

The background of the cover is a photograph of a soldier in silhouette, standing in a field of tall grass and looking out over a sunset sky. The soldier is holding a rifle in his right hand and a helmet in his left hand. The sky is filled with golden, glowing clouds.

WIT Oklahoma Bar JOURNAL

Volume 82 ♦ No. 31 ♦ November 19, 2011

MILITARY LAW

ALSO INSIDE

- Annual Meeting Highlights
- New Military Section Created
- 2012 Committee Involvement Urged



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CREDIT: Approved for 2 hours MCLE/ 2 Ethics

TUITION: \$100 for early-bird registrations with payment received at least four full business days prior to the seminar date; \$125 for registrations with payment received within four full business days of the seminar date. \$50 for non OBA guest.

CANCELLATION POLICY: Standard policy

PROGRAM

5:30: REGISTRATION & DINNER
6:00: PROGRAM
7:50: ADJOURN

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Thank You Is Not Enough

By Deborah Reheard

November is a very busy month for the Oklahoma Bar Association, and I am proud to say that lawyers and OBA staff have gone above and beyond the call of duty once again.

We started out the month with the **Annual Meeting in Tulsa**. It was a year of planning, and we nearly completely revamped programs from years past. Staff and volunteers put in hundreds of hours to ensure the success of this year's Annual Meeting, and their efforts were not in vain. Preliminary numbers indicate registration tripled from the previous year. Lawyers who never thought about attending an Annual Meeting before and lawyers who had not attended an Annual Meeting in years were there. We line danced, rode the mechanical bucking bull and laughed out loud at the tales told by NFL Referee Walt Coleman. We listened to the riveting story told by Sgt. Matt Eversmann as he relived the events immortalized in the movie *Black Hawk Down*. And we sat in somber silence as we heard Andrew Card give the chilling details of the events of 9/11 and after.

We laughed until we cried as we heard The Capitol Steps (the group that put the "mock" in democracy) satirize current events. Who can ever look at Republican presidential candidate Herman Cain again without hearing the old O'Jay's tune "Get On The Love Train" with the "new" words, "Get On The Love

Cain"? Or not begin humming the ballad sung by Justices Ginsburg, Sotomayor and Kagan of their unrequited love for Justice Scalia?

Speaking of singing, we had standing room only at the President's Breakfast as folks crowded in to hear the Martin Luther King Jr. Unity Choir from McAlester, led by my good friend, Loise Washington. They were better than a double shot of espresso to get you wide awake and motivated for the day, following up their gospel-inspired renditions of "What The World Needs Now," "Lean On Me" and "Blessed Assurance" with a medley of "God Bless America" and "We Shall Overcome" at the General Assembly.

But the Oklahoma lawyers did not have an opportunity to rest on their laurels after such a successful Annual Meeting. Simultaneously with all the Annual Meeting planning and

preparation, the Military Assistance Task Force was assembling numerous "Clinic In A Box" packages to distribute to county bars across the state that were scheduling **veterans legal clinics**. The contents of the clinic boxes were financed in part by a generous grant from the Oklahoma Bar Foundation. Twenty-two counties were represented in clinics held from Weatherford to Idabel and Lawton to Sallisaw and lots of places in between on Nov. 10 and 11. The number of veterans and servicemen and women the Oklahoma Lawyers for America's Heroes program has helped is getting close to 1,000 in one short year.

Lawyers have a special skill set to help those who have fought and are fighting for us and when called upon, have not shirked from that duty.

That number will grow as members of the Oklahoma Army National Guard 45th Infantry Battalion begin returning. Oklahoma lawyers will be staffing the **Yellow Ribbon post-deployment events** in the coming months as our soldiers return home from their mission in Afghanistan.

And a big thank you to the *Oklahoma Bar Journal* Board of Editors for this out-

standing issue dedicated to legal issues facing lawyers representing veterans and military members. Lawyers have a special skill set to help those who have fought and are fighting for us and when called upon, have not shirked from that duty.

For all this, I say thank you. Thank you for your service to our country. Thank you for your service to our profession. Thank you for your efforts to improve the image of our profession — one good deed at a time.



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EVENTS CALENDAR

NOVEMBER 2011

- 24-25 **OBA Closed** – Thanksgiving Day Observed
- 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
- 30 **OBA Clients' Security Fund Committee Meeting**; 2 p.m.; Oklahoma
Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact:
Micheal Salem (405) 366-1234

DECEMBER 2011

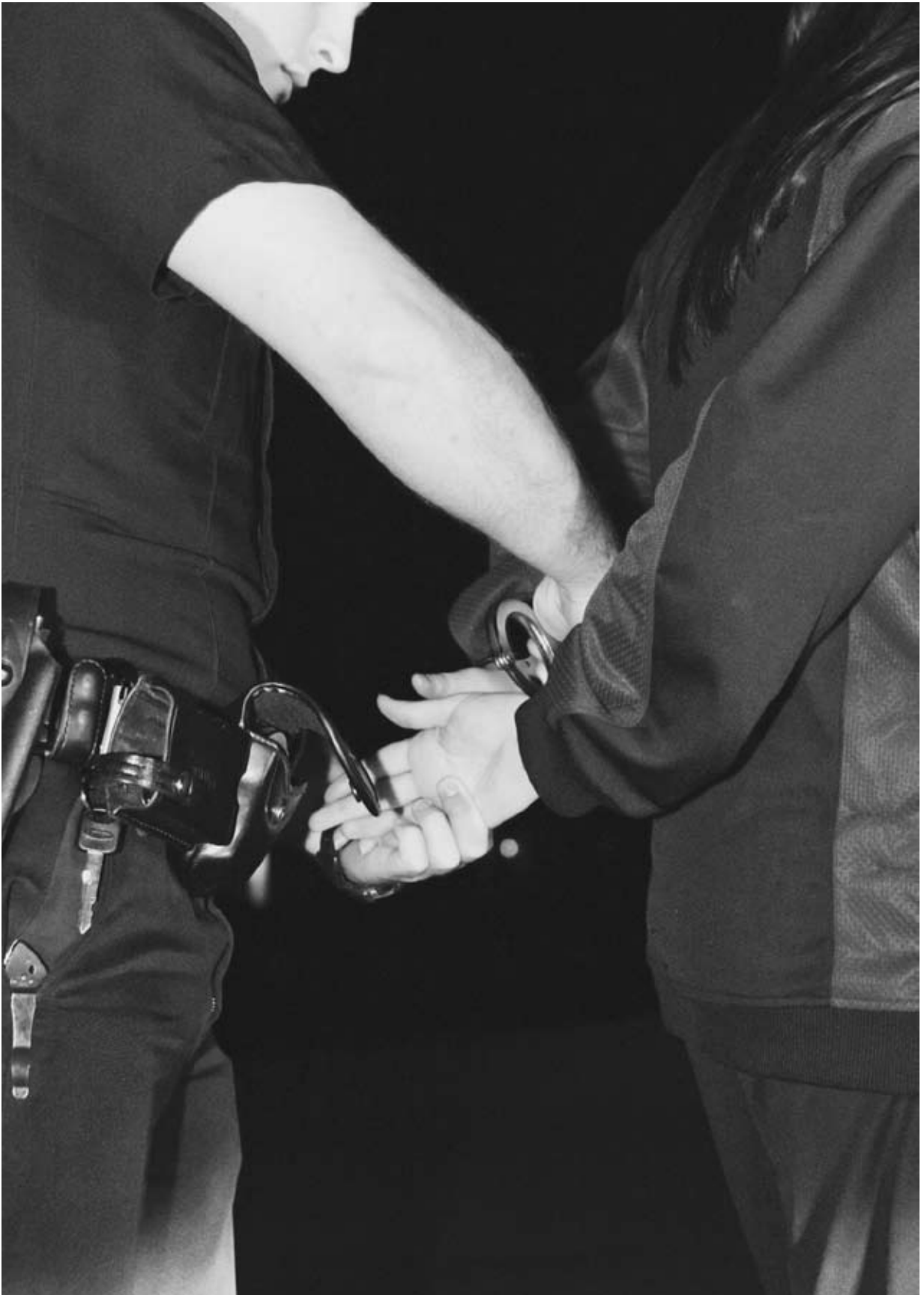
- 1 **OBA Lawyers Helping Lawyers Assistance Program Training**;
12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Donita Douglas
(405) 416-7028
- OBA Men Helping Men Support Group**; 5:30 p.m.; The Oil Center –
West Building, Suite 108W, Oklahoma City; RSVP to: Kim Reber
(405) 840-3033
- OBA Women Helping Women Support Group**; 5:30 p.m.; The
Center for Therapeutic Interventions, Suite 510, Tulsa; RSVP to: Kim Reber
(405) 840-3033
- 7 **OBA Appellate Practice Section Meeting**; 12 p.m.; Oklahoma Bar
Center, Oklahoma City; Contact: Rick Goralewicz (405) 521-1302
- OBA Law Day Committee Meeting**; 12 p.m.; Oklahoma Bar Center,
Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Tina Izadi
(405) 522-3871
- 8 **OBA Women Helping Women Support Group**; 5:30 p.m.; The Oil
Center – West Building, Suite 108W, Oklahoma City; RSVP to: Kim Reber
(405) 840-3033
- 9 **OBA Communications Committee Meeting**; 12 p.m.; Oklahoma Bar
Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact:
Mark Hanebutt (405) 948-7725
- Oklahoma Association of Black Lawyers Meeting**; 12 p.m.;
Oklahoma Bar Center, Oklahoma City; Contact: Donna Watson
(405) 721-7776
- 14 **OBA Justice Commission Meeting**; 2 p.m.; Oklahoma Bar Center,
Oklahoma City; Contact: Drew Edmondson (405) 235-5563

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

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

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A Military Primer for the Oklahoma Attorney

Groucho Marx Was Wrong about Military Justice¹

By Robert Don Gifford II

"It is the function of the courts to make sure ... that the men and women constituting our Armed Forces are treated as honored members of a society whose rights do not turn on the charity of their military commander ... A member of the Armed Forces is entitled to equal justice under law not as conceived by the generosity of a commander but as written in the Constitution."

— Justice Douglas, 1968

THE CLIENT — SORT OF ...

With the smells of autumn still lingering in the air, the sounds that accompany it in "Small Town, America" reverberate on a crisp Oklahoma Friday night. It's football season. You warm your hands on the booster club hot chocolate as you watch your hometown team battle for glory and bragging rights under those "Friday Night Lights." Naturally, that is when your cell phone rings.

Without looking at the incoming phone number, and before you can say "Hello," you are cut-off with a bellowing and graveled-voiced "Counselor! It's me, Jerry. I need some quick advice for my second ex-wife's third cousin's son, Wayne, who joined the Army last month." Jerry is your erstwhile client that has allowed you to guide and counsel him through divorce(s), DUIs, battles with the IRS, bankruptcy and land deals gone bad. As you recall Jerry's unpaid bills, Jerry's bellowing voice interrupts those thoughts with the conundrum that Wayne is in. As it turns out, Wayne may be in the Army — but he is not *with* the Army. "Private" Wayne is "AWOL" from basic training at Fort Sill, and sitting with Jerry at Booger Red's Watering Hole.

While you are aware that "civilian" attorneys can represent military clients in a court-martial, and before you can remind Jerry that your knowledge of military law is limited to the movie *A Few Good Men*, Jerry "can't handle the truth." He tells you he'll be at your office in the morning with Wayne to discuss the case, and to have the coffee ready.

"Jerry, listen to me..." you begin, but you are interrupted with a click of the phone. You make a mental note of the time on your watch; take a sip of hot chocolate, while the sounds of the game disappear into the backdrop of your mind.

As you ponder the array of questions to come, the range of questions begins to awaken your "issue-spotting" senses. This is where we begin ...

THE ARMED SERVICES AND OKLAHOMA

The Sooner State has a proud military history. Fort Sill, Tinker Air Force Base, Vance Air Force Base, Altus Air Force Base, as well as numerous storied reserve and National Guard units grace the Heartland (*i.e.*, the 95th Infantry Division's "Iron Men of the Metz" and the 45th Infantry

Division). Oklahomans have played significant roles in military history that range from Brig. Gen. Stand Watie of the Cherokee Braves in the Civil War to the Comanche code-talkers in World War II to Adm. William Crowe's service as the chairman of the Joint Chiefs of Staff to Maj. Gen. Clarence Tinker's death at the Battle of Midway to most recently Gen. Dennis Reimer's service as the Army Chief of Staff and Gen. Tommy Franks' command over Central Command and the war in Afghanistan and Iraq. In addition, a multitude of Oklahomans proudly serve at nearly every military installation in the world in every branch of service.

While each respective branch of service has its own attorneys in uniform serving as members of the Judge Advocate General's Corps, servicemembers often turn to civilian counsel when accused of a court-martial offense. Thus, a working knowledge of the military justice system presents a great opportunity to expand a practice and possibly help an underserved population.

The controversial court-martial of Edmond's 1st Lt. Michael Behenna, the pending Wikileaks case against former Crescent resident Pfc. Bradley Manning and the case against Maj. Nadal Hasan of the Fort Hood shootings, which is being led by OBA member and University of Tulsa College of Law graduate Col. Michael Mulligan, are prime examples of how quickly the operation of the military justice system captures public attention.

Tellingly, media coverage and public commentary about these cases revealed many misunderstandings of the military criminal justice system,² including the widespread belief that members of our armed forces do not enjoy the same constitutional protections that they are sworn to defend. In actuality, the rights guaranteed to servicemembers in the pretrial, trial and post-trial stages are probably *more* protective than the rights granted individual citizens in both the civilian federal and state court systems.³

ORIGINS OF THE SYSTEM

"Military music, be it the skirl of Scottish bagpipes, the long roll of the drums or the blare of bugles sounding the charge, was originally intended to inspire troops in battle and to hold them to their duty. Likewise . . . the military justice system was also designed for the battlefield."

— Col. Harry G. Summers Jr.⁴

The American system of courts-martial is older than our civilian court system. Courts-martial are courts of special and limited jurisdiction that derive their authority from the U.S. Constitution,⁵ the Uniform Code of Military Justice (UCMJ) and the *Manual for Courts-Martial*.⁶ The genesis of our system was derived from the British Code of 1765 with the Articles of War. While the Articles of War governed the Army, the Navy operated from a completely different system known as Articles for the Government of the Navy or "Rocks and Shoals."

When the armed services unified under the Department of Defense in 1947, efforts began for a uniform code that would cover all of the branches of service.⁷ The Uniform Code of Military Justice⁸ was enacted and signed into law in May of 1950 by President Truman with the *Manual for Courts-Martial* following in 1951. Significant reforms came after the Korean and Vietnam conflicts and again in 1983 with the Military Justice Act and Executive Order by Ronald Reagan adopting the *Manual for Courts-Martial*, 1984.

The legality of courts-martial has long been established with the 1857 decision in *Dynes v. Hoover* in which the U.S. Supreme Court made it clear that Article I of the Constitution gave Congress the power to provide for the trial and punishment of military offenses.⁹

PLAYERS IN A COMMAND-DRIVEN SYSTEM

Military law . . . is a jurisprudence which exists separate and apart from the law which governs in our federal judicial establishment.

— Chief Justice Vinson, *Burns v. Wilson*,
346 U.S. 137, 140 (1954)

The military justice system has a number of players that are not normally found in its civilian counterparts. Unlike the civilian criminal justice system where the discretion to prosecute usually lies with the state, federal, tribal or city prosecutor, the initial charging decision typically lies with the accused's commander, who is almost assuredly a non-lawyer. That commander, who has the benefit of non-binding advice from a judge advocate (a uniformed attorney), has the options of choosing no punishment, a letter of reprimand, non-judicial punishment,¹⁰ administrative separation¹¹ or some form of court-martial. Of the various types of military tribunals, the general court-martial is the highest.¹² A servicemember

may only be sent before a general court-martial by order of the General Court-Martial Convening Authority (GCMCA),¹³ the military officer who has authority over “felony-level” misconduct concerning members of his or her command.¹⁴ For example, at Fort Sill, the commanding general serves as the GCMCA.

While the decision to charge, also called “pre-ferral” of charges, lies with the commander, negotiating with the trial counsel over an appropriate disposition is an avenue that cannot be ignored. Convincing a commander not to prosecute is only half the battle; if the trial counsel is unconvinced, he or she can easily undermine defense counsel’s efforts by elevating the argument to a higher (and less sympathetic) commander. Likewise, the trial counsel can help “sell” a deal to a reluctant commander.

While both the trial counsel and the defense counsel are both members of the Judge Advocate General’s Corps of their respective armed service’s branch,¹⁵ the appointed military defense counsel in most of the services is a part of a “stovepipe” organization independent of commanders of the military installation.¹⁶ This protects military defense counsel from being reprimanded, criticized or suffering in their career progression for zealously defending their clients.¹⁷ While the trial counsel usually may have other duties as legal advisors to commanders, the defense counsel is able to focus solely on criminal defense. It also noteworthy that even if a military accused retains civilian counsel, he will also can keep the military lawyer as well. This “free” co-counsel provides many benefits with relationships with opposing counsel, the judge, as well as any recent changes in military case law.

Prior to the Military Justice Act of 1968,¹⁸ the “judge” in a court-martial did not have to be a lawyer. Under the current system, however, not only is the military judge a lawyer, he or she is actually a criminal law specialist, as there is no system of civil courts in the military.¹⁹ A military judge is usually a senior judge advocate with proven experience in military criminal justice. In comparison, a new civilian judge may reach the judiciary without any exposure to criminal practice. Now that we have a familiarity with the personnel involved, we address the threshold question of jurisdiction over a servicemember.

JURISDICTION AND DOUBLE JEOPARDY

Members of the military are subject to overlapping jurisdiction; thus, they are expected to comply with the UCMJ in addition to state and federal laws.²⁰ The need for a separate justice system arose out the necessity for good order and discipline in the armed services and the need for a system of military law with worldwide jurisdiction.²¹ As a part of the good order and discipline, military-specific crimes are necessary with offenses such as absence without leave (AWOL), dereliction of duty, conduct unbecoming of an officer, disobedience, adultery, malingering, mutiny, insubordination, contempt toward officials (*i.e.*, the president), subordinate compelling surrender, etc.

Jurisdiction of a court-martial depends solely on an accused’s status as a member in the armed forces, not the location or “military nature” of the crime.²² The crimes subject to military justice include any crime contained in the UCMJ, as well as those incorporated through the penumbra of the Assimilated Crimes Act.²³

Those subject to the UCMJ include enlisted personnel, commissioned officers, inductees, cadets, retirees,²⁴ persons in military custody, prisoners of war, reservists on active duty status, and even civilian personnel accompanying the armed forces in the “field” in time of war or when martial law is declared. Members of the National Guard are subject to the UCMJ when they are in federal status;²⁵ otherwise, they are subject to their respective state military codes when they are on active duty in their state status.²⁶

The UCMJ is applicable both on- and off-post; the military may also have concurrent jurisdiction with local law enforcement, leading to prosecution by both entities. Even if the state does choose to prosecute, double jeopardy does not preclude the military from prosecution due to its status as a separate sovereign.²⁷

However, the Fifth Amendment, the UCMJ and the *Manual for Courts-Martial* protect a servicemember from being tried twice for the same offense in *federal* district court and by a court-martial. The Air Force has extended this protection to trial by state courts as well,²⁸ and the Army has adopted the policy that prosecutions will not “ordinarily” be tried by court-martial or punished by the UCMJ for an same act already punished by civilian state courts.

PRE-TRIAL CONFINEMENT

The *Manual for Courts-Martial* provides that pre-trial confinement should be used only as a last resort.²⁹ A unique factor for military members is that even while in military confinement, an accused continues to receive full pay and allowances, and will have a job to return to if released. Family members who are dependent upon the servicemember also continue to receive the same housing and other benefits that other military dependents receive.

Even though there is no system of bail in the military, a servicemember does receive the same Fourth Amendment protections as he would as a civilian.³⁰ A servicemember may only be put into pretrial confinement if the commander believes that: 1) probable cause exists that an offense has been committed under the UCMJ; 2) the accused committed it; and 3) confinement is necessary to ensure appearance at trial or will engage in serious misconduct.³¹ It must also be shown that lesser forms of restraint would be inadequate.³² The fact that the servicemember is a “pain in the neck” to the command does not suffice.³³

When the servicemember is placed in military confinement, three reviews take place. The first is by the commander of the servicemember,³⁴ with the assistance of trial counsel. This must take place within 48 hours,³⁵ and is followed by a 72-hour review of the pretrial confinement if the confinement was not ordered by the servicemember’s commander. A military magistrate, who is usually a neutral and detached judge advocate, conducts a second review.³⁶ An appeal of this review may be made to the military judge.

ARTICLE 32 INVESTIGATION

The Fifth Amendment right to a grand jury indictment, by its express terms, is not applicable to servicemembers,³⁷ just as it does not require indictment by grand jury in state courts.³⁸ In the place of the grand jury, the military provides that an individual may not be tried by general court-martial unless there has been a thorough investigation.³⁹ The Article 32 pretrial investigation has been compared to a civilian grand jury investigation⁴⁰ and bears

“The UCMJ is applicable both on- and off-post; the military may also have concurrent jurisdiction with local law enforcement, leading to prosecution by both entities.”

resemblance to Oklahoma’s preliminary hearing.⁴¹ The Article 32 pretrial investigation accomplishes several things. Among them is protection of the servicemember from baseless charges,⁴² early defense discovery⁴³ and assisting the convening authority in determining whether or not to refer (send forward) charges to a general court-martial, recommend dismissal or to utilize a lesser disposition (letter of reprimand, etc.).

The Article 32 hearing is unique in that it is an open hearing at which the accused and counsel are not only present⁴⁴ but have the right to cross-examine adverse witnesses⁴⁵

and even to present a defense. In contrast, federal grand juries do not afford the right to a defendant to appear with counsel, to testify, to cross-examine witnesses and/or present a defense. Oklahoma is among the 12 states to permit at least some witnesses to have counsel with them in the grand jury room.⁴⁶

The Article 32 is limited in that the findings of the investigating officer is only a recommendation, and may be ignored by the convening authority.⁴⁷ That advisory opinion by an Article 32 investigation officer is contrasted with a finding by a special judge or federal magistrate at a preliminary hearing or refusal to indict or return a *true bill* by a grand jury.

An officer, who is usually not a lawyer, conducts the Article 32 pretrial investigation. The investigating officer will review evidence and will call any witnesses he wants, as well as any witnesses or evidence requested by the prosecution or defense. With the exception of a limited set of rules on privileges, interrogation and the rape-shield rule, the military rules of evidence do not apply at this hearing. All testimony is taken under oath with the exception that an accused may testify through an unsworn statement. Like the state court system,⁴⁸ the burden of proof for the government at this hearing is much lower.⁴⁹

TRIAL PROCEDURE

"You should never wear your best trousers when you go out to fight for freedom and liberty."

— Henrik Ibsen

A general court-martial is very similar to a civilian criminal trial. Gone are the days of saluting in court. Contested motions and formal arraignment are held on the record in the courtroom in "Article 39(a) sessions."⁵⁰ At the arraignment portion of the Article 39(a) session, the accused must state on the record his plea, choice of counsel and the forum to decide his case.

An accused has the right to either have his case decided by either judge alone or by a "panel."⁵¹ The panel members are also members of the military ("peers from the same community"), appointed to this special duty by the convening authority. The panels selected are normally mature and responsible officers with long military command experience. If the accused is enlisted, he is also entitled to either have a panel of all officers or a panel consisting of one-third enlisted personnel.⁵² An accused and his counsel will have the opportunity to voir dire the panel members for any prejudices, and can challenge members for cause or use the one peremptory challenge to exclude any member for any reason.

The trial on the merits portion of the case is much like a civilian case. After a selection of panel members, both sides may give opening statements, present witnesses and evidence, be allowed to cross-examine, call rebuttal witnesses and give closing arguments. Also like civilian courts, the rules of evidence do apply. The Military Rules of Evidence mirror the Federal Rules of Evidence⁵³ with minor variations.

PANELS (I.E., THE JURY) AND VERDICTS

F. Lee Bailey, the renowned (former) trial lawyer and former Marine officer, has called the military panel a "blue ribbon" jury with a guarantee of various viewpoints. Whereas an Oklahoma civilian jury on a state case and federal jury members are selected by voter registration rolls or lists of actual voters,⁵⁴ the convening authority picks military court members⁵⁵ based upon age, education, training, experience, length of service and judicial temperament.

The verdict of a court-martial may be less than unanimous.⁵⁶ The one exception for unan-

imous vote is when the death penalty is sought.⁵⁷ A unique factor of the military courts is that there are no "hung juries," as found in civilian courts. Voting is done by secret, written ballot, and although court-martial members are usually of different ranks, they are not permitted to use superiority of rank to pressure another panel member. While the traditional voir dire may occur with the removal of panel members pursuant to peremptory strikes or for "cause," a quorum can be declared with as little as five members sitting for a general courts-martial.

GUILTY PLEAS AND SENTENCING

In the military, guilty pleas are handled quite differently from the plea practice in civilian jurisdictions. While the Supreme Court has held that a defendant may constitutionally plead guilty prior to the sentencing proceeding,⁵⁸ and most civilian courts allow a plea of *nolo contendere* or "no contest," a military accused must enter a plea of either "not guilty" or "guilty." Before a judge can find an accused guilty, he must go through a lengthy and in-depth "providence inquiry" to make sure the accused is factually guilty and that there are no possible defenses.⁵⁹ The "providence inquiry" (allocation) by the trial judge is quite extensive and often lasts several hours.

Another nicety for the military accused is the unique handling of the pretrial agreement. The deal is a binding ceiling.⁶⁰ If the trial judge or panel imposes a lesser sentence than the cap agreed upon, the accused gets the benefit of the lesser sentence. If the sentencing authority imposes a harsher sentence exceeding the pretrial agreement, then the sentence must be reduced to the limits that were agreed upon in the deal. This provides a great opportunity to "beat the deal." In the civilian sector, the prosecutor can at most only agree to make a specific non-binding recommendation on punishment to the judge.

At sentencing the trial court holds an open sentencing hearing rather than relying on a written pre-sentence report. While the *Manual for Courts-Martial* provides for a maximum punishment for each crime, most military crimes do not carry minimum penalties and there are no sentencing guidelines such as those in the civilian federal system. The rules of evidence are relaxed to some extent for the defendant, and an accused and counsel may have personal attendance of various witnesses,

at government expense, to speak about the defendant's background, character, potential for rehabilitation, and good military and civilian record.

Should the servicemember be found guilty, the sentence normally starts the day it is announced. The convening authority, not the military judge, has the power to defer the sentence, but, regardless of appeal, the servicemember should have all affairs in order.⁶¹

APPEALS

Another benefit enjoyed by the military accused is the multiple "bites at the apple" in appellate rights. If an accused is convicted, the rules for court-martial once again provides free counsel on appeal regardless of indigence.⁶² The military counsel on appeal is a different individual than the military counsel at trial, thus serving as a check on the effectiveness of the counsel at the trial level. Unlike civilian courts, the military appellate courts have the plenary authority to review *de novo* both the findings (legal and factual) and the sentence.⁶³

The first opportunity at an appeal is through a request for clemency from the one who authorized the court-martial in the first place, the convening authority. The convening authority can reduce the punishment or throw out the conviction *in toto*.⁶⁴ The servicemember has one appeal as a matter of right to each of the respective service's Court of Criminal Appeals. After that, the appeal may be taken to the U.S. Court of Appeals for the Armed Forces, which is composed of civilian judges.⁶⁵ As the court of last resort, the service member may petition the U.S. Supreme Court, on application for writ of certiorari, to hear the case.⁶⁶

NON-JUDICIAL PUNISHMENT — ARTICLE 15

One of the most common occurrences in military justice is the imposition of punishment under Article 15, Uniform Code of Military Justice. Depending on the branch of service, it is also referred to as "NJP," "Captain's Mast" or even "Office Hours." Article 15 of the UCMJ authorizes a commander to impose nonjudicial punishment upon any member of his or her command with the purpose is to correct, educate and reform "offenders" and to dispose of minor offenses without the stigma of a court-martial conviction. It is "nonjudicial" in the sense that a commanding officer,

most likely a non-lawyer, hears all the evidence and determines whether the soldier is guilty or not guilty.

An Article 15 is an expeditious means to handle infractions not warranting the time and expense of a court-martial. In other words, it is not a trial. Most importantly, a finding of guilt and its punishment under Article 15 does not result in a "conviction," nor does it give a soldier a criminal record. A court-martial conviction, on the other hand, can become a part of the permanent record that will follow a soldier for the rest of his or her life. Even though it prevents the stigma of courts-martial and gives a second chance to offenders, it can be detrimental to the careers of senior enlisted and officers.

Servicemembers facing an Article 15 always have the option of accepting the offered Article 15, or refusing it and choosing a court-martial instead. The one exception that prevents a servicemember from turning down an Article 15 and requesting courts-martial, is when a servicemember is "attached to or embarked on a vessel."

The maximum punishments are based upon the rank of the imposing commander. There are basically four types of punishments: 1) Reduction in grade, unless the accused soldier is above the grade of E-6 or an officer; 2) Loss of liberty to include extra duty, restriction and even correctional custody; 3) Forfeiture of pay which is based on grade to which reduced and whether or not the reduction is suspended (forfeiture may even be applied against a soldier's retired pay); and 4) Admonition and reprimand.

CONCLUSION

If I were an officer, I am convinced I should be the most decisive disciplinarian in the Army. ... Discipline in an Army is like the law in a civil society. There can be no liberty in a commonwealth where the laws are not revered and most sacredly observed, nor can there be happiness or safety in an army for a single hour when discipline is not observed.

— John Adams

An accused facing court-martial has the benefit of broad legal rights — sometimes broader than is constitutionally required. However, due to the unique disciplinary needs of military service and the need for a worldwide military judicial system, a separate system of justice for the military must exist.

Civilian counsel should not exclude themselves from the battlefield of military justice merely because they are not members of the military themselves. A civilian attorney retained to assist a member of the armed forces at court-martial has a golden opportunity to discover a unique legal specialty.

With these starting points, a diligent attorney can effectively represent any servicemember. This representation may not only be a lucrative and challenging addition to the attorney's practice, but an opportunity to provide a valuable service to those who defend America.

1. "Military justice is to justice what military music is to music." – Julius Henry "Groucho" Marx. Marx allegedly borrowed the phrase from French Premier Georges Clemenceau's reference to the notorious Dreyfus trial of 1895. See L.H. LaRue, *What is the Text in Constitutional Law: Does it Include Thoreau?*, 20 Ga. L. Rev. 1137, 1142 n.2 (1986).

2. The dissenting Supreme Court justices in *U.S. v. Solorio*, 107 S. Ct. at 2924 (1987), stated that the ruling that a crime committed by a service member did not have to be "service connected," would "sweep an entire class of Americans beyond the reach of the Bill of Rights."

3. It is "a system of military justice that is notably more sensitive to due process concerns than the one prevailing through most of our country's history...." Justice Ginsburg, concurring in *Weiss v. United States*, 510 U.S. 163, 194 (1994).

4. *Civilianizing the Military Justice System*, December '98 Vietnam Feature, found at www.thehistorynet.com/Vietnam/articles/1998/1298-side.htm.

5. Article I, section 8, clause 14 ("The Congress shall have Power ... [t]o make Rules for the Government and Regulation of the land and naval Forces"); Article II, Section 2 ("The President shall be Commander in Chief of the Army and Navy of the United States ...").

6. R.C.M. 201-204.

7. The Marine Corps became part of the Navy by virtue of the Act of June 30, 1834. Thus the Marine Corps was governed by the Articles for the Government of the Navy (aka "Rocks and Shoals") until the enactment of the UCMJ. The Navy JAG Corps was established in 1967. The Coast Guard, established in 1790 as the Revenue Cutter Service within the Department of Treasury, is now a part of the Department of Transportation and the smallest of the Armed Forces.

8. 10 U.S.C. §§801-946.

9. *Dynes v. Hoover*, 61 U.S. (20 How.) 65, 79 (1857).

10. The drafters of the Uniform Code of Military Justice (UCMJ) recognized a commander's necessity to punish minor offenses by promulgating a means to adjudicate offenses quickly without going to court-martial. Also known as "Captain's Mast," "NJP" and "Office Hours" in the other armed services, Article 15 of the UCMJ and its provisions are located in the MCM at Part V, 10 U.S.C. §815, as well as Chapter 3 of AR 27-10 for the Army.

11. Army administrative actions include, but limited to formal and informal counseling (AR 600-20 and 635-200), para 1-18), corrective training (AR 600-20, para 4-6b), revocation of pass privileges (AR 600-8-10, chap 5, section XIV), Letters of Reprimand (AR 600-37, AR 25-400-2, para B-80), Bar to Reenlistment (AR 601-280), Removal from the Promotion List (AR 600-8-19, para 3-28 and 4-18), Administrative Reduction of Rank (AR 600-8-19, chap 6), and Personnel Separations-Enlisted Personnel (AR 635-200).

12. As well as the adverse administrative and non-judicial punishments that servicemembers are subject to, there are also Summary Courts-Martial (no punitive discharge and limit on confinement), Special Court-Martial (also known as a "straight special"), and Bad-Conduct Discharge (BCD a.k.a. "Big Chicken Dinner") Special Court-Martial (limited to a BCD and six months confinement). The GCM can award any authorized punishment, including death in capital cases. The GCM requires a military judge, at least five panel (jury) members, trial and defense counsel. See UCMJ Art. 16 and 18, 10 U.S.C. §§816 and 818.

13. A "commander" is the commanding officer of certain military units. See 10 U.S.C. §822 (1988).

14. The military has many different forms of punishment — administrative, judicial and non-judicial. The civilian practitioner should be

aware of these lesser forms to effectively plea bargain if necessary to help prevent a conviction on the servicemember's record.

15. The Coast Guard uses the term "Law Specialists," but is the equivalent to the JAG officers in the other services. The exception is that Coast Guard Law Specialists are all line officers and are not a part of a separate "corps."

16. The Air Force created an Area Defense Counsel program, the Army has a Trial Defense Service, and the Navy has a Legal Services Command. See *United States v. Davis*, 20 M.J. 61 (C.M.A. 1985); *United States v. Nicholson*, 15 M.J. 436 (C.M.A. 1983).

17. UCMJ, Article 37(b), 10 U.S.C. §837(b).

18. Military Justice Act of 1968, Pub. L. No. 90-632, 82 Stat. 1335 (1968).

19. The military judge is usually a senior military attorney appointed by and working directly for the judge advocate general, and thus independent of any local military chain of command. See UCMJ Art. 1 & 26, 10 U.S.C. §§801 & 826.

20. In 1950 Congress exercised its power to provide one statute to govern the armed forces. It is currently codified at 10 U.S.C. §§801-946. There are 145 articles in the UCMJ. The individual sections are commonly referred to by their enumerated article, e.g. Article 134.

21. The legal basis for the military justice system originates from the U.S. Constitution, Article I, section 8, clause 14: "The congress shall have the power...[t]o make Rules for the Government and Regulation of the land and naval Forces."

22. In *Solorio v. United States*, 483 U.S. 435 (1987), the Supreme Court held that jurisdiction of a court-martial depends solely on the accused's status as a member of the armed forces.

23. 18 U.S.C. §13. Applicable state crimes not codified in the UCMJ may be incorporated through the Assimilated Crimes Act and Article 134 of the UCMJ.

24. Army Regulation 27-10, Chapter 5, para 5-2 proscribes the policy not to try retirees unless extraordinary circumstances are present.

25. 10 U.S.C. §672.

26. 44 O.S.A. §3112, etc.

27. Army Regulation 27-10, *Military Justice*, para 4-2, provides that a soldier ordinarily will not be tried by court-martial for the same act over which a civilian court has exercised jurisdiction.

28. Air Force Regulation 51-201.

29. R.C.M. 305(h)(2)(B)(iii)(b). There is no opportunity for bail in the military. A military accused continues to receive pay and military benefits while he is confined, thus the rationale justifying the allowance of bail in the civilian sector is not a concern for the military member in pre-trial confinement.

30. *Courtney v. Williams*, 1 MJ 267, 271 (C.M.A. 1976).

31. R.C.M. 305(d) discussion.

32. R.C.M. 305(h)(2)(b)(iii)(a).

33. *United States v. Heard*, 3 MJ. 65 (C.M.A. 1977).

34. R.C.M. 305(h)(2).

35. *U.S. v. Rexroat*, 38 M.J. 292 (C.M.A. 1993), Court found the 48 hour review requirement of *County of Riverside v. McLaughlin* applied to the military as well.

36. The magistrate's review must take place within seven days of the imposition of confinement. R.C.M. 305(i)(1).

37. U.S. Const. amend. V. "No person shall be held to answer for . . . (c) crime, unless on a presentment or indictment of a Grand Jury except in cases rising in the land or naval forces, or in the Militia, when in actual service in time of War . . ."

38. *Hurtado v. California*, 110 U.S. 516 (1884).

39. An accused servicemember can waive his right to an Article 32 Investigation for strategic purposes and/or as a tool in plea negotiations.

40. Okla. Const. Art. II, §18, 22 O.S.A. §351, *et al.*, Rule 6 of the Federal Rules of Criminal Procedure.

41. 22 O.S.A. §258.

42. *Talbot v. Toth*, 215 F.2d 22 (D.C. Cir. 1954); See Gaydos, "A Comprehensive Guide to the Military Pretrial Investigation," 111 Mil. L. Rev. 49 (1986).

43. *U.S. v. Roberts*, 10 M.J. 308 (C.M.A. 1981); R.C.M. 405(a) discussion.

44. R.C.M. 405(f)(3).

45. R.C.M. 405(g).

46. 22 O.S.A. §355.

47. *Green v. Widdecke*, 19 C.M.A. 576, 42 C.M.A. 178 (1970).

48. *State v. Weese*, 625 P.2d 1181.

49. The burden of proof is comparable to probable cause.

50. UCMJ, Art. 39(a).

51. "Panel" is a military term of art for a jury.

52. UCMJ Art. 25(c), 10 U.S.C. §825(c).

53. The federal rules are applied in all civilian federal trials and in at least 27 state courts.

54. The Jury Selection and Service Act of 1968 ("JSSA") codified at 28 U.S.C. §§1861-1878 (1994), is to implement the Sixth Amendment's fair-cross-section requirement.

55. UCMJ 25(d)(2), 10 U.S.C. §825(d)(2).

56. The Supreme Court has ruled that juries of fewer than six members are unconstitutional, see *Ballew v. Georgia*, 435 U.S. 223, 245 (1978), and that six person juries must return unanimous verdicts, see *Burch v. Louisiana*, 441 U.S. 130 (1979). In the military arena, the court has not reconsidered its 1942 validation of military panels in *Ex Parte Quirin*, 317 U.S. 1 (1942). Therefore, military jury panels may consist of only five members, see 10 U.S.C. §829(b) (1988), and may deliver less-than-unanimous verdicts. Sentences of death require a unanimous panel vote, sentences of more than 10 years of confinement require a three-fourths vote among panel members, and all other sentences require two-thirds vote. See 10 U.S.C. §852.

57. UCMJ, Art. 52, 10 U.S.C. §852.

58. *North Carolina v. Alford*, 400 U.S. 25 (1970).

59. R.C.M. 910(c).

60. R.C.M. 705(b).

61. UCMJ Art. 57, 10 U.S.C. §857.

62. R.C.M. 1202, 1204(b)(1), and 1110(b).

63. UCMJ Article 66(c), 10 USC §866(c).

64. UCMJ Art. 61, 66-67a, 10 U.S.C. §§861, 866-867a.

65. This three-member judiciary is nominated by the president and confirmed by the Senate, however not tenured because the CAAF is an article I court in contrast with the civilian article III courts.

66. This right was initiated with the Military Justice Act of 1983, and codified at UCMJ art. 67(h); see also R.C.M. 1205.

ABOUT THE AUTHOR



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Consumer Protections for America's Heroes

An Overview of the Servicemembers Civil Relief Act

By Kaleb K. Hennigh

The brave men and women on active duty serving in the armed forces provide citizens of the United States safety and security from threats of harm whether those threats are foreign or domestic. The time and energy our servicemembers devote to their own country at home or abroad can easily compromise their ability to satisfy personal and family contractual and financial obligations. Perhaps even more important and of greater concern is the fact that active military service can impede a servicemember's access to justice and adversely affect their civil rights. Consumer protection is important to all; however, it can become a matter of national security if our active servicemembers become distracted with domestic obligations while engaged in military service. Fortunately, there is some relief for active duty servicemen and servicewomen found in the Servicemembers Civil Relief Act (SCRA).¹ This article is designed to provide general practitioners a brief overview of the protections and applicability offered to active servicemembers.²

BRIEF HISTORY

Recognizing the need to protect servicemembers is certainly not a novel idea. In fact, our Congress has established various policies of protection for these men and women since the Civil War. Policies have ranged in scope and direction. There existed a blanket policy of absolute moratoriums on any civil actions against sailors and soldiers during the Civil War. In 1918, the original Soldiers' and Sailors' Act was enacted to direct courts to take action as equity required when a servicemember's rights were at stake in

a civil action. In 1940, the 1918 act was revised to address court interpretations to expand the protections to other servicemembers, and renamed the Soldiers' and Sailors' Civil Relief Act (SSCRA). Further court interpretations and societal changes led to additional alterations of the law and to the ultimate creation of the Servicemembers Civil Relief Act (SCRA) as we know it today, and signed into law by President George Bush in December 2003. The overarching policy is certainly to protect our servicemembers' civil liberties while they are on active duty. Courts have

arguably maintained this position and SCRA's interpretation should be read favorably for those servicemembers as the U.S. Supreme Court has directed that the prior act be read "with an eye friendly to those who dropped their affairs to answer their country's call."³

LEGAL PROTECTIONS AFFORDED

When seeking to utilize the SCRA, it is important to understand its applications and limitations. The act controls civil litigation seeking remedies against members of the armed services. SCRA applies to all U.S. court or administrative hearings and includes all states and political subdivisions.⁴ Anything from domestic and custody matters to state permitting and license revocation hearings are covered by SCRA. One limitation can be taken directly from its name; the act is limited to civil actions involving servicemembers. Criminal matters and appearances, although likely to be continued when a servicemember is heeding his or her country's call, are not controlled by SCRA.⁵ An application that many might not realize or recognize is that the act can even apply to non-servicemembers. Dependents such as spouses and children can receive relief under the act as well as anyone else who can establish a dependency of over 50 percent of one's support for a six-month period prior to seeking SCRA relief.⁶

SCRA applies to termination of residential and personal property leases, controls interest rates, stays court proceedings and can even prevent states from effectively increasing income tax rate brackets for nonmilitary spouses by including a servicemember's military income. This article certainly can't identify all of the nuances or court interpretations, but should briefly identify some of those protections afforded our servicemembers in an effort to assist all practitioners in their quest to assist America's heroes.

LEASE AGREEMENTS AND MORTGAGE PROTECTIONS

SCRA protects servicemembers relating to leases in two ways. First, SCRA prevents evictions from leased housing. Upon receipt of an eviction notice a servicemember or his or her dependents can request SCRA relief from the court. Prior to any order of eviction being entered a court must: 1) confirm that the a servicemember or dependent of the servicemember maintains the lease; 2) establish the servicemember is on active duty;⁷ and 3) ensure that

the rental rate does not exceed a maximum rental rate, as determined by statute.⁸ When evaluating the applicability for relief from eviction it must be determined that the member's service duties have materially affected the ability to make timely rent payments. There is a statutory maximum monthly rental rate for this protection that is based on a sliding formula; said current maximum monthly rental amount for 2011 is \$2,975.54.

The second protection SCRA provides servicemembers regarding lease agreements is an ability to prematurely terminate residential and other personal property leases that 1) were signed prior to the member entering active duty; and 2) have either been occupied by or in use for a servicemember or dependent thereof.

“When seeking to utilize the SCRA, it is important to understand its applications and limitations.”

A servicemember can terminate any lease affecting a dwelling, profession or business, agriculture or similar lease signed by the servicemember or his or her dependent prior to the entry of active duty,⁹ as well as those leases entered into by an active servicemembers who have received deployment orders for 90 days or more or who have received permanent change of station orders.¹⁰ To terminate these leases the member must provide: 1) written notice of the termination of the lease to the lessor; and 2) copies of the military order.¹¹ The effective date of termination of said leases for month-to-month leases is 30 days following the first date of the next rental payment, and for all other rentals the termination becomes effective the last day of the first full month proper notice is delivered.¹² The termination of an automobile lease occurs upon and becomes effective upon the return of the vehicle to the lessor within 15 days after providing effective written notice and copies of the orders as described above.¹³ Unpaid lease amounts at the time of termination of any lease are allowed to be repaid on a prorated basis and

any early termination fees or charges can be eliminated by SCRA.¹⁴

SCRA protects servicemembers who have entered into an installment contract prior to active duty and, because of their service, are unable to make payments. Unless otherwise ordered by a court a party to a contract with a servicemember cannot rescind, terminate or repossess property without a court order if: 1) an initial installment payment or deposit has been provided; 2) the active service has prevented payments; and 3) said service materially affected the ability to adhere to the contract. There can be no termination of any such contract or repossession of property subject to those contracts for any breach by a servicemember prior to or during active service without a court order.¹⁵

As mortgage foreclosure rates continue to rise, it is important to recognize significant protections afforded servicemembers entering contracts for the purchase of real or personal property. Servicemembers are protected against real property foreclosures if the following conditions are met:

- 1) Sought relief is on an obligation secured by a mortgage, deed of trust or similar device whether on real or personal property;
- 2) Obligation to pay originated prior to active duty;
- 3) Property was owned by a servicemember or dependent prior to active duty;
- 4) Property is still owned by said servicemember or dependent at the time relief is sought;
- 5) The ability to meet the financial obligation is *materially affected*, by the member's service; and
- 6) The action is filed during or within 90 days after completion of the servicemember's period of active service.¹⁶

Once these elements are met courts have the authority to stay proceedings until members are available to answer. Courts even have the authority to alter contractual documents by extending maturity dates, extension of redemption periods and can even reduce monthly payments.¹⁷ A court can set aside any sale, foreclosure or property seizure for any mortgage if said order, seizure or foreclosure occurred during a period of active service or within two

months after the completion of said active service and the following elements are met: 1) The servicemember was materially affected due to military service in asserting a defense; 2) there exists a meritorious defense; and 3) provided the application to set aside the aforementioned action is filed within 90 days of the end of military service.¹⁸ There are significant penalties to those who violate the SCRA. Any party who knowingly repossesses assets or seeks judgment in violation of SCRA can be fined or imprisoned or both.¹⁹

STATUTE OF LIMITATIONS AND STAY OF PROCEEDING

In any civil action, SCRA tolls periods of time of service of active duty when computing statutory or other mandated deadlines, whether the servicemember is a plaintiff or defendant in an action. SCRA provides that the period of active service (including 60 days after active service) may not be included in any limitation period once proof of military service is established.²⁰

Further, any action involving a servicemember may be stayed prior to the entry of a final judgment.²¹ This stay is mandated and may be requested by a servicemember who has received notice of a proceeding against him or her, or in the event no notification has been provided and no entry of an appearance made by a servicemember, the applicable court has a duty to determine if a party is a military servicemember.²² Prior to any default judgments SCRA puts the burden upon the court to determine if a defendant is in the military.²³ An affidavit is required to be filed by a plaintiff stating whether or not a defendant is a servicemember and if a servicemember, whether or not said servicemember is currently engaged in active service. The affidavit must contain a statement, declaration or certification and subscribed or declared to be under penalty of perjury as to its contents.²⁴ The United States Department of Defense operates a free website that can provide plaintiffs with current active military status of an individual and can be found at: www.defense.gov/faq/pis/pc09sldr.html.

In those instances where a servicemember appears in a case upon receiving notice of an action, a servicemember must first file an application/motion requesting a stay to be provided the protections for stays under SCRA. The SCRA request must contain:

- 1) Written statement of member outlining how the current duties of the service-

member materially affect the ability to appear or otherwise respond;

- 2) Provide a date when the servicemember will next be available to appear;
- 3) Statement from the commanding officer confirming military duty prevents appearance;²⁵
- 4) And said statement confirming leave isn't authorized.

SCRA provides in 50 U.S.C. App. 522, that a court shall enter a stay for at least 90 days if the elements of the motion/application listed above are satisfied. There is no definitive limitation to providing additional stays of the proceedings, provided that all elements continue to remain satisfied.

INTEREST RATE PROTECTIONS

SCRA provides a 6 percent annual interest rate cap on pre-service interest-bearing loans and obligations of servicemembers or joint obligations with dependents, during the time of active service.²⁶ Any incurring interest in excess of the 6 percent cap must be forgiven upon written notification from the servicemember directly to the creditor that includes copies of the military orders and so long as it is shown that the service materially affected the servicemember's ability to meet the ability to pay. Upon receipt, a creditor must grant relief of reduction and/or write off excess interest effective as of the initial date of active service.²⁷ Those representing creditors should note that relief from this annual interest rate cap can be granted upon court order if it is proven that the service did not have a material effect on said member's ability to pay.²⁸

CONCLUSION

The men and women of the armed services deserve the additional protections afforded to them through the Servicemembers Civil Relief Act. As practitioners, it is important we understand those protections and ensure civil rights and liberties are not violated nor statutes ignored. The Oklahoma Bar Association has taken huge strides in providing pro bono services to our servicemembers through the Oklahoma Lawyers for America's Heroes program and continues to work to educate and provide resources to assist the over 100 volunteer attor-

neys who have committed their time to helping our heroes. During the month of November, I encourage all Oklahoma practitioners to take time to make an in-depth review of the SCRA and make an effort to join with the Oklahoma Bar Association through Oklahoma Lawyers for America's Heroes.

1. 50 U.S.C. App. §§501-596.

2. SCRA defines active servicemembers as not only those members of the Army, Navy, Air Force, Marine Corps and Coast Guard on active duty pursuant to 10 U.S. 101(d)(1); but also those commissioned members of Public Health Service and the National Oceanographic and Atmospheric Administration; as well as, National Guard Unit members responding to national emergencies as declared by the president of the United States and serving over 30 consecutive days, via authorization under 32 U.S.C. §502(f). See 50 U.S.C. App. §511.

3. *Le Maistre v. Leffers*, 333 U.S. 1, 6 (1948).

4. 50 U.S.C. App. §511 (5).

5. 50 U.S.C. App. §512(b).

6. See 50 U.S.C. App. §§511-517.

7. Active under 10 U.S.C. 101 (d)(1) or 30 consecutive days under 32 U.S.C. 502(f).

8. 50 U.S.C. App. §531(a).

9. 50 U.S.C. App. §534.

10. 50 U.S.C. App. §535(b).

11. 50 U.S.C. App. § 535(c).

12. 50 U.S.C. App. §535(e).

13. 50 U.S.C. App. § 535(d).

14. *Id.*

15. 50 U.S.C. App. §532(a).

16. 50 U.S.C. App. §533.

17. *Id.*

18. 50 U.S.C. App. §521(g).

19. 50 U.S.C. App. §532.

20. 50 U.S.C. App. §526.

21. 50 U.S.C. App. §522(b)(1).

22. 50 U.S.C. App. §521.

23. *Id.*

24. 50 U.S.C. App. §521(b)(4).

25. Military orders are generally deemed sufficient to satisfy the commanding officer requirement to contain in the 90-day stay application.

26. 50 U.S.C. App. §527(a).

27. 50 U.S.C. App. §527(b)(2).

28. 50 U.S.C. App. §527(c).

ABOUT THE AUTHOR



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NOTICE OF JUDICIAL VACANCY

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

**District Judge
Seventh Judicial District, Office 2
Oklahoma County, Oklahoma**

This vacancy is due to the death of the Honorable Twyla Mason Gray.

[To be appointed to the office of District Judge, Office 2, Seventh Judicial District, one must be a registered voter of Oklahoma County Electoral Division Three at the time (s)he takes the oath of office and assumes the duties of office. Additionally, prior to appointment, such appointee shall have had a minimum of four years experience as a licensed practicing attorney, or as a judge of a court of record, or both, within the State of Oklahoma.]

Application forms can be obtained online at www.oscn.net under the link to Judicial Nominating Commission, or by contacting Tammy Reaves, Administrative Office of the Courts, 2100 North Lincoln, Suite 3, Oklahoma City, Oklahoma 73105, (405) 556-9862, and must be submitted to the Chairman of the Commission at the same address **no later than 5 p.m., Friday, November 18, 2011. If applications are mailed, they must be postmarked by midnight, November 18, 2011.**

Jim Loftis, Chairman
Oklahoma Judicial Nominating Commission

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

NOTICE OF PROPOSED LOCAL RULE CHANGES

Pursuant to Rule 57, Fed. R. Crim. P. the court hereby gives notice and opportunity for comment on proposed changes to its Local Criminal Rules. This District has not revised its Local Criminal Rules in any comprehensive manner since 1995. Therefore, the revisions resulted in significant changes that do not lend themselves to a “red-line” comparison approach. Accordingly the revised rules appear in a side-by-side comparison with current rules to aid the reader in his or her review of the revised rules.

Copies of the proposed Local Criminal Rules and the current Local Criminal Rules are available at the District Court Clerk’s office. Electronic copies are available on the court’s website under Announcements: Change to Local Rules: Comment Period at www.oknd.uscourts.gov.

The court invites written comments from any interested persons. Send comments to the Court Clerk, Attention: Proposed Rule Changes, 333 W. 4th Street, Room 411, Tulsa, Oklahoma, 74103; or email to: cm-ecfintake_OKND@oknd.uscourts.gov and type “Proposed Rule Changes” in the subject line. Comments will be accepted by the court through Dec. 7, 2011.



Employment Protection for the Citizen-Soldier

[F]or the benefit of he who has laid aside his civilian pursuits to serve his country in its hour of need.¹

By Robert Don Gifford II

*... When Johnny comes marching home.
Get ready for the Jubilee,
Hurrah! Hurrah!
We'll give the hero three times three,
Hurrah! Hurrah!
The laurel wreath is ready now
To place upon his loyal brow ...²*

Since Sept. 11, 2001, thousands of Oklahomans have stood up to answer the call to duty to respond to the tragic events of this era's Pearl Harbor. The far majority of employers see themselves as "patriot partners" with a noble duty to support their employees who also wear the military uniform. Despite this pride and joint sacrifice, smaller businesses may suffer their own financial stress. Ignorance, and in the rare circumstance callousness or retribution, may violate a state or federal law that can result in judicially-ordered awards of double damages to the employee/servicemember.

The citizen-soldier is deeply rooted in our nation's history. In 1636 at the Massachusetts Bay Colony, the first regiments of a militia were formed. Males between the ages of 16 and 60 were obligated to possess arms, "drill" every week, perform guard duty, and defend the colonists against attacks from the Pequot tribe. Forty percent of our all-volunteer military is made up of our friends, families and neighbors who serve

in either the Reserve or National Guard components of our armed forces.

When activated, these citizen-soldiers leave behind not only families and loved ones, but civilian careers as well. For the past 70 years, there has been some form of federal protection for those that have "laid aside his civilian pursuits to serve his country in its hour of need." To further mitigate any hardship, Congress enacted the Uniformed Services Employment and Reemployment Rights Act (USERRA). In 1994, the Oklahoma Legislature enacted a similar provision.

USERRA,³ and the similar Oklahoma statute, provide that persons serving in the uniformed services "shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of" their membership in the uniformed services.⁴ USERRA is the principal mechanism protecting soldiers and members of the Reserve from illegal employment discrimination.⁵ The statute enables average American citizens to serve their country by

guaranteeing their reemployment upon returning from active duty.⁶

USERRA embodies a promise from Congress that members of the uniformed services will not suffer negative employment repercussions based on their military service.⁷

The intentions of the USERRA are to encourage the patriotic service in our armed forces (non-career) by minimizing the side effects to civilian employment by such sacrifices for the nation. It should also be noted that “uniformed services” is not limited only to those serving in the Army, Air Force, Marines and Navy, but also the Army and Air National Guard, the Coast Guard, the Public Health Service commissioned corps, as well as any other category designated by the president in time of war or emergency. Generally, the USERRA’s broad anti-discrimination provisions prohibit all types of employers from denying initial employment, promotion or any benefit of employment on the basis of an individual’s membership, application for membership, performance of service, application for service or obligation in any of the uniformed services. It not only covers reemployment rights, but also health insurance, pension and any usual fringe benefits following military service.

HISTORY

The United States has had issues with large-scale demobilizations of servicemembers back to civilian life. One of the most significant such occasions occurred following World War I. Rapid demobilization of millions of troops followed the signing of the armistice that brought about the end of the war.⁸ Widespread apprehension existed as to how the demobilization would occur and whether the demobilization would create profound economic disturbances.⁹

At the end of World War I, a group of unemployed veterans known as the “Bonus Marchers” traveled to Washington, D.C.¹⁰ in an attempt to receive an early payment of a promised “bonus” to the veterans for their service — but not yet due for over a decade.¹¹ While the Bonus Marchers did not get their money early, Congress took the steps legislatively to avoid future veterans from suffering mass unemployment after coming home from war.¹² Congress first enacted the 1940 Selective Training and Service Act,¹³ the Military Selective Service Act of 1967,¹⁴ the Vietnam Era Veterans’ Readjustment Assistance Act of 1974¹⁵ and the Veterans’ Reemployment Rights Act (VRRA).¹⁶ These USERRA

predecessors had become cumbersome given the greater responsibilities of reservists in “every phase of military preparedness.”¹⁷

In 1994, Congress enacted USERRA in response to concerns regarding Gulf War veterans.¹⁸ During the first Gulf War, President George H.W. Bush ordered the first large-scale call up of reservists since the Korean War.¹⁹ Almost 228,000 reservists were ordered to active duty, with a further 132,000 authorized.²⁰ This substantial mobilization of reserve units made the issue of job protection for reservists once again relevant. The act was signed into law by President Clinton on Oct. 13, 1994.²¹

Congress went further to ensure that there would be continuity in its attempts to protect members of the uniformed services. Congress did so by making clear its intent that case law interpreting USERRA’s statutory predecessors would be applied to USERRA.²² In particular, the congressional committee noted that previous courts had called for a liberal construction of the statute. Congress wanted the case law to be consistent.²³

DISCRIMINATION BASED ON MILITARY SERVICE

USERRA prohibits discrimination based on an individual’s military service. Specifically, an employer cannot take any action based on a person’s current obligations as a member of the uniformed services, prior service in the uniformed services or intent to join the uniformed services. Title 38, United States Code, Chapter 43, §4311 states: “[A] person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.”

THE LEGAL CONCEPT AND STRUCTURE

A burden-shifting framework is used by the courts to determine whether an employer has violated the statute by discriminating against the “dual-hatted” employee. Under this structure, a employee/servicemember first bears the burden of proving by a preponderance of the evidence that his military duties were the “substantial or motivating factor” in the employer’s actions. In other words, the mili-

tary duty needs only to be one of the reasons for an employment action that is adverse to the servicemember. The burden then shifts to the employer to prove and rebut, also by a preponderance of the evidence, the adverse action (or inaction) would have been taken in the absence of military service. If the employer meets this burden, the servicemember claimant then can only prevail if he establishes that the action, or inaction, would not have happened but for the military obligation.

RETALIATION AGAINST NON-MILITARY EMPLOYEES FOR ASSISTING

The act also prohibits the civilian employers from retaliating against a servicemember solely because of trying to enforce those protected rights under USERRA. USERRA also protects those non-military employees from retaliation for assistance in an investigation under the statute. The same burden-shifting framework that is used to prove discrimination applies to retaliation cases.

ADVANCE NOTICE

The act also specifies certain obligations of the servicemember as well in order to invoke its protections. The USERRA mandates that if reasonably possible, an employee/servicemember called to military service must give advance notice to the civilian employer of activation. In giving this advance notice, the servicemember does not have to indicate the expected length of service or whether the servicemember intends to return to his or her position after service. The servicemember must, however, inform that civilian employer that he is leaving for military service to have reemployment rights upon completion of that service. Advance notice is not required if giving notice was precluded by military necessity or if giving notice was otherwise unreasonable or impossible.

LENGTH OF SERVICE

The servicemember's cumulative length of military service generally cannot exceed five years per employer, and the clock is reset with a new civilian employer. Naturally, there are exceptions to the rule — usually those matters that are beyond the control of the citizen-soldier. The five-year limitation period also does

not include the period of military absence before or after military duty to allow for training, counseling or transition of equipment and supplies.

TIMELY APPLICATION FOR REEMPLOYMENT

Upon de-mobilizing and returning to civilian life, the employee/servicemember must report or submit a written or oral application for reemployment in a reasonably timely manner. An employee's application for reemployment is deemed timely depending upon the length of service.

If an employee has served up to 30 days of military duty, the member must report to his or her employer by the beginning of the first regularly scheduled work period that begins on the next calendar day, after allowance for reasonable and safe travel home. If the military duty lasted 31 days to six months, the employee must submit a reemployment application (verbal or written) within 14 calendar days upon completion of military service. If the military service exceeded six months (181 days or more), the application for reemployment must be submitted no later than 90 calendar days after completion of military service. In any event, if the resubmission of a "timely" application is impossible for one reason or another, the application must be submitted as soon as it becomes reasonably possible.

Once these requirements are met, the employee must be promptly reinstated to his employment. While "prompt reemployment" is not defined by statute, USERRA regulations indicate that employment within two weeks of the reapplication is expected. In addition, an employee's rights are not necessarily and automatically forfeited if the employee does not timely return to work or properly apply for reemployment within the time constraints. In those circumstances, reemployment is not by USERRA and an employer's rules governing unexcused absences will apply to the employee.

Furthermore, an employee who is reemployed has certain protections from subsequent firing. The employee who served 31 days to six months cannot be discharged within six months

“Once these requirements are met, the employee must be promptly reinstated to his employment.”

of reemployment without cause. The servicemember who was mobilized for more than six months may also not be fired for up to one year of reemployment except for cause. This protection concept is to allow the returning military employee to readjust to civilian employment after a long military mobilization. Cause for removal may be based on an employee's misconduct or the application of the so-called "escalator principle." Regardless of the situation, the burden of proving a lawful firing during this grace period falls upon the civilian employer.

REEMPLOYMENT POSITION

As a general principle, the "escalator principle" provides that the citizen-soldier employee must be allowed to be reemployed back to a position where he would have been employed for not the break due to military duty or given the opportunity to be in another position of similar seniority, status and pay. This principle, as stated by the U.S. Supreme Court in *Fishgold v. Sullivan Drydock and Repair*, states that the military employee "does not step back on the seniority escalator at the point [the employee] stepped off," but "steps back on at the precise point [the servicemember] would have occupied had [the servicemember] kept his [civilian] position continuously during [military duty]."²⁴

It is worth noting that while the employment "escalator" may go up, it also may go down. Therefore, the returning servicemember is also subject to any pay or benefit decreases that would have been suffered if not for military leave. Also, an employer is not required to reemploy a servicemember in a position he or she is not qualified to perform. The employer, however, must make "reasonable efforts" to enable the returning servicemember to qualify for the position.

This also applies to missed promotional opportunities. An employee returning from military duty must be elevated with a promotion if there is "reasonable certainty" that it would have occurred but for the obligated absence. A servicemember is not automatically entitled to receive a promotion that is based on some measure of performance, but the member must be allowed a fair opportunity to compete for a promotion missed because of military service. Any missed promotion must be retroactive to the date it would have occurred had the member's employment not been interrupted by service.

EXCEPTIONS TO THE RULE

There are three statutory exceptions to USERRA's reemployment requirement that are considered affirmative defenses with the employer bearing the burden of proof. If the employer's circumstances changed to make reemployment unreasonable, USERRA does not apply. Also, if reemployment would impose an undue hardship on the employer, the employer is exempt. The "hardship" is limited in scope and employers must be cautious and sure in claiming this exemption. Finally, an employer is not required to bring back the employee whose employment was limited in nature for a brief, nonrecurring period with no reasonable expectation of continued employment. To clarify, this does not necessarily mean that a part-time or seasonal employee who also is a member of the Guard or Reserve is without USERRA protections.

COMPENSATION

Employers are not required under federal law to compensate employees on military leave. However, an employee may elect to use an accrued vacation leave instead of unpaid military leave.²⁵ The employer, however, cannot require that the employee use his or her accrued vacation leave. Under the Fair Labor Standards Act, an employer cannot reduce a salaried employee's pay for less than a week's military leave.²⁶ Under state law, Oklahoma Attorney General Drew Edmondson stated in a 2010 opinion that 44 O.S. Supp. Section 209 requires the municipal employees, like state employees, to receive their full regular pay during the first 30 days of their mobilization and that the state (or municipality) may pay the difference between the employee's civilian salary and his military salary.

BENEFITS

In addition, servicemembers/employees who are covered in an employer's health plan may continue that same coverage for themselves and family for up to 18 months after they deploy. The servicemember and his family will also have coverage from the military medical facilities through Tricare.

Retirement plans are also covered under USERRA. Those plans cannot treat returning servicemember/employees as having a break in time by sole reason of military service, and are not required to reapply to qualify for participation. The act requires employers to treat service-

member employees called to military duty as if they were on merely on leave and, accordingly, must also provide all other benefits enjoyed by similarly situated employees on leave. Once the employee is reemployed to the civilian job after activation, employers must also provide for a make-up contribution for plan service periods during which the servicemember/employee was on active military service.

ADDITIONAL PLAYERS IN THE SYSTEM

The U.S. Department of Labor's Veterans and Training Service (VETS), enforces cases arising under the USERRA. A wronged employee may be entitled to not only reinstatement to his job, but also receive back pay, attorney's fees and even double damages for a willful violation. Furthermore, the employee/servicemember may also seek a private civil action.

CONCLUSION

"When we assumed the Soldier, we did not lay aside the Citizen." — Gen. George Washington²⁷

Without the citizen-soldier to answer the call of duty, it would be impossible for the United States to maintain a substantive military force. As it was when Frederick Douglass told President Lincoln during the Civil War in regards to allowing former slaves to fight, the United States without the Reserve and Guard components would be "fighting with [its] right hand behind [its] back." Congress has provided a tool to the citizen-soldier to not have to choose between serving in uniform and keeping their job. In the defense of this nation, everyone should make sacrifices. While non-military employers may have their own challenges with the loss of an employee to a deployment, Congress and the courts have prioritized job security for our citizen-soldiers while trying to do so as fairly as possible to an employer. USERRA and Oklahoma state law is meant for "the benefit of he who has laid aside his civilian pursuits to serve his country in its hour of need."

For more information and additional resources, visit the Department of Labor's website at www.dol.gov/elaws/veterans.html.

1. *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946).

2. "When Johnny Comes Marching Home Again" was a popular Civil War-era song.

3. 38 U.S.C. §§4301-4333 (2006 & Supp. 2008)), 72 Okla. Stat. Ann. §48.1.

4. *Id.* §4311(a).

5. See 38 U.S.C. §4301(a)(1)-(3).

6. See *id.* §4311(a).

7. See *id.* §4301(a)(1).

8. Benedict Crowell & Robert Forrest Wilson, *Demobilization: Our Industrial and Military Demobilization After the Armistice, 1918-1920*, at 47-50 (1921).

9. *Id.* at 50.

10. Lucy G. Barber, *Marching on Washington: The Forging of an American Political Tradition*, at 75 (2002).

11. *Id.*

12. See Samuel F. Wright, "USERRA: Frequently Asked Questions," *The Officer*, Dec. 2003, at 108, available at www.roa.org/site/DocServer/1203_officer.pdf?docID=24421; Samuel F. Wright, Reserve Officers Association, "Everything You Always Wanted to Know About USERRA but Were Afraid to Ask" (Dec. 2003), www.roa.org/site/PageServer?pagename=law_review_104 [hereinafter Wright, About USERRA] (Captain Wright was one of the principal draftsmen of USERRA and a long-time employee of United States Department of Labor, Office of the Solicitor);

13. See H.R. Rep. No. 103-65, at 18-19 (1993), as reprinted in 1994 U.S.C.C.A.N. 2449, 2451-52.

14. Pub. L. No. 90-40, 81 Stat. 100 (1967) (codified as amended at 50 U.S.C. app. §§451-471 (2006)).

15. Pub. L. No. 93-508, 88 Stat. 1578 (1974) (codified as amended in scattered sections of 38 U.S.C.); Nichols, 11 F.3d at 162.

16. Pub. L. No. 93-508, 88 Stat. 1594 (1974).

17. H.R. Rep. No. 103-65, at 18-19.

18. See Pub. L. No. 103-353, §2(a), 108 Stat. 3150 (1994) (codified as amended at 38 U.S.C. §§4301-4333 (2006 & Supp. 2008)).

19. Wright, About USERRA, *supra*, note 15.

20. Stephen M. Duncan, "ROA National Security Report: Gulf War Was a Test of Reserve Components and They Passed," *The Officer*, June 1991, available at www.dtic.mil/doctrine/doctrine/research/p162.pdf#search=desertshield.

21. Alexei Oreskovic, "On the Home Front: Call up of Reservists Raises Questions for Employment Bar," *The Recorder*, Oct. 18, 2001, at 4; Wright, About USERRA, *supra*.

22. See H.R. Rep. No. 103-65, at 19 ("[T]he Committee wishes to stress that the extensive body of case law that has evolved over that period, to the extent that it is consistent with the provisions of this Act, remains in full force and effect in interpreting these provisions. This is particularly true of the basic principle established by the Supreme Court that the Act is to be 'liberally construed.'" (citing *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946); *Ala. Power Co. v. Davis*, 431 U.S. 581, 584 (1977)).

23. *Id.*

24. 328 U.S. 275, 284-85 (1946).

25. 38 U.S.C. 4316(d)

26. WH Admin. Op. (Feb 26, 1965).

27. Jared Sparks, ed., *The Writings of George Washington* 13 (1834) (from Answer to an Address of the New York Provincial Congress, June 26, 1775).

28. *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946).

ABOUT THE AUTHOR



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Some Recent Developments in Veterans Benefits

By Judge Gerald A. Williams

Virtually anyone who has served in our nation's military will be impacted in some way by one or more of the benefits available through the U.S. Department of Veterans Affairs (VA). Working your way through the maze of information available on those benefits — whether in the form of VA pamphlets or law review articles¹ — can be daunting, but necessary. Hopefully, this brief update on VA benefits will prove useful, as well.

DISABILITY COMPENSATION

Disability compensation payments are paid to veterans who are disabled (at least to some degree) by injury, illness or disease incurred or aggravated while on active duty.² If such a condition exists, then it will most likely be considered to be "service-connected." However, there is a fairly new requirement that a veteran must establish a "current disability" prior to receiving disability compensation benefits.³

The first step in the disability compensation claims process has not changed much. The veteran must still complete a VA Form 21-526 and get it to a VA regional office. Now, however, it can be done online.⁴

A veteran's access to compensation benefits and to health care is determined in part by whether his or her condition is service-connected.⁵ Generally, there are three requirements for establishing service-connection: 1) a current disability; 2) the occurrence or aggravation of an injury or disease from military service; and 3) a causal link between the two.⁶

There is a new list of conditions and diseases that qualify for a presumption of service-connection for Gulf War veterans who served

from Aug. 2, 1990, to July 30, 1991, and for people who served in Afghanistan on or after Sept. 19, 2001.⁷ Gulf War veterans who served in southwest Asia and have chronic disabilities resulting from undiagnosed or medically unexplained conditions are able to receive compensation if their condition appeared either during active service or to a degree where it would trigger at least a 10 percent disability rating at any time since then through Dec. 31, 2011.⁸

Perhaps the most significant development in this area is the decision to create a presumption of service-connection for Post-traumatic Stress Disorder (PTSD).⁹ Veterans are required to establish an "in service stressor" for a PTSD claim,¹⁰ but the VA will no longer be able to deny such a claim merely because the stressor is not verified.¹¹ In short, the VA employee now has an affirmative duty to first seek verification from an appropriate source (e.g., the U.S. Army) unless the veteran's statement is too vague to allow for independent confirmation.

Perhaps the most political development in this area concerns what is known as "concurrent receipt." Prior law required disabled military retirees to forfeit a dollar of retired pay for every dollar they received in disability compensation.

Veterans organizations have literally hated this requirement. Now, there is a gradual phase-out of this offset, lasting through 2013; but it is complicated.

For military retirees with a 50 to 90 percent VA disability rating, concurrent receipt payments have been increasing at a rate of 10 percent each year.¹² Military retirees with a 100 percent VA disability rating were entitled to receive both their full disability compensation and their full retired pay immediately.¹³ There is yet another category of veterans, who were granted a medical disability retirement before they could serve 20 years on active duty. These veterans, known as “Chapter 61 retirees” have different concurrent receipt phase in schedules;¹⁴ although there is pending legislation in Congress to correct this perceived injustice.¹⁵

So how much money for a veteran is at stake? Potentially, quite a lot; although everything is relative, especially given what a veteran went through to earn a disability rating. The current rates are as follows:¹⁶

2011 VA Disability Compensation Rates for Veterans	
Veteran's Disability Rating	Monthly Rate Paid to Veterans
10%	\$123
20%	\$243
30%	\$376
40%	\$541
50%	\$770
60%	\$974
70%	\$1,228
80%	\$1,427
90%	\$1,604
100%	\$2,673

Unless you have had experience as a VA claims adjudicator, it may be almost better to do nothing than to try to provide procedural advice to a veteran in this area. There are free trained counselors available from veterans service organizations (*i.e.*, American Legion, Veterans of Foreign Wars, etc.) and a referral to them could not hurt. In my opinion, the law governing VA disability ratings is unnecessarily complex and full of procedural traps.¹⁷ If

you find yourself giving a veteran advice in this area, there is nothing wrong with simply recommending that he or she apply for whatever benefits are being sought.

ACCESS TO MEDICAL CARE

Veterans who served on active duty and who received a discharge under honorable conditions are eligible to receive VA medical care. There are some exceptions, but generally a veteran must first apply for enrollment to access VA health care by completing a VA Form 10-10EZ; however, this can also be done online.¹⁸ If veterans want to enroll based in part on their inability to pay for any portion of their medical care, then they must also provide personal financial data so that their application can go through a means test.

“ So how much money for a veteran is at stake? Potentially, quite a lot; although everything is relative, especially given what a veteran went through to earn a disability rating. ”

When my first article was published,¹⁹ the VA had seven health care priority groups. Now, there are eight.²⁰ The new category was added in part to allow veterans, who had previously been denied enrollment because they made too much money, to access certain kinds of care. By way of background, the number of veterans treated in VA health care facilities increased from 2.9 million in 1995 to 4.5 million in 2003.²¹ Due to limited resources, the VA had to ration access and suspended further enrollment of some higher income veterans (those now in priority group eight) until 2009. The VA’s “medical benefits package” includes an impressive list including surgical care, inpatient hospital care and prescription drugs.²³

The co-payment amount for a 30-day supply of medication depends on the veteran’s priority group but is generally either \$8 or \$9 up to a

current cap of \$960, which expires Dec. 31, 2011.²⁴ However, no co-pay is required if the medication is being used to treat a veteran's service-connected disability.²⁵

An update on VA health care issues would not be complete without noting the changed attitudes concerning medical care for women veterans.²⁶ Female veterans can access gender-specific primary care for Pap smears, mammograms and reproductive health. There are also programs available for victims of sexual assaults.

HOME LOANS AND FORECLOSURE ISSUES

Although the VA does not actually loan money, it guarantees home loans for almost all active-duty military members and veterans. A veteran seeking a VA loan guaranty must first obtain a certificate of eligibility, which is available online.²⁷ He or she must also agree to actually live in the property that is subject of the VA loan.

The Veterans Benefits Improvement Act of 2004²⁸ increased the maximum loan amount, expanded eligibility for Specially Adapted Housing Grants, reinstated an adjustable rate mortgage program and expanded the eligibility for waiving the VA funding fee. Although there are exceptions, generally the maximum loan guarantee is \$417,000.²⁹ That amount is the limit for all loans in Oklahoma because none of the areas in Oklahoma are considered to be a high cost county. For veterans (but sometimes not surviving spouses), a VA funding fee is required unless the veteran is eligible to receive compensation as a result of a pre-discharge disability examination and rating.³⁰ This fee can be included as part of the loan.

The options for veterans facing foreclosure have not changed much (*i.e.*, request for forbearance or loan modification, short sale, deed-in-lieu of foreclosure).³¹ However, there is a genuine interest in keeping veterans in their houses. The primary responsibility for modifying VA home loans remains with the actual lender; however, the VA does have employees that provide assistance to veterans in regional loan centers. They can be accessed by calling (877) 827-3702.

Even though most VA loans are given without a down payment, most VA borrowers in default are able to keep their homes. However, if efforts to do so fail, the VA recently authorized veter-

ans, who lose their homes due to a short sale or due to a deed-in-lieu of foreclosure, to receive up to \$1,500 in relocation assistance.³²

EDUCATION BENEFITS

The potential benefits from the Post 9/11 GI Bill are almost too good to be true. Eligible participants are entitled to receive tuition and fees in an amount equal to the most expensive in-state tuition at a public university, a monthly housing allowance and a stipend of up to \$1,000 per year for books and supplies.³³ However, these amounts are dependent upon the amount of time serviced on active duty. Military members who have served an aggregate period of active duty after Sept. 10, 2001, can receive the following percentages based on length of service.³⁴

Active-duty Service	Maximum Benefit
At least 36 months	100%
At least 30 continuous days and discharged due to service-connected disability 100%	100%
At least 30 months < 36 months	90%
At least 24 months < 30 months	80%
At least 18 months < 24 months	70%
At least 12 months < 18 months	60%
At least 6 months < 12 months	50%
At least 90 days < 6 months	40%

As wonderful as these potential benefits are, the genuinely amazing item, that causes everyone to immediately become alert during a benefits briefing, is the discovery that these benefits can be transferred to a veteran's children. Eligible children can receive up to 36 months of college benefits and they have 15 years from the date of their 18th birthday to take advantage of them.³⁵

On Jan. 4, 2011, the president signed the Post 9/11 Veterans Educational Assistance Improvements Act of 2010. Among other things, this law expanded the Post 9/11 GI Bill to include service in the National Guard.³⁶

CONCLUSION

VA benefits touch many lives. According to the VA, Oklahoma has an estimated 329,601 veterans.³⁷ Of that group, approximately 63,741 are receiving disability compensation, 9,208 are using the GI Bill for education benefits and at least 5,878 have homes backed by a VA loan guarantee.³⁸ In 2009, there were 10,901 total inpatient admissions to VA facilities in Muskogee and in Oklahoma City.³⁹ During that same time, there were 806,000 outpatient visits to VA clinics from Altus to Vinita.⁴⁰ On perhaps a more somber note, in 2009, the VA provided 5,721 headstones and markers in Oklahoma.⁴¹ While it may not be possible for most to become an expert in veterans law, hopefully this article can assist an attorney in spotting some of the issues.

1. Gerald A. Williams, *A Primer on Veterans' Benefits for Legal Assistance Attorneys*, 47 Air Force L. Rev. 163 (1999). In 1999, the author wrote a detailed law review article on benefits available through the Department of Veterans' Affairs: Gerald A. Williams, *A Primer on Veterans' Benefits for Legal Assistance Attorneys*, 47 Air Force L. Rev. 163 (1999). This article is intended as a supplement and an update to the 1999 article.

2. 38 C.F.R. §3.4(b) (2010); Department of Veterans Affairs Pamphlet, *Federal Benefits for Veterans, Dependents & Survivors*, Chapter 2 (June 16, 2011), available online at www.va.gov/opa/publications/benefits_book.asp.

3. *Disabled Am. Veterans v. Sec'y of Dept. of Veterans Affairs*, 419 F.3d 1317, 1318 (Fed. Cir. 2005); Service-Connected and Other Disability Compensation; Proposed Rule, 75 Fed. Reg. 53744, 53747 (Sept. 1, 2010)(amending 38 C.F.R. Part 5).

4. www.ebenefits.va.gov/ebenefits-portal/ebenefits.portal. Veterans can also call 1 (877) 222-VETS (8387) to enroll.

5. Service-Connected, *supra* note 3, 75 Fed. Reg. at 53763 (Proposed §5.240).

6. *Shedden v. Principi*, 381 F.3d 1163, 1166-67 (Fed. Cir. 2004); Service-Connected, *supra* note 3, 75 Fed. Reg. at 53763 (Proposed §5.243).

7. Presumptive service connection may be granted for the following infectious diseases: brucellosis, *Campylobacter jejuni*, *Coxiella burnetii* (Q fever), malaria, *Mycobacterium tuberculosis*, Nontyphoid *Salmonella*, shigella, visceral leishmaniasis and West Nile virus. Department of Veterans Affairs Pamphlet, *supra* note 2 at Chapter 2; See also, Sidath V. Panagala, et. al., *Veterans Affairs: Presumptive Service Connection and Disability Compensation*, Congressional Research Service (Sept. 13, 2010)(Diseases Based on Exposure to Agent Orange).

8. Department of Veterans Affairs Pamphlet, *supra* note 2 at Chapter 2.

9. Service-Connected, *supra* note 3, 75 Fed. Reg. at 53765 (Proposed §5.250(c)); See also, Tiffany Chapman, *Leave No Soldier Behind: Ensuring Access to Health Care for PTSD-Afflicted Veterans*, 204 Military Law Review 1 (2010); Evan Seamone, *Attorneys as First-Responders: Recognizing the Destructive Nature of Posttraumatic Stress Disorder on the Combat Veteran's Legal Decision-Making Process*, 202 Military Law Review 144 (2009); *The Nexus Between Engaged in Combat with the Enemy and Post-Traumatic Stress Disorder in an Era of Changing Warfare Tactics*: Hearing Before the Subcommittee on Disability Assistance and Memorial Affairs of the House Committee on Veterans' Affairs, 111th Cong. (Mar. 24, 2009).

10. Service-Connected, *supra* note 3, 75 Fed. Reg. at 53765 (Proposed §5.250(a)).

11. Service-Connected, *supra* note 3, 75 Fed. Reg. at 53765 (Proposed §5.250(b)).

12. 38 C.F.R. §3.750 (2010).

13. *Id.*

14. *Id.*

15. H.R. 186, 112th Cong., 1st Session (2011)(Introduced by Congressman Joe Wilson; Referred to House subcommittee on Feb. 18, 2011).

16. Department of Veterans Affairs Pamphlet, *supra* note 2 at Chapter 2.

17. See generally, Michael P. Allen, *The Law of Veterans' Benefits 2008 – 2010: Significant Developments, Trends, and a Glimpse into the Future*, 3 Veterans Law Review 1 (2011); Brian K. Walker, *Serving Those Who Served; Representing Veterans at the VA*, 73 Texas Bar J. 832 (Nov. 2010); Department of Veterans Affairs Pamphlet 01-02-02A, *How Do I Appeal?* (April 2002) available online at www.bva.va.gov/docs/Pamphlets/010202A.pdf.

18. www.1010ez.med.va.gov/sec/vha/1010ez/.

19. *Supra* note 1.

20. 38 C.F.R. §17.36 (b)(2010)(Lists and Defines the Eight Enrollment Categories).

21. Congressional Budget Office Report, *Potential Costs of Veterans' Health Care* vii (October 2010).

22. *Id.*

23. 38 C.F.R. §17.38 (2010)(Medical Benefits Package).

24. 38 C.F.R. §17.110 (2010)(Co-payments for Medication).

25. 38 C.F.R. §17.110(c) (2010)(Medication Not Subject to the Co-payment Requirements).

26. Department of Veterans Affairs, Advisory Committee on Women Veterans Report 2010, *Women Veterans – A Proud Tradition of Service* (Sept. 2010).

27. www.benefits.va.gov/homeloans/docs/Veteran_registration_coe.pdf.

28. S. 2486, 108th Cong. (2004).

29. 38 C.F.R. §36.4204 (2010)(Loan Purposes, Maximum Loan Amounts and Terms).

30. See, Department of Veterans Affairs, Veterans Benefits Administration Circular 26-11-11, *Funding Fee Exemption Status and Verification of Income on Certificate of Eligibility* (Sept. 8, 2011).

31. See generally, Evaluation of VA's Home Loan Guaranty Program (July 2004) available online at www.benefits.va.gov/homeloans/docs/final_report.pdf.

32. Department of Veterans Affairs, Veterans Benefits Administration Circular 26-11-1, *Relocation Assistance for VA Borrowers* (Jan. 6, 2011).

33. 38 C.F.R. §21.9640(b) (2010)(Maximum Amounts Payable). See also, U.S. Department of Veterans Affairs' Update on Short and Long-Term Strategies for Implementing New GI Bill Requirements: Hearing before Subcommittee on Economic Opportunity of the House Committee on Veterans' Affairs, 111th Cong. (Feb. 26, 2009).

34. 38 C.F.R. §21.9640(a) (2010)(Percentage of Maximum Amounts Payable); See generally, Department of Veterans Affairs VA Pamphlet 22-09-1, *The Post-9/11 Veterans Educational Assistance Act of 2008* (March 2010).

35. 38 C.F.R. §21.9570 (2010)(Transfer of Entitlement).

36. S. 3447, 111th Cong. (2010)(Became Public Law No. 111-377).

Department of Veterans Affairs Fact Sheet, *Oklahoma and the U.S. Department of Veterans Affairs* (November 2010).

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

ABOUT THE AUTHOR



Gerald A. Williams is an elected justice of the peace in Arizona. His law degree is from the OU College of Law, and he recently retired from the U.S. Air Force Reserve after serving as a judge advocate. As a civilian judge, he hears a mixture of civil lawsuits, traffic citations, restraining orders, misdemeanors and eviction actions.

You are not alone.



Men Helping Men

Oklahoma City • Dec. 1, 2011

Time - 5:30-7 p.m.

Location

The Oil Center – West Building
2601 NW Expressway, Suite 108W
Oklahoma City, OK 73112

.....

Tulsa • Dec. 22, 2011

Time - 5:30-7 p.m.

Location

The Center for Therapeutic Interventions
4845 South Sheridan, Suite 510
Tulsa, OK 74145

Women Helping Women.....

Oklahoma City • Dec. 8, 2011

Time - 5:30-7 p.m.

Location

The Oil Center – West Building
2601 NW Expressway, Suite 108W
Oklahoma City, OK 73112

.....

Tulsa • Dec. 1, 2011

Time - 5:30-7 p.m.

Location

The Center for Therapeutic Interventions
4845 South Sheridan, Suite 510
Tulsa, OK 74145

Food and drink will be provided! Meetings are free and open to 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 kimreber@cabainc.com.

LAWYERS HELPING LAWYERS ASSISTANCE PROGRAM





Army Legal Assistance An Overview of the Free Legal Services that the Army Offers Soldiers and their Families

By Andrew W. Scott and Jason G. Varughese

George Washington established the U.S. Army Judge Advocate General's Corps in 1775 at the start of the American Revolution. In the time since the Second Continental Congress appointed its first practitioner, the Army JAG Corps has grown to become the oldest law firm in the United States and one of the largest in the world. It has survived wars, politics, boards of inquiry, courts-martial, military commissions, and even abolishment and resurrection.

Today, the more than 4,500 attorneys that comprise the Army JAG Corps represent the U.S. Army's interests at home and abroad in every aspect of the Army's operations, including war-fighting, humanitarian assistance, nation building, criminal justice, civil litigation, administrative operations and more. Although its members perform varied and countless legal duties on a daily basis, the Army JAG Corps has six "core competencies," or practice areas in which the JAG Corps specializes. Those core competencies are military justice, international law, administrative law, civil law, claims and legal assistance.

This article will focus on the last, but certainly not least, of the Army JAG Corps' competencies, legal assistance. Specifically, it will discuss the capabilities and limitations of the Army lawyers who perform the legal assistance mission in Oklahoma and suggest areas in which Oklahoma attorneys seeking to assist military members and their families might focus their efforts.

BACKGROUND

Every Army JAG lawyer (or, more properly, judge advocate) is required to hold a J.D. from

an ABA-approved law school and be a member in good standing of the bar of the highest court of any U.S. state or federal court. Judge advocates are commissioned officers and stationed at nearly every one of the Army's posts in its vast, decentralized network of facilities and installations across the United States and the world. Everywhere the Army has more than a few dozen troops, at least one judge advocate can be found.

Like all Army officers, judge advocates are managed centrally by an office in the Pentagon. Because military law is federal law and all courts-martial are federal tribunals, all judge advocates can practice law on any Army post, no matter where it may be, as long as they can practice in federal court; that is, they must be admitted to practice in some U.S. state, but no particular state. As a result, Army judge advocates can be, and are, assigned to duty stations without regard for their specific bar memberships.

The Army's policy of stationing judge advocates to duty posts irrespective of their bar memberships, and then re-assigning them every few years to new locations, is one of the

two key factors that shapes the way the Army JAG Corps performs its legal assistance mission. The other factor is the limiting influence of resource constraints. With 4,500 attorneys, the Army JAG Corps is a large firm; but legal assistance is only one of the Army JAG Corps' missions, and the Army is a huge organization – numbering over 1 million soldiers across the active service, the Army Reserve and the National Guard. Every one of those soldiers and their dependent family members have some level of access to the Army's free legal assistance program. Additionally, Army retirees and their dependents; some Department of Defense civilian employees; and active, Reserve, National Guard and retired members of all armed forces and their dependents may all seek counsel from an Army legal assistance office. This large pool of clients puts significant demands on every legal assistance office and affects the scope and nature of representation that can be offered for each individual client.

In Oklahoma, the Army JAG Corps has only one full-time legal assistance office, located at Fort Sill, which is served by a handful of active duty judge advocates. These attorneys provide the overwhelming bulk of the legal assistance support that the Army can provide to its soldiers and families in Oklahoma.

SERVICES AVAILABLE

The mission of the Army's legal assistance program is "to assist those eligible for legal assistance with their personal legal affairs in a timely and professional manner by ... meeting their needs for information on legal matters; and ... resolving their personal legal problems whenever possible."¹

In practice, the Army carries out its legal assistance mission by performing the following functions for soldiers: 1) giving general legal advice; 2) executing certain legal documents; 3) negotiating and mediating disputes; 4) preparing and filing tax documents; and 5) referring to outside counsel for further assistance.

Legal Advice: The most basic function of an Army legal assistance attorney is to advise soldiers and their families on the law. This advice often includes explaining the provisions of a contract, for example, to purchase a home, a new car or to enter into a service agreement. Legal assistance attorneys also review and offer advice to their clients about the terms of court documents, including separation agreements, child support orders and other judg-

ments. Legal assistance attorneys frequently explain and interpret Army regulations and ethics guidelines for their clients. They also inform soldiers of the basic tenets of the Servicemembers Civil Relief Act, a federal law that protects soldiers and their families from unfair contractual and legal practices.² In many legal assistance offices, attorneys will also review documents that pro se clients have prepared for their own use in court.³

Preparing Legal Documents: Legal assistance offices have the capability to execute some legal documents, which is a popular and often-used service. At Fort Sill, as with all Army legal assistance offices, soldiers and family members can fully execute a will, a testamentary trust, an advance medical directive, a general or special power of attorney, and have most documents notarized.

Dispute Mediation and Negotiation: Army legal assistance attorneys will often contact creditors and adverse parties on behalf of their clients in an effort to negotiate or mediate disputes. For example, a legal assistance attorney could contact a soldier's landlord in an attempt to resolve an ongoing payment dispute. That same attorney could send a cease-and-desist letter to a creditor who is harassing a soldier or military family member. If a client is a plaintiff or defendant in a civil action, the legal assistance counsel can contact the attorney of the adverse party and try to negotiate an out-of-court settlement. If the out-of-court negotiation attempts are unsuccessful, the legal assistance attorney will explain the soldier's options and discuss the possibility of hiring a civilian attorney to handle the matter in court.

Tax Preparation: Every year, Army legal assistance offices open tax centers to assist soldiers and their family members in preparing and filing federal and state income taxes. These centers are fully staffed with attorneys and paralegals who are schooled in tax preparation, and they generally remain open throughout the annual tax season. As with all legal assistance services, tax preparation is free of charge.

Referral to Outside Counsel: For more complicated legal matters, Army legal assistance attorneys will refer their clients to outside counsel. The Fort Sill legal assistance office maintains a list of attorneys who are interested in representing soldiers and military families in a variety of legal practice areas. The office cannot and

does not recommend individual lawyers, but instead provides its clients with lists of attorneys and also information about how to search for a reputable attorney in the area.

LEGAL SERVICES LIMITATIONS

No In-Court Representation: The major limitation of an Army legal assistance office is that its attorneys generally do not represent clients in any court proceedings. Although a few Army installations have implemented a program of enhanced legal assistance that includes some in-court representation, Fort Sill has not yet adopted this program. As discussed above, judge advocates assigned to a legal assistance position are infrequently members of the state bar in which their offices are located, rendering them often unable to appear in local state court. Army civilian attorneys working in a legal assistance office are usually members of the local state bar, but resource limitations also prevent them from being able to provide their clients with in-court representation.⁴

The obvious impact of this limitation on representing clients in civilian court proceedings is that when legal matters escalate, soldiers and military family members will often need to hire a civilian attorney to represent them in court. This applies to both civilian criminal and civil actions.

Conflicts of Interest: In some instances, as is the case in all law firms, a legal assistance office may be unable to see a client due to a conflict of interest. Judge advocates and Army civilian attorneys will not advise soldiers or family members on matters for which they already have outside legal representation, although a legal assistance office will consult and advise the outside legal counsel on specific issues when necessary.

Complex Matters: For complex legal matters, such as complicated testamentary schemes, pour-over trusts, living trusts, business matters, civilian criminal actions, tort claims, some property disputes and other actions that require specialized knowledge or a long-term course of representation, legal assistance offices are not equipped to provide adequate legal sup-

port. Legal assistance attorneys will also generally not draft divorce settlements, child custody agreements or premarital agreements. In such cases, clients will often be referred to outside counsel.

Ineligibility for Services: A final significant limitation on the services offered by a JAG Corps legal assistance office is the set of eligibility requirements for access to legal assistance. Although the group of people eligible for Army legal assistance is large, it notably does not include veterans who no longer have any military status. Former soldiers who have been honorably or otherwise discharged before retirement eligibility, which is normally 20 years of service, cannot seek the services of a legal assistance office unless they have some independent qualifying status, such as Army medical disability. Additionally, Reserve and National Guard soldiers and their families are only eligible for legal assistance from a full-time legal assistance office when the soldier is on active duty status; at other times, they must seek legal assistance from a Reserve or National Guard judge advocate, if available, or seek private counsel. Department of Defense civilians are generally only eligible for limited services at a

legal assistance office, such as representation when they are the subjects of a Department of Defense investigation.

CONCLUSION AND SUGGESTIONS

The JAG Corps provides essential legal support free of cost to service members, retirees and their families through its legal assistance program. Although an Army legal assistance office cannot provide legal support in every case due to attorney limitations and resource constraints, many thousands of clients across the Army have their basic legal needs fulfilled at their local legal assistance offices.

For Oklahoma attorneys seeking to provide legal support to servicemembers and their families, a useful approach would be to focus on areas in which Army legal assistance is not also available, such as family law matters, civilian criminal defense matters, litigation,

“The major limitation of an Army legal assistance office is that its attorneys generally do not represent clients in any court proceedings.”

private business matters and tort claims. It would also be helpful to target those military populations who are not eligible for legal assistance, such as veterans who have left the service prior to retirement eligibility.

Specific inquiries about Army JAG legal assistance policies in Oklahoma should be directed to the Fort Sill Legal Assistance Office at (580) 442-5058.

1. Army Regulation 27-3, "The Army Legal Assistance Program," 21 Feb. 1996, Chapter 2-1.

2. See 50 USC App §501 et seq.

3. A legal assistance attorney cannot guarantee any document's admissibility in an Oklahoma court. The Fort Sill legal assistance office does not review pro se divorce documents.

4. It is important to note in the context of this discussion that the Army does provide criminal defense services for soldiers who are charged with military crimes and are to be tried by court-martial. The U.S. Army Trial Defense Service is composed of judge advocates whose sole function is to represent soldiers undergoing adverse administrative and criminal actions in the military justice system. This is a free service that includes full in-court representation and appellate counsel. In addition to or in lieu of their appointed military counsel, soldiers always have the right to hire a civilian attorney to represent them in courts-martial and most adverse administrative proceedings.

ABOUT THE AUTHOR



Andrew W. Scott is the brigade judge advocate for the 75th Fires Brigade, Fort Sill, Okla., where he manages the brigade legal office and serves as the brigade commander's chief legal advisor. He is a captain in the U.S. Army and graduated from the U.S. Military Academy with a B.S. in American politics in 2002. He earned his J.D. from William & Mary in 2008, where he was editor-in-chief of the law review.



Jason G. Varughese is the trial counsel for the 75th Fires Brigade, Fort Sill, Okla., where he serves as the chief prosecutor for his brigade. He is a captain in the U.S. Army and was a student attorney and board member at the free legal aid clinic in Detroit before receiving his commission. He graduated from the University of Michigan with a B.S. in political science in 2005 and earned his J.D. at Wayne State University in 2009.

NOTICE OF JUDICIAL VACANCY

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

**Associate District Judge
First Judicial District
Texas County, Oklahoma**

This vacancy is due to the appointment of the Honorable Ryan Reddick as Associate District Judge position in Beaver County.

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

Application forms can be obtained online at www.oscn.net under the link to Judicial Nominating Commission, or by contacting Tammy Reaves, Administrative Office of the Courts, 2100 North Lincoln, Suite 3, Oklahoma City, Oklahoma 73105, (405) 556-9862, and must be submitted to the Chairman of the Commission at the same address **no later than 5 p.m., Friday, November 18, 2011. If applications are mailed, they must be postmarked by midnight, November 18, 2011.**

**Jim Loftis, Chairman
Oklahoma Judicial Nominating Commission**

Chickasaw Nation Bar Association 2011 Fall Seminar

December 2, 2011

CLE CREDIT: APPROVED 7 HOURS (INCLUDING 2 HOURS OF ETHICS)

Riverwind Casino
Norman, Oklahoma



Agenda

Master of ceremonies: Dustin P. Rowe, Chair of the Chickasaw Bar Association

8:30 a.m. Continental Breakfast and On-Site Registration

8:50 a.m. Welcome

- Hon. Mark Colbert – *Chief Justice of the Chickasaw Nation*
- Matthew Morgan, Esq. – *Chickasaw Nation Gaming Commissioner*

9:00 a.m. Updates to the Oklahoma Adoption Code and its comparison to the Chickasaw Adoption Code

- Michael Yeksavich, Esq. – Tulsa, OK

9:50 a.m. Break

10:00 a.m. Practicing Before the Oklahoma Supreme Court

- Justice Noma Gurich

10:50 a.m. Break

11:00 a.m. Current Issues in Federal Indian Law

- Professor Tai Helton – University of Oklahoma College of Law
- Professor Lindsay Robertson – University of Oklahoma College of Law

12:00 p.m. Lunch – Provided at the Willows Buffet

1:00 p.m. Pros for Africa

- Jeff Hargrave, Esq. – Native Explorers Foundation

1:50 p.m. Break

2:00 p.m. Ethics from a Practitioner's Perspective

- D. Kent Myers, Esq. – Crowe & Dunlevy

2:50 p.m. Break

3:00 p.m. Judge Panel

- Judge Wallace Coppedge – District Judge, 20th Judicial District
- Judge Aaron Duck – Assoc. District Judge Murray County
- Judge Martha Kilgore – Assoc. District Judge Pontotoc County
- Judge Lori Walkley – District Judge, 21st Judicial District, Presiding Administrative Judge for the South Central Administrative District
- Judge Steve Parker – Choctaw Nation District Judge

3:50 p.m. Break

4:00 p.m. Ethics from the Oklahoma Bar Association's Perspective

- Travis Pickens, Esq. – *Ethics Counsel for the Oklahoma Bar Association*

4:50 p.m. Swearing –In of New Bar Members

- Chickasaw Nation Supreme Court Justices
 - Hon. Mark Colbert, *Chief Justice*
 - Hon. Barbara Ann Smith, *Justice*
 - Hon. Cheri Bellefeuille-Gordon, *Justice*
- District Court Judges
 - Hon. Dustin P. Rowe, *District Judge*
 - Hon. Sherry Abbott-Todd, *Special Judge*

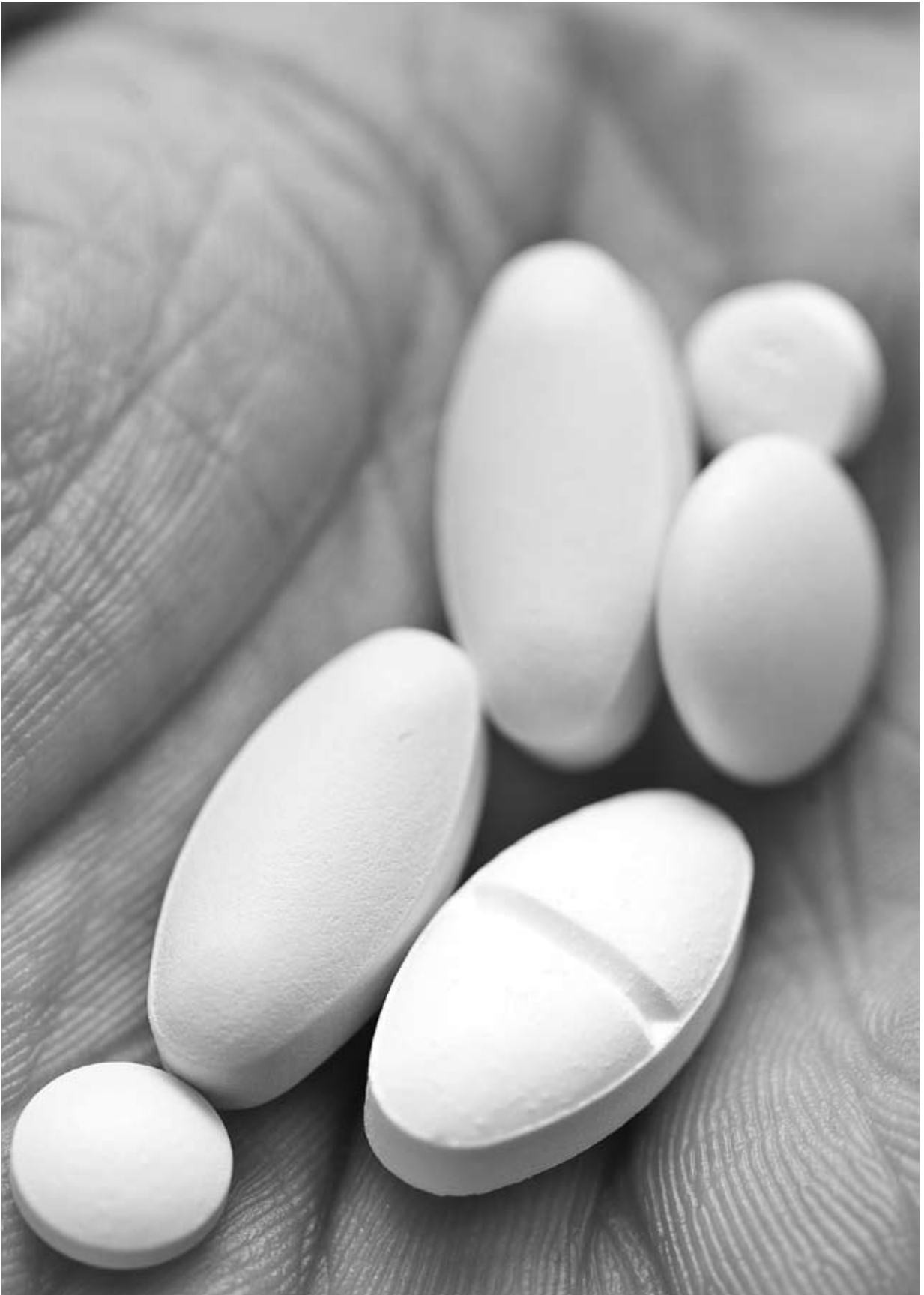
5:00 p.m. Adjourn

Registration Fee: Before November 30, 2011 – \$95.00

Onsite Registration – \$125.00

Bar membership requirements for new members may be met on day of Seminar.

For Registration information, Please contact The Chickasaw Bar Association at 580-235-0279 or by email at Ginger.Sanders@chickasaw.net



Tulsa County Veterans Treatment Court

By Judge David Youll

Why do we punish, or what is the goal of our criminal justice system? The answer lies along a multi-dimensional spectrum that, by necessity, is developed and representative of what we collectively as a society have identified as desired outcomes: deterrence, retribution, restitution, prevention, incapacitation and treatment. The goal, in general, is the modification of a behavior that we have determined is not copasetic with our norms and values. To meet these motives and outcomes, the tried and true adversarial system most of us have been trained in is still alive and well in courthouses across the country. However, what is new and rewarding on the horizon is the ongoing development and implementation of Veterans Treatment Court (VTC) to achieve the same desired end state.

BACKGROUND

History has proven that the traditional forms of rehabilitative attempts of incarceration/incapacitation for drug and alcohol offenses are much more improved and likely for success if drug/alcohol treatment is the cornerstone of the effort. The placement of this cornerstone is unique in that it is only achieved by a collaborative effort and relationships of more than just the traditional players. While the district attorney's office plays a vital role of "gatekeeper," other critical partners, such as outside service organizations, treatment providers and benefits counselors that fill the gap between the Veterans Administration eligibilities and capabilities and the soldiers' needs. Veterans of the United States Armed Forces may be eligible for a broad range of programs and services provided by the Department of Veterans Affairs. While these benefits are legislated in Title 38 of the United States Code, many veterans are not aware and/or do not have access to the infor-

mation that will allow them to take advantage of the available programs and resources.

Additionally, veterans may be eligible for programs through the state of Oklahoma and/or the Oklahoma Department of Veterans Affairs due to their veteran status. It has been clear from the success of the other alternative courts that early identification of individuals or groups of individuals that present or are assessed with identifiable criteria or symptoms requiring unique treatment needs is key to success. This is the case with most returning veterans.

TULSA COUNTY

Tulsa's experience with veterans who have participated in either the Tulsa County Drug Treatment Court and/or Mental Health Treatment Court has also proven this out. Addressing the veterans with specialized assessment needs and treatment goals has required that they be provided with not "special treatment" but

instead with all the opportunities currently available to them through the agencies and community organizations already in place to provide support and treatment. This mandates that veterans involved in the criminal justice system have access to and collaboration with the Veterans Health Administration and the Veterans Benefit Administration by more timely identifying referral-eligible veterans who come into the criminal justice system. This is where the departure from the traditional system becomes more apparent. The veteran is upon application diverted after arrest and charging from what was traditionally processing into either Drug or Mental Health Treatment Courts instead to a specialized veterans docket to facilitate peer-to-peer and vet-to-vet mentoring. This diversion is in place to help the veterans cope with their substance and/or mental health issues with directed services.

The following guidance from the Tulsa County Veterans Treatment Court directive summarizes the program's intent:

VTC is designed as a specialized drug court docket involving veterans charged with felony non-violent criminal offenses with substance dependency and/or mental illness. Veterans are identified through specialized screening and assessments. VTC is voluntary. At regular status hearings, treatment plans and other conditions are periodically reviewed for appropriateness, incentives are offered to reward adherence to court conditions; sanctions for non-adherence are handled down. Completion of the program is defined according to specific criteria. Upon admission to the VTC, the court staff and mentors assist the veteran with an array of stabilization and other services, such as emergency financial assistance, mental/trauma counseling, employment and skills training assistance, temporary housing and veteran and other referral services.

A GROUNDBREAKING PROGRAM

Tulsa was the third court in the nation to launch a Veterans Treatment Court on Dec. 8, 2008. The program now services more than 60 participants. Recent data reflects that military personnel returning from Iraq and Afghanistan are likely to present with dual diagnoses to be

comprised of addictions, traumatic brain injuries, and suffer from post-traumatic stress disorder or major depression. These are diagnoses that typically are beyond the means of current treatment providers in the established alternative treatment courts. This is what makes VTC imperative for addressing these unique issues of veterans. Tulsa County reports that from September 2008 through June 2009, 1,189 veterans were arrested in Tulsa County; one-third would be eligible for the program.

To meet the treatment needs of veterans, VTC facilitates participants being assessed and directs the agency or organization with the available veteran resources during their participation in the program. Other unique features of VTC are the recruitment and assignments of mentors that are compatible with veterans who assist them in their recovery. Veterans will be matched with retired or current military personnel based on their branch of service, war or conflict deployment, gender and age.

Planning an implementation of the Veterans Treatment Court was accomplished with no additional funding. Agencies participating in Tulsa's Drug Treatment Court agreed to undertake the additional responsibilities of staffing the court. Tulsa set an initial participant target of 50 veterans. As of today, Tulsa has over 60 participating. Based on arrest numbers, 538 were arrested on felony charges, 629 had misdemeanors (September 2008-June 2009). At the current arrest rate in Tulsa, the average of 60 veterans with felony arrests each month would translate to 720 eligible veterans per year.

ABOUT THE AUTHOR



Dave Youll is a special district judge for the 14th Judicial District serving Tulsa County. Currently he presides over the Veterans Treatment Court and conducts felony preliminary hearings. He retired from the Army National Guard as a lieutenant colonel, aviation, with over 23 years of service. He serves as an adjunct professor for the University of Phoenix, criminal administration division and is a member of the Hudson-Hall-Wheaton American Inns of Court.

2011 EMPLOYMENT LAW SEMINAR

presented by the Oklahoma Employment Lawyers Association

Date: Friday, Dec. 2, 2011 – 9 a.m. to 5 p.m.
Location: Crabtown in Bricktown, Okla. City
CLE CREDIT: CLE credit proposed for 8.0 hours including 1 hour of ethics
Tuition: \$225 for registration by Nov. 28, 2011 **(Buffet lunch included)**
 \$255 for registration Nov. 29 and after
 \$25 discount for OELA members & government/public service attys
CANCELLATION POLICY: There will be a \$25 charge for cancellations prior to Nov. 29. No refunds after Nov. 29, however written materials will be provided. Materials may be purchased for \$75
REGISTRATION: Make checks payable to: OELA
 Send registrations to OELA, 325 Dean A. McGee, Okla. City, OK 73102
 Fax No: (405) 235-6111
 For more information contact Lori Lanon at (405) 235-6100

PROGRAM

9-9:30	The EEOC's Perspective	Holly Cole, Director, EEOC Area Office
	<ul style="list-style-type: none"> • <i>EEOC v. Abercrombie & Fitch Stores Inc.</i> • How attorney can assist the EEOC in making discovery at the administrative level more meaningful • Questions from the audience 	
9:30 - 10:30	New Supreme Court Decisions	Mark Hammons, Sr.
10:30 - 11	New Drug Policy Legislation	Loren Gibson
11 - noon	New ADA Regulations	Brian East
Noon - 1	Lunch	
1 - 2	Ethics	Wayne Dabney
2 - 3	The New Oklahoma Anti-Discrimination Act (Panel Discussion)	Sam Fulkerson
	Break	Daniel Smolen
3 - 3:10	New 10th Circuit Decisions	Elaine Turner
3:10 - 4	Wage & Hour Update	Amber L. Hurst
4 - 4:30	Employee vs Independent Contractor	Stephanie M. Lorange
4:30 - 5		

Please complete registration form below and fax, mail or email to lori@hammonsllaw.com.

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An Alternate Approach to Helping Veterans

By Catherine “Catt” Burton

In June 2010, a group of central Oklahoma leaders, lawyers and veterans gathered in the conference room of the Oklahoma County District Attorney’s Office. My boss, District Attorney David Prater, had enlisted the help of local hero Maj. Gen. Rita Aragon (Ret.)¹ Although Mr. Prater wanted to help veterans, he was not sure where to go and how to do it, so he brought a group of us together with Maj. Gen. Aragon to brainstorm and discuss where we thought veterans needed help and how we were going to accomplish such a goal. By the end of the meeting, we decided that we needed to do some research on how we could be most effective in helping veterans who find themselves in the criminal justice system.

Tim Wilson, assistant public defender and veteran Marine lieutenant; Chuck Loughlin, public defender investigator and veteran Army sergeant; and I, assistant district attorney and the daughter of a World War II and Korea Marine veteran; started our journey. We first went to Tulsa County’s Veterans Court training, where we learned that they have separated veterans who are members of their drug court into a separate group, plus they added many veterans groups to the team to help their veterans succeed. We truly liked their concept, but we also knew that our drug court was full and that we were going to have trouble selling another treatment court to our Oklahoma County bench.

With the added help of John Foley, an attorney and father of a Navy SEAL, the four of us started visiting any place that served veterans health and treatment needs in this area. Essentially, what we found were wonderful heroes all over this county and beyond who have dedicated their lives to helping veterans. We went to the VFW,² the American Legion, the VA Hospital,³

the DAV,⁴ the Vets Council,⁵ Vets Corner,⁶ the Vet Center,⁷ the Oklahoma Department of Veterans Affairs, Oklahoma City University School of Law, the University of Oklahoma College of Law and any other place where we felt we could find a listening ear.

The goal in our search was to answer a couple of questions:

- 1) Why do we need specialty programs to help veterans?; and
- 2) What kind of program should we have to help veterans?

In our search to figure out “why” we needed a program to help veterans, my answer came on the radio one evening in January when I was driving north on 1-35, just south of the Frontier City exit. I was listening to my favorite station, National Public Radio, and there was a piece on about the fact that Jan. 20, 2011, was going to be the 50th anniversary of John F. Kennedy’s first inaugural speech.⁸ It was the anniversary of the speech where Kennedy uttered the challenge,

“And so my fellow Americans: Ask not what your country can do for you — ask what you can do for your country.”⁹

When I started thinking about this, I just couldn’t stop. I kept thinking about all of these men and women (who truly put themselves in harm’s way) and many who gave the ultimate sacrifice by joining the military.

I decided to ask some of my friends in the courthouse about why they joined and whether their sole motivation was “ask not.” In talking to them all, I found that not long after they signed up and they got in, that the greater part of why they served and why they fought or why they stayed was because:

- They owed it to the brothers (and sisters) on either side of them in battle;
- They wanted to do it for their country;
- Of what America stood for, and what they believed in; and
- In the military, *you leave no man behind*.¹⁰

After listening to and re-reading President Kennedy’s speech several times and after listening to countless members of the armed services say to me, “we don’t leave anyone behind,” I realized that the call to attorneys in our nation was to continue on with those themes or missions. We could help veterans (and our country) by not leaving those in need behind. So, our team decided that our mission was to develop a program targeted specifically for veterans in need in the criminal justice system so that they would not be left behind.

We decided that our program would focus exclusively on veterans because many of the problems that veterans have are endemic to servicemen and women. We also found in our research that veterans excel better when with other veterans.

In looking at the law, Oklahoma uses essentially three avenues to handle a criminal defendant:

1) Traditional Model. The traditional approach is where the accused is arrested, charges are

filed, and the charges are resolved by plea bargain, trial or dismissal of some sort.¹¹

2) Drug Court Model. Treatment Courts are the newest approach on the books. Currently in Oklahoma:

- Many counties have drug courts.¹²
- Some counties have mental health courts.¹³
- Some counties have domestic violence courts. Domestic violence courts either operate modeling the drug court statutes or they operate as a condition on an offender’s probation, or they do some kind of combination.
- Two counties have a veterans court.¹⁴
- Pursuant to statute, when one successfully finishes drug court (which is a minimum 12 months and a maximum of three years), their outcomes can range from having probation or parole violations dismissed to having all criminal cases against them dismissed.

3) Diversion Program Model. The third way of handling a criminal accusation in Oklahoma is through some type of diversion program. In Oklahoma, we have three different statutes that speak to diversions.¹⁵ The typical diversion case is either not filed or it is dismissed based on a signed contract with a defendant. If the defendant fulfills all conditions, charges are not re-filed and they are successfully diverted from the criminal justice system.

Our program in Oklahoma County, the Oklahoma County Veterans Program, has chosen to use the diversion program model.¹⁶ Veterans are applied to our program through their defense attorney, through our assistant district attorneys, through law enforcement, through the judges or through the defendants themselves. All applicants are considered. We then pull their files and review

them to see if we will grant an interview. We try to interview everyone who applies, but in three short months, we have had more than 71

“So, our team decided that our mission was to develop a program targeted specifically for veterans in need in the criminal justice system so that they would not be left behind.”

applicants. No one is accepted into the program without an interview with the team.

At this time, our team consists of assistant district attorneys, assistant public defenders, investigators, a Veterans Administration employee and representatives from a local mental health/day reporting agency. We hope to grow our team to include employment counselors, mental health and drug counselors, and benefits counselors. We will also be assigning each veteran a mentor to help them get through everyday problems. We also hope to have a representative on the team who helps veterans and their families deal with issues as a family. We see our program growing to include supervision of veteran defendants on probation as well. But, we are realistic that we are in the beginning stages of our program, and we must follow our own advice of taking one day at a time.

Once the team conducts an interview, we discuss the applicant in private. After that, our DA's office has the final say in who is accepted. If the applicant is accepted, they sign a contract waiving statute of limitations and agreeing to a myriad of requirements. The program is at least a year and at most three years. Once the contract is signed, the DA's office dismisses their charges to enter the Oklahoma County Veterans Program. If at any time, the team decides that the veteran is not progressing or is not working the program, charges will be re-filed and the veteran will progress through the normal criminal justice route.

In the last two months, we have signed contracts with 23 veterans. They range in age from 23 to 65. We have 22 men and one woman. We have about 50 outstanding applications. We meet every Friday from 9 a.m. until noon (or later). The first hour is administrative. This is where we discuss each veteran's progress or issues for the week. The next hour or two is our group meeting with our veterans. They check in with the group and with the team. The rest of the time is spent interviewing new candidates (we interview in jail two Fridays a month and in the Public Defender Library two Fridays a month).

So far, we have managed to get those veterans who don't have housing into some type of sober living house or some type of house or apartment. We have been able to have North-care Day Reporting Center have daily contact with almost all of our veterans. We have been able to help veterans start receiving benefits

and health care and treatment that they didn't realize was out there for them. We try to assess those in need of immediate help and get them somewhere before the day is over. We have accomplished everything so far without a penny due in large part to the commitment of our District Attorney, David Prater, and our Public Defender, Robert Ravitz.

Our goals are mighty, but we take everything one day at a time, just like we preach to our participant veterans. We want to be ready for the thousands of our heroes who are coming home soon. We believe that we are serving our country by reaching out to those veterans at their lowest and bringing them back to a place of pride in themselves: a place they held when wearing the uniform of a United States soldier and serving our country.

1. Maj. Gen. Aragon (Ret.) enlisted as an airman basic in the Oklahoma Air National Guard in 1979. In February 1989, she became the first female commander in the Oklahoma Air National Guard. She became the first female to hold the rank of brigadier general in the Oklahoma National Guard and the first female commander of the Oklahoma Air National Guard in March 2003. She was inducted into the Oklahoma Women's Hall of Fame in 2009. She currently serves as the Secretary for the Oklahoma Department of Veterans Affairs. Source: Oklahoma Women's Hall of Fame Library.

2. Veterans of Foreign Wars.

3. Veterans Administration Hospital.

4. Disabled American Veterans.

5. Vets Council is the Council of Veterans' Organizations that meet on the first Tuesday of every month at the Oklahoma Veterans' Building at 2311 N. Central, Oklahoma City, 73105.

6. Vets Corner is a 100 percent volunteer organization started in the garage of Marine veteran Dale Graham. It has grown into well-oiled machine of volunteers who meet every Thursday at the Goldsby Community Center to serve veterans and widows who need help trudging through the morass of paperwork required by the government in order to seek benefits.

7. The Vet Center in Oklahoma City serves combat veterans and is located at 1024 NW 47th St.

8. www.gpb.org/news/2011/01/18/jfks-inaugural-speech-still-inspires-50-years-later.

9. www.jfklibrary.org/Research/Ready-Reference/JFK-Miscellaneous-Information/Inaugural.

10. www.phrases.org.uk/bulletin_board/60/messages/907.html.

11. Title 22 of the Oklahoma statutes covers most of the criminal process from arrest through appeal.

12. 22 OKLA. STAT. §§471.1-471.10 (1997) (statutory authority for drug courts).

13. Oklahoma's Mental Health Court Act falls under 22 O.S. 472, which is the Anna McBride Act. It became law in 2002. Our mental health court in Oklahoma County looks a lot like our drug court. Participants must remain drug free and medication compliant in addition to all of their other requirements.

14. Tulsa and Creek counties have veterans courts. Tulsa County's Veterans Treatment Court operates under the Oklahoma Drug Court Act, found in 22 OKLA. STAT. §§471.1-471.10.

15. 1) 22 OKLA. STAT. §471.11 falls under the Drug Court Statute and allows for a diversion program under the Drug Court Act. It reads:

A) Nothing in this act shall preclude the establishment of substance abuse treatment programs in support of a deferred prosecution program authorized by Section 305.1 of Title 22 of the Oklahoma statutes. Any such programs established after July 1, 1997, or in existence on July 1, 1997, may be known as a drug court program; provided, the program is not contrary to public interest or provision of law.

B) Any drug court program established and in existence prior to July 1, 1997, which is not limited to treatment programs in support of deferred prosecution programs shall be considered a

drug court program, as defined in Section 471.1 of this title, for all purposes of the Oklahoma Drug Court Act.

2) 22 OKLA. STAT. §§305.1-305.6 is the deferred prosecution statute. The original statute was passed in 1979. Essentially, this statute allows the state of Oklahoma to enter into an agreement with the accused to defer the filing of criminal charges in order to give the defendant an opportunity to successfully complete a program. In 2007, the Legislature extended the time of the deferred prosecution agreement to last up to three years.

A) If the defendant is successful, charges are not filed (or re-filed) as the case may be.

B) If the defendant is not successful, charges are filed or (re-filed) as the case may be. The defendant is then prosecuted just as in Section I above.

C) Although our diversion statute has been on the books since 1979, using it to develop a structured program catering to specific individuals is the part that has been rarely used.

3) 22 OKLA. STAT. §991f-1.1 provides the third diversion statute in Oklahoma. This type of diversion program focuses on defendants who owe restitution and who are trying to avoid a criminal record by getting an opportunity to pay restitution (as well as fulfill other obligations) and avoid charges.

16. 22 OKLA. STAT. §§305.1-305.6.

ABOUT THE AUTHOR



Catherine "Catt" Burton graduated from Shawnee High School and the University of Oklahoma. She has been with the Oklahoma County Public Defender's Office, John W. Coyle III and Burton & Goodman PLLC. In 2007, she returned to public service working for her dear friend, David

Prater, at the Oklahoma County District Attorney's Office. She is a team leader over misdemeanors and "treatment" programs.

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NOTICE OF JUDICIAL VACANCY

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

Judge for Oklahoma Court of Civil Appeals District Six, Office Two

This vacancy is created by the retirement of the Honorable Carol M. Hansen effective January 1, 2012.

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

Application forms can be obtained online at www.oscn.net under the link to Judicial Nominating Commission, or by contacting Tammy Reaves, Administrative Office of the Courts, 2100 North Stiles, Suite 3, Oklahoma City, Oklahoma 73105, (405) 556-9862, and should be submitted to the Chairman of the Commission at the same address **no later than 5 p.m., Friday, December 16, 2011. If applications are mailed, they must be postmarked by midnight, December 16, 2011.**

Jim Loftis, Chairman
Oklahoma Judicial Nominating Commission

NOTICE OF PUBLIC HEARING on the SCHEDULE OF MEDICAL and HOSPITAL FEES

The Oklahoma Workers' Compensation Court Administrator will hold two public hearings in order to receive public comments regarding revision of the workers' compensation Schedule of Medical and Hospital Fees. The public hearings will be held **Thursday, December 1, 2011 at 1:30 p.m. in the Auditorium of the Oklahoma Judicial Center, 2100 N. Lincoln Blvd., Oklahoma City, OK, and on Tuesday, December 6, 2011 at 1:30 p.m. in the Auditorium of the Kerr State Office Building, 440 South Houston, Tulsa, OK.**

The proposed fee schedule changes will be available online at:

www.owcc.state.ok.us/Whats_new.htm

Comments concerning the fee schedule are encouraged and requested to be submitted in writing at or before the public hearing; comments will be accepted by the Court through December 9, 2011. Submit comments to the Workers' Compensation Court Administrator, 1915 N. Stiles Ave., Oklahoma City, OK 73105, or electronically to FeeScheduleComments@owcc.state.ok.us.

Parking for the Oklahoma City public hearing is available in the South parking lot of the State Capitol Building. Both public hearing locations have a security screening station which all attendees are required to go through.



Veterans Administration Benefits

A General Practitioner's Guide to Aid and Attendance Pension

By *Dalen D. McVay*

Many of Oklahoma's veterans face difficult decisions regarding the cost of long-term care and what financial assistance programs and benefits may be available to them. As the cost of living in elder care communities continues to rise, the ability to place a loved one in a community carries a heavy financial burden. The decisions become even more complicated when it comes to assisted living arrangements. Historically, Medicaid has been available for impoverished individuals who meet health, income and asset tests to assist residents with the ever-rising costs of care. Additionally, Medicaid has been available to assist individuals who require nursing-type care while living at home, through the ADvantage Waiver program. Although the eligibility tests are the same as for nursing home assistance, the ADvantage Waiver program will allow those that qualify by paying up to 20 hours a week for hospice-type programs.

Many have pondered the question: "Why will Medicaid cover individuals who need assistance in activities of daily living but can live at home, while also covering long-term care facilities, but will not cover individuals who require more care than those staying at home but not as much care as those in nursing facilities, *i.e.*, living in assisted living facilities?" Although the question is a legitimate one, the Legislature has recently attempted to remedy this issue by passing a bill that will allow assisted-living facilities to be able to accept Medicaid residents. While many welcomed the change, for the most part, the change has been substantially short-lived. While the Oklahoma Department of Human Services is responsible for reviewing and approving/reject-

ing Medicaid applicants, the Oklahoma Health Care Authority is the state agency responsible for the Medicaid program and has approved only two assisted-living facilities in the state of Oklahoma to accept Medicaid recipients as "pilot" programs. The approval of the two facilities was completed over a year ago. To this author's knowledge, they are still the only "Medicaid approved" assisted-living facilities in the state of Oklahoma. Although other facilities have applied for the licensure, they have yet to be approved.

This begs the question: Are families being forced to choose long-term care facilities over otherwise available assisted-living communities

solely to receive governmental assistance through the Medicaid program?

Although the quandary is a stifling one, don't fret. There is still help available for veterans or their spouses through the Veterans Administration (VA). Most believe that for an individual or their spouse to be qualified to receive monetary assistance from the VA, the veteran must have been injured or died during combat. This simply is not the case. For the most part, the "improved pension" of the aid and attendance program is widely unheard of. To qualify for the benefit, the veteran or veteran's spouse must need the aid and attendance of another person for any activity of daily living. "Activities of daily living" include dressing/undressing, eating, cooking, mobility, bathing, etc.¹ The veteran and/or spouse does not need to be confined to an assisted living community; nursing homes and individuals residing at home can also qualify for the benefits. To qualify for this benefit, the veteran does NOT have to be injured in combat. It is completely distinct and separate from service-related injuries. To qualify for aid and attendance benefits, the veteran must have:

- 1) Served at least 90 days of consecutive active duty service, one day of which must have been during a war-time period;²
- 2) Received a discharge other than dishonorable;
- 3) Limited income³ and assets;⁴
- 4) A permanent and total disability at the time of application;⁵
- 5) A disability that was caused without willful misconduct of the claimant;⁶ and
- 6) A signed application and provides the application to the Veterans Administration.

To qualify for No. 4, any veteran above the age of 65 is presumed to be totally or permanently disabled; however, the VA will require an affidavit from a physician attesting to the claimant's condition.⁷ The tests for qualification are much more relaxed and less stringent than the qualification tests for Medicaid. For

“Most believe that for an individual or their spouse to be qualified to receive monetary assistance from the VA, the veteran must have been injured or died during combat. This simply is not the case.”

instance, there is no "look back" rule regarding applications for veterans benefits. Income and assets are determined solely at the date of the application. In regard to the "assets" test denoted above, there is no hard and fast rule regarding an asset limit. The Veterans Administration considers each case on an individual basis and applies a general rule that non-exempt assets exceeding \$80,000 are usually considered excessive, whether the party receiving the benefit is married or single.

In summation, there are numerous governmental benefits in addition to the aid and attendance benefit described above that are available for individuals living in a long-term care facility, assisted-living facility or homebound that the majority of people, including many elder law attorneys, are unaware of. A large majority of elder law clients are completely unaware of the VA benefits available to them and have never applied for the same. Veterans and their spouses should be strongly encouraged to at least seek advice concerning the benefits that may be available to help assist with the rising costs of elder care.

1. 28 U.S.C.S. §1502(b).

2. 38 U.S.C.S. §1521(j).

3. 38 U.S.C.S. §1521.

4. 38 U.S.C.S. §1522.

5. 38 U.S.C.S. §1521(a).

6. 38 U.S.C.S. §1502(a).

7. See U.S. Department of Veterans Affairs, *VA Pension Benefits*, www.vba.va.gov/bln/21/pension/vetpen.htm (accessed Feb. 26, 2009).

ABOUT THE AUTHOR



Dalen D. McVay is a partner of the Enid-based law firm of Ewbank, Hennigh & McVay PLLC and practices in the areas of elder law, estate planning, probate, family law, real estate and transactional law. He received a Bachelor of Science from the University of Central Oklahoma, a Master of Science from Iowa State University and his J.D. from Oklahoma City University.

**In Memory of Sharon Corbitt and Bill Hood, the OBA Family Law Section Presents:
“ 25 Oklahoma Family Law Cases You Should Know ”**



**In honor of the Family Law Section's Silver
Anniversary, Professor Robert Spector & Section
Founders will present an overview and analysis of the
Top 25 Oklahoma Family Law Cases**

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Held *only* in Oklahoma City**

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Map: www.osuokc.edu/map/directions.aspx

Program Agenda:

8:30 – 9	Registration / Coffee & Donuts	11:50-12:40	Lunch (included with registration fee)
9	Welcome	12:40-1:30	Kit Petersen
9:05	Program Introduction / Professor Spector	1:30-2:20	Carolyn Thompson
9:10-10	Jon Hester	2:20-2:30	Break
10-10:10	Break	2:30-3:20	Professor Spector
10:10-11	Rees Evans	3:20-4	Questions / Comments / Open Discussion
11-11:50	Chris Szlichta	4	Adjourn

- ❖ The OBA Family Law Section is a Presumptive Oklahoma MCLE Provider. This course has been approved by the Oklahoma Bar Association Mandatory Continuing Legal Education Commission for **6 hrs of mandatory CLE Credit & 0 hrs Ethics**.
- ❖ **Test your family law case knowledge!** Prepare a list of what Top 25 Family Law cases will be revealed during the CLE and submit it with this form (must include full case name and citation). The registrant with the most correct number of cases will win a prize to be awarded during the seminar. One entry per registrant; and the deadline to submit an entry is December 8, 2011 at 5 p.m.

Family Law Section Reception

5 - 7 p.m.

Beacon Club • 210 Park Avenue, Suite 2230 • Oklahoma City

Immediately following the CLE program, the OBA FLS is hosting a Reception in honor of Professor Robert Spector and the Section Founders. Join us for this opportunity to thank our Founders for their hard work and continued support of the Section. The Reception is included in the CLE registration.

Cost: \$140 if received by 5 p.m. on or before November 30, 2011. \$160 if received on or after December 1, 2011. Cost of registration includes materials, lunch, and Reception. A \$25 fee will be charged for cancellations made within four (4) full business days of the seminar date. Cancellations, refunds, or transfers will **not** be accepted on or after the seminar date. **Fully** complete and return this form and **check payable** to *OBA Family Law Section* to: Tamera A. Childers, JONES, GOTCHER & BOGAN PC, 3800 First Place Tower, 15 East 5th Street, Tulsa, Oklahoma 74103; **Fax** (918) 583-1189.

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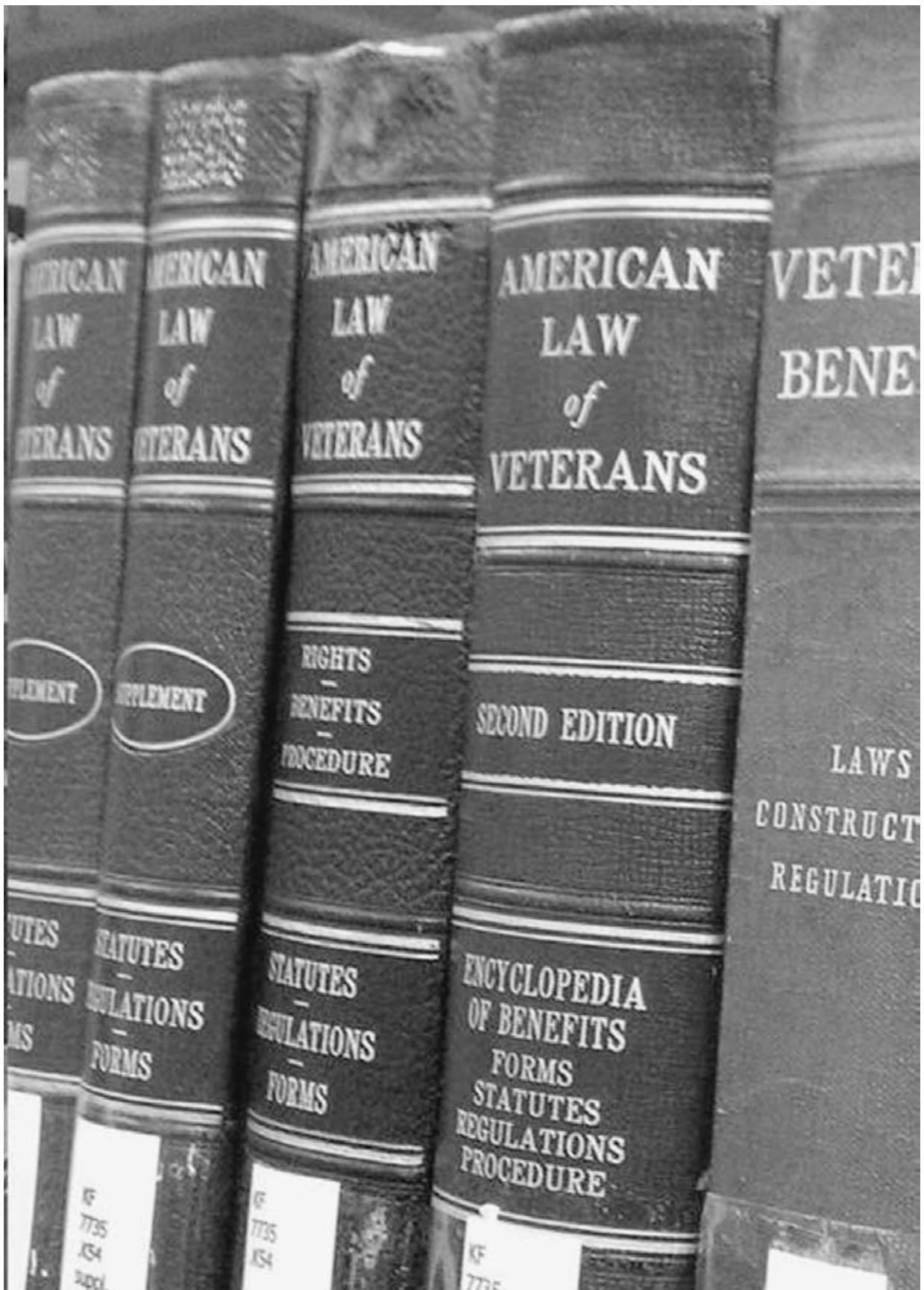
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You will NOT receive a confirmation of registration. Your completed registration form is your receipt.

Questions: Contact Tamera A. Childers at (918) 581-8200 or email at tchilders@jonesgotcher.com.



At Ease: A Guide for Legal Research Related to Military Issues

By Darla W. Kite-Jackson

For those unfamiliar with federal bureaucratic and military structure, researching veterans benefits and military justice can be a maze of confusion filled with strange acronyms. Providing some basic knowledge of the structure of the system and resources that can point researchers in the right direction is the purpose of this article. This work is not an exhaustive list, but will provide the uninitiated with a basic set of resources to begin research in two areas of law related to military issues.

On the battlefield, military servicemembers develop excellent problem-solving skills. Part of their problem-solving process is developing a familiarity with the hostile environment in which they are operating. Veterans attempting to overcome obstacles to obtaining benefits at home often cannot succeed without the assistance of an attorney familiar with the environment and trained in researching issues and advocating for the veteran. In his second inaugural address, Abraham Lincoln challenged the nation as follows: “with charity for all ... let us strive on to finish the work we are in; to bind up the nation’s wounds; to care for him who shall have borne the battle, and for his widow, and his orphan.”¹ Ensuring that veterans and their dependents receive the benefits they have earned is a step toward answering that challenge made long ago.

RESOURCES ON VETERANS BENEFITS CLAIMS, DENIALS AND APPEALS

This brief article does not discuss the research of statutes, federal and state regulations, and agency and court decisions. This work instead concentrates on secondary sources that will

assist the legal advocate in identifying and applying specific primary authority on behalf of the client.

Oklahoma Bar Association Young Lawyers Division, *Resource Guide for Lawyers Assisting Veterans* — Pages 15-26 of this 30-page resource address the topic of assisting veterans with benefits claims, denials and appeals. While this resource is not yet available electronically, similar information is available via the Solo/Small Practice Series: Assisting Veterans in the November 2010 *Texas Bar Journal*.² The *Texas Bar Journal* is available at no cost via the Internet as well as via subscription databases.

Barton F. Stichman & Ronald B. Abrams, eds., *Veterans Benefits Manual* (Matthew Bender & Co. 2010) — Written by attorneys at the National Veterans Legal Services Program (NVLSP), the *Veterans Benefits Manual* contains sample forms and briefs, checklists, citations to legal authorities and other useful information. Despite being published by Matthew Bender, this resource is not currently available electronically through LexisNexis. The *Veterans Benefits*

Manual is available in print at the Oklahoma City University Law Library as well as via the Metropolitan and Tulsa City-Country Library Systems. The manual may also be purchased for \$140 from Lexis.³

***The Veterans Advocate: A Veterans Law and Advocacy Journal* (National Veterans Legal Services Program)** —

Like the *Veterans Benefits Manual*, this resource is prepared by the NVLSP. While the title suggests it is a journal, some refer to the publication as a newsletter. Published quarterly, *The Veterans Advocate* provides in-depth analyses of issues affecting veterans benefits entitlement, including practical advice and advocacy tips for those representing veterans and their dependents.

The Veterans Advocate is available via and electronic annual fee-based subscription.⁴ OCU Law Library and the University of Oklahoma Law Library also provide limited access to the print version of *The Veterans Advocate*.

***Veterans Law Review* (Board of Veterans' Appeals, 2009-current)** — This journal is edited by lawyers and veterans law judges employed by the Board of Veterans' Appeals. It is published with appropriated funds of the Department of Veterans Affairs and has a stated goal of encouraging "frank discussion of relevant legislative, administrative and judicial developments in veterans benefits law."⁵ *The Veterans Law Review* is available electronically via the United States Department of Veterans Affairs website.⁶

***Federal Benefits for Veterans, Dependents & Survivors* (Department of Veterans Affairs)** — This resource, which is available electronically at no cost,⁷ is primarily an explanation of the available benefits for veterans and their dependents. Unlike the publications of the NVLSP, this publication does not include practice tips or in-depth analysis. With the introduction, the publication does include a list of acronyms that may be useful.⁸ However, a more extensive resource for interpretations of acronyms is the acronymfinder.com website.⁹

“The *Survival Guide* provides information about benefits, assistance and resources available, as well as the directions for navigating the bureaucracy often involved in addressing veteran and servicemember issues.”

available at the OCU, OU and University of Tulsa law libraries as well as through the Pioneer and Tulsa City-County Public Library Systems.

***The American Veterans and Service Members Survival Guide: How to Cut Through the Bureaucracy and Get What You Need — and Are Entitled To* (National Veterans Legal Services Program, 2009)** — While the publisher and sponsoring institution is acknowledged as the Veterans for America, the copyright on the book is held by the NVLSP and some of the coverage overlaps with that of other NVLSP publications. As noted in the introduction to this resource, one of its new features is that it is available for no cost via the Internet.¹¹ *The Survival Guide* provides information about benefits, assistance and resources available, as well as the directions for navigating the bureaucracy often involved in addressing veteran and servicemember issues.¹² In addition, chapter 27 of the *Survival Guide* also contains a very brief general overview of the military justice system and the Uniform Code of Military Justice.

Before moving on to resources providing guidance on military justice, there are two additional resources that, like the *American Veterans and Service Members Survival Guide*, address a variety of issues related to military service.

Margaret C. Jasper, *Veterans Rights and Benefits* (Oxford University Press, 2009) — This title is part of the *Law for the Layperson* series. While the author is not an expert practitioner in the area of military service-related benefits, she is an experienced researcher and writer and has authored a number of other titles aimed at pro se litigants. The book discusses topics such as basic health care, including specializations such as PTSD or amputation therapies, education and vocational rehabilitation, spousal support, home loans, life insurance, and burial and survivor benefits. The resource is not available electronically but can be purchased from Oxford University Press.¹⁰ This title is also

OBA-Net Military Law Forum — This forum contains messages on a number of topics, including benefits and military justice issues. Oklahoma lawyers who are unfamiliar with these issues do not simply have to wait for others to post. The forum can be used to solicit advice from colleagues with more experience in the area. However, attorneys should be cautious in posting items that might disclose confidential information. OBA-Net is a free, members-only online discussion board available at www.oba-net.org.

The Military Commander and the Law, 10th Edition (Air Force Judge Advocate School, 2010) — This resource addresses not only military justice procedures, but also administrative and personnel actions, legal assistance programs, and benefits under the Servicemembers Civil Relief Act and the Uniformed Services Employment and Reemployment Rights Act. Intended for non-attorney commanders, the publication provides information in an outline form as well as citations to Air Force and Department of Defense Instructions and Directives. *The Military Commander and the Law* is available electronically at no cost.¹³

No soldier, airman, sailor, marine, or coast guardsman, male or female, will object to the swift and proper punishment of an offender. They ask only that the procedures used be fair; that those charged with misconduct have a proper hearing and be afforded the same basic rights fundamental as all American citizens. Recognizing the unique nature of military life and operations, they do not require every element of customary civilian procedure. They do demand candor, fairness and justice. Nothing less is due them.¹⁴

MILITARY JUSTICE

Federal military justice research is based in several primary sources including the Constitution of the United States, the Uniform Code of Military Justice, executive orders of the president (including the Manual for Courts-Martial and the Military Rules of Evidence), Regulations of the Department of Defense and the specific armed services and military case law. This brief article will not address the research of these primary authorities. Rather, it is suggested that attorneys reference an excellent guide on researching these primary sources available from the Law Librarians Society of Washington, D.C.¹⁵ Additionally, the research guide on military justice available from the OCU Law Library also

discusses these primary sources.¹⁶ Similar to the resources suggested in the section on benefits above, the works outlined in this section are secondary sources that will assist the researcher in identifying, understanding and applying specific primary authority.

Military Justice: Courts-Martial, an Overview (Congressional Research Service)¹⁷ — This report from the Congressional Research Service (CRS)¹⁸ is an updated report based on similar previous reports by the CRS. The CRS report discusses the military justice system and sets forth the types of courts-martial established by the Uniform Code of Military Justice. The report also discusses the basis for convening a courts-martial and compares the constitutional safeguards available in the civilian court system with safeguards put in place by the Uniform Code of Military Justice for military courts.

Criminal Law Deskbook (U.S. Army Judge Advocate General's School, 2010) — The criminal law department at the Judge Advocate General's Legal Center and School, U.S. Army, prepares the *Deskbook* "as a resource for Judge Advocates, both in training and in the field, and for use by other military justice practitioners."¹⁹ The *Criminal Law Deskbook* covers military justice procedure in Volume I and substantive criminal law in Volume II. While the *Deskbook* does attempt to be "an accurate, current, and comprehensive resource," the preface cautions that practitioners should "always consult relevant primary sources, including the decisions in cases referenced" in the *Deskbook*.²⁰ Additionally, although some other service regulations are cited, because the *Deskbook* is prepared by the U.S. Army Judge Advocate School, when applicable, it primarily references Army regulations. The full text of both volumes of the *Deskbook* are available electronically at no cost from the Library of Congress.²¹

Eugene R. Fidell, Elizabeth L. Hillman, Dwight H. Sullivan, *Military Justice: Cases and Materials* (LexisNexis Matthew Bender, 2007) — Eugene Fidell, one of the authors of this casebook, is one of the most often referenced experts on military justice and the president of the National Institute of Military Justice. This casebook provides coverage not only of the U.S. court-martial system, but also of other national systems of military criminal law. However, the material focuses heavily on the U.S. system.

David A. Schlueter, *Military Criminal Justice: Practice and Procedure* (LexisNexis/Matthew Bender, 2004) — Written by David A. Schlueter, who served in the Army Judge Advocate Corps and is well-known author currently on faculty at the St. Mary's School of Law, this one-volume work is "an attempt to help first, those practicing military justice — both civilian and military — to do it right. But the text should also assist students of the system in understanding what military justice is all about ..."²² This resource provides coverage of many aspects of military criminal law, including procedural considerations from motion practice through trial and appeal as well as substantive crimes. The book also contains a glossary and list of commonly used abbreviations which may be helpful to those unfamiliar with many of the military acronyms. Research in other sources is also facilitated by the annotated bibliography following each chapter. Although published in 2004, the print edition of this title, which is available from the Lexis store,²³ is kept up-to-date with supplements. However, because *Military Criminal Justice* is available on LexisNexis, some libraries are no longer updating the resource in print.

“Additionally, military servicemembers may face situations in which a case can be charged in both a civilian state court system or in the military court.”

David A. Schlueter, Stephen A. Saltzburg, & Lee Schinasi, *Military Rules of Evidence Manual, Sixth Edition* (LexisNexis/Matthew Bender, 2006) — This manual is a two-volume set and includes the official text of each rule of evidence, editorial comment on each rule, a drafters' analysis, and annotations of cases that have interpreted and applied the rule. Although the manual is not available for purchase in print, information concerning the nearest library holding a print copy may be obtained by searching <http://www.worldcat.org>. Alternatively, a downloadable 25th Anniversary

ebook edition is available for purchase²⁴ and the manual is also available as a searchable database via LexisNexis.

David A. Schlueter, Stephen A. Saltzburg, Lee Schinasi, & Edward J. Imwinkelried, *Military Evidentiary Foundations, Fourth Edition* (LexisNexis/Matthew Bender, 2010) — This is another work done in cooperation with David Schlueter. As the title implies, the book is designed to assist military justice practitioners understand how to establish a foundation to gain admission or exclusion of evidence. The authors suggest sample lines of questioning for establishing foundations applying military evidence law. This resource is available in print and is also accessible via LexisNexis.

David A. Schlueter, Ken Jansen, Kevin J. Barry & Kenneth A. Arnold, *Military Criminal Procedure Forms, Third Edition* (LexisNexis/Matthew Bender, 2009) — This resource provides forms, motions, letters and other material related to the court-martial process. In addition to the forms, which reflect the differing practices of the services, the authors have also included analysis and discussion of applicable statutory, regulatory and case law. Like the other resources by Schlueter published by Lexis, this resource is available in print²⁵ and also available electronically via LexisNexis.

Law Review Articles on Military Justice Issues — In addition to the deskbooks, casebooks and treatises set forth above, there are a number of law reviews and serial publications focusing on military law issues. These publications include the *Air Force Law Review*, *Naval Law Review* and the *Military Law Review*. These reviews are published by the judge advocate general schools of each of the respective services. Limited runs of the print reviews are available at Oklahoma's academic law libraries. The law reviews are available electronically via Westlaw/WestlawNext, LexisNexis, HeinOnline and other fee-based subscription databases. Additionally, the law reviews and other publications are available via no-cost websites.²⁶

The resources identified above address federal military justice procedure and issues. However, military justice actions may also be initiated at the state level. The Oklahoma Uniform Code of Military Justice,²⁷ codified at Okla. Stat. tit 44, §§3200 *et seq.*, may serve as basis for justice actions regarding "members of the state military forces who are not in federal service."²⁸

Additionally, military servicemembers may face situations in which a case can be charged in both a civilian state court system or in the military court. In such cases, it is important to conduct research regarding handling of the allegations in both systems, giving special attention to the policy of the military service in regards to exercise of jurisdiction if a case is being handled by civilians. Many civilian jurisdictions, including Tulsa County, have established a special court system designed to more effectively address the issues of veterans and servicemembers affected by combat operations.²⁹ If a special court exists, an effective advocate may be able to successfully negotiate the processing of the case in the special court.

Individuals needing additional research assistance related to benefits or military justice issues may contact the author or the reference librarians at any of the academic law libraries in Oklahoma for additional assistance.

1. Abraham Lincoln, Second Inaugural Address (1865), available at www.bartleby.com/124/pres32.html.
2. *Assisting veterans*. 73 TEX. B.J. 848 (2010), available at www.texasbar.com/AM/Template.cfm?Section=Texas_Bar_Journal&Template=/CM/ContentDisplay.cfm&ContentID=11683.
3. LexisNexis, *Veterans Benefits Law and Advocacy*, www.lexisnexis.com/veteranslaw/maninfo.asp (last visited Sept. 16, 2011).
4. National Veterans Legal Services Program, Publications — *The Veterans Advocate*, www.nvlsp.org/Publications/Bookstore/Journal/veteransadvocate.htm (last visited Sept. 16, 2011).
5. United States Department of Veterans Affairs, Board of Veterans' Appeals, *Front matter*, 3 VETERANS L. REV. v (2011), available at www.bva.va.gov/docs/VLR_VOL3/VLR-FrontMatterPages-i-vi.pdf.
6. United States Department of Veterans Affairs, Board of Veterans' Appeals, *Veterans Law Review*, www.bva.va.gov/VLR.asp (last visited Sept. 16, 2011).
7. United States Department of Veterans Affairs, FEDERAL BENEFITS FOR VETERANS, DEPENDENTS AND SURVIVORS (2011), available at www.va.gov/opa/publications/benefits_book.asp.
8. United States Department of Veterans Affairs, *Introduction, FEDERAL BENEFITS FOR VETERANS, DEPENDENTS AND SURVIVORS* (2011), available at www.va.gov/opa/publications/benefits_book/benefits_introduction.asp.
9. Acronym Finder, www.acronymfinder.com/ (last visited Sept. 16, 2011).
10. Catalog offering for Veterans' Rights and Benefits, Oxford University Press, www.oup.com/us/catalog/general/subject/Law/UnallocatedMiscellaneous/?view=usa&ci=9780195376524#Author_Information (last visited Sept. 16, 2011).
11. National Veterans Legal Services Program, THE AMERICAN VETERANS AND SERVICE MEMBERS SURVIVAL GUIDE: HOW TO CUT THROUGH THE BUREAUCRACY AND GET WHAT YOU NEED — AND ARE ENTITLED TO (2009), available at www.nvlsp.org/images/Survival%20Guide-102309.pdf.
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13. Air Force Judge Advocate General's School, MILITARY COMMANDER AND THE LAW (10th ed. 2010), available at www.afjag.af.mil/shared/media/document/AFD-101025-032.pdf.
14. Susan J. Crawford, *Foreword to Francis A. Gilligan & Fredric I. Lederer, COURT-MARTIAL PROCEDURE* vii (3rd ed. 2006).
15. Steve Young, *Reporting for Duty: A Primer on Researching Military Law*, L.LIB LIGHTS, Winter2004 at 1, available at www.llsdc.org/attachments/wysiwyg/232/winter04.pdf.

16. Darla Jackson, *Military Justice Research Guide*, <http://law.okcu.libguides.com/content.php?pid=174909> (last visited Sept. 19, 2011).
17. R. Chuck Mason, CONG. RESEARCH SERV., R41739, MILITARY JUSTICE: COURTS-MARTIAL, AN OVERVIEW (2011), available at <http://www.fas.org/sgp/crs/natsec/R41739.pdf>.
18. Previous CRS on this topic is Estela I. Velez Pollack, CONG RESEARCH SERV., RS21850, MILITARY JUSTICE: COURTS-MARTIAL, AN OVERVIEW (2014), available at www.fas.org/man/crs/RS21850.pdf.
19. Daniel G. Brookhart, *Foreword to Army Judge Advocate General's Legal Center and School, CRIMINAL LAW DESKBOOK* (2010), available at www.loc.gov/rr/frd/Military_Law/pdf/Crim-Law-Deskbook_V-1.pdf.
20. *Id.*
21. Army Judge Advocate General's Legal Center and School, CRIMINAL LAW DESKBOOK (2010), available at www.loc.gov/rr/frd/Military_Law/pdf/Crim-Law-Deskbook_V-1.pdf and www.loc.gov/rr/frd/Military_Law/pdf/Crim-Law-Deskbook_V-2.pdf.
22. David A. Schlueter, *Preface to the Seventh Edition of David A. Schlueter, MILITARY CRIMINAL JUSTICE: PRACTICE AND PROCEDURE*, at — (7th ed. 2008).
23. LexisNexis, *Description of the Seventh Edition of David A. Schlueter, MILITARY CRIMINAL JUSTICE: PRACTICE AND PROCEDURE*, www.lexisnexis.com/store/catalog/booktemplate/productdetail.jsp?pageName=relatedProducts&prodId=6571 (last visited Sept. 19, 2011).
24. LexisNexis, *Description of the Sixth Edition of David A. Schlueter, Stephen A. Saltzburg, & Lee Schinasi, MILITARY RULES OF EVIDENCE MANUAL, Sixth Edition* (2008), LexisNexis, *Description of the 25th Anniversary Edition of David A. Schlueter, Stephen A. Saltzburg, & Lee Schinasi, Military Rules of Evidence Manual* (2011), <http://www.lexisnexis.com/store/catalog/booktemplate/productdetail.jsp?pageName=relatedProducts&prodId=prod-us-ebook-66911-mobi> (last visited Nov. 17, 2011).
25. LexisNexis, *Description of the Third Edition of Ken Jansen, Kevin J. Barry & Kenneth A. Arnold, MILITARY CRIMINAL PROCEDURE FORMS, Third Edition* (2009), www.lexisnexis.com/store/catalog/booktemplate/productdetail.jsp?pageName=relatedProducts&skuId=SKU6800&catId=116&prodId=6800 (last visited Sept. 19, 2011).
26. See Military Justice Research Guide, *supra* note 16, for additional information on access to law review and other articles related to military justice.
27. Okla. Stat. tit 44, §§3200 to 4002 (2011), available at www.oscn.net/applications/oscn/Index.asp?ftdb=STOKST44&level=1.
28. Okla. Stat. tit 44, §§3202 (2011), available at www.oscn.net/applications/oscn/Index.asp?ftdb=STOKST44&level=1.
29. Tiffany Cartwright, "To Care for Him Who Shall have Borne the Battle": The Recent Development of Veterans Treatment Courts in America, 22 STANFORD L. & POL. REV. 295 (2011).

ABOUT THE AUTHOR



Darla Jackson is the associate director of the Oklahoma City University School of Law Library, where she also serves as adjunct faculty. She earned a master of library and information studies degree from the University of Oklahoma, a J.D. from the OU College of Law, an LL.M. in international law from the University of Georgia and a master of military operational arts and science from Air University. She practiced law as an Air Force judge advocate from 1989-2003. She is a member of the OBA Technology Committee.



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2012

OBA

OFFICERS & NEW BOARD MEMBERS



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Oklahoma City

House of Delegates Actions

Actions of the OBA House of Delegates on matters submitted for a vote at the 107th Annual Meeting on Friday, Nov. 4, 2011, are as follows:

RESOLUTION NO. ONE: DISCLOSURE AGREEMENT

BE IT RESOLVED by the House of Delegates of the Oklahoma Bar Association that the Association adopt, as part of its legislative program, as published in *The Oklahoma Bar Journal* and posted on the OBA website at www.okbar.org, proposed legislation amending 12 O.S. Supp. ____, Section 2502, Attorney-Client Privilege. (Requires 60% affirmative vote for passage. OBA Bylaws Art. VIII Sec. 5) (Submitted by the Civil Procedure and Evidence Code Committee. **Adoption recommended by the OBA Board of Governors.**)

Action: Adopted

ADOPTED

RESOLUTION NO. TWO: CORRECTING REFERENCES TO SECTION 3230.

BE IT RESOLVED by the House of Delegates of the Oklahoma Bar Association that the Association adopt, as part of its legislative program, as published in *The Oklahoma Bar Journal* and posted on the OBA website at www.okbar.org, proposed legislation amending 12 O.S. Supp. ____, Section 3232, Use of Depositions in Court Proceedings. (Requires 60% affirmative vote for passage. OBA Bylaws Art. VIII Sec. 5) (Submitted by the Civil Procedure and Evidence Code Committee. **Adoption as amended recommended by the OBA Board of Governors.**)

Action: Adopted as amended to incorporate revision marks inadvertently omitted

ADOPTED

RESOLUTION NO. THREE: CORRECTING REFERENCES TO SECTION 3230.

BE IT RESOLVED by the House of Delegates of the Oklahoma Bar Association that the Association adopt, as part of its legislative program, as published in *The Oklahoma Bar Journal* and posted on the OBA website at www.okbar.org, proposed legislation amending 12 O.S. Supp. ____, Section 3237, Failure to Make or Cooperate in Discovery – Sanctions. (Requires 60% affirmative vote for passage. OBA Bylaws Art. VIII Sec. 5) (Submitted by the Civil Procedure and Evidence Code Committee. **Adoption recommended by the OBA Board of Governors.**)

Action: Adopted

ADOPTED

RESOLUTION NO. FOUR: CREATION OF STATE OFFICE OF ADMINISTRATIVE TAX HEARINGS

BE IT RESOLVED by the House of Delegates of the Oklahoma Bar Association that the Association adopt, as part of its legislative program, as published in *The Oklahoma Bar Journal* and posted on the OBA website at www.okbar.org, proposed legislation creating new law to be codified as 74 O.S. Section 9100 et seq. and amending existing laws to create a State Office of Administrative Tax Hearings to have authority to hear Oklahoma tax controversies and to implement an independent Oklahoma Tax Commission internal review and settlement program. (Requires 60% affirmative vote for passage. OBA Bylaws Art. VIII Sec. 5) (Submitted by the Chair and a former Chair of OBA

Taxation Law Section as Members of the Association. Adoption recommended by the OBA Board of Governors.)

Action: Adopted

ADOPTED

TITLE EXAMINATION STANDARDS

Action: The Oklahoma Title Examination Standards revisions and additions published in *The Oklahoma Bar Journal* 82 2566 (Oct. 22, 2010) and posted to the website at www.okbar.org were approved in the proposed form. The revisions and additions are effective immediately.

All resolutions are available in their entirety at <http://am.okbar.org/2011/bar-business/resolutions/>

NOTICE OF PUBLIC HEARING ON PROPOSED CHANGES TO WORKERS' COMPENSATION COURT RULES

The Workers' Compensation Court invites public input on proposed changes to its Court rules. The Court will hold two public hearings as follows. The public hearings are per 85 O.S., Section 303(D).

- **Tulsa, Oklahoma – Wednesday, December 7, 2011 at 1:30 p.m. in the Auditorium of the Kerr State Office Building, 440 South Houston, and**
- **Oklahoma City, Oklahoma – Thursday, December 8, 2011 at 1:30 p.m. in the Auditorium of the Oklahoma Judicial Center, 2100 N. Lincoln Blvd.**

All comments and suggested revisions (including a brief statement of need and proposed wording) should be submitted in writing to Judge Owen T. Evans, Workers' Compensation Court, 440 South Houston, Suite 210, Tulsa, OK 74127 or to Tish Sommer, Special Counsel, Workers' Compensation Court, 1915 N. Stiles Avenue, Oklahoma City, OK 73105; or sent by email to CourtRulesComments@owcc.state.ok.us. Comments will be accepted by the Court through December 8, 2011.

Copies of the proposed rules are available for viewing at the Workers' Compensation Court's offices in Oklahoma City and Tulsa. Electronic copies are available on the court's website under "What's New" at <http://www.owcc.state.ok.us>.

Parking for the Oklahoma City public hearing is available in the South parking lot of the State Capitol Building. Both public hearing locations have a security screening station which all attendees are required to go through.

OBA 107th Annual Meeting

Nov. 2 - 4, 2011 • Hyatt Regency Hotel, Tulsa



OBA President-Elect Cathy Christensen, Judge D.W. Boyd, Justice Douglas Combs and OBA President Deborah Reheard



Attendees at President's Boots and Bandanas Reception



Board of Governors voting at the House of Delegates



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



Attendees socialize at the President's Boots and Bandanas Reception.



OBA President Deborah Reheard addresses the Annual Luncheon.



Red Dirt Rangers band



OBA President Deborah Reheard presents a President's Award to Oklahoma Lawyers for America's Heroes volunteer Robert Manchester. Other President's Award winners were: Oklahoma Supreme Court Chief Justice Steven W. Taylor, OBA Vice President Reta Strubhar and Oklahoma Lawyers for America's Heroes volunteer Danny White. Twenty-five awards were given out at the meeting.



NFL Referee Walt Coleman addressing the crowd as the keynote speaker at the Bench and Bar Breakfast.



Annual Luncheon speaker Andrew Card, former White House chief of staff under President George W. Bush



Political musical comedy group the Capitol Steps performing at the Red, White and Blue Reception



Martin Luther King Jr. Unity Choir of McAlester singing at the President's Breakfast



Young Lawyers Division members Eric Davis, Bryon Will and Carson Brooks enjoy friends and fellowship.



Court of Criminal Appeals Judge Gary Lumpkin, Supreme Court Chief Justice Steven W. Taylor and Supreme Court Justice Tom Colbert



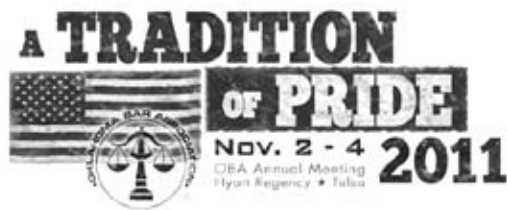
The Washington County Bar Association receives their award for outstanding county bar association.



Attendees participate in a little line dancing at the Boots and Bandanas Reception.



2011 Attorney Art Show



BEST IN SHOW

Nathanial Haskins,
Oklahoma City



BEST MILITARY-THEMED ART

Kenni Merritt, Oklahoma City

.....

OIL PAINTING

Thomas Marsh, Tulsa

ACRYLIC

Madison Miller,
Oklahoma City

BLACK AND WHITE PHOTOGRAPHY

Judge Michael Stano, Stillwater

COLOR DRAWING

Paula Wood,
Oklahoma City

COLOR PHOTOGRAPH

Judge Michael Stano, Stillwater

New Military Section:

The OBA's 'Draft' — Will You Answer the Call?

By Robert Don Gifford

The willingness with which our young people are likely to serve in any war, no matter how justified, shall be directly proportional as to how they perceive the veterans of earlier wars were treated and appreciated by their nation.

- George Washington

ATTENTION! The “Commander in Chief” of the Oklahoma Bar Association, President Deborah Reheard has called for a muster of all OBA members to pick up the proverbial rifle and to get in the battle. Your first “order” is take notice on your bar association dues statement of a brand new section of the Oklahoma Bar Association, the Military & Veterans Law Section (M&V Law Section). This new section is now looking for a “Few Good Men” (and Women!) to help assist our true national treasure – the men and women serving in uniform, their families and our veterans. The cost is nominal, and there is a waiver for all OBA members who serve in uniform or are veterans.

Here is your hypothetical: An Oklahoman, who just recently came off of active duty, joined the Reserves and is now (again) deployed to Afghanistan. It would not be unreasonable for this soldier to have a rental house outside of Fort Knox, Ky.; a storage facility near Fort Huachuca, Ariz. with some old furniture from a tour there; the family car with a Texas license plate from assignments at Fort Hood, Texas; and his wife may have started a small business doing child care while she is staying with her parents in Reno, Nev. Throw in a couple of other factors that he is a lawful permanent resident pending U.S. citizenship, and he and his wife are wanting to adopt a child. Potential legal issues? Unique laws that are applicable only to servicemembers and their families? Let me count the ways...

Oklahomans who wear the military uniform, whether full-time active duty, National Guard or Reserve Component, can have significant legal needs. Those legal needs also extend to

those family members, and especially to that honored class of citizen — the veteran. Arguably, our servicemembers, their families and our veterans are probably the most underserved group of individuals who need a good attorney to help navigate the multiple issues that arise. There is a common misperception that a military lawyer in uniform will handle all legal needs of our servicemembers. The reality is that our brethren lawyers in uniform are limited in what legal services they are allowed to perform. In addition, the legal issues range

“Oklahomans who wear the military uniform, whether full-time active duty, National Guard or Reserve Component, can have significant legal needs.”

from the common (i.e. child support, divorce, etc.) to the unique (invoking the protections of the Servicemembers Civil Relief Act (SCRA), defending a soldier or airman in a court-martial, assisting in a denial of a security clearance, etc.). The Oklahoma Bar Association, recognizing that those needs may go unmet, is organizing its members to provide pro bono or reduced-cost legal services for military members and veterans in Oklahoma. To quote George Wash-

ington, “[w]hen we assumed the Soldier, we did not lay aside the citizen.” The OBA remains dedicated to the highest ideals of the profession through advocacy and volunteer service.

The new Military & Veterans Law Section of the Oklahoma Bar Association is building on the amazing work from the OBA’s Oklahoma Lawyers for America’s Heroes and the Military Assistance Task Force. The mission of the new section is a diverse one. Nearly every area of the law has some impact on the military status of a servicemember or there are unique laws that apply simply because the client is a servicemember or veteran. The M&V Law Section will help educate Oklahoma attorneys through continuing legal education (CLE) classes on the unique issues that face our servicemembers, their families and our veterans. In addition, this new section will continue to develop and assist pro bono legal clinics throughout the state for this unique clientele who cannot afford or do not have access to the legal ser-

vices they need. The program is a major initiative of the Oklahoma Bar Association President Deborah Reheard, and President-Elect Cathy Christensen is prepared to assume command and lead the charge.

With 2011 marking 10 years of a post-9/11 world and a society that sees our men and women in uniform on a daily basis — it is time to adjust the way we practice law to meet this new paradigm. To borrow from Abraham Lincoln’s second inaugural address on this country’s obligation to its veterans, the Military & Veterans Law Section of the Oklahoma Bar Association is “for him who has borne the battle, and his widow and orphan.” Fellow OBA members, consider this “draft” notice as your “greeting” from the president for induction into “service.”

Mr. Gifford is a lieutenant colonel in the U.S. Army Reserve serving as the staff judge advocate for the 95th Training Division at Fort Sill and an assistant U.S. attorney in Oklahoma City.

Oklahoma Bar Journal Editorial Calendar

2011

- December:
Ethics & Professional Responsibility
Editor: Melissa DeLacerda
melissde@aol.com
Deadline: Aug. 1, 2011

2012

- January
Meet Your OBA
Editor: Carol Manning
- February
Environmental Law
Editor: Emily Y. Duensing
emily.duensing@oscn.net
Deadline: Oct. 1, 2011
- March
Work Life Balance
Editor: Joseph M. Vorndran
joe@scdtlaw.com
Deadline: Oct. 1, 2011

- April
Law Day
Editor: Carol Manning

- May
Nonprofit Law
Editor: Dietmar Caudle
d.caudle@sbcglobal.net
Deadline: Jan. 1, 2012

- August
Family Law
Editor: Sandee Coogan
scoogan@coxinet.net
Deadline: May 1, 2012

- September
Bar Convention
Editor: Carol Manning

- October
Opening a Law Practice
Editor: Melissa DeLacerda
MellssDE@aol.com
Deadline: May 1, 2012

- November
Homeland Security
Editor: Erin Means
means@gungolljackson.com
Deadline: Aug. 1, 2012

- December
Ethics & Professional Responsibility
Editor: Pandee Ramirez
pandee@sbcglobal.net
Deadline: Aug. 1, 2012

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

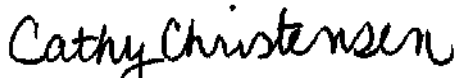
OBA Needs Volunteers for 2012 Committees

Teamwork makes things happen and that's very true for all our OBA committees. If you're not yet a committee member, I urge you to get involved. There's no better way to network among colleagues — and isn't that an investment in your career worth the time out of the office?

The variety of committees makes it easy to find something you are interested in. Pick one and help me make a difference. I need you on my team.

If you work in or around Tulsa, videoconferencing from there with the bar center in Oklahoma City saves travel time. We want your participation.

It's easy to sign up online at www.okbar.org. You can also complete this form and either fax or mail it to the OBA. I need to start working on committee appointments soon, so please respond by **Dec. 1, 2011**.


Cathy Christensen, President-Elect

Standing Committees

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

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

Please Type or Print

Name _____ Telephone _____

Address _____ OBA # _____

City _____ State/Zip _____

FAX _____ E-mail _____

Committee Name

1st Choice _____

2nd Choice _____

3rd Choice _____

Have you ever served
on this committee?

☐ Yes ☐ No

☐ Yes ☐ No

☐ Yes ☐ No

If so, when?
How long?

☐ Please assign me to only one committee.

☐ I am willing to serve on (two or three - circle one) committees.

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

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

Fax: (405) 416-7001

I Told You So

By John Morris Williams

Last month I told you the Annual Meeting would be a WOW. Boy, was it ever. We all owe a debt of gratitude to President Deborah Reheard and her leadership to make all this happen. It was a team effort involving the OBA officers, Board of Governors and the OBA staff. They all had good ideas and worked hard to make it a great Annual Meeting. However, President Reheard was the driving force. And drive she did. She went to more than 30 county bar meetings and pitched the meeting anywhere she could. She had a compelling message and a big thank you to all of you who attended.

I have received a number of emails and in-person communications all glowing over what a good event it turned out to be. My only response is to thank President Reheard. She worked hard to attend other state bar meetings and bring back the best she saw and then improved upon it.

It was my fear that our Annual Meeting was going by the wayside, as many state bar association meetings have done. At training sessions I attended at the National Association of Bar Executives, I have heard a number of naysayers regarding the generational shift that makes people coming

together darn near impossible. Too many distractions, everything is online and different patterns in socializing. One speaker I heard once gave me hope. He said if you do a "wow," they will come. I need to remember who that was. Cause that guy was right. I believed him when he said it. President Reheard proved it.

If you missed the meeting, it is your loss. The programming was first rate. The judiciary was involved, and the social events were just plain fun. In fact, it was all fun. We did what associations were meant to do. We brought like-minded people together to talk about our issues, improve our skills, enjoy the society of those who do the same or similar work and just have some fun. I do not need to tell you that what you do is hard and stressful. Taking a few days off from the office and getting refreshed is a good idea. Doing it at the Annual Meeting is the ultimate in multi-tasking. You are working, you are socializing, you are learning — and you are seeing the best and brightest of our profession all under the same roof.

DOCKET 2012 ANNUAL MEETING

Right now. This very instant. Get out your calendar, pull up your calendar or whatever you do to docket your schedule; write down OBA Annual Meeting Nov. 14-16, 2012. It will be in Oklahoma City and another wow is in the offering. President-Elect Christensen has been challenged for a repeat. If you know Cathy like I do, just you wait and see. President Reheard has been drafted as Annual Meeting consultant, and we know she can produce!

Again, many thanks to President Reheard, OBA officers, governors and OBA staff who worked long and hard. Especially, I want to thank our members who volunteered to work at the meeting, and all those who attended. It was a WOW!

Next year ya'll come back, you hear!



To contact Executive Director Williams, email him at johnw@okbar.org.

So What Do You Think of Technology Now?

By Jim Calloway, Director, OBA Management Assistance Program

Yes, the title of this column is a rhetorical question. I know some of you love it and some of you hate it and sometimes both at the same time.

The vast majority of those of us who use technology daily for our work probably love it part of the time and hate it part of the time. These times typically are related to how the technology is helping or preventing us in doing what we are trying to do at the time.

The 2011 OBA Technology Fair “Going Geek” at the OBA Annual Meeting in Tulsa this month provided an opportunity for me to look back at law office technology as we discussed the present and future. Reid Trautz was my co-presenter for most of the day. He is the chair of ABA TECHSHOW™ 2012, which will be held March 29-31, 2012, in Chicago. Oklahoma bar members can get a discount when registering for ABA TECHSHOW™ by using their Event Promoter Code EP1218.

We started the Tech Fair with 50 Tips in 50 Minutes. As Mr. Trautz and I prepared for that program, I was thinking that the 2011 version of “50 tips” would be dramatically different than the technology tips program at the first OBA Solo & Small Firm Conference at Shangri La in 1998. I’d imag-

“There have been many legislative changes but Moore’s Law (of technology improvement) remains with us.”

ine a 1998 audience wouldn’t be able to even follow the discussion as it referred mostly to things that did not even exist in that year. Conversely, I would guess almost all of the 1998 tips have now either been rendered irrelevant or have been incorporated into an application or operating system.

Technology marches on. There have been many legislative changes but Moore’s Law (of technology improvement) remains with us. (If you are not familiar with Moore’s Law and want to know more, the Wikipedia entry http://en.wikipedia.org/wiki/Moore's_law is a good place to start.)

I should also note that back then it was still the subject of discussion as to whether a computer should be on a law-

yer’s desk or whether it was only an appropriate tool for law firm staff.

Ross Kodner (www.micro-law.com) spoke at our 1999 OBA Solo & Small Firm Conference on the PaperLESS™ Office. It was a very interesting presentation, and I recall looking across the audience seeing some lawyers listening (and writing) intensely while many were visibly skeptical. Even today I talk to lawyers who cringe in horror at the idea of digital files replacing paper files. My favorite quote from one such lawyer is “But I love the tactile sensation of flipping through my case files. It is how I work.” But since that time we have all gotten used to the idea of digital client files. Lawyers regularly receive digital documents as email attachments and use electronic filing in federal court and bankruptcy court. I doubt that there are any lawyers who do not regularly use PDF files. And I think most lawyers see a distal law practice in their future, unless they are planning retirement soon.

Ed Walters, the CEO of Fastcase, also spoke at the OBA Tech Fair. His topic was “The Lawyer: Open-Sourcing the Law — Law.gov, Data.gov, and the Firm’s Bottom Line.” Now that may sound like a quite technical topic, but among his

many accomplishments, Ed Walters previously worked in the White House Office of Presidential Speechwriting. He knows how to put together an informative and entertaining talk. The recent history of how “the law” transitioned from being the exclusive province of one well-known book publisher to the various sources where it can be found now was truly great. Oklahoma lawyers can all be proud that the Oklahoma Supreme Court led the way with its creation of OSCN.NET and adoption of the Oklahoma public domain citations.

BUT...

While a trip down the memory lane of older technology might be interesting to some, of more interest is where technology is headed and how that impacts the practice of law.

- 1) **Mobile everything.** Every lawyer needs to have a smartphone. There, I said it (again). There was a time when the lawyers who have told me over the years, “I don’t want a smart phone. I just want a phone to be a phone” had a better justification for that statement. But now earlier generations of smart phones are really inexpensive and you do not have to have the most expensive data plan just to check email and have your calendar synchronized with the office calendar.

Today, one simply has to be able to set appointments and check the office calendar remotely. It is important for a variety of reasons, but mainly because if you are talking to someone outside of the office who needs to make an appointment with you, it is better

just to do it and be done as opposed to making a note to call them Monday. Email access by phone is equally important, particularly if you are a courthouse lawyer who has to spend time waiting at the courthouse.

2) **Digital law practice.**

Hopefully all lawyers and law firms are at least in the planning stages of using digital client files. The advantages of having all records scanned and organized in digital client files are numerous: the ability to remotely access client files and other information, the ability to have a backup of your important data so it is protected, the speed of quickly accessing a digital client file, no more lost files and so on.

3) **Data drives businesses.**

Lawyers are trained to think in terms of facts and the law. Most all 21st century businesses are focused on data. Law firms should be too. Typing a client’s address a few dozen times at various times during representation sometimes seemed like a repetitive waste in the past. But it represented a small amount of wasted time and the technology-based

solutions required quite a time investment, if they worked, which was far from a sure thing.

But as law firms strive to improve their efficiency, retyping data will become even more frustrating and even copying and pasting from a form will seem slow. Starting a new letter to a client or a new pleading will become a one-click or two-click operation as law firms focus on entering data where it can be quickly used again and again.

- 4) **Tablets.** The iPad wasn’t just a game changer. It represents a society changer. Whether you have purchased one or not, you likely will own one or something of similar design sooner than you think. Although not “there” yet, the Droid tablets are catching up. As new, improved iPads are released each year, the used and reconditioned ones will flood the market, too. The Kindle Fire, which was just released, looks to be a pretty nice device, even though it is focused more on information consumption than creation. (Of course, that is what many initially thought

Tech Toys for the Holidays

As most of you know, Jim Calloway and Sharon Nelson do a monthly podcast for the *Law Practice Today* webzine titled “The Digital Edge: Lawyers and Technology.” Their most popular podcast is the annual “Tech Toys for the Holidays” podcast, which has just been released. To listen, enter this URL into your browser: <http://tinyurl.com/ck7hcry>.



about the iPad before learning more.)

Carrying a device smaller than a traditional legal pad with Internet access, email access, videoconferencing, specialized apps, notetaking ability, video and audio recording and all of your documents, music and other files is just hugely convenient. Oklahoma City attorney Tom Cooper reported to me what a great experience it was to fly with an iPad containing hundreds of documents that he needed to review in conjunction with a deposition. He was able to easily make notes and annotations on the documents. He noted that he would never have been able to get all of the documents in physical binders in his carry-on bags, much less deal with them during a flight.

- 5) **Flexibility in working locations.** Lawyers truly can now work from anywhere that they have an Internet connection. Two

American Bar Association publications that were just published contain a lot of information on this subject.

The October/November edition of *GPSOLO* magazine had the theme of Home and contained six different articles about lawyers working from home. The issue is online at www.americanbar.org/publications/gp_solo/2011/october_november.html or <http://tinyurl.com/8xj5qfn>.

I served as guest editor of the September/October issue of *Law Practice Magazine*, which was devoted to virtual law practice. Virtual law practice is a fairly broad term referring to lawyers who deliver client services over the Internet. I wrote the cover story "Moving to a Virtual Practice Model – Do You Have the Right Stuff?" There are several other features related to this topic, including two about the ethical considerations. You can

find this issue online at www.americanbar.org/publications/law_practice_magazine/2011/september_october.html or <http://tinyurl.com/3nef7xt>.

- 6) **The Cloud.** Last month I wrote on cloud computing in this space, avoiding a discussion of lawyers storing confidential client files in the cloud and focusing instead on filing less sensitive personal documents you might want to quickly access there. You will hear more and more about the cloud. If you missed the article, it is "Mobile Technology and Cloud Computing," 82 *Oklahoma Bar Journal* 2347 (Oct. 8, 2011.)

Lawyers deal with a lot of information. Changes in information technology tools will continue to impact us and change the way we work. You can love the technology or hate the technology, but there seems to be little doubt the lawyers will be using the technology on a daily basis.



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Meeting Summaries

The Oklahoma Bar Association Board of Governors met at the Holiday Inn in Vinita on Friday, Aug. 26, 2011.

REPORT OF THE PRESIDENT

President Reheard congratulated Past President Smallwood on his recent honor of receiving the Tulsa County Bar Association Outstanding Senior Lawyer Award. She reported she attended the July board meeting in Oklahoma City, luncheon with Chinese law student delegation through OCU, Southern Conference of Bar Presidents meeting, National Conference of Bar Presidents meeting, ABA Annual Meeting in Toronto, OBA bar leaders meeting at the Tulsa County Bar Center, OBA bar leaders meeting at the Oklahoma Bar Center and numerous planning meetings for Annual Meeting. She assisted at the Muskogee County Bar Association Veterans Clinic, presented 50- and 60-year pins at the Tulsa County Bar Association awards luncheon and welcomed attendees to the Military Law Boot Camp CLE in Enid.

REPORT OF THE VICE PRESIDENT

Vice President Strubhar reported she attended the bar leaders meeting and SCOPE/LRE meeting. She also made plans for the Board of Governors September meeting to be held in Canadian County.

REPORT OF THE PRESIDENT-ELECT

President-Elect Christensen reported she attended the July board meeting, luncheon with the Chinese law student delegation through OCU, Bar Association Technology Committee meeting, SCOPE Task Force meeting, document storage product meeting, bar leaders meeting in Oklahoma City, 2012 Solo Conference planning meeting, ABA Annual Meeting in Toronto, Southern Conference of Bar Presidents meeting and National Conference of Bar Presidents meeting. She met with Executive Director Williams and Director Combs on 2012 budget planning and attended the staff budget meeting.

REPORT OF THE PAST PRESIDENT

Past President Smallwood reported he attended the American Bar Association meeting in Toronto, conducted judicial replacement interviews as a Judicial Nominating Commission member and planned efforts to ensure the JNC remains in existence.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported that he attended the Bar Association Technology Committee meeting, bar leaders meeting in Oklahoma City, NABE and NCBP meetings, Veterans Clinic in Muskogee, OBF grant proposal meeting, staff and president-elect meetings on budget, document storage product demonstra-

tion, staffing meeting on posting of web articles, Tulsa County Bar Association annual lunch and monthly staff celebration. He met with the builder regarding the remodeling of bar center first floor west wing, with the executive director of Oklahoma Lawyers Association and participated in a telephone conference with Grant Thornton regarding modifications to the technology request for proposal.

BOARD MEMBER REPORTS

Governor Carter reported she attended the July board meeting, new judges' orientation at the beautifully renovated and decorated Oklahoma Judicial Center and an orientation meeting of the Tulsa County Bar Association Board of Directors. **Governor De-Moss** reported she attended the Tulsa County Bar Foundation meetings, the TCBF annual meeting and luncheon, the bar leaders meeting held by President Reheard in Tulsa, July board meeting and the Chinese student delegation luncheon. **Governor Devoll** reported he attended the July board meeting in Oklahoma City, luncheon with Chinese law students, briefly attended the military assistance CLE in Enid and worked on matters for the Garfield County Bar Association. **Governor Dobbs** reported he attended the July board meeting and Chinese law student luncheon. **Governor Moudy** reported she attended the July Board of Governors meeting, luncheon with Chinese student delega-

tion, court improvement project in Norman and assisted with the Muskogee County Veterans Clinic. **Governor Pappas** reported she attended the July board meeting in Oklahoma City, luncheon with Chinese law student delegation through OCU, Payne County Bench and Bar Committee meeting and annual, two-day Oklahoma Children's Court Summit. **Governor Poarch** reported he attended the July board meeting, luncheon with students from China and the Cleveland County Bar Association meeting.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported the *Gather v. OKARNG, et al.* case has been dismissed. A written status report of the Professional Responsibility Commission and OBA disciplinary matters for July 2011 was submitted for the board's review.

SOCIAL MEDIA POLICY

Communications Director Manning reported since a subcommittee of the Bar Association Technology Task Force submitted its proposed social media policy, she has had an opportunity to do more research and concurs with much of the subcommittee's draft. She said the policy submitted to the board for its consideration is a combination of the subcommittee's version and the model social media policy created by the National Association of Bar Executives Communications Section. The board approved the social media policy.

AMENDMENTS TO REIMBURSEMENT POLICY

The board approved amendments to the OBA Reimbursement Policy that

delete reference to providing a telephone credit card and add provision for reimbursement of expenses preapproved by the president or Board of Governors.

SPECIAL COMMITTEE ON PUBLIC EDUCATION (SCOPE) REPORT

President-Elect Christensen reported the group has come together and is moving forward. She said meetings last two to four hours. Several task force members traveled to Norman for the Hatton Sumners Summer Institute dinner. Federal funding from the Center for Civic Education is disappearing, and the OBA will need to make a decision to fund the programs the center's grant supports or to drop the programs. She reported SCOPE created subcommittees to evaluate existing programs and to make recommendations. Subcommittees are 1) Lawyers in the Classroom, 2) Community Outreach, 3) Hatton Sumners/We the People/Civitas/Project Citizen, 4) Program Development and 5) Management Plan. She explained what the subcommittees are working on. President-Elect Christensen shared details about a Florida civic education program started by Justice R. Fred Lewis, and he will be the guest speaker at a special Sept. 29 event at the new Oklahoma Judicial Center in Oklahoma City. She said the task force reviewed original aims and objectives of the Law-related Education Committee, and the task force decided the focus needs to be on Oklahoma teachers and students. Aims and objectives were revised and included in an interim report submitted to the Board of Governors. The board voted to adopt the task force's interim report and to

allow the task force more time to continue its work. Vice President Strubhar praised President-Elect Christensen for her work in merging the efforts of the LRE Committee with the SCOPE Task Force.

LEGAL INTERN COMMITTEE ANNUAL REPORT

Committee Chairperson Candace Blalock reviewed the committee's annual report to the Oklahoma Supreme Court. Governor Poarch added comments and encouraged support of providing law students experience before becoming a lawyer.

AMENDMENT TO RULES OF THE SUPREME COURT ON LEGAL INTERNSHIP

Legal Intern Committee Chairperson Candace Blalock reported the committee is asking the Supreme Court to amend Rule 2.1 to allow law students who have completed half the number of academic hours in their law school program to be eligible for a limited license as a Licensed Legal Intern. The amendment removes the requirement of specifically 45 hours of academic hours, which causes problems because the total number of academic hours is not consistent among law schools. The board voted to accept the report.

TECHNOLOGY AUDIT – GRANT THORNTON SERVICE AGREEMENT

President Reheard reported the bar center has continued to have technology problems, and outside assistance is needed to help correct the problems. It is believed that email and phone issues have been solved. The board reviewed a proposal for a technology audit from Grant Thornton.

Governor Dobbs reported his wife's company has had a good experience working with this company. The board approved the proposal.

REQUEST FOR OUT-OF-STATE TRAVEL

The board authorized Jim Calloway to attend the ABA GP Solo & Small Firm Conference from October 20-22 in Denver.

2011-2012 LEADERSHIP ACADEMY PARTICIPANTS

President Reheard shared insight into the selection process for Leadership Academy participants that involved diversity in many areas. She announced that the 2011-2012 class will have 35 participants, more than originally envisioned but there were many quality candidates.

CLE MAGAZINE

President Reheard called board members attention to the new magazine format created by the CLE Department to promote fall OBA/CLE programs. Kudos were given to Educational Programs Director Douglas and her staff.

HEROES PROGRAM UPDATE

President Reheard reported 422 cases have been assigned to volunteer lawyers and together with the legal advice given at yellow ribbon events the OBA has assisted with a total of 600 cases. Statistics are being kept on the types of cases being handled. She expressed thanks to YLD Chair and Muskogee County Bar Association President Roy Tucker, whose bar hosted the first Veterans Clinic. She said people started lining up 40 minutes early. A presentation was made to the Oklahoma Bar Foundation Grants Com-

mittee to fund all the materials needed to conduct a Veterans Clinic, called a Clinic in a Box, in 40 Oklahoma cities. She said she received early confirmation that the \$15,000 OBF grant request has been approved. The next step is to work on preparing the materials for the boxes. She read a portion of a heart-touching email from a soldier who benefited from the program. A video promoting the Oklahoma Lawyers for America's Heroes program created by the OBA Communications Department was shown. The video is designed to recruit lawyers to volunteer for the program and to educate community members about this worthwhile program. County bar associations will be encouraged to show the video to local civic organizations.

ANNUAL MEETING UPDATE

President Reheard reported there is a vehicle for communication among bar leaders in the form of a midyear meeting for bar leaders. She said she invited 134 leaders, and the results were 12 attended in Tulsa and 28 attended in Oklahoma City. She was pleased with the participation since this was the first time for the event to be held. She noted that only three attendees were section chairs. The information packet given to them included a form to request her to speak. Feedback from participants about the Annual Meeting was they know there will be CLE opportunities, but it is the new events that capture their attention. She shared details about Annual Meeting planning. Governor DeMoss shared details about the new trial college that will be part of Annual Meeting and efforts to make

it as interactive as possible. Board members were encouraged to take fliers to post at courthouses and give to law firms. It was noted that sponsorship by the OBA Law Office Management and Technology Section is keeping the registration fee for the Tech Fair low. Improvements will be made to the difficult parking situations that occur when the Annual Meeting is held at the Hyatt Regency Hotel in Tulsa.

NATIONAL JUDICIAL MERIT SELECTION CONFERENCE

President Reheard reported Missouri is hosting a national conference next week, and retired U.S. Supreme Court Justice Sandra Day O'Connor will be speaking. She said that President-Elect Christensen will attend the conference with her.

LAWYERS HELPING LAWYERS FOUNDATION UPDATE

Governor Shields reported a foundation was formed to support the Lawyers Helping Lawyers program years ago but became dormant. She is assisting in the process of reactivating the 501(c)(3) status, but essentially they are starting over and will transfer funds to the new foundation. The LHL committee will hold a meeting Sept. 23, and President-Elect Christensen will be forming a subcommittee to plan fundraising events.

EXECUTIVE SESSION

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



The Oklahoma Bar Association Board of Governors met at the Canadian County Children's Justice Center in Yukon on Friday, Sept. 16, 2011.

REPORT OF THE PRESIDENT

President Reheard reported she attended the National Summit on Defending Merit Selection of Judges sponsored by the Missouri Bar Association, Military Assistance Task Force meeting, Budget Committee meeting, Annual Meeting planning meetings with staff, Employer Service for Guard and Reserve (ESGR) awards banquet and reception with Canadian County bar members and judiciary. She participated in media interviews regarding Annual Meeting. She also presented CLE to the Tri-County Bar Association (McCurtain, Pushmataha and Choctaw) and gave a presentation to the Washington County Bar Association regarding Annual Meeting and the heroes program.

REPORT OF THE VICE PRESIDENT

Vice President Strubhar reported she attended the Board of Governors meeting in Vinita, SCOPE Task Force meeting, Budget Committee meeting and Canadian County Wills Clinic. She also planned the Board of Governors meeting in Canadian County.

REPORT OF THE PRESIDENT-ELECT

President-Elect Christensen reported she attended the board meeting in Vinita, National Summit on Defending Merit Selection of Judges sponsored by the Missouri Bar Association, Oklahoma County LRE Committee meeting, OBA SCOPE Task Force meet-

ing, OBA Awards Committee meeting, OBF Cy Pres Award presentation to the Oklahoma County Law Library for the purchase of public computers, awards banquet sponsored by the Employer Support of the Guard and Reserve (ESGR), lunch with Rep. Aaron Stiles and reception with Canadian County bar and judiciary. She also presented the 2012 OBA budget to the Budget Committee, discussed 2012 CLE event planning with CLE Director Donita Douglas and Ethics Counsel Travis Pickens, toured the Oklahoma Justice Center with Justice Kauger, worked with Executive Director Williams on 2012 planning and viewed the heroes program video with Gov. Fallin, the first gentleman and President Reheard.

REPORT OF THE PAST PRESIDENT

Past President Smallwood reported he had several telephone conferences with members regarding the September 2011 OBA Board of Governors meeting and has had discussions with others regarding Annual Meeting particulars.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported that he attended the board dinner and rodeo in Vinita, Member Survey Committee meeting, Budget Committee meeting, Military Assistance Task Force meeting, various planning meetings with President Reheard and President-Elect Christensen, staff meetings on Annual Meeting and monthly staff celebration. He met with the Administrative Office of the Court director and all project managers for the new electronic filing and information

system, with President-Elect Christensen regarding budget and with the contractor and architect on the current remodel and planning for 2012 remodeling. He also finalized the mobile Annual Meeting app contract, negotiated a final contract for the tech audit and participated in two punch list walkthroughs on the new remodel project.

BOARD MEMBER REPORTS

Governor Carter reported she attended the August board meeting, Thursday evening social event in Vinita and the Tulsa County Bar Association Board of Directors August meeting. She reviewed the nominations packet for the OBA Awards Committee containing numerous, worthy nominations. **Governor DeMoss** reported she attended the board meeting in Vinita, Tulsa County Bar Foundation Board of Directors meeting, OBA Awards Committee meeting, Diversity Committee meeting and participated in planning for the OBA Trial College. **Governor Devoll** reported he attended the August board meeting in Vinita and the Budget Committee meeting. He also worked on Garfield County Bar Association matters. **Governor Dobbs**, unable to attend the meeting, reported via email that he attended the board meeting in Vinita and Budget Committee meeting. He also announced he has retired from his firm. **Governor Meyers** reported he attended the board meeting in Vinita, rodeo social event and the Comanche County Bar Association reception for Oklahoma Bar Foundation trustees. **Governor Pappas** reported she attended the August board meeting in Vinita. She contacted each county

bar, drafted letters to accompany invitations sent from her office to the judiciary, county bar presidents and a few others in her district for the Sept. 29 LRE event. **Governor Poarch** reported he attended the board meeting in Vinita, Budget Committee meeting and the reception with Canadian County Bar Association and judiciary. **Governor Shields** reported she attended the board meeting in Vinita, Oklahoma County Bar Association annual dinner and dance and a planning meeting with the Oklahoma County Bar Association president regarding the Nov. 11 heroes program.

REPORT OF THE SUPREME COURT LIAISON

Justice Kauger invited board members to come visit their building, and she suggested the new Oklahoma Justice Center as a location for future social events. She said a monthly evening OBA/CLE event is planned in the building next year, which will utilize the wonderful auditorium and feature a Supreme Court justice. She toted the center's art collection and reported the veterans' memorial on the grounds has been restored.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx briefed board members on non-discipline pending OBA litigation. A written status report of the Professional Responsibility Commission and OBA disciplinary matters for August 2011 was submitted for the board's review.

OKLAHOMA BAR FOUNDATION PROPOSAL

OBF President-Elect Shon Erwin reported the OBF board has approved the concept of creating an "opt-out" contribu-

tion on the annual dues statement; however, details remain to be worked out. He explained that resources for law-related services are limited, and this was an idea suggested by an OBF task force to increase donations. He emphasized that the OBF did not want this to be perceived as a dues increase. He explained the opt-out process and said it was thought an opt-out option would be more successful than opt-in. He shared that the video created to promote the heroes program and shown at the beginning of the grants application presentation was very effective. He said the OBF is proud to be involved in that project. He expressed his hope that there could be a closer relationship between the OBF Trustees and the OBA Board of Governors in the future. Concerns about the opt-out concept were discussed. Justice Kauger suggested the first step regarding this proposal should be to ask the Supreme Court for an advisory opinion on whether it would approve the concept. The board voted to take the proposal to the courts for its advisory opinion.

ANNUAL AWARD RECIPIENTS

OBA Awards Committee Chairperson Renee Hildebrandt reviewed the process the committee uses to make its recommendations to the board for OBA awards recipients. The board approved the recommendations made by the Awards Committee.

PROPOSAL TO CREATE MILITARY AND VETERANS LAW SECTION

President Reheard reported Oklahoma is one of only a few states without a section devoted to this practice area. She

noted that far more than the 75 signatures required to create a section were obtained. The board approved the creation of a Military and Veterans Law Section.

CREATION OF SECTION COUNCIL

President Reheard reported that about one-fourth of OBA sections are collecting money but are not active, which is a violation of their bylaws. She said the creation of a Section Council would be helpful to ensure section self-governance, and there is a plan for that to take place next year.

OBF TRUSTEE APPOINTMENTS

The board approved President Reheard's reappointing Guy Clark, Ponca City, and Briana J. Ross, Tulsa, each to their first full term; and reappointing Judge Valerie Couch, Oklahoma City, to her second three-year term. Terms for all three will expire 12/31/14.

CERTIFICATE OF APPRECIATION

The board voted to issue a certificate of appreciation to the Canadian County Bar for its hospitality Thursday evening before the Friday morning board meeting. Vice President Strubhar was thanked for her work in planning the event.

REQUEST FOR OBA TO BECOME JURISDICTION

Executive Director Williams reported OBA member Michael Ridgeway has asked the OBA to make application to be recognized as a jurisdiction that would enable him to be considered a "qualified lawyer" under the UK Solicitors Regulations Authority. Twenty-two states already have this distinction. Execu-

tive Director Williams said he was working on the request and will report back to the board.

HEROES PROGRAM UPDATE

President Reheard reported the entire OBF board has approved the grant request to provide the materials for 40 Vet Clinics in a Box. She said the heroes video will be mailed next week to county bar presidents along with an appeal asking the county bar to host a free legal advice veterans clinic on Nov. 11, 2011. She said efforts will be made to encourage participation. Sadly, she reported 10 soldiers from the 45th Infantry have lost their lives, and letters from the OBA are being sent to their families.

ANNUAL MEETING UPDATE

President Reheard reported that she is traveling to several county bar meetings to speak and promote the Annual Meeting. Board members were offered extra copies of the Annual Meeting insert promotion piece for them to hand out. She said a dinner is being planned for board members the Tuesday evening of Annual Meeting week. Members of the Supreme Court and Court of Criminal Appeals will be invited.

EXECUTIVE SESSION

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



The Oklahoma Bar Association Board of Governors met at the Oklahoma Bar Center in Oklahoma City on Friday, Oct. 21, 2011.

REPORT OF THE PRESIDENT

President Reheard called attention to the report on the aging of bar association members that is included in the financials. She said that the current policies of waiving CLE requirements at age 65 and waiving dues at age 70 will have an impact on future revenue. President-Elect Christensen will be looking at that issue next year. President Reheard reported she attended the September board meeting in Yukon, Southern Conference of Bar Presidents meeting in Lexington, Ky., several Annual Meeting meetings, justice teaching presentation by Florida Justice Lewis, new admittee swearing-in ceremonies, Women in Law Conference and banquet and Journal Record Woman of the Year banquet at the National Cowboy Museum. She gave CLE presentations to county bar associations in Custer, Pittsburg, McIntosh and Logan counties in addition to giving Annual Meeting and heroes program presentations at Boiling Springs Institute in Woodward, Lincoln County Bar Association and Muskogee County Bar Association. She also organized a heroes program clinic in a box workday, coordinated veterans legal clinics with county bar presidents and addressed the Leadership Academy.

REPORT OF THE VICE PRESIDENT

Vice President Strubhar reported she attended the September board meeting in Canadian County, Women in Law conference, two Canadian County Bar Association meetings, Custer County Bar Association meeting, LRE SCOPE meeting and House legislative

interim study on judicial redistricting. She also co-chaired the Oklahoma Justice Commission meeting.

REPORT OF THE PRESIDENT-ELECT

President-Elect Christensen reported she attended the September board meeting hosted by the Canadian County Bar Association, Custer County Bar Association monthly meeting, Boiling Springs Institute, Southern Conference of Bar Presidents Conference in Lexington, Ky., justice teaching presentation by Justice Fred Lewis hosted by the OBA SCOPE Task Force and LRE Department, Leadership Oklahoma Conference with Educational Programs Director Douglas to preview potential speakers for OBA programs, OBA Lawyers Helping Lawyers Assistance Program Committee meeting, LRE SCOPE Task Force meeting, OBA Bar Center Facilities Committee meeting, segments of the Leadership Academy, Women in Law Conference and banquet, Journal Record Woman of the Year Banquet at the National Cowboy Museum, new admittee swearing-in ceremonies, several planning meetings with Director Douglas regarding 2012 CLE events and OBA public hearing on the 2012 OBA budget. She met with Executive Director Williams and Director Douglas to discuss 2012 presidential programs, contacted OBA committee members to discuss 2012 committee leadership and projects and participated in 2011 Annual Meeting planning sessions with President Reheard. She also attended the Red Mass at Our Lady's Catholic Church and OCU School of Law Dean Search Committee meetings.

REPORT OF THE PAST PRESIDENT

Past President Smallwood reported he worked on two military veteran referral cases, had discussions with board members about the Annual Meeting and helped in the transition on the Judicial Nominating Commission.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported that he attended the Canadian County dinner for the Board of Governors, Women in Law Conference dinner, Payne County Bar Association lunch to show Heroes Video and talk about Annual Meeting, Boiling Springs Legal Institute, LRE presentation at the Supreme Court building given by Justice Lewis from the Florida Supreme Court, Southern Conference of Bar Presidents meeting, LHLAP meeting, meeting with the Supreme Court liaison regarding proposed rule changes, insurance trust meeting, meeting with Grant Thornton on tech audit, new admittees swearing-in ceremonies, staff meeting to discuss IT work load, public hearing on the OBA budget, directors meeting, monthly staff celebration and preparation meetings for Annual Meeting. He also spoke at the Oklahoma County Bar Association and presented a legislative update CLE.

BOARD MEMBER REPORTS

Governor Carter reported she attended the September board meeting, September Board of Directors meeting of Tulsa County Bar Association and Tulsa County Bar Association past presidents' lunch. **Governor DeMoss** reported she attended the board dinner

and meeting in Canadian County, OBA Women in Law seminar and dinner, Tulsa County Bar Association past presidents luncheon, TCBA open house and worked on Trial College planning for the Annual Meeting. **Governor Devoll** reported he attended the September Board of Governors meeting, Garfield County Bar Association meeting, Boiling Springs Institute and addressed the Garfield County bar to encourage attendance at the OBA Annual Meeting.

Governor Meyers reported he attended the September board meeting at Canadian County, Comanche County Bar Association meeting and Legal Intern Committee meeting. **Governor Pappas** reported she attended the board meeting hosted by Canadian County, Women in Law Conference dinner, bar association meetings with the road show presentation for Payne, Lincoln, Pontotoc and Coal counties to show the heroes video and talk about Annual Meeting, Payne County Bar Association October meeting to talk about 11/11/11 event, LRE presentation given by Florida Justice Lewis and Legal Professional and prelaw student reception put on by OSU Phi Alpha Delta Law Fraternity International. She sent emails to county bar presidents, judiciary and superintendents in her district to follow up on the invitation to justice teaching event, worked on scheduling road shows for 10 counties in her district, created a flier for the bar meeting regarding dinner/movie CLE with the Oklahoma Supreme Court and prepared to be in an OBA ethics skit presentation at an ABA meeting in Denver.

Governor Poarch reported he attended the September board meeting, swearing-in ceremony

at capitol and Law Schools Committee meeting at OU.

Governor Shields, unable to attend the meeting, reported via email that she attended the Canadian County Board of Governors meeting and lunch, Women in Law Conference and dinner, and Oklahoma County Bar Association meeting in addition to working on LHL Foundation matters.

REPORT OF THE SUPREME COURT LIAISON

Justice Kauger reported she is excited about the upcoming CLE series beginning in January. She will be the first justice to host the evening seminar at the Oklahoma Justice Center featuring the movie, *To Kill a Mockingbird*. Justice Winchester will host in February with the film, *12 Angry Men*.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reviewed pending litigation. She called attention to an excellent opinion written by Justice Edmondson and reported the Clients' Security Fund Committee will be meeting soon. She noted that claims will be down this year. President Reheard reported a disgruntled client, who is homeless and lives in Colorado, has been making threats against the Office of the General Counsel. Although it is thought that the client does not have the means to come to Oklahoma, Executive Director Williams has filed a report with the FBI. He asked board members if they receive any communication from the client to forward it to him, and the information will be shared with the FBI. A written status report of the Professional Responsibility Commission and OBA disciplinary matters

for September 2011 was submitted for the board's review.

RESOLUTIONS NO. 1, NO. 2 AND NO. 3

Civil Procedure and Evidence Code Committee member Mary Sue Backus reviewed the contents of three resolutions. Resolution No. 1 recommends legislation to change the disclosure agreement and Resolutions No. 2 and No. 3 recommend correcting references to Section 3230. Questions were asked, and discussion followed. The board voted to recommend that the House of Delegates adopt the three resolutions.

RESOLUTION NO. 4

Former Taxation Law Section Chair Sheppard Miers reviewed the history of the submission of the resolution to create a State Office of Administrative Tax Hearings to have authority to hear Oklahoma tax controversies and to implement an independent Oklahoma Tax Commission internal review and settlement program. The resolution is being submitted by the Taxation Law Section and was last submitted in 2008. It was noted funding has not been addressed. The board voted to recommend that the House of Delegates adopt the resolution.

DUES WAIVER FOR MILITARY MEMBERS IN COMBAT ZONE

President Reheard determined that the exhibit included with board materials was not the final version. It was decided to table action and to conduct a vote by email next week.

PROPOSED DISTRICT COURT RULE 31

President Reheard reported the Supreme Court is asking

for comments about proposed District Court Rule 31 regarding personal identifier information on court documents. A question was asked about whether the cover sheet would be considered public record and other issues were raised. She said she will gather information and send to Administrative Director of the Court Mike Evans.

OKLAHOMA BAR FOUNDATION PROPOSAL AND GRANTS

President Reheard reported the Supreme Court was not in favor of the OBF proposal to add an opt-out option for a foundation contribution to OBA dues statements. The OBF supplied a list of its 2011 grant awards totaling more than \$600,000, which pushes their total grant awards to more than \$10 million. OBF Trustees will be celebrating at the Annual Meeting.

HOUSE INTERIM STUDY ON JUDICIAL REDISTRICTING

Vice President Strubhar reported that she attended the meeting on behalf of the OBA, and Executive Director Williams made a presentation. Indications are there is not much interest in redistricting.

APPOINTMENT OF INTERIM CHAIR FOR MILITARY AND VETERANS LAW SECTION

The board voted to approve President Reheard's recommendation of Robert Don Gifford, Oklahoma City, to serve as interim chair of the section created last month.

PROPOSAL TO CREATE MILITARY ASSISTANCE COMMITTEE

President Reheard said it is time to sunset the Military

Assistance Task Force, but its mission is not done. The new section will deal with substantive law, and the committee will focus more on community service. The legal needs of those serving in the military continue, and the units will be coming back in a few months. She also reported two more counties are on board to host veterans clinics on Nov. 11. She showed board members a sample of the "Clinic in a Box" and thanked Administrative Assistant Debbie Brink for her work in gathering the materials. The boxes will be assembled this afternoon. Governor Rivas moved, Governor Devoll seconded to approve the creation of the Military Assistance Committee (MAC).

ANNUAL MEETING

President Reheard emphasized the need for board members to be present at the bar convention, and she reviewed the events that will take place. She was pleased to report the registration numbers are up over last year.

EXECUTIVE SESSION

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

2012 BUDGET

The board voted to accept the budget as submitted by President-Elect Christensen and the Budget Committee.

NEXT MEETING

The Board of Governors met in Tulsa on Wednesday, Nov. 2, 2011, as part of the 107th OBA Annual Meeting. A summary of those actions will be published after the minutes are approved. The next meeting of the Board of Governors will be at 9 a.m. in Oklahoma City on Friday, Dec. 16, 2011.

Recognition — A Tradition of Giving Back

By John Munkacsy

The Oklahoma Bar Foundation was privileged to be able to recognize bar members during the OBA Annual Meeting for their tireless giving of time, energy, service and dedication to the mission of the Oklahoma Bar Foundation so that other less fortunate Oklahomans might benefit.

2011 Oklahoma Bar Foundation Roger R. Scott Memorial Awards

Roger Scott, a name synonymous with outstanding professionalism, congeniality and the highest regard for ethics, served as Trustee of the Oklahoma Bar Foundation from 2003 to 2009. During his entire board tenure, he chaired the Development Committee, charged with seeking donations through the OBF Fellows program. His unqualified dedication to the foundation and the good work it does in the name of Oklahoma lawyers serves as an inspiration to all individuals connected to the legal profession. Roger labored mightily to fulfill OBF's mission of: **LAWYERS TRANSFORMING LIVES** to promote justice, fund critical legal services and advance public awareness of the law. The Roger Scott Memorial Award honors that individual or organization who best exemplifies Roger's dedication to the Oklahoma Bar Foundation.

The 2011 awards recognize those who best exemplify Roger Scott's unqualified dedication to the OBF and the good work it does on behalf of Oklahoma lawyers who have improved the OBF's ability to fund charitable law-related programs, maintain the quality of the grant process and promote the mission of the foundation to its members and the citizens of Oklahoma. The 2011 Roger Scott Memorial award recipients are:

Valerie K. Couch, Oklahoma City

Judge Couch has represented the Oklahoma Bar Foundation as a Trustee since 2008. She has been a Fellow since 2001 and converted to the premier Benefactor Fellow status during 2010. Early on it became apparent that she was destined to lead the Grant and Awards Committee she has chaired since 2009. Her day job is as the Honorable Valerie



Couch, having been appointed in 1999 as U.S. magistrate judge in the U.S. District Court for the Western District of Oklahoma. She practiced general civil litigation with distinction at Hartzog Conger & Cason from 1983 to 1999. Her awards and qualifications are many and the foundation has been privileged to benefit from her tutelage as she guided OBF through rough grant cycles due to continuing historically turbulent economic conditions. "Judge Couch is so skilled and compassionate that grant applicants feel compelled to thank her even when their grant amounts are drastically reduced or even cut," a committee member remarked last year. She has also found other ways to support grantees including site visits to grantee locations. Judge Couch has been instrumental in the success of the newer OBF Court Grant Program. The foundation and the OBA membership are privileged to have Judge Valerie Couch as a board member for the Oklahoma Bar Foundation. Valerie Couch is truly a lawyer who is transforming lives.

OBA Young Lawyers Division 2011

The OBA YLD has recruited more than 40 new Fellows of the foundation and enrollments are still coming in. This year, the YLD board took on the OBF as one of their philanthropic projects and has

worked to better educate new lawyers about the charitable work accomplished across the state by the OBF on behalf of all Oklahoma lawyers. The YLD has worked events, made OBF presentations and actively created a renewed interest in giving back through the foundation. The foundation continues to increase the involvement of YLD member Trustees on the board each year. The foundation belongs to all members of the OBA and is the philanthropic future of our profession. The OBF needs the help and direction of YLD members to continue the legacy of the foundation to promote justice, fund critical legal services and advance public awareness of the law. Key members providing help and support to the OBF include YLD Chair Roy D. Tucker of Muskogee, Briana J. Ross of Tulsa, A. Gabriel Bass of Oklahoma City, Timothy L. Rogers of Tulsa, Breea McCorkle of Norman, and Brandon Long of Washington, D.C.

Oklahoma Bar Foundation President's Award

Others recognized for helping to make it possible for the OBF to maintain 2011 grant award levels are **Douglas E. Burns** of Norman, **Terry Stowers** of Norman, **Allan DeVore** of Oklahoma City, **Robert J. Kee** of Beaver, and **Ret. Associate District Judge Gerald H. Riffe**, also from Beaver.

Please join me in congratulating and thanking this group of dedicated Oklahoma lawyers for going the extra mile. You can become a part of all this through membership in the OBF Fellows program. The signup process is easy, the money is put to good use, and all contributions are tax-deductible. Join us in the continuing *Tradition of Giving Back*.

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



OBF Memorial Gifts In lieu of Flowers

Often, for various reasons, individuals, county bar associations and other groups may wish to make contributions "in memory of" or "in honor of" a judge, a fellow lawyer, a special person, or to mark an event. A gift to the Memorial Fund of the Oklahoma Bar Foundation is a fitting way to express your feelings. Such contributions will be acknowledged by the OBF to the family or to the person being honored.

This gift will be used in meeting the ongoing mission of the Oklahoma Bar Foundation, **Lawyers Transforming Lives** through the promotion of justice, funding of critical legal services and advancement of public awareness of the law.

Kindly make checks payable to:
Oklahoma Bar Foundation
P.O. Box 53036
Oklahoma City, OK 73152-3036

Charitable contributions to the OBF are tax deductible to the extent allowed by law



FELLOW ENROLLMENT FORM ☐ Attorney ☐ Non-Attorney

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

Firm or other affiliation: _____

Mailing & delivery address: _____

City/State/Zip: _____

Phone: _____ E-Mail Address: _____

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

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

___ \$100 enclosed & bill annually

___ Total amount enclosed, \$1,000

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

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

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

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

**LAWYERS
TRANSFORMING LIVES**

*Through education,
citizenship and
justice for all.*

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

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

Your Signature & Date: _____ OBA Bar# _____

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

Many thanks for your support & generosity!

Task Force Efforts to Assist Military Servicemembers and Veterans Draw Praise

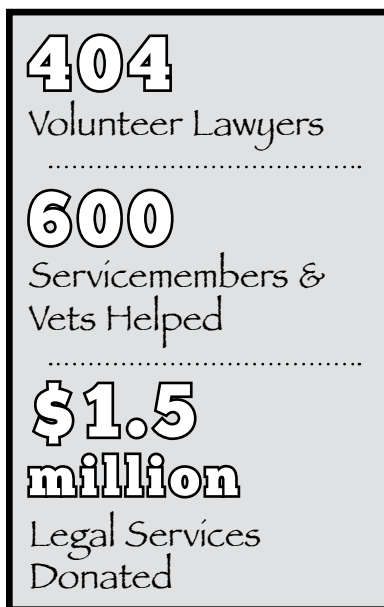
By Carol Manning

A Military Assistance Task Force was formed in September 2010 to study and attempt to create a new OBA legal assistance program to aid Oklahoma military service members, their immediate dependents and veterans. This program was the vision of OBA President Deborah Reheard, who saw a need. A blue ribbon group of lawyers, active military service members and veterans were recruited to accept the call to action as task force members, and Lawton attorney Dietmar Caudle agreed to serve as its chairperson.

The task force hit the ground running as a massive deployment of the 45th Infantry National Guard troops to Afghanistan in the spring of 2011 was impending. Task force subcommittees researched issues such as current American Bar Association Legal Assistance to Military Personnel (LAMP) programs, family law issues arising from sudden deployment, technology, marketing, legal clinics and current pro bono programs to train and educate lawyers.

The OBA program called “Oklahoma Lawyers for America’s Heroes” was created to give free legal advice. A “bootcamp” CLE was conducted in Oklahoma City in February 2011 to

“The OBA program called “Oklahoma Lawyers for America’s Heroes” was created to give free legal advice.”



help train Oklahoma pro bono lawyers for the program, and another CLE was presented in Enid in August. A total of 224 lawyers, with a pledge to donate at least 20 hours of legal services, answered the initial call to represent servicemembers and veterans. Before deployment, the military held numer-

ous Yellow Ribbon events to provide information and resources to military personnel and their families. OBA members were at each event staffing a booth, often giving free legal advice on the spot. People with legal problems requiring more help were assigned a volunteer lawyer.

President Reheard said, “Just as no one is left behind on the battlefield, no one — including these heroes — should be left behind in the justice system. The same rights and liberties that we as lawyers fight in the courtrooms and the boardrooms to protect were earned by the blood, sweat, tears — and too often the lives — of everyone who ever fought for this country. Those sacrifices should not be in vain.”

It didn’t take long to realize the need was great, and a part-time coordinator was hired to take phone calls from people needing help, to connect



DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY FIRES CENTER OF EXCELLENCE AND FORT SILL
OFFICE OF THE STAFF JUDGE ADVOCATE
462 HAMILTON ROAD, SUITE 305
FORT SILL, OKLAHOMA 73503-5100

Office of the Staff Judge Advocate

Oklahoma Bar Association
1901 N. Lincoln Blvd.
Oklahoma City, OK 73105

Dear Member of the Oklahoma Bar Association:

At a point in everyone's life, the opportunity presents itself to "answer the call of duty." One does not have to wear the uniform or pick up a rifle to serve this great nation. As attorneys, we possess the skills and training to meet the needs of any servicemember who, to quote the United States Supreme Court, "has laid aside his civilian pursuits to serve his country in its hour of need."

The practice of military law is very broad. It is one that all attorneys in every aspect of the law can participate in. Our servicemembers need your expertise in family law, landlord/tenant law, tax law, and criminal law just to name a few. While there are many Oklahomans serving as military lawyers, there is a place for a civilian "force" to fill a role for the needs here at home.

The Oklahoma Bar Association's initiative of "Oklahoma Lawyers for America's Heroes" is a sterling example of leadership by true professionals willing to share in the sacrifice of those who defend our nation. It is a pleasure and an honor as a Soldier, Officer, and lawyer to serve a tour of duty in a state that treasures and supports its servicemembers.

Sincerely,

Jeffery D. Pedersen
Colonel, U.S. Army
Staff Judge Advocate



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS OKLAHOMA CITY AIR LOGISTICS CENTER (AFMC)
TINKER AIR FORCE BASE OKLAHOMA

Colonel David W. Penczar
Staff Judge Advocate
7460 Arnold Street SE WG
Tinker AFB, OK 73145

Ms. Deborah A. Reheard
President
Oklahoma Bar Association
1901 N. Lincoln Boulevard
Oklahoma City, OK 73105

Dear Ms. Reheard and Members of the Oklahoma Bar Association

Our service members, veterans, and their families are a true national treasure. These groups encounter the same legal problems faced by traditional legal clients, but often have legal issues that are unique to their status. Oklahoma Bar Association's initiative to "fill the gap" in services offered by uniformed lawyers is one that is timely and important. The *Oklahoma Lawyers for America's Heroes* program provides a significant resource for legal advice and assistance to those who serve our nation.

Please accept my sincere appreciation to all of the "troops" of the Oklahoma Bar Association for stepping up on behalf of those who defend America. Representation of our service members, veterans, and their families allows each of us another opportunity to provide support to our nation. Your time and effort makes a difference. Thank you!

Sincerely

David W. Penczar
DAVID W. PENCZAR, Colonel, USAF

servicemembers with a volunteer lawyer and to document results.

The OBA Young Lawyers Division took responsibility for drafting two manuals, a Resource Guide for Lawyers Assisting Veterans and a Resource Manual for Veterans. The Oklahoma Bar Foundation approved an out-of-cycle grant to underwrite the expense of producing the manuals.

Next came the production of a five-minute DVD showing gripping photos of uniformed men and women in action combined with a background of the song, "An American Soldier," written by Oklahoman Toby Keith. Its purpose — to educate both lawyers and community members about the OBA's program and to encourage everyone to help America's heroes from all conflicts. Copies of the Oklahoma Lawyers for America's Heroes DVD are available from the OBA, and bar members are encouraged to show the heart-touching presentation to civic clubs and other community organizations.

Veterans Day 2011 had special significance for the task force. Nov. 11, 2011, became the day to encourage as many counties as possible to host free veterans legal clinics. Before the actual statewide D-Day, the Muskogee County Bar Association agreed to conduct a test clinic. Their event was a tremendous success. One person seeking help was an 83-year-old World War II veteran who had lent money and couldn't get it back despite repeated requests. The lawyer who interviewed him was so outraged that he took the case himself. Within the next week, the borrowed money was returned and an estate plan was set up so the veteran would not be taken advantage of again. Muskogee County Bar Association President Roy Tucker said,

"More than one veteran broke down in tears at simply having the opportunity to have someone listen to his legal issue and advise him of his options."

Gearing up the week immediately following the OBA's Annual Meeting, 22 county bar associations responded (not bad for a first-year project) offering clinics on or around Nov. 11. County bars hosting clinics were Canadian, Carter, Choctaw, Comanche, Custer, Garfield,

"... bar members are encouraged to show the heart-touching presentation to civic clubs and other community organizations."

LeFlore, Lincoln, McCurtain, McIntosh, Muskogee, Okfuskee, Oklahoma, Okmulgee, Payne, Pittsburg, Pottawatomie, Pushmataha, Rogers, Sequoyah, Tulsa and Washington. Some counties will hold additional clinics. For this one-day project a total of 177 veterans were helped and 208 lawyers volunteered to staff the clinics.

Making it easy for the county bars to conduct their clinics was the creation of a "Vet Clinic In A Box," which contained *everything* needed to host the clinic — sample press release, sample letter asking veterans organizations to support and promote the clinic, information manuals, forms, brochures on 11 general legal topics, intake sheets, interview question-

naires on 10 subjects, lapel pins for volunteers, flash drive with all printed material for customization, business cards, in addition to legal pads, pens, paper clips and a stapler. And that's just a partial list.

All these materials were physically placed in a box with wheels and a telescoping handle making it easy to transport. Sequoyah County Bar President Kent Ghahremani said, "I was very impressed with the contents of the box. The only thing it didn't contain was the coffee and donuts." The hero in making the Clinic in a Box possible for every county was the Oklahoma Bar Foundation, which approved the OBA's grant request to pay for all the materials.

Task Force Chair Dietmar Caudle said, "The OBF has been a major partner with the OBA on this project, and its financial support has helped make this statewide community service effort a success."

As of mid-November, 404 Oklahoma lawyers have committed to represent about 600 guardsmen, reservists, active duty members and veterans from nearly all 77 Oklahoma counties. This commitment adds up to at least \$1.5 million in free legal services.

VOLUNTEER LAWYERS NEEDED

The need continues and is expected to climb dramatically when the 45th Infantry returns home in spring 2012. The greatest demand is for family law attorneys and also those with experience in estate planning, consumer and credit issues and disability and benefits issues. Sign up to volunteer at www.okbar.org/heroes or call (405) 416-7000; (800) 522-8065. You'll also find on the website resource materials to prepare you for your volunteer service.



Secretary Of Military and Veterans Affairs
Maj. Gen. (ret) Rita Aragon

The Oklahoma Bar Association has taken an unparalleled step to support our Oklahoma heroes. Members have donated hundreds of volunteer hours that have gone into helping departing warriors make legal decisions and preparations for those they leave behind and by helping when patriots return from deployment and have legal issues with the civilian justice system — or find themselves engaged in family dilemmas.

OBA President Deborah Reheard and her corps of dedicated legal eagles are providing defense and advice for our patriots. The devotion that the members of Oklahoma Bar Association have demonstrated in their care for Oklahoma's heroes is nothing short of life altering. They have responded to the unmet need of legal assistance to help our military get back on track, out of legal trouble and on the road to a normal life again. Oklahoma is so fortunate that these successful practitioners have the heart and will to donate their expertise and billable time to make a difference in the lives of those who offer their lives to secure the blessings of liberty for us and our children.

Once more the "OKLAHOMA STANDARD" is displayed by bar association members. Our state and our military members and their families are deeply grateful to each who has helped.

Rita Aragon, Retired Major General
Oklahoma Secretary of Military
and Veteran Affairs

The task force has taken its mission to provide legal advice and assistance to veterans and service members seriously. That mission — to leave no one who has served or is honorably serving this country behind in the legal system — is now an on-going and long-term project for the OBA.

TASK FORCE BECOMES A COMMITTEE

President Reheard said, “It’s time to turn the continuation of this mission over to a standing committee and open up the membership to all interested OBA members. The Board of Governors took action to create the Military Assistance Committee (MAC) at its October 2011 meeting. MAC will focus on projects to assist our veterans and servicemembers, including legal clinics and staffing Yellow Ribbon post-deployment events as the 45th Infantry Battalion of the Oklahoma Army National Guard begins returning from their mission in Afghanistan in the

next few months. MAC will also be working with the new Military and Veterans Law Section to offer training and information about the specialized areas of veterans and military law.”

President Reheard has appointed Task Force member and Oklahoma Army National Guard Lt. Col. Brad Carter of Seminole as the interim committee chair.

To sign up for the new Military Assistance Committee, use the OBA Committee sign-up form in this issue of the journal or sign up online at www.okbar.org, look for the “Join a committee” link at the bottom of the page.

For more information about the new section, read the story on page 2771 in this bar journal.

Ms. Manning is OBA communications director.

NEW LEGAL EAGLES

The following is a list of Oklahoma lawyers who have recently taken a case for an American hero.

Marshall Basham, Ponca City	Edward Oliver, Oklahoma City
Michael Blaschke, Oklahoma City	Jeffrey Potts, Muskogee
William Cubbage, Cushing	Justin Pratt, Broken Bow
Thomas Hadley, Hugo	Clarke Randall, Oklahoma City
Stephen Harry, Oklahoma City	John Scaggs, Sulpher
Michael Jones, Tulsa	James Shaw, Oklahoma City
Ron Lander, Tahlequah	Katrina Wrightman, Tulsa
Mark Morrison, Durant	

Thanks to all volunteers, especially those who are now taking additional cases. For the complete list of Legal Eagles, go to www.okbar.org/s/nzvri.



Serving Those Who Serve

By Chelsea M. Baldwin

In the course of my volunteer work with Legal Aid of Oklahoma and Oklahoma Lawyers for America's Heroes, I discovered some of the circumstances here at home that our men and women in uniform face which make it difficult for them to receive the benefits of the justice system that they give so much to protect. These individuals sacrifice time, energy, money and relationships to serve and protect our nation. The government pays them enough for the basics of shelter, food, clothing and health-care, but frequently, they have very little extra.

Military service places soldiers at greater risk for certain issues with profound consequences such as identity theft and abuse of trust. Their lifestyle also leads to frequent realignment of family groups and the legal consequences that follow those changes.

In one instance, I learned about a commanding officer who absconded with the pay of two of his soldiers. While they were deployed, pay was accumulating, and upon discharge, the officer was able to steal several months of the soldiers' wages. Thanks to the support of the military, the soldiers' immediate needs were covered when they returned, but they still needed lawyers to recover the money

and help fix the damages that resulted from that situation.

Although that situation is heinous, most of the situations I learned about arise when families are just trying to protect their loved ones and genuinely believe they are acting in the soldier's best interest. For example, a mother convinced her son's ex-girlfriend to take money out of the soldier's account for the purpose of hiring counsel to get a guardianship now that he is disabled. Elsewhere, a wife took out advances against a soldier's pay, without a valid power of attorney, so she could stay by his side while he was in ICU recovering from an injury. Both of these women thought they were helping a loved one even though their actions harmed the estate of their loved one.

Sometimes soldiers need to be protected from their loved ones, and all it takes is the gravitas of an attorney telling the loved one, "Don't do that." Sometimes soldiers need to be protected from the general reluctance of young, able-bodied men and women to think about end-of-life issues. Providing education about, and opportunity to execute, powers of attorney, advance directives and estate plans can eliminate much of the stress that falls on a sol-

dier and his or her family following a tragedy.

Although pro bono work is frequently framed in terms of serving the indigent, providing pro bono service to those who survive just above subsistence can have significant positive effects on the individuals involved and the justice system. There are several thousand who serve and live here in Oklahoma. If you haven't chosen your pro bono cause for 2011 or 2012, or you are looking to give more, I encourage you to sign up with Oklahoma Lawyers for America's Heroes. There were a number of clinics around the state on November 11, Veterans Day. As OBA President Reheard said last month, "For many of these service members, just getting the opportunity to talk one-on-one with a lawyer can relieve a huge burden." For many attorneys, getting the opportunity to talk one-on-one with a member of the armed forces can renew confidence in, and passion for, justice.

You can sign up at www.okbar.org/heroes or call (405) 416-7000 to volunteer.

Ms. Baldwin is assistant director of academic achievement at OCU LAW and volunteers with several Legal Aid programs in Oklahoma County.

Annual Meeting & Election Results

By Roy D. Tucker, YLD Chairperson

For those of you who were unable to attend this year's Annual Meeting you missed a wonderful opportunity, regardless of whether you are a YLD'er or not. There were so many events going on that it was impossible to attend them all. So here are some of the highlights:

FRIENDS AND FELLOWS

The YLD held its annual Friends and Fellows Reception on Thursday night. Two non-lawyers were named to "Friends" of the YLD: Judy Spencer for her tireless work with the high school mock trial program and Larry Rose for his assistance with our community service project. Two lawyers were named "Fellows" of the YLD: Faye Rodgers and Christopher Camp, both for their long history of involvement with and championing of the YLD. Awards were also presented to Bryon Will and Amber Peckio Garrett for Outstanding Committee Chairs; Jennifer Kirkpatrick for Officer of the Year; LeAnne McGill for Outstanding Director of the Year; Robert Faulk for the Chair's Choice Award; and finally, LawWare Inc. was awarded the Meritorious Project Assistance Award for its contribution to the Serving Our Seniors project.



SPEED NETWORKING

The YLD also hosted its second Speed Networking event during which new lawyers were able to meet and interact with a variety of mentor attorneys from across the state. The focus topic for the event was how the OBA and the YLD can best serve each other in professional and leadership roles on a going forward basis. A big "Thank You!" to the following mentor attorneys who participated: Stephen Beam, Jon Parsley, Jim Stuart, John Morris Williams, Dean Janet Levit, Assistant Dean Kristine Bridges, Mack Martin and Lou Ann Moudy.

YLD ELECTION RESULTS ANNOUNCED

Congratulations to the following members who were elected to the YLD Board of Directors, as well as, to those who will be taking over leadership roles in 2012. They are:

Immediate Past Chair **Roy D. Tucker** of the City of Muskogee; Chair **Jennifer Kirkpatrick** of Hall, Estill, Hardwick, Gable, Golden & Nelson PC; Chair-Elect **Joe Vorndran** of Stuart, Clover, Duran, Thomas & Vorndran LLP; Treasurer and District 4 Director **Kaleb Hennigh** of Ewbank, Hennigh & McVay PLLC; Secretary **LeAnne McGill** of McGill & Rodgers; Director for District 2 **Blake Lynch** of Pat Layden Law Firm PC; Directors for District 3 **Lane Neal** of McAtee & Woods PC and **Jeff Trevillion**; Director for District 6 **Conor Cleary** of Hall, Estill, Hardwick, Gable, Golden & Nelson PC; Director for District 8 **Jill Ochs-Tontz**, assistant district attorney for Payne and Logan Counties; At Large Directors **Robert Faulk**, **Brandi Nowakowski** of the West Law Firm and **Bryon Will**; and At Large Rural Director **Nathan Richter** of the Denton Law Firm.

Calendar

November

24-25 OBA Closed – Thanksgiving Day Observed

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

30 OBA Clients' Security Fund Committee Meeting; 2 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Micheal Salem (405) 366-1234

December

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

OBA Men Helping Men Support Group; 5:30 p.m.; The Oil Center – West Building, Suite 108W, Oklahoma City; RSVP to: Kim Reber (405) 840-3033

OBA Women Helping Women Support Group; 5:30 p.m.; The Center for Therapeutic Interventions, Suite 510, Tulsa; RSVP to: Kim Reber (405) 840-3033

7 OBA Appellate Practice Section Meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Rick Goralawicz (405) 521-1302

OBA Law Day Committee Meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Tina Izadi (405) 522-3871

8 OBA Women Helping Women Support Group; 5:30 p.m.; The Oil Center – West Building, Suite 108W, Oklahoma City; RSVP to: Kim Reber (405) 840-3033

9 OBA Communications Committee Meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Mark Hanebutt (405) 948-7725

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

14 OBA Justice Commission Meeting; 2 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Drew Edmondson (405) 235-5563

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



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

OBA Rules of Professional Conduct Committee Meeting; 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Paul Middleton (405) 235-7600

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

20 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

22 OBA Men Helping Men Support Group; 5:30 p.m.; The Center for Therapeutic Interventions, Suite 510, Tulsa; RSVP to: Kim Reber (405) 840-3033

26-27 OBA Closed – Christmas Day Observed

January 2012

2 **OBA Closed** – New Year's Day Observed

6 **OBA Law Day Committee Meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Tina Izadi (405) 522-3871

10 **OBA Law-related Education SCOPE Task Force Meeting**; 11:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Reta Strubhar (405) 354-8890



12 **OBA Leadership Academy**; 11 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Heidi McComb (405) 416-7027

13 **OBA Leadership Academy**; 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Heidi McComb (405) 416-7027

Board of Bar Examiners; 9 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Bar Examiners (405) 416-7075

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

16 **OBA Closed** – Martin Luther King Jr. Day

18 **Luther Bohanon American Inn of Court Meeting**; 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Maryann Roberts (405) 740-3124

19 **OBA Board of Governors Swearing-In Ceremony**; 10:30 a.m.; Ceremonial Supreme Court Courtroom, State Capitol; Contact: John Morris Williams (405) 416-7000

OBA Board of Governors Meeting; 1:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: John Morris Williams (405) 416-7000

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

NOTICE OF OBA MEMBER REINSTATEMENT

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

Michael Dean Clay
OBA No. 13624
6538 Collins Avenue, No. 102
Miami, FL 33141



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Lawyers Donate Turkeys to Families in Need

Just in time for the Thanksgiving holiday, a group of Oklahoma lawyers has teamed up to give 1,700 turkeys to needy families through a partnership with the Regional Food Bank. Lawyers Against Hunger raised more than \$58,000 to provide a holiday meal for families in Oklahoma City, Norman and Tulsa.

Oklahoma City attorney Noble McIntyre said, "I started this event last year after seeing a story on the news about a family that was going to do without a Thanksgiving meal due to finances. I've never missed a Thanksgiving meal and don't expect too many of my lawyer friends have either. This was one area we could give back and make a difference. Last year's event provided food for more than 4,500 hungry Oklahomans. This year's event will be even bigger."

The Regional Food Bank serves primarily children, seniors living on fixed incomes and working families.

Regional Food Bank Executive Director Rodney Bivens said, "These turkeys will provide a valuable source of protein that is often sacrificed when you have to choose between paying your rent and utilities or buying food."

More information about the project is available online at www.lawyersagainsthunger.com.

OBA Communications Director Receives Award

OBA Communication Director Carol Manning was awarded the Paul Edward Dannelley Jr. Harmony Award. The award recognizes professionals who have done outstanding work to ensure their efforts result in harmony, a public relations objective. The award is presented to a member in good standing of the Oklahoma City Public Relations Society of America Chapter who has given longtime service to the profession of public relations, who has longevity in the field, who has furthered the professionalism and the practice of public relations and who has earned the respect of his or her peers. Ms. Manning has served as OBA director of communications since 1995.



Carol Manning (center) accepts the Paul Edward Dannelley Jr. Harmony Award from PRSA Oklahoma City Chapter President Erin Page. Former OBA Communications staff member Melissa Brown (left) nominated Ms. Manning for the award.

New Member Benefit: Dues Waived for Members Serving in Combat Zones

The Oklahoma Supreme Court recently approved an amendment to the Rules Creating and Controlling the OBA allowing the waiver of annual bar dues for deployed military members:

Active OBA members who are in an active duty and deployed status serving outside of the United States or one of its territories with the U.S. Armed Forces in a combat zone or receiving "Imminent Danger Pay" (combat pay) or "hardship duty pay" in any given year may request that dues be waived for that year. A request for a waiver of dues, along with sufficient supporting documentation of service, shall be submitted to the OBA executive director as soon as reasonably practical. Members requesting such dues waiver shall have the right to appeal any administrative decisions made by the executive director to the OBA Board of Governors and ultimately to the Oklahoma Supreme Court. In the event the member is not able to submit the request personally, such request can be made by a family member, law partner or other such person having authority to act on behalf of the member.

Kudos

International Masters of Gaming Law recently presented **Michael McBride III** of Tulsa with the 2011 President's Cup Award during the organization's autumn meeting in Vienna, Austria. He is recognized for his outstanding service and contributions to the organization. He serves as chair of Crowe & Dunlevy's Indian Law & Gaming Practice Group, and he is one of only two Oklahoma general members of the IMGL.

The Seminole Nation of Oklahoma has re-established the judicial branch of its tribal government, after its abolishment in 1904. **Gregory Bigler, Kelly Gaines-Stoner, Joe Taylor** and **William C. Wantland** were recently sworn in for the judiciary. Mr. Bigler, a 1985 graduate of Harvard Law School, was sworn in as judge of the Seminole Nation District Court. Ms. Stoner, 1988 graduate of OU College of Law, serves as director of the Native American Legal Resource Center at the OCU School of Law. Mr. Taylor, 1968 graduate of OU College of Law, retired from the Oklahoma Court of Criminal Appeals, and currently serves as Supreme Court Justice for the Sac & Fox Nation. Mr. Wantland, a 1964 graduate of OCU Law, has been named Seminole Nation Supreme Court chief justice.

William G. Paul, W. DeVier Pierson,

William J. Ross and **Ada Lois Sipuel Fisher** (posthumously) are being honored as the inaugural inductees into the Order of the Owl, a newly established hall of fame recognizing OU College of Law graduates. The order pays tribute to individuals who demonstrate leadership and service through outstanding accomplishments in their legal careers. Mr. Paul serves as of counsel with Crowe & Dunlevy. Mr. Pierson focuses his practice on litigation, with concentration on the domestic and international energy fields and on international arbitration and litigation. Mr. Ross is of counsel for Rainey Ross Rice & Binns of Oklahoma City. Ms. Fisher was the first African American to attend the OU College of Law. After briefly practicing law in Chickasha, Fisher joined the faculty of Langston University in 1957, where she chaired the Social Sciences Department. She died in 1995.

OU Law Professor **Lindsay Robertson** announced launch of an extensive online collection of historical documents related to the foundational Supreme Court decision divesting Native Americans of their ownership interest in the North American continent. The announcement was made as part of Ms. Robertson's presentation at a symposium at the Smithsonian National Museum of the American Indian discussing the United States courts' use of history to shape Native law jurisprudence. The "United Illinois and Wabash Land Companies Collection" consists of 263 original manuscripts, five

hand-drawn maps and seven published documents related to the companies' efforts to acquire title to Indian lands during the period 1775 to 1823. These efforts culminated in the Supreme Court's landmark 1823 decision in *Johnson v. M'Intosh* divesting Native Americans of title to their lands.

Carol Sorensen was recently named as the 96th president of the Kiwanis Club of Oklahoma City. Ms. Sorensen is an attorney with the law firm of Phillips Murrah, where she is a member of the firm's real estate, estate planning and probate and commercial financial services practice groups.

Gov. Mary Fallin recently appointed Crowe & Dunlevy director **Cori Loomis** to the Oklahoma Board of Nursing. Ms. Loomis is a member of the firm's health-care practice group. Her primary focus is on the representation of healthcare providers with transactional, compliance, reimbursement, legislative and regulatory compliance issues.

Attorney **Eric L. Johnson** with Phillips Murrah's Oklahoma City office has been elected to the governing committee of the Conference on Consumer Finance Law, a national non-profit group. Mr. Johnson will establish policy and direct the activities of the organization, whose mission is to offer educational services, publications and research relating to consumer financial services law.

Tulsa City-County Library's American Indian Resource Center will induct **Kirke Kickingbird** into the Circle of Honor. He is a member of the Kiowa Tribe and Kiowa Gourd Clan. He currently practices law with the Oklahoma City office of Hobbs, Straus, Dean & Walker, focusing on representing Indian tribes. For the past six years he has been an organizer and instructor in Nation Building for Native Youth, an Indian youth leadership program in Scottsdale, Ariz.

Deborah Bruce was recognized as a 2011 Distinguished Alumna by UCO Alumni Association at the Alumni Recognition Ceremony.

On The Move

Joshua M. Snavelly has been appointed to serve as interim director of the Professional Career Development Center at OCU School of Law. Mr. Snavelly is a *cum laude* graduate of OCU and previously served as the president of the Student Bar Association and executive editor of the *OCU Law Review*. He also served as the chair of OCU Law's Wrongful Convictions Task Force, which drafted the documents related to the creation of the Oklahoma Justice Commission. He now serves as an inaugural member of the commission.

Andrews Davis Law Firm of Oklahoma City announces **Chelsea Celsor Smith** has joined the firm as an associate. She graduated

from OU in 2008 with a B.A. in criminology and a minor in history. Ms. Smith received her J.D. from OCU School of Law in 2011.

Barrow & Grimm PC announces **Melissa Henke Sartin** and **Alexis Casady-Cohen** have joined the firm. Ms. Sartin attended OU where she received her bachelor's degree in finance, and she went on to earn her J.D. from the TU College of Law. She spent 13 years with Texaco in various capacities, most recently as the manager of supply and distribution for the Natural Gas Liquids Group. Ms. Sartin practices in the areas of business law and estate planning. Ms. Casady-Cohen attended Hamilton College in Clinton, N.Y., where she received her B.A. in history in 2006. She received her J.D. with honors from the TU College of Law in 2011.

Johnson & Jones PC announces **Kari Staats** has joined the firm as an associate attorney, focusing her practice on business transactions, labor and employment law and litigation. She earned her B.S., *magna cum laude*, in international business from OSU in 2004. She obtained her J.D., with honors, from the TU College of Law in 2008. For the past 3 years, she worked as an associate attorney in the Houston office of the international law firm Jones Day.

Sonja R. Porter has opened up her own solo practice, Sonja R. Porter, Attorney at Law, PLLC. Her focus will be on helping those charged with DUI or related criminal and driver's license matters as well as expunging criminal records. Her office is located at 620 N. Robinson, Suite 203,

Oklahoma City, 73102; phone: (405) 516-0333.

Krista Steuart has been named a state's attorney in the Tulsa West Child Support office. Ms. Steuart received her bachelor's degree and J.D. from OU. Prior to joining the Tulsa West office she was a staff attorney for Legal Aid.

Fenton Fenton Smith Reneau & Moon announces that **Sarah E. Yates** has joined the firm as an associate. She received bachelor's degrees from Westminster College in pre-law political science and in classics with a Latin emphasis in 2008. She received her J.D. from the TU College of Law in 2001 with certificates in Native American law and resources, energy and environmental law.

Riggs, Abney, Neal, Turpen, Orbison & Lewis announce that **Vaden Bales, John Hickey, Tyler Leonard, Peter Brolick, David Page, Kiemonn Jones, Mary Rounds, Donna DeSimone** and **J. Patrick Mensching** have attained principal status in the firm. The status of principal denotes the professional status and level of excellence that each of these attorneys have earned through service to the firm and the community. Mr. Bales has more than 35 years of varied corporate, mergers and acquisitions experience. He has extensive experience advising companies and their boards of directors on corporate governance issues, organizational, general corporate and contract matters. Mr. Hickey's areas of experience include a wide range of law including 20 years of experience in handling commercial litigation matters, construction law dis-

agreements, bankruptcy law questions, labor and employment disputes, and real estate litigation. Mr. Leonard practices in the area of real estate and business transactional law. His practice includes the acquisition, development, disposition and financing of real property. Mr. Brolick has more than 13 years of litigation experience in state and federal courts and representation of businesses, entrepreneurs, doctors and other professionals. Mr. Page is an attorney with more than 25 years experience addressing complex environmental law issues. His practice includes environmental litigation, regulatory compliance and permitting. Ms. Jones practices in the areas of traffic, criminal, education, employment and general civil litigation matters. In addition, Ms. Jones serves as an associate municipal judge for the City of Tulsa. Ms. Rounds practices primarily family law, including adoptions, guardianships and child custody matters, and is a certified family and divorce mediator. Ms. DeSimone focuses her practice in the area of complex civil litigation, including medical malpractice, products liability and environmental law with prior experience as an associate counsel for a large health-care system. Mr. Mensching is a general practice litigator who concentrates his practice in the commercial collections field. He typically represents manufacturing concerns, banking institutions, savings and loans, professional groups and national leasing companies.

McAfee & Taft has announced the addition of 15 attorneys to its Tulsa office following the acquisi-

tion of the boutique litigation firm Eldridge Cooper Steichen & Leach. Joining the firm are **Ruth J. Addison, Brita Haugland Cantrell, Mary Quinn Cooper, Ellen Cordell, Fred C. Cornish, Travis G. Cushman, Jessica L. Dickerson, Richard M. Eldridge, William S. Leach, Andrew L. Richardson, Vani Singhal, Michael F. Smith, Thomas E. Steichen, Alison A. Verret** and **Harold C. Zuckerman**. Ms. Addison is a trial lawyer whose practice focuses on the areas of products liability, complex litigation, white collar criminal defense and family law. Ms. Cantrell is a trial lawyer whose practice is focused on products liability defense and family law litigation. Ms. Cooper is a nationally recognized trial lawyer who serves as national trial counsel for major corporations and defends products liability claims and class actions across the country. Ms. Cordell is a trial lawyer whose practice is concentrated on the resolution of complex business disputes with an emphasis in defending large-scale local, regional, national and international manufacturers, distributors and sellers in products liability litigation nationwide. Mr. Cornish is a veteran lawyer whose practice is focused on the litigation and transactional needs of businesses of all sizes and whose broad career experience and knowledge base has qualified him to serve like outside general counsel for numerous local and regional clients. Mr. Cushman is a trial lawyer who concentrates his practice in the areas of products liability, employment law and complex business litigation. Ms.

Dickerson is a trial lawyer, whose practice is concentrated in commercial litigation, complex litigation and insurance defense, representing both plaintiffs and defendants in a variety of cases, including claims for breach of contract, products liability, personal injury and professional negligence. Mr. Eldridge is a veteran trial attorney with experience and expertise in the areas of product liability defense, mass torts and other complex civil litigation. Mr. Leach is a nationally recognized veteran trial lawyer who has tried more than 90 cases to verdict, successfully representing clients in the utility, trucking, securities, general business and product liability fields. Mr. Richardson is a trial lawyer whose practice is primarily focused on representing manufacturers and distributors in products liability litigation and other complex business disputes. Ms. Singhal is a trial lawyer whose practice is focused on mass torts litigation, product liability defense, healthcare-related litigation, multidistrict litigation, class actions and other complex litigation in state and federal courts. Mr. Smith is a trial and appellate lawyer whose practice focuses on defending manufacturers and other suppliers and distributors of products, including automobiles, cranes, forklifts, pharmaceuticals and implanted medical devices. Mr. Steichen is a trial attorney with knowledge and experience in medical matters and the defense of multi-district medical product litigation. Ms. Verret is a trial attorney practicing in a broad range of civil litigation with an emphasis in research and writing in complex litigation. Mr. Zucker-

man is a trial lawyer whose practice is focused on business litigation with an emphasis on product liability defense.

Blake Lawrence of Oklahoma City has joined Hall Estill in the firm's business litigation and transactional practice. He received his undergraduate degree from Texas Christian University, and earned his J.D. from OCU School of Law in 2011, graduating in the top 15 percent of his class.

Holden & Carr announces that **Aaron J. Goodman** has been promoted to partner and **Jason Seay** and **Jake Pipinich** have been hired as associates. Mr. Goodman's practice focuses on civil litigation in the areas of civil rights, medical malpractice defense, coverage disputes, E&O claims, construction defense, bad faith defense, premises liability and insurance defense. He is admitted to practice in all the Oklahoma Courts, the 10th Circuit and the U.S. Supreme Court. Mr. Seay previously served as an intern for U.S. District Court Judge Richard Owen (South District of New York) and as an intern for two years for Justice Marian C. Opala. Mr. Pipinich has experience with personal injury law. He is a *cum laude* graduate of OCU School of Law.

Army Reserve Brigadier Gen. Walter Chahano-vich transferred to the retired reserves following more than 34 years of military service, and he was awarded the Army Distinguished Service Medal upon his retirement. He continues his work as a Department of the Army civilian attorney in Fort Meade, Md., practicing in

federal acquisition and environmental law.

Laura J. Long has joined the law firm of McAfee & Taft as a member of the litigation group. Her practice includes energy litigation, complex business and commercial litigation, and creditor's rights including bankruptcy and employment litigation. A graduate of the OU College of Law, she has experience with oil and gas industry matters, including contract disputes, marketing and measurement, royalty owner issues, easement and encroachment, surface owner disputes, lease disputes and toxic torts.

Tulsa law firm Norman Wohlgemuth Chandler & Dowdell announces that **Lauren A. Lindsey** has joined the firm as associate, where her practice will focus on general civil litigation. Prior to joining the firm, she served as judicial law clerk for Judge James H. Payne in the U.S. District Court for the Eastern and Northern Districts of Oklahoma. She earned her J.D. with highest honors from OU College of Law, and she graduated with a B.A. *cum laude* from Rice University.

McAfee & Taft announces that **Jeb Boatman**, a former assistant U.S. attorney for the Western District of Oklahoma, has joined the firm. He will concentrate his practice in the areas of white collar criminal defense, internal investigations and compliance programs, enforcement actions and related administrative proceedings, *qui tam* lawsuits, federal and state grand jury investigations and complex civil litigation. A portion of his practice will

also be devoted to appellate matters.

Pray Walker announces **Kajeer Yar** has joined the firm. He will focus on intellectual property licensing and litigation, private equity transactions, nonprofit governance, best practices and alternative investment regulations. Prior to joining the firm, he practiced with the international law firm Jones Day in its patent litigation section for eight years, representing several *Fortune* 100 clients in a variety of domestic and international matters involving patent litigation and intellectual property licensing.

Paul Foster Law Offices PC has moved to a new location: 2150 McKown Drive, Norman, 73072. The attorneys may be contacted by phone: (405) 329-9101 or by email: pfoster@fgblaw.com (Paul Foster) & clf@fgblaw.com (Carrie Foster).

At The Podium

Stephen Coit, fiduciary Trust officer with the Office of the Special Trustee for American Indians, U.S. Department of Interior, recently spoke in Savannah, Ga., at the 38th Annual Institute of the National Association of Division Order Analysts. He spoke on the topic "Indian Mineral Leasing 101."

Tulsa attorney Dwight L. Smith delivered the opening address at the National Summit on the Future of

Legal Service Plans. The summit, focusing on "Expanding Access to Justice for Persons of Modest Income" was presented by the American Prepaid Legal Services Institute and took place in October in Denver. Mr. Smith's presentation was titled "A Primer on Access to Justice for Persons of Modest Means Through Legal Services Plans."

Oklahoma City lawyer, **Joseph B. Miner** was the featured speaker for the CLE presentation "Fair Debt Collection Practices Act — Lawyer Beware," in October at the monthly meeting of the South Oklahoma City Commercial Law Attorney's Association at the Willow Creek Country Club. Mr. Miner's presentation was on the far reaching consequences of even technical violations

under the FDCPA. Mr. Miner also presented "The FDCPA and Collection Law" for National Business Institute in conjunction with West Legal Center in a nationally broadcast CLE webinar in October.

David W. Lee of Lee Law Center PC in Oklahoma City presented a nationally broadcast teleconference lecture on the topic of "Police Liability Claims" to the National Business Institute in October. The lecture was also simulcast through West LegalEdcenter as a webcast.

McAfee & Taft Tulsa attorney **Chris Paul** presented "Recognizing and Managing Environmental Liability" at OSU Tulsa on Oct. 17, "San Bruno — New Exposures in Legacy Practices and Record Keeping" at Marsh Mid-

stream Forum in Tulsa on Oct. 18, and "Regulatory Update" at Pipe Line Insurance and Risk Management Conference in Austin, Texas, on Nov. 2.

Warren E. Mouledoux, III recently spoke to the Metropolitan Healthcare Annual Meeting on Sept. 28, at The Greens Country Club in Oklahoma City. The presentation focused on the recent changes of the workers' compensation law.

Submit news items via email to:
Lori Rasmussen
Communications Dept.
Oklahoma Bar Association
(405) 416-7017
barbriefs@okbar.org

Compiled by Nikki Cuenca.

Articles for the Dec. 10 issue must be received by Dec. 2.

IN MEMORIAM

Thomas A. Bamberger of Tahlequah died Oct. 2. He was born May 28, 1926, in Massillon, Ohio. He was a trial lawyer in Oklahoma City and served 12 years as a state representative. **He served in the Navy in the South Pacific during World War II and in the Air Force stateside in the Korean conflict.** He loved to travel and learned to speak multiple languages. He spent the last 30 years of his life ranching in Cherokee and Adair counties, raising long-horns and crossbred cattle. He also loved teaching and taught government at the Flaming Rainbow University.

Matthew J. Browne of Tulsa died Oct. 26. He was born May 28, 1952. He

graduated from the University of Arkansas School of Law. He was an avid reader and golfer and enjoyed being with his family and friends. Memorial contributions may be made to the American Liver Foundation, Mid-America Division.

Roger Johnston of Enid died Oct. 3. He was born Aug. 23, 1934, in Tipton. **He served in the U.S. Army from 1954-1956.** He studied at OSU and later graduated from SWOSU in 1958. He graduated from the OU College of Law and practiced in Enid for more than 45 years. He was a member of many state and local civic organizations. He was an active member of First United Methodist

Church. He loved to play golf and watch OU football. Memorial contributions may be made to First United Methodist Church or Noon Ambucs.

Virgil L. Upchurch of Norman died Oct. 23. He was born Feb. 14, 1930, in Anadarko. **He served in the United States Air Force during the Korean War with the 59th Fighter Interceptor Squadron.** He graduated from the OU College of Law. He was a member of the Anadarko Rotary Club and previously served as president for Oklahomans for Indian Opportunity and was a proud member of the University of Oklahoma Alumni Association.

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Addressing the Legal Needs of Our Citizen Soldiers

By Kyle Goerke

This country's citizen soldiers have experienced a period of sustained deployments since Sept. 11, 2001. Prior to 9/11, the Reserve Components — The Army National Guard of the United States, The Army Reserve, The Navy Reserve, The Marine Corps Reserve, The Air National Guard of the United States, The Air Force Reserve and the Coast Guard Reserve — were organized as a strategic reserve with the primary mission to expand the armed forces rapidly in the event of war. Since 9/11, the Reserve Component has been used as an operational force playing a vital role in meeting our defense missions and allowing the management of stress on the active force. During this time more than 430,000 Army National Guard soldiers alone have been mobilized for various missions around the world.

With mobilizations come the realities of leaving one's "civilian life" in order to answer the call of the country. These realities include legal issues involving a wide variety of matters such as landlord-tenant problems, car leases, interest rate charges on preexisting debt, employment and reemployment



rights and family law questions to name a few.

Federal and state laws have been enacted which address many of the legal needs of our citizen soldiers. The Servicemembers Civil Relief Act (SCRA) protects those eligible under the act from prosecution of certain civil matters against the servicemember while in an active duty status, among other things. The Uniformed Services Employment and Reemployment Rights Act (USERRA) protects the servicemember's civilian job rights and guarantees his or her reemployment to the job the person would have attained had they not been called to active service.

Recently the state of Oklahoma passed legislation that

prohibits the use of military deployment as a cause for changes in custody agreements and further ensures that military deployment cannot be used as a negative factor in determining custody.

Servicemembers are entitled to legal assistance through programs provided by their respective service's Judge Advocate General Corps. However, due to regulation, often times these services do not extend far enough to meet the legal needs of our citizen soldiers. For this reason, the Oklahoma Lawyers for America's Heroes, and similar programs, go a great distance in assisting those who have honorably served our country and who may not otherwise have the necessary means with which to address their legal issues.

We owe a debt of gratitude to those who serve in uniform on behalf of our country. Thank you to those of you who devote your time and resources to assist these servicemembers as they may experience legal difficulties during and after their mobilizations.

Col. Kyle Goerke is the special assistant to the judge advocate general of the Army and is in private practice in Watonga.



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5:30
REGISTRATION AND NETWORKING DINNER

6
MOVIE SHOWING: *TO KILL A MOCKINGBIRD*

8-10
A PANEL DISCUSSION
MODERATOR
KIERAN MAYE, JR., MILLER DOLLARHIDE, OKLAHOMA CITY

PANELISTS
JUSTICE JOHN F. REIF, OKLAHOMA SUPREME COURT, OKLAHOMA CITY
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