

WITTE Oklahoma Bar JOURNAL

Volume 82 ♦ No. 26 ♦ October 8, 2011

Labor & Employment Law



ALSO INSIDE

- Annual Meeting
- Leadership Academy
- New Lawyers Admitted
- Proposed 2012 OBA Budget

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with
OBA MAP



presents

GEEK IS IN

2011 TECHNOLOGY FAIR GOING GEEK: LET ME COUNT THE WAYS

**TULSA - NOVEMBER 4, 2011
HYATT REGENCY. 100 E. 2nd St.**

Planner/Moderator:

Jim Calloway, OBA Management Assistance Program Director, Oklahoma City

8:30 a.m. - Registration

9:00 - 50 Hot Tech Tips in 50 Minutes

Reid Trautz, Director, Practice and Professionalism Center,
American Immigration Lawyers Association, Washington, D.C.
Jim Calloway

9:50 - Break

10:00 - 2 Use or Not 2 Use Social Media: Practice and Ethics
(ethics)
Reid Trautz

10:50 - The Top 10 Technology Tools Everyone Should Be Using
Reid Trautz, Jim Calloway

11:40 - Lunch (included in registration)

12:40 p.m. - 4 The Lawyer: Open-Sourcing the Law- Law.gov,
Data.gov, and the Firm's Bottom Line
Ed Walters, CEO, Fastcase, Inc., Washington, D.C.

1:30 - Break

1:40 - 2 For the Money: iPad and Smartphone Tips
Reid Trautz, Jim Calloway

2:00 - 50 Websites in 50 Minutes
Reid Trautz, Jim Calloway

2:50 - Deuces



Annual meeting registration not required. To register for annual meeting, visit am.okbar.org/2011

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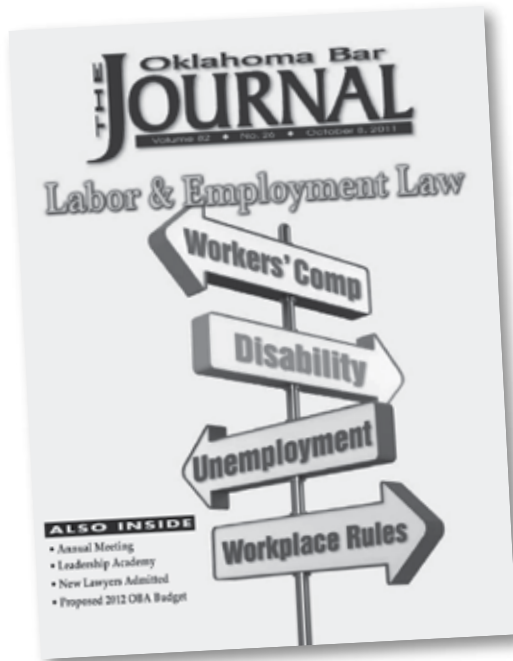
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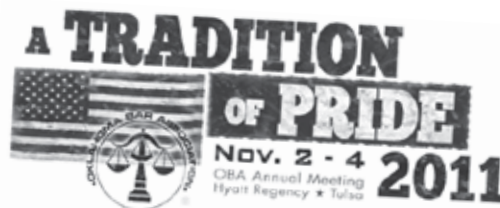
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My First Jobs

By Deborah Reheard

The theme of this month's issue made me start waxing nostalgic about my first job. But I found myself unable to decide what was my first job?

I thought my first job was when I was in grade school and I had to bottle feed the baby calves on the dairy farm. All I really did was measure out the milk replacer and add warm water which now does not seem like much of a job. Dad filled the bottles and carried them to the calves, then I petted the calves while they ate. I thought it was a job but as with most of my farm chores, I was probably more trouble than I was help, especially in those early years. But I learned a great lesson in responsibility. When you have living things relying on you, you have to be dependable.

Then I thought, no, my first job was the summer after I graduated high school and I waited tables at the local country club. I do not remember much about that job except taking my tip money in quarters so I could put them in the hidden slot machines in the back room. That job taught me that you work too hard for your money to gamble it away.

Maybe my first job was in the language lab at Oklahoma State University, where I was in charge of playing language tapes for foreign students. For a small-town farm girl, that was my first experience with people of different cultures, and that job taught me how big this world really is.



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

Or maybe my first job was at the small town newspaper where I began my journalism career after graduating from college. I started in the "Society Department," and despite the embarrassment of leaving the "r" out of "shirts" when describing the lime green shade of the groomsmen's attire, I moved on to the "News Department" and covered murders, fatality accidents and prison riots. I learned that being accurate is important (as is proof-reading!).

Then it was on to my legal career and my first full-time law-related job was as a prosecutor. There I learned about the rules of law and how

our society needs rules to govern our behavior. But I also learned that sometimes bad things happen to good people. Sometimes they deserve a second or even third chance.

I have had the job as small town, small firm lawyer now for many years. The lessons it has taught me are many. As lawyers, we are advocates and adversaries. We work in conflict and turmoil. Our clients are imperfect people ensnared in problematic situations. In this profession, we meet people from all walks and stations of life.

Some will become friends as we forge a bond while getting through the legal trials and tribulations life has thrown their way. Others will blame their lawyer for the legal problems they find themselves in, even though those problems were often created before they ever met the lawyer. It is a daily lesson in human nature.

*I have learned
that lawyers,
no matter how
busy, will give
unselfishly of
their time
and money to
help others...*

My latest job as your bar president has taught me more lessons — that we as lawyers take seriously our oath to serve, protect and defend the Constitution and to guarantee equal justice for all. I have learned that lawyers, no matter how busy, will give unselfishly of their time and money to help others, be it children, veterans, the elderly or any other group which needs the special skills we lawyers possess.

Life lessons learned through on-the-job training — the best kind.

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EVENTS CALENDAR

OCTOBER 2011

- 11 **OBA Bar Center Facilities Committee Meeting**; 9 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Judy Hamilton Morse (405) 235-7759
- 12 **OBA Diversity Committee Meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Jeff Trevillion (405) 778-8000
- OBA Law Day Committee Meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Tina Izadi (405) 522-8097
- 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
- William J. Holloway American Inn of Court**; 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Caroline Larson (405) 609-5322
- 13 **OBA Women Helping Women Support Group**; 5:30 p.m.; The Oil Center – West Building, Suite 108W, Oklahoma City; RSVP to: Kim Reber (405) 840-3033
- 14 **Oklahoma Association of Black Lawyers Meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Donna Watson (405) 721-7776
- OBA Communications Committee Meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Mark Hanebutt (405) 948-7725
- OBA Rules of Professional Conduct Subcommittee Meeting**; 3 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Paul Middleton (405) 235-7600
- OBA Family Law Section Meeting**; 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Kimberly Hays (918) 592-2800
- 19 **Oklahoma Council of Administrative Hearing Officials**; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Carolyn Guthrie (405) 271-1269 Ext. 56212
- OBA Women in Law Committee Meeting**; 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Deborah Bruce (405) 528-8625

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

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

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Final ADAAA Regulations Take Effect

The EEOC Further Broadens the Definition of Disability

By Mary L. Lohrke and Shannon P. Wheeler

On March 25, 2011, the Equal Employment Opportunity Commission issued final regulations¹ implementing and interpreting the ADA Amendments Act (ADAAA) signed into law on Sept. 25, 2008. The ADAAA, which became effective Jan. 1, 2009, amends the Americans with Disabilities Act of 1990 (ADA)² by expressly rejecting a narrow definition of “disability” and restoring broad protections to disabled individuals in the employment context. The new regulations took effect May 24, 2011, and like the ADA itself, apply to employers with 15 or more employees. Consistent with the ADAAA, the regulations broaden the definition of disability. The changes will make it easier for individuals seeking protection under the ADA to establish a disability within the meaning of the ADA.

THE EEOC REGULATIONS BROADEN THE DEFINITION OF DISABILITY

The ADA was enacted to prohibit employment discrimination against a qualified individual on the basis of disability.³ The ADA defines “disability” as a physical or mental impairment that “substantially limits” an individual’s ability to perform a “major life activity.”⁴ The ADA also prohibits discrimination against individuals who have a “record of” or are “regarded as” having such an impairment.⁵ Discrimination under the ADA includes an employer’s failure to provide reasonable workplace accommodations to qualified individuals with known disabilities, unless doing so would impose an undue hardship.⁶

Federal courts, following U.S. Supreme Court precedent, adopted a narrow interpretation of “disability” under the original ADA. The result was that many plaintiffs could not make the threshold showing that they were disabled within the meaning of the ADA. Consequently, the issue of whether the employer discriminated on the basis of disability was never reached in many cases. The ADAAA legislatively overturned several Supreme Court decisions that Congress believed had interpreted the definition of “disability” too narrowly.⁷ Although the statutory definition of “disability” did not change, Congress mandated in the ADAAA that the term “disability” be *broadly* construed “to the maximum extent permitted” by the statute.⁸

The EEOC final regulations echo congressional intent, expressly stating that the “primary purpose of the ADAAA is to make it easier for people with disabilities to obtain protection under the ADA.”⁹ The regulations make clear that courts should focus their attention in ADA cases on “whether covered entities have complied with their obligations and whether discrimination has occurred, *not* whether the individual meets the definition of disability.”¹⁰ The final regulations lower the standard for proving a disability by:

- expanding the definition of “major life activity”
- relaxing the definition of “substantially limits”
- eliminating from consideration the ameliorative effects of mitigating measures
- including coverage to impairments that are episodic or in remission
- revising the definition of “regarded as” disabled

EXPANDED DEFINITION OF MAJOR LIFE ACTIVITY

While the original ADA was silent, the ADAAA defines “major life activity” to include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, breathing, learning, reading, concentrating, thinking, communicating and working.¹¹ The ADAAA also defines “major life activity” to include the operation of major bodily functions, such as the “immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.”¹² The new regulations add to the list of major life activities: sitting, reaching, bending, lifting and interacting with others.¹³ The regulations also add special sense organs and skin, genitourinary, cardiovascular, hemic, lymphatic and musculoskeletal to the list of “major bodily functions.”¹⁴ Rejecting the Supreme Court’s holding in *Toyota Motor Manufacturing v. Williams*,¹⁵ the regulations further clarify that the term “major life activity” is not to be interpreted strictly to create a demanding standard and is not determined by reference to whether the activity is of “central importance to daily life.”¹⁶

The regulations significantly expand the number of individuals who potentially qualify as “disabled” under the ADA. This is particularly true with respect to impairments affecting “bodily functions.” In the past, an individual

had to show that an impairment substantially limited a major life activity such as walking, seeing, hearing, etc. Now, an individual may be disabled if he or she has a disability that substantially limits a “major bodily function,” regardless of whether the impairment has an obvious effect on the performance of day-to-day activities. Given that the list of major life activities and major bodily functions is meant to be non-exhaustive, many more activities may be covered in the future.

RELAXED DEFINITION OF ‘SUBSTANTIALLY LIMITS’

Like the ADAAA, the EEOC final regulations provide that the term “substantially limits” should be construed broadly and is not meant to be a demanding standard.¹⁷ The regulations provide rules of construction for determining whether an impairment is substantially limiting.¹⁸ Under the new regulations, an impairment is a disability if it substantially limits the ability of an individual to perform a major life activity as compared to most people in the general population.¹⁹ However, the impairment need not prevent or significantly or severely restrict the individual’s ability to perform a major life activity in order to be considered a disability.²⁰ Although the determination of whether an impairment is substantially limiting requires an individualized assessment, the term “substantially limited” is to be interpreted and applied to require a degree of functional limitation that is lower than the standard applied prior to the ADAAA.²¹ Further, the regulations provide that the comparison of an individual’s performance of a major life activity to the same major life activity by most people in the general population usually will not require scientific, medical or statistical analysis.²²

The condition, manner or duration²³ under which a major life activity can be performed are factors that may be considered in determining whether an individual is substantially limited.²⁴ This assessment may include consideration of the difficulty, effort or time required to perform a major life activity; pain experienced when performing a major life activity; the length of time a major life activity can be performed; and/or the way an impairment affects the operation of a major bodily function.²⁵ According to the new regulations, the focus should be on the extent to which a major life activity is substantially limited — not on what outcomes the individual can achieve.²⁶ For example, someone with a learning disability

may achieve a high level of academic success, but may be substantially limited in the major life activity of learning because of the additional time or effort required to learn as compared to most people in the general population. Further, it may not be necessary to use these concepts with respect to those conditions which the regulations recognize will almost always substantially limit a major life activity, including: deafness, blindness, an intellectual disability, partially or completely missing limbs, mobility impairments requiring the use of a wheelchair, autism, cancer, cerebral palsy, diabetes, HIV, multiple sclerosis, muscular dystrophy, major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder and schizophrenia.²⁷

While employers retain the right to argue on a case-by-case basis that an impairment is not substantially limiting, as a practical matter employers should expect that the impairments listed above will nearly always qualify as a disability. The relaxed standards will make it increasingly risky for employers to attempt to determine on their own whether or not an individual is disabled and to deny an accommodation on that basis.

ELIMINATION OF AMELIORATIVE EFFECTS OF MITIGATING MEASURES

Rejecting the Supreme Court's decision in *Sutton v. United Airlines*,²⁸ the regulations make clear that the ameliorative effects of mitigating measures are not taken into account in determining whether someone is disabled.²⁹ Under the ADAAA, the determination of whether an impairment substantially limits a major life activity is to "be made without regard to the ameliorative effects of mitigating measures," such as, medication, medical supplies, equipment, prosthetics, hearing aids, mobility devices, assistive technology or auxiliary aids.³⁰ The EEOC regulations add psychotherapy, behavior therapy and physical therapy to this non-exhaustive list of mitigating measures.³¹ The only exception to this rule remains that ordinary eyeglasses or contact lenses can be considered mitigating measures.³²

While the ameliorative effects of mitigating measures are not considered, the *negative* effects of mitigating measures may be taken into account in determining whether an impairment is substantially limiting. That means that an employee whose condition does not substantially limit a major life activity may never-

theless be disabled if the employee is taking a medication, the effects of which substantially limit a major life activity.

INCLUSION OF EPISODIC CONDITIONS AND CONDITIONS IN REMISSION

The new regulations provide that disabilities include episodic conditions or conditions in remission, provided the impairment would substantially limit a major life activity in an active state.³³ The appendix to the regulations provides a non-exhaustive list of conditions which generally will constitute a disability despite their episodic nature or the fact the condition is in remission, including cancer, epilepsy, multiple sclerosis, hypertension, diabetes, asthma, major depressive disorder, bipolar disorder, schizophrenia and post-traumatic stress disorder.³⁴ This means that an employee whose cancer is in remission may still be considered disabled under the ADAAA, if, at the time the cancer was active, it substantially limited a major life activity. An individual can potentially be rendered permanently disabled under the ADAAA without regard to the current effects of the impairment.

Further, the new regulations provide that a temporary impairment, lasting or expected to last fewer than six months, can also be a disability under the ADA as long as the impairment substantially limits a major life activity.³⁵ Although the interpretive guidance states that the duration of an impairment may be considered in determining whether it is substantially limiting, it will be increasingly difficult for employers to defend an ADA claim on the basis that the impairment was temporary or transitory.

REVISED DEFINITION OF 'REGARDED AS'

The ADAAA makes it easier for an individual to meet the definition of a person "regarded as" having a disability. Specifically, the ADAAA departs significantly from the old rule that an employee, under the "regarded as" prong, had to show that the employer wrongfully perceived the individual as being substantially limited in a major life activity. Consistent with the ADAAA, the new regulations expressly provide that whether an individual's impairment "substantially limits" a major life activity is *not* relevant to coverage under the "regarded as" prong.³⁶ Rather, an employer regards an individual as having a disability if it makes an adverse employment decision because of the employer's belief that the individual has an

impairment.³⁷ An individual no longer has to demonstrate that the employer wrongfully perceived the individual as being substantially limited in a major life activity.³⁸

Unlike claims brought under the “actual” or “record of” prongs, employers may defend against a “regarded as” claim by showing that the actual or perceived impairment is transitory (lasting or expected to last six months or less) and minor.³⁹ However, this defense is limited by an objective analysis of the impairment.⁴⁰ An employer cannot claim that it subjectively believed the impairment to be transitory and minor, but rather must demonstrate that the impairment was actually transitory and minor, or that it could objectively be considered transitory and minor.⁴¹

The regulations clarify that an employer is not required to provide a reasonable accommodation to an individual who meets the definition of disability under the “regarded as” prong.⁴² Further, an employee who is not asserting an accommodation claim can proceed under the less demanding standard of a “regarded as” claim — even if the employee has an *actual* disability.⁴³ The result will likely be an increase in “regarded as” claims.

THE PRACTICAL EFFECTS OF THE EEOC REGULATIONS

Due to the broadened definition of disability, there will likely be an increase in cases filed under the ADA. The focus in such cases will no longer be on whether an individual has a covered disability. Rather, litigation will be focused on the lack of discrimination. Practitioners should ensure their employer clients are aware of their obligations under the ADA, including the obligation to engage in the interactive process and to make reasonable accommodations where warranted. In the past, many employers did not have their accommodation practices challenged since claims were dismissed for failure to establish a covered disability. In the future, an employer’s accommodation process will be scrutinized, and cases will be won or lost based on whether the employer met its obligation to accommodate.

1. Regulations to Implement the Equal Employment Provisions of the American with Disabilities Act, as amended, 76 Fed. Reg. 16999 (Mar. 25, 2011).

2. ADA Amendments Act of 2008 §8.

3. The ADAAA prohibits discrimination against an individual “on the basis of disability” rather than against a “qualified individual with a disability” on the basis of disability. Consistent with the ADAAA, the new regulations refer to an “individual with a disability” and “qualified individual” as separate terms. The regulations are intended to make the

primary focus of an ADA inquiry on whether the discrimination occurred — not whether an individual meets the definition of disability.

4. 42 U.S.C. §12102(1)(A).

5. 42 U.S.C. §12102(1); 42 U.S.C. 12112(a).

6. 42 U.S.C. §12102(5).

7. 42 U.S.C. §12101 note.

8. 42 U.S.C. §12102(4)(A).

9. 29 C.F.R. §1630.1(4).

10. 29 C.F.R. §1630.1(4).

11. 42 U.S.C. §12102(2)(A).

12. 42 U.S.C. §12102(2)(B).

13. 29 C.F.R. §1630.2 (i)(1)(i).

14. 29 C.F.R. §1630.2(i)(1)(ii).

15. 534 U.S. 184 (2002).

16. 29 C.F.R. §1630.2(i)(2).

17. 29 C.F.R. §1630.2(j)(1)(i).

18. 29 C.F.R. §1630.2(j)(1)(i)-(ix).

19. 29 C.F.R. §1630.2(j)(1)(ii).

20. 29 C.F.R. §1630.2(j)(1)(iii).

21. 29 C.F.R. §1630.2(j)(1)(iv).

22. 29 C.F.R. §1630.2(j)(1)(v).

23. Duration does not refer to the duration of the impairment but rather refers to the length of time it takes an individual to carry out the major life activity. 29 C.F.R. §1630.2(j)(4)(i).

24. 29 C.F.R. §1630.2(j)(4).

25. 29 C.F.R. §1630.2(j)(4)(ii).

26. 29 C.F.R. §1630.2(j)(4)(iii).

27. 29 C.F.R. §1630.2(j)(3)(iii).

28. 527 U.S. 471 (1999).

29. 29 C.F.R. §1630.2(j)(1)(vi).

30. 42 U.S.C. §12102(4)(E).

31. 29 C.F.R. §1630.2(j)(5)(v).

32. 42 U.S.C. §12102(4)(E)(iii); 29 C.F.R. § 1630.2(j)(1)(vi).

33. 29 C.F.R. §1630.2(j)(1)(vii).

34. 29 C.F.R. §1630, app. (Section 1630.2(j)(1) Rules of Construction).

35. 29 C.F.R. §1630.2(j)(ix).

36. 29 C.F.R. §1630.2(l).

37. 29 C.F.R. §1630.2(l)(1).

38. 29 C.F.R. §1630.2(l)(1).

39. 29 C.F.R. §1630.15 (f).

40. 29 C.F.R. §1630.15(f).

41. 29 C.F.R. §1630.15(f).

42. 29 C.F.R. §1630.2(o)(4).

43. 29 C.F.R. §1630.2(l)(1).

ABOUT THE AUTHORS



Mary L. Lohrke is a partner in the Tulsa firm Titus Hillis Reynolds Love Dickman & McCalmon. She focuses her practice in the area of employment discrimination law. She serves as an adjunct settlement judge.



Shannon P. Wheeler graduated with highest honors from the TU College of Law in 2008 and was named Order of the Curule Chair. She is an associate with the Tulsa firm Titus Hillis Reynolds Love Dickman & McCalmon and focuses her practice in the area of employment law and

general civil litigation.

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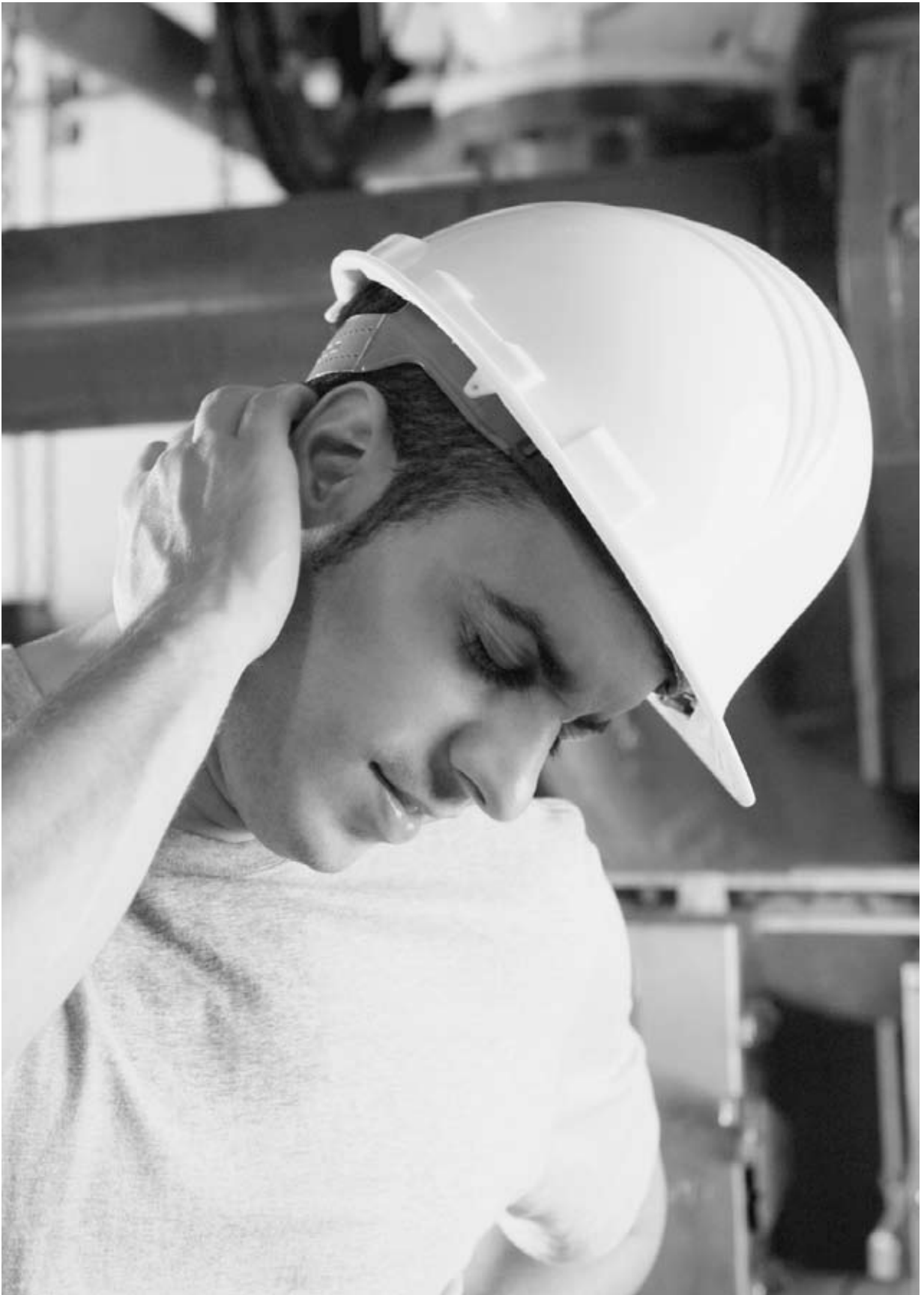
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Keys to Oklahoma's Workers' Compensation Retaliation Claim

By Leah Avey

Your business client calls you with an urgent question expressed in a pleading, plaintive voice:

"Can we terminate this employee? He's been off on workers' compensation and we're afraid that he's going to get hurt again and file another claim."

Or an individual calls you:

"I just got cleared to return to work from workers' compensation leave but my supervisor eliminated my position while I was gone because of lack of business. Can I sue and win?"

Your response should be framed by your answer to the following question: When does the termination of an employee violate 85 O.S. §341¹ (§341 replaced the repealed 85 O.S. §§5-6), which prohibits discharge *because* an employee has filed or instituted a workers' compensation claim? The answer to these questions appears at the end of the article (Don't jump ahead!).

OKLAHOMA'S WORKERS' COMPENSATION RETALIATION STATUTE

Oklahoma workers' compensation law states that no employer "may discharge...an employee because the employee has in good faith:

- 1) Filed a claim;
- 2) Retained a lawyer for representation regarding a claim;

- 3) Instituted or caused to be instituted any proceeding under the provisions of this act;
- 4) Testified or is about to testify in any proceeding under the provisions of this act; or
- 5) Elected to participate or not to participate in a certified workplace medical plan as provided in this act."²

85 O.S. §341 also states that an employee may not be discharged during a period of temporary total disability solely on the basis of absence from work.³ The only statutory exception to these rules is that an employer is not "required to rehire or retain any employee who is determined to be physically unable to perform assigned duties."⁴

BASIC DEFINITIONS

John Dewey said, "A problem well defined is half solved," so it's important to begin with relevant definitions:

Discharge: The common meaning of “discharge” in this context is “to force someone to leave an office or position,”⁵ i.e., an employee’s involuntary termination of employment.

Constructive Discharge: The Oklahoma Supreme Court also recognizes a “constructive discharge” theory in a worker’s compensation retaliation case. A “constructive discharge occurs when an employer deliberately makes or allows the employee’s working conditions to become so intolerable that the employee has no choice but to quit...The test is whether a reasonable person would view the working conditions as intolerable and would feel compelled to resign.”⁶ Constructive discharge has been alleged when a reduction in hours forces an employee to look for other work; an employee quits; and when an employee is left with no work to do.⁷ Thus “discharge” may mean the traditional termination, or it may in some circumstances, include a voluntary quit by an employee.

Filed a Claim: Sending or delivering to the Workers’ Compensation Court a Form 3, *Employee’s First Notice of Accidental Injury and Claim for Compensation*.⁸

Instituted a Proceeding: “Instituted or caused to be instituted any proceeding” is held to mean more than the mere filing of a claim.⁹ According to *Buckner v. Gen. Motors Corp.*:

Merely seeking and receiving first aid is not in and of itself sufficient to institute proceedings. Some other evidence sufficient to persuade the trier of fact that the worker intended or reasonably could have intended to institute proceedings is necessary...First aid coupled with circumstances which raise a clear inference of an anticipated claim must be present before the institution of proceedings is triggered. For now, we simply conclude that the provision of medical treatment by the employer, when accompanied by circumstances... which would lead a reasonable employer to infer that a workers’ compensation claim would in all probability ensue, constitutes the institution of proceedings.¹⁰

Thus, the actual filing of a case in Workers’ Compensation Court is not necessary to have “instituted” a claim, and the threshold of knowledge imputed to the employer on which a workers’ compensation retaliation claim can be based is quite low. For example, in *Zaragosa v. Oneok Inc.*, the employee, on the day before

the effective date of her discharge, gave her employer a written report from a physician “indicating that she had injured her back on the job and that she should be placed on sick leave for 7 days.”¹¹ The court held that this written notice qualified as “instituting proceedings under the act.”¹² In contrast, in *Bryant v. Am. Airlines Inc.*, the court affirmed that plaintiff’s FMLA claim on the basis of a back condition did not put the employer on notice of the possibility of a workers’ compensation claim.¹³

THE PRIMA FACIE CASE, ORDER OF PROOF

The *prima facie* case for retaliatory discharge has been long established in Oklahoma. The discharged employee must show the court:

- 1) Employment
- 2) On the job injury
- 3) Receipt of treatment under circumstances which put the employer on notice that treatment had been rendered for a work-related injury, or that the employee in good faith instituted, or caused to be instituted, proceedings under the act; and
- 4) Consequent termination of employment.¹⁴

After a *prima facie* case is established, the burden then appropriately shifts to the employer to rebut the inference that its motive was not retaliatory by articulating that the discharge was for a legitimate non-retaliatory reason... The employer need not persuade the court that it was actually motivated by the proffered reasons. The employer’s burden is a burden of production of relevant and credible evidence, not a burden of persuasion.¹⁵

The employer is obligated to set forth a legally sufficient reason for the employee’s termination. If it does so, the presumption raised by the *prima facie* case is rebutted. The employee is then given a full and fair opportunity to demonstrate that the reason offered by the employer for terminating the employee was not the true reason for the employment decision, but was, rather, pretext.¹⁶ The employee bears the ultimate burden of persuading the trier of fact that the employer retaliatorily discharged the employee.¹⁷

KEY ONE: ‘CONSEQUENT’ TERMINATION = SIGNIFICANTLY MOTIVATED

Most retaliatory discharge cases center on the fourth prong of the *prima facie* case, wheth-

er a *consequent* termination has occurred. A showing of “consequent termination” requires the production of evidence that gives rise to “a legal inference the discharge was *significantly motivated* by retaliation for exercising one’s statutory rights.”¹⁸ A plaintiff need not meet a “but for” standard for a successful §5 claim; however, she must “present evidence that does more than show the exercise of her statutory rights was only one of many possible factors resulting in her discharge.”¹⁹ It is important to remember that “consequent” is not the same as “subsequent,” although as a practical matter jurors often have a hard time separating the two.

Timing of the Discharge

The inquiry into the “significantly motivated” inference begins with a check of the temporal proximity, or the timing of the termination in relation to the workers’ compensation claim. How long after a claim was filed or initiated did the termination occur? When does the timing become significant? In *Thompson v. Medley Material Handling Inc.*,²⁰ the employee was injured on Aug. 23, was off for a month with pay, returned to work, filed a workers’ compensation claim on Nov. 5, and was laid off about six weeks later.²¹ The court refused to necessarily connect his termination to the filing of the workers’ compensation claim, absent other evidence. The court stated:

The reasons for Thompson’s discharge... could only be deduced by pure speculation. Such evidence could not support the presentation of the matter to a jury. To hold

otherwise would be to require any employer laying off a worker who has at any time in the past filed a workers’ compensation action to submit to a jury trial based purely on the coincidence of the layoff and the past filing.²²

The *Thompson* opinion is widely cited for the proposition that while the timing of the discharge may be evidence of a retaliatory discharge, timing *alone* is not sufficient to meet the *prima facie* case. In *Taylor v. Cache Creek Nursing Centers*, subsequent to *Thompson*, even when a plaintiff was fired immediately after returning from a two-week, doctor-ordered disability leave,²³ the court stated that, “[t]his in itself does not raise a legal inference that the firing was significantly motivated by retaliation,” and held for the defendant.²⁴ The timing of the discharge may constitute evidence of a retaliatory motive, but it is not outcome determinative.²⁵

Employer’s Response

The issue discussed most often in relation to the “significantly motivated” test is the employer’s response to an employee’s notification of an injury on the job or initiation of proceedings. Oklahoma jurisprudence holds that the employer’s response to its employees’ contemplated or actual commencement of a workers’ compensation proceeding may constitute evidence of retaliatory motive.²⁶ The table below is a sampling of cases in which factual circumstances of the employer’s response were directly tied to the “significantly motivated” factor, and the court’s holding in each case.

Employee allegations of ‘significant motivation’:	Court’s Holding
1. Upon the plaintiff’s return to work, his job performance was praised, but the employer told him that he would “be jeopardizing his employment if he continued to see doctors whose practices were significantly associated with workers’ compensation claimants.” ²⁷	Remanded for a new trial. Sufficient evidence to state a <i>prima facie</i> case. ²⁸
2. Upon notification of an injury, a supervisor “quizzed” an employee about whether her injuries were work related. ²⁹	Defendant was granted Summary Judgment. Questions from the employer about the nature of that injury should not, without more, give rise to an inference that legitimate reasons given for termination were pretextual. ³⁰

Employee allegations of ‘significant motivation’:	Court’s Holding
3. Upon notifying defendant’s warehouse manager of his injury, the manager recommended that the employee promptly obtain medical attention and the employer filed a Form 2; defendant had never threatened or fired an employee because of a workers’ compensation claim. ³¹	The case was remanded for trial. The evidence and testimony also showed that upon hiring a lawyer and the pursuit of an adjustment to his TTD payments, he was terminated. The employer gave differing reasons for plaintiff’s termination. ³²
4. Supervisor’s attitude allegedly worsened after the plaintiff filed a claim. ³³	Court of Appeals Order vacated; Trial Court Judgment was affirmed. No actual references were proven to have been made by management; no legal inference of retaliation. ³⁴
5. Supervisor allegedly made a statement regarding plaintiff’s health and age. ³⁵	Summary Judgment for the defendant. One statement about plaintiff’s health from one link in the decision-making chain would be insufficient to show that her termination was “significantly” motivated by her workers’ compensation claim. ³⁶
6. The order of items listed on an email regarding plaintiff’s health and workers’ compensation injury (no mention of claim). ³⁷	Summary Judgment for the defendant. Court found the concern expressed in the email was that plaintiff was missing work when not really ill, and no legal inference of termination due to claim. ³⁸
7. Defendant asserted it offered medical treatment; it later offered medical treatment again; assisted plaintiff with overhead tasks and didn’t give her a “hard time” about light duty restrictions; however, an email existed that expressed concern about plaintiff hiring a lawyer relative to her claim. ³⁹	Summary Judgment denied. The court found that the email in controversy could be read to establish that a consequent termination occurred. ⁴⁰
8. The company did not comply with 85 O.S. §24.1, to report the injury to the court (Form 2) even after the employee fully filled out the form. ⁴¹	Judgment for plaintiff was affirmed. Failing to comply with the statute is additional evidence of the employer’s hesitancy to comply with the workers’ compensation laws. ⁴²
9. Defendant encouraged employees to file under health insurance instead of workers’ compensation insurer. ⁴³	Verdict for the plaintiff. Motion denying directed verdict and new trial properly denied; evidence of a pattern or practice. ⁴⁴
10. Employees testified that they were “worried” about being terminated if they filed a claim; employees less qualified but who had not filed claims were not let go. ⁴⁵	Verdict for the plaintiff. Motion denying directed verdict and new trial properly denied. ⁴⁶
11. Employees testified that a supervisor got “mad” when an employee filed a WC claim. ⁴⁷	Verdict for the plaintiff. Motion denying directed verdict and new trial properly denied. ⁴⁸

The pattern emerges: To avoid exposure in a retaliation claim, an employer's response should be one that handles a report or initiation of a claim in a straightforward, consistent, objective manner, with respect for the employee's right to seek treatment and representation.

*The Big Picture of the Employer's Response:
Pattern or Practice*

In *Pettitt v. Dolese Brothers Co.*, the court allowed testimony regarding other employees' injuries and workers' compensation claims, even though the injury occurred several years prior, and allowed the testimony of a former supervisor who also alleged termination after filing a workers' compensation claim.⁴⁹ Over the objections of the defendant, the court determined the evidence was relevant to the question of "pattern or pressure" against other employees who filed a claim and thus to the question of "significant motivation" for the termination of the plaintiff.⁵⁰ A similar situation existed in *Wallace v. Halliburton*, where there was testimony that led the court to allow the imposition of punitive damages because the evidence would "support a pattern of retaliatory discharges" on behalf of Halliburton. Based on these two cases, an employer should heed to not only correctly handle the individual employee that initiates a claim, but also periodically analyze claims handling over a period of years. Conversely, an employee may recognize that he is not the first employee to be terminated after filing a claim, and bring this to the attorney's attention to support his case.

KEY TWO: THE EMPLOYER'S BURDEN OF PRODUCTION

As stated by *Buckner, supra*, the employer's burden is one of production of evidence that raises a genuine issue of fact of whether the employee was discharged in retaliation.⁵² The employee's burden is then to address the specific reason given by the employer to show that the reason is pretextual. Oklahoma case law shows that employer's reason must also be consistent and lawfully based.

Employers' Business Reasons

Inconsistency: In a recent case, *Estrada v. Port City Properties Inc.*,⁵³ the Court of Civil Appeals reviewed evidence that the defendant offered differing reasons for the plaintiff's termination.⁵⁴ The court stated that because of the differing explanation of the *facts* surrounding termination, more than one conclusion could

be reached regarding the *reason* for termination, and remanded the case for trial.⁵⁵ At trial, the evidence "indicated that the [employer] gave inconsistent versions as to how the events [of termination] unfolded."⁵⁶ The jury returned a verdict in favor of the employee and awarded him more than \$75,000.⁵⁷

Insurance costs: In *Thornburg v. Frac Tech Servs.*, the plaintiff was told he was being terminated "due to insurance costs."⁵⁸ In the same conversation, the employer discussed the employee's return to work at light duty.⁵⁹ The court held that the terminology used by the supervisor could show a desire to terminate the employee due to workers' compensation

“...there was testimony that led the court to allow the imposition of punitive damages because the evidence would ‘support a pattern of retaliatory discharges’...”

insurance costs, and summary judgment for the employer was precluded.⁶⁰ Some employers are even more straightforward: In *Elzey, supra*, the plaintiff testified he was told he was being terminated for filing a workers' compensation claim.⁶¹

Business Necessity: In *Thompson v. Medley Material Handling Inc.*, *supra*, the plaintiff presented his *prima facie* case, and the employer submitted evidence that showed the plaintiff's termination "had been part of a company-wide reduction in staff necessitated by a slowdown in the oil industry."⁶² The plaintiff presented no evidence of pretext, other than the timing of the layoff, which was only six weeks after the plaintiff filed a claim. The court held this proximity alone was insufficient to show the business reason for termination was pretextual.⁶³

Employee Performance

Another reason given to refute the "significantly motivated" standard is evidence of a plaintiff-employee's poor performance. In *Del-*

gado v. Tom Kelly & Assocs., the defendant encouraged the employee to go to medical appointments, worked with the employee to determine the best time for surgery, but eventually terminated the employee due to concerns about the employee's production levels.⁶⁴ The court granted Summary Judgment to the defendant because it presented evidence that there was no pressure exerted on the plaintiff *not* to file a claim, and the supervisor's demands regarding production, while harsh, did not show retaliatory motive.⁶⁵

Violation of Employer Policy and Misconduct

In *Redricks v. Industrial Vehicles Int'l. Inc.*, the employer submitted what appeared to be a legitimate, non-retaliatory reason for the termination of the employee who was out on TTD leave: He had violated a policy that required all personnel to call in before 9 a.m. every day if they were gone for any reason, and the plaintiff had failed to do so.⁶⁶ However, the employee testified that he had never received a copy of the call-in policy, and in fact, it was created while the plaintiff was off work.⁶⁷ The court determined the employer's justification for the policy (to schedule personnel and to determine whether an employee was in the community and intended to continue employment) was insufficient justification for the "unduly burdensome" requirement to call in.⁶⁸

In contrast, and cited in *Redricks*, is the situation in *Hopkins v. Seagate*,⁶⁹ in which the plaintiff failed to comply with company policy requiring her to provide documentation and information during her absence from work, and her lack of cooperation with defendant's efforts to accomplish a medical examination prior to her return to work.⁷⁰ The court determined that these policy violations were sufficient reasons for termination other "than to retaliate against her for filing a workers' compensation claim," and upheld the jury's non-retaliation verdict.⁷¹

A statutory policy was at issue in the termination of a state employee in *Glasco v. Okla. Department of Corrections*, after he had been off work for more than a year due to a workers' compensation injury.⁷² The defendant's reason for termination was that state law "clearly authorizes a state employer to discharge an employee who has been on leave without pay for a year or more notwithstanding the workers' compensation laws."⁷³ The court recognized an inconsistency between 85 O.S. §5 and the

statute authorizing termination after one year, and held that "If there is a conflict between two statutes on the same subject and the language in one statute is general while the language in the other is specific, the specific statute will control over the general statute."⁷⁴ Thus, the more specific state leave policy was upheld.⁷⁵

Finally, in *Kennedy v. Builders Warehouse Inc.*, the employer gave as its sole, valid, non-retaliatory reason for the employee's termination that the employee had confronted and had an altercation with a co-employee.⁷⁶ The employee produced evidence of the first three prongs of the retaliation *prima facie* case, and demonstrated that he was terminated *after* he was released to return to work without restriction, *after* he told the employer he needed more medical treatment, and *after* he told his employer he was going to hire a lawyer.⁷⁷ The plaintiff also denied the altercation, which allegedly occurred five days before his termination.⁷⁸ The court held this information was circumstantial evidence "suggesting employer's pretext," and the case was remanded for trial.⁷⁹

After Acquired Evidence

Oklahoma courts do not, however, allow an employer relief from liability for terminating an employee engaged in misconduct which is discovered *after* the employee is terminated.⁸⁰ In *Mosley v. Truckstops Corp. of America*, the employer discovered after termination that the employee had falsified his application and health insurance application while employed.⁸¹ The employer argued that evidence of employee misconduct should be considered by the jury in determining damages and the jury should have been instructed as such.⁸² The court hypothesized that allowing after-acquired evidence was inconsistent with Oklahoma law because such evidence would relieve the employer of liability, even if the evidence was not a significant factor in the employer's decision to terminate.⁸³ The court determined that giving such an instruction was reversible error.⁸⁴

KEY THREE: AN EXCEPTION TO 'SIGNIFICANTLY MOTIVATED' - THE PHYSICAL INABILITY TO PERFORM THE JOB

The statutory exception to terminating an employee because he has filed a workers' compensation is set out in 85 O.S. §341(C):

After an employee's period of temporary total disability has ended, no employer

shall be required to rehire or retain any employee who is determined to be physically unable to perform the assigned duties. The failure of an employer to rehire or retain any such employee shall not be deemed a violation of this section.

For example, in *Elzey v. Forrest*, the court indicated that a “legitimate” reason for terminating an employee is the employee’s inability to perform his assigned duties.⁸⁵ In *Taylor v. Cache Creek Nursing Centers*,⁸⁶ an employee returned to work from disability leave and was given a chance to improve, but was not able to perform all the required duties, and the court affirmed the trial court’s decision that the plaintiff failed to establish a *prima facie* case.⁸⁷ Thus, the case law is consistent with the statute: If an employee cannot physically do the job he was doing when injured, the employer is not obligated to rehire or retain the employee in that position.

However, the employer must be *aware* of the physical inability to perform the duties of the job prior to conform to the statutory exception. In *Buckner*, discussed above, the employee admitted in deposition that at the time she was terminated, she was physically unable to perform her job duties.⁸⁸ Despite this statement, the court determined that because the employer had not terminated her for “inability to perform her job duties,” but had asserted instead that the plaintiff was fired for “loitering,” the statutory exception did not relieve the employer of liability.⁸⁹ The implication is that for an employer to claim the statutory exception, not only does the employee have to be physically incapable of performing her former job duties at the time of the termination; the employer must terminate her *for the reason* of the incapacity. The knowledge of physical inability might require the employer to ask about or be aware of an employee’s permanent disability when the employee is released to return to work, or require a physical abilities test before allowing the employee back to work.⁹⁰

EMPLOYER’S CHECKLIST

The “significantly motivated” standard coupled with the burden of production of a non-retaliatory reason for termination places the burden of compliance with 85 O.S. §341 squarely on the shoulders of the employer. An attorney representing a business should advise his client/employer to take the following steps to

reduce exposure to workers’ compensation retaliation claims:

- 1) Train managers and supervisors on how to react if an employee claims an injury; *i.e.*, have and execute a plan for medical treatment/evaluation of the employee; consider post-accident drug testing; file a Form 2, notify upper management; notify the employer’s insurer; be in contact with the employee.
- 2) Instruct managers and supervisors to interact appropriately with employees that have filed a workers’ compensation claim; *i.e.*, work with the employee to schedule medical appointments, communicate to determine when the employee is likely to return to work; refrain from threatening or derogatory comments.
- 3) Communicate with the insurance company and the employee regarding light duty work, releases to return to work and permanent disability.
- 4) Consider setting up a procedure where employees can report retaliation of any kind.
- 5) Train managers and supervisors about avoiding retaliation and the risk of retaliation claims.
- 6) Check in with returning employees to determine whether they perceive or are experiencing retaliation.

CONCLUSION

Every employer who has an employee with a comp claim and every employee injured on the job is at risk for retaliation. Oklahoma’s workers’ compensation retaliation law is a highly litigated, fact-intensive inquiry, and the damages for non-compliance can be significant.⁹¹ Thus, when an attorney is faced with a question regarding the possibility of workers’ compensation retaliation, she should keep one eye on the law and the other eye on practical considerations to frame the advice given.

What would you have told the business client mentioned at the beginning of this article? Answers may vary from lawyer to lawyer but the advice to the first client is “Firing someone because you fear an additional comp claim is likely to get you sued (probably successfully) under the retaliatory discharge statute. ‘I wouldn’t do it.’” To the second

client's question "Can I sue and win?" The answer is "Maybe. If you can prove the downturn in business wasn't the real reason for the layoff, and that in some sense you were being picked on because of your comp claim, you may have a suit."

1. 85 O.S. §§5-6 were repealed, effective Aug. 26, 2011. The sections were effectively replaced by Section 341 of Title 85, which reads as follows:

- A. No employer may discharge or, except for nonpayment of premium, terminate any group health insurance of any employee because the employee has in good faith:
 - 1) Filed a claim;
 - 2) Retained a lawyer for representation regarding a claim;
 - 3) Instituted or caused to be instituted any proceeding under the provisions of this act;
 - 4) Testified or is about to testify in any proceeding under the provisions of this act; or
 - 5) Elected to participate or not to participate in a certified workplace medical plan as provided in this act.
- B. No employer may discharge any employee during a period of temporary total disability solely on the basis of absence from work.
- C. After an employee's period of temporary total disability has ended, no employer shall be required to rehire or retain any employee who is determined to be physically unable to perform assigned duties. The failure of an employer to rehire or retain any such employee shall not be deemed a violation of this section.
- D. No employer may discharge an employee for the purpose of avoiding payment of temporary total disability benefits to the injured employee.
- E. An employer which violates any provision of this section shall be liable in a district court action for reasonable damages, actual and punitive if applicable, suffered by an employee as a result of the violation. An employee discharged in violation of the Workers' Compensation Code shall be entitled to be reinstated to his or her former position. Exemplary or punitive damage awards made pursuant to this section shall not exceed \$100,000. The employee shall have the burden of proof by a preponderance of the evidence.

*There were few substantive changes:

- 85 O.S. §341 uses the word "employer" in place of "person, firm, partnership, corporation, or other entity" former used in 85 O.S. §§5-6.
- 85 O.S. §341(A)(5) replaces the reference to Section 14 in 85 O.S. §5 (regarding certified workplace medical plans) with a reference to the "act."
- 85 O.S. §341(E) deletes the reference to Section 29 in 85 O.S. §6 and states that an employer who violates the provision of the section shall be liable...
- 85 O.S. 341(E) specifies the burden of proof upon the employee to be "by a preponderance of the evidence."

2. 85 O.S. §341.

3. *Id.*, part B.

4. *Id.*, part C.

5. www.macmillandictionary.com/dictionary/british/discharge.

6. *Wilson v. Hess-Sweitzer & Brant Inc.* 1993 OK 156, 864 P.2d 1279, 1283-84.

7. *Wilson, Id.*; *Buchanan v. Sherrill*, 51 F.3d 227, 229 (10th Cir.1995); *Green v. Bd. Oklahoma County Commissioners*, 472 F.3d 794, 803 (10th Cir.2007).

8. See <http://www.owcc.state.ok.us/Forms.htm>.

9. See *Buckner v. Gen. Motors Corp.*, 1988 OK 73 ¶¶ 9-11, 760 P.2d 803, 806; See also *Barber v. Payless Cashways Inc.*, 1990 OK CIV APP 10 ¶ 4, 787 P.2d 101; *Williams v. Universal Enters. LLC*, No. CIV-07-0801, 2008 U.S. Dist. LEXIS 45147 (W.D. Okla., June 9, 2008); *Carter v. Veni Vidi Vici*, No. 07-CV-325, 2008 U.S. Dist. LEXIS 27970 (N.D. Okla., April 7, 2008).

10. *Buckner, Id.*

11. *Zaragosa v. Oneok Inc.*, 1984 OK CIV APP 53, ¶ 13, 700 P.2d 662.

12. *Id.*

13. *Bryant v. Am. Airlines Inc.*, No. 02-5106, 75 Fed. Appx. 699, 702, 2003 U.S. App. LEXIS 17959 (10th Cir., Aug. 27, 2003).

14. *Buckner v. Gen. Motors Corp.*, 1988 OK 73 ¶¶ 9-11, 760 P.2d 803, 806 (underline added).

15. *Id.*

16. *Id.*

17. *Id.*

18. *Wallace v. Halliburton Co.*, 1993 OK 24, 850 P.2d 1056, 1058 (emphasis added).

19. *Blackwell v. Shelter Mut. Ins. Co.*, 109 F.3d 1550, 1554 (10th Cir.1997); *Elzey v. Forrest*, 1987 OK 58, ¶ 6, 739 P.2d 999, 1003.

20. *Thompson v. Medley Material Handling Inc.* 1987 OK 2, 732 P.2d 461, 464.

21. *Thompson, Id.* at ¶ 2.

22. *Thompson, Id.* at ¶ 10.

23. *Taylor v. Cache Creek Nursing Centers*, 1994 OK CIV APP 160, 891 P.2d 607, 610.

24. *Taylor, Id.*

25. *Gussa v. J. Morris and Associates Inc.*, 2000 OK CIV APP 50, ¶ 2, 12 P.3d 473, 474; *Wallace v. Halliburton Co.*, 1993 OK 24, ¶6, 850 P.2d 1056, 1059.

26. *Estrada v. Port City Props. Inc.*, 2007 OK CIV APP 23, 158 P.3d 495, 499 (citing cases).

27. *Elzey*, 1987 OK 58, at ¶ 12.

28. *Id.*

29. *Ziegler v. J-M Manufacturing Co. Inc.* No. 10-CV-0014, 2010 U.S. Dist. LEXIS 125690 (N.D. Okla., Nov. 29, 2010).

30. *Id.*

31. *Estrada v. Port City Properties Inc.*, 2007 OK CIV APP 23, ¶ 6, 158 P.3d 495.

32. *Estrada, Id.* at ¶¶ 16-18.

33. *Thompson*, 732 P. 2d at 464.

34. *Thompson, Id.*; *Ziegler, Id.* at *37-38.

35. *Wilbanks v. Nordam Group, Inc.* No. 09-CV-0572, 2010 U.S. Dist. LEXIS 113402 *61 (N.D. Okla., Oct. 25, 2010).

36. *Wilbanks, Id.*

37. *Colbert v. Okla. Spine Hosp. LLC*, No. 09-1356, 2010 U.S. Dist. LEXIS 102651 *18-19 (W.D. Okla., Sept. 27, 2010).

38. *Colbert, Id.*

39. *Carver v. Physician's Group PLLC*, No. CIV-08-195, 2009 U.S. Dist. LEXIS 45635 *8-9 (W.D. Okla., May 27, 2009).

40. *Carver, Id.*

41. *Gussa v. J. Morris & Assoc. Inc.*, 2000 OK CIV APP 50, 12 P.3d 473, 474-75.

42. *Gussa, Id.*

43. *Wallace v. Halliburton Co.*, 1993 OK 24, 850 P.2d 1056.

44. *Wallace, Id.*

45. *Wallace, Id.*

46. *Wallace, Id.*

47. *Wallace, Id.*

48. *Wallace, Id.*

49. *Pettitt v. Dolese Bros.*, 1997 OK CIV APP 46 ¶¶ 7, 9, 943 P.2d 161.

50. *Pettitt, Id.* at ¶¶ 6-9.

51. *Wallace*, 1993 OK 24 at ¶ 18; see inset table, *supra*.

52. See n.9, *supra*.

53. *Estrada*, 2007 OK CIV APP 23, ¶ 16 (*Estrada I*)

54. *Estrada I, Id.*

55. *Estrada I, Id.*

56. *Estrada v. Port City Properties Inc.*, 2011 OK 30, ¶ 10. (*Estrada II*)

57. *Estrada, Id.* at ¶ 12 (*Estrada II*).

58. *Thornburg v. Frac Tech Servs.*, 709 F.Supp. 2d 1166, 1175; (E.D. Okla., April 21, 2010).

59. *Id.*

60. *Id.*

61. *Elzey, supra*, n.19.

62. *Thompson v. Medley Material Handling Inc.*, *supra*, n.20.

63. *Id.* at ¶ 10.

64. *Delgado v. Tom Kelly & Assocs.*, No. 06-CV-0004, 2006 U.S. Dist. LEXIS 92589 *23-25 (N.D. Okla., Dec. 20, 2006).

65. *Delgado, Id.*

66. *Redricks v. Industrial Vehicles Int'l. Inc.*, 2002 OK 13 ¶ 3, 45 P.3d 416.

67. *Redricks, Id.* at ¶ 9.

68. *Redricks, Id.*

69. *Hopkins v. Seagate*, 30 F.3d 104 (10th Cir.1994).

70. *Hopkins, Id.* at 105.

71. *Hopkins, Id.* at 107.

72. *Glasco v. Okla. Dept. of Corrections*, 2008 OK 65, 188 P.3d 177.

73. *Glasco, Id.* at ¶ 6 (discussing 74 O.S. §840-2.21(D)).

74. *Glasco, Id.* at ¶ 17.

75. *Glasco, Id.*

76. *Kennedy v. Builders Warehouse Inc.*, 2009 OK CIV APP 32 ¶ 22, 208 P.3d 474.

77. *Id.*

78. *Id.* at ¶ 3.

79. *Id.*

80. *Mosley v. Truckstops Corp. of America*, 1993 OK 79, 891 P.2d 577.

81. *Mosley, Id.* at ¶ 6.

82. *Id.* at ¶ 8.

83. *Id.* at ¶ 16.

84. *Id.*

85. *Elzey v. Forrest*, 1987 OK 58, 739 P.2d 999.

86. *Taylor v. Cache Creek Nursing Centers*, 1994 OK CIV APP 160, 891 P.2d 607, 610.

87. *Id.*

88. *Buckner v. General Motors Corp.*, 1988 OK 73 ¶ 23, 760 P.2d 803.

89. *Id.*

90. An employer should also comply with the Americans with Disabilities Act in its requirements or possible accommodations for an employee returning to work with a disability.

91. See 85 O.S. §341(E), which allows remedies of “reasonable damages, actual and punitive if applicable, suffered by an employee as a result of the violation. An employee discharged in violation of the Workers’ Compensation Code shall be entitled to be reinstated to his former position. Exemplary or punitive damage awards made pursuant to this section shall not exceed \$100,000. The employee shall have the burden of proof by a preponderance of the evidence.”

ABOUT THE AUTHOR



Leah Avey is an associate with the firm of Rubenstein & Pitts PLLC. She graduated with honors from Oklahoma City University School of Law in 2007. Prior to her work in law, she was employed in the human resources and employee benefits areas. She is admitted to practice in Oklahoma, the Western District of Oklahoma and the 10th Circuit Court of Appeals.

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The Basics of Unemployment

By Jessica Sherrill

In dealing with employment, we always hope we hired well and that our employees will succeed. But, sometimes, it starts bright and ends bleak. With the end of any employment relationship, there is always the possibility of a claim for unemployment.

Unemployment insurance or unemployment compensation was a concept created during the Great Depression in 1936 as part of the Social Security Act.¹ The purpose was to help the American people stay afloat in tough times.² It was and still is not meant to replace what a person would earn in wages. It should help cover some of the expenses one might have, such as a mortgage payment.

In the past few years, unemployment compensation has become a hot topic for both employers and the unemployed as we have had a slump in our economy. What is frustrating for most who deal with unemployment on either side is a frequent misunderstanding of the state unemployment law. A few common misconceptions about unemployment are:

Myth #1: She quit, so she *can't* get unemployment.

Myth #2: He was fired, so he *can* get unemployment.

Myth #3: *Everybody* who files for unemployment gets it.

All of these are false. Here is why:

TYPES OF CLAIMS AND BURDEN OF PROOF

Because the unemployment process is all about how someone became unemployed (or as the Oklahoma Employment Security Commission (OESC) terms it, "separated"), it only seems natural that the ways a person becomes unemployed are categorized. In all Oklahoma unemployment claims, it is the OESC that is the decision-maker. The OESC has delineated based on federal guidance three types of claims for unemployment: Misconduct, Voluntary Quit and Lack of work.

Depending on each type of claim, the burden of proof is assigned to either the claimant or the employer. Basically, whichever is the moving party to cause the separation has the responsibility of proving that it was for a good reason.

Type of Separation	Burden of Proof	Primary focus
Misconduct	<i>Employer</i>	<i>the reason(s) for being dismissed</i>
Voluntary Quit	<i>Claimant</i>	<i>the reason(s) for quitting</i>
Lack of Work	<i>Employer</i>	<i>whether there was work to perform</i>

MISCONDUCT

When the employer dismisses an employee “for cause,” misconduct will often apply. When a claim for unemployment reaches the employer and states that the reason for separation was “misconduct,” as chosen by the claimant when filing the claim, then the employer is responsible for explaining to the OESC why it decided to terminate the claimant’s employment.³ In 2010, there were 45,981 claims in Oklahoma that were categorized as misconduct.⁴ Of these, the claimant prevailed 62 percent of the time.⁵

Depending upon the reasoning and support for the employer’s decision, the OESC will decide whether benefits are allowed and paid to the claimant or denied and not. The important concept for employers to remember is that, although we are considered an at-will state, a need for the specific reason(s) for termination of employment will arise in an unemployment claim. This often throws employers off guard, especially when written warnings and evaluations are requested to decide the claim. It should be known that frequent, written employment record keeping is most helpful to employers in these claims.

When misconduct is found, there is likely an intentional deviation from the employer’s expectations by the claimant. As an example, an employee who frequently reports to work late despite many written warnings and a clear indication that continuation of tardiness will result in termination would be likely considered misconduct. In this example, the claimant has sole responsibility for reporting to work on time each day, and despite warnings, claimant did not improve. To contrast, benefits would be allowed for an absence of misconduct when an employee “just wasn’t working out,” as the implication is that the employee’s inability to do the job was unintentional.

VOLUNTARY QUIT

In a voluntary quit claim, it was the employee who made the decision to resign and separate from the employer, therefore, it is the claimant who has the burden of proof to show there existed “good cause”⁶ or “compelling family circumstance”⁷ to quit. Last year, there were close to 17,000 claims of this nature with claimants being successful only 16 percent of the time.⁸

In this type of claim, the main objective is to find out exactly why the claimant resigned. As

mentioned above, the claimant would have a successful claim if it’s proven that there was “good cause” for quitting.⁹ For instance, a claimant who resigns because of a supervisor’s continual verbal abuse that doesn’t improve after the claimant reported concerns to the supervisor and up the ladder would likely be allowed benefits for voluntary resignation for good cause. To contrast, a claimant who quits to accept other employment would not have good cause.

On the issue of “compelling family circumstances,”¹⁰ a claimant would be allowed benefits if, for example, the claimant resigned for medical reasons,¹¹ to escape domestic violence,¹² or to relocate with a spouse’s employment elsewhere.¹³ Our state unemployment law is very clear to delineate these areas of exception.

The resignation letter itself becomes very important in these matters. There is always an expectation that the resignation will shed light on the reason the claimant resigned. In the absence of a clearly stated reason, the OESC would then be charged to collect statements from both sides to determine what the employer believed to be the reason as well as the claimant’s stated reason for quitting. As in all claims, written documentation is more persuasive than anything either side verbalizes.

LACK OF WORK

Lack of work claims are exactly as it sounds — there is no work to be completed. These often arise as a result of some sort of reduction in force. When there is truly no other reason for the employee to become separated other than through budgetary shortfalls, the claimant is allowed benefits. This category is the largest majority of claims the OESC handled last year. Close to 137,000 claims were for lack of work,¹⁴ and most likely, all will be allowed unless there are other disqualifying issues.

CONCLUSION

Claims for unemployment have seen a sharp incline in the previous years. When both the claimant and employer fully participate in the process by providing timely, accurate and detailed information with the focus being on what is needed to decide the claim, the OESC is able to fulfill its responsibility to balance the important and sometimes competing tasks of keeping our unemployed financially afloat while also ensuring that benefits aren’t paid

out automatically to the detriment of our state's employers.

1. Act of Aug. 14, 1935, c. 531, 49 Stat. 620, 42 U.S.C., c. 7 (Supp.II); 42 U.S.C.A. §§301 - 1305.

2. "Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this state. Unemployment is therefore a subject of general interest and concern which requires appropriate action by the Legislature to prevent its spread and to lighten its burden which now so often falls with crushing force upon the unemployed worker and his family." 40 O.S. §1-102.

3. 40 O.S. §2-406; *Vester v. Board of Review of the OESC*, 697 P.2d 533 (Okla. 1985).

4. Statistics provided by the OESC at www.ok.gov/oesc_web/Services/Unemployment_Insurance/Claim_Statistics.html.

5. *Id.*

6. 40 O.S. §2-405.

7. 40 O.S. §2-210.

8. Statistics provided by the OESC at www.ok.gov/oesc_web/Services/Unemployment_Insurance/Claim_Statistics.html.

9. 40 O.S. §2-405.

10. 40 O.S. §2-210.

11. 40 O.S. §2-210(4)(a).

12. 40 O.S. §2-210(4)(d).

13. 40 O.S. §2-210(4)(c).

14. Statistics provided by the OESC at www.ok.gov/oesc_web/Services/Unemployment_Insurance/Claim_Statistics.html.

ABOUT THE AUTHOR



Jessica Sherrill earned her undergraduate degree in psychology from OU and J.D. from OCU School of Law. She has served as a staff attorney for Oklahoma State School Boards Association and the director of Oklahoma Public Schools Unemployment Compensation Account since August 2008. She also presents across the state on various topics relating to school and unemployment law. She is a Rotarian and a graduate of Leadership OKC LOYAL Class III.

NOTICE OF HEARING ON THE PETITION FOR REINSTATEMENT OF BART CHARLES CRAYTOR, SCBD #5753 TO MEMBERSHIP IN THE OKLAHOMA BAR ASSOCIATION

Notice is hereby given pursuant to Rule 11.3(b), Rules Governing Disciplinary Proceedings, 5 O.S., Ch. 1, App. 1-A, that a hearing will be held to determine if Bart Charles Craytor should be reinstated to active membership in the Oklahoma Bar Association.

Any person desiring to be heard in opposition to or in support of the petition may appear before the Professional Responsibility Tribunal at the Oklahoma Bar Center at 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma, at 10:00 a.m. on **Tuesday, November 8, 2011**. Any person wishing to appear should contact Gina Hendryx, General Counsel, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, Oklahoma 73152, telephone (405) 416-7007.

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FAMILY PRACTICE MONTAGE XV

SELECTED TOPICS FOR PRO BONO ATTORNEYS

Monday, October 24, 2011

Oklahoma Bar Center, Emerson Hall, 1901 N. Lincoln Blvd., Oklahoma City, Oklahoma
MCLE Credit of 6.0 Hours, Including 1.0 hours of ethics

PROGRAM AGENDA

Moderator: Richard J. Vreeland

8:30-8:55 Registration & Continental Breakfast

8:55-9 Welcome

9-9:50 Recent Updates in the Adoption Code
Tina Peot, of Petersen, Henson, Meadows, Pecore & Peot PC, Norman.

9:55-10:45 HB 1603, "Deployed Parents Custody and Visitation Act"
Kathryn McClure, Legal Assistance Attorney, Office of the Staff Judge Advocate, U.S. Army

10:50-11:40 The Celebrity, the Friend and the Client, One Attorney's Journey to Getting the Dynamics of Domestic Violence, **Karen Pepper Mueller**, Attorney, Oklahoma City.

11:40-1 Lunch (on your own)

1-1:50 Granny and the New "Best Friend"
Richard Goralewicz, Staff Attorney, Legal Aid Services of Oklahoma Inc.

1:55-2:45 The Money Trap: Financial Obstacles Victims Face When Ending a Relationship
Robin Wilson, Staff Attorney, Legal Aid Services of Oklahoma Inc.

2:55-3:45 Recent Developments 2011 (1 hour ethics credit)
Travis Pickens, Ethics Counsel, Oklahoma Bar Association

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Questions? Cindy Goble 405-488-6823 or cindy.goble@laok.org. You may also mail or fax your registration form to:

Cindy Goble, Legal Aid Services of Oklahoma Inc., 2901 N. Classen Blvd, Ste 112, Oklahoma City, OK 73106, Fax: (405) 488-6763



Workers' Compensation Hearings at the Oklahoma Department of Labor

By Walter Jenny Jr.

In Oklahoma, most employers are required to provide workers' compensation insurance coverage for their employees. Workers' compensation performs a dual role — ensuring compensation and medical care for employees who are injured in the course of their employment while minimizing the potential liability of employers by insulating them from civil lawsuits.

The Oklahoma Department of Labor (ODOL) levies civil penalties against non-exempt employers who do not provide workers' compensation insurance for their employees. If the breach is willful, the employer has committed a misdemeanor and may face a fine, jail time or both. The purpose of this article is to review the legal requirements, the role and process of the Department of Labor, and expectations if you or your clients receive a citation from the agency.

THE ROLE OF THE OKLAHOMA DEPARTMENT OF LABOR

Under Oklahoma law, compensation is to be paid to an employee for injuries arising out of and in the course of their employment. 85 O.S. Supp. 2001 §2.1. As a general rule, employers in Oklahoma are required to provide workers' compensation insurance coverage for their employees. As with any rule, of course, there are exceptions, which will be addressed in a later section.

The Oklahoma Department of Labor has six Employment Standards Division¹ employees — two in Tulsa and four in the agency's main

office in Oklahoma City — with the title of Labor Compliance Officers (LCOs) who are tasked with investigating and citing employers who fail to comply with the law.

During the past five years, ODOL has opened 6,929 cases and issued 1,313 citations for noncompliance. Almost \$3 million in penalties have been assessed against noncompliant employers during that time, or an average of about \$2,268 per employer. Ninety-five percent of the citations issued are first violations, indicating ODOL's efforts have a significant impact in securing compliance with the law going forward.

WHAT IS AN EMPLOYER? WHO IS AN EMPLOYEE?

Section 3(8) and (9) of Title 85 define the terms "employer" and "employee" for the purposes of the Workers' Compensation Act (the act). Sole proprietors and members of a partnership are generally not considered employees, but may elect to be included by endorsement under the insurance policy. The same is true for a member of a limited liability company or a "stockholder-employee" of a

corporation owning 10 percent or more of the capital or stock of the business, respectively.²

The term “employee” does not include those who provide voluntary services and receive no wages other than meals, transportation, lodging or reimbursement for incidental expenses. Also excluded are voluntary participants in drug or alcohol rehab programs or participants in sheltered workshops certified by the U.S. Department of Labor.

Truck drivers merit close attention under the law. Owner-operators who own or lease a truck or semi-tractor for hire are not considered employees if a) they actually operate the vehicle, and b) the person contracting for their services is not the lessor of the vehicle. The same applies to truck drivers who transport new or used vehicles, also known as “drive-away owner-operators.” 85 O.S. Supp. 2001 §3(9) and (10). However, in either case they can also elect to be covered as sole proprietors.

Whether an employer/employee relationship exists under the act depends largely on the employee’s status or role in relation to the business.

The guiding case used by ODOL in determining whether workers are employees or independent contractors is *Page v. Hardy*, 1958 OK 293, 334 P.2d 782. In that case, the Supreme Court recognized that

“an independent contractor is one who engages to perform certain service for another, according to his own manner and method, free from control and direction of his employer in all matters connected with the performance of the service, except as to the result or product of the work. In other words independent contractor denotes any person to whom the revising or repair of a chattel is entrusted in such a way as to give him charge and control of the details of doing the work.”

The court went on to enumerate elements to be considered in distinguishing between an independent contractor and a servant:

- a) the nature of the contract between the parties, whether written or oral;
- b) the degree of control which, by the agreement, the employer may exercise on the details of the work or the independence enjoyed by the contractor or agent;

c) whether or not the one employed is engaged in a distinct occupation or business and whether he carries on such occupation or business for others;

d) the kind of occupation with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision;

e) the skill required in the particular occupation;

f) whether the employer or the workman supplies the instrumentalities, tools and the place of work for the person doing the work;

g) the length of time for which the person is employed;

h) the method of payment, whether by the time or by the job;

i) whether or not the work is a part of the regular business of the employer;

j) whether or not the parties believe they are creating the relationship of master and servant; and

k) the right of either to terminate the relationship without liability.

Id., at ¶10.

ODOL’s LCOs weigh these factors in determining whether a worker is an independent contractor or an employee who, absent exemptions, should be covered by workers’ compensation insurance. Many cases fall into gray areas, bearing characteristics of both. The LCO seeks to gather enough information for the scales to tip to one side or the other. As a result, cooperation from the well-intentioned employer is more likely to help the employer’s cause than to hurt it.

EXEMPTIONS TO COVERAGE

Most of the coverage exemptions are found in Sections 2.1 through 2.7, as well as Section 3, of the act.

Domestic servants or casual workers in a private household in which the gross annual payroll for such workers in the preceding calendar year was less than \$10,000 are exempt. 85 O.S. Supp. 2001 §2.1(1). Similarly, agricultural or horticultural workers employed in a business with a gross annual payroll in the preced-

ing year for such workers of less than \$100,000 are also exempt. 85 O.S. Supp. 2001 §2.1(2).

These exemptions create bookkeeping challenges for some employers. For example, a private household that paid \$9,500 in 2008 but paid \$10,500 in 2009 should purchase coverage effective Jan. 1, 2010. If that payroll drops to \$6,000 during 2010, the employer needs to keep coverage in place until at least Dec. 31, 2010, and is not required to insure their employees in 2011, even if the payroll exceeds \$10,000 in 2011. LCOs may require an extensive review of multiple years of payroll records to document whether, and when, the employer was exempt from coverage requirements.

The agricultural/horticultural exemption also provides some challenging issues in Oklahoma. As with domestic servants, records must be maintained over the years to track the gross annual payroll. Moreover, the terms “agriculture” and “horticulture” are not defined in the act.³ Finally, agricultural workers who are not engaged in the operation of motorized machines are specifically exempt from the coverage requirements. 85 O.S. Supp. 2001 §2.2.

Most of the pertinent cases handed down by our courts have been appeals from workers’ compensation claims. In most of those cases, claimants were injured on farms while they were not using motorized machinery, although they might from time to time use motorized equipment during the course of their employment. See *Gillespie v. Sathers Family Partnership*, 2009 OK CIV APP 108, __ P.3d __; *Virginia Lay Lawn Service v. Cain*, 1994 OK CIV APP 5, 868 P.2d 1322; and *Whitworth v. Melvin West/West Dairy*, 1990 OK CIV APP 35, 798 P.2d 228. Presumably an employee injured while using the motorized equipment on a farm would not be exempt from coverage. In *Gillespie*, for example, the court specifically held “the exemption from coverage applies *because Gillespie was not engaged, or assigned, as any type of motorized machine operator at the time of her injury*” (emphasis added). Consequently agricultural and horticultural employers should secure workers’ compensation insurance coverage if their employees use motorized equipment, even if it appears at first blush that they would usually be exempt from coverage requirements.

Licensed real estate sales associates or brokers who are paid on a commission basis are also exempt from coverage. 85 O.S. Supp. 2001 §2.1(4). Also exempt is “any person who is providing

“The agricultural/horticultural exemption also provides some challenging issues in Oklahoma.”

services in a medical care or social services program, or who is a participant in a work or training program, administered by the Department of Human Services, unless the department is required by federal law or regulations to provide workers’ compensation for such person. This section shall not be construed to include nursing homes.” 85 O.S. Supp. 2001 §2.4.⁴

Another challenging exemption is found in Section 2.6, which was amended in 2009. Exempt from the act is any employer “with five or less total employees, all of whom are related by blood or marriage to:

1. The employer if the employer is a natural person;
2. A general or limited partner if the partnership is the employer;
3. The member of an association or limited liability company responsible for forming the association or limited liability company if the association or limited liability company is the employer; or
4. An incorporator of a corporation if the corporation is the employer.”

The spouse of any employer who is exempt from the Workers’ Compensation Act is also exempt. 85 O.S. Supp. 2001 §2.6 (B).

All of the employees must be related by blood or marriage under the act; the inclusion of just one employee who is not a relative spoils the exemption. But the statute does not define, by degrees of consanguinity, what the relationship may be. Is a first cousin sufficient? If a first cousin, why not a second cousin, or a second cousin once removed, or the spouse of a second cousin once removed? What about a first cousin’s spouse, or a first cousin’s step-child? What if a son and his wife are working in the family business, they divorce, the son leaves with his new girlfriend, and the ex-wife remains employed? What about a daughter and her common-law husband/live-in boy-

friend? Each situation invoking Section 2.6(B) must be reviewed on a case-by-case basis, and a judgment call made as to whether it satisfies the legislative intent.

Subsection 4 raised additional concerns. Quite often the person who incorporates a corporation is an attorney or CPA who has no business management connection to the business or its principals. Similarly, in Subsection 3 the person responsible for forming an association or limited liability company may not be related to any of the employees; further, if two or three unrelated individuals acted in concert to form the business, which one is "responsible" for the purposes of this subsection? Identifying "the incorporator" or "responsible member" for the purpose of compliance with this amendment may depend on interviews with corporate officers as well as paperwork filed with the secretary of state.

Finally, any youth sports league which qualifies as a 26 U.S.C. §501(c)(3) or (4) exemption from federal income taxation is exempt from the act. 85 O.S. Supp. 2001 §2.7. Proof of 501(c)(3) or (4) status is usually sufficient to satisfy ODOL's requirements.

THE INVESTIGATIVE PROCESS

Cases come to ODOL through a variety of sources. If a Form 3⁵ is filed at the Workers' Compensation Court and no insurance carrier is identified, ODOL is notified and a case file is opened. Whistleblowers may also bring non-coverage to the attention of ODOL; they often include current or past employees or competitors. In addition, cases in ODOL's Wage and Hour Unit often result in workers' compensation investigations, especially if the employer contends a claimant is an independent contractor and ODOL determines otherwise. If insurance carriers receive or issue a cancellation of existing coverage, ODOL is notified. Employers who have committed a first violation will be routinely checked to determine if they have obtained and maintained coverage in subsequent months.⁶ In all cases, the opening of an investigative file does not mean ODOL has concluded a violation has occurred. Staff will proceed with due diligence to determine if coverage exists, or if the employer enjoys an exemption.

LCOs have a number of resources at their disposal. For example, ODOL has access to a nationwide database provided by the National Council on Compensation Insurance Inc. NCCI

maintains the nation's largest database of workers' compensation insurance information and has been designated by the Oklahoma insurance commissioner as the official rating and statistical organization for Oklahoma. LCOs also check records of the Oklahoma Employment Security Commission to determine whether a respondent has reported employees, and, if so, how many and during what calendar quarters.

After a case has been opened, and it appears to an LCO that a respondent may be out of compliance, the LCO will issue a pre-citation letter to the respondent. The "pre-cite" directs the respondent to provide, within 10 days, a certificate of workers' compensation insurance with dates of coverage. If no coverage exists, the respondent is directed to provide payroll, business and tax records upon which a determination can be made. Business records will include any contracts, insurance policies or other business records of subcontractors or independent contractors who may be mistaken for employees. If an employer ignores the pre-citation letter, the agency issues a subpoena *duces tecum* for the same records.

If, after a review of all the evidence available, it appears to the LCO that a respondent is in violation, a citation is issued. The citation informs the respondent of the number of employees identified, the civil penalty rate (per employee), and the resulting amount of the civil penalty. It also informs the respondent of the date, time and place of the summary hearing at which the case will be heard.

Under 85 O.S. Supp. 2001 §63.1(A), an employer who fails to provide workers' compensation coverage "shall be liable for a civil penalty ... of not more than Two Hundred Fifty Dollars (\$250.00) per employee for a first offense." If the employer secures workers' compensation insurance within 30 days after receiving notice of the violation, the civil penalty is not to exceed \$75 per employee.

Because payroll counts change as employees come and go, ODOL interprets this statute to cover the total number of employees who were not covered by insurance. As a result, employers with a high turnover are at risk of a higher penalty than a company with a steady workforce, even if, on a daily basis, they maintain the same size crew. Part of the rationale behind this interpretation has been the fact that each of those employees has been exposed to a possi-

ble injury on the job without being covered by insurance. The statute provides no other guidance as to when a head-count should be taken for determining the civil penalty.

In many cases, unfortunately, an LCO may be left largely in the dark to make a decision. A respondent who refuses to communicate with an LCO during the investigative process runs the risk of alienating the hearing officer who is charged with making “a fair and equitable resolution of the violation.” 85 O.S. Supp. 2001 §63.2(A). There may be a simple misunderstanding of facts between the LCO and the employer that, if clarified at an early stage, could lead to a prompt and satisfying settlement that would avoid both an unnerving appearance at a hearing and commensurate legal fees.

APPEARING BEFORE THE DEPARTMENT OF LABOR

In addition to the provisions of the Administrative Procedures Act, ODOL utilizes a novel “summary hearing” codified at 85 O.S. Supp. 2001 §63.2. The summary hearing provides an opportunity to review the evidence and testimony of each side in a more informal setting than a formal individual proceeding under the APA. Over 95 percent of the cases heard annually are summary hearings.

Any attorney appearing at either a summary or formal hearing should first enter an appearance. There are no formal requirements; a letter or email will suffice as well as a more formal pleading. Once an entry of appearance has been filed, ODOL staff will communicate directly with legal counsel instead of the respondent. Conversely, ODOL staff will rarely work with an attorney on a case until some sort of entry of appearance has been received.

ODOL's LCOs are charged with conducting investigations and issuing citations, which consistently are a function of the number of employees times the statutory civil penalty rate. Hearing officers, on the other hand, are charged with taking into consideration mitigating circumstances, determining “a fair and equitable resolution of the violation,” and, if warranted, assessing the civil penalty “commensurate with the violation so adjudged.” 85 O.S. Supp. 2001 §63.2(A). Summary and formal hearings are conducted before private attorneys who contract with ODOL to serve as impartial administrative law judges.⁷

ODOL's workers' comp dockets are held twice a month, with a docket in Tulsa once every two months. All dockets are digitally recorded. A summary hearing begins with a call of the docket to determine which respondents are present. Each case begins with the presentation of a summary by ODOL's legal counsel of the facts on which the LCO made the determination. The respondent is then given an opportunity to explain their version of the story. This provides the hearing officer with a clear view of what issues exist — does the respondent believe his workers are independent contractors, or did they believe they were exempt from coverage requirements, or were they under the mistaken belief that they had coverage? Sometimes there is a legitimate dispute about how many workers should be counted, especially if an employer has a mix of genuine employees and independent contractors.

Any individuals, including the LCO, are placed under oath, and may be examined by legal counsel, the unrepresented respondent or the hearing officer.

Documents may be presented to support their respective positions. Authentication of documents may be challenged, but hearsay is freely considered at this stage. The objective is to give the hearing officer a clear understanding of the information available to the LCO in making the decision.⁸ A respondent may testify that his insurance agent told him he didn't need workers' comp insurance without calling the agent as a witness or presenting documentary corroboration; if the case proceeds to a formal hearing, however, it may be necessary to call the insurance agent as a live witness to confirm or discredit such testimony.

The hearing officer “may remit, mitigate or negotiate” the LCO's assessment. In doing so, the hearing officer may take into consideration “the appropriateness of such penalty in light of the life of the business of the employer charged, the gravity of the violation, and the extent to which the employer ... has complied with the provisions of section 61 of (Title 85) or has otherwise attempted to remedy the consequences of the said violation.” 85 O.S. Supp. 2001 §63.1(B).

In almost every case, the hearing officer will render a decision at the conclusion of a summary hearing, and the respondent receives a copy. The order includes findings of fact and conclusions of law, and informs the respondent

of appeal rights under the law. On rare occasions, the hearing officer may take a case under advisement and issue an order days or weeks after the hearing.

Employers are also afforded an opportunity to “provide additional mitigating circumstances or evidence to the hearing officer” within 10 days of the assessment.

A respondent may appeal the decision of the hearing officer by filing, within 30 days of the date of assessment, a written request for a formal hearing. 85 O.S. Supp. 2001 §63.2(B). Formal hearings, held on the same docket as summary hearings, are conducted with the higher evidentiary requirements and formalities of the APA. Formal hearings are heard *de novo*, although the administrative law judge may take into consideration the order rendered at the summary hearing. Respondents may appeal from a formal hearing order within 30 days thereof under the auspices of the APA.

Unpaid final orders may be collected in district court as foreign judgments. ODOL also routinely files claims with the Oklahoma Tax Commission for income tax warrant intercepts, and pursues other collection remedies where appropriate.

To avoid hearings altogether, a respondent may enter into a “consent agreement” with the LCO to pay the assessment, either in lump sum or on a short payment schedule. A consent agreement constitutes an admission of a first violation and waives the respondent’s right to seek mitigation of the citation.

SECOND AND SUBSEQUENT VIOLATIONS

On occasion, respondents have more than one lapse of coverage. The penalty for second or subsequent offenses rises to \$1,000 per employee, with a cap of \$10,000 “for all related series of violations.” 85 O.S. Supp. 2001 §63.1(A). The statute does not elaborate on what constitutes a “related series of violations,” but as a general rule it seems reasonable to the department that a lapse of coverage on more than one occasion for the same reason would satisfy the definition. A bona fide dispute about whether a respondent was exempt from coverage requirements in the first instance, and a missed premium payment in a second instance, might constitute an “unrelated series of violations” that could waive the statutory cap. Whether two or more violations are relat-

ed rests in the sound discretion of the administrative law judge.

CEASE AND DESIST ORDERS

The most onerous penalty available to ODOL is the cease and desist order. If, after two offenses, an employer fails to obtain coverage within 30 days of the second offense, the commissioner of labor is required by law to order “the cessation of activities of an employer whose employees are not covered by workers’ compensation insurance.” 85 O.S. Supp. 2001 §63.1(B). If an employer has made application for insurance coverage and, through no fault of the employer, the application is still pending, the employer may continue doing business until a decision has been made on the application.

The commissioner’s order is enforceable in district court, which may issue an injunction without bond. Any subsequent violations of the district court order constitute contempt of court.

As a practical matter, a respondent against whom a cease and desist order has been imposed should shut down all operations immediately until insurance is secured, except as may be necessary to secure coverage. Once it is secured, a current certificate of coverage from their insurance carrier should be submitted to the commissioner. After ODOL verifies that insurance is in place, the cease and desist order will be lifted by the commissioner of labor.

CRIMINAL SANCTIONS

Any employer who willfully fails to provide required workers’ compensation insurance coverage commits a misdemeanor and may be fined up to \$1,000 or up to six months in county jail, or both. 85 O.S. Supp. 2001 §63.3(A). Two or more ODOL assessments in a three-year period constitutes *prima facie* evidence of willful violation of the law. 85 O.S. Supp. 2001 §63.3(B).

CONCLUSION

Part of ODOL’s mission is to ensure compliance with Oklahoma’s mandatory workers’ compensation insurance requirements. Employers are entitled to exemptions imbedded in the law, but cannot circumvent the intent of the law. ODOL strives to apply the law fairly, firmly and, where warranted, vigorously. A good understanding by businesses of their

legal obligations can help them avoid expensive pitfalls and penalties in the future.

The author wishes to acknowledge the assistance of Amy Cameron with the Oklahoma Department of Labor Information Technology office in the preparation of this article.

1. The Employment Standards Division also handles wage and hour and child labor cases.

2. The status of Native American tribes as employers is not directly discussed in the act. The policy applicable to them has largely been established by an Opinion of the Attorney General. "Federally recognized Indian tribes are not required to purchase workers' compensation insurance for their employees. Nevertheless, when a federally recognized Indian tribe has voluntarily purchased workers' compensation insurance to protect its employees, those employees may make claims against the insurance carrier in the Workers' Compensation Court. In such cases the court has jurisdiction to entertain such matters, and an insurer who has accepted premiums on the basis of the claimant's wages is estopped from denying coverage." 2006 OK AG 4. Because coverage is optional on the part of the tribe, the Department of Labor does not have jurisdiction to penalize a tribe for failure to provide coverage for its employees.

3. In *Sport O'Kings Farms v. Thomas*, 1990 OK CIV APP 75, 797 P.2d 1016, the Court of Civil Appeals adopted the following definition: "Agriculture, in the broad and commonly accepted sense, may be defined as the science or art of cultivating the soil and its fruits, especially in large areas or fields, and the rearing, feeding, and management of livestock thereon, including every process and step necessary and incident to the completion of products therefrom for consumption or market and the incidental turning of them to account." 2 Am.Jur. 395, cited in *Chapman v. Koenig*, 205 Okla. 402, 404, 238 P.2d 357, 358 (1951). The court concluded that the breeding and raising of thoroughbred horses for racing purposes did not constitute an agricultural activity for the purposes of this exception.

4. Section 2.4 is almost identical to Section 2.3, which referred to programs administered by the "Department of Institutions, Social and Rehabilitative Services," the agency's name from 1970 to 1980 when Section 2.4 was adopted. The last sentence concerning nursing homes was also added in 1980. It seems reasonable to infer that the Legislature intended to replace Section 2.3 with Section 2.4, although both sections officially remain in the statute books.

5. The Form 3 is the "Employee's First Notice of Accidental Injury and Claim for Compensation." Injured employees file the Form 3 with

the Oklahoma Workers' Compensation Court to begin their case. Upon receipt of the Form 3, court staff checks for a matching insurance carrier on their employer database. If no carrier is found, a referral is made to ODOL.

6. From 2006 through 2010, over 53 percent of ODOL's new cases were the result of Form 3 filings with no matching insurance coverage. Other sources included 17.6 percent from whistleblowers, 7.6 percent from wage and hour cases, 3.9 percent from follow-up compliance reviews and 3.75 percent from notifications of cancellations.

7. Section 63.2(A) of Title 85 provides that "a summary hearing shall be conducted by a hearing officer designated by the Commissioner of Labor." Because a summary hearing is not a full APA individual proceeding, ODOL is not required to use an administrative law judge or even an attorney for that purpose. However, the current practice is to use an administrative law judge for all dockets, largely because both summary and formal hearings are set on the same docket.

8. Counsel should not mistake this casual environment as a waiver of their ethical obligations. A summary hearing is a tribunal as contemplated by Rule 3.3, Oklahoma Rules of Professional Conduct. Clients and witnesses are under oath. Any attempts to commit or suborn perjury or present false evidence, once discovered, have been and will be referred to appropriate authorities for prosecution.

ABOUT THE AUTHOR



Walter Jenny served as assistant general counsel at the Oklahoma Department of Labor from 2007 to 2011. He served as an assistant attorney general for 11 years and was general counsel of the Oklahoma Department of Consumer Credit before joining ODOL in 2007. He is a graduate of the University of Washington and Oklahoma City University College of Law, where he received the American Jurisprudence Award in administrative law.



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Thompson v. North American Stainless

The U.S. Supreme Court Rules on Third-Party Retaliation Claims

By Kimberly Lambert Love and Robyn M. Funk

Employers can expect to see a new kind of Title VII retaliation claim after the Supreme Court's recent decision in *Thompson v. North American Stainless*, 562 U.S. ___, 131 S.Ct. 863 (2011). Eric Thompson and his fiancée (now wife) were both employed by North American when Thompson's fiancée filed a charge of discrimination with the Equal Employment Opportunity Commission alleging sex discrimination. Three weeks after North American received notice of the charge, the company terminated Thompson for performance problems.¹

After his termination, Thompson sued North American,² claiming the company had violated the anti-retaliation provisions of Title VII by terminating him in order to retaliate against his fiancée for filing her EEOC charge. The district court granted summary judgment in favor of North American, holding that Title VII does not permit third-party retaliation claims.³ The 6th Circuit reversed.⁴ However, after a rehearing *en banc*, a divided 6th Circuit affirmed the district court's grant of summary judgment. Specifically, the 6th Circuit held that Thompson was not protected by the anti-retaliation provisions of Title VII because he had not engaged in any protected activity himself.⁵

The U.S. Supreme Court granted certiorari, and in an opinion written by Justice Scalia, the court unanimously⁶ held that Thompson had a right to sue for retaliation. The court had "little difficulty" concluding that if the facts as alleged

by Thompson were true, Thompson's termination violated Title VII.⁷ In reaching this conclusion, the court relied on the broad standard set forth in *Burlington Northern & Santa Fe Railway Co. v. White*.⁸ In *Burlington Northern*, the court held that a plaintiff must show the alleged retaliatory conduct was "materially adverse" — meaning that a reasonable person may be dissuaded from making or supporting a charge of discrimination. Applying this standard to the facts in *Thompson*, the court held it was "obvious" that a reasonable worker might be dissuaded from engaging in protected activity if the worker knew that his fiancée would be terminated.⁹ In holding that third-party retaliation claims are actionable, the court declined to adopt a bright line rule regarding how far third-party retaliation claims may stretch. Instead, the court concluded that terminating "a close family member" will likely always dissuade a reasonable worker from engaging in

protected activity whereas “inflicting a milder reprisal on a mere acquaintance” will likely not.¹⁰ The court emphasized that Title VII’s anti-retaliation provision for judging harm must be objective and not based on a plaintiff’s subjective feelings.¹¹

Further, the second part of the court’s opinion answered the more difficult question of whether Thompson — who had not engaged in protected activity while employed — had standing to sue North American.¹² The court held that Thompson *could* bring a claim against North American because he was “an aggrieved person” within the meaning of Title VII, which seeks to protect employees from their employer’s unlawful actions.¹³ Specifically, the court reasoned that Thompson was in the “zone of interests” protected by Title VII because Thompson was an employee of North American.

“Prior to the court’s holding in *Thompson*, there was a disagreement among the various courts as to whether third-party retaliation claims were actionable.”

can and terminating him was North American’s intended means of harming Thompson’s fiancée — the employee who engaged in the protected activity.¹⁴ Thus, even though Thompson did not engage in protected activity himself, he could bring a retaliation claim against North American.

Prior to the court’s holding in *Thompson*, there was a disagreement among the various courts as to whether third-party retaliation claims were actionable.¹⁵ Indeed, district courts within the 10th Circuit were inconsistent on the issue.¹⁶ For instance, in *McKenzie v. Atl. Richfield Co.*,¹⁷ an employee filed a Title VII claim against his employer, alleging that the employer retaliated against him for sexual harassment claims made by his wife (also an employee). The District Court of Colorado recognized that the

employee’s claims were derivative in nature since he had not engaged in the protected activity himself. Nevertheless, the Colorado District Court allowed the employee to maintain the action.¹⁸ In contrast, in *EEOC v. Wal-Mart Stores Inc.*,¹⁹ the District Court of New Mexico determined that Title VII did not permit third-party retaliation claims. In *EEOC*, two adult children of a Wal-Mart employee sued Wal-Mart alleging that the company refused to hire them in retaliation for their mother’s protected activity. The EEOC urged the New Mexico District Court to recognize the third-party claims, but the court dismissed the claims finding that the plain language of Title VII did not permit claims by individuals who had not engaged in protected activity.²⁰

While *Thompson* makes clear that third-party retaliation claims are now cognizable, employers are left to guess how far a court will extend a retaliation claim given the fact the Supreme Court declined to establish a bright line test. For example, will courts extend *Thompson*’s holding to relationships such as co-worker friendships — an issue the court recognized but purposefully left unresolved? Indeed, at least one district court has extended the first part of *Thompson*’s holding to a co-worker friend situation. Specifically, the District Court for the District of Columbia allowed an employee to proceed past summary judgment on his retaliation claim where the employee alleged he had engaged in protected activity and his employer responded by threatening to fire his “best friend” co-worker.²¹

Thus, in light of *Thompson*’s unclear and potentially far-reaching scope, employers should review their anti-retaliation policies to ensure that the language is broad enough to prohibit third-party retaliation and should train supervisors to understand that retaliation against *any* employee is prohibited.

1. *Id.* at 867; see also 520 F.3d 644, 646 (6th Cir. 2008).

2. *Id.* at 867.

3. See 435 F. Supp. 2d 633 (E.D. Ky. 2006).

4. See 520 F.3d 644 (6th Cir. 2008).

5. See 567 F.3d 804 (6th Cir. 2009).

6. Justice Elena Kagan did not take part in the decision.

7. *Thompson*, 131 S.Ct. at 867.

8. 548 U.S. 53, 126 S.Ct. 2405 (2006).

9. *Thompson*, 131 S.Ct. at 868.

10. *Thompson*, 131 S.Ct. at 868.

11. *Thompson*, 131 S.Ct. at 868-69.

12. *Thompson*, 131 S.Ct. at 869.

13. The court analyzed 42 U.S.C. §2000e-5(f)(1), which provides in pertinent part, “a civil action may be brought...by the person claiming to be aggrieved.”

14. *Thompson*, 131 S.Ct. at 869-70.

15. See 1 Employment Discrimination Coordinator Analysis of Federal Law, §8:22; see also *Thompson v. N. Am. Stainless*, 567 F.3d 804,

809-12 & n.6 (6th Cir. 2009) (collecting cases); *EEOC v. Wal-Mart Stores, Inc.*, 576 F. Supp. 2d 1240, 1243-46 (D.N.M. 2008) (collecting cases). Notably, North American argued that there was no split among the Circuits. See e.g., *Torres v. McHugh*, 701 F.Supp.2d. 1215, 1219-20 (D. New Mexico 2010) (stating that every circuit to address whether Title VII allows third-party retaliation claims has answered the question in the negative).

16. See also *Horizon Holdings, LLC v. Genmar Holdings, Inc.*, 241 F. Supp. 2d 1123, 1142-44 (D. Kan. 2002) (holding that family member of employee who engaged in protected activity could not bring a third-party retaliation claim under Title VII and granting summary judgment for employer on third-party retaliation claim); *Torres v. McHugh*, 701 F. Supp. 2d 1215 (D.N.M. 2010) (granting summary judgment for employer where plaintiff alleged only that her husband had engaged in protected activity).

17. 906 F. Supp. 572 (D. Colo. 1995).

18. *Id.* at 575.

19. 576 F.Supp.2d 1240 (D. New Mexico 2008).

20. *Id.* at 1244-47.

21. *Ali v. District of Columbia Gov't.*, 2011 U.S. Dist. LEXIS 97474 (D.D.C. Aug. 31, 2011).

ABOUT THE AUTHOR



Kimberly Lambert Love is a partner at the Tulsa firm Titus Hillis Reynolds Love Dickman & McCalmon. With more than 25 years experience, she practices in all areas of employment law. She is the past chairperson of the OBA Labor and Employment Law Section and is a regular contributor to the *Oklahoma Bar Journal*.



Robyn M. Funk is an associate at the Tulsa firm Titus Hillis Reynolds Love Dickman & McCalmon, where her practice focuses in the areas of employment law and general civil litigation. She graduated with highest honors from the OU College of Law in 2003 and was named to the Order of the Coif.



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Electronic Cigarettes: It's Time to Include Them in Your Tobacco Use Policy

By Abby Dillsaver

Electronic Cigarettes (e-cigs) are a smokeless tobacco product that has taken the nation's smoking population by storm. It's only a matter of time before you see an employee "lighting" up an e-cig in the office. Employers need to address these new smoking devices so employees know when and where they can use them.

ELECTRONIC CIGARETTES: AN INTRODUCTION

E-cigs mimic the effects of smoking, from holding the cigarette to the smoke-like vapor they emit. These cigarette look-alikes contain a battery-powered cylinder that holds nicotine-filled cartridges. The cylinder is designed to resemble a real cigarette. When operated, the cylinder vaporizes a liquid nicotine mixture, which the user inhales and exhales through the mouth. The resulting vapor looks like the smoke from a traditional cigarette, which has led to e-cig use being referred to as "vaping." E-cigs come in different flavors and different concentrations of nicotine.

Marketed as a healthier alternative to smoking because nicotine is delivered without any accompanying tar or smoke, e-cigs proclaim they can be used anytime and anywhere. Employee smokers have taken this marketing at its word and are supplementing or replacing their traditional cigarettes with e-cigs, believing them not only safer but also not covered by traditional employer tobacco policies. Given this popularity, it's time to revise your tobacco use policy to include e-cigs.

EMPLOYER RISKS IF E-CIGS ARE USED INDOORS

If you haven't seen e-cigs at your work, you will. Their use has been on the rise since they first appeared on U.S. shelves several years ago. And given many user testimonials that e-cigs help to quit smoking, more and more smokers are swapping their traditional cigarettes for e-cigs.

While you may gain some productivity by allowing "vaping" inside, that productivity may be counterbalanced by negative effects on health, professionalism and employee satisfaction. Given their novelty, e-cigs have not been thoroughly studied to determine what, if any, harmful effects they may pose to those using them much less what effect the second-hand vapors may cause, making an employer's potential liability as unknown as the effects of e-cigs. Allowing "vaping" indoors may subject you to lawsuits based on alleged health problems caused by the vapors and fumes, from mere irritation to more serious issues such as breathing problems and possibly cancer. But there are reasons to include "vaping" in your

tobacco use policy in addition to the unknown health effects.

Second to health risks are the appearances of professionalism and a healthy business environment. Even though e-cigs are not traditional cigarettes, employees still look like they are smoking when they use them. That's the point of e-cigs. Customers and clients may not realize employees are not actually smoking and even if they do, the client may be irritated or offended by employees who "vap" in front of them.

"Vaping" inside the office may also lead to complaints from co-workers who notice an odor despite e-cig's claim to be odorless or who are otherwise bothered by the vapor. Including e-cigs in your tobacco policy preserves the status quo and enforces your no smoking policy.

A NEW TOBACCO PRODUCT

Under *Sottera Inc. v. U.S. Food and Drug Administration*,¹ electronic cigarettes are regulated by the Food and Drug Administration (FDA) as a tobacco product, not a drug-device.² The impact of this distinction is in the regulatory steps a distributor or manufacturer must go through to market their products in the United States.³

In *Sottera*, two e-cig distributors petitioned the court for a preliminary injunction against the FDA.⁴ The FDA had denied entry of the distributors' e-cigs on the grounds they were "adulterated, misbranded, or unapproved drug-device combinations under the [Federal Food, Drug, and Cosmetic Act,] FDCA."⁵ The court held that e-cigs were not a drug-device but rather a tobacco product and that the FDA had no authority to regulate them under the FDCA but could regulate them under the Family Smoking Prevention and Tobacco Control Act of 2009 (the Tobacco Act).⁶ The FDA has indicated that it will not appeal the decision and will regulate e-cigs as tobacco products in conformity with the decision.⁷ E-cigs classification as a tobacco product places them firmly within the sphere of employers' tobacco policies.

Tobacco use in the workplace has been restricted for several decades. In 1987, Oklahoma passed the Smoking in Public Places and Indoor Workplaces Act⁸ (the act) which banned smoking in indoor workplaces.⁹ Indoor workplaces are excluded from this prohibition only if the owner, the immediate family, or smokers are the exclusive workers and the public has

only "incidental public access" to the workplace.¹⁰ Given these limitations, most employers are prohibited from allowing employees to smoke inside any indoor workplace.

REVISING YOUR TOBACCO USE POLICY

As an employer, you may restrict employees' tobacco use more stringently than required by law so long as you do not offend any legal rights an employee may have to use tobacco. Employees do have the right to use tobacco when they are off-duty. Oklahoma employers may not discriminate against their employees who smoke or otherwise use tobacco products.¹¹ However, employers are certainly free to limit smoking in the workplace.¹² Indeed, most employers are legally required to only allow smoking outdoors under the act. Regulating "vaping" to work breaks outside conforms to the legal requirements for smoking and meets expectations for the use of tobacco products.

As a tobacco product, employers should also consider whether they are legally required to ban indoor "vaping" under the act. The act defines "smoking" as "the carrying by a person of a lighted cigar, cigarette, pipe, or other lighted smoking device."¹³ As e-cigs are derived from tobacco, marketed as an alternative to cigarettes, and the liquid nicotine mixture is heated, or lit, by the battery within the cylinder, they are arguably a "lighted smoking device."¹⁴ Even if e-cigs are not a "lighted smoking device," it is foreseeable that the Oklahoma Legislature may amend the act to specifically include e-cig use. Some U.S. agencies, states and municipalities have banned or are considering banning e-cig use. The U.S. Department of Transportation has proposed regulations to ban the use of e-cigs during flights.¹⁵ After public comment and debate over the regulation of e-cig use, Washington State's Tacoma-Pierce County only permits vaping where minors are lawfully prohibited, non-public workplaces and retail outlets that exclusively sell e-cigs.¹⁶ Boston's Board of Health has preliminarily approved regulations to treat the sale and consumption of e-cigs like tobacco products, including banning their use in the workplace.¹⁷ The San Francisco Health Commission has also endorsed similar proposed regulations.¹⁸ And the New York and New Jersey Assemblies have introduced bills that would similarly prohibit e-cig use.¹⁹

All these issues should be considered when revising your tobacco use policy to cover e-cigs.

Specifically listing electronic cigarettes in your policy leaves no doubt they are covered. You should also evaluate revising the policy to include a broader definition of tobacco use, if one is not already used. A broad definition will ensure that future tobacco products are covered. Whether you explicitly name electronic cigarettes in your policy or simply decide the policy already covers their use, employees should be informed that e-cigs are covered and may only be used outdoors or in designated areas.

As an employer, it's important to be proactive when protecting your employees' health, the welfare of the company, and yourself against legal liabilities. Don't wait until "vaping" inside becomes a problem. Act now and revise your tobacco policy to address e-cig use.

1. 627 F.3d 891 (D.C. Cir. 2010).

2. *Id.* at 898.

3. *See generally*, 21 U.S.C.A. §§321 et seq. and 21 U.S.C.A. §§387 et seq.

4. 627 F.3d at 893. The two petitioners were Smoking Everywhere and Sottera Inc. (doing business as NJOY). However, "[w]hile this appeal was pending, Smoking Everywhere voluntarily dismissed its complaint against the FDA, leaving NJOY as the sole appellee." *Id.*

5. *Id.*

6. *Id.* at 898. Congress passed the Tobacco Act in 2009. Pub. L. 111-31, 123 Stat. 1776, codified at 21 U.S.C.A. §§387 et seq.

7. U.S. Food and Drug Admin., letter to stakeholders: *Regulation of E-Cigarettes and Other Tobacco Products* (Apr. 25, 2011), available at www.fda.gov/NewsEvents/PublicHealthFocus/ucm252360.htm.

8. 63 O.S. §§1-1521 et seq.

9. *Id.* at §1-1523.

10. *Id.* at §§1-1523(G)(5)-(8).

11. *See*, 40 O.S. §500.

12. Historically, the nicotine addiction associated with tobacco use has not been covered as a disability under the Americans with Disabilities Act (ADA), 42 U.S.C.A. §§12101 et seq. 138 F.Supp.2d 639, 695 (D. Md. 2001) (finding that nicotine addiction is not a disability under the ADA because it is remediable). The expansion of the definition of "disability" under the Americans with Disabilities Act Amendments

Act (ADAAA), Pub. L. 110-325, 122 Stat. 3553, codified at 42 U.S.C.A. 12101 et seq., has sparked debate over whether smoking will now qualify as a disability. The potential ramifications of changes under the ADAAA are beyond the scope of this article.

13. 63 O.S. §1-1522(8).

14. However, the act's definition of "smoking" is not as broad as that found in the Oklahoma Tobacco Use Prevention and Cessation Act, 63 O.S. §§1-229.1 et seq., which covers "tobacco use," defined as "the consumption of tobacco products by burning, chewing, inhalation, or other forms of ingestion." 63 O.S. §1 229.2(7).

15. Dept. of Transp., Press Release DOT 119-11: "U.S. Department of Transportation Proposes to Ban the Use of Electronic Cigarettes on Aircraft" (Sept. 14, 2011), available at www.dot.gov/affairs/2011/dot11911.html.

16. *Tacoma-Pierce County Board of Health Passes Tobacco Regulations* (June 1, 2011), available at www.tpchd.org/news.php?nid=647; *Tacoma-Pierce County Health Regulations, Ch. 9, Restrictions on Sale, Use and Availability of Electronic Smoking Devices and Unregulated Nicotine Delivery Products*, available at www.tpchd.org/files/library/22094f84d3b140cb.pdf.

17. Boston Public Health Comm'n, Press Release: *Boston Board of Health gives preliminary approval to regulating e-cigarettes* (Sept. 9, 2011), available at www.bphc.org/Newsroom/Pages/TopStoriesView.aspx?ID=233.


18. Health Commission, City of San Francisco, Resolution No. 7-11 (June 21, 2011), available at www.sfdph.org/dph/files/hc/HCRes/Resolutions/2011Res/ecig%20reso.pdf.

19. A. 01468, 2011 — 2012 State Assem., Reg. Sess. (N.Y. 2011); A. 4228, 213th Leg., Reg. Sess., 2009 N.J. Laws 182.

ABOUT THE AUTHOR



Abby Dillsaver is deputy general counsel with the Oklahoma Tax Commission, handling personnel issues and tax matters. She received a B.A. from the University of Oklahoma in 2002, followed by a J.D. in 2005. She is admitted to practice in Oklahoma, the Western District of Oklahoma and the 10th Circuit Court of Appeals.



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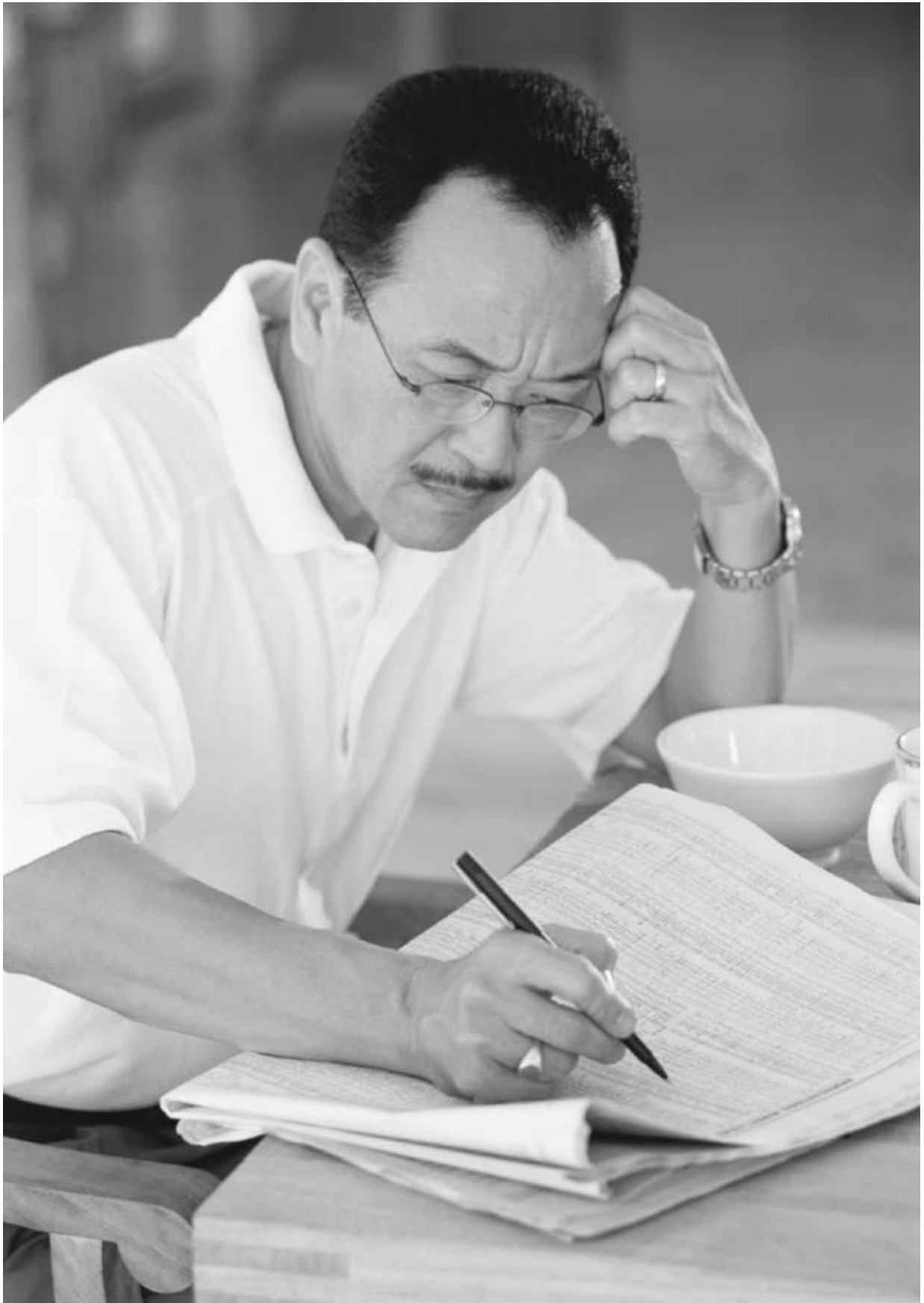
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Oklahoma Legislature Bars Public Policy Discrimination Tort Claims

By Stephanie Johnson Manning and J. Miles McFadden

Sweeping changes to Oklahoma's Anti-Discrimination Act (OADA)¹ mean that Oklahoma employers will no longer face status-based *Burk* public policy tort claims. In a dramatic overhaul of the OADA, Senate Bill 837, signed by Gov. Fallin on May 18, 2011, and effective Nov. 1, 2011, prescribes an exclusive statutory cause of action for plaintiffs seeking to assert claims for violations of the OADA. The bill expressly abolishes common law tort remedies for status based discrimination claims and abrogates the Oklahoma Supreme Court's decisions extending the *Burk* tort to all victims of status based discrimination.² Under the revised OADA, plaintiffs asserting a claim for workplace discrimination are precluded from pursuing a *Burk* tort cause of action and must bring their claim under the OADA, which provides significantly less attractive remedies than are available under *Burk* or federal law.

THE GENESIS AND EVOLUTION OF THE BURK PUBLIC POLICY TORT CLAIM

The Oklahoma Supreme Court first fashioned a public policy exception to the employment "at-will" rule in *Burk v. K-Mart Corp.*³ Specifically, the Supreme Court recognized a new cause of action in tort in a "narrow class of cases in which the discharge is contrary to a clear mandate of public policy as articulated by constitutional, statutory or decisional law."⁴ Since announcing its decision, the Supreme Court has struggled to define the boundaries of the tort and to clearly articulate when a plaintiff can bring a claim for status-based employment discrimination under *Burk*, as opposed to

a conduct based claim, such as whistle-blowing. Status-based discrimination occurs when an employer discriminates between applicants or employees with respect to an employment decision based on an identifiable characteristic of that employee, such as race, gender, age or disability.

In *Tate v. Browning-Ferris Inc.*, the court considered whether a discharged employee could pursue a *Burk* claim on the basis of racial discrimination.⁵ The court found that the OADA's statutory remedies were *not* the exclusive remedies for employment discrimination and the *Burk* tort remedies existed cumulatively with the statutory remedy provided in the OADA

for employment discrimination.⁶ In *Tate*, the court noted that the remedies for race discrimination were fewer than those provided for victims of handicap discrimination in that *only* victims of handicap discrimination have a private right of action under the OADA.⁷ Individuals alleging discrimination based on race, color, religion, national origin, and age had only administrative remedies.⁸ Based on this dichotomy, the court recognized that the *Burk* tort was necessary to avoid finding the OADA unconstitutional for treating members of the same class differently.⁹ *Tate* was the first time the court identified this inherent flaw in the OADA and provided the backdrop for a series of decisions by the court left struggling to avoid finding constitutional infirmities in the OADA.

In subsequent cases, the court considered whether a *Burk* tort claim existed for other types of employment discrimination and ultimately focused its analysis on examining whether the OADA statute provided equal remedies for each category of employment discrimination identified in the act. In *List v. Anchor Paint Manufacturing Co.*, the court declined to recognize a common law claim for wrongful constructive discharge in violation of public policy where the claim is predicated upon the employer's conduct rather than the employee's status.¹⁰ The *List* court further went on to hold that where the employee has an adequate statutory cause of action for wrongful discharge which is sufficient to protect his or her rights, that remedy is exclusive and no common law remedy is available under *Burk*.¹¹ In other words, the court concluded that a discharged employee asserting a claim of age discrimination could not bring those claims as a *Burk* tort cause of action because plaintiffs have adequate remedies for age discrimination under the Federal Age Discrimination in Employment Act (ADEA).¹²

Again in *Marshall v. OK Rental & Leasing Inc.*, the court concluded that a constructively discharged employee could not assert a public policy tort claim based on sexual harassment and gender discrimination against the former employer because Title VII provided adequate statutory remedies.¹³ In *Marshall*, the court distinguished *Tate* by noting that at the time of *Tate*, Title VII did not provide adequate remedies, but that since that time Title VII had been amended to allow for jury trial and for compensatory and punitive damages.¹⁴ With its opinion, the court seemed to foreclose plain-

tiffs from asserting a claim of status-based employment discrimination under *Burk*.¹⁵

In *Collier v. Insignia Commercial Group*, the court did what appeared to be an about-face and effectively overruled *List* and *Marshall* in allowing a *Burk* tort claim for sexual harassment.¹⁶ The court focused solely on the adequacy of the state remedy and held that because the OADA does not allow private suits for sexual harassment, plaintiffs who allege wrongful discharge as a result of sexual harassment may state a cause of action under the common law tort theory recognized by the court in *Burk*.¹⁷ Based on the disparity of remedies under the OADA, the court concluded that the Legislature could not have intended the administrative remedies to be plaintiff's "exclusive remedy."¹⁸ An interpretation otherwise, according to the court, would accord "asymmetrical remedies to members of a single class of employment-discrimination victims" and render the OADA unconstitutional. The court distinguished its earlier decision in *Marshall* on grounds that the conduct in that case involved conduct by a coworker, not a supervisor.¹⁹

In *Clinton v. State ex rel. Logan County Election Board*, the court attempted to clarify its *Burk* tort analysis and again considered the availability of federal statutory remedies.²⁰ The court stated that, first, a plaintiff must identify a clear public policy that was violated by the employer's termination of the plaintiff, then, courts are to examine whether a federal or state statute is sufficient to protect the public policy goal. According to the *Clinton* court, no *Burk* tort exists if there is an adequate federal or state statutory remedy.²¹ A complete ban on *Burk* torts for status-based plaintiffs, however, was specifically rejected.²²

The Supreme Court came full circle in *Saint v. Data Exchange Inc.*, and reversed its holding in *List* by recognizing a *Burk* claim for age discrimination.²³ In examining the inherent flaw in the OADA, the court found that age discrimination victims are part of the employment discrimination class and that the OADA *must* provide the same remedies for each member of this broad class of victims of discrimination as available to victims of handicap discrimination.²⁴ *Shirazi v. Childtime Learning Center Inc.*, confirmed that the *Burk* tort is available to all victims of status-based discrimination.²⁵

The Supreme Court's decisions sculpting the contours of status-based *Burk* tort claims have

been widely divergent, with the court landing on the bright-line rule that a plaintiff would be allowed to assert a *Burk* tort claim in all cases where the plaintiff asserts a status-based discrimination claim.²⁶ In direct response, the Oklahoma Legislature enacted significant changes to the OADA. The provisions of the revised OADA rein in the use of the *Burk* tort by providing an exclusive statutory remedy for plaintiffs asserting status-based claims.

THE NEW OADA

The revised OADA prohibits discrimination by employers on the basis of race, color, national origin, sex, religion, creed, age or disability.²⁷ Additionally, discrimination on the basis of genetic information was added to the amended OADA, bringing the Oklahoma law in line with the federal Genetic Information Non-Discrimination Act (GINA), which became effective in 2008.²⁸ The amended OADA provides the *exclusive* remedy for individuals alleging status-based discrimination and specifically states that “any common law remedies are hereby abolished.”²⁹ Consequently, common law causes of action such as the *Burk* tort are no longer available to individuals seeking redress for status-based discrimination.

Under the revised OADA, the definitions of “employer” and “employee” have both been revised. An “employer” subject to the statutory claims now includes legal entities, institutions, or organizations, but not individuals.³⁰ The definition of “employee” now specifically excludes independent contractors.³¹ Notably, however, the revision does not limit the liability of employers based on the size of their organization, reflecting the Supreme Court’s decision in *Smith v. Pioneer Masonry Inc.*,³² that employers of all sizes are subject to claims of employment discrimination under the Oklahoma Constitution.

Procedurally, in order to enforce this statutory right, a complaining party must first file a charge of discrimination with the Oklahoma Human Rights Commission or the Equal Employment Opportunity Commission within 180 days of the alleged discriminatory act and await a determination from those agencies as to whether they will pursue the action or will issue a Notice of Right to Sue.³³ If a charge of discrimination is not resolved within 180 days of filing a charge, the complaining party may demand a Notice of Right to Sue in order to proceed with the action in court.³⁴

Once the suit is commenced, employer defendants “may allege any defense that is available” under the federal anti-discrimination statutes, including Title VII, the Americans with Disabilities Act, the Pregnancy Discrimination Act, the Rehabilitation Act, the Age Discrimination in Employment Act and/or GINA.³⁵ Importantly, the remedies available to a successful plaintiff are far more restrained than those available under federal statutes or previously available under the *Burk* tort for claims of status-based discrimination. While a court may still issue a prohibitory or mandatory injunction requiring the employer to comply with the OADA, including reinstatement or hiring of employees,³⁶ a successful plaintiff may now only recover damages for “backpay and an additional amount as liquidated damages.”³⁷ A court in considering this award will offset that amount with the interim earnings or the amounts earnable with “reasonable diligence” by the party discriminated against.³⁸ Explicitly absent from the OADA are emotional distress damages and punitive damages, further reducing the potential liability an employer may face. Attorney fees, however, *may* be awarded to *either* a prevailing plaintiff *or* a prevailing defendant.³⁹

POTENTIAL EFFECTS OF THE REVISIONS

The amended OADA is tantamount to tort reform in the labor and employment context, ushering in a new, post-*Burk* era for status-based employment discrimination claims in Oklahoma courts. Importantly, these amendments may discourage plaintiffs from exclusively pursuing OADA claims because more lucrative remedies are available under the federal statutes. Consequently, there will likely be a reduction in employment discrimination claims litigated in state court, as plaintiffs that file OADA claims along with federal claims in state court will face removal by employer defendants.

In sum, status-based *Burk* tort claims are not long for Oklahoma courts. Once the amended OADA takes effect on Nov. 1, 2011, plaintiffs seeking redress for status-based discrimination must file federal discrimination claims to obtain the types of lucrative remedies that were once available in *Burk* tort actions.

1. Okla. Stat. tit. 25, §§1101-1901.

2. *Saint v. Data Exchange Inc.*, 2006 OK 59, 145 P.3d 1037 (extending the public policy tort first recognized in *Burk v. K-Mart Corp.* to victims of age discrimination); *Shirazi v. Childtime Learning Center Inc.*, 2009 OK

13, 204 P.3d 75 (clarifying that a *Burk* tort was available to *all* victims of status-based discrimination).

3. 770 P.2d 24 (Okla. 1989).

4. *Id.* at 28.

5. 833 P.2d 1218 (Okla. 1992).

6. *Id.* at 1227-28.

7. *Id.* at 1227-31.

8. *Id.*

9. *Id.* at 1226-28.

10. 910 P.2d 1011, 1012 (Okla. 1996).

11. *Id.* at 1013.

12. *Id.* at 1013-15.

13. 939 P.2d 1116, 1119-22 (Okla. 1997).

14. *Id.* at 1122.

15. *Id.* at 1119-22.

16. 1999 OK 49, 981 P.2d 321.

17. *Id.* at ¶¶ 11-15, 324-26.

18. *Id.*

19. *Id.* at 326, n. 20.

20. 2001 OK 52, 29 P.3d 543.

21. *Id.* at ¶ 10, 546.

22. *Id.*

23. 2006 OK 59, 145 P.3d 1037.

24. *Id.* at ¶¶ 1-6, 1037-38.

25. 2009 OK 13, 204 P.3d 75.

26. *Id.* at ¶ 10, 79.

27. Act of May 11, 2011, §1 (to be codified as amended at Okla. Stat. tit. 25, §1101).

28. Pub. L. No. 110-233, 122 Stat. 881 (2008).

29. Act of May 11, 2011, §11(A) (to be codified as Okla. Stat. tit. 25, §1350).

30. *Id.* §2 (to be codified as Okla. Stat. tit. 25, §1301).

31. *Id.*

32. 2009 OK 82, 226 P.3d 687.

33. Act of May 11, 2011, §11(B) (to be codified as Okla. Stat. tit. 25, §1350).

34. *Id.* §11(C) (to be codified as Okla. Stat. tit. 25, §1350).

35. *Id.* §11(F) (to be codified as Okla. Stat. tit. 25, §1350).

36. *Id.* §11(G) (to be codified as Okla. Stat. tit. 25, §1350).

37. *Id.*

38. *Id.*

39. *Id.* §11(H) (to be codified as Okla. Stat. tit. 25, §1350).

ABOUT THE AUTHORS



Stephanie Johnson Manning is a partner with the Tulsa firm of Titus Hillis Reynolds Love Dickman & McCalmon. She represents employers in discrimination suits, wrongful discharge cases and other employment litigation. She routinely counsels employers on preventative employment policies and currently serves as the chairperson for the OBA Employment Section.



J. Miles McFadden practices with the Tulsa firm Titus Hillis Reynolds Love Dickman & McCalmon. He graduated in 2010 with honors from the University of Oklahoma College of Law, where he was the special features and note editor for the *American Indian Law Review* and was a member of the first amendment moot court competition team. He practices in all areas of civil litigation in Oklahoma state and federal courts.



OU Law Alumni Luncheon Wednesday, Nov. 2, 2011

.....
HYATT REGENCY, TULSA

11:15 RECEPTION WITH CASH BAR

12:00 LUNCH
.....

For additional details, contact Evie Holzer at (405) 325-2227
or eholzer@ou.edu.

► Luncheon tickets are \$30
and may be purchased when
registering for the Oklahoma Bar
Association Annual Meeting.

► If you are not attending the OBA
Annual Meeting, mail a \$30
check payable to:

OU College of Law
300 Timberdell Road
Norman, Oklahoma 73019

*Please note "Nov. 2 Alumni
Luncheon" on the check.*



Giving Legal Advice to Your Clients: Grounds for Prosecution?

Earlier this year, Judge Roger Titus of the District of Maryland dismissed the case *United States v. Stevens*. Lauren Stevens, a former Vice President and Associate General Counsel at GlaxoSmithKline, had been indicted based upon her involvement in responding to an FDA inquiry.

Ms. Stevens' purported crime? The government alleged that she sent to the FDA six substantive letters that contained false statements and obstructed justice by misleading the FDA concerning GSK's promotion of one of its prescription drugs.

Could this happen to you?

You are invited to come to the OBA Health Law Section Meeting to hear about Ms. Stevens' experience and "lessons learned" in a discussion moderated by Professor Marguerite Chapman of the TU College of Law:

Wednesday, November 2, 2011

Tulsa Hyatt Regency

Meeting and Dinner – 6 p.m.,

Presentation – 6:30 p.m.

RSVP to reception@cgmlawok.com by Thursday, October 27, 2011.

Annual Meeting

Attention All Servicemembers & Veterans

The OBA wants to honor you on Thursday at a Veterans Appreciation Reception, which begins at 2:30 p.m. Sgt. Matt Eversmann, real-life hero portrayed in the film *Black Hawk Down*, will speak at 3 p.m. All OBA members are invited to attend. Those being honored will receive a small gift as a token of appreciation for their service. Special thanks to sponsor McAfee & Taft.



Art Contest Rules

Military-themed art is encouraged in all categories but is not a separate category. Registration forms are due Oct. 17; two forms are needed – the main Annual Meeting registration form and the Art Contest entry form. Entry fee is included with Annual Meeting registration. Printed forms are in this bar journal.

1. Artists may submit entries in each category; however, each artist is limited to two entries per category.

2. Each piece must be the original work of the person entering it.

3. All pieces entered must have been completed within five years of the date of registration (except for military-themed art).

4. Pieces that have received an award in any prior OBA Art Contest are not eligible for resubmission.

5. The name of the artist and the piece must be securely fastened to each piece, whether by sticker on the back or bottom or otherwise.

6. The artists receiving the Artist of the Year Award and the best military-theme art will be requested to attend the Annual Meeting luncheon on Thursday to receive his/her award.

Questions? Email artatty@okbar.org.

Past Annual Meeting Problems Fixed

Parking — Garage would fill up and no valet parking was available. Not this year! Hotel promises unlimited valet parking for \$15 per day. Other options: 1) self park with no hotel stay — \$8 per day, 2) self park with hotel stay — free, 3) overflow parking at 100 West 1st St. (Boulder & 1st) only a half block west of the hotel - \$5 per day.

Nowhere to go for lunch — If you're not going to luncheons on Wednesday and Thursday, eat in the hotel's Daily Grill — or new this year you can catch an OBA shuttle making a continuous loop around to Blue Dome Diner, El Guapo's Cantina, McNellie's Public House, Joe Mamma's, Back Alley Blues and BBQ and Dilly Deli - and back to the hotel.

Annual Meeting App Coming Soon

Yes, that's right — it's a first in the association's 107-year history. In development now is a mobile app that can be downloaded to your iPhone, BlackBerry, Android or iPad. The goal is to launch it two weeks before the meeting. Watch for more details.

Sponsors

Commander in Chief

Beale Professional Services

President's Reception

OBA Litigation Section

Bench and Bar Breakfast & Trial College

Four Star

OBA General Practice – Solo and Small Firm Section

President's Reception Band, Red Dirt Rangers

Three Star

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Annual Meeting Jute Bags

GableGotwals

President's Breakfast & a CLE Breakout

McAfee & Taft

Veterans Appreciation Reception

OBA Energy and Natural Resources Law Section

Hotel/Restaurant Shuttle

OBA Family Law Section

Annual Meeting Mobile App

OBA Law Office Management and Technology Section

Going Geek: Tech Fair

**Sponsorship opportunities are still available. Contact OBA Executive Director John Morris Williams (johnw@okbar.org) at (405) 416-7014, (800) 522-8065.*

A TRADITION OF PRIDE
Nov. 2 - 4 2011
OBA Annual Meeting
Hyatt Regency • Tulsa

Smartphone User:
Use the QR app and snap the barcode for quick Annual Meeting information and registration

2011 Annual Meeting Awards

OBA Awards:

Individuals for Whom Awards are Named

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

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

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

JOHN E. SHIPP — John E. Shipp, an attorney from Idabel, served as 1985 OBA president and became the executive director of the association in 1998. Unfortunately his tenure was cut short when his life was tragically taken that year in a plane crash. Mr. Shipp was

(cont'd on page 2295)

Law School Luncheons Wednesday, Nov. 2

These awards will be presented at these events.

OUTSTANDING LAW SCHOOL SENIOR STUDENT AWARD

**Paige Mathews, Oklahoma City University
School of Law**

Paige Mathews, a native of Lamont, graduated *summa cum laude* from Oklahoma State University with a degree in journalism and broadcasting in 2005. While at OSU, she was named outstanding graduate of the College of Arts and Sciences, Journalism & Broadcasting, outstanding senior and Top Ten Freshmen Woman. She was also named



to the President's Honor Roll for eight semesters and served as feature twirler for the Spirit of Oklahoma State University Cowboy Marching Band. A Regent's Distinguished and Lew Wentz Scholar, she was a member of the President's Leadership Council, Mortar Board Senior Honor Society, College of Arts and Sciences Student Council and Student Alumni Board. Upon graduation, Ms. Mathews obtained a job as producer/safe family reporter for KXII-TV Channel 12 in Sherman, Texas, and was later promoted to chief of the station's Ardmore, Okla., bureau. Most recently, she served as spokesperson and community outreach manager for Women and Children First: *The Center Against Family Violence* in Little Rock, Ark.

Ms. Mathews was awarded the Hatton W. Sumners Foundation's full scholarship in 2009, which allowed her to move home and attend Oklahoma City University School of Law. She currently serves as editor in chief of the *Oklahoma City University Law Review* and is an intern for the Honorable Valerie Couch, magistrate judge for the U.S. District Court for the Western District of Oklahoma. She is a member of the William J. Holloway Jr. Inn of Court, Phi Delta Phi, Merit Scholars, OCU LAW Innocence Project Committee and the National Trial Competition Team. She has received 10 CALL Excellence for the Future Awards, was named to both the faculty and dean's honor rolls for four semesters and was awarded Outstanding Law Review Note for her article titled, "Caught Between a Rock and a Hard Place: A Missouri Court's Tough Choice and the Power to Change the Face of Indigent Defense," which will be published in an upcoming issue of the *Oklahoma City University Law Review*.

Ms. Mathews works as a certified aerobics instructor for Jazzercise Center of Edmond in her spare time. After graduation, she plans to work as a litigation associate for the firm of Crowe & Dunlevy in Oklahoma City.

OUTSTANDING LAW SCHOOL SENIOR STUDENT AWARD

Barbara McHugh Moschovidis,
University of Oklahoma College of Law

Barbara Moschovidis is a law student at the University of Oklahoma College of Law. She earned her bachelor's degree in international business and languages at the University of Tulsa, where she was inducted to Phi Beta Kappa.



Ms. Moschovidis serves as the business development editor of the *American Indian Law Review*, in which her case note regarding the termination of the Osage reservation will be published this fall. She is also a member of the Board of Advocates and has enjoyed numerous moot court experiences while at OU Law. As a first-year student, she competed in the final round of the 1L Moot Court Competition, and she has been selected to compete on the ABA National Appellate Advocacy moot court team for the past two years. Ms. Moschovidis has also taken an active leadership role in the Organization for the Advancement of Women in Law.

Following graduation and the bar exam, Ms. Moschovidis looks forward to returning to her home

town of Tulsa, where she will work at the law firm of GableGotwals.

OUTSTANDING LAW SCHOOL SENIOR STUDENT AWARD

**Russell Ramzel, University of Tulsa
College of Law**

Russell Ramzel is from Bartlesville, where he graduated in 2000 from Bartlesville High School. He received his bachelor of arts *summa cum laude* from the University of Arkansas and is a member of Phi Beta Kappa. He received his paralegal certificate from the University of Tulsa and worked as a paralegal prior to going to law school.



Mr. Ramzel currently serves as the editor-in-chief of the *Energy Law Journal*. He also served as an executive editor for the 2010 volume of the ABA Section of Environment, Energy and Resources Law Year in Review. He is a student member of the Council Oak/Johnson-Sontag Inn of Court and is a member of the Phi Delta Phi honors fraternity. He was a member of the college of law's 2010 National Health Law Appellate Competition team, which won best national brief — and third place overall. The brief will be published in the October 2011 issue of the *Journal of Legal Medicine*.

His note, "Environmental Review of Permitted Pollution: *Communities for a Better Environment v. South Coast Air Quality Management District*," will be published in Volume 32 of the *Energy Law Journal*. He has also received the John Hager Award for excellence in torts, the George and Jean Price Award for legal reasoning, authorities and writing, the Board of Advocates Award for Outstanding 2L, and CALL awards in contracts, torts, reasoning and writing I & II, legal research, civil procedure I & II, property, professional responsibility and advanced competitions: health law.

After graduation, Mr. Ramzel will join Conner & Winters in its Tulsa office.

Annual Luncheon

Thursday, Nov. 3

These awards will be presented at this event.

EARL SNEED CONTINUING LEGAL EDUCATION AWARD

Noel Tucker, Edmond

Noel Tucker received her undergraduate degree from the University of Central Oklahoma and her law degree from the Oklahoma City University School of Law in 1996.



Ms. Tucker serves on the ABA Family Law Section Council and is a past chair of the OBA Family Law Section and continues to serve as its legislative chair. She has been published and regularly presents in the areas of adoption, paternity, ethics, legislation and guardian ad litem representation, and is also a contributing editor for the OBA Family Law Section *Practice Manual*.

She also volunteers her services for Trinity Legal Clinic and Legal Aid of Western Oklahoma and is a volunteer with Operation Standby (legal assistance to service members). She is a member of the National Court Appointed Special Advocates Association and served as president of the Oklahoma CASA executive board from 2002-2003.

EARL SNEED CONTINUING LEGAL EDUCATION AWARD

Phil Tucker, Edmond

Phil Tucker received undergraduate degrees from Oklahoma State University and the University of Central Oklahoma, ultimately graduating from the Oklahoma City University School of Law in 1983.



For the last 20 years, Mr. Tucker has been presenting and/or publishing materials for continuing legal education programs and scholarly articles. He is a past chair of the OBA Family Law Section, served as senior co-editor of the section's *Practice Manual* from 2002 to

present, and for years has been actively involved in the section's legislative committee. Mr. Tucker is also a member of the ABA Family Law Section.

He also volunteers his services as the secretary and board member for Trinity Legal Clinic of Oklahoma and Legal Aid of Western Oklahoma. He is an adjunct professor of law, teaching both family law and civil procedure classes, as well as a member of the National Court Appointed Special Advocates Association (CASA).

Both Noel and Phil Tucker volunteer their time and creative efforts to CLE programs and writing scholarly articles. Their presentations are for a variety of program planners including the OBA Family Law Section, OBA CLE Department, *Oklahoma Bar Journal*, *Oklahoma Family Law Practice Manual*, Oklahoma County Bar Association and the American Bar Association Family Law Section.

They have collectively presented or co-presented over 45 CLEs and authored or co-authored 20 articles over the last several years. If they are presenting a CLE program, the audience is a fortunate recipient, wrote their nominator. They are the dynamic duo of continuing legal education.

AWARD OF JUDICIAL EXCELLENCE

Judge Millie Otey, Tulsa

Judge Millie Otey was chosen as the recipient of this year's Judicial Excellence Award because of her contributions to the Tulsa community through the development of pro bono programs. Judge Otey serves as special judge for the Tulsa County District Court.



Through her dedication, the court established the "early settlement" component of the Small Claims Court. Supreme Court-trained mediators are "on sight" in the courtroom four mornings a week to mediate cases involving issues that are deemed appropriate for the mediation process. It has had great success. According to the statistics that were kept, 98 percent of the cases that settle through this process have remained settled.

The nomination for the award remarks that Judge Otey "saw a problem that was affecting the lives of many in our community and she worked tirelessly to find a solution. She never fails to give her time and talents to make our lives better — what else could you ask?" Judge Otey is also commended for being a

model of judicial efficiency, her legal scholarship and work ethic.

LIBERTY BELL AWARD

**Oklahoma County Law Library,
Oklahoma City**



The Oklahoma County Law Library is honored this year for its service to the community, both lawyers and laypersons. The library is the largest and most complete county law library in the state, with more than 38,000 volumes available. It provides up-to-date legal reference materials that are often not available in private collections, and they keep many specialized treatises on the shelves that particularly benefit solo and small firm practitioners. It also provides treatises on a variety of topics for pro se patrons.

Venita Hoover serves as director and head law librarian and has served in that position for more than 16 years. She and her staff are dedicated to providing the best possible service to its patrons, while maintaining to be good stewards with the law library funds. Ms. Hoover is particularly recognized for her good management practices, and with the great support of her Board of Library Trustees, has managed to keep a standard of excellence even during the tight budget years. Staff members Corinna Patterson and Cecelia Spain are also recognized for their ability to provide a user-friendly environment for laypersons; while unable to offer legal advice, they often offer assistance on where a pro se litigant may find the information they need. "We try to be able to offer some sort of information to everyone. Often it's just

where to go in the books to find the answers to their questions or where to find something in the courthouse. We can't always give everyone what they come in for, but we always offer them a way to get more knowledge about what they are asking about, often this is all they need," said Hoover.

The award nomination points out "there is not another place in our area to receive this kind of service for the public." The library also provides conference space and other services to pro se litigants meeting with law students and faculty from Oklahoma City University in preparation for waiver divorces. The library is recognized in the nomination for seeing "the benefits received by both those who have offered the service and those who have received it." The library is also honored for its annual hosting of events during Law Week, especially their sponsorship of Lawyers in the Library in conjunction with Legal Aid Services of Oklahoma and the Oklahoma County bar members. Through this program, free legal advice and referrals were offered in 15-minute sessions on a walk-in basis. The Law Library also co-sponsors programs with the Downtown Metro Library, the Oklahoma County Bar Association and other Oklahoma County offices concerning issues such as expungements, probate, guardianship and landlord/tenant issues. These programs are open to the bar and the public, and many more are planned for next year..

JOE STAMPER DISTINGUISHED SERVICE AWARD

William R. Grimm, Tulsa

William R. "Bill" Grimm of Tulsa is recognized as the winner of the Joe Stamper Distinguished Service Award due to his long-time tireless work for the betterment of the legal profession. He is the president of Barrow & Grimm PC, where he practices as a trial lawyer primarily in business litigation matters, but his volunteer work on behalf of the OBA and the Tulsa County Bar Association is extensive.



Mr. Grimm served as OBA president in 2006 and as vice president in 2004. He also served on the Board of Governors from 1996-1998 and 2004-2007 and currently sits on the Professional Responsibility Commission and has served in the House of Delegates since 1986. He has also served on and chaired numerous committees and task forces and

served as OBF Trustee from 2005-2006. His leadership positions in the TCBA are also numerous, serving as its president in 1991-1992, and as president of the Tulsa County Bar Foundation in 1992. He has been a member of the American Bar Association since 1974 and served as a delegate in 1992 and 2005-2006. In 2003, he was selected as a fellow of the ABA. He is a two-time winner of the OBA President's Award; in 2004 for his efforts in assisting with the creation of the Access to Justice Commission and in 2009 for his chairmanship of the Administration of Justice Task Force. In 2006, he received the OBF President's Award for outstanding service and has been an OBF Benefactor Fellow since its inception. He has also received numerous honors and service awards from the TCBA, most recently the Gary C. Clark Distinguished Service Award in 2003 for his chairmanship of the Centennial Committee and the TCBA Neil E. Bogan Professionalism Award in 2002.

Mr. Grimm earned his J.D. from the OU College of Law in 1973.

ALMA WILSON AWARD

Robert N. Sheets, Oklahoma City

Robert Sheets was born and raised in St. Louis, Mo. He received a B.A. from Washington University and later attended and graduated from the Oklahoma City University School of Law in 1979. He is a director, shareholder and founding partner of Phillips Murrah in Oklahoma City.



Mr. Sheets has been a volunteer with Oklahoma Lawyers for Children since 2003 representing children in the Juvenile Division of the Oklahoma County District Court. In one case, he was able to obtain an optimal outcome for two children who had been physically abused in a home where domestic violence and substance abuse were rampant. He also serves as the chair of the Oklahoma County Bar Association's Voices for Children Committee. Through his work, he became involved with a head-start program in the Barrio District called the Carver Mark Twain Head-Start. It began as holiday parties for young children when he learned that many of the children did not have access to books. Accordingly, Mr. Sheets became a fundraiser and engaged his firm to financially support a lending library for the program, providing bilingual and age-appropriate literature. Now, every month, members of the OCBA Voices for Children Committee visit the school to read to young students – and he takes books

- for the children to keep and take home. Many of the
- children in the head-start program have no male pres-
- ence in their lives, and their exposure to "Mr. Bob" as
- a role model is invaluable.

- He has also managed to fit in volunteering with
- Bethany Children's Center, a nonprofit hospital caring
- for children with medical and physical disabilities. He
- was part of a major fundraiser named "Christmas in
- Wonderland" that allowed for building a brand new
- Children's Center. For the past several years, he has
- been a member of Legal Aid Service of Oklahoma's
- successful *Campaign for Justice* program to increase
- funding to support providing legal services to tens of
- thousands of Oklahoma families in need.

- In his community, Mr. Sheets leads a Bible study of
- youth and adults at Wesley United Methodist Church
- where he is a member. And for over five years, he was
- a volunteer baseball coach through the Edmond YMCA.
- He was a great motivator for the young boys and dedi-
- cated himself to the teaching of the sport and also to
- modeling those character traits essential for success.

- Although Mr. Sheets has devoted his professional
- career to commercial litigation, many Oklahoma chil-
- dren have been the beneficiary of his wit, generosity,
- determination and compassion.

NEIL E. BOGAN PROFESSIONALISM AWARD

Judge William J. Holloway Jr., Oklahoma City

- Judge William J. Holloway
- Jr. was born in Hugo, Okla. in
- 1923. He is the son of the late
- governor and Mrs. William J.
- Holloway.



- His family moved to Okla-
- homa City in 1927, where he
- received his elementary edu-
- cation in Oklahoma City pub-
- lic schools, graduating from
- Classen High School in 1941.
- He attended the University of
- Oklahoma for two years before World War II and for
- one year after serving in the U.S. Army, receiving his
- B.A. in 1947. He received his LL.B. from Harvard Law
- School in 1950.

- After being in general practice with his father and
- uncle in Oklahoma City, Judge Holloway served as an
- attorney in the Department of Justice in Washington,
- D.C., in 1951 and 1952. He then returned to general
- practice in Oklahoma City until his appointment by
- President Johnson as a U.S. Circuit Judge of the 10th
- Circuit on Sept. 16, 1968. He served as chief judge of

the 10th Circuit from September 1984 until September 1991. In 1988, he received the President's Award from the Oklahoma Bar Association for his 20 years of judicial service. In 1991, he received the Humanitarian Award from the Oklahoma City Region of the National Conference of Christians and Jews. In August 1991, Oklahoma City University conferred an Honorary Doctor of Laws Degree on Judge Holloway.

His courtesy and consideration have become a matter of legend among not only judges but among the practicing bar. It has been observed that in the thousands of opinions Judge Holloway has written, he has never once made a joke. Although, he is not lacking a sense of humor. An acquaintance once asked him just what it is he does as an appellate judge. Without hesitation, he replied, "I seek error. I seek error. And in Judge West's cases it is not all that hard to find." All kidding aside, he is adamant that no litigant should ever walk away from what may be their only experience with the courts, and feel that their case was not treated with seriousness and understanding.

His civility and congeniality are contagious. His colleagues are unanimous in pointing to his character and courtesy as one of the chief reasons the 10th Circuit is reputed to be the most harmonious of the courts. He has a gift for treating strongly opposing viewpoints with grace and respect. This quality dates back to his days as a national champion high school debater. Even at that tender age he was marked by his ability to win an argument without losing a friend.

His life does not lend itself to a litany of anecdotes. His story is best reflected in the legion of lawyers, judges and litigants who have seen in him how our legal system performs at its best, and who have, as a result, resolved to aim higher in their own lives and careers.

William G. Paul, who was in private practice with Judge Holloway, noted that in everything he has touched, he has given more than he's taken. Wherever Judge Holloway has been, that place has been better because of his presence.

JOHN E. SHIPP AWARD FOR ETHICS

Brooke Smith Murphy, Oklahoma City

Brooke Murphy was born and raised in Oklahoma City to a family firmly embedded in law. Her grandfather, uncle and father were all outstanding Oklahoma attorneys, and her father, Homer Smith, became a judge. When she attended college, women did not typically study law and she became a teacher. It wasn't until a few years later that her family's profession became her own.



After getting a B.S. from the University of Oklahoma, she enrolled in law school at the University of Wisconsin, graduating *magna cum laude* in 1975.

Ms. Murphy handles every situation with grace and has long served as a role model to other members of the profession through absolute adherence to ethical ideals in both the practice of law as well as in her personal life. She is a tenacious advocate for her clients and has outstanding courtroom skills that she brings to bear on their behalf. However, although she is a tough advocate, Ms. Murphy always acts ethically and professionally in a way that brings honor to the legal community. She has absolute fidelity to the principals of the ethical practice of law. She deals with others fairly and professionally. You can ask any lawyer or judge who knows her and they will tell you that her word is indeed her bond and you can always rely on what she says.

She also enjoys mentoring other young lawyers. She takes time to train young lawyers in the skills required to practice law at the highest levels and always emphasizes the need to act ethically and honestly in all circumstances. Ms. Murphy has an especially strong influence on the young women of Crowe & Dunlevy. As the first female attorney at Crowe & Dunlevy when she joined the firm in 1975 and its first female partner a few years later, she made the path smoother for those women who followed. Ms. Murphy has the ability to have both a successful career and a family and others have learned from her example.

She exemplifies the type of lawyer that all members of the profession should aspire to emulate.

General Assembly

Friday, Nov. 4

These awards will be presented at this event.

TRAILBLAZER AWARD

Donald W. Davis Sr., Oklahoma City



Donald Davis was born in Sapulpa where he was an active member of his community. He graduated from Booker T. Washington High School and served in the U.S. Air Force receiving an honorable discharge in 1959. He then earned a B.S. degree from the University of Colorado and his law degree from

the University of Wyoming School of Law in 1968.

Mr. Davis practiced criminal and civil law in Oklahoma for 32 years and was the first African American appointed to serve as a municipal special judge in Oklahoma City Municipal Court. He also had the distinction of being considered for a vacancy on the U.S. Court of Appeals for the 10th Circuit. His clients were seldom people who would win popularity contests. He represented them not because they were easy to represent but because they had a constitutional right to due process and justice. During his career, he represented 30 defendants accused of capital murder — 29 of those people were not convicted of the capital charges — the single receiving a life sentence rather than death.

During the Civil Rights Movement, he represented the Ministers Alliance Organization, which included the majority of the African-American churches in Oklahoma City. In 1979, Mr. Davis obtained the largest verdict for damages up to that time in the U.S. Court for the Western District of Oklahoma against Pool Mortgage Company on a claim of racial discrimination.

His impact extends beyond Oklahoma. In the '70s, he served as lead defense counsel in the joint trial of the infamous Ogden, Utah, "Hi-Fi Murders." His client was the only defendant in a racially-charged trial who was acquitted of the most serious charges arising out of this horrific crime.

Mr. Davis' activities are not limited to just the courtroom, however. He has served as a leader in bar

organizations devoted to support lawyers in their efforts to help the disadvantaged. He is a founding member of the J.J. Bruce Legal Society, an organization of black trial lawyers and was also a charter member of the Oklahoma Criminal Defense Lawyer's Association.

Additionally, he spread his influence to non-legal venues as well. An amateur radio operator, he communicated with lawyers and others around the world and served as National President of OMik Amateur Radio Operators, a worldwide organization. He served on the board of directors of the Urban League and as a state director for the Boy Scouts of America. Mr. Davis is a member of the NAACP and is a 32nd Degree Mason, a trustee at Faith Memorial Baptist Church where he also served as a Sunday School Teacher. He is a 2006 recipient of the Oklahoma Human Rights Award.

While he generally abides by his self-proclaimed retirement status, he recently obtained two judgments in probate cases in a south central Texas county as a pro hac vice attorney for the petitioners.

He has served as a remarkable example to those coming behind him and has directly influenced many of Oklahoma's current attorneys, judges and African-American leaders. His professional and personal activities have enhanced both the state and bar association's reputation.

OUTSTANDING COUNTY BAR ASSOCIATION

Canadian County Bar Association



The 75 members of the Canadian County Bar Association (CCBA) consist mainly of small-firm members and solo practitioners. Many live and practice in communities located some distance from the Canadian County Courthouse in El Reno. Despite the commute, the association's monthly meetings are routinely attended by 30-40 members. The association provides the opportunity for its members to fulfill at least a portion of their annual CLE requirements by attending meetings, but the unique composition of the association's membership also encourages interaction and discourse on a personal level. The involvement of the Canadian County judiciary allows the association to work together with the judges to consider procedural changes and address problems or concerns that sometimes arise during daily courthouse activities. This

year, the association and the district court worked collaboratively to seek an OBF grant to remodel an outdated area of the county courthouse. Based on the grant proposal, the bar foundation awarded the county bar more than \$16,000 to convert unused library space to small conference rooms to ensure the confidentiality of attorney-client communications. Association members produced a video demonstrating the need for the funds for the remodel offering to provide their own "sweat equity" in the form of construction demolition and securing donated items if needed.

The grant proposal process highlighted the charitable mission of the Oklahoma Bar Foundation, and so impressed the group, that the CCBA applied as a group for OBF fellowship, which was awarded in June. This marks the first time a county bar association has sought membership as an OBF Fellow *en masse*, and the association now challenges other county bar associations to follow its lead.

That same giving spirit also applied close to home in 2011. A CCBA member's house was destroyed during the tornadoes that ripped through the area in May. Association members rushed to his aid with offers of food, clothing and financial assistance during his family's difficult transition to temporary housing. In September, members donated their time and talents to community members when they hosted a wills clinic in Yukon in association with Legal Aid of Oklahoma. Members are also pursuing a mentoring program and have been asked to participate in a school attendance and diversionary truancy program in conjunction with the Canadian County Children's Justice Center. The association will also host a Veteran's Clinic in November. The events of this year cap off a revitalization of the CCBA that has taken place over the last three years. The association is also looking ahead to the establishment of a Young Lawyers Division, and anticipates the addition of many more new members in the coming years.

OUTSTANDING COUNTY BAR ASSOCIATION

Washington County Bar Association



The 57-member Washington County Bar Association (WCBA) serves attorneys and judges in the three-county area of Washington, Nowata and Osage counties. The WCBA serves its members and commu-

nities by providing education of the legal system and promoting community service. This year the WCBA embarked on an aggressive campaign to renew pride in the legal profession and understanding and trust in the judicial system. The association started the year with a campaign designed to increase and motivate its membership through personal letters, emails and direct contact with all area attorneys. As a result, the number of WCBA members has steadily increased throughout the year; but even more importantly, the level of involvement of the WCBA membership has significantly improved.

The WCBA took an active role in not only monitoring proposed legislation this past year, but also educating its members, legislators and the general public concerning the ramifications of certain legislation on individual rights and the judicial branch of government. The WCBA closely followed the 2011 legislative session and kept its members informed of any critical developments involving key legislation. While the Legislature was in session, the WCBA hosted a legislative update presentation by the Oklahoma Lawyers Association. WCBA members were also active participants in the OBA's Day at the Capitol event, and members have regularly engaged in direct communication with area legislators concerning proposed legislation. Following the end of the legislative session, the WCBA continued to provide its members with updated information on the legislative measures which were passed. Members have also received up to eight hours of free CLE by attending the monthly WCBA meetings.

The WCBA made a concerted effort this year to improve the perception and image of lawyers among the general public. Programs aimed at this objective include the development of a Facebook page, a presentation to members on personal responsibility, participation in the annual OBA Ask A Lawyer program, coordinating a Lawyers in the Classroom program, and implementing plans for an art contest this fall aimed at educating elementary school-aged children about the values inherent in our legal system. The WCBA also publicized and invited the general public to a ceremony and reception at the courthouse which unveiled portraits of the Washington County judges and other historical photographs and documents. The WCBA also worked in conjunction with a local poverty alleviation program in presenting a very successful legal forum and panel discussion devoted to "Poverty and the Legal System." The legal forum received such extraordinary positive feedback that it has prompted plans for follow-up programs in the coming months. In December, the WCBA will participate in a toy drive for needy children.

HICKS EPTON LAW DAY AWARD

Cherokee County Bar Association



The Cherokee County Bar Association was selected this year because its members are seen as a great example of what a small county can do during the OBA's annual celebration of Law Day. All counties are asked to participate in the yearly Ask A Lawyer event in which callers are offered free legal advice, but many small counties are declining to participate citing limited resources. Despite its small size, Cherokee County not only took calls by phone during Law Day, they went above and beyond the call by hosting two separate "in-person" Ask A Lawyer events in their community. Because of their efforts, dozens of walk-in clients at the Cherokee Nation Complex and Northeastern State University received legal assistance during Law Day this year.

The nomination for the award recognized that "the Cherokee County Bar Association truly recognizes the value of Law Day, especially its importance with respect to education and improving access to justice for Oklahomans, and [they] saw an opportunity to make a positive impact on the lives of those in their community."

A special thanks goes out to the officers of the county bar: Cynthia Burlison, Robert Garcia, N. Cheryl Hamby and Chrissi Ross Nimmo for the hard work and dedication throughout the year.

GOLDEN GAVEL AWARD

Civil Procedure and Evidence Code Committee

The Civil Procedure and Evidence Code Committee is the product of a merger at the beginning of this year between the Civil Procedure Committee and the Evidence Code Committee. Historically, the Civil Procedure Committee has been one of the OBA's more active standing committees, producing several recommended resolutions each year



- for consideration by the OBA Board of Governors and House of Delegates.

- In recent years, the committee recommended statutory revisions addressing electronic discovery, allowing alternative means for service of process, and addressing the availability of work-product protection for communications with testifying expert witnesses. This year, the committee addressed the "claw back" provisions of the Evidence Code. In addition to these substantial issues, the committee's members engage in regular review of procedural statutes and rules and provisions of the Evidence Code, looking for efficiencies and areas where these provisions can be made more clear and user-friendly.

- The committee's members represent a broad spectrum of trial lawyers as well as judges and law professors from around the state. Jim Milton, who has chaired the committee since 2006, praised the committee's members as diligent, hard working and practical. As with all trial lawyers, when there is work to be done, the committee members roll up their sleeves and get to work. When they first learned of this award, the committee's members noted in particular the contribution of professor Steve Gensler of the University of Oklahoma College of Law, who was instrumental in generating the committee's e-discovery proposal that became law on Nov. 1, 2010.

- One award committee member said, "I don't think most people understand the time and work that goes into being on this committee. The impact that their work has on real-world issues is quite incredible. I didn't understand just exactly what and how much they do until I got somewhat involved with the committee."

OUTSTANDING YOUNG LAWYER AWARD

Molly Aspan, Tulsa

- Molly Aspan was selected as this year's outstanding young lawyer award because of her professionalism, skills and commitment to the profession and her community. Ms. Aspan is a shareholder with the law firm of Hall, Estill, Hardwick, Gable, Golden & Nelson PC in its Tulsa office, where she has practiced since her graduation from the University of Kansas School of Law in 2003. Her primary practice area is employment and labor defense litigation and counseling. She is also admitted to practice in Kansas.



Through her actions, Ms. Aspan embodies the spirit of public service that is the purpose of the OBA Young Lawyers Division. She chaired the OBA YLD in 2010. Under her leadership, she reinvigorated the YLD's public service projects and instituted several major undertakings. Her year as director began with a YLD director orientation, aimed at providing young lawyer leaders with the tools needed to be effective in carrying out the division's goals. This was the first orientation in many years. She also imagined and instituted a large-scale Statewide Day of Service, during which young lawyers from across the state met on Law Day 2010 to provide the manpower to update, beautify and restore public libraries, which have been her passion since childhood. Twelve Oklahoma libraries were the beneficiaries of her vision, and the Statewide Day of Service model continued in 2011, with plans to become an annual event targeting different recipients. She also implemented a YLD regional conference in conjunction with young lawyers from Oklahoma, Kansas and Missouri in recognition of the importance of networking and learning from other lawyers. Though her year as chair ended, Ms. Aspan continues to be an active YLD member and was unanimously elected to serve as district representative to the ABA YLD for Oklahoma and Arkansas. She also currently serves as the chair of the OBA Disaster Response and Relief Committee and is the Oklahoma and Arkansas coordinator with FEMA for providing disaster legal services to victims of disasters. Her nomination for the Outstanding Young Lawyer Award states that she has inspired and challenged others to be more effective leaders in the bar and in their communities.

Ms. Aspan also serves as membership director of the Council Oak/Johnson-Sontag American Inns of Court and was recognized by the inn in 2009 with the James Sontag Award. In addition, she currently serves on the Board of Directors for Legal Aid Services of Oklahoma and is an active volunteer in many other community organizations.

OUTSTANDING SERVICE TO THE PUBLIC AWARD

Philip F. Horning, Oklahoma City

Philip Horning grew up in Norman and received an economics degree from the University of Oklahoma. In 1963, he began two years of active duty with the U.S. Army and was honorably discharged as a captain in 1968 from the U.S. Army Reserve. He attended the OU College



of Law and graduated in 1968 having served on the Law Review.

Mr. Horning had a law practice for 35 years until his retirement in 2003. After his retirement, he focused his energy into helping the young people of Oklahoma City by tutoring at Linwood Elementary School. It was here in 2003 where he found his new passion — tutoring one child one hour per week — to now up to six kids every week. The relationship between him and his students is evident by the way they respond to him. His patience and sincere interest in their struggles and achievements makes him much more than a tutor, he is a mentor. Representatives from Linwood reflect that the students who have moved on to middle school ask about him and remember the concern and dedication he showed for them. Whenever there is a writing assignment about Linwood teachers and staff, he is always represented. One young man wrote, "Mr. Horning talks to us like we are people he likes."

His positive experience with Linwood students inspired him to run for the Oklahoma City School Board where he was elected in 2008. He spends 20-30 hours each week on school board work. In addition to his required board work, he makes a point of visiting each school within his district while continuing to tutor. He describes his service on the board as a labor of love for which he is well suited and which utilizes his talents. Mr. Horning has become a true spokesman for compromise, competency and excellence for our school system throughout Oklahoma City.

AWARD FOR OUTSTANDING PRO BONO SERVICE

Stanley Evans, Oklahoma City

Stan Evans recently retired as the assistant dean for students at The University of Oklahoma College of Law. There, he maintained an outstanding record of leadership and service to his community. In addition to shaping future members of the bar association, he volunteers extensively within his home community and around the state.



He is a Vietnam veteran who served his country in the U.S. Army for 32 years, rising to the rank of colonel.

Col. Evans was the leader of the legal team for a highly successful annual "Make-A-Will" Clinic at Langston University in Oklahoma City. The clinic is a concerted effort of various organizations and churches to encourage the protection of black family wealth

through the making of wills and estate planning. Sixty-two families were assisted this year.

He has also developed several legal career pipeline programs to open awareness and expectations among the disadvantaged youth of Oklahoma. He donates his time to Cherokee Elementary School in Muskogee and has twice brought the entire 5th and 6th grade classes to spend a law day at OU. The children are involved in a mock trial, legal indoctrination and meetings with attorneys and students from similar backgrounds.

He has created similar "law day" programs with schools in both Norman and Oklahoma City, and with Upward Bound at both OU and Langston Universities. Mr. Evans' contagious positivity and compassion are great examples of how one person can change the way someone feels or the way something can get accomplished.

This year, he was also deeply involved with the OBA's Military Assistance Task Force and Oklahoma Lawyers for America's Heroes. He organized law student support for the OBA's legal assistance to deploying 45th Brigade Soldiers in Operation Yellow Ribbon and personally took on pro bono cases for veterans.

As a decorated Army officer, it seems fitting that he act as administrative advisor to the Military Law Society at the OU College of Law. He employs his extensive military network to connect students with internships and postgraduate positions; and to find quality speakers to speak about relationships between the military and the rule of law. He also assists students and leads practitioners in veteran advocacy efforts.

He has served on the school board of Anchorage, Alaska, and has been recognized as "Man of the Year" by organizations in both Tyler, Texas, and Leavenworth, Kan. At Fort Leavenworth, he was the first African-American Garrison Commander and dean of the U.S. Army's Command and General Staff College.

In 2009, Mr. Evans received the Toastmasters International Communication and Leadership Award for exemplary service to his community, state and nation. He was one of 70 outstanding leaders throughout the world to receive the award that year.

In addition to other activities, both Gov. Keating and Gov. Henry appointed him to the Oklahoma Human Rights Commission. There, he has served as both a board member and as chairman. He has also received the Governor's Commendation for Service to the state of Oklahoma.

MAURICE MERRILL GOLDEN QUILL AWARD

Jim Drummond, Norman

Jim Drummond receives the Maurice Merrill Golden Quill Award for his article titled "A Natural History of the Leon Good Faith Exception in Oklahoma," which appeared in the May 14, 2011, issue of *The Oklahoma Bar Journal*.



Mr. Drummond is a private criminal defense lawyer handling trial and appellate cases at the federal and state level.

He recently graduated from Gerry Spence's Trial Lawyers' College in Dubois, Wyo. He graduated with a bachelor of arts from Wesleyan University and received his J.D. from the OU College of Law. He also holds a master of arts in creative writing from the City College of New York and has recently published a book of short stories, *The Coyotes Forgive You*, with Mongrel Empire Press. His poetry has appeared in numerous small literary magazines, including *Cross Timbers*.

He served as the chief of the Non-Capital Trial Division of the Oklahoma Indigent Defense System from 1998-2007, having been a capital appellate defender with that agency from 1996-1998.

Recently from 2007-2008 he was supervisor of the Oklahoma-Western Capital Habeas Corpus Unit, representing clients in all three Oklahoma federal judicial districts. He is licensed in Oklahoma and Arizona, as well as in all Oklahoma federal district courts, the 5th and 10th Circuit Courts of Appeals and the U.S. Supreme Court.

He is the current chair of the Legal Ethics Advisory Panel of the Oklahoma Bar Association. From 2001-2006 he was a voting member the Oklahoma Sentencing Commission, mandated to make recommendations to the Legislature on sentencing policy and to supervise the Oklahoma Criminal Justice Resource Center. In 2004, he was the inaugural chairperson of the OBA Criminal Law Section, which now boasts over 500 members — prosecutors, defenders and judges. He continues to serve on its board as a past chairman and assistant editor of its quarterly publication, Q&A. He is a Master of the Ruth Bader Ginsburg Inn of Court and a past president of the Cleveland County Bar Association. Mr. Drummond currently serves on the boards of the Oklahoma Criminal Defense Lawyers Association and the Oklahoma County Criminal Defense Lawyers association and is a Benefactor Fellow of the Oklahoma Bar Foundation.

MAURICE MERRILL GOLDEN QUILL AWARD

Robert G. Spector, Norman

Robert G. Spector receives the Maurice Merrill Golden Quill Award for his article titled "Children and Divorce: A 31-Year Retrospective," which appeared in the Aug. 6, 2011, issue of *The Oklahoma Bar Journal*.



Professor Spector is the Glenn R. Watson Chair and Centennial Professor of Law Emeritus at the University of Oklahoma College of Law. He taught courses on family law, children and the law, conflict of laws, evidence, child abuse and neglect. He received his J.D. degree from the University of Wisconsin in 1966. Prior to joining the University of Oklahoma faculty in 1980, he was a member of the faculty of Loyola University of Chicago Law School for 13 years. He has served as a visiting professor at the University of Illinois, the University of North Carolina and Suffolk University in Boston.

Professor Spector writes and lectures extensively on family law topics. He is the author of *Oklahoma Family Law; Cases and Materials*, *Oklahoma Family Law: The Handbook* and *Oklahoma Family Law: Statutes and Rules Annotated*, all published by Imprimatur Press and over 100 articles on family law. He also serves as the associate editor of the *Family Law Quarterly*, and is a member of the board of editors of *Divorce Litigation* and the *American Journal of Family Law*.

He serves as the reporter for the Uniform Child Custody Jurisdiction and Enforcement Act and the Family Law Joint Editorial Board for the National Conference of Commissioners on Uniform State Laws. He also is the vice-chair of the Family Law Committee of the International Law Section and serves as a consultant to the Oklahoma Bar Association's Family Law Section.

He was a member of the governing council of the American Bar Association's Family Law Section for 10 years. He also chaired the committee on marital torts and served as vice-chair of the Law School Curriculum Committee. He received the Chair's Award from the OBA's Family Law Section in 1994 and 1997 for significant contributions to the development of family law and in 1990 was named the Outstanding Family Law Attorney.

Professor Spector also received the Earl Sneed Award for significant contributions to continuing legal education by the OBA in 1991.

(cont'd from page 2284)

known for his integrity, professionalism and high ethical standards. He had served two terms on the OBA Professional Responsibility Commission, serving as chairman for one year, and served two years on the Professional Responsibility Tribunal, serving as chief-master. The OBA's Award for Ethics bears his name.

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

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

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

OBA Governance

2012 Transitions

2011 President *Deborah Reheard, Eufaula*



Deborah Reheard has been in private practice in Eufaula since 1991, litigating in the areas of family law, criminal defense and bar disciplinary defense. Prior to her private practice, she served as an assistant city attorney in Tulsa and an assistant district attorney in Craig, Mayes, Rogers, Ottawa and Delaware counties.

She was the first woman elected to the Oklahoma Judicial Nominating Commission, serving as its chair in 2003-2004. Her OBA involvement includes serving on the Board of Governors for four years and membership on numerous committees. She served as chair of the Women in Law Committee in 2002, 2003 and 2009 and served on the Professionalism and Civility Task Force and the Administration of Justice Task Force. She currently serves on the Military Assistance Task Force and the Unauthorized Practice of Law Special Committee. She served on the Oklahoma Criminal Defense Lawyers Association Board of Directors and, as its vice president, was the recipient of the OCDLA President's Award in 2005. She was also a recipient of the Mona Salyer Lambird Spotlight Award in 2003 and the Earl Sneed Award for Continuing Legal Education in 2009. She is a frequent presenter of CLE topics on professionalism, civility, ethics and criminal law. She graduated from the University of Tulsa College of Law in 1987.

2012 President *Cathy Christensen, Oklahoma City*



Cathy Christensen was born in Norristown, Penn., and moved to Oklahoma in 1973. She received her undergraduate degree from Oklahoma State University in 1982 and J.D. from Oklahoma City University School of Law in 1986. She was admitted to the bar in 1987. She practices in Oklahoma City for the law office

Cathy M. Christensen and Associates PC. Ms. Christensen has been actively involved with and held offices in numerous organizations including serving as chairman for the Law-related Committee in 1989-1995; OBA Facilities Committee; OBA Bench and Bar Committee; OBA Family Law Section member since 1990, in 1992 served as secretary and 1993 as social chairman; OBA High School Mock Trial Committee member; National Mock Trial Task Force member; Solo and Small Firm Committee; OBA Women in Law Committee member since 1995; OBA Audit Committee; OBA Budget Committee; OBA Unauthorized Practice of Law Committee; OBA Strategic Planning Committee; and OBA Awards Committee. She is also a Benefactor Fellow of the Oklahoma Bar Foundation and serves as an OBF Trustee. She served as the OBA Board of Governors liaison to the Oklahoma County Bar Association Board of Directors from 2006-2009. Ms. Christensen has received numerous awards for her leadership and community service.

2012 Nominees

President-Elect

James T. Stuart, Shawnee



James T. Stuart is a partner in the Shawnee firm of Stuart, Clover, Duran, Thomas & Vorn-dran, established in 1904, emphasizing his practice in the areas of estates and trusts, real property, oil and gas, banking, and commercial law and litigation. He graduated from Central State University in 1975 and received his J.D. from the University of Tulsa College of

Law in 1978. Mr. Stuart recently served on the OBA Board of Governors (2008-2010) and was previously a director of the OBA Young Lawyers Division. He has served on the OBA Access to Justice, Awards, Audit, Budget and Communications Committees, and he was also a member of the Board of Editors of the *Oklahoma Bar Journal* (2005-2010). He was appointed to the OBA Administration of Justice Task Force. He served by Supreme Court appointment on a temporary panel of the Oklahoma Court of Appeals (1991), and he is a Supreme Court justice of the Absentee Shawnee Tribe of Indians. He attorney coached the Shawnee High School mock trial team, and he served as both a mock trial site coordinator and National Championship scoring judge. He was a business law instructor at Oklahoma Baptist University. He is a past president of the Pottawatomie County Bar Association and is a member of the Oklahoma and American Bar Associations. He has been a multi-term delegate to the OBA Annual Convention. He was a director of Legal Aid of Western Oklahoma Inc. He is a Fellow of the Oklahoma Bar Foundation and an OBA Fellow of the American Bar Foundation. Mr. Stuart was an initial organizer of Leadership Oklahoma and was a member of its Class IV. He is a past president of the Shawnee Rotary Club and a Paul Harris Fellow. He is currently a trustee of the UCO Foundation. He has been on the boards of Shawnee civic affairs and service organizations, including the Educational Foundation, Economic Development Foundation, Chamber of Commerce, Volunteer Health Clinic, United Way, Habitat for Humanity, Youth and Family Resource Center, Unity Health Center Foundation, Shawnee Community Foundation, Mabree-Gerrer Museum of Art and the City of Shawnee Housing Authority. He is a member of the Oklahoma Baptist University-Shawnee Advisory Board and a contributing member of the *Shawnee News-Star* editorial board. He and his wife, Kathy, are the parents of three daughters.

Vice President

Peggy Stockwell, Norman

Peggy Stockwell lives and practices family law in Norman. She is also a mediator, arbitrator and guardian *ad litem* in family law cases. She takes cases for pro bono and Legal Aid Services and was awarded the Legal Aid Pro Bono Award in 1999 for her service. After the tornadoes in 1999 and in 2003, she and her brother arranged for the OBA to have a presence at the FEMA sites to assist those affected with legal issues.



For her efforts, she was awarded the 1999 OBA Outstanding Service to the Public Award. She also received the Mona Salyer Lambird Spotlight Award in 2005. Since becoming a lawyer, Ms. Stockwell has served on several OBA committees including: Professional Responsibility Tribunal (two terms), Access to Justice Committee, Budget Committee, Lawyers Helping Lawyers Assistance Program Committee, Awards Committee and Clients' Security Fund Committee. She was the co-chair of the Disaster Response and Relief Committee, and she is currently a member of the Family Law Section. She also served as the District 5 representative on the Board of Governors from 2007-2009. Ms. Stockwell has also been an active member of the Cleveland County Bar Association and has served on the CCBA Executive Committee for many years. During her tenure as its president in 2000, the CCBA received the OBA President's Award for Outstanding Participation in OBA Programs and Projects (and for having a "world class" hospitality suite). She is currently a director of the Cleveland County Bar Foundation, an organization dedicated to charitable works. She is currently serving as a member on the Cleveland County Board of Health of the Cleveland County Health Department. She has also served on the board of several charitable organizations including Norman Alcohol and Information Center and Health for Friends. Ms. Stockwell enjoys spending time with her boxer, Winston, who has been featured in the bar journal with President Reheard.

Supreme Court Judicial District One

Linda S. Thomas, Bartlesville



Linda S. Thomas is a sole practitioner in Washington County, with her office located in Bartlesville. She graduated *cum laude* from Ouachita Baptist University in Arkadelphia, Ark., in 1976 with a Bachelor of Arts degree in speech pathology and subsequently received a B.A. in elementary education. After teaching for

20 years, Ms. Thomas received her J.D. from the University of Tulsa College of Law. She was admitted to the Oklahoma Bar Association in 1994. Ms. Thomas is an active member of the Washington County Bar Association. She has served the Washington County Bar Association as its president, vice president, secretary/treasurer, Law Day chair, CLE coordinator, chairperson for annual blood drive and annual toy drive, and as a delegate to the OBA House of Delegates (2000, 2001, 2004-2007, 2009). In 2009, she received a special recognition award from the Washington County Bar Association for her excellence in leadership, professionalism and dedication to the bar and community. Ms. Thomas is a member of the Oklahoma Bar Association, the American Bar Association, the OBA Family Law Section and the National Association of Professional Women. In January 2003, Ms. Thomas was elected to the OBA Board of Governors, serving a three-year term. She served as vice president of the Oklahoma Bar Association in 2009. In 2007, Ms. Thomas was appointed by OBA President Stephen Beam as the OBA Leadership Academy Task Force chairperson and has served in that capacity since that time. She is a member of the Women in Law Committee, a Charter Benefactor Fellow of the Oklahoma Bar Foundation, a Young Lawyers Division Fellow and an Oklahoma Fellow of the American Bar Foundation. Ms. Thomas also served the OBA as a member of the Strategic Planning Task Force, chair of the Credentials Committee of the 2005 House of Delegates, Access to Justice Committee member, Budget Committee member, and OBA Centennial Task Force Member. She is a former member of the Oklahoma Bar Foundation Board of Trustees. Ms. Thomas received the OBA President's Award from Stephen Beam in 2007 and again from Jon Parsley in 2009. She is also a 2010 recipient of the prestigious Mona Salyer Lambird Spotlight Award. Ms. Thomas' private practice focuses primarily in the area of family and juvenile law. In addition to her private practice, she is a volunteer attorney in Washington County,

- where she has represented hundreds of children who
- are victims of child abuse and neglect, and she is also
- a volunteer attorney for Legal Aid of Northeastern
- Oklahoma. She represents children as a guardian *ad*
- *litem* in divorce, guardianship and adoption cases, as
- well as serving as a trained mediator and parenting
- coordinator in domestic cases. Ms. Thomas was an
- attorney for the Oklahoma Indigent Defense System
- representing juvenile delinquents in Osage and Pawnee
- counties from 1998-2003.

Supreme Court Judicial District Six

Kimberly K. Hays, Tulsa



Kimberly K. Hays began practicing law in Tulsa with her father, James R. Hays, in 1993. After his death, she joined the firm of Savage, O'Donnell, Scott, McNulty, Affeldt and Gentges, where she concentrated her practice in family law. In 1998, she established her law firm where she continues to practice exclusively in

- the area of family law. Ms. Hays was born in Tulsa
- and attended Oklahoma State University, where she
- received her B.A. in philosophy with honors in 1990.
- She graduated from the University of Kansas School
- of Law in 1993. She is currently serving as the 2011
- chairperson of the OBA Family Law Section and also
- served as its chair in 2010. She has also served as
- the OBA Family Law Section CLE chair (2009), secretary
- (2008) and CLE committee (2007). She has been
- an active member of numerous OBA committees,
- including the co-chair of the Solo and Small Firm Conference
- Committee (2011); OBA Professionalism
- Committee (2009-2011; secretary 2009); OBA Bench
- and Bar Committee (2009-2011); Leadership Academy
- Task Force Committee (2007); and OBA Women
- in Law Committee (2010-2011). Ms. Hays was
- selected as a participant in the Oklahoma Bar Association
- Leadership Academy (2008-2009). She has
- also enjoyed her participation in the Tulsa County Bar
- Association as a director-at-large (2011-2012), a
- member of the Tulsa County Bar Association Professional
- Responsibility Committee (2009-2010 and
- 2010-2011); Tulsa County Bar Association Professionalism
- Committee (2009-2010 and 2010-2011) and
- as a Tulsa delegate to the OBA House of Delegates
- (2009-2011 and 2011-2013). In addition, she is
- serving as the Tulsa County Bar Association Family
- Law Section chair (2010-2011 and 2011-2012). Ms.
- Hays is a member of the American Bar Association,
- ABA Family Law Section, Oklahoma Bar Association,
- OBA Family Law Section, Tulsa County Family Law

Section, Tulsa County and Creek County bar associations, and a Fellow of the Oklahoma Bar Foundation. In addition to her service with the OBA, she frequently presents/moderates CLEs for organizations including the Oklahoma Bar Association, OBA Family Law Section and Oklahoma Child Support Services. She has been a pro bono volunteer for Legal Aid Services of Oklahoma since 1996. She is a resident of Tulsa, where she is a lifelong member of St. John's Episcopal Church. She and her husband, Alan, have been married since 1993, and they have two children, Noelle and Parker.

CONTESTED ELECTION:

Supreme Court Judicial District Seven *Bret A. Smith, Muskogee*



Bret A. Smith received his B.A. in political science from the University of Oklahoma in 1986 and earned his J.D. from the University of Tulsa in 1990. He interned at the law office of Bill Haworth while attending law school and then became a practicing attorney at Haworth, Finerty & Smith. He has been practicing since gradu-

ation and is now president of Bret A. Smith, Attorney at Law, PC. In April 2007, he became alternate municipal judge for the City of Muskogee, and in November 2007, he became municipal juvenile judge for the City of Muskogee. He also recently became municipal judge for the town of Ft. Gibson. Mr. Smith is admitted to practice before the 10th Circuit Court of Appeals and U.S. District Court for the Northern and Eastern Districts of Oklahoma. He has served as past president of the Muskogee County Bar Association and continues to be an active member of the association in various capacities. Civically, he has been president of the Muskogee Rotary Club and a member of its Board of Directors.

Supreme Court Judicial District Seven *Gary J. Dean, Pryor*



Born and raised in Oklahoma, Gary J. Dean graduated from the University of Oklahoma College of Law in 1966. Upon graduation, he entered into general practice in Mayes County as an associate, and then partner, of Col. Tony Jack Lyons. He began his solo practice in 1984. In 1999, he was appointed special district judge

for the 12th Judicial District serving Mayes, Craig and Rogers counties until his retirement in October 2010. Judge Dean has been active in OBA service during his entire legal career. He is well acquainted with OBA staff and leadership. He continued his bar activities after his appointment to the bench. Although not required, he generally attains over 50 OBA/MCLE hours per year. His bar activities, service and honors include 19 continuous years in leadership positions of Family Law Section (FLS); FLS chair, vice chair, secretary and current membership co-chair; organized and chaired first Solo and Small Firm Conference; selected in 2000 as lifetime Fellow of Young Lawyers Division; awarded OBA Presidential Citation for Outstanding Service; served on OBA Implementation of Judicial Reform and Long Term Technology Planning Committees; Sustaining Fellow, Oklahoma Bar Foundation; reorganized inactive Mayes County Bar Association in 1999 and served continuously as its secretary-treasurer, with over 35 paid members, and selected one year as Outstanding County Bar Association; certified NTHSA field sobriety tester; founding member, Oklahoma Criminal Defense Lawyers Association; Oklahoma Trial Lawyers Association officer; selected as Master of the Bench of the Hudson-Hall-Wheaton Chapter of American Inns of Court and remains active as Pupilage Group Leader; Oklahoma Lawyers for America's Heroes volunteer for service to military and families. Since retirement, Judge Dean has remained active in numerous bar functions. He has the time, maturity, ability and experience to fully represent all of the rural counties in this important position on the Board of Governors.

Member-At-Large
Nancy Parrott, Oklahoma City



Nancy Parrott grew up in Atoka, received her law degree from Oklahoma City University, was in private practice in Oklahoma City and served for more than 25 years as marshal of the Oklahoma Supreme Court. She received the 2009 Oklahoma Bar Association Joe Stamper Distinguished Service Award

and the 2010 Oklahoma County Bar Association Leadership in Law Award. She currently is in her second three-year term as a director of the Oklahoma County Bar and she is a Benefactor Fellow of the

- Oklahoma Bar Foundation. She has chaired and
- served on committees such as the OBA Awards Com-
- mittee, Civil Procedure Committee, Professionalism
- Committee, Disaster Relief, Law Day, Continuing Legal
- Education and on the Oklahoma County Bar *Brief-*
- case, Community Service, Lawyer Referral, Public
- Information, Bench and Bar, and the OETA Ask A
- Lawyer program for many years. She has been a fre-
- quent speaker, writer and planner for CLE programs
- for both the state and several county bar associations,
- the Appellate Practice Section and high school and
- civic groups. She has been on the boards of the
- American Cancer Society, Lupus Association, Youth
- Leadership Exchange, Shiloh Camp and American
- Lung Association. She is a graduate of both Leader-
- ship Oklahoma City and Leadership Oklahoma, cur-
- rently serving as class representative and chair-elect of
- the Leadership Oklahoma Ambassadors Board.

NOTICE OF JUDICIAL VACANCY

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

**District Judge
Fourteenth Judicial District, Office 8
Tulsa County, Oklahoma**

This vacancy is due to the appointment of the Honorable P. Thomas Thornbrugh to the Court of Civil Appeals.

To be appointed to the office of District Judge, Office 8, Fourteenth Judicial District, one must be a registered voter of Tulsa County Electoral Division Five 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, Oct. 28, 2011. If applications are mailed, they must be postmarked by midnight, Oct. 28, 2011.**

Jim Loftis, Chairman
Oklahoma Judicial Nominating Commission

2012 OBA Board of Governors Vacancies

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

OFFICERS

President-Elect

Current: Cathy M. Christensen, Oklahoma City
Mrs. Christensen automatically becomes

OBA president Jan. 1, 2012

(One-year term: 2012)

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

Vice President

Current: Reta M. Strubhar, Piedmont

(One-year term: 2012)

Nominee: **Peggy Stockwell, Norman**

BOARD OF GOVERNORS

Supreme Court Judicial District One

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

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

Supreme Court Judicial District Six

Current: Martha Rupp Carter, Tulsa
Tulsa County

(Three-year term: 2012-2014)

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

Supreme Court Judicial District Seven

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

Nominee: **Bret A. Smith, Muskogee**
Gary J. Dean, Pryor

Member-At-Large

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

Nominee: **Nancy Parrott, Oklahoma City**

Summary of Nominations Rules

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

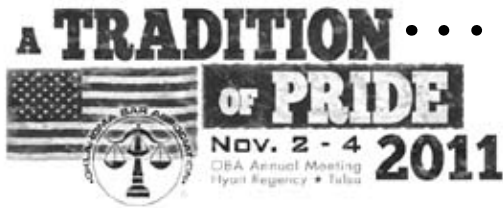
Not less than 60 days prior to the Annual Meeting, 50 or more voting members of the OBA from any or all Judicial Districts shall file with the Executive Director, a signed petition nominating a candidate to the office of Member-At-Large on the Board of Governors, or three or more County Bars may file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

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

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

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

Vacant positions will be filled at the OBA Annual Meeting Nov. 2-4. Terms of the present OBA officers and governors listed will terminate Dec. 31, 2011. Nomination and resolution forms can be found at www.okbar.org.



2011 House of Delegates

Delegate certification should be sent to OBA Executive Director John Morris Williams in order for names to appear in print in the bar journal and to be included in the House of Delegates agenda book.

COUNTY	DELEGATE	ALTERNATE
Adair	Jeff Payton	Barrett Harris
Alfalfa	Marcus Jungman.....	Kyle Hadwiger
Atoka	Preston Harbuck	Pethi Hays-Gabbard
Beaver	Todd Trippet	Robert J. Kee
Beckham		
Blaine	Daniel G. Webber	F. Douglas Shirley
Bryan	Melissa Middleton.....	Matt Mickle
Caddo		
Canadian	Suzanne P. Heggy.....	Leslie Taylor
	Nathan Richter	Morris Galloway
	Kevin Cunningham.....	Jack Dawson
	Michael Denton Jr.	W. Mark Hixson
Carter	Dennis Morris	Thomas Baldwin
	Mike Mordy	(Ret.) Judge Thomas Walker
Cherokee	N. Cheryl Hamby	Elizabeth Odell
Choctaw	J. Frank Wolf III	Gary Brownsworth
Cimarron	Judge Ronald L. Kincannon	Stanley Ed Manske
Cleveland	Michael Johnson	Ann Harcourt
	Don Pope.....	David Poarch
	Alissa Hutter.....	Tyson Stanek
	Peggy Stockwell.....	Cindee Pichot
	Richard Stevens	Amy Pepper
	Holly Iker	Ben Odom
	Judge Lori Walkley.....	Buddy Pendarvis
	Henry Herbst.....	Debra Loeffelholz
	Judge Stephen Bonner	Rebekah Taylor
	Blake Virgin	David Swank
	Dave Stockwell	Clint Pratt
	Micheal Salem	Cheryl Farnsworth
	Gary Rife	
	Sandee Coogan	
	Jan Meadows	
	Craig Sutter	
	Golda Long	
	Beth Stanley	
Coal	Kara Bacon	Trae Gray

Comanche	Mark Stoneman	Ana Basora-Walker
	Eric Davis	Dietmar Caudle
	Robin Rochelle.....	Greg Beben
Cotton	Judge Michael C. Flanagan	Kathleen Flanagan
Craig	Leonard M. Logan IV.....	Kent Ryals
Creek	Charles D. Watson.....	Laura Farris
	Judge Richard Woolery	J. V. Frazier
Custer	Anthony Seth Adams.....	Perry Luther "Luke" Adams
Delaware	Rogers Hughes	Dodi Manley
Dewey	Judge Rick Bozarth	Gary Combs
Ellis	Saundra F. Lapsley	Laurie E. Hays
Garfield	Douglas L. Jackson	Michael C. Bigheart
	Tim DeClerck	Robert R. Faulk
	Judge Tom L. Newby	Kaleb Hennigh
Garvin	Daniel Sprouse	John A. Blake
Grady	Ryland Rivas	
	Judge Richard VanDyck	
Grant	Judge Jack D. Hammontree Jr.	Steven A. Young
Greer	Judge Danny R. Deaver	Eric Yarborough
Harmon	David L. Cummins.....	Judge W. Mike Warren
Harper	Judge G. Wayne Olmstead.....	Jim Harkins
Haskell	Thomas H. Conklin III	
Hughes	Trisha D. Smith	Harold E. Heath
Jackson		
Jefferson	William W. Eakin	Carrie Hixon
Johnston	Dustin P. Rowe	Laura F. Corbin
Kay	Christopher W. Landes	Guy Clark
	Shawna N. Taylor.....	Richard Johnson
Kingfisher	Matthew Oppel	Edd Pritchett
Kiowa	Thomas W. Talley	
Latimer		
LeFlore	Ranada Adams.....	Dru Waren
Lincoln	Patrick A. Thompson	Charles Thompson
Logan	James Bennett.....	Jeff Hirzel
Love	Kenneth L. Delashaw Jr.	Richard A. Cochran Jr.
Major		
Marshall	D. Michael Haggerty II.....	Jeff Landgraf
Mayes	Gary J. Dean	Larry J. Paden
McClain	John Mantooth	James Dee Graves
McCurtain	Judge Michael D. DeBerry	Jerry L. McCombs
McIntosh	Steve Barnes	Deborah A. Reheard
Murray	Phil S. Hurst	John H. Scaggs
Muskogee	Chad Locke	Eric Jones
	Roy D. Tucker	Carol Cowan
	Justin Stout	Lowell Howe
Noble		
Nowata		
Okfuskee	Judge David N. Martin.....	Maxey Reilly
Oklahoma	Laura H. McConnell-Corbyn	LeAnne Burnett
	Judge Patricia G. Parrish	Richard Rose
	John Heatly	Amy S. Fischer
	Judge Bryan C. Dixon	J. Kelly Work
	Judge Vicki L. Robertson	Collin Walker
	Judge Barbara Swinton.....	Jeff Todd

	David B. Donchin.....	Janna Dunnagan Gau
	Judy Hamilton Morse.....	Jeffrey Tate
	Judge Lisa Hammond	Maurice Woods
	Reggie N. Whitten.....	Daniel Couch
	G. Calvin Sharpe.....	Lance Schneider
	Daniel G. Webber Jr.	Cherish Ralls
	Michael Mullins	Dawn M. Rahme
	Don Holladay	Gary S. Chilton
	Judge Lynne McGuire	Michael Rubenstein
	Nancy S. Parrott	David Kisner
	D. Lynn Babb	Susan Shields
	Amy J. Pierce	Michael Brewer
	Leslie Lynch	Phillip Whaley
	Bradley Gungoll	Jim Webb
	Judge Timothy D. DeGiusti	Kieran D. Maye
	Mack K. Martin	Judge E. Bay Mitchell III
	Judge Geary L. Walke.....	Charles Alden
	Judge Glenn Jones	David Ogle
	Howard K. Berry	W. Todd Blasdel
	Larry M. Spears.....	Angela Ailles Bahm
	James Kirk	M. Courtney Briggs
	Robert McCampbell	Judge Page Morgan
	Benjamin Butts	Timothy Rhodes
	John S. Oldfield.....	Evan Gatewood
	Luke Gaither.....	Lou Ann Moudy
Okmulgee		
Osage		
Ottawa	Charles W. Chesnut	John M. Weedn
Pawnee	Lawrence A. Martin	Billy Joe Ellington
Payne	David Bryan.....	Catherine R. Seagraves
	Susan Worthington.....	Martin High
	Jill Tontz.....	Niles Stuck
Pittsburg	Ellen Quinton	Tim Mills
	Mindy Beare	John Thomas
Pontotoc	Ash Mayfield	
	Christine Pappas	
Pottawatomie	James T. Stuart.....	George Wright
	Joe Vorndran	Mat Thomas
Pushmataha	James T. Branam	Charlie Michelle Wolfe
Roger Mills	E. Pat VerSteeg	Thomas B. Goodwin
Rogers	Justin Greer.....	Sean McConnell
	Noah Sears.....	Melinda Wantland
Seminole	R. Victor Kennemer III	William D. Huser
Sequoyah		
Stephens		
Texas	Douglas D. Dale	Cory B. Hicks
Tillman		
Tulsa	Robert S. Farris	Robert Redemann
	Judge Charles R. Hogshead	Fred H. DeMier
	Leonard I. Pataki.....	Georgenia (Brown) Van Tuyl
	Renee DeMoss	Gale Allison
	William G. LaSorsa	Michael Scott Ashworth
	Paul D. Brunton	Kenneth G. Miles
	C. Michael Zacharias.....	Kimberly K. Moore Waite
	Kenneth L. Brune	David M. Thornton Jr.

Bruce A. McKenna	James C. Milton
Tony W. Haynie	Amber Peckio Garrett
Paul B. Naylor	Shelton Benedict
Vivian C. Hale	Jeremy K. Ward
Jack L. Brown	William "Bill" Sanders
Catherine M. Cullem	Michael "Mike" Esmond
Molly A. Aspan	Nathan Harley Mayenschein
Judge Millie Otey	Ken Williams
Deirdre Dexter	Julie A. Evans
Martha Rupp Carter	E. Zach Smith
James R. "Jim" Gotwals	Trisha Archer
Steven K. Balman.....	Moura A. J. Robertson
D. Faith Orłowski	Tamera A. Childers
John R. Woodard III	Melissa F. Cornell
Robert B. Sartin	Keith A. Jones
Phil Frazier	Vijay Madduri
Ronald Main	
Gerald L. Hilsher	
Mark Barcus	
Kimberly K. Hays	
Richard L. Gray Jr.	

Wagoner

Washington

Washita

Woods

Woodward

Judge Christopher S. Kelly

Jeremy Bays

Bryce L. Hodgden

Skye D. Shephard-Wood

Jesse Kline

Justin P. Eilers

OKLAHOMA JUDICIAL CONFERENCE

Judge P. Thomas Thornbrugh

Judge Mickey J. Hadwiger

Judge M. John Kane IV

Judge Mark Moore

NOTICE OF MEETING FOR CREDENTIALS COMMITTEE

The Credentials Committee of the Oklahoma Bar Association will meet Thursday, Nov. 3, 2011, from 9 B 9:30 a.m. in Room 1 of Directors Row at the Hyatt Regency, 100 East Second Street, Tulsa, Oklahoma in conjunction with the 107th Annual Meeting. The committee members are: Chairperson Luke Gaither, Henryetta; Leisa M. Gebetsberger, Tulsa; Reta M. Chaney Strubhar, Piedmont and Linda S. Thomas, Bartlesville.

NOTICE OF MEETING FOR RULES & BYLAWS COMMITTEE

The Rules & Bylaws Committee of the Oklahoma Bar Association will meet Thursday, Nov. 3, 2011, from 10 B 10:30 a.m. in Room 1 of Directors Row at the Hyatt Regency, 100 East Second Street, Tulsa, Oklahoma in conjunction with the 107th Annual Meeting. The committee members are: Chairperson Robert S. "Bob" Farris, Tulsa; Jody R. Nathan, Tulsa; Roy D. Tucker, Muskogee; T. Luke Abel, Oklahoma City and Alan Souter, Tulsa.

NOTICE OF MEETING FOR RESOLUTIONS COMMITTEE

The Resolutions Committee of the Oklahoma Bar Association will meet Thursday, Nov. 3, 2011, from 10:45 B 11:45 a.m. in Room 1 of Directors Row at the Hyatt Regency, 100 East Second Street, Tulsa, Oklahoma in conjunction with the 107th Annual Meeting. The committee members are: Chairperson Peggy Stockwell, Norman; Joe Vorndran, Shawnee; D. Faith Orłowski, Tulsa; Molly A. Aspan, Tulsa; Glenn A. Devoll, Enid and James T. Stuart, Shawnee.

Program of Events

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

All events will be held at the Hyatt Regency Hotel unless otherwise specified.

TUESDAY, Nov. 1

OBA Registration 4 – 7 p.m.
Lobby Lounge

Oklahoma Fellows of the
 American Bar Foundation 7 – 9 p.m.
*Tulsa Country Club
 701 N. Union Ave.*

OBA/CLE Seminar 9 a.m. – 5 p.m.

*See seminar program for speakers
 and complete agenda*

Charm School *Promenade A*
 Recent Developments *Promenade B*
 Family Law *Promenade C*
 Criminal Law *Promenade D*
 Art of War *Oklahoma Room*

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

WEDNESDAY, Nov. 2

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

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

OBA Art Show Registration 8 – 11 a.m.
Director's Row 1

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

Oklahoma Fellows of the American
 Bar Foundation 7:30 – 9 a.m.
Tulsa Ballroom North

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

Outstanding Senior Law School Student Award

*Barbara McHugh Moschovidis,
 University of Oklahoma College of Law*

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

Speaker:



**Mike Turpen,
 Riggs, Abney, Neal,
 Turpen, Orbison & Lewis**

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

Outstanding Senior Law School Student Award

*Russell C. Ramzel,
University of Tulsa College of Law*

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

Outstanding Senior Law School Student Award

*Paige Mathews,
Oklahoma City University School of Law*

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

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

OBF Fellows Reception 5:30 – 7 P.M.
*Jones, Gotcher & Bogan
15 E. 5th St. - 38th Floor
First Place Tower
Transportation provided*

OBA Health Law Section 6 – 8 p.m.
Promenade B

BOG Alumni Reception.....5:30 – 6:30 p.m.
Chairman's Suite

OBA YLD Board of Directors 6 – 7 p.m.
Suite 304

President's Boots & Bandanas
Reception.....7 – 11 p.m.
Tulsa Ballroom

**(Free for everyone
with meeting registration)**

SPONSOR: *Beale Professional Services*

Entertainment: Red Dirt Rangers

SPONSOR: *OBA General Practice Solo-Small Firm
Section*

*Celebrate the Annual Meeting Tulsa style with
President Deborah Reheard. Each attendee
receives two drink tickets.*

Tombstone Casino Night8 – 11 p.m.
Tulsa Ballroom

**(Free for everyone
with meeting registration)**

Prize drawings at break and end of the event

SPONSOR: *OBA Young Lawyers Division*

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

THURSDAY, NOV. 3

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

Bench and Bar Breakfast.....7:30 – 9 a.m.
Tulsa Ballroom South

Featuring:



**Walt Coleman,
NFL Referee**

TOPIC: *Turning Your Boos into Cheers:
How Effective Are You?*

SPONSOR: *OBA Litigation Section*

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

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

Annual Insurance, Tort &
Workers' Compensation
Update 8:30 a.m. – 4 p.m.
Promenade C

*(Program offered by the Oklahoma
Association for Justice)*

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

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

OBA Rules of Professional
Conduct Committee..... 9 – 11 a.m.
Directors Row 4

OBA/CLE Plenary Session 9 – 11:45 a.m.
Promenade A

Speaker:



**Sgt. Matt Eversmann,
American military hero
involved in the events
that inspired the movie
*Black Hawk Down***

TOPIC: *Stepping on the Battlefield: Do the Rules
Change?*

MODERATOR: *Robert Don Gifford, assistant U.S.
attorney in the Western District of
Oklahoma*

PANEL:

Sgt. Eversmann

*Vicki Behenna, assistant U.S. attorney in the
Western District of Oklahoma, mother of
Army Ranger Lt. Michael Behenna*

*David E. Coombs (tentative), Law Office
of David E. Coombs, attorney for Private
Bradley Manning*

*Michelle Lindo McCluer, executive director
of the National Institute of Military Justice,
Washington, D.C.*

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

OBA Diversity Committee..... 10 a.m. – Noon
Tulsa Ballroom North

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

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

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

**(\$35 with meeting
registration)**

Earl Sneed Award

Noel Tucker, Edmond and Phil Tucker, Edmond

Award of Judicial Excellence

Judge Millie Otey, Tulsa

Liberty Bell Award

Oklahoma County Law Library, Oklahoma City

Joe Stamper Distinguished Service Award

William R. "Bill" Grimm, Tulsa

Alma Wilson Award

Robert N. Sheets, Oklahoma City

Neil E. Bogan Professionalism Award

Judge William J. Holloway Jr., Oklahoma City

John E. Shipp Award for Ethics

Brooke Smith Murphy, Oklahoma City



**Andrew H. Card Jr.,
former White House chief
of staff under President
George W. Bush**

TOPIC: *A Conversation with Andrew Card:
Eyewitness to History*

Sgt. Matt Eversmann
Book Signing.....1:45 – 2:30 p.m.
(Books available for purchase)
Tulsa Ballroom South Foyer

OBF Executive Committee2 – 3 p.m.
Directors Row 1

Real Property Law Section.....2 – 4 p.m.
Promenade A

Law Day Committee2 – 4 p.m.
Directors Row 4

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

Oklahoma Criminal Defense
Lawyers Association2 – 4 p.m.
Promenade B

OBA Leadership Academy.....2 – 6 p.m.
Diplomat Room

Trial College.....2:30 – 6 p.m.
Oklahoma Room

SPONSOR: *OBA Litigation Section*

Veterans Appreciation Reception.....2:30 – 4 p.m.
Tulsa Ballroom Central

SPONSOR: *McAfee & Taft*

Oklahoma Bar Foundation
Board of Trustees3 – 5 p.m.
Executive Room

OBA Board of Editors.....3:30 – 5 p.m.
Directors Row 3

OBA Technology Committee.....4 – 5:30 p.m.
Directors Row 1

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

OBA YLD Speed Networking.....6 – 7 p.m.
Directors Row 5

OBA YLD Fellows Reception7 – 8 p.m.
Promenade A

Red, White & Blue Reception7 – 8 p.m.
Tulsa Ballroom South Foyer

The Capitol Steps.....8 – 9:45 p.m.
Tulsa Ballroom South



FRIDAY, NOV. 4

President's Breakfast.....8 – 9 a.m.
Promenade A

**(\$25 with meeting
registration)**

Featuring: *Martin Luther King Jr. Unity Choir,*
McAlester

SPONSOR: *GableGotwals*

American College of
Trust and Estate Counsel8 – 9:30 a.m.
Executive Room

OBA Registration8 a.m. – Noon
Promenade D Foyer

OBA Hospitality.....8 a.m. – Noon
Lobby Lounge

Trial College.....8 a.m. – 5 p.m.
Oklahoma Room

SPONSOR: *OBA Litigation Section*

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

Trailblazer Award

Donald W. Davis Sr., Oklahoma City

Outstanding County Bar Association Award

*Canadian County Bar Association
Washington County Bar Association*

Hicks Epton Law Day Award

Cherokee County Bar Association

Golden Gavel Award

*OBA Civil Procedure and Evidence
Code Committee*

Outstanding Young Lawyer Award

Molly Aspan, Tulsa

Outstanding Service to the Public Award

Philip F. Horning, Oklahoma City

Award for Outstanding Pro Bono Service

Stanley Evans, Oklahoma City

Maurice Merrill Golden Quill Award

*Jim Drummond, Norman
Robert G. Spector, Norman*

General Assembly Speakers:



**Chief Justice Steven
W. Taylor,
Oklahoma Supreme
Court**

**Presiding Judge
Arlene Johnson,
Oklahoma Court
of Criminal Appeals**



**Deborah Reheard,
President
Oklahoma Bar Association**

OBA CLE Going Geek:

Tech Fair..... 9 a.m. – 2:50 p.m.
Promenade B

SPONSOR: *OBA Law Office Management and
Technology Section*

Oklahoma Bar Association

House of Delegates..... 10 a.m. – Noon
Promenade C

*Election of Officers & Members of
the Board of Governors
Approval of Title Examination Standards
Resolutions*



**Cathy Christensen,
President-Elect
Presiding**

Tellers Committee 10:30 a.m. – Noon
Directors Row 1





OBA Estate Planning,
Probate and Trust

Section Seminar..... 11:30 a.m. – 3 p.m.
Promenade A

OBA Professionalism

Committee..... 11:30 a.m. – 1:30 p.m.
Diplomat Room

OBA/CLE.....

	Family Law Track 	Criminal Law Track 	Charm School for Lawyers 	Recent Developments 
	MODERATOR: Tamara Childers	MODERATORS: Ben Brown Cindy Danneil	MODERATORS: Justice Jim Winchester Judge Jane Wiseman	MODERATOR: Travis Pickens
9 - 9:50	Social Media Discovery Shann Henry	Oklahoma Jury Sentencing and 2404(b) Evidence and Jury Instruction OJICR 9-20 David McKenzie Jacqui Ford	How to Charm the Pants off the Court Without Skirting the Issue Justice Jim Winchester Judge Jane Wiseman	Criminal Law Update Barry Derryberry Andrea Miller
10 - 10:50	Dealing with Difficult Opposing Counsel Virginia Henson	Through the Looking Glass: Critiquing Forensic Child Interviews Jamie G. Vogt, MS., LPC	Manners 101: The Rules Have Changed Jana Christian	Family Law Update Professor Robert G. Spector
11 - 11:50	Hot Tech Tips Donelle Ratheal Rees Evans Jon Ford Noel Tucker	Some Things Old, Some Things New, Some Things Borrowed, and Juveniles Too: Adjudicative Competence Kathy LaFortune, J.D., Ph.D.	Image and Personal Brand - A Focus on Appearance Byron Dickens	Employment Law Update David Strecker
2 - 2:50	Modification of Support Alimony Rees Evans	Are You Crazy? The Insanity Defense in Oklahoma Winston Connor	You Don't Clock Out at Five: Personal Behavior and Your Law License Gina Hendryx	Insurance Law Update Rex Travis
3 - 3:50	Defending the Victim Protective Order Kirsten Bernhardt	Forensic Archeology & Anthropology in the Courtroom Professor Kent Buehler Angela Berg	Techno E²: Ethics and Etiquette Jana Christian	Estate Planning and Probate Update LeAnn Drummond Ellis
4 - 4:50	Recent Developments from the Legislative Perspective Noel Tucker	Grave Consequences: Forensic Archaeology and Forensic Anthropology - Part 2 Professor Kent Buehler Angela Berg	Behaving Badly: The Best of the OBA Ethics Musical (ethics) Jay Buxton Brady Henderson Rees Evans	Health Law Update David McKuney Jordan Edwards

OBA/CLE presents

OBA TRIAL COLLEGE

Cosponsored with the OBA Litigation Section

November 3-4, 2011

Hyatt Regency Hotel, Tulsa — Oklahoma Room

Thursday, November 3

2:30 p.m. Welcome/Introductions/Overview

Renée DeMoss, GableGotwals, Tulsa

3 – 4 p.m. Pretrial Matters

Judge Mark Moore, Associate District Judge, Blaine County, Watonga

Charles “Buddy” Neal, Steidley & Neal, McAlester

4 – 6 p.m. Jury Selection/Voir Dire

Plaintiff Attorney: Guy Clark, Northcutt Clark Gardner Horn & Braun, Ponca City

Defendant Attorney: Karen Long, Rosenstein Fist & Ringold, Tulsa

Judge Daman H. Cantrell, Tulsa County District Judge, Tulsa

Judge Dana Kuehn, Tulsa County District Judge, Tulsa

Friday, November 4

8 – 9:30 a.m. Opening Statements

Plaintiff Attorney: Mike Atkinson, Atkinson Haskins, Tulsa

Defendant Attorney: John Kenney, McAfee Taft, Oklahoma City

Judge Timothy DeGiusti, U.S. District Court for the Western District of Oklahoma,
Oklahoma City

9:30 a.m. - Direct Examination

12 p.m. Plaintiff Attorney: Amy Kempfert, Best & Sharp, Tulsa

Defendant Attorney: Oliver Howard, GableGotwals, Tulsa

Judge Gregory K. Frizzell, U.S. District Court for the Northern District of Oklahoma,
Tulsa

12 – 1 p.m. Lunch (included in registration)

1 – 3:30 p.m. Cross Examination

Plaintiff Attorney: Judy Hamilton Morse, Crowe & Dunlevy, Oklahoma City

Defendant Attorney: Larry Ottaway, Foliart Huff Ottaway & Bottom PC, Oklahoma City

Justice Noma D. Gurich, Oklahoma Supreme Court, Oklahoma City

3:30 – 5 p.m. Closing

Plaintiff Attorney: Laura McConnell-Corbyn, Hartzog, Conger,
Cason & Neville LLP, Oklahoma City

Defendant Attorney: Mack Martin, Mack Martin Law Offices, Oklahoma City

Patricia Parrish, Presiding District Judge, Oklahoma County, Oklahoma City

*To Register: Use the Annual Meeting registration form. Annual Meeting registration is required
and available online at <http://am.okbar.org>.*

2011 OBA ANNUAL MEETING REGISTRATION

Please complete a separate form for each registrant.

Name _____

E-mail _____

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

Address _____

City _____ State _____ Zip _____ Phone _____

Name of Non-Attorney Guest _____

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

Check all that apply:

- ☐ Judiciary ☐ OBF Fellow ☐ OBF Past President ☐ OBA Past President ☐ YLD Officer
☐ YLD Board Member ☐ YLD Past President ☐ Board of Bar Examiner ☐ Leadership Academy
☐ 2011 OBA Award Winner ☐ Delegate ☐ Alternate ☐ Military service/Veteran
☐ County Bar President: County _____

☐ YES! Register me for the 2011 Annual Meeting, November 2, 3 & 4, in Tulsa.

Events will be held at the Hyatt Regency Hotel. Registration fee includes Wednesday continental breakfast in hospitality area, President's Boots & Bandanas Reception, YLD Tombstone Casino Night, Bench & Bar Breakfast, Veterans Appreciation Reception, Red, White & Blue Reception, The Capitol Steps, convention gifts, Art Contest entry and Vendors Expo.

- ☐ MEMBER: ☐ \$60 through Oct. 17; \$85 after Oct. 17\$ _____
☐ NEW MEMBER (Admitted after Jan. 1, 2011): ☐ Free through Oct. 17; \$25 after Oct. 17 ...\$ _____
☐ LAW STUDENT DIV. ☐ \$35 through Oct. 17; \$45 after Oct. 17\$ _____
☐ I will submit an entry (or entries) in the Art Contest. (Submit art registration form by Oct. 17.)
Entry fee included in meeting registration.

I will be attending the free event(s) included in the registration fee:

- ☐ Wednesday President's Boots & Bandanas Reception with a guest
☐ Wednesday President's Boots & Bandanas Reception without a guest
☐ Thursday Bench & Bar Breakfast

continued on reverse

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

- ☐ Wednesday: CLE Multitrack only, 6 MCLE hours (\$125 through Oct. 17; \$150 after Oct. 17; \$25 for new members through Oct. 17; \$50 after Oct. 17) \$ _____
- ☐ Wednesday: Art of War Seminar only 6 MCLE hours (\$125 through Oct. 17; \$150 after Oct. 17; \$25 for new members through Oct. 17; \$50 after Oct. 17) \$ _____
- ☐ Wed. & Thurs.: CLE Multitrack and Plenary, 9 MCLE hours (\$175 through Oct. 17; \$200 after Oct. 17; \$50 for new members through Oct. 17; \$75 after Oct. 17) \$ _____
- ☐ Wed. & Thurs.: Art of War Seminar and Plenary, 9 MCLE hours (\$175 through Oct. 17; \$200 after Oct. 17; \$50 for new members through Oct. 17; \$75 after Oct. 17) \$ _____
- ☐ Thursday: CLE Plenary only, 3 MCLE hours (\$75 through Oct. 17; \$100 after Oct. 17; \$25 for new members through Oct. 17; \$50 after Oct. 17) \$ _____
- ☐ Thursday: Annual Luncheon (_____ number of tickets @ \$35 each) \$ _____
- ☐ Thurs. & Fri.: Trial College, 12 MCLE hours (\$200 through Oct. 17; \$225 after Oct. 17; No new member discount) \$ _____
- ☐ Friday: President's Breakfast (_____ number of tickets @ \$25 each) \$ _____
- ☐ Friday: Reba McEntire Concert at BOK Center (_____ number of tickets @ \$80 each; max of 4 tickets per person; limited number of tickets available) \$ _____
- ☐ Please check here, if under the Americans with Disabilities Act you require specific aids or services during your visit to the OBA Annual Meeting. ☐ Audio ☐ Visual ☐ Mobile (Attach a written description of your needs.)

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

- ☐ Wednesday: Law School Luncheon – (check one) ☐ OCU ☐ OU ☐ TUJ
(_____ number of tickets @ \$30 each) \$ _____
- ☐ Friday: OBA/CLE Seminar Going Geek: Counting the Ways – OBA 2011 Tech Fair, cosponsored with the OBA Law Office Management and Technology Section, 6 MCLE hours, (\$60 through Oct. 17; \$85 after Oct. 17) \$ _____
- ☐ Friday: OBA/CLE Seminar Drafting Special Needs Trust, cosponsored with the OBA Estate Planning Probate & Trust Section, 2 MCLE hours (\$100 through Oct. 17; \$125 after Oct. 17) \$ _____

Payment Options:

- ☐ Check enclosed: Payable to Okla. Bar Association
- Credit card: ☐ VISA ☐ Mastercard
☐ Discover ☐ American Express

Card # _____

Exp. Date _____

Authorized Signature _____

Hotel Accommodations

Fees do not include hotel accommodations. For reservations contact: Hyatt Regency at (888) 591-1234. Call by Oct. 11 and mention Oklahoma Bar Association 2011 Convention for a special room rate of \$110 per night. For online hotel reservations go to www.hyatt.com and use G-OKBA as the Corporate/Group #. For hospitality suites, contact Craig Combs at (405) 416-7040 or email: craigc@okbar.org.

Questions about Annual Meeting registration?

Contact Mark Schneiderwent at (405) 416-7026; (800) 522-8065 or marks@okbar.org.

TOTAL \$ _____

THREE WAYS TO REGISTER

- **MAIL** this registration form with payment or credit card info to:

OBA Annual Meeting
P.O. Box 53036
Okla. City, OK 73152

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

- **ONLINE** at www.okbar.org

CANCELLATION POLICY - Full refunds will be given through Oct. 26. No refunds will be issued after that date.



2011 OBA ATTORNEY ART SHOW

REGISTRATION FORM



The following categories of art will be judged:

- ★ Oil Painting
- ★ Acrylic
- ★ Watercolor
- ★ Black and White Drawing
- ★ Color Drawing
- ★ Black and White Photograph
- ★ Color Photograph
- ★ Three Dimensional (sculptures, woodwork, etc.)
- ★ Craft (tile work, stained glass, needlepoint, etc.)
- ★ Mixed Media (screenprint, enhanced photographs, etc.)

Military themed artwork is encouraged in all categories

Deadline: Oct. 17, 2011

Return form with Annual Meeting registration fee to:

Oklahoma Bar Association • P.O. Box 53036 • Oklahoma City, OK 73152
Attn: Mark

Name _____

OBA Number _____

*E-mail _____

(*Must be submitted to receive additional information and forms)

Address _____

City _____ State _____ Zip _____

Phone _____ Fax _____

I will enter _____ pieces of art, each of which are described below.

Questions? Email artatty@okbar.org

For each entry, complete in detail all information requested below. If needed, please attach an additional sheet.

Name of Piece	Size/Weight	Date Created	Category

ANNUAL CRIMINAL LAW SECTION LUNCHEON

Hyatt Regency Hotel, Tulsa, Oklahoma

November 2, 2011



Michael C. Turpen will speak on professional advocacy and civility at the Criminal Law Section Luncheon during the OBA Annual Meeting. Mr. Turpen served as Muskogee County District Attorney from 1977 to 1982, and was elected Attorney General for the state of Oklahoma in 1982. Since 1987, Mr. Turpen has been a partner in the law firm of Riggs, Abney, Neal, Turpen, Orbison & Lewis in Oklahoma City. In May 2009, he was appointed as a State Regent by Governor Henry, to serve a nine-year term ending in May 2018. Mr. Turpen is a nationally sought after public speaker, having keynoted conferences of the National Association of Attorneys General, the Fourth Federal Judicial Circuit, and the National and Juvenile Judges' Association.

The luncheon will also recognize the recipients of the Professional Advocacy Awards, unique in that the nominations must be from the opposing side of litigation. The luncheon will feature an Italian Market buffet, with options of Steak Scallopini and Chicken Marsala, as well as a variety of fresh salads and sauteed fresh vegetables. The luncheon is open to all OBA members. **Registrations are requested to be submitted no later than October 26, 2011.**

Registration Form

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

Address _____

City _____ State _____ Zip _____

E-mail _____

Phone (____) _____ Fax (____) _____

OBA Number: _____

Registration (Check appropriate boxes):

☐ \$15 — Criminal Law Section Member attending the luncheon

☐ \$20 per guest if accompanied by a member. Guest Name: _____

☐ \$30 — Nonmember (includes section membership for 2011)

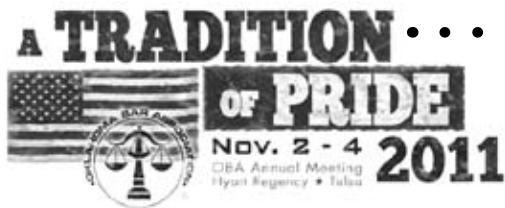
\$_____ Total Enclosed

Payment (Select One):

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

Signature required: _____

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



2011 Resolutions

The following resolutions will be submitted to the House of Delegates at the 107th Oklahoma Bar Association Annual Meeting at 10 a.m. Friday, Nov. 4, 2011, at the Hyatt Regency Hotel in Tulsa.

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.*)

Section 1. AMENDATORY. 12 O.S. Supp. __, Section 2502, is amended to read as follows:

A. As used in this section:

1. An “attorney” is a person authorized, or reasonably believed by the client to be authorized, to engage in the practice of law in any state or nation;

2. A “client” is a person, public officer, or corporation, association, or other organization or entity, either public or private, who consults an attorney with a view towards obtaining legal services or is rendered professional legal services by an attorney;

3. A “representative of an attorney” is one employed by the attorney to assist the attorney in the rendition of professional legal services;

4. A “representative of the client” is one having authority to obtain professional legal services, or to act on advice rendered pursuant thereto, on behalf of the client; and

5. A communication is “confidential” if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal

services to the client or those reasonably necessary for the transmission of the communication.

B. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

1. Between the client or a representative of the client and the client’s attorney or a representative of the attorney;

2. Between the attorney and a representative of the attorney;

3. By the client or a representative of the client or the client’s attorney or a representative of the attorney to an attorney or a representative of an attorney representing another party in a pending action and concerning a matter of common interest therein;

4. Between representatives of the client or between the client and a representative of the client; or

5. Among attorneys and their representatives representing the same client.

C. The privilege may be claimed by the client, the client’s guardian or conservator, the personal representative of a deceased client, or the successor, trustee, or similar representative of a corporation, association, or other organization, whether or not in existence. The person who was the attorney or the attorney’s representative at the time of the communication is presumed to have authority to claim the privilege but only on behalf of the client.

D. There is no privilege under this section:

1. If the services of the attorney were sought or obtained to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud;

2. As to a communication relevant to an issue between parties who claim through the same deceased client, regardless of whether the claims are by testate or intestate succession or by inter vivos transaction;

3. As to a communication relevant to an issue of breach of duty by the attorney to the client or by the client to the attorney;

4. As to a communication necessary for an attorney to defend in a legal proceeding an accusation that the attorney assisted the client in criminal or fraudulent conduct;

5. As to a communication relevant to an issue concerning an attested document to which the attorney is an attesting witness;

6. As to a communication relevant to a matter of common interest between or among two or more clients if the communication was made by any of them to an attorney retained or consulted in common, when offered in an action between or among any of the clients; or

7. As to a communication between a public officer or agency and its attorney unless the communication concerns a pending investigation, claim or action and the court determines that disclosure will seriously impair the ability of the public officer or agency to process the claim or conduct a pending investigation, litigation or proceeding in the public interest.

E. A disclosure of a communication or information covered by the attorney-client privilege or the work-product doctrine does not operate as a waiver if:

1. The disclosure was inadvertent;

2. The holder of the privilege took reasonable steps to prevent disclosure; and

3. The holder of the privilege took reasonable steps to rectify the error including, but not limited to, information falling within the scope of paragraph 4 of subsection B of Section 3226 of this title, if applicable.

F. Disclosure of a communication or information meeting the requirements of an attorney-client privilege as set forth in this section or the work-product doctrine to a governmental office, agency or political subdivision in the exercise of its regulatory, investigative, or enforcement authority does not operate as a waiver of the privilege or protection in favor of nongovernmental persons or entities. Disclosure of such information does not waive the privilege or pro-

tection of undisclosed communications on the same subject unless:

1. The waiver is intentional;

2. The disclosed and undisclosed communications or information concern the same subject matter; and

3. Due to principles of fairness, the disclosed and undisclosed communications or information should be considered together.

G. An agreement on the effect of disclosure in an Oklahoma state court proceeding is binding only on the parties to the agreement, unless it is incorporated into a court order. An Oklahoma state court may order that an attorney-client privilege or work product protection is not waived by disclosure connected with the litigation pending before the court — in which event the disclosure is also not a waiver in any other Federal or State proceeding.

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.*)

Section 1. AMENDATORY. 12 O.S. Supp. ___, Section 3232, is amended to read as follows:

A. **USE OF DEPOSITIONS.** At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the Oklahoma Evidence Code applied as though the witness were then present and testifying, may be used against any party who was present or who was represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

1. Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness, or for any other purpose permitted by the Oklahoma Evidence Code;

2. The deposition of a party or of anyone who at the time of taking the deposition was an officer, director or managing agent, or a person designated under paragraph 5 6 of subsection C of Section 3230 or subsection A of Section 3231 of this title to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used for any purpose;

3. The deposition of a witness, whether or not a party may be used for any purpose if the court finds:

a. That the witness is dead, or

b. That the witness does not reside in the county where the action or proceeding is pending or is sent for trial by a change of venue or the witness is absent therefrom, unless it appears that the absence of the witness was procured by the party offering the deposition, or

c. That the witness is unable to attend or testify because of age, illness, infirmity or imprisonment, or

d. That the party offering the deposition has been unable to procure the attendance of the witness by subpoena, or

e. That the witness is an expert witness, who for purposes of this section is a person educated in a special art or profession or a person possessing special or peculiar knowledge acquired from practical experience, or

f. Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

Nothing in this paragraph shall be construed to limit the authority of the appropriate office to issue a subpoena to compel an expert witness to appear in the same manner as any other witness;

4. If only part of a deposition is offered in evidence by a party, an adverse party may require the introduction of any other part which ought in fairness to be considered with the part introduced, and any party may introduce any other parts.

Substitution of parties pursuant to Section 1081, 1082, 1083 or 2025 of this title does not affect the right to use depositions previously taken. When an action has been brought in this state or in any court of the United States or of

any other state and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

A deposition previously taken may also be used as permitted by the Oklahoma Evidence Code.

B. OBJECTIONS TO ADMISSIBILITY. Subject to the provisions of subsection B of Section 3228 of this title and paragraph 3 of subsection D of this section, objection may be made, at the trial or hearing, to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

C. FORM OF PRESENTATION. Except as otherwise directed by the court, a party offering deposition testimony pursuant to this section may offer it in stenographic or nonstenographic form, but, if in nonstenographic form, the party shall also provide the court with a transcript of the portions so offered.

D. EFFECT OF ERRORS AND IRREGULARITIES IN DEPOSITIONS.

1. **AS TO NOTICE.** All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.

2. **AS TO DISQUALIFICATION OF OFFICER.** Objection to taking a deposition because of disqualification of the officer before whom it is to be taken is waived unless made before the taking of the deposition begins or as soon thereafter as the disqualification becomes known or could be discovered with reasonable diligence.

3. **AS TO TAKING OF DEPOSITION.**

a. Objections to the competency of a witness or to the competency, relevancy or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

b. Errors and irregularities occurring in the manner of the oral examination in the taking of the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties, and errors of any kind which might be obviated, removed or cured if prompt-

ly presented, are waived unless reasonable objection thereto is made at the taking of the deposition.

c. Objections to the form of written questions submitted under Section 3231 of this title are waived unless served in writing upon the party propounding them within the time allowed for serving the succeeding cross or other questions or within five (5) days after service of the last questions authorized.

4. AS TO COMPLETION AND RETURN OF DEPOSITION. Errors and irregularities:

a. in the manner in which the testimony is transcribed or recorded, or

b. in the manner in which the deposition is prepared, signed, certified, sealed, endorsed, transmitted, filed, or otherwise dealt with by the officer under Sections 3230 and 3231 of this title are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after such defect is, or with due diligence might have been, ascertained.

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.)

Section 1. AMENDATORY. 12 O.S. Supp. ___, Section 3237, is amended to read as follows:

A. MOTION FOR ORDER COMPELLING DISCOVERY. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery as follows:

1. APPROPRIATE COURT. An application for an order to a party may be made to the court in which the action is pending, or, on matters, relating to a deposition, to the district court in the county where the deposition is being taken. An application for an order to a deponent who is not a party shall be made to the district court in the county where the deposition is being taken or to the court in which the action is pending.

2. MOTION. If a deponent fails to answer a question propounded or submitted under Section 3230 or 3231 of this title, or a corporation or other entity fails to make a designation under paragraph 5 6 of subsection C of Section 3230 or subsection A of Section 3231 of this title, or a party fails to answer an interrogatory submitted under Section 3233 of this title, or if a party, in response to a request for inspection and copying submitted under Section 3234 of this title, fails to respond that the inspection or copying will be permitted as requested or fails to permit the inspection or copying as requested, or if a party or witness objects to the inspection or copying of any materials designated in a subpoena issued pursuant to subsection A of Section 2004.1 of this title, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection and copying in accordance with the request or subpoena. The motion must include a statement that the movant has in good faith conferred or attempted to confer either in person or by telephone with the person or party failing to make the discovery in an effort to secure the information or material without court action. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before applying for an order.

When a claim of privilege or other protection from discovery is made in response to any request or subpoena for documents, and the court, in its discretion, determines that a privilege log is necessary in order to determine the validity of the claim, the court shall order the party claiming the privilege to prepare and serve a privilege log upon the terms and conditions deemed appropriate by the court. The privilege log shall be served upon all other parties. Unless otherwise ordered by the court, the privilege log shall include, as to each document for which a claim of privilege or other protection from discovery has been made, the following:

- a. the author or authors,
- b. the recipient or recipients,
- c. its origination date,
- d. its length,
- e. the nature of the document or its intended purpose, and
- f. the basis for the objection.

The court may conduct an in camera review of the documents for which the privilege or other protection from discovery is claimed. If the

court denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion made pursuant to subsection C of Section 3226 of this title.

3. EVASIVE OR INCOMPLETE ANSWER. For purposes of this subsection, an evasive or incomplete answer is to be treated as a failure to answer.

4. AWARD OF EXPENSES OF MOTION. If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is denied, the court shall, after opportunity for hearing, require the moving party or the attorney advising the motion or both of them to pay to the party or deponent who opposed the motion the reasonable expenses incurred in opposing the motion, including attorney fees, unless the court finds that the making of the motion was substantially justified or that other circumstances make an award of expenses unjust.

If the motion is granted in part and denied in part, the court may apportion the reasonable expenses incurred in relation to the motion among the parties and persons in a just manner.

B. FAILURE TO COMPLY WITH ORDER.

1. SANCTIONS BY COURT IN COUNTY WHERE DEPOSITION IS TAKEN. If a deponent fails to be sworn or to answer a question after being directed to do so by the court in the county in which the deposition is being taken, the failure may be considered a contempt of that court.

2. SANCTION BY COURT IN WHICH ACTION IS PENDING. If a party or an officer, director or managing agent of a party or a person designated under paragraph 5 6 of subsection C of Section 3230 or subsection A of Section 3231 of this title to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subsection A of this section or Section 3235 of this title,

or if a party fails to obey an order entered under subsection F of Section 3226 of this title, the court in which the action is pending may make such orders in regard to the failure as are just. Such orders may include the following:

a. An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order,

b. An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting him from introducing designated matters in evidence,

c. An order striking out pleadings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the action or proceedings or any part thereof, or rendering a judgment by default against the disobedient party,

d. In lieu of or in addition to the orders provided for in subparagraphs a through c of this paragraph, an order treating as a contempt of court the failure to obey any orders except an order to submit to a physical or mental examination,

e. Where a party has failed to comply with an order under subsection A of Section 3235 of this title requiring him to produce another for examination, such orders as are listed in subparagraphs a, b and c of this paragraph, unless the party failing to comply shows that he is unable to produce such person for examination,

f. If a person, not a party, fails to obey an order entered under subsection C of Section 3234 of this title, the court may treat the failure to obey the order as contempt of court.

In lieu of or in addition to the orders provided for in this paragraph, the court shall require the party failing to obey the order or the attorney advising the party or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

C. EXPENSES ON EXAMINATION OF PROPERTY. The reasonable expense of making the property available under Section 3234 of this title shall be paid by the requesting party, and at the time of the taxing of costs in the case, the court may tax such expenses as costs, or it may apportion such expenses between the parties, or

it may provide that they are an expense of the requesting party.

D. EXPENSES ON FAILURE TO ADMIT. If a party fails to admit the genuineness of any document or the truth of any matter as requested under Section 3236 of this title, and if the party requesting the admission thereafter proves the genuineness of the document or the truth of the matter, the party may apply to the court for an order requiring the other party to pay him or her the reasonable expenses incurred in making that proof, including reasonable attorney fees. The court shall make the order unless it finds that:

1. The request was held objectionable pursuant to subsection C of Section 3236 of this title; or
2. The admission sought was of no substantial importance; or
3. The party failing to admit had reasonable ground to believe that he or she might prevail on the matter; or
4. There was other good reason for the failure to admit.

E. FAILURE OF PARTY TO ATTEND AT OWN DEPOSITION OR SERVE ANSWER TO INTERROGATORIES OR RESPOND TO REQUEST FOR INSPECTION. If a party or an officer, director or managing agent of a party or a person designated under paragraph 5 6 of subsection C of Section 3230 or subsection A of Section 3231 of this title to testify on behalf of a party fails:

1. To appear before the officer who is to take the deposition, after being served with a proper notice; or
2. To serve answers or objections to interrogatories submitted under Section 3233 of this title, after proper service of the interrogatories; or
3. To serve a written response to a request for inspection submitted under Section 3234 of this title, after proper service of the request;

the court in which the action is pending on motion may make such orders in regard to the failure as are just, and among others it may take any action authorized under subparagraphs a, b and c of paragraph 2 of subsection B of this section. In lieu of or in addition to any order, the court shall require the party failing to act or the attorney advising him or her or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that

the failure was substantially justified or that other circumstances make an award of expenses unjust.

The failure to act as described in this subsection may not be excused on the ground that the discovery sought is objectionable unless the party failing to act has applied for a protective order as provided by subsection C of Section 3226 of this title.

F. FAILURE TO PARTICIPATE IN THE FRAMING OF A DISCOVERY PLAN. If a party or a party's attorney fails to participate in good faith in the framing of a discovery plan by agreement as is required by subsection F of Section 3226 of this title, the court may, after opportunity for hearing, require such party or his or her attorney to pay to any other party the reasonable expenses, including attorney fees, caused by the failure.

G. ELECTRONICALLY STORED INFORMATION. Absent exceptional circumstances, a court may not impose sanctions on a party for failure to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

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 the OBA Taxation Law Section as members of the association.)*

Because of the page length of this resolution, a summary is provided below. The resolution in its entirety is available at www.okbar.org.

An Act relating to revenue and taxation; providing for enactment of the State Office of Administrative Tax Hearings Act to establish within the

executive branch of the State government an independent State Office of Administrative Tax Hearings to have exclusive administrative authority to hear and decide taxpayer protests involving assessment or refund of state taxes. The Act would eliminate the necessity for an administrative hearing system within the Tax Commission; and provide an effective date.

Independent Administrative Office and Law Judges. The Act would create the State Office of Administrative Tax Hearings to independently hear taxpayer protests on state tax matters. Administrative law judges of this agency would be appointed by the Governor. An individual would have to be an attorney admitted to practice in Oklahoma who has substantial knowledge of Oklahoma state tax law and substantial experience making the record in a tax case for judicial review to be appointed as an administrative law judge.

Informal Independent Review and Settlement Procedure Within Tax Commission Required. The Act would also require the Tax Commission to maintain a system for an informal internal administrative appeals function within the Tax Commission separate and independent from the Tax Commission audit function. This provision is comparable to the Internal Revenue Service's appeals function, and also incorporates some of the better features of the informal review/settlement programs in other states.

Informal Discovery. The Act requires the Tax Commission and taxpayer to make every effort to achieve discovery by informal consultation or communication, before invoking formal discovery. This would reduce the time and cost for Oklahoma taxpayers.

Requiring Stipulations. The Act requires the Tax Commission and taxpayer to stipulate to all relevant and non-privileged matters to the fullest extent to which complete or qualified agreement can or fairly should be reached. This would reduce the cost for Oklahoma taxpayers by eliminating the need to prove certain facts with testimony from witnesses.

Liberal Rules of Evidence. The Act provides for all relevant evidence, including hearsay, to be admitted if it is probative of a material fact in a tax controversy. This is an important benefit for taxpayers representing themselves pro se or

who have tax professionals other than attorneys representing them.

Taxpayers May be Represented by Persons Other Than Attorneys. In addition to attorneys and accountants, enrolled agents authorized to practice before the IRS would qualify to represent taxpayers in administrative proceedings pursuant to the Act.

Taxpayer's Burden of Proof is a Preponderance of the Evidence. The Act would adopt the same standard common to civil litigation. This would make it clear that this standard of proof would apply notwithstanding the current "presumption" of correctness by the Tax Commission.

Hearings Held at Locations Convenient to Taxpayers. The Act authorizes the administrative hearings to be conducted at any place within the State, with a view toward providing to taxpayers a more convenient and less expensive opportunity for hearing in a state tax controversy.

Administrative Tax Hearings Decisions. The State Office of Administrative Tax Hearings would be given exclusive jurisdiction and authority for conducting administrative hearings to determine questions of law and fact in taxpayer protests of proposed tax assessments or denials of refunds. However, questions regarding constitutionality of statutes or their application or of Tax Commission regulations would be decided only judicially in the courts by separate action as authorized by statute, or on appeal from an administrative hearing conducted under the Act.

The State, as Well as the Taxpayer, is Allowed to Appeal. Because the Act would establish a separate and independent State Office of Administrative Tax Hearings, the Tax Commission, as well as the taxpayer, would be allowed to appeal to the Supreme Court of Oklahoma.

Small Claims Division for Tax Controversies Not Exceeding \$25,000. The Act would allow, but not require a taxpayer election to have a protest involving an amount not exceeding \$25,000 heard in an informal procedure by a Small Claims Division of the State Office of Administrative Tax Hearings. The decisions in informal proceedings of the Small Claims Division would not be appealable. This would reduce the cost of contesting a tax liability for Oklahoma taxpayers.

◆◆◆◆ CAREER OPPORTUNITY ◆◆◆◆



**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OKLAHOMA**

Position Title:	Legal Assistant to U.S. Magistrate Judge
Location:	Tulsa, Oklahoma
Closing Date:	Until Filled
Starting Date:	December 5, 2011
Starting Salary Range:	JSP 9-11* (\$47,448 - \$57,408)

*Starting salary commensurate with qualifications and experience.

POSITION OVERVIEW

The Legal Assistant is responsible for a wide variety of tasks, primarily involving the performance of legal research and writing which entails detailed review and analysis of administrative records, analysis of issues, and writing drafts of Orders and Recommendations. The position also requires tracking organizing and managing all matters assigned to the Magistrate Judge and performance of clerical tasks and support services for the Magistrate Judge and law clerk, including word processing, report preparation, and travel and meeting planning.

REQUIRED SKILLS AND ABILITIES

High school diploma required; college courses or degree preferred; paralegal certification highly desirable. Must be able to perform intermediate level legal research and draft recommendations and orders. The successful candidate will have computer and word processing skills, be well organized and detail oriented, display a high level of initiative and be able to work largely unsupervised. The ability to project a professional image and maintain integrity of confidential information is required. The ability to write in a grammatically correct and well punctuated manner is also required. Prior experience in the Social Security area and in reading medical records is desirable. A writing sample must be submitted.

QUALIFICATIONS

Applicants must be U.S. citizens or eligible to work in the United States. The selected candidate will be subject to a background check as a condition of employment. Six years of relevant work experience required.

BENEFITS

Employees of the U.S. District Court are not classified under Civil Service, but are entitled to many of the same benefits as other federal government employees including participation in the retirement system, health and life insurance programs, leave accrual, periodic grade and step increases, and paid holidays.

SUBMIT A COVER LETTER, WRITING SAMPLE, RESUME, AND REFERENCES TO:

VACANCY No. 11-1
United States District Court Clerk
ATTN: Legal Assistant Vacancy
Northern District of Oklahoma
333 W. 4th Street, Room 411
Tulsa, Oklahoma 74103

An Equal Opportunity Employer

OBA Names 2011 Leadership Academy Participants

Attorneys from across the state prepare for the fourth Leadership Academy this fall where they will learn leadership skills to boost their careers and better serve their communities. The Oklahoma Bar Association named 35 participants to this year's multi-session training program.

"It's important to cultivate leadership in our profession, and we understand that means more than just enhancing careers," said OBA President Deborah Reheard of Eufaula. "The program builds successful leaders both professionally and personally, and we know this year's participants will be no different."

Completing a total of five sessions by April 2012, participants will hear from prominent legal and community leaders in interactive sessions about topics ranging from how to be a good communicator and motivator to how to combat ethical challenges in the legal profession. Other session topic highlights include better understanding the inner workings of the court system, tips for serving on a nonprofit board and much more.

Revered as one of the U.S. Navy's most inspirational leaders, retired Rear Adm. Greg Slavonic, will begin the first session — Leadership in Action.

"We are very proud of the Leadership Academy program and are excited for this new class of participants to experience it first-hand," President Reheard said.

OBA Leadership Academy Participants

BARTLESVILLE

Blake Gibson of Sutterfield Financial Group Inc.

CLINTON

Shelly Harrison of Oklahoma Indigent Defense System

EDMOND

Leah Avey of Rubenstein & Pitts and **Amber Godfrey** of The Tucker Law Firm

ENID

Christa Evans of Encompass Financial
Erin Means of Gungoll, Jackson, Collins, Box & Devoll

LAWTON

Eric Davis of Legal Aid Services of Oklahoma

MIAMI

BreeAnn Rice of the Social Security Law Center

NOBLE

Mark Melton of John Colbert & Associates

OKLAHOMA CITY

Tom Bates of the Oklahoma Attorney General's Office; **Matt Brockman** of Hartzog Conger Cason & Neville; **Robert Clark** of the Federal Bureau of Prisons; **Stephen Harry** of Stephen A. Harry PC; **Suzanne Heggy** of the Oklahoma Court of Criminal Appeals; **Cori Loomis** of Crowe & Dunlevy PC; **Natalie Mai** of Duo Law Firm PLLC; **Madison Miller** of the Oklahoma Department of Environmental Quality; **Todd Murray** of Looney, Nichols & Johnson; **Sarah Schumacher** of the Cathy Christensen & Associates P.C.; **Shea Smith** of the Oklahoma County Public Defender's Office; **Valerie Smith** of Rife Walters Bruehl & Stanley; **Collin Walke** of Kirk & Chaney; **Bryon Will** of The Law Office of Bryon J. Will PLLC and **Linette Wright** of Ailles & Associates

SAPULPA

Carla Stinnett of Gregory J. Denney & Associates PC

SHAWNEE

George Wright of Stuart Clover Duran Thomas & Vorndran

SHEPPARD AIR FORCE BASE

Brent Dishman of the U.S. Air Force

STILWELL

Liz Brown of the Adair County District Court

TULSA

Christy Caves of the University of Tulsa College of Law; **Tamera Childers** of Jones, Gotcher & Bogan PC; **Steve Crittenden** of Allstate Insurance Co.; **Nicole Longwell** of McDaniel, Longwell, Acord PLLC; **Jim McGough** of McGough Law Firm PC; **Kimberly Moore-Waite** of Legal Aid Services of Oklahoma and **Tim Rogers** of Barrow & Grimm PC

Five Honored for Distinguished Service

Mona Salyer Lambird Spotlight Award Recipients

By J. Deborah Bruce

Since 1996 the Spotlight Awards have been given annually to five women who have distinguished themselves in the legal profession and who have lighted the way for other women. In 1998 the award was named to honor the late Mona Salyer Lambird, the first woman president of the Oklahoma Bar Association, and one of the award's first recipients. The award is sponsored by the OBA Women in Law Committee.

Each year all previous winners nominate and select the current year's recipients. A plaque bearing the names of all recipients hangs at the Oklahoma Bar Center in Oklahoma City. The 2011 recipients are:

Gina L. Hendryx

Gina Hendryx is the general counsel for the Oklahoma Bar Association (OBA) and serves as the association's counsel on other legal matters. She works with the Professional Responsibility Commission and serves as a liaison to the OBA Board of Governors, OBA committees, the courts and other local and national entities concerning lawyer ethics issues. From 2003 until 2009, Ms. Hendryx served as the OBA's first ethics counsel fielding questions from OBA members pertaining to ethical dilemmas faced in the day to day practice of law. In addition to the ethics help line, Ms. Hendryx implemented and directed



Patricia G. Parrish

Since 2004 Patricia Parrish has served as an Oklahoma County district judge. She served as the presiding judge in 2009-2010. She previously served as a special judge and prior to her judicial appointment, she practiced civil law with several law firms including Mullins, Hirsch & Parrish; Musser & Bunch; and Linn and Helms. An accomplished mediator, she has served as a mediator in state and federal court cases and as an arbitrator on insurance issues.



the OBA Discipline Diversion Program, which is designed to provide awareness of ethical obligations and responsibilities. Ms. Hendryx is a frequent lecturer in the areas of professional responsibility and compliance with ethical standards. She has spoken to numerous private, public and governmental sector groups including state and county bar associations, legal services groups and Judge Advocate General training programs. Ms. Hendryx writes a regular column for the *Oklahoma Bar Journal* on current issues in the area of professional accountability. In her personal time, Ms. Hendryx is an avid scuba diver with more than 1,000 logged dives and holds instructor level ratings with several scuba certification agencies.

Judge Parrish is a member of the Oklahoma County Bar Association, where she currently serves as vice president. She is a master, William J. Holloway Jr., American Inn of Court, a member of the Oklahoma Trial Judges Association and was co-chair of the OCBA Voices for Children

Committee. She has served on the board of directors for the City Rescue Mission and the Downtown Exchange Club for Prevention of Child Abuse. She has also participated in Leadership Oklahoma City. In 2007 she was the recipient of the *Journal Record* Leadership in Law Award. She was appointed by Gov. Henry to serve on the Adoption Task Force. In 2008 she was inducted into the Hennessey High School Hall of Fame. Judge Parrish is one of the most highly regarded judges in Oklahoma County. She is always in charge of her courtroom while treating all participants, lawyers and litigants alike, with appropriate civility and respect.

Susie Pritchett (posthumous award)

Until her untimely death this year, Susie Pritchett had served as associate district judge for Kingfisher County from 1994 until her retirement in January 2011. She began her legal career as the first female assistant public defender in Oklahoma County and later as the first female



assistant United States attorney for the Western District of Oklahoma. She was one of the government lawyers on the Karen Silkwood case and her list of prosecutions reads like the who's who of the notorious in Oklahoma. She also served as a chief administrative law judge

and as a temporary intermediate Court of Criminal Appeals judge. She was a member of the Kingfisher County Bar Association, where she served as president, and she was a member of the Oklahoma County Bar Association, where she served on the board of directors. She was a member of the National Association of Women Judges, Ruth Bader Ginsburg Inn of Court, American Inns of Court and the Federal Bar Association. For many years Judge Pritchett was elected by her fellow judges to serve on the Oklahoma Judicial Conference Executive Committee and to represent them as a delegate at the OBA annual meetings. Over the years Judge Pritchett received numerous awards and commendations from organizations including the FBI, IRS, ATF, YWCA and Oklahoma Women's Hospitality Club.

Susan B. Shields

Susan Shields is an attorney with McAfee & Taft in Oklahoma City, where she is the leader of its tax practice group. Ms. Shields' experience and expertise have earned her recognition in *The Best Lawyers in America* and *Oklahoma Super Lawyers*, where she has been consistently named to its prestigious "Top 25



Female" and "Top 50 Oklahoma Lawyers" lists. She has also been recognized as Outstanding

Pro Bono Lawyer by Legal Aid of Western Oklahoma, received the OBA Earl Sneed Award and was named to the *Journal Record's* list of Leadership in Law honorees. Ms. Shields is also a two-time finalist for the *Journal Record's* Woman of the Year Award. Ms. Shields is a frequent lecturer on estate planning and nonprofit issues and serves as an adjunct professor of law at the University of Oklahoma College of Law. She is currently serving a three-year term as a member of the OBA Board of Governors. For many years she has also served as a Trustee of the Oklahoma Bar Foundation and is currently a member of its Executive Committee. Ms. Shields is a Fellow of the American College of Trust and Estate Counsel and a member of the Oklahoma Medical Research Foundation's planned giving council. She heads the Central Oklahoma Stanford Alumni Club, is a graduate of Leadership Oklahoma and has served as a board member for numerous community and volunteer boards.

Betty Outhier Williams

Betty Outhier Williams heads the Betty Outhier Williams Law Office in Muskogee. She practices civil litigation with an



emphasis in federal and bankruptcy courts. She received her law degree from Vanderbilt Uni-

versity in 1972 and was one of a very few women graduating from an Ivy League university. She was the first female assistant U.S. attorney in any district of Oklahoma. She also served as the U.S. attorney for the Eastern District. She served as a Trustee of the Oklahoma Bar Foundation for nine years. The OBF Board of Trustees changed the rules so that she was eligible to serve as president. Ms. Williams served on the OBA Board of

Governors and on the *Oklahoma Bar Journal* Board of Editors. She has twice served as a justice on the Oklahoma Judicial Appeals Tribunal, where she presently serves as vice chief justice. She was a Reginald Heber Smith Fellow in Tulsa. On the local level she has been president of the Muskogee County Bar Association and for 20 years has served on the Muskogee County Library Committee. She has twice been

voted best attorney in Muskogee and has twice been named as an Oklahoma Super Lawyer. She is a member of the Defense Research Institute, Oklahoma Association of Defense Counsel, adjunct settlement judge for the Eastern District and is a Fellow of the Council on Litigation Management.

Ms. Bruce is the OBA Women in Law Committee chairperson.

“MEDIATION: IT’S HERE TO STAY: LEARN HOW TO MAKE IT WORK FOR YOU AND YOUR CLIENT”

On Saturday, October 15, 2011, the O.U. Legal Clinic will present a three (3) hour CLE on mediation. Using simulation exercises and audience participation, the mediation process will be fully explored.

Led by: Phil Johnson – Early Settlement Mediation
Professor Cheryl Wattlely – Director, O.U. Legal Clinic

O.U. College of Law • 9:00 a.m. – 12:00 noon

Cost: \$50.00 for Clinic Alumni (CLE only)

\$85.00 for Clinic Alumni

(CLE and 40th anniversary dinner)

\$100.00 for other participants (CLE only)

Please make checks payable to:

O.U. College of Law

Mail to:

O.U. Legal Clinic

O.U. College of Law

300 Timberdell Road

Rm. 2020

Norman, OK 73019

For additional information please contact Lori
at 405-325-3433.

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OBA Women in Law Conference

The OBA Women in Law Conference has gained the reputation as a premier event within the Oklahoma Bar Association. This year's event held at the Oklahoma City Golf and Country Club, gave a perspective on "Women Changing the World," and provided ways to be successful on the pathway to leadership, politics and public service.



OBA President Deb Reheard, Justice Yvonne Kauger, Gina Hendryx, Keynote Speaker Karen Hughes and Kay Floyd



Women in Law Conference at Oklahoma City Golf and Country Club

OBA President-Elect Cathy Christensen and Judge Lisa Davis



Lisa Samuel-Jaha, Jeff Riles, Christa Bennett, Leah Roper and Jessica Hamm



OBA Women in Law Chair Deborah Bruce and Deirdre Dexter

You are not alone.



Men Helping Men

Oklahoma City • Nov. 3, 2011

Time - 5:30-7 p.m.

Location

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

.....

Tulsa • Oct. 27, 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 • Oct. 13, 2011

Time - 5:30-7 p.m.

Location

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

.....

Tulsa • Nov. 3, 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@cabin.com.

LAWYERS HELPING LAWYERS ASSISTANCE PROGRAM



New Attorneys Take Oath

Board of Bar Examiners Chairperson Peggy B. Cunningham of Yukon, announces that 313 applicants who took the Oklahoma Bar Examination on July 26-27, 2011, were admitted to the Oklahoma Bar Association on Thursday, Sept. 22, 2011, or by proxy at a later date. Oklahoma Supreme Court Chief Justice Stephen W. Taylor administered the Oath of Attorney to the candidates at a swearing-in ceremony at the state Capitol. A total of 381 applicants took the examination.

Other members of the Oklahoma Board of Bar Examiners are Vice-Chairperson J. Ron Wright, Muskogee; Tom A. Frailey, Chickasha; Monte Brown, McAlester; Stephanie C. Jones, Clinton; Bryan Morris, Ada; Loretta F. Radford, Tulsa; Donna L. Smith, Miami and Scott E. Williams, Oklahoma City.

The new admittees are:

Sue Hudson Abreu	Barrett Thomas Bowers	Jasen Odis Chadwick
Leah Evonne Agers	Elizabeth Diane Bowersox	Laleh Nikki Chafi
Robert Kyle Alderson	Jared Rhett Boyer	Clayton J. Chamberlain
Katie McKenzie Anderson	Stephen Shea Bracken	Allison Beall Chandler
Matthew Philip Anderson	Christopher Brian Branch	Jacob Matthias Charney
Kristine Nicole Aquino	Dustin Matthew Brazeal	Adam Wade Christensen
Ronald Max Armstrong II	Jennifer Katherine Bridgforth	Lindsey Kay Christopher
Mariann Mae Atkins	Michelle Llanderosos Briggs	Kenzie Lee Claunch
Anita Nana Denne Ayisi	Jessie Ann Brotherton	Tyler James Coble
Kendall Claire Carter Bailey	Elisabeth Dawn Brown	Christine Elizabeth Coleman
Robert Lindsay Bailey II	Robert Allen Brown	Lorenzo Ryan Collins
Lorenzo Banks	Philip Richard Bruce	Patrick Francis Collogan
Adam Robert Banner	Carl Jennings Buckholts	Dustin Edward Conner
Rachel Barnes	Aaron Philip Budd	Terry D. Cook
Tyler Rogers Barrett	Kevin Robert Burnett	Lester Lyman Aloysius Cowden IV
Mehrdod Eric Bayat	Joshua Blake Bush	Emily Elizabeth Crain
John Timothy Beesley	Brett Butner	Alicia Kelly Crawford
William Brett Behenna	Meredith Caldwell	Terry Dustin Crawford
Jolyn Noel Belk	Andy Jeff Campbell	Christopher Michael Crouch
William Joseph Bergner Jr.	Lauren Ashley Campbell	Jeremy Broc Cumbie
David Gerald Beyleryan	Timothy F. Campbell	Clayburn Thomas Curtis
Laura Louise Blais	Robert Daniel Carter	Allison Ann Davis
Hilary Jennifer Blake	Robert Glenn Carter	Eric Alexander Davis
Kelley Ann Bodell	Alexis Lauren Casady-Cohen	Whitney Nicole Davis
Angela Marie Bonilla	Seth Alan Caywood	

Angela Marie Dockrey
 Tiffany Anh Drake
 Kevin Dunnington
 Kathryn Isabell Dupree
 Ethan T. Eitel
 Christa Lynn Evans
 Robert Edward Fagnant Jr.
 Mohammad Hossein
 Farzaneh
 Aaron Wayne Faurschou
 Caroline Kendall Featherstone
 Kelley Nicole Feldhake
 Lori Christine Fisher
 David T. Fletcher
 Zachary James Foster
 Charlie Mikale Fowler
 Sacia Fowler
 Derek Stuart Franseen
 Kisa Diane Freyre
 Theran Scott Fries
 Jessica Rachel Fu
 Stephen Thomas Gary
 Lysbeth Lou George
 Cody E. Gilbert
 James Robert Gilmartin
 Chad Andrew Gilson
 Amy Nichole Gioletti
 Bryan Tod Gordon
 Alea Anne Gossen
 Danae Victoria Grace
 Jeffrey McKenzie Graham
 Bevan Jean Graybill
 Carly Danyale Griffith
 Hotvedt
 Joseph Mark Gutel III
 Brett Paul Gwartney
 Tessa Louise Hager
 Ashley Harrell
 Jane Ann Harris
 Michael Hatfield

Lindy Jane Hawes
 Sheridan Kay Haynes
 Taylor Paige Henderson
 Sean Patrick Hennessee
 Lynn Louise Hermanson
 Andrew G. Hill
 Jason Louis Hines
 Kaitlyn Grace Hobby
 Amanda Nannette Holden
 John David Holden
 David Fuller Holt
 Nicholas Robert Hood
 Martin Joseph Howell
 Douglas Edward Huff

Kathryn Lee Jones
 Kristy Ellen Kapp
 Chad William Philip Kelliher
 Corry Kendall
 Elizabeth Alice Keough
 Brian Matthew Kester
 Clayton Ketter
 Ali William Khalili
 Carissa Cae King
 Tami Lynn Knorr
 Jana Lee Knott
 Tyler Michael Kollock
 John Michael Krattiger
 Anita Marie Lamar



Justice Yvonne Kauger, OBA President-Elect Cathy Christensen, and her son new lawyer Adam Christensen, Chief Justice Steven W. Taylor, Gov. Mary Fallin and First Gentleman Wade Christensen, also an OBA member and Adam's father.

Sean Steven Hunt
 Lateesha Danielle Hunter
 Amaan Husain
 Brooks Patrick Huse
 Erin Rachel Israel
 Brittini Lynn Jagers
 Ricky Lee James
 Macy Faye Jensen
 Travis Verl Jett
 Brittany Paige Jewett
 Jerry Christopher Johnsen
 Aaron Drue Johnson

Thomas Houston Landrum
 Blake M. Lawrence
 Megan Cheryl Lee
 Hans Otto Lehr
 Lewis Thomas LeNaire Jr.
 Jared Christopher Lentz
 Robert George Lepak
 Shelley Lynne Levisay
 Daniel David Lewerenz
 Brandon Todd Link
 Brett Michael Logan
 Eric Scott Loggin

Kathryn Louise Lopez
 Lauren Christina Lucht
 Shannon Kathryn Macko
 David Charles Mainprize
 Alexa Louise Mangum
 Anthony Douglas Mann
 Kirk Raymond Martin
 Kayli Lynn Maxwell
 Michael David May
 Evan Arthur McCormick
 Caleb Nolan McCoy
 Laura Katherine McDevitt
 Codopony

Rhonda Jo McLean
 Michael James McMillin
 LeeAnna Kathleen McNally
 Eliot Jensen McNeil
 Aaron Frederick Wotring
 Meek
 Christine Lynn Mescher
 Timothy Robert Michaels-
 Johnson
 Christopher George Miller
 Corey Lane Miner
 Peter Todd Mittelholzer
 Jason K. Moore
 Emily Jean Mueller
 Lindsey Weber Mulinix
 Riley William Mulinix
 Roxanne Nicole Mullon
 Seth Murphy
 Megan Tomlinson Myers
 Jeffrey David Nachimson
 Ryan Andrew Naylor
 Nathaniel Robert Baird
 Nebergall
 Michelle Dawn Newton
 Douglas James Nix
 Katharine Carter Oakley
 Ivan Randall Orndorff Jr.
 Zachary August Paul Oubre



New OBA member Lester Cowden signs the roll of attorneys.

Amy Dominick Padgett
 Kirsten Louise Palfreyman
 William Richard Parker
 Brent Allan Parkey
 Robert Hall Parks III
 Steven Shane Pate II
 Jon Blake Patton
 Colby Christopher Pearce
 John Robert Pettifer
 Lora Margaret Pfeffer
 Corey Wayne Phillips
 William R. Pierce
 Jessie Pierre
 Jamie Marie Powers
 Matthew Christopher Prasuhn
 Kara Elizabeth Pratt
 Miles Thomas Pringle
 Jenny Marie Proehl-Day
 Nathan Lee Prugh
 Rebecca Kathleen Pugh
 Michael Morgan Purcell
 Kelsey Lynn Quillian
 Ashley Dianna Rahill
 Blake Taylor Rambo
 Jonathan Gary Rector
 Deborah Ann Reed

Nancy Jill Reed
 Michael Edward Reel
 Randa Kay Reeves
 Kathryn Forman Reichert
 Kyle Benjamin Reynolds
 Jason Edward Richards
 Will Tyler Riley
 Benjamin Ryan Ritchie
 Samantha Claire Roberts
 Micah John Robison
 Ann Maureen Robl
 Kyle Patrick Rogers
 Sara Ryser Rogers
 Samantha Jane Ross
 Elizabeth Ross-Jones
 Eric Jay Russell
 Gerald Benjamin Sager
 Todd Edward Saucedo
 Benjamin Saunier
 Patricia Ann Sawyer
 Ryan Wayne Schaller
 Raven Shae Sealy
 John Seidenberger
 Jason Anthony Seigars
 Tyler Joseph Sena
 Kinder D. Shamhart

Tina Soin Sharma
 Blake Beeson Shipley
 Amber Siddiqui
 Zachary Michael Simpson
 Angela Singleton
 Penni Danielle Skillern
 Brady Lane Smith
 Chelsea Celsor Smith
 Lauren Diana Smith
 Naomi Dawn Smith
 Scott Michael Smith
 Taos Caleb Smith
 Jared Brandon Snider
 Jordan Southerland Ensley
 Allison Mary Spears
 David Michael Spring
 Kari Ann Staats
 Courtney Leigh Starr
 Patrick Leroy Stein
 Ryan Paul Stephenson

Tracy Elizabeth Stetson
 Gregory Steward
 Quinn Patrick Stine
 Genavee Stokes-Avery
 Karman Jene' Stoops
 Kristin D. Straily
 Heather Lynn Strohmeyer
 Brian Russell Swenson
 Robert Blair Swinford
 Jessica Lauren Tait
 Tara Marie Tannehill
 Madeline Jamay Taylor
 Denecia Rachelle Taylor-Cassil
 Cody Allen Thomas
 Leslie Mariah Thompson
 Joshua Mark Tietz
 Whitney Louise Tolley
 Christopher Charles Trojan
 Devon Antonia Trupp
 Allison Leigh Tuffield

Anthony Thomas Van Eck
 Kyle Edward Wackenheim
 Jason James Waddell
 Hayden Vincent Ward
 Kathryn Dianne Warden
 Chris M. Warzecha
 Tynia A. Watson
 Thomas Weatherford
 Teresa La Verne Webster
 Zachary Paul West
 Malcolm Stuart Wightman
 Blair Wigington
 Kelly Jeanne Wilbur
 Dominic Deangelo Williams
 Paula Michelle Williams
 Taylor Victoria Wilson
 Michael Preston Winkler
 John Justin Wolf
 Sarah Elizabeth Yates
 Sajani Geevarghese Zachariah

WHAT ATTORNEYS NEED TO KNOW ABOUT AVOIDING PROBATE AND MEDICAID DISASTERS

Tuesday, November 15, 2011

1:00 - 4:30 p.m.

Rose State College, Midwest City

Seniors are the fastest growing segment of our population. Be prepared to meet the legal needs of your older clients, including:

- **Avoiding Probate Without a Trust**
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- **Medicaid and Estate Planning Ethics**

\$100/person early registration (before Nov. 1)

\$125/person (after Nov. 1)

\$75/person for new attorneys
 (admitted after Sept. 2008)

Register by phone or online:



Senior Law Resource Center
 (405) 528-0858
www.senior-law.org

4 Hours CLE / 1 Hour Ethics

Earn 7 MCLE credits (1 Ethics)

**Approved by the Oklahoma Bar
 Association**

**Review of the Medical Record for
 Merit & Causation**

NOVEMBER 11, 2011 FROM 9 TO 5

**LOCATION: 1437 South Boulder Avenue
 Tulsa, Oklahoma**

*Presented by: Legal Medical Resource Group
 & Tulsa Law Center*

SEMINAR AGENDA: Ethical Considerations — How to systematically review a medical record — The admission process and documents generated — The steps involved in executing a doctor's order and areas of potential liability - Identifying the applicable standards of care and determining compliance — Where to locate the documentation needed to support your case — Litigation trends & statistics — Case studies & discussion

COST IS \$185. Contact us for additional information at: (918) 812-4337

Legal Medical Resource Group LLC 8310 South 67th East
 Avenue Tulsa, Oklahoma 74133
legalmedicalresourcegroup@cox.net

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
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	Have you ever served on this committee?	If so, when? How long?
1st Choice _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
2nd Choice _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____
3rd Choice _____	<input type="checkbox"/> Yes <input type="checkbox"/> No	_____

☐ Please assign me to only one committee.

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

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

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

Fax: (405) 416-7001



Some Doors Close While Others are Pushed Open: Recent Changes in the Creation of Employer Liability

The OKC program
will be webcast.
Webcast price varies.

www.okbar.org/cle

8:30

Registration and Continental Breakfast

9

Revolutionary Changes in Affirmative Action Requirements
for Government Contractors

Dan Morgan, Newton O'Connor Turner & Ketchum, Tulsa

9:50

Break

10

You're Kidding, Right?! That's a Disability Now? Reflections
on Changes Brought About by the New ADAAA Regulations.

Adam Childers, Crowe & Dunlevy, Oklahoma City

10:50

There's An App for That: Wage and Hour Compliance Goes
Digital

Oklahoma City Program

Daniel Johnson, Crowe & Dunlevy, Oklahoma City

Tulsa Program

Courtney Warmington, Crowe & Dunlevy, Oklahoma City

11:40

Networking lunch

(included in registration)

12:10

Retaliation Claims Made Easier

Oklahoma City Program

Mark Hammons, Hammons, Gowens, Hurst, &
Associates, Oklahoma City

Tulsa Program

Amber Hurst, Hammons, Gowens, Hurst, &
Associates, Oklahoma City

1

For Better or Worse: Oklahoma Legislation Lays Down
New Laws for Employees

Sam Fulkerson, McAfee & Taft, Oklahoma City

1:50

Break

2

Attorney's Role and Ethics in Workplace
Investigations (ethics)

Oklahoma City Program

Leah Avey, Rubenstein & Pitts, Edmond

Tulsa Program

Jim Priest, Rubenstein & Pitts, Edmond

2:50

Adjourn

Oct. 14, OKC - Oklahoma Bar Center, 1901 N. Lincoln Blvd.

Oct. 21, Tulsa - Renaissance Hotel, 6808 S. 107th East Ave.

Planner/Moderator:

Christine Cave, Employers Legal Resource Center, Oklahoma City

Credit: Approved for 6 hours MCLE/ 0 Ethics TX approved webcast only for 5 hours MCLE/ 0 Ethics

Tuition: \$150 for early-bird registrations with payment received at least four full business days prior
to the seminar date; \$175 for registrations with payment received within four full business days of the seminar date.

Cancellation Policy: Cancellations will be accepted at any time prior to the seminar date; however,
a \$25 fee will be charged for cancellations made within four full business days of the seminar
date. Cancellations, refunds, or transfers will not be accepted on or after the seminar date.



Oklahoma Bar Association 2012 Proposed Budget

Pursuant to Article VII, Section 1 of the Rules Creating and Controlling The Oklahoma Bar Association, Cathy M. Christensen, President-Elect and Budget Committee Chairperson, has set a Public Hearing on the 2012 Oklahoma Bar Association budget for Thursday, Oct. 20, 2011, at 4 p.m. at the Oklahoma Bar Center, 1901 N Lincoln Boulevard, Oklahoma City, Oklahoma.

The purpose of the OBA is to engage in those activities enumerated in the Rules Creating and Controlling the Oklahoma Bar Association (the Rules) and the OBA Bylaws (the Bylaws). The expenditure of funds by the OBA is limited both as set forth in the Rules and Bylaws and in *Keller v. State Bar of California*, 496 U.S. 1 (1990). If any member feels that any actual or proposed expenditure is not within such purposes of, or limitations on the OBA, then such member may object thereto and seek a refund of a *pro rata* portion of his or her dues expended, plus interest, by filing a written objection with the executive director. Each objection must be made in writing on an OBA Dues Claim

Form, addressed to the Executive Director of the OBA, P.O. Box 53036, Oklahoma City, OK 73152, and postmarked not later than Sixty (60) days after the approval of the Annual Budget by the Oklahoma Supreme Court or January 31st of each year, whichever shall first occur. Objection procedure and form are available at www.okbar.org/members/budget.htm.

Upon receipt of a member's written objection, the executive director shall promptly review such objection together with the allocation of dues monies spent on the challenged activity and, in consultation with the president, shall have the discretion to resolve the objection, including refunding a *pro rata* portion of the member's dues, plus interest or schedule a hearing before the Budget Review Panel. Refund of a *pro rata* share of the member's dues shall be for the convenience of the OBA, and shall not be construed as an admission that the challenged activity was or would not have been within the purposes of or limitations on the OBA.

The proposed budget begins on the next page.

OKLAHOMA BAR ASSOCIATION 2012 PROPOSED BUDGET

REVENUES	2012 PROPOSED BUDGET		2011 BUDGET	
ADMINISTRATIVE:				
Dues and Penalties	\$ 4,080,625		\$ 4,026,450	
Investment Income	35,000		50,000	
Annual Meeting	70,000		70,000	
Commissions and Royalties	38,000		30,000	
Mailing Lists and Labels	12,000		12,000	
Council on Judicial Complaints - Rent and Services	10,000		10,000	
Board of Bar Examiners - Rent and Services	15,000		15,000	
Legal Intern Fees	7,000		7,000	
Other	<u>17,000</u>	\$ 4,284,625	<u>17,000</u>	\$ 4,237,450
OKLAHOMA BAR JOURNAL AND PUBLIC INFORMATION:				
Oklahoma Bar Journal:				
Advertising Sales	135,000		135,000	
Subscription Sales	16,000		16,000	
Other Miscellaneous	<u>500</u>	151,500	<u>500</u>	151,500
LAW RELATED EDUCATION:				
Grants	<u>45,500</u>	45,500	<u>114,083</u>	114,083
CONTINUING LEGAL EDUCATION:				
Seminars and Materials	<u>1,120,000</u>	1,120,000	<u>1,140,000</u>	1,140,000
GENERAL COUNSEL:				
Disciplinary Reinstatements	12,000		15,000	
Out of State Attorney Registration	<u>286,500</u>	298,500	<u>254,000</u>	269,000
MANDATORY CONTINUING LEGAL EDUCATION:				
Filing Penalties	98,000		98,000	
Provider fees	<u>77,000</u>	175,000	<u>77,000</u>	175,000
PRACTICE ASSISTANCE				
Consulting Fees and Material Sales	2,650		3,000	
Diversion Program	<u>6,500</u>	9,150	<u>4,000</u>	7,000
COMMITTEES AND SPECIAL PROJECTS:				
Mock Trial Program Fees	49,000		48,000	
Lawyers Helping Lawyers	26,000		29,000	
Insurance Committee	53,000		53,000	
Women-in -Law Conference	50,000		50,000	
Solo-Small Firm Conference	50,000		50,000	
Law Student Division	<u>-</u>	228,000	<u>-</u>	230,000
TRANSFER FROM BUILDING FUND		<u>440,000</u>		<u>-</u>
TOTAL REVENUES		<u>\$ 6,752,275</u>		<u>\$ 6,324,033</u>

OKLAHOMA BAR ASSOCIATION 2012 PROPOSED BUDGET

EXPENDITURES	2012 PROPOSED BUDGET		2011 BUDGET	
ADMINISTRATIVE:				
Salaries and Benefits	\$	943,221	\$	942,966
Annual Meeting		150,000		140,000
Board of Governors and Officers		146,000		138,000
Conferences and Organizational Development		18,000		18,000
Legislative Monitoring		8,500		8,000
General and Administrative:				
Utilities		104,000		100,000
Insurance		56,500		46,500
Data Processing		73,560		64,800
Building and Equipment Maintenance		74,000		74,000
Postage		46,000		44,000
Copier		48,000		48,000
Supplies		24,000		36,000
Grounds Maintenance		8,500		7,000
Audit		16,500		16,500
Miscellaneous		66,200		71,200
Overhead Allocated to Departments		<u>(486,059)</u>	\$ 1,296,922	<u>(468,602)</u> \$ 1,286,364
OKLAHOMA BAR JOURNAL				
AND PUBLIC INFORMATION:				
Salaries and Benefits		257,192		229,121
Oklahoma Bar Journal:				
Weekly Issue Printing		280,500		275,000
Special Issue Printing		163,200		160,000
Other		4,000		3,000
Public Information Projects		4,000		0
Newsclip Service		1,700		1,600
Pamphlets		10,000		10,000
Photography		350		500
Supplies		1,000		1,000
Miscellaneous		10,750		10,750
Allocated Overhead		<u>86,740</u>	819,432	<u>85,863</u> 776,834
LAW RELATED EDUCATION:				
Salaries and Benefits		120,497		118,034
Other Grant Projects		45,500		116,583
Training, Development and Travel		37,000		25,500
Newsletter		10,500		10,000
Miscellaneous		10,400		9,600
Allocated Overhead		<u>50,625</u>	274,522	<u>45,585</u> 325,302
CONTINUING LEGAL EDUCATION:				
Salaries and Benefits		413,068		398,672
Meeting Rooms and Food Service		150,000		150,000
Seminar Materials		80,000		78,000
Co-sponsorship fees		25,000		40,000
Brochures and Bulk Mail		90,000		90,000
Speakers		100,000		100,000
Audio/Visual		12,000		12,000
Department Travel		8,000		7,000
Supplies		3,500		3,500
Miscellaneous		31,000		29,900
Allocated Overhead		<u>128,643</u>	1,041,211	<u>133,988</u> 1,043,060

OKLAHOMA BAR ASSOCIATION 2012 PROPOSED BUDGET

EXPENDITURES	2012 PROPOSED BUDGET		2011 BUDGET	
DISCIPLINARY:				
Salaries and Benefits	\$ 1,106,170		\$ 990,611	
Investigation and Prosecution	50,500		50,500	
PRC Travel and Meetings	12,000		8,500	
PRT Travel and Meetings	7,500		7,500	
Department Travel	7,250		6,250	
Library	5,000		7,000	
Supplies	8,000		8,000	
Miscellaneous	7,400		6,750	
Allocated Overhead	<u>119,599</u>	\$ 1,323,419	<u>112,300</u>	\$ 1,197,411
MANDATORY CONTINUING LEGAL EDUCATION:				
Salaries and Benefits	203,071		199,467	
Printing & Compliance Reporting	3,000		3,000	
Supplies	1,000		1,000	
Commission Travel	1,500		1,500	
Miscellaneous	5,050		5,050	
Allocated Overhead	<u>50,226</u>	263,847	<u>45,433</u>	255,450
PRACTICE ASSISTANCE				
Salaries and Benefits	269,036		258,484	
OBA-NET Expense	6,000		6,000	
Dues & Subscriptions	2,600		2,600	
Library	2,450		2,450	
Computer Software	1,700		1,700	
Supplies	1,200		1,150	
Diversion Programs	4,100		3,500	
Travel and Conferences	16,000		15,800	
Miscellaneous	3,750		3,650	
Allocated Overhead	<u>50,226</u>	357,062	<u>45,433</u>	340,767
COMMITTEES AND SPECIAL PROJECTS:				
Law Day	48,000		43,000	
Women-in -Law Conference	60,000		60,000	
Solo-Small Firm Conference	50,000		50,000	
Mock Trial Program	47,000		45,000	
FastCase Legal Research	85,000		85,000	
General Committees	51,750		50,250	
Lawyers Helping Lawyers Program	52,000		48,000	
Membership Survey	17,500		0	
Military Task Force	22,000		10,000	
Judicial Funding/LRE Program	10,000		0	
ABA Commission Hearings	10,000		0	
2013 Southern Conference of Bar Presidents	5,000		0	
Law Student Division	2,000		0	
Young Lawyers Division	<u>85,000</u>	545,250	<u>85,000</u>	476,250
CLIENT SECURITY FUND CONTRIBUTION		100,000		100,000
OKLAHOMA BAR CENTER RENOVATIONS		440,000		220,000
2013 SOUTHERN CONFERENCE OF BAR PRESIDENTS FUND		15,000		15,000
FURNITURE, FIXTURES AND OTHER CAPITAL IMPROVEMENTS		<u>274,600</u>		<u>221,000</u>
TOTAL EXPENDITURES		<u>\$ 6,751,265</u>		<u>\$ 6,257,438</u>
TOTAL REVENUES OVER (UNDER) EXPENDITURES		<u>\$ 1,010</u>		<u>\$ 66,595</u>

Statement of Ownership Management and Circulation

(Required by 39 U.S.C. 3685)

1. Publication Title: The Oklahoma Bar Journal

2. Publication number: 277-340

3. Filing Date: Oct. 3, 2011

4. Issue Frequency: 3 issues monthly in January, February, March, April, May, August, September, October, November & December; bimonthly in June & July

5. Number of issues published annually: 34

6. Annual subscription price: \$55

7. Complete mailing address of known office of publication: P.O. Box 53036, Oklahoma City, Oklahoma County, OK 73152-3036; 1901 N. Lincoln Blvd., Oklahoma City, OK 73105

8. Complete mailing address of headquarters or general business office of publisher: P.O. Box 53036, Oklahoma City, Oklahoma County, OK 73152-3036; 1901 N. Lincoln Blvd., Oklahoma City, OK 73105

9. Full names and complete addresses of publisher, editor, and managing editor:
 Publisher: Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152-3036
 Editor: Melissa DeLacerda, 301 S. Duck, Stillwater, OK 74076
 Managing Editor: John Morris Williams, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152-3036

10. Owner (If the publication is owned by a corporation, give the name and address of the corporation immediately followed by the names and addresses of all stockholders owning or holding 1 percent or more of the total amount of stock.)
 Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152-3036

11. Known bondholders, mortgages, and other security holders owning or holding 1 percent or more of total amount of bonds, mortgages or other securities: None

12. Tax Status: The purpose, function and nonprofit status of this organization and the exempt status for federal income tax purposes has not changed during preceding 12 months.

13. Publication Title: The Oklahoma Bar Journal

14. Issue Date for Circulation Data Below: September 24, 2011

15. Extent and nature of circulation

A. Total No. Copies (net press run) (average no. copies each issue during preceding 12 months): 14,056 (actual no. copies of single issue published nearest to filing date): 13,100

B. Paid and/or Requested Circulation

1. Paid/Requested Outside-County Mail Subscriptions (average no. copies each issue during preceding 12 months): 12,994 (actual no. copies of single issue published nearest to filing date): 11,918

2. Paid In-County Subscriptions (average no. copies each issue during preceding 12 months): 0 (actual no. copies of single issue published nearest to filing date): 0

3. Sales Through Dealers and Carriers, Street Vendors, Counter Sales and Other Non-USPS Paid Distribution (average no. copies each issue during preceding 12 months): 0 (actual no. copies of single issue published nearest to filing date): 0

4. Other Classes Mailed Through the USPS (average no. copies each issue during preceding 12 months): 0 (actual no. copies of single issue published nearest to filing date): 0

C. Total Paid and/or Requested Circulation (average no. copies each issue during preceding 12 months): 12,994 (actual no. copies of single issue published nearest to filing date): 11,918

D. Free or Nominal Rate Distribution by Mail

1. Outside-County (average no. copies each issue during preceding 12 months): 164 (actual no. copies of single issue published nearest to filing date): 162
2. In-County (average no. copies each issue during preceding 12 months): 0 (actual no. copies of single issue published nearest to filing date): 0
3. Other Classes Mailed Through the USPS (average no. copies each issue during preceding 12 months): 0 (actual no. copies of single issue published nearest to filing date): 0
4. Free Distribution Outside the Mail (average no. copies each issue during preceding 12 months): 0 (actual no. copies of single issue published nearest to filing date): 0

E. Total Free Distribution (average no. copies each issue during preceding 12 months): 164 (actual no. copies of single issue published nearest to filing date): 162

F. Total Distribution (average no. copies each issue during preceding 12 months): 13,158 (actual no. copies of single issue published nearest to filing date): 12,080

G. Copies Not Distributed (average no. copies each issue during preceding 12 months): 898 (actual no. copies of single issue published nearest to filing date): 1,020

H. Total (average no. copies each issue during preceding 12 months): 14,056 (actual no. copies of single issue published nearest to filing date): 13,100

I. Percent Paid and/or Requested Circulation (average no. copies each issue during preceding 12 months): 98.75 (actual no. copies of single issue published nearest to filing date): 98.66

I certify that the statements made by me above are correct and complete.

John Morris Williams
Editor-in-Chief

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CALLING ALL OU LEGAL CLINIC ALUMS

Remember your meetings with the supervising attorneys? The cases you worked on? All of the delicious foods and snacks? If you answered yes to any of these, then **YOU** should join us at the anniversary celebration.

The 40th anniversary of the legal clinic begins Friday, October 14th. See the OU Legal Clinic Facebook page or call Lori Ketner at 325-3433.

In an effort to protect personal identifier information in court documents, the Oklahoma Supreme Court is considering the attached proposed order creating Rule 31 of the Rules of the District Courts of Oklahoma. The court has studied this issue for several years and the courts will continue to gather personal identifier information for the business needs of the court.

The court invites your written comments on this matter on or before Nov. 4, 2011. The court will consider your input before it considers a final order.

Thank you for taking the time to comment on this important public policy topic. Your written comments may be sent to:

Michael D. Evans, Administrative
Director of the Courts
2100 N. Lincoln Boulevard, Ste. 3
Oklahoma City, OK 73105

Or

Mike.evans@oscn.net

Sincerely,

Michael D. Evans
Administrative Director of the Courts

2011 OK

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

**In re Amendment to 12 O.S. Ch. 2, App.,
Rules for the District Courts of Oklahoma,
Creating New Rule 31.**

SCAD NO. 2011-

FOR OFFICIAL PUBLICATION

¶0 Order Creating new Rule 31, Rules for the District Courts of Oklahoma.

¶1 The Court hereby creates Rule 31, 12 O.S. Ch. 2, App., Rules for the Districts Courts of Oklahoma.

¶2 Rules of the District Courts of Oklahoma, Rule 31, is created to read as follows.

Rule 31, Personal Identifier Information on Court Documents

A. Personal Identifier Information

Every party to an action shall omit, or where inclusion is necessary shall include, only the following personal identifier information in all pleadings, papers, exhibits or other documents, whether filed electronically or in paper, unless otherwise ordered or as otherwise provided by law (i.e. 22 O.S. 977):

1. Social Security Numbers: An individual's social security number shall include only the last four digits.

2. Taxpayer Identification Numbers: A taxpayer identification number shall include only the last four digits of that number.

3. Names of Minor Children: Only the initials of a minor child shall be used. In the alternative, the filer may refer to the child in the manner that shields the identity of the minor in the context of the proceeding (i.e., by symbol [Child A, Child B]: as Doe 1, Doe2; or by the child's status in the litigation [/Witness, Victim, Ward, Beneficiary]).

4. Dates of Birth: An individual's date of birth shall include only the year.

5. Financial Account Numbers: Financial account records shall include only the last four digits of these numbers.

6. Home addresses: A home address shall include only the city and state.

7. Driver's License: An individual's driver's license shall include only the last four digits of that number.

8. Other Personal Identification Numbers: Any other personal identification number shall include only the last four digits of that number.

B. Responsibility of Filer

The responsibility for following the guidelines set forth above rests solely with counsel, the parties, or any other filer. The Clerk of the Court will not review documents for compliance with this rule, seal documents or redact documents. If a filer includes personal identifier information and other sensitive information in any document filed with the courts, electronically or otherwise, the document becomes a public record as filed.

C. Filing of Documents under Seal

A. Any party may request of the court that any pleading, paper, exhibit or other document be sealed and a redacted version filed for the public record.

B. Any party may, with leave of court, file a document under seal containing personal identification information.

1. The party seeking to file a document with personal identification information shall file a motion to file the document under seal.

2. If the motion is granted, the filer shall submit the original and one copy of the unredacted document to the Clerk in a clearly identified envelope. The document shall contain the notation " Document filed under seal by Order dated_____".

3. The assigned judge shall require the filer to file a redacted copy for the public record. The redacted pleading or other paper shall be clearly identified as a redacted version. The redacted pleading shall be a public record as filed.

¶3 Rules for the District Courts of the State of Oklahoma, Rule 31, shall be created by this order and shall take effect _____. This Order shall be published three times in the *Oklahoma Bar Journal*.


¶4 DONE BY ORDER OF THE SUPREME COURT IN CONFERENCE THIS _____ DAY OF 2011.

/s/ Steven W. Taylor
CHIEF JUSTICE

HOW DO YOU MEASURE AN EDUCATION'S WORTH

HOLLAND HALL CLASS SIZES 100% COLLEGE ADMISSIBLE FULL TIME COLLEGE COUNSELORS AVERAGE
STATE UNIVERSITIES 3.48 \$7 MILLION IN COLLEGE SCHOLARSHIPS LAST YEAR STUDENT CENTER
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UPPER SCHOOL 100% PRIMARY AND MIDDLE SCHOOL STUDENTS IN PHYSICAL EDUCATION/ATHLETICS
UPPER SCHOOL STUDENTS IN INTERSCHOLASTIC SPORTS 46% UPPER SCHOOL STUDENTS IN TWO OR
MORE INTERSCHOLASTIC SPORTS 20% OF GRADUATES IN COLLEGE SPORTS 100% PRIMARY AND MIDDLE
SCHOOL STUDENTS IN ART, MUSIC OR DRAMA 80% UPPER SCHOOL STUDENTS ENROLLED IN AT LEAST
ONE FINE ARTS CLASS 50% UPPER SCHOOL STUDENT ENROLLED IN TWO OR MORE FINE ARTS CLASSES
CLASSES AND LEVELS OFFERED IN THE FINE ARTS INCLUDE THEATER, STAGE CRAFT, TECH THEATER,
VOICE, CHORUS, ORCHESTRA, BAND, ART, CERAMICS 145 STUDENTS RECEIVE FINANCIAL AID \$1.7
MILLION GRANTED IN FINANCIAL AID INCLUSIVE ENVIRONMENT COMMUNITY SERVICE STRONG ADVISOR
SYSTEM PERSONAL ATTENTION CARING COMMUNITY

We understand a yardstick is used throughout education to measure how one school stacks up against another; how test scores determine a student's worth; how extracurricular activities are used to build a portfolio. But we fundamentally disagree with making your child our statistic. While we will confidently tell you that 100 percent of our students are college-bound where they then achieve on average a 3.48 GPA, we will not tell you that your child is a number to us. This is because our numbers are low, with an 8:1 student:teacher ratio. Our faculty knows your child, knows their strengths, their weaknesses, their dreams and aspirations. Where your confident child meets our inspired educators is where we place value. That's how we measure an education's worth.

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THE 2011 OKLAHOMA CRIMINAL DEFENSE LAWYERS ASSOCIATION AWARDS FOR EXCELLENCE IN CRIMINAL DEFENSE

Each year your peers in the practice of criminal defense select three of their own to receive the most prestigious awards for excellence in criminal defense achievements in Oklahoma. These awards are the only statewide awards that are nominated and selected by attorneys that practice criminal defense in Oklahoma. The awards are as follows:

The Clarence Darrow Award

Clarence Darrow was born in Ohio in 1857. After being admitted to the bar in 1878, he became a small town lawyer for nine years.

During WWI he defended anti-war activists and was critical of The Espionage Act that was used to stifle anti-war activities. You need only mention the names of his famous cases to realize his impact on criminal defense; the *Scopes Monkey Trial*, the *Scottsboro 9* and the *Leopold-Loeb Murder Trials*. A 1936 FBI memo to Clyde Tolson, aide-de-camp to J. Edgar Hoover, gave Mr. Hoover some quotes that Clarence Darrow had made in an article entitled Attorney for the Defendant. It was suggested that Mr. Hoover could use these quotes in speeches to point out how unscrupulous criminal lawyers stimulate disrespect for law and influence crime conditions.

The award recognizes the efforts of an individual who has, during the year, exemplified the zealous criminal defense advocacy that befits the namesake of the award "Clarence Darrow". It is in the deeds and spirit of Clarence Darrow that this award is given each year for the zealous criminal defense advocacy by an individual attorney. The only qualification requirement is that the event(s) upon which the nomination is based must have taken place during the current year.

The Lord Thomas Erskine Award

Lord Erskine was a Scotsman, the third son of the 10th Earl of Buchan, educated at Edinburgh and Cambridge and called to the bar in 1778. He was a strong advocate and defender of popular liberties and constitutional rights. His defense of Thomas Paine cost him his post of attorney general to the Prince of Wales. The award is given to honor a member of the criminal defense bar who has over the years steadfastly placed the preservation of personal liberties over his or her own personal gain or reputation.

The award is a cumulative year award and is not limited to any particular activities in any given year.

The Thurgood Marshall Appellate Advocacy Award

Thurgood Marshall, the grandson of a slave, was born in 1908 in Maryland. In 1930, he was denied admission to the University of Maryland Law School due to the fact he was black. This event was to direct his future professional life.

In 1934, he began his association with the NAACP and dismantled school segregation in his 1954 victory of *Brown vs. Board of Education of Topeka*. He later desegregated graduate schools with his victory in *Mclaurin vs. Oklahoma State Regents*. As a Justice for the Court of Appeals for the 2nd Circuit, he made 112 rulings that were all upheld before the United States Supreme Court. As Solicitor General for the United States, he won 14 of 19 cases argued before the United States Supreme Court. In 1967, Thurgood Marshall was the first African American appointed to the United States Supreme Court. He was often the lone voice of dissent against the death penalty and always spoke for voiceless Americans in his opinions. He died in 1993.

The only qualification for the awards is that the nominee must be the appellate attorney of record in the decision that formed the basis of the nomination. However, there is no requirement that the decision must have occurred within the current year.

Please submit written nominations and the reasons therefore to:

BY MAIL: OCDLA, P.O. Box 2272, Oklahoma City, OK 73101

FAX TO: (405) 212 5024

EMAIL TO: bdp@for-the-defense.com

The deadline is October 21, 2011. The awards will be announced prior to the OBA Convention and awarded at the OCDLA Annual Meeting on November 3, 2011 at 1:30 p.m. **You do not have to be a member of OCDLA to nominate an individual.**

Awards not received by October 21, 2011 at the OCDLA PO Box or fax # will not be considered.

Some Other Stuff

By John Morris Williams

Last month I wrote about the Annual Meeting and this edition has plenty of information that is supplied in much better form than I could provide. So, I thought I would talk about some other stuff going on at the Oklahoma Bar Association. Right now, besides gearing up for the Annual Meeting we are in preparation for the Veterans Free Legal Clinics to be conducted statewide on Veterans Day this year. Your county bar president has already been contacted and the many counties have responded positively to the request to put on a clinic. The OBA did a test clinic in Muskogee a few weeks ago and it was very successful. I had the opportunity to attend and can promise you that the clinics will be well organized with the turn key "Clinic in a Box" supplied by the OBA. The "Box" was made possible by a grant from the Oklahoma Bar Foundation. Thanks to the OBF for helping us supply the materials for this great project. If your county bar is not already on board, please consider doing this. From my first-hand experience, I am certain you will have a good time doing this and leave feeling better for the effort. It is a good thing. Do it.

We have finally completed the remodel of the first floor west wing, except for the restrooms. The restrooms and the third floor west wing (General Counsel's Office) will be renovated after the first of next year. The remodel of the third floor

west wing will conclude the final project of the final phase. It has been a long process and to see this work coming to an end is most welcomed. Our elected leaders and our Bar Center Facilities Committee have worked hard to help us update and make your headquarters a clean, warm and welcoming place for you to meet, get CLE and conduct any other business you may have here. Thank you OBA membership for supporting our efforts on this project. So far we have brought every project in under time and under budget.

We are also gearing up for dues and MCLE reporting. Every year we end up charging late fees or suspending members who just "forget." Please be watching for the MCLE email that advises you of your status. If you do not have a current email with the OBA you are missing out on a great feature. Also, every year I hear members complain that they moved and did not get notice of dues or MCLE because they moved and did not alert the OBA of the new address. Oklahoma Supreme Court rules require OBA members to provide the OBA with a current address. It is easy to go online and change your address. If you have moved please make sure you get us your new address quickly. We cannot assure that the post office will forward your dues statement or MCLE communications. In less than one minute you can update your information and

perhaps save yourself hundreds of dollars in late fees, penalties and reinstatement fees.

Of course the Annual Meeting has big-time CLE this year. If for some reason you miss the Annual Meeting CLE, there are many great opportunities from now until the end of the year. You should have gotten the really slick magazine the CLE department put out this year. I read one of the programs and was so impressed that I signed up and attended. Once again, the options are many: come in person, go online and watch live or watch one or more of the achieved programs at your leisure.

Technology is great. However, it is not perfect. If you encounter any difficulties in paying dues or signing up for CLE online, we want to hear from you. We love hearing from our members and we want to give you good service. We have tested the systems and they are in good form. However, sometimes the gremlins do slip in. We are here in person to assist you with any needs you may have.

I am looking forward to seeing you at the Annual Meeting.



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

Mobile Technology and Cloud Computing

By Jim Calloway, Director, OBA Management Assistance Program

Mobile technology remains a hot topic.

Just this month, Apple announced a new iPhone, the iPhone 4S with Siri — the voice-activated data assistant and a much improved camera. Apple also set the official launch of its iCloud service on Oct. 12. This personal cloud service will bring a user's iTunes and Apple's Photo Stream to the cloud. Users can also store files on the service via Documents in the Cloud. The iCloud service makes all of a user's content and documents available across all of his or her mobile devices, including iPhones, iPads, iPods, Macintosh computers and PCs.

As I understand it, this version of iCloud doesn't let one use Microsoft Word or WordPerfect to save or edit these documents. So most lawyers will not find this development overly interesting for business use. Having your iTunes music and video collection available on all of your devices without physically syncing the device will undoubtedly sound great to iTunes subscribers. Apple has released its API to developers so these other word processors may be compatible with iCloud at some point.

It is pretty clear now that tablet devices like the iPad are going to dominate hardware

sales for consumers. This will be one of the major factors that drives cloud computing and online data storage. Since smartphones and tablets are currently priced according to gigabytes of storage, one can save on the initial purchase price by buying the cheapest unit and storing most files and data in the cloud rather than on the phone's drive. Accessing it will be almost as speedy as

from the phone as long as you have a 3G connection.

Lawyers remain rightfully concerned about protecting confidential client information. Some lawyers will never be comfortable with storing client data on any cloud-based service. That is perfectly acceptable and understandable. But it is also clear that the trends are moving toward cloud data storage.

OBA Ethics Counsel Travis Pickens published an article discussing these issues about a year ago in the *Oklahoma Bar Journal*, see Pickens, "Ethics Up in the Clouds," 81 *OBJ* 29, 2407-2411 (2010).

You can also download this article by Travis Pickens from my blog at <http://jimcalloway.typepad.com/files/ethics-up-in-the-clouds.pickens.oklabarj.pdf>.

I have communicated with several lawyers in Oklahoma who are now using the cloud-based practice management system Clio, www.goclio.com/.

They really like the convenience of having their complete office interface and all files accessible from any computer or mobile device.

I am sure there are other Oklahoma lawyers using the other cloud-based practice management solutions, Rocker-

“Using a home scanner to store them in the cloud gets them out of your way and also means you can instantly access them from a smartphone...”



Matter or HoudiniEsq. I just have not heard from them yet.

I have posted several times on my blog about Dropbox. See e.g. "Pizza and Online Document Repositories," at <http://jimcalloway.typepad.com/lawpracticetips/2010/11/online-document-repositories.html> or <http://tinyurl.com/2683yl4>.

My point is that while you may be a bit cautious about your law practice files moving to the cloud, we all have many documents associated with our personal lives that are not confidential and do not contain any birth dates, account numbers or a social security number. Using a home scanner to store them in the cloud gets them out of your way and also means you can instantly access them from a smartphone, tablet or computer should the need arise. A Magic Marker kept close to the scanner can handle any needed redaction.

But there is real value in storing personal items safely online. If you are given a sports schedule for your child, you can scan it to Dropbox and have ready access. Then you can use Dropbox to send another parent who lost their schedule a link to download your copy. From recipes to

warranties to any hand-written note, scan it, file it and you will always have access to it until you decide to delete it. If you are in an organization and are given the 20-page membership directory, you probably will not take the time to enter each address into your contacts database. But scanning the directory and uploading it to your online storage means you can find all members' phone numbers or addresses if you need them.

While Dropbox is the best known among these online document repositories, there are many others, including Box.net, SpiderOak.com, Sugar Sync and Windows Live SkyDrive, to name but a few. One lawyer-blogger greatly prefers SpiderOak because he, and only he, has the encryption key and therefore the ability to unlock the files. See <http://hytechlawyer.com/?p=511>. Files are encrypted on Dropbox as well, but in a way where Dropbox employees can unlock them. My guess is Dropbox will expand those options in the future.

When you are working from different locations, online document repositories with file synchronization is great. No more emailing a document home to work on it later with file syn-

chronization. For articles and papers that are being created and revised, you can have the single current version available to you via several computers, your smartphone and tablet.

Most of these services are free for a basic allotment of online storage. While one could easily upload enough pictures or music to fill the free allotment quickly, documents take up much less space and, once you have uploaded enough of those to fill your free allotment, you probably should be paying the modest monthly or annual fee anyway.

Anytime you have to trust a third party with your data, it is a matter for concern whether it is the night cleaning crew at the office, a new employee or an online document repository. But for junior's basketball schedule or grandma's stew recipe, there is little cause for concern. Learning to use these tools is good experience, if for no other reason than your clients will be using them and perhaps not as cautiously as a lawyer might. Some small businesses have already converted their files to cloud storage. Their lawyer should ask them what the backup plan is if the vendor suddenly goes out of business.

New ABA Ethics Opinions

Advising Clients Regarding Direct Contacts with Represented Persons, Email and Renegotiating Fees

By Travis Pickens

The Supreme Court of Oklahoma has the sole, nondelegable, constitutional responsibility to regulate the practice, ethics, licensure and discipline of lawyers. Their opinions regarding application of the Oklahoma Rules of Professional Conduct are the ultimate answer on any question. In the meantime, practitioners rely upon guidance from my office, or ethics opinions from the Oklahoma Legal Ethics Advisory Panel, treatises, ABA articles and the like, or simply their own research. All such guidance is advisory and non-binding. Another such source of guidance that appears to be little known is the ABA's Standing Committee on Ethics and Professional Responsibility, and the formal ethics opinions they issue. The committee produces ethics opinions pertaining to the ABA's Model Rules of Professional Conduct, most of which are valuable to Oklahoma lawyers as the Oklahoma Rules of Professional Conduct were adapted directly from the Model Rules.

The Standing Committee has recently issued four new formal opinions, relating to direct communication between parties, duties regarding email communications and renegotiating an

attorney fee. This article will focus on the most interesting opinion discussing party to party communications, one which will have broad application to litigators and transactional lawyers involved in negotiations. Brief synopses of the other opinions are included at the end of this article. You should read them all, especially Formal Opinion 11-459 which advises a lawyer under Model Rule 1.6 (a) typically has a duty to warn his or her client that a third party (say, an employer) may have a right to locate and read emails on the employee's business computer or other device.

Formal Opinion 11-461 "Advising Clients Regarding Direct Contacts with Represented Persons" deals with Model Rule 4.2.

It states:

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

(The Oklahoma version of 4.2 is identical.)

The committee's summary of the opinion states:

Parties to a legal matter have the right to communicate directly with each other. A lawyer may advise a client of that right and may assist the client regarding the substance of any proposed communication. The lawyer's assistance need not be prompted by a request from the client. Such assistance may not, however, result in overreaching by the lawyer.

The purpose of the rule of course is to keep parties from making enforceable obligations, admissions or divulging confidential information without the benefit of their own counsel's advice. Lawyers do not often know whether or how they can assist a client with these communications. We know that parties may speak directly to each other, but we are not sure how and to what extent counsel may be involved in the planning and strategy of those communications.

The ABA committee concluded the lawyer may advise the client about the content of the communications that the client proposes to have with the represented person. For example,

the lawyer may review, redraft and approve a letter or a set of talking points. The lawyer may also draft the basic terms of a proposed settlement agreement, or even more remarkably, a formal agreement ready for execution. But, it went on to say that the lawyer must not overreach and this is where you should pay particular attention. Examples of overreaching would include “assisting the client in securing from the represented person an enforceable obligation, disclosure of confidential information, or admissions against interest without the opportunity to seek the advice of counsel.” At a minimum, a lawyer must advise her client to “encourage the other party to consult with counsel before entering into obligations, making admissions or disclosing confidential information.” The opinion further advises that “[i]f counsel has drafted a proposed agreement for the client to deliver to her represented adversary for execution, counsel should include in such agreement conspicuous language on the signature page that warns the other party to consult with his lawyer before signing the agreement.”

It would be wise to cover communications between your client and the opposing party carefully in person and in writing, when you first begin representation. Make sure you and your client know and respect the boundaries. As an Oklahoma lawyer, my practical counsel is to proceed very carefully, and more conservatively than the outer bounds of this opinion, at least until there is some specific Oklahoma guidance. There is not a recent Oklahoma

ethics opinion on this precise point, although Comment [4] to ORPC Rule 4.2 states “[p]arties to a matter may communicate directly with each other, and a lawyer is not prohibited from advising a client concerning a communication that the client is legally entitled to make.” I foresee many opportunities for argument and accusations regarding the motives and methods used by a client and lawyer in obtaining admissions, information, and especially executed settlements from the opposing party that have not been provided to the opposing lawyer in advance, no matter how conspicuous the “warning” language on the document. I also foresee the potential for related bar complaints, warranted or not.

As a defensive precaution, you should counsel your clients to never agree, admit or divulge anything without the benefit of your prior advice, no matter what they are presented by the opposing party. Do not let them be surprised and sign something without your review; it may be enforceable, and could lead to an awkward moment for you later. Again, cover this orally and in your written materials that you prepare and provide to the client at the beginning of representation.

Look for new opinions from the ABA; there are a few each year. Be sure to compare the Model Rule with our own version of it. There may be significant differences. Other ABA formal ethics opinions released this year include:

- Formal Opinion 11-460: duty when a lawyer receives copies of a third-party’s

email communication with counsel. (Generally, the employer’s lawyer has no duty to notify opposing counsel when the employer locates the employee’s private emails in a business email file or the employee’s workplace computer under Rule 4.4 (b).)

- Formal Opinion 11-459: duty to protect the confidentiality of email communications with one’s client. (Generally, a lawyer sending or receiving substantive communications with a client via email or other electronic means ordinarily must warn the client about the risk of sending or receiving electronic communications using a computer or other device, or email account, where there is a significant risk that a third party may gain access.)
- Formal Opinion 11-458: changing fee arrangements during representation. (Generally, fee agreements may be modified, if reasonable under the circumstances and accepted by the client.)

These opinions are available through the ABA website at www.americanbar.org, or a Google search. These synopses are provided for the convenience of the reader. Oklahoma laws, court rules, regulations, Oklahoma Rules of Professional Conduct and related opinions are controlling.

Travis Pickens is ethics counsel for the OBA. Contact Mr. Pickens at travis@okbar.org or (405) 416-7055; (800) 522-8065.

A Tradition of Giving Back

By John Munkacsy Jr.

The Annual Meeting is just around the corner. As members of the Oklahoma Bar Association we have a duty to support our association with our presence. And why not? You will enjoy it and good things will happen. OBA President Deborah Reheard will lead a successful event. She has devoted so much this year to benefit our association and deserves our support. Plan to attend the OBF Fellows Reception on Wednesday, Nov. 2 from 5:30 to 7 p.m. at the beautiful downtown law offices of Jones Gotcher & Bogan. I look forward to seeing you there!

The Annual Meeting theme is A Tradition of Pride. The Oklahoma Bar Foundation has a tradition also — A Tradition of Giving Back. As a member of the OBA you are automatically a member of the OBF. You can certainly be proud of the OBF. As a member of a proud profession should you support its tradition and its mission? Of course the answer must be a YES, I WILL! This year, at the time of this writing — despite the woes in the economy and the financial markets — your bar foundation awarded grants in the amount of \$436,000 in addition to scholarships of \$40,900, out-of-cycle grants of \$4,000, and court grants of \$119,297 to total \$600,197 covering 38 programs or projects. These grants mark passage of \$10,119,602 for total grants awarded since the OBF was established.

The list gives grant details. Bear in mind that grant applicants must provide detailed information, financial and other to qualify. Vetting is a diligent process with the Grants and Awards Committee, ably led again this year by Judge Valerie Couch. Vigilance continues as committee members and board members make site visits. Grant recipients are also required to provide additional reports as a condition to the delivery of funds and recipients must credit the OBF in their programs and publications.

However, the OBF cannot sustain this effort without your support. If you are a Fellow you are already committed, but please encourage others to become Fellows. Only about 11 percent of our members have stepped up to give back as Fellows. It is easy. There is an application form right here in the bar journal. It is not expensive. A commitment of only \$100 per year over 10 years. However, many Fellows become Sustaining Fellows by continuing with the annual support. Newly admitted attorneys are able to be Fellows at a reduced rate. Many Fellows elevate their support to be premier Benefactor Fellows at \$300 per year.

By the way, we all have an easy way to provide additional support to OBF by simply making an additional gift on the annual OBA dues statement. Please consider making a gift to OBF today.

2011 OKLAHOMA BAR FOUNDATION GRANT AWARDS

Center for Children & Families

Divorce Visitation Arbitration Program to provide court letters, court-ordered supervised visitation and exchange services for children, and parental educational training in Cleveland County

\$ 7,500

Community Crisis Center Inc.

Part-time court advocate for victims of violence in Ottawa, Delaware and Craig counties

\$ 5,000

Domestic Violence Intervention Services Inc.

Attorney staff funding for victims of violence in Tulsa and Creek counties

\$ 12,500

Family & Children's Services Inc., Tulsa County Family Court Program

Family court case coordinator funding in Tulsa County

\$ 5,000

Legal Aid Services of Oklahoma Inc.

Statewide support funding to provide free civil legal service for low-income and elderly Oklahomans

\$ 200,000

Marie Detty Youth & Family Services Center

Domestic violence/sexual assault victims' court advocate position in Comanche County

\$ 12,500

OBA Oklahoma Lawyers for America's Heroes Program

Veterans Clinic In A Box project to provide legal service materials for the presentation of the statewide Veterans Day Legal Clinics in some 40 counties with an estimated 5,000 attendees for the provision of pro bono legal services

\$ 15,000

OBA-YLD High School Mock Trial Program

Total overall presentation of the statewide Oklahoma High School Mock Trial Program

\$ 45,000

Oklahoma CASA Association Inc.

Centralized statewide CASA training conference to provide annual mandatory training for directors, staff and CASA volunteers

\$ 1,500

Oklahoma Court Appointed Advocates for Vulnerable Adults Program

Funding for legal mentoring/oversight services for OCAAVA volunteers to provide services to vulnerable adults in Oklahoma, Canadian, Cleveland, Pontotoc and Tulsa counties

\$ 3,000

Oklahoma Indian Legal Services Inc.

Statewide Low-Income Taxpayer Legal Services Clinics for low-income Oklahomans

\$ 20,000

Oklahoma Lawyers for Children Inc.

Funding for staff coordination of attorney pro bono legal services for deprived children in Juvenile Court and representation at emergency show-cause hearings in Oklahoma County

\$ 40,000

Tulsa Lawyers For Children Inc.

Funding for staff coordination of attorney pro bono legal services for deprived children in Juvenile Court and representation at emergency show-cause hearings in Tulsa County

\$ 25,000

OU Health Sciences Center, Interdisciplinary Graduate Level Training Program on Child Abuse and Neglect

Funding for an interdisciplinary graduate-level training program on child abuse and neglect for law students in Oklahoma and surrounding counties

\$ 4,000

Senior Law Resource Center Inc.

Law-student interns project for elderly citizens; providing free legal services and educational outreach programs to promote informed, thoughtful diminished capacity, incapacity planning, and for the prevention of elder financial exploitation in Oklahoma and surrounding counties

\$ 12,500

Teen Court Inc. of Comanche County

Program maintenance funding for teen court presentation serving first-time juvenile offenders and their peers in Comanche County

\$ 10,000

Trinity Legal Clinic of Oklahoma Inc., Pro Bono Legal Clinic

Software client case management database subscription used in the provision of free legal services across the greater Oklahoma City area

\$ 2,500

TU Boesche Legal Clinic, Immigrants Rights Project

Clinical legal education program to provide legal services to vulnerable non-citizen residents of Oklahoma while providing law students with educational and professional development opportunities, including representation in Immigration Court

\$ 4,500

Catholic Charities, Immigration Assistance Program

Program to provide legal services to low-income, non-citizen residents of Oklahoma while providing law students with educational and professional development opportunities, serving the western two-thirds of Oklahoma

\$ 4,500

William W. Barnes Children's Advocacy Center, Child Abuse Prevention

Specialized training to recognize, respond and report child abuse for educational, law enforcement and child welfare personnel in an ongoing effort to reduce trauma to child abuse victims in Rogers, Mayes and Craig counties

\$ 4,000

YMCA of Oklahoma Youth & Government Program

Statewide Youth Model Legislative Day programming for 7th and 8th grade students.

\$ 2,000

Total 2011 OBF Grant Awards:

\$ 436,000

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



FELLOW ENROLLMENT FORM ☐ Attorney ☐ Non-Attorney

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

Firm or other affiliation: _____

Mailing & delivery address: _____

City/State/Zip: _____

Phone: _____ E-Mail Address: _____

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

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

___ \$100 enclosed & bill annually

___ Total amount enclosed, \$1,000

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

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

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

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

**LAWYERS
TRANSFORMING LIVES**

*Through education,
citizenship and
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- — **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.

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Veterans Day Legal Clinics Are the Next Step

By Deborah Reheard

I recently received a letter from Col. David W. Penczar, staff judge advocate at Tinker Air Force Base in Midwest City. Col. Penczar took the time to write in order to offer his appreciation for our representation of service members and veterans through the Oklahoma Lawyers for America's Heroes program. In the letter he said, "Our service members, veterans and their families are a true national treasure. These groups encounter the same legal problems that are unique to their status. The 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."

I was honored to get this letter and to know that our time and effort is making a difference to those service members who need us, but it also serves as a reminder that it is time for me to rally the troops once again.

This Veterans Day, Nov. 11, we are calling on all county bar associations to host legal clinics aimed at expanding our reach to even more of the men and women who serve or have served our country.

For many of these service members, just getting the opportunity to talk one-on-one with a lawyer can relieve a

huge burden. Our guard, reserves, active duty and veterans often do not have the resources, financial or otherwise, to seek and retain legal counsel.

As Oklahoma lawyers, our expertise in the law can be a lifeline. Through the Oklahoma Lawyers for America's Heroes program, we want to assist your local bar association in establishing a veterans legal clinic to provide assistance to those

combined efforts to put together a "Clinic in a Box" — a box containing forms, supplies, signage, everything you need to host a clinic. It also includes two excellent pamphlets put together by the YLD — one for lawyers and one for veterans — filled with resources to help in answering veterans' legal questions.

We also recently produced a video which captures the essence of this program and what we are trying to accom-

"Thank you is not enough for men and women who have sacrificed so much. Will your county bar host a clinic to help on Nov. 11?"

in your community who are serving and have served their country honorably.

The OBA, Oklahoma Bar Foundation and OBA Young Lawyers Division are working together to provide your county bar association with the resources it will need to host a veterans legal clinic. We have

URGENT! Family law attorneys across the state needed to volunteer for Heroes Program to meet demand for help in this area. Sign up at www.okbar.org/heroes or call (405) 416-7000; (800) 522-8065.

plish. The video has been distributed to county bar presidents across the state. I hope they will use it not only to promote this program to members, but also show it to civic, church or social groups as yet another example of how lawyers are leaders in their communities. My hope is that all county bars will commit to hosting a clinic, either individually or jointly with other area counties, this Veterans Day.

Thank you is not enough for these men and women who have sacrificed so much. Will you help?

Ms. Reheard practices in Eufaula and serves as OBA president.

Students Donate Public Service

By Christy M. Caves

The University of Tulsa College of Law students proudly serve their school, their community and their profession. During the 2010-2011 academic year, students donated 3,491 hours of their time to various public service causes. From animal shelters and food banks to government agencies and legal non-profits, students participated in several worthwhile programs and worked in a variety of settings to benefit the public good. Two of our most recent service projects include the Foundation of Legal Studies Public Service Day and the Let Us Read Foundation. Additionally, we continue to blaze new trails with the TU Law Boesche Legal Clinic's Immigrant Rights Project, an effort that helps those seeking political asylum to become U.S. citizens.

TU Law prides itself on introducing the value of public service to our law students early in their legal careers. During first-year law students' orientation, called Foundations of Legal Study, students have the opportunity to give back to our local community through Public Service Day, which is an important way for first-year students to take their first steps into the profession. From the outset, we strive that service to the community is at the core of being a legal professional, and Public

Service Day is a way to emphasize that and make a real difference in people's lives.

This year's event on Sept. 1, involved the entire incoming first-year class, faculty, staff, upperclassmen and TU Law Dean Janet Levit, donating their time at the Kendall Whit-tier Food Pantry and G.R.O.W. Garden, Community Food Bank of Eastern Oklahoma and



“...Mbilike Mwafulirwa has launched the Let Us Read Foundation to help children in his native country of Malawi in southeastern Africa.”

Goodwill Industries. While logging 340 hours of service and with 108 first-year students leading the way, the TU law contingent was able to make a significant contribution by sorting and repackaging food items; processing, packaging and hanging donated clothes — mowing, picking weeds and performing other gardening chores.

TU law upperclassmen are also leading by example by taking their own initiative with public service efforts. TU College of Law student Mbilike Mwafulirwa has launched the Let Us Read Foundation to help children in his native country of Malawi in southeastern Africa. The purpose of the Let Us Read Foundation is to provide books to schools in Malawi lacking such basic resources. Malawi is one of the world's poorer countries, and its education system reflects that. Classroom supplies, including books, are sparse, and classes are overcrowded (often more than 100 pupils per class).

The genesis of the foundation began when a childhood friend from Malawi asked Mwafulirwa to donate two books, but Mwafulirwa decided that was too little and thought he could collect 2,000. He and fellow TU law students Mark Smith, executive vice president of the foundation, and Arthur Loyd,

fundraising and marketing director of the foundation, became involved and decided to incorporate the foundation in Oklahoma as a nonprofit, with Mwafulirwa as president. They are now in the process of applying for 501(c)(3) income tax exempt status from the IRS. TU law student Blake Feamster serves as vice president of logistics and collections for the foundation. The foundation has shipped more than 2,000 books to Malawi. To make donations, visit letusreadfoundation.org.

In the five years of our Immigrant Rights Project, more than 70 clients have been granted some form of legal immigration status. Under the direction of professor Elizabeth McCormick, the clinic is a valuable resource for people who have legal immigration issues but who

have little financial resources. The clinic is also an important venue allowing our law students to gain practical legal experience.

This past year, law students Meghan King, Lindsey Christopher, Eric Reynolds, Pedro Mari, Amy Gioletti, Lenora Gulley, Hans Lehr, Amanda Cornell, Pegi Haddock, Lorena Tiemann, Sean Dooley and Matt Williams produced results for clients: A Pakistani human rights worker targeted by the Taliban was granted asylum. Four Mexican victims of violent crimes were granted U Visas, a special visa for crime victims who provide assistance to law enforcement, enabling the clients to remain in the U.S. A Mexican client was granted relief under the Violence Against Women Act, saving her years of delay waiting for an immigrant visa and putting her on the path

to becoming a U.S. citizen. A Haitian national who had been a legal permanent resident of the United States for more than 20 years was allowed to stay in the country with his U.S. citizen children and their disabled mother after a stay for removal was filed and his conviction was vacated.

In summary, the above projects represent a piece of TU Law's commitment to public service, and we always seek new ideas on how our law students can make a difference. Please feel free to contact me with any comments or questions at christy-caves@utulsa.edu or (918) 631-2890.

Ms. Caves is associate director of professional development and public service coordinator for The University of Tulsa College of Law.

REMINDER **COLUMBUS DAY** **NOTICE**

The Supreme Court Clerk's office will be open on Columbus Day, October 10th.

If your appeal-time trigger occurred thirty days before this date, your time to bring an appeal will not be extended by failing to file on Columbus Day.

G 
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It's Election Time!

2012 YLD Leadership

The YLD again has a full slate of candidates running for Board of Directors positions, so let your voice be heard and exercise your right to vote!

Elections will be conducted electronically. YLD members will receive an email from the OBA with your ballot attached. The email address used is the one currently on file with the OBA. If you do not have a current email address on file with the OBA, you can access a paper-based ballot on the YLD website, www.okbar.org/yld.

Your OBA number is required to identify if you are a qualified voter, and your address on file with the OBA will be used to determine your district. Elections are conducted based on Oklahoma judicial districts, and you may only vote for officers, candidates for election in your district, and at-large candidates. Nonconforming ballots will be stricken.

All ballots must be submitted to the Nominating Committee by 5 p.m. on Friday, Oct. 28. Election results will be announced at the YLD Annual Meeting held in Tulsa on Wednesday, Nov. 2, at 6 p.m., in conjunction with the OBA Annual Meeting.

If you have any questions, please contact Nominating Committee Chairperson Molly Aspan, at Hall Estill, 320 S. Boston, Suite 200, Tulsa, 74103, or by email at maspan@hallestill.com.

2012 LEADERSHIP

The following individuals automatically hold the following positions for the 2012 OBA Young Lawyers Division.



Jennifer Kirkpatrick
2012 Chairperson

Ms. Kirkpatrick is an attorney in the Oklahoma City office of Hall, Estill, Hardwick, Gable, Golden & Nelson PC, and she focuses her practice in the areas of administrative law, bankruptcy and civil litigation. She is admitted to practice before all Oklahoma state courts, as well as the U. S. District Courts for the Western, Northern and Eastern Districts of Oklahoma and the 10th Circuit Court of Appeals. Her educational credentials include a B.A. from Cameron University (1996), an M.A. from OU (1999) and a J.D. from the OCU School of Law (2002).

She is a member of the OBA, Oklahoma County Bar Association and the ABA. She has served on the OBA Young Lawyers Division Board of Direc-

tors since 2008 and is currently serving as the chair-elect of the OBA YLD. She is also actively involved with the Oklahoma Academy, a non-partisan policy-making group, and has served on both the board and the executive committee of the Oklahoma Academy for several years. She lives in Edmond with her two sons.



Roy D. Tucker
Immediate Past Chairperson

Roy D. Tucker is the current YLD chair. He has served in various capacities on the YLD Board of Directors since 2005, including the officer positions of secretary and treasurer in 2009 and 2010, respectively. He is a previous YLD award winner for Outstanding Director (2006; 2007) and Outstanding Officer (2009; 2010). He also serves on various OBA committees, including the Membership Survey Task Force and the Audit Committee. Most recently, he accepted a three-year term as trustee of the Oklaho-

ma Bar Foundation beginning January 2012.

He is a 2003 graduate of the TU College of Law and was admitted into the OBA the same year. He has been admitted to practice before all federal courts in Oklahoma, as well as the 10th Circuit Court of Appeals. He is active in the Muskogee County Bar Association, serving as its president in 2011. He is a former board member for the Muskogee Area Arts Council and is a current advisory board member for Health Outreach Prevention Education Inc. in Tulsa.

He is employed as the assistant city attorney for Muskogee, a position he has held since May 2008. He was very recently promoted to city attorney, assuming those responsibilities on Dec. 31.

UNCONTESTED ELECTIONS:

The following persons have been nominated. They are running uncontested and will be declared elected at the Annual Meeting of the OBA Young Lawyers Division.



Joe Vorndran
Chairperson-Elect

Joe Vorndran is a partner with the Shawnee law firm of Stuart, Clover, Duran, Thomas & Vorndran LLP. His practice is focused on general civil litigation, corporate law and municipal law. He received his B.A. from OU in May 2003, where he was a member of the OU Scholars program, Order of Omega Honor Fraternity and numerous other campus committees. He received his J.D. from OU College of Law in May 2006, where he was a class representative, on the Dean's Council and a member of the SBA Board of Governors. He was admitted to practice law before all Oklahoma state courts in September 2006.

He has served as the YLD District Eight representative since 2006 and chairs the Children and the Law Committee. He has served as YLD treasurer since 2011 and is an active volunteer for the Oklahoma Bar Foundation Mock Trial Program. He attended the 2007 OBA Leadership Conference and was a delegate to the 2009-2010 OBA Leadership Academy. He is also on the Board of Editors for the *Oklahoma Bar Journal* and is a member of the Pottawatomie County Bar Association, serving as presi-

dent from 2007-2009. He is a member of the ABA, and a fellow of the Oklahoma Bar Foundation. In 2008 he received the District Five Child Abuse Prevention Task Force "Child Advocate of the Year" Award. He also serves on the Board of Directors for the OU Chapter of Sigma Alpha Epsilon, Gateway to Prevention and Recovery and the Shawnee Drop-out Retention Foundation.



Kaleb Hennigh
Treasurer

Kaleb Hennigh was born and raised near Laverne and recently established a new law partnership of Ewbank, Hennigh and McVay PLLC in Enid, focusing his practice and clientele throughout northwest Oklahoma. He has remained active in the OBA and the Young Lawyers Division for the past four years, serving in various roles and committees. His roles include serving as YLD secretary for the past year, and he currently serves as a task force member for Oklahoma Lawyers for America's Heroes.

He obtained his J.D. from the OU College of Law, then attending the University of Arkansas School of Law, earning his LL.M. in agricultural law. During his time at OU, he was awarded the Kelly Beards-

lee Award for his work with the OU Criminal Law Clinic. While working to obtain his LL.M., he served as a graduate assistant at the National Agricultural Law Center, where he conducted extensive research on multiple issues within agricultural law and drafted his thesis on the new National Animal Identification System and the application of FOIA laws. Upon completing his LL.M. degree, He remained in northwest Arkansas, working as an associate attorney in an intellectual property law firm. There he worked with several agricultural corporations regarding intellectual property protection and helped establish an agricultural bankruptcy practice which received regional recognition for its efforts in assisting immigrant farmers.

He and his family returned to Enid in early 2007 where he served as an associate attorney and later a partner in a regional law firm where he expanded his practice and focus on estate planning, asset protection and bankruptcy liquidation and reorganization. He continues his practice within his new partnership focusing on asset protection, estate planning, real estate transactions, bankruptcy, corporations, wind energy and leases and other issues within the agricultural industry. He and his wife, Jennifer, and their two sons, Karsen and Jase, reside in Enid.



Blake Lynch
District Two

Blake Lynch is an associate attorney with the Pat Layden Law Firm PC in McAlester and Wilburton where he has practiced since admission to the OBA in 2009. He has adopted the generalist philosophy of professor McNichols while at OU Law and has a general practice that covers most of southeast Oklahoma, including tribal courts. An OU graduate for both his bachelor's (2006) and J.D. (2009), he excelled in speaking and debate events including the Josh Lee undergraduate speech competition, the Calvert Moot Court Competition and the American Association of Justice Mock Trial Competition. In addition to his competition accomplishments, he also received the Order of the Barristers Award and an American Indian Law certificate from the OU Law Center for the Study of American Indian Law and Policy.

As a member of the Pittsburg County Bar Association, he has served as Law Day chair, an event which this year was proud to present Chief Justice Steven Taylor as its featured speaker, and he also organized the first Pittsburg County PAWS 5k9 to benefit the animal welfare organizations of the

local communities, the Race up the Courthouse Steps, which raised money for four local organizations and the Red Cross, and is currently planning the Second Annual PAWS 5k9. He enjoys participation in physical activities and has completed several half-marathons, 5Ks, triathlons, 100+ mile bicycle rides, and enjoys long backpacking trips. He is also a city council trustee for his adopted home town of Quinton, where he resides with his wife, Amanda.



Conor Cleary
District Six

Conor Cleary is an associate with Hall, Estill, Hardwick, Gable, Golden & Nelson PC. He graduated *summa cum laude* with degrees in political science and criminology from OU in 2007. A founding member of the OU debate team, he won the national debate championship in 2007, as well as the Harvard, Northwestern and Wake Forest University debate tournaments. He received his J.D. from the OU College of Law in 2010 where he was articles editor of the *Oklahoma Law Review*, received the Order of the Barristers Award as a member of the ABA National Appellate Advocacy Moot Court Team, and he was awarded an AmJur award in Legal

Research and Writing. He is admitted to practice in all Oklahoma courts, the U.S. District Courts for the Northern and Western Districts of Oklahoma and the U.S. Bankruptcy Court for the Northern District of Oklahoma. He practices mainly in the area of corporate litigation. He also participates in Legal Aid's Courthouse Assistance Program and handles other pro bono cases for Legal Aid. He is a member of the Oklahoma Academy for State Goals, Oklahoma Center for Community and Justice and Oklahomans for Equality. In his free time he enjoys running, traveling and playing with his dog, Oliver Wendell Holmes III.



Robert R. Faulk
Secretary

Robert R. Faulk is originally from Oklahoma City, graduating from Northwest Classen High School in 1996. After graduation he attended OSU where he was president of several organizations including Lambda Chi Alpha Fraternity, Political Science Club and College Republicans. Upon his graduation from OSU in 2001 he was awarded the Kenny Gallagher Award for top Arts and Science Male. He attended OCU School of Law on a prestigious Hatton W. Sumners Scholarship. While at OCU Law he founded the Criminal Law Association and was active in many other organizations including Merit Scholars, American Trial Lawyers Association and the Federalist Society. In 2004 he graduated *magna cum laude* from OCU Law and was admitted to the OBA in October 2004.

He now lives in Enid with his son, Baylor, and daughter, Sophia. He is the managing member of Faulk Law Firm PLLC and practices in the areas of criminal defense, general civil litigation, family law, personal injury, workers' compensation, custody and divorce. He is a member of the OBA, the Garfield County Bar Association treasurer and social chair,

member of the ABA, Enid Noon Ambucs past president, is an Oklahoma Bar Foundation fellow, a member of the Federal Bar of the Western District of Oklahoma, chair of Leadership Greater Enid and is on the board of directors for several civic and community organizations including Main Street Enid and the Cherokee Strip Chapter of the OSU Alumni Association. He was appointed to the OBA's inaugural Leadership Academy and recently received the Garfield County Bar Association's Outstanding Young Lawyer Award.

He has been a member of the OBA YLD Board of Directors since 2006, representing both the rural counties of the state including Enid, as well as District Four. His most recent duties on the YLD board have included the planning and execution of the YLD hospitality suites at the Solo and Small Firm Conference and Annual Meeting.



LeAnne McGill
Secretary

LeAnne McGill is a partner with the Edmond law firm of McGill & Rodgers, where her practice focuses on all areas of family law. She has been active in the OBA YLD since 2006 and

CONTESTED ELECTIONS:

The following persons have been nominated and are running contested for the following positions. Results will be announced at the Annual Meeting of the OBA Young Lawyers Division.

is currently serving her second term as a director for District Three. LeAnne is the chair of the New Attorney Orientation Committee, which is responsible for preparing and passing out bar exam survival kits to those taking the bar exam each February and July. This committee is also responsible for the refreshments at the swearing in ceremonies and planning the "Welcome to the Bar" celebrations each April and September. In addition, she is currently the Publications and Website Committee chair, has participated in the Wills for Heroes, Serving our Seniors and Done in a Day community service projects, and she has provided pro bono time to service members through the Oklahoma Lawyers for America's Heroes program.

She has served on the Oklahoma County YLD Board of Directors for the last five years. As a director for the OCBA YLD, she has held numerous positions, including serving as the chair for the Harvest Food Drive Committee and the Chili Cook-off Committee. These two committees work together to donate in excess of \$20,000 to the Regional Food Bank each fall. Aside from her participation in the YLD, she is active in the OBA Family Law Section, currently serving her second term on the section's executive board as co-chair of the social committee. She has served on several OBA committees, including the Mentoring Task Force, Law Day and Women in Law. She is a graduate of the inaugural 2008-2009 OBA Leadership Academy, the 2007 OBA Leadership Conference, is an Oklahoma Bar Foundation fellow and served as the first chair of the OBA Law Student Division. She has been active in

the ABA, having held several positions within the organization, including two terms as the national secretary treasurer of the ABA Law Student Division and one term as the National Pro Bono Committee co-chair for the Law Student Division. She has served on the ABA YLD Programming Team and as chair of the ABA YLD Access to Justice Committee. She received her B.A. in English and political science from OSU in 2003 and her J.D. from OCU School of Law in 2006.

In addition to bar activities, she has served on the OCU Law Alumni Association Board of Directors and is an active member of the Ginsburg Inn of Court, EWF International, Edmond Women's Club and the Edmond Family Counseling Board of Directors. She is a graduate of Class XXVI of Leadership Edmond and volunteers with the American Cancer Society and the Salvation Army.



Lane Neal
District Three and At Large

A native of Lawton, Lane Neal is currently an associate with McAtee & Woods PC in Oklahoma City. His practice is focused on civil litigation. Prior to joining McAtee & Woods, he was an assistant district attorney

for the Oklahoma County District Attorney's Office. He received his B.B.A. from OU in 2004, where he was a member of the first class at OU to be conferred a degree in entrepreneurship. During his undergraduate career, he served as president of the Sigma Alpha Epsilon fraternity and chief justice of the OU Interfraternity Council.

Following graduation, he worked as a business analyst for MEDIBIS LLC in Oklahoma City. He received his J.D. from the OU College of Law in May 2008. During law school, he was a member of Phi Delta Phi, a note editor for the *American Indian Law Review*, and a member of the ABA and AAJ competitions teams. He was admitted to practice law in Oklahoma in September 2008. He is a member of the Oklahoma County Bar Association and is a fellow of the Oklahoma Bar Foundation. He is an associate in the Luther Bohanon Inn of Court and is a 2010 graduate of the OBA Leadership Academy. He currently serves as a District Three representative for the YLD Board of Directors.



Jeff Trevillion
District Three and At Large

Jeff Trevillion is a native of Tulsa and has lived in the Oklahoma City area since 1999.

He is admitted to practice law in Oklahoma, the U.S. District Court, Western District of Oklahoma and the U.S. Tax Court. This private practice attorney was formerly associated with the Court of Criminal Appeals, the City of Oklahoma City and OG&E. He is also a CPA and earned his law degree from OU College of Law in 2007 along with an MBA from the Michael F. Price College of Business. He is an active member of the OBA, who currently serves on the YLD Board of Directors, chairs the OBA's Diversity Committee and was a member of the 2008-2009 Leadership Academy. He is also a member of the National Bar Association, the Oklahoma County Bar Association and serves on the Oklahoma County Bar Foundation Board of Directors. He currently resides in Oklahoma City with his wife and children where he is president of the John F. Kennedy Neighborhood Association.



Bryon Jay Will
District Three and At Large

Bryon Will is a solo practitioner in the Law Office of Bryon J. Will PLLC. He is a third-generation Oklahoman born and raised in Morrison. He graduated from OSU with a bachelor's degree in animal science and began his career as a

sales representative for an animal health supply company and a broadband Internet vendor, then later worked for Bank of Oklahoma. He earned his M.B.A. at UCO and his J.D. at OCU School of Law. During law school, he earned his Oklahoma legal intern's license and worked for the Oklahoma County District Attorney's Office, then later took an internship with Haupt Brooks Vandruff Cloar. He currently practices in estate planning, elder law and long-term care planning, probate, real estate, business transactions and bankruptcy. He is admitted to practice before the Oklahoma Supreme Court and the U.S. District Court for the Western District of Oklahoma. He is a member of the OBA, Oklahoma County Bar Association, ABA, National Academy of Elder Law Attorneys and a fellow of the Oklahoma Bar Foundation. He was formerly an associate member of the William J. Holloway American Inn of Court. Currently he serves on the OBA YLD Board of Directors as a member-at-large. This year he was accepted to the OBA Leadership Academy as a candidate for the 2011-2012 term.

Robert Faulk
District Four and At Large

Biography appears on page 2360.

Kaleb Hennigh
District Four and At Large

Biography appears on page 2358.



Brandi N. Nowakowski
District Eight and At Large

Brandi N. Nowakowski is an associate with the West Law Firm in Shawnee. Her practice is focused on general civil litigation with an emphasis in personal injury, products liability law and class actions. She and her husband, Chris, and their two sons, Ethan and Zachary, reside in Shawnee. She received her B.B.A. in management from OU, where she graduated *magna cum laude* in May 2006. She received her J.D. from the OU College of Law in May 2010. She was admitted to the practice of law before all Oklahoma state courts in September 2010.



Jill Ochs-Tontz
District Eight and At Large

Jill Ochs-Tontz is an assistant district attorney for Payne/Logan counties, handling a fel-

only caseload of sexual assaults, rape, lewd acts with minors, child pornography and domestic violence. She was born and raised in Guthrie. She graduated from OSU (B.S. political science, 2005) and the TU College of Law (J.D. 2008). She is a member of the Payne and Logan county bar associations and admitted to practice in the U.S. District Court for the Western District of Oklahoma. She has served twice as Law Day chair or co-chair of the Payne County Bar Association and was also a member of the OBA Leadership Academy (Class of 2010). She is also a member of the OBA Bench and Bar Committee and an Oklahoma Bar Foundation fellow. She is also very active in Payne County on various civic groups advocating for justice for victims of domestic violence and sexual abuse. She enjoys spending time with her husband, Brandon, and two children, Ella Ray and Cruz. They keep her busy with dance and gymnastics. She is also an adjunct professor at OSU teaching intro to speech communication. She is also an avid sports fan and enjoys cheering on her OSU cowboys!



Ashton Handley

At Large

Ashton Handley is an attorney at the Handley Law Center in El Reno, where his practice is primarily focused on family law and criminal defense/DUI. He also practices in the areas of business litigation, estate planning and personal injury. He is a graduate of Loyola University in New Orleans, where he received his bachelor's in communications, with a focus on broadcast production. While in college, he was active in leadership roles in his fraternity, Sigma Phi Epsilon, and the Tulane/Loyola Navy ROTC unit. After college, he joined the U.S. Navy where he had the opportunity to study both the Russian language and nautical navigation. Initially assigned as a Russian linguist, he was an instrumental asset to the crew aboard USS Wadsworth (FFG-9), when the ship was decommissioned and given to the Polish Navy. Then in 2003, while serving in the Persian Gulf with the Navigation Department aboard USS Boxer (LHD-4), he was awarded the Navy and Marine Corps Achievement Medal for his service in support of Operation Iraqi Freedom. He still focuses a portion of his practice on veterans' issues and gives dis-

counts to veterans and their families.

In 2008, he received his J.D. from the TU College of Law, and moved back to his hometown of El Reno, where he currently lives with his wife and family. In 2010 he began practicing law with his father, Fletcher D. Handley Jr., at the Handley Law Center. He is a member of the ABA, OBA, Oklahoma Association for Justice, National Academy of Criminal Defense Lawyers, Oklahoma Criminal Defense Lawyers Association, International Society of Primerus Law Firms and is a fellow of the Oklahoma Bar Foundation. He is an active member of the YLDs of the ABA, OBA and Primerus. He is also active in the Canadian County Bar Association as well as the ABA Tort Trial and Insurance Practice Section (TIPS), and he served on the ABA TIPS' Task Force on Outreach to Law Students from 2006 to 2010. He has also been active in the OBA's Mock Trial program, serving as a scoring panelist in several competitions over the past two years. He is a member of the El Reno Chamber of Commerce and El Reno Main Street program, and currently serves on the El Reno Main Street Committee for Economic Development. He is also a member of several veterans' organizations, including the American Legion and the VFW. For the past five years he has chaired the Americanism and Veterans committees of the El Reno Chapter of the Benevolent and Protective Order of Elks and is currently the president of the El Reno chapter of Rotary International.



Nathan Richter
At Large

Nathan D. Richter was born in Oklahoma City and graduated from Mustang High School in 1996. He received his B.S. in zoology with an emphasis in

genetics from OU in 2000. He graduated *cum laude*, receiving his law degree from OCU School of Law in 2007. He was a member of Phi Delta Phi, and received the CALI Award for top performance in civil procedure and business planning. He has lived in Canadian County for more than 30 years. Before beginning his legal career, he served in the Oklahoma Army National Guard for 10 years. He was deployed in support of Operation Enduring Freedom to Afghanistan in 2003 where he received the Joint Forces Commendation Medal and numerous other awards.

He is a trial lawyer currently working for the Denton Law

Firm in Mustang. He is active in his profession serving as the vice president of the Canadian County Bar Association, volunteering monthly with Trinity Legal Clinic at the Oklahoma City Rescue Mission, and he has assisted soldiers in the OBA's Oklahoma Lawyers for America's Heroes program. He is also a member of the Robert J. Turner American Inn of Court. He is very active in his community, serving as a board member for Youth & Family Services Inc. in Canadian County and is an active member of Lakehoma Church of Christ. He and his wife, Kristin, have two children, Harrison and Kailyn.

Oklahoma Bar Journal Editorial Calendar

2011

- November:
Military Law
Editor: Dietmar Caudle
d.caudle@sbcglobal.net
Deadline: Aug. 1, 2011
- December:
Ethics & Professional Responsibility
Editor: Melissa DeLacerda
melissde@aol.com
Deadline: Aug. 1, 2011

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: Judge Sheila A. Condren
sheila.condren@oscn.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: Craig M. Hoehns
choehns@gmail.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.

Calendar

October

- 11 OBA Bar Center Facilities Committee Meeting;** 9 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Judy Hamilton Morse (405) 235-7759
- 12 OBA Diversity Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Jeff Trevillion (405) 778-8000
- OBA Law Day Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Tina Izadi (405) 522-8097
- 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
- William J. Holloway American Inn of Court;** 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Caroline Larson (405) 609-5322
- 13 OBA Women Helping Women Support Group;** 5:30 p.m.; The Oil Center – West Building, Suite 108W, Oklahoma City; RSVP to: Kim Reber (405) 840-3033
- 14 Oklahoma Association of Black Lawyers Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Donna Watson (405) 721-7776
- OBA Communications Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Mark Hanebutt (405) 948-7725
- OBA Rules of Professional Conduct Subcommittee Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Paul Middleton (405) 235-7600
- OBA Family Law Section Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Kimberly Hays (918) 592-2800
- 19 Oklahoma Council of Administrative Hearing Officials;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Carolyn Guthrie (405) 271-1269 Ext. 56212
- OBA Women in Law Committee Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Deborah Bruce (405) 528-8625
- 20 OBA Leadership Academy;** 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Heidi McComb (405) 416-7027
- OBA Budget Public Hearing;** 4 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Craig Combs (405) 416-7040
- 21 OBA Leadership Academy;** 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Heidi McComb (405) 416-7027
- OBA Board of Governors Meeting;** 9 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: John Morris Williams (405) 416-7000
- OBA Lawyers Helping Lawyers Assistance Program Training;** 11 a.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact: Tom Riesen (405) 843-8444
- OBA Rules of Professional Conduct Committee Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Paul Middleton (405) 235-7600
- 22 OBA Military Assistance Task Force Meeting;** 8 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Dietmar Caudle (580) 248-0202
- 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
- 24 OBA Alternative Dispute Resolution Section Meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: D. Michael O'Neil Jr. (405) 239-2121
- 25 OBA Bench & Bar Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Barbara Swinton (405) 713-7109
- OBA Legal Intern Committee Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact: Candace Blalock (405) 238-3486
- 26 OBA Professionalism Committee Meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Patricia Podolec (405) 760-3358
- 27 OBA Justice Commission Meeting;** 2 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Drew Edmondson (405) 235-5563
- 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

- 28 **Oklahoma Uniform Jury Instructions Meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Chuck Adams (918) 631-2437

November

- 2-4 **OBA 107th Annual Meeting;** Hyatt Regency, Tulsa
- 3 **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
- OBA Board of Governors Meeting;** Tulsa, Oklahoma; Contact: John Morris Williams (405) 416-7000
- 10 **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
- 11 **OBA Closed** – Veterans Day Observed
- 15 **OBA Civil Procedure and Evidence Code Committee Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: James Milton (918) 591-5229
- 16 **Oklahoma Council of Administrative Hearing Officials;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Carolyn Guthrie (405) 271-1269 Ext. 56212
- OBA Women in Law Committee Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Deborah Bruce (405) 528-8625
- Ruth Bader Ginsburg American Inn of Court;** 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Donald Lynn Babb (405) 235-1611
- 17 **OBA Justice Commission Meeting;** 2 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Drew Edmondson (405) 235-5563
- 18 **OBA Rules of Professional Conduct Committee Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Paul Middleton (405) 235-7600
- 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. O 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 Bar Association Technology Committee Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Gary Clark (405) 744-1601
- 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 Law Day Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Tina Izadi (405) 522-8097
- 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
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- 15 **OBA Bench & Bar Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Barbara Swinton (405) 713-7109
- 16 **OBA Board of Governors Meeting;** 9 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: John Morris Williams (405) 416-7000

OBA Member Appointed Corporation Commissioner

Gov. Mary Fallin recently announced Patrice Douglas of Edmond has been appointed to serve on the Oklahoma Corporation Commission. She replaces outgoing Commissioner Jeff Cloud, also an OBA member, who resigned in September.

Ms. Douglas currently serves as mayor of Edmond, a post she has held since April 2009. She will resign her position to serve on the commission. She also serves as executive vice president of First Fidelity Bank in Edmond, where she leads the commercial lending team at four branches in Edmond and north Oklahoma City. She practiced law for 13 years including serving as a staff attorney for Supreme Court Justice Hardy Summers. She earned her law degree from the OU College of Law.

The Corporation Commission has judicial, legislative and regulatory authority over a number of sectors of the Oklahoma economy, including the transportation, energy and telecommunications industries as well as public utilities.

"The Oklahoma Corporation Commission impacts our economy on many levels through its oversight and regulation of a variety of industries," Gov. Fallin said. "As a small business owner, banker, accomplished attorney and proven leader at the state and local level, Patrice will be an excellent addition as Oklahoma's newest commissioner. She has proven herself to be a committed public servant and a student of the policy issues facing Oklahoma and its citizens. Her dedication, intelligence and experience will make her a strong voice for consumers, ratepayers and another fair and qualified commissioner for the relevant industries to work with."

**OBA Member Nominated for Army General Counsel**

President Obama recently announced his intent to nominate Brad Carson for general counsel of the Army, Department of Defense. Mr. Carson is currently an associate professor of business law at the University of Tulsa, where he is also director of the National Energy Policy Institute. He served as the U.S. representative for the Second District of Oklahoma during the 107th and 108th Congresses. From 2009 to 2010, he served in Iraq on active military duty, for

which he was awarded the Bronze Star. Prior to his deployment, he served as president, CEO and business development director for Cherokee Nation Businesses LLC. He joined that organization in 2005 following a one-year fellowship at the Harvard University Institute of Politics. From 1997 to 1998, he was a White House fellow and worked as a special assistant to the secretary of defense for special projects at the Department of Defense. His legal career began in 1994 at Crowe & Dunlevy, where he worked as an antitrust attorney. He is a Rhodes Scholar and an officer in the U.S. Navy Reserve. He holds a B.A. from Baylor University, an M.A. from Trinity College at Oxford University and a J.D. from OU College of Law.

Reinstatement

The following OBA member suspended by the Supreme Court Order has complied with the requirements for reinstatement, and notice is hereby given of such reinstatement:

Kristen Anne Hilty
OBA No. 21214
P. O. Box 722334
Norman, OK 73070

Judge Thornbrugh Named to Civil Appeals Court



Judge Tom Thornbrugh of Tulsa has been appointed by Gov. Mary Fallin to fill the vacancy on the Oklahoma Court of Civil Appeals District Three.

Since 1997, Judge Thornbrugh has served as district court judge for the 14th Judicial District and currently serves as presiding judge. He has presided over more than 200 jury trials involving civil and criminal felony matters.

"The Oklahoma Court of Civil Appeals plays an important role in ensuring our court system provides fair and just treatment for all," Gov. Fallin said. "Judge Thornbrugh has had a distinguished career in both private practice and on the bench. I know in his new role on the Court of Civil Appeals, Judge Thornbrugh will be committed to ensuring our citizens receive fair treatment under the law."

Before being appointed to the district court, he spent more than 20 years in private law practice in Tulsa. He also served as prosecuting attorney for the city of Bixby and as a municipal court judge for the city of Tulsa. He also served as a legislative advisor for U.S. Senator Dewey Bartlett. He earned dual degrees in speech and political science from Emporia State University in Emporia, Kan. He earned a law degree from TU, where he was a member of the Dean's Honor Roll and *Res Nova* law review. He is a member of the Oklahoma Judicial Conference, where he serves on the Conference Executive Board, the president of the Council of Presiding Judges, and on the conference's legislative committee. He also is an adjunct professor at TU and at St. Gregory's University

Open Meetings, Open Records to be Subject of Workshop Series

Oklahoma Attorney General Scott Pruitt is inviting OBA members to attend one of a series of workshops designed to educate public officials, agency employees and board members about the state's Open Meetings and Open Records acts. The seminars are presented in conjunction with the Oklahoma Press Association and are free and open to the public. The workshops will run from 1 – 4 p.m. in the following cities:

- Oct. 17, Muskogee, Bedouin Shrine
- Nov. 7, Oklahoma City, Metro Technology Center
- Nov. 14, Woodward, High Plains Technology Center
- Dec. 5, Tulsa, Tulsa Technology Center – Riverside
- Dec. 12, Lawton, Great Plains Technology Center

Florida Justice Shares Vision for Model Civics Program



On Sept. 29 Florida Supreme Court Justice R. Fred Lewis spoke to Oklahoma education leaders and legal professionals at the Oklahoma Justice Center about a successful civic program he started in his home state. With him are, from left, SCOPE Chair Suzanne Heggy, President-Elect Cathy Christensen and President Deborah Reheard. Alarmed at people's lack of knowledge about the American justice system, Justice Lewis started a statewide civic education effort to reach out to public schools. Five years later his Justice Teaching Program now involves 4,500 volunteer lawyers and judges donating at least two hours each month at every school in Florida. Sharing concern about the decline of civic engagement and political apathy, OBA President-Elect Cathy Christensen of Oklahoma City has decided to place special emphasis on law-related education during her upcoming presidential year, with particular attention paid to the role of the courts. She said the OBA envisions duplicating the Florida model to provide a service to Oklahoma students.

Kudos

Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile announce **Keith A. Bartsch** was elected president of the Muscogee (Creek) Nation Bar Association at the association's annual meeting in Tulsa. The association is comprised of over 350 attorneys throughout Oklahoma and the U.S. who are admitted to practice before the courts of the Muscogee (Creek) Nation. Mr. Bartsch is a litigation associate at the firm. His practice area is federal/tribal Indian law, insurance defense and catastrophic personal injury.

The Fellows of the American Bar Foundation recently selected Crowe & Dunlevy attorney **Karen Rieger** as a foundation Fellow. She joined the firm in 1981 and serves as the chair of the firm's healthcare practice group. She serves on a number of civic and charitable boards, including the Oklahoma Cerebral Palsy Commission and the Catholic Foundation of Oklahoma. She is former adjunct professor of healthcare law at the OU Oklahoma College of Law, past president and current director of the Oklahoma Health Lawyers Association.

Kimberly K. Hays, Tamera A. Childers, Jon Ford, Noel K. Tucker, Phillip J. Tucker, Amy E. Wilson, Donelle Ratheal, C. Michael Zacharias, David Tracy, Shane Henry, Ron Little and

Heather Earnhart attended the annual Family Law Section Fall Leadership Retreat on Sept. 9-10. The group utilized its time making plans for its upcoming CLE agenda, annual meeting and monthly business meetings. In addition, they discussed the section's slate of officers for 2012, as well as progress and planning for upcoming section events.

The Seminole Nation of Oklahoma has re-established the judicial branch of its tribal government, abolished in 1904. On Aug. 8, 2011, Principal Chief Leonard Harjo swore in **Gregory Bigler, Kelly Gaines-Stoner** and **William C. Wantland** 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. Wantland, a 1964 graduate of OCU Law, has been named Seminole Nation Supreme Court chief justice.

On The Move

Kirk & Chaney announce **Jenny E. McElroy** and **Collin R. Walke** have joined the firm as associates. Ms. McElroy will practice family law. She received her bachelor's degree from OU in 2001 and her law degree from the

OU College of Law in 2004. Mr. Walke will practice family law and insurance defense. He received his bachelor's degree from OSU in 2005 and his law degree from OCU School of Law, *magna cum laude* in 2008.

Gordon and Gordon Law-**Gyers** announce that **Patrick Abitbol** has become of counsel to the Claremore firm. Mr. Abitbol will practice general criminal law, personal injury law and domestic relations. He is a 1980 graduate of TU College of Law. He retired as assistant district attorney for the 12th Judicial District covering Rogers, Mayes and Craig counties.

Jennings, Cook & Teague announce that **Bryan E. Stanton** has joined the firm. Mr. Stanton earned his J.D. from TU College of Law in 2001. His practice will focus on insurance law, litigation, products liability and a general defense practice.

Attorneys **John Spencer Bryan** and **Steven James Terrill** have established a law firm headquartered in downtown Tulsa. The firm will be known as Bryan Terrill PLLC and will serve new and existing clients throughout Oklahoma. The law firm can be located online at www.bryanterrill.com.

Doug Stall, Eric Stall and **Kate Thompson** announce the formation of Stall, Stall & Thompson P.A., a general civil litigation firm. Doug Stall will practice general civil litigation with an emphasis on business and tort law. Eric Stall will practice general civil litigation

with an emphasis on business law, energy law and tort law. Ms. Thompson will practice general civil litigation with an emphasis on tort law and business law. The firm's offices are located at 1800 South Baltimore, Suite 900, Tulsa, 74119, (918) 743-6201.

Crowe & Dunlevy recently announced the addition of **Lysbeth L. George, Travis Jett, Jonathan G. Rector** and **Tynia A. Watson** as associates in the firm's Oklahoma City office and **Kathryn I. DuPree** as an associate in the Tulsa office. All will focus on general litigation practice. Mr. Jett holds a J.D. from Georgetown University Law Center in Washington, D.C., where he was editor-in-chief of the *Georgetown Journal of Law and Public Policy*. Mr. Rector received his J.D. from OU College of Law, where he received American Jurisprudence Awards for contracts, evidence and the First Amendment. Ms. Watson received her J.D. from OCU School of Law, where she received CALI Awards in civil procedure II, copyright and art & cultural heritage law. Ms. DuPree received her J.D. from TU College of Law and served as executive editor of the *Tulsa Law Review*.

First American Title & Trust Co. in Oklahoma City announces that **Jennifer S. Jones** has joined the company as underwriting counsel and **Nathan B. Schlinke** joined as commercial underwriting counsel. Ms. Jones graduated from OCU College of Law in 2005 and was previously in private practice in the areas of real property law. Mr. Schlinke, a 2004 OU graduate, was previously in private practice. The company also announces

the appointment of **Don Laudick** as underwriting counsel for the states of Oklahoma and Arkansas. Mr. Laudick is a former partner in the Ames, Ashabrunner law firm in Oklahoma City and has served as commercial underwriting counsel for First American Title & Trust Co. for the past eight years.

Tomlinson, Rust, McKinstry & Grable announced that **Kelly J. Wilbur** and **Michael S. Hatfield** have joined the firm as associate attorneys. Ms. Wilbur graduated from OCU School of Law in 2011. She graduated *cum laude* from Baker University in Baldwin City, Kan. in 2008 with a degree in molecular biology and will sit for the patent bar this winter. She will practice in the firm's intellectual property and litigation areas. Mr. Hatfield graduated *magna cum laude* from OCU School of Law in 2011. At OCU, he was a resource editor for the *OCU Law Review* and a student member of the William J. Holloway American Inn of Court. He will practice in the firm's litigation area.

McAfee & Taft announce that **Elizabeth Bowersox, Jared R. Boyer, Meredith J. Caldwell, Danae V. Grace, Zachary A.P. Oubre** and **David M. Spring** have joined the firm as associates. Ms. Bowersox is a trial attorney whose practice is focused on labor and employment law. She graduated *summa cum laude* from OCU School of Law. Mr. Boyer is a trial lawyer practicing in the areas of business and commercial litigation, representing clients in the agriculture and equine industry, as well as handling disputes involving aviation,

construction litigation, automobile dealership law and regulation, commercial contracts and other general litigation matters. He earned his J.D. from Notre Dame Law School, where he graduated *magna cum laude*. Ms. Caldwell is a corporate attorney practicing in the areas of commercial transactions, corporate governance, real estate and general business matters. She graduated *summa cum laude* with an undergraduate degree in economics from OSU in 2008 and with honors from the OU College of Law in 2011. Ms. Grace is a transactional lawyer practicing in the areas of commercial and business matters, including mergers and acquisitions, corporate governance, real estate, healthcare, contract drafting and negotiations, and general business transactions. She graduated with honors from OU College of Law. Mr. Oubre is a trial lawyer practicing in the areas of commercial and business matters, including construction litigation, labor and employment, oil and gas litigation, mass torts litigation, bankruptcy litigation and intellectual property litigation. He graduated with highest honors from OU College of Law. Mr. Spring is a tax attorney practicing in the areas of general tax planning for corporations, partnerships, and individuals; wealth transfer tax planning; local, state and federal taxation; and the tax structuring of business and commercial transactions. He graduated with highest honors from TU College of Law.

At The Podium

Attorney **Eric L. Johnson** presented the American Bar Association's consumer financial services program at its annual meeting, held in Toronto. During the program titled "Dodd Frank's Regulatory Triangle: Love or Bermuda?," Mr. Johnson shed light on the complex layers of interaction and coordination recently created between the new Consumer Financial Protection Bureau and the myriad of federal and state agencies involved with supervision, examination and enforcement actions.

Jim Banowsky recently spoke in Moscow, Russia, at a conference on intellectual property in emerging markets. Mr. Banowsky spoke on the topic of "Managing

Microsoft's International Patent Portfolio."

Jon Cartledge of Johnson & Jones PC, was featured as the keynote speaker at the Rogers County Bar Association's Aug. 26 meeting. Mr. Cartledge, who heads the Johnson & Jones legal research, writing, and appellate division, presented a CLE titled "Time to Pay the Piper: Indemnity and Contribution Law in Oklahoma."

Judge James Francis Gillet spoke at the 16th Annual Missouri Solo and Small Firm Conference held at the Tan-Tar-A Resort in Osage, Mo., on the subject of "Preparing for the Social Security Disability Hearing: Foundations for Successful Advocacy and Future Appeals."

How to place an announcement: The *Oklahoma Bar Journal* welcomes short articles or news items about OBA members and upcoming meetings. If you are an

OBA member and you've moved, become a partner, hired an associate, taken on a partner, received a promotion or an award, or given a talk or speech with statewide or national stature, we'd like to hear from you. Sections, committees, and county bar associations are encouraged to submit short stories about upcoming or recent activities. Honors bestowed by other publications (e.g., *Super Lawyers*, *Best Lawyers*, etc.) will not be accepted as announcements (Oklahoma-based publications are the exception.) Information selected for publication is printed at no cost, subject to editing, and printed as space permits.

Submit news items via email to:
Lori Rasmussen
Communications Dept.
Oklahoma Bar Association
(405) 416-7017
barbriefs@okbar.org

Compiled by Nikki Cuenca.

Articles for the Nov. 19 issue must be received by Nov. 4.

IN MEMORIAM

John R. Carle of Claremore died Sept. 17. He was born Oct. 18, 1929, in Tulsa. **After graduating in 1947 from Tulsa Central High School, he served in both the U.S. Navy and the U.S. Army.** He received his B.A. in history from TU in 1955 and graduated from the TU College of Law in 1957. He and his family then moved to Claremore, where he practiced law for the next 54 years. He was last associated with law partners William R. Higgins and J. Justin Greer in the firm of Carle & Higgins. He was on the board of the First National Bank of Claremore and was

chairman of the Claremore Chamber of Commerce, which honored him as Citizen of the Year in 1990. As attorney for Claremore Industrial and Development Authority, he helped bring many industries and businesses to the Claremore area. Until recently, he was on the board of directors of Light Opera Oklahoma. He earned a private pilot's license and loved flying his small plane. His most recent hobby was oil painting, which he studied and practiced at Ziegler's with a group of fellow artists who became his close friends. Memorial contributions may

be made to Claremore Public School Foundation, LOOK Musical Theatre, Hospice of Green Country or the Rogers County PAL Program.

Joe W. Davis of Midwest City died Sept. 22. He was born in Okmulgee on March 8, 1932, and graduated from Classen High School. While working at Tinker Air Force Base, he attended OCU School of Law and graduated in 1968. He was president of W.P. Atkinson Properties and Investments, assisting with various building projects such as modular homes and apartment complexes, in addition

to managing several shopping centers. He served as president of Central Oklahoma Home Builders Association in 1988 and Oklahoma State Home Builders Association in 1995. He served for more than 20 years as trustee of the Rose State College Foundation, and he received a Rose State Tower Award in 2010. Other organizations and recognitions include president and longtime member of Midwest City Rotary, Midwest City Builders Advisory Board, Comprehensive Plan Update Subcommittee and the Subdivision Regulation Zoning Ordinance Update Task Force for the City of Midwest City, along with receiving an award for over 25 years of service to the city. Memorial contributions may be made to the Rose State Foundation Scholarship Fund.

Larry “Joe” Fulton of Tulsa died Sept. 16. He was born on July 13, 1939, in Olney, Ill. He attended primary school in Billings, Mont., before his family settled in Okmulgee, where he graduated from high school in 1957. In 1961, he received his B.A. in government from OU where he pledged Delta Upsilon fraternity. He graduated from Harvard Law School in 1964. **He served in the Judge Advocate General’s Corps, United States Army, Legislation Branch, Military Affairs Division, Pentagon, Washington, D.C.,** before returning to Oklahoma to practice law. He joined the Tulsa firm of

Conner, Winters, Randolph and Ballatine in 1968 and later Rhodes, Hieronymous. From 1969 to 1989 he was the corporate attorney for Sweet Adelines International. He was a founding member of the Tulsa Scion Society of the Baker Street Irregulars known as The Afghanistan Perceivers. He founded the Northeastern Oklahoma Cinematic Society, which met annually at the Kerr mansion in Poteau.

James Clinton Garland of Tahlequah died Jan. 5. He was born Dec. 13, 1937, in Stigler. He received his bachelor’s degree from TU in 1959, continuing his education with a M.B.A. from the University of Denver in 1962. After a successful career in business, he elected to pursue a legal career, graduating from TU College of Law in 1981. His primary interests were hunting, fishing, and the practice of law.

Oklahoma County District Judge **Twyla Mason Gray** died Oct. 3. She was born Oct. 26, 1956. She received her B.S. from UCO and earned her J.D. at the TU College of Law. She was first elected district judge in 1998 and recently re-elected to her third term. Before serving on the bench, she was general counsel and chief financial officer for Laser Tech Color. Prior to her legal career, she served four years as a state representative from Tulsa, was an executive with BMC Advertising Inc. and a congressional assistant in Washington D.C. She was honored

by the Redlands Girl Scout Council as a “Woman of Distinction” in 2002 and that same year she was named to UCO Outstanding Alumni. She served on the board of numerous civic organizations and was a member of Class XIV of Leadership Oklahoma City. She volunteered her time with Oklahoma City Public Schools Foundation, Oklahoma Library for the Deaf, National Association for the Mentally Ill and Oklahoma Arts Institute. Memorial contributions may be made to Acts2 United Methodist Church of Edmond.

Howard A. Maddux of Tulsa died Sept. 3. He was born on Sept. 2, 1929, in Cambridge, Kan. He obtained his law degree from the University of Kansas in 1957 and was a real estate attorney. Memorial contributions may be made to the American Red Cross.

Ted G. Vogle of Bixby died Aug. 26. He was born July 31, 1939, in Woodward. He graduated from Central High School in 1957 and then attended OU. **After a year and a half of college, he enlisted in the U.S. Army and served during the Korean Conflict.** He was later recruited into the U.S. Marine Corps. After the service, he returned and completed college. He received his J.D. degree from the TU College of Law. Memorial contributions may be made to Disabled American Veterans.

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OKC 63RD AND N. WESTERN AVE. Furnished, spacious wood paneled office in bank building. One-half day per week - \$300 per month. Share conference room, kitchen, high-speed Internet. Contact farris2002@swbell.net.

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TULSA AV-RATED MEDIUM SIZED FIRM has associate openings for two lawyers with 2-4 years experience in commercial, business, tort and employment litigation. Exceptional benefits including medical, dental, life insurance, 401k and partnership track. Send resume and salary history to Mary Chastain, Sneed Lang Herrold PC, One West Third, Suite 1700, Tulsa, OK 74103 or by email to mchastain@sneedlangherrold.com.

SMALL MCALESTER LITIGATION FIRM has a position available for full-time attorney with 2 - 10 years experience. The firm specializes in personal injury, domestic relations and criminal law. Send resume and letter to Box "B," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

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ASSISTANT CITY ATTORNEY: The City of Muskogee is accepting applications/resumes for the position of assistant city attorney. Requires research, drafting of contracts and ordinances and preparing legal memoranda for city departments and prosecution of misdemeanors in municipal court. Must possess a J.D. and be licensed to practice law in the state of Oklahoma with a minimum of two years of experience. Salary D.O.Q. and excellent fringe benefits. Full job description can be found at www.cityofmuskogee.com under Personnel Department. Applications/resumes are to be directed to the Human Resources Department, P.O. Box 1927, Muskogee, OK 74402 or emailed to jkennedy@muskogeeonline.org. EOE.

LITIGATOR WANTED – DOWNTOWN OKLAHOMA CITY LAW FIRM Chubbuck Smith & Duncan seeks additional lawyer to augment its fast-growing trial practice. Salary commensurate with experience. Send resume and salary requirements to Law Office Manager, 119 N. Robinson Ave., Ste. 820, Oklahoma City, OK 73102.

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POSITIONS WANTED

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Mutt Inspires Bar Charity Event

By Blake E. Lynch

This story, like so many others before it, starts with a lonely and bored wife, left at home by her husband, who was taking off for a week with the guys. Over a year ago I decided to take a “man”cation with two of my oldest friends to North Carolina. Of course, the first rule of the trip was no wives allowed. I was allowed to take the trip only after some begging, but I assumed all would be well. I was leaving my wife, Amanda, with our trusted and loyal — though not very cuddly — German shepherd, Gertrude.

It wasn’t long before I started getting long winded voicemails about the loneliness my wife was experiencing, and how Gertrude, while great at fetch, was not the best dog to keep her company. I disregarded these pleas to my own peril. On the afternoon of our second day of “man” trip, I went for a run and returned to see my two buddies laughing. When I asked the cause of this outburst I was told that my wife had called from a local puppy adoption drive and asked them if they thought I would mind if she adopted a red headed mutt named Sasha. They of course replied that

she could do it and I would not mind at all — a lie that they perpetuated for their own comic relief.

Well, a year later Sasha has been renamed Olie, and although I believe that any adoption should require the consent of *all* homeowners,



Rescue dog Olie, along with sister Gertrude the German shepherd, dresses up for the 2010 PAWS 5k9 race.

not just the lonely ones who show up looking for a weekend companion, I have grown to love the cause of helping abandoned and abused animals. Through the Pittsburg County Bar Association I have been able to rally other like-minded souls and have started the annual PAWS 5k9, of which we are preparing for our second annual run set for Nov. 12 at Robbers Cave State Park. The event allows people to run with their dogs and all proceeds go to the

local PAWS (Partners for Animal Welfare Society) organizations in Pittsburg and Latimer counties.

The Pittsburg County Bar Association has also sponsored a charity stair climbing event, fundraisers and other events to help in the community of McAlester and beyond. These events have raised thousands of dollars for local and statewide charities. When I look at my poor mutt Olie, I like to think that even though she came to my house without my permission or consent, she has helped spark a desire for charity in me, and more importantly in the bar association that has helped so many people. However insignificant an event may seem, it can always

spark a greater change. I am sure that in every local bar association in the state, someone has had some small event happen to them that can help spark an interest that might enliven the charitable will in those around them. Hopefully, you can find that event in your county and start something positive to effect change!

Mr. Lynch practices in McAlester.



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8:30

Registration and Continental Breakfast

9

The Mechanics of ODEQ Administrative Enforcement -
From N.O.V to R.I.P.

Laura Finley, Oklahoma Department of
Environmental Quality, Oklahoma City

Madison Miller, Oklahoma Department of
Environmental Quality, Oklahoma City

9:50

Break

10

The Lay of the Land on the Water Wars: The Issues,
Parties, and Current Status of the Various Water
Fights

Dean Couch, Oklahoma Water Resources Board,
Oklahoma City (tentative)

10:50

What the Frac is Going On? The Potential Federal
Regulation of Hydraulic Fracturing

LeAnne Burnett, Crowe & Dunlevy, Oklahoma City

11:40

Networking lunch

(included in registration)

12:10

You Think You Have a Big Case? Aguinda v. Chevron and The
Making of the Largest Judgement in History

Mark Walker, Crowe & Dunlevy, Oklahoma City

1

The Answer is Blowing in the Wind: Impact of Texas Sources
on Oklahoma Air Quality and What Can Be Done About It.

Rob Singletary, Oklahoma Department of Environmental
Quality, Oklahoma City

1:50

Break

2

Can You Keep a Secret? Legal and Ethical Obligations
Relating to Reporting of Releases, Soil/Groundwater
Contamination, and Other Environmental Problems (ethics)

Gerald Hilsher, McAfee & Taft, Tulsa

2:50

Adjourn

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A photograph of Joe Paulk, a man with a bald head, glasses, and a goatee, wearing a white and black football jersey over a white shirt and a red patterned tie. He has his arms crossed and is looking directly at the camera.

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