experience in complex motions and appellate advocacy. He is also a certified mediator for civil/commercial cases in the Oklahoma state courts.

Gary M. Chubbuck, Curtis G.L. Smith, Michael D. Duncan and **Bart Jay Robey** announce the formation and opening of their new practice, **Chubbuck Smith & Duncan PC**. **Stacey S. Chubbuck** joins the firm as an associate. The firm's practice will focus on products liability, bad faith defense, employment law and insurance defense while also offering comprehensive counseling, litigation and appellate services. The firm's office is located at the Robinson Renaissance building, 119 N.

Robinson, Suite 820, Oklahoma City, 73102; (405) 236-8282; www.chubbucksmithlaw.com.

Crowe & Dunlevy announces **Sarah Brune Edwards** as its newest associate in the firm's Oklahoma City office. Ms. Edwards focuses her practice in corporate and securities law. Prior to joining the firm, Ms. Edwards served as deputy general counsel in the office of Gov. Brad Henry. She also worked as an attorney for the Oklahoma House of Representatives, assistant general counsel for Harry Mortgage Company and as an attorney for an Oklahoma City law firm.

Kenneth L. Davidson has retired from practice as vice president and general counsel of Northern Illinois University after more than 40 years as a licensed attorney. Mr. Davidson served 14 years as legal counsel at Oklahoma State University before relocating to Illinois where he practiced since 1990. He previously served six years active duty in the U.S. Air Force JAG Department.

Mock, Schwabe, Waldo, Medler, Reeves & Bryant PLLC announces **Layla J. Dougherty** and **Robyn R. Baker** as associates. Ms. Dougherty's practice is concentrated in appellate practice, business litigation, commercial law, debtor-creditor relations, and insolvency and bankruptcy law. She graduated in 2000 from the OU College of Law. Ms. Baker's area of practice includes business litigation, debtor-creditor relations, banking, bankruptcy, and commercial and consumer law. Ms. Baker is a 2005 graduate of the OU College of Law.

At The Podium

James Francis Gillet, U.S. administrative law judge in Springfield, Mo., recently addressed the Springfield Metropolitan Bar Association. His presentation titled, "Master Your Case — An Advanced Discussion: Beyond Checklists at the Horizon of the Jury Instruction," offered a tactical and thematic approach to administrative hearing and an in-depth exploration of selected federal regulations and agency rulings.

Oklahoma City attorneys **Eric L. Johnson** and **James A. McCaffrey**, of Phillips Murrah's commercial and consumer financial services

department, spoke recently at the annual Commercial Law Update, a CLE seminar held annually in Oklahoma City. Mr. Johnson and Mr. McCaffrey briefed attendees on the latest developments in consumer law and auto finance. The annual Commercial Law Update is jointly sponsored by the Oklahoma Bar Review CLE and the Conference on Consumer Finance Law.

Oklahoma City attorney **Sharon Voorhees** spoke at a National Business seminar in December on the topic of "Administering the Estate on the Cusp of Exemption," and presented her paper on "Marshalling, Valuing and Disposing of Assets and Debts." Ms. Voorhees also participated in the panel discussion on ethics, including topics of setting and collecting attorney's fees in probate cases.

Compiled by Jenefar de Leon

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

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Articles for the Feb. 12 issue must be received by Jan. 31.

IN MEMORIAM

James Burton of East Lyme, Conn. died Dec. 2, 2010. He was born March 26, 1932, and graduated from Michigan State University Law School in 1959. He was admitted to the OBA the same year.

Longtime Mountain View resident **Mike A. Caruso Jr.** died Aug. 18, 2010. He was born Sept. 20, 1916, in Fort Cobb and was admitted to the bar in 1938. Memorial contributions may be made to the Addie Davis Library or Mountain View First Methodist Church.

William Wilber "Bill" **Dimmitt** died Dec. 24, 2010, in Tulsa. He was born Jan. 20, 1917, in Chicago, Ill. **Mr. Dimmitt enlisted in the**

U.S. Navy and served in World War II from 1942 -1945 and in the Korean conflict from 1951-1952. He graduated from Washburn University in 1950 and Washburn University Law School in 1951. He practiced law in Topeka, Kan., after graduating. In 1962 he joined the U.S. Army Corps of Engineers, moving to Sand Springs in 1969 and Kellyville in 1978. He retired in 1981. Memorial donations may be made to the Kellyville Methodist Church.

Cecil Blair **Easley** of Oklahoma City died June 1, 2010. He was born July 13, 1943. He attended law school at Oklahoma City University, graduating in 1976, and was

admitted to the bar the same year.

Henry F. Featherly of Oklahoma City died on Dec. 26, 2010. He was born on Aug. 10, 1930, in Stillwater. He graduated from Stillwater High School and Oklahoma State University, and then went on to receive his J.D. from the OU College of Law. **Henry served in the U.S. Air Force, spending 18 months in Europe from 1952 to 1954, where he achieved the rank of captain.** He practiced law for 50 years in Oklahoma City, retiring from the law firm of Lamun, Mock, Featherly, Keihling and Cunningham. He was appointed as special judge for the Oklahoma Workers' Compensa-

tion Court. He was one of the original board members of Heritage Hall School, having served for six years; a long-time member of the Expressway Lions Club, having been a two-time president of the club; and a member of Crown Heights United Methodist Church. He was also a commissioner for the Boy Scouts and served as a committee member for the State Republican Party. Memorial donations may be made to Community Learning Council of Oklahoma City, P.O. Box 20414, Oklahoma City, 73156 or Physician's Choice Hospice LLC.

Murray Marcus Holcomb of Buffalo died Dec. 13, 2010. He was born on Nov. 23, 1932, in Buffalo. He attended Oklahoma A&M, and went on to receive his J.D. in 1956 from the OU College of Law. He practiced law in Harper County for 54 years. He was a member of the Shriners, a 32nd degree Mason and became a member of the Oklahoma Bar Association in 1956. He also farmed and ranched for most of his life. He was a leader in the community, and his life was marked by work ethic, education and family. Memorial donations may be sent to Zion Lutheran Church in Buffalo or the Oklahoma Medical Research Foundation in Oklahoma City.

Lowell L. Martin died Dec. 9, 2009, in Waynesville, N. C. He was born Sept. 30, 1938, in Ft. Jay, N.Y. Mr. Lowell spent his entire career in military service, beginning in 1957 as a midshipman at the U.S. Naval Academy in

Annapolis, Md., graduating with a B.S. in 1961. **He took his commission in the U.S. Army as an artillery officer serving tours of duty in Germany and Vietnam.** He was an avid scholar throughout his career, earning an M.S., a J.D. from OCU Law School, and he completed the Army Command and General Staff College. His last posting was at Ft. Leavenworth, Kan., in 1985, retiring in 1998.

Jasper David "J.D." Nance of Broken Arrow died Dec. 7, 2010. He was born July 7, 1919, in Henryetta. **Mr. Nance served in the U.S. Army.** He was admitted to the bar in 1947. As an attorney, he worked in the petroleum industry.

James Albert Peabody died Nov. 30, 2010. He was born on May 14, 1929, and was a lifelong Oklahoma City resident, graduating from Capitol Hill High School in 1947. He earned his law degree from the University of Oklahoma, where he was editor of the law review and a Rhodes scholar. **He served as a military officer during the Korean conflict.** He worked more than 50 years at Crowe & Dunlevy, retiring in 1991, yet continuing on as of counsel and firm historian. Memorial contributions may be made to Full Life Hospice, 4001 N. Classen, Oklahoma City, 73118.

Paul A. Puttroff of Oklahoma City died Dec. 17, 2010. He was born on Sept. 13, 1917 in Newton, Kan. **He served in the U.S. Army during World War II.** He received his B.S. from Kansas

State University and his J.D. from OCU School of Law. He was also a CPA. He began his career working for Boeing in Wichita, Kan., was later a partner at Williams, Hurst & Groth CPA in Oklahoma City and finished his career employed for many years with Kerr-McGee. Memorial contributions may be made to the Humane Society or a charity of your choice.

James William Roberts died June 3, 2010. He was born in Holdenville on April 29, 1920, and graduated from Holdenville High School in 1938. His studies at the University of Oklahoma were interrupted by **four years of military service, two years of which were spent in India during WWII.** He graduated from OU in 1949 with a B.A. and an LL.B. degree; the latter was later superseded by a J.D. degree. After working three years for the Oklahoma Supreme Court, he became associated with the Oklahoma City law firm of Kerr, Davis, Roberts, Irving and Burbage. In 1966 he joined the legal department of Kerr-McGee Corporation, retiring in 1985 as division counsel of the oil, gas and minerals division. He was a member of the Phi Delta Phi legal fraternity and a Mason. He was a member of Olivet Baptist Church in Oklahoma City for 60 years, where he served as a deacon, a Sunday school teacher and on various committees. He joined Spring Creek Baptist Church in 2007. He loved history, gardening, painting, family and church.

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THE CITY OF SHAWNEE is seeking applications for the position of City Attorney. This position shall provide full time, in-house legal representation to the city of Shawnee, its officers and employees and to the Shawnee Municipal Authority and Shawnee Airport Authority. The city attorney's responsibilities shall include drafting ordinances, resolutions, contracts, maintaining the Municipal Code, serving as prosecuting officer of the Municipal Court, serving as legal advisor of the city's boards and committees and shall appear on behalf of such entities at their meetings. In addition, the city attorney shall prosecute or defend suits of every nature involving all aspects of city business, including the areas of zoning, labor/personnel, civil rights, personal injury/property damage and contracts. Interested candidates should submit their cover letter and resume to: City of Shawnee, Attention Tammy Johnson, Interim HR Director, 16 W 9th St., Shawnee, OK 74801. Position will be open until Jan. 31. EOE.

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OKLAHOMA CITY AV RATED INSURANCE DEFENSE FIRM seeks associate attorney with 0-5 years experience. Excellent research and writing skills required. All replies kept confidential. Resume and writing sample should be sent to "Box E," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

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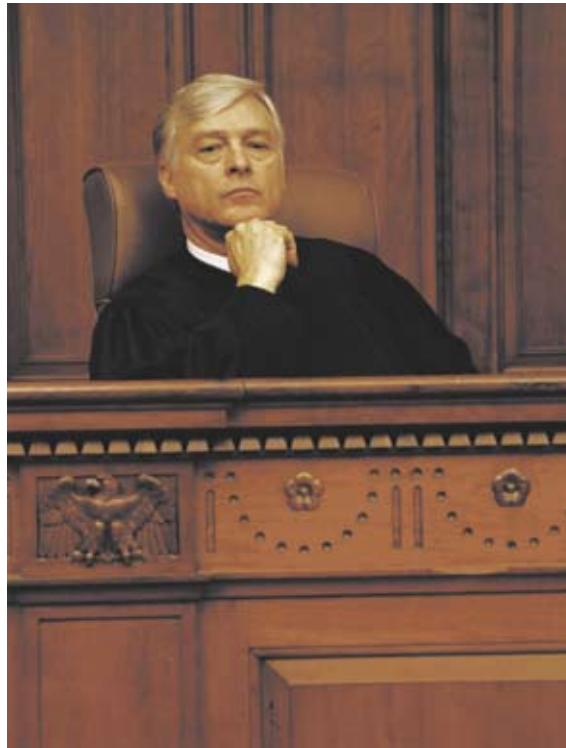
By Retired Judge David A. Barnett

In my years as a trial judge, I observed a great many lawyers plying their trade, some with great skill, and some not so skillful. Consequently, I have memories of some of the best and some of the worst.

The best question I have heard from the bench happened in a hotly contested custody battle. The plaintiff's dad was present with his attorney and defendant's mom with hers. Also present was the attorney I had appointed to represent the interest of the child.

The main issue which had given rise to the post-divorce proceeding was the new husband of the defendant. He had been accused of improper behavior toward the female child whose custody was the subject of the lawsuit. The defendant's lawyer made a bold strategic decision to call the ex-wife of the stepfather to testify as to his character and his great parenting skills.

Defense counsel's strategy seemed good



as the ex-wife testified as to stepfather's sterling character and as to what a great daddy he was. The plaintiff's lawyer didn't ask many questions of the witness and the defense attorney was sitting proud. I noticed counsel even seemed to sit taller in the seat, obviously proud that the bold strategy was working.

After both sides had examined the witness, I

recognized the child's attorney to inquire. He began by stating that he only had one question, then directed this question to the witness. "Ma'am, if Mr. Stepfather was such a wonderful husband, why in the world did you divorce him?"

As soon as the question registered with the witness, her demeanor changed from all smiles to that of great consternation. Then, with a

lengthy barrage of examples, she proceeded to tell of his many faults, including acting very improperly toward her children. It seemed as though the child's attorney had opened a floodgate with his simple and straightforward inquiry.

From my higher vantage point, I could clearly view the response of defense counsel. From sitting high in the seat, counsel actually began to sink lower in the chair as the testimony spewed forth. Before the witness finished her answer, the case was all but decided in the plaintiff's favor, and defense counsel was almost out the bottom of the chair, apparently trying to hide under the table. No one else had any more questions.

A Proverb says pride goes before a fall and a haughty spirit before stumbling. I continue to be amazed at the effectiveness of only one question!

Retired Judge Barnett lives in Frederick.

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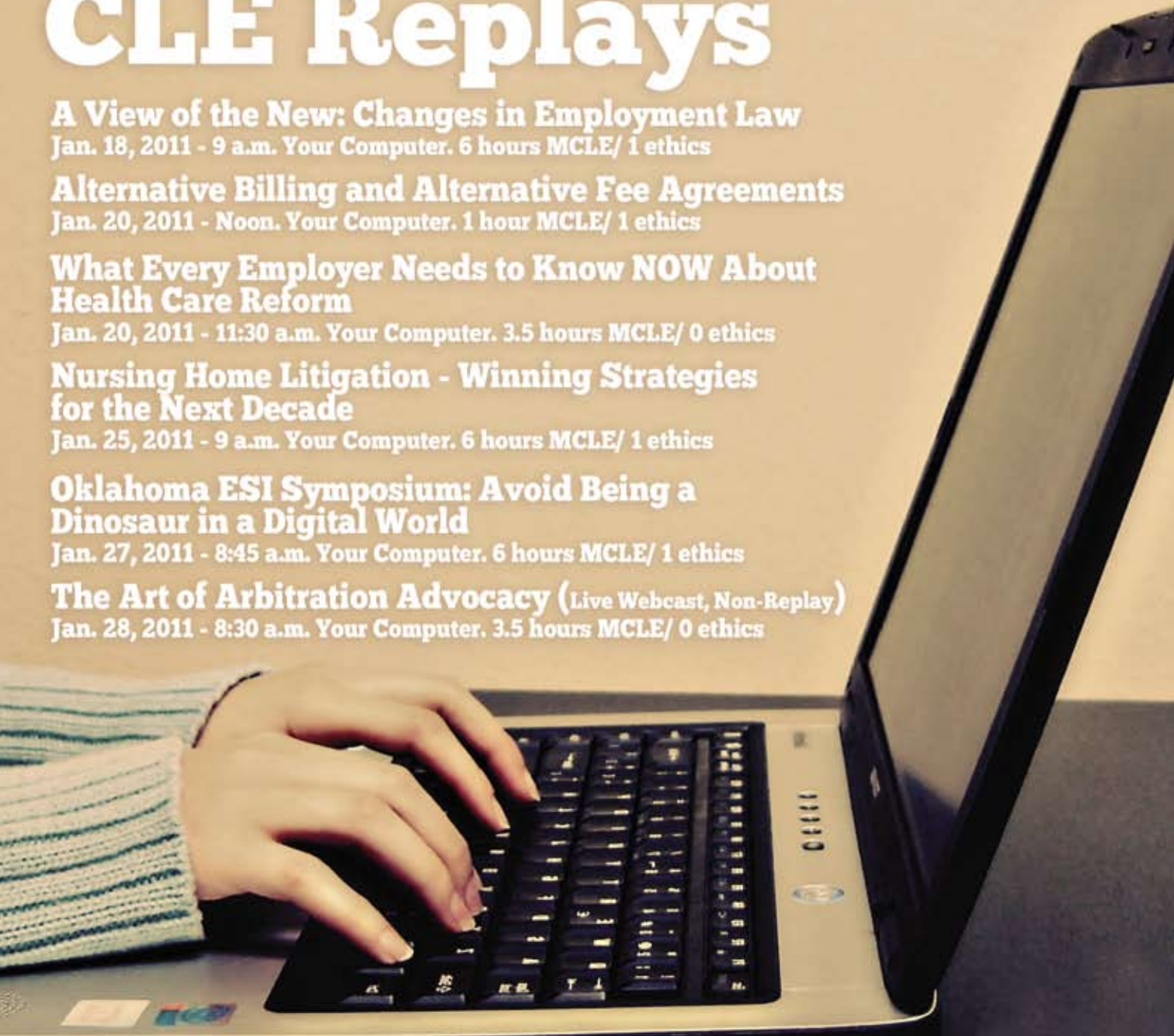
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