

Oklahoma Bar JOURNAL

Volume 83 ♦ No. 11 ♦ April 14, 2012

LAW DAY

No Courts, No Justice, No Freedom

ALSO INSIDE

- Liability Insurance
- Future of State Commercial Transactions Law
- iCivics Events to Feature Justice Sandra Day O'Connor

Science for Lawyers: Crime Scene to Courtroom

April 20, 2012
Renaissance Hotel, Tulsa

April 27, 2012
Oklahoma Bar Center, OKC

Planners/Workshopers:

Art Stokes, Latent Print Unit Supervisor, Oklahoma State Bureau of Investigation, Edmond



www.okbar.org/civ

8:30 a.m.

Registration and Continental Breakfast

9

Crime Scene Responsibilities: Basic Scene Investigations and Evidence Issues

Beth Green, Agent, Oklahoma State Bureau of Investigation, Weatherford

9:50

Break

10

Computer Forensics and Cell Phone Examinations: What It Can and Can't Tell You

Agent James Bogle, Computer Crimes Unit, Oklahoma State Bureau of Investigation, Edmond

10:50

DNA Analysis: Y-STR DNA Analysis and Touch DNA Analysis

Janice Joslin, Forensic Biology Technical Manager, Oklahoma State Bureau of Investigation, Tahlequah

11:40

Networking lunch

(included in registration)

12:10

Forensic Ballistics: Are You Asking the Right Questions?

Deion Christophe, Impression Evidence Training Coordinator, Forensic Science Institute, University of Central Oklahoma, Edmond

1

Blood Alcohol/Drug Analysis

Robert Weston, Forensic Chemistry, Oklahoma State Bureau of Investigation, Edmond

1:50

Break

2

Latent Print Development and Comparison

Chris Davis, Criminalist, Oklahoma State Bureau of Investigation, Edmond

2:50

Adjourn



Credit: Approved for 8 hours MCLE/ 0 Ethics. TX MCLE approved for 5 hours/ 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.

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Price varies



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2012 OBA SOLO and SMALL FIRM CONFERENCE & YLD MIDYEAR MEETING



Join us for the 2012 Solo & Small Firm Conference June 21-23, 2012! This exciting annual event will be held at the Choctaw Casino Resort in Durant, Oklahoma. For those of you unfamiliar, the Choctaw Casino Resort carries the prestigious North American AAA's Four Diamond Rating. This rating is reserved for the truly exceptional properties with the highest quality of service. Choctaw Casino Resort delivers an extensive array of amenities, world-class dining, and hospitality to its visitors.

Early bird registration is only \$175! Register by June 8 for the early bird rate at www.okbar.org/solo

Oklahoma Bar Association

Phone: 405.416.7006
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www.okbar.org/solo

THEME:
**LAW DAY: NO COURTS,
NO JUSTICE, NO FREEDOM**
EDITOR: CAROL MANNING

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Photographer: Jeff Kelton

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OKLAHOMA iCIVICS EVENTS



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No Courts, No Justice, No Freedom Law Day Theme Gives Bar Members Opportunity to Advocate

By Cathy Christensen

In a few weeks, the nation will celebrate Law Day, a celebration that originated in Oklahoma. Law Day was conceived by the late Hicks Epton, a Wewoka attorney and OBA past president. President Dwight D. Eisenhower established Law Day nationally by presidential proclamation in 1958. On this occasion, he said, "It is fitting that the American people should remember with pride and vigilantly guard the great heritage of liberty, justice and equality under law. It is our moral and civil obligation as free men and as Americans to preserve and strengthen that great heritage."

This year's Law Day theme "No Courts, No Justice, No Freedom" allows us, as attorneys, to showcase what it is that we may do best — advocate! It is our opportunity to advocate in support of adequate funding of the court system and the judiciary. It is our opportunity to advocate for fair and just judicial salaries at all levels of the judiciary to ensure that the best and the brightest legal minds are attracted to judicial service. Most importantly, it is our opportunity to advocate that courthouses remain open for business to all Oklahomans regardless of race, religion or economic level.



Cathy Christensen

President Christensen
practices in Oklahoma City.
Cathy@
CathyChristensenLaw.com
405-752-5565

Inadequate funding threatens to undermine the ability of our state courts to function properly. Oklahoma judicial funding was decreased in each of the last three years. Like many of our sister states, funding for the third branch of government is about one percent of the total state budget. Many state courts around the nation are closing early each day or closing one full day each week to save money or to avoid overtime costs. In other states, many court employees have been laid off or furloughed. In comparison to other states' court systems, Oklahoma has weathered well the national economic challenges and the corresponding reduced income to the court system. We are blessed to

enjoy one of the lowest unemployment rates in the country.

Oklahoma welcomes new citizens and new businesses into our state on a regular basis. But, will those individuals and businesses remain in our state if they are unable to have their legal disputes promptly resolved in a court of law? Will businesses tolerate the expense of unnecessarily prolonged litigation? Will families wish to remain in Oklahoma if they cannot have timely access to fair and impartial courts? I think not.

*We are under a
Constitution, but
the Constitution
is what the judges
say it is, and the
judiciary is the
safeguard of our
liberty and of our
property under the
Constitution.*

*Charles Evans Hughes
American Jurist and
Statesman, 1862-1948*

Adequate court funding is essential to Oklahoma's business growth and a stable economy. It is also essential to the core of our constitutional democracy. Courts must remain open, available and adequately staffed. The consequences of inadequate court funding will negatively impact the daily life of any Oklahoma litigant in trial court seeking resolution of civil disputes, divorces, child support, custody and probate or criminal law matters. Someone in almost every Oklahoma family has, most likely, entered into an administrative court or a trial court seeking relief or restitution.

cont'd on page 943

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EVENTS CALENDAR

APRIL 2012

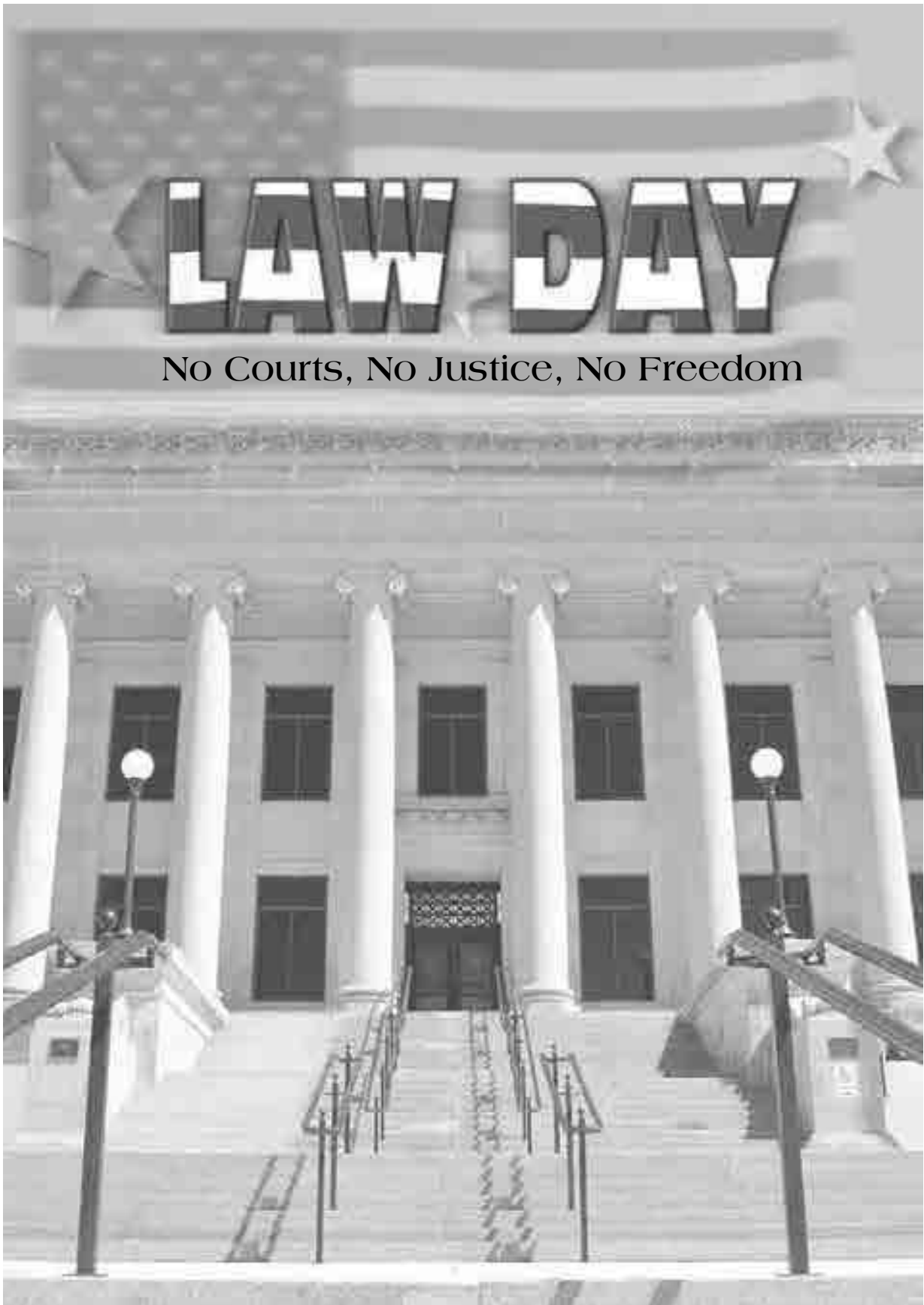
- 17 **OBA Bench and Bar Committee Meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Barbara Swinton 405-713-7109
- 18 **OBA Law Day Committee Meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Tina Izadi 405-522-3871
OBA Women in Law Committee Meeting; 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Deirdre Dexter 918-584-1600
- 19 **OBA Access to Justice Committee Meeting**; 10 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Rick Rose 405-236-0478
OBA Work/Life Balance Committee Meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa and teleconference; Contact: Sarah Schumacher 405-752-5565
OBA Justice Commission Subcommittee Meeting; 1 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Drew Edmondson 405-235-5563
OBA Justice Commission Meeting; 2 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Drew Edmondson 405-235-5563
- 20 **OBA Lawyers Helping Lawyers Assistance Program Training**; 12 p.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 and teleconference; Contact: Paul Middleton 405-235-7600
- 21 **OBA Young Lawyers Division Officers Meeting**; 10 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jennifer Kirkpatrick 405-553-2854
- 23 **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
- 24 **A Conversation with Justice Sandra Day O'Connor**; 10 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jane McConnell 405-416-7024
- 25 **OBA Board of Governors Meeting**; 9 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: John Morris Williams 405-416-7000

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

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

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LAW DAY 2012

Celebrations Focus on Importance of the Judiciary

By Tina L. Izadi

The theme for Law Day 2012 is “No Courts, No Justice, No Freedom.” It’s an overdue and timely theme. The importance of honoring, respecting, supporting and preserving our judiciary is as critical now as it was in the founding days of our nation. It is through the courts that we are able to maintain and safeguard a free society. Severe funding cuts to the courts are occurring nationwide and significantly hindering the courts’ ability to provide a fair and impartial forum to reach a just result. Despite these budgetary cuts, the courts are seeing a significant increase in the cases filed, taxing the system even more. For these reasons it is important to recognize the courts and Oklahoma’s judiciary and its role in ensuring that justice is served. It is essential that the courts are open and accessible to everyone, safeguarding the rule of law.

Law Day provides an opportunity to take time to celebrate our theme and educate both the public and students about the importance of the law, the judiciary and the role both play in shaping day-to-day existence. It is a fantastic and exciting opportunity! The OBA Law Day Committee believes it is a critical task to celebrate the important work lawyers do for the community. We’ve carried on the tradition for more than 50 years, a tradition born right here in Oklahoma. Wewoka attorney and past OBA President Hicks Epton developed the idea for Law Day in the late 1950s, and it has evolved into a national celebration. This year Oklahomans will observe Law Day on April 26 with events and activities throughout the state. We have continued our annual art and writing contests focusing this year on the “No Courts,

No Justice, No Freedom” theme. We have also put together once again an informative television show, highlighting the important impact lawyers make on the lives of individuals and the law. Additionally, with the help of all our attorney volunteers, we will continue to offer 12 hours of nonstop free legal advice.

ASK A LAWYER TV SHOW

This year’s Ask A Lawyer television program will air Thursday, April 26, at 7 p.m. on OETA stations across the state. The show provides information about current legal issues facing individuals in this state and how Oklahoma lawyers are making an impact. This year’s show features segments titled “Families in Transition,” “Dealing with Disaster” and “Residential Rights.”

The first segment details an innovative program administered through Family Court Services in Tulsa County aimed at assisting families as they go through a divorce. During the show, we’ll hear from participants who explain why the help they received made a difference for their children, and why they believe the program should be expanded statewide. Then you’ll meet a couple who needed a new roof after a devastating Oklahoma hail storm, only to discover their insurance company was unwilling to pay their claim. Later, we’ll meet a man who found he had no place to live as he struggled to turn his life around after his release from prison.

The show also offers an update on the Oklahoma Lawyers for America’s Heroes program. The initiative, now in its second year, is more



Lt. Col. Max Moss of the Oklahoma National Guard 45th Infantry Brigade Combat Team is interviewed for the Ask A Lawyer TV Show.

critical than ever as thousands of troops serving with the Oklahoma National Guard 45th Infantry Brigade Combat Team have now returned stateside after their year-long deployment in Afghanistan. Military experts warn some of these soldiers could face legal challenges in the months to come, and hundreds of OBA members continue to stand ready to assist them at no cost.

You'll hear from a returning service member and a veteran who needed legal services during and after their deployment, and find out why the OBA's legal assistance program is important to heroes like them. You'll also hear from 2011 OBA President Deborah Reheard who initially conceived the program, as well as from OBA member Lt. Col. Max Moss from the 45th, who explains why the program continues to be vitally important to members of his outfit.



Tulsa County District Judge Mark Barcus discusses "Families in Transition" during the Law Day TV show.

Ask A Lawyer

Thursday, April 26

7-8 p.m.

OETA stations

FEATURING
SEGMENTS ON:

- ☆ Families in Transition
- ☆ Dealing with Disaster
- ☆ Residential Rights
- ☆ Lawyers for Heroes

Hosted and
Moderated by
Dick Pryor

Special Guests:
Oklahoma Supreme Court
Chief Justice Steven Taylor

OBA President
Cathy Christensen





Oklahoma Supreme Court Chief Justice Steven Taylor welcomes Law Day contest winners to a recognition ceremony at the State Capitol. Also attending the ceremony were Law Day Committee Chair Tina Izadi and OBA President Cathy Christensen (far right).

The show will continue its town hall format, where audience members will have an opportunity to ask questions to expert attorney panelists. The show will also feature OBA President Cathy Christensen and Chief Justice Steven Taylor along with the winners of the Law Day contests and their winning artwork.

CONTESTS AND ACTIVITIES

This year more than 1,400 students from across the state submitted entries centered on this year's theme, "No Courts, No Justice, No Freedom." Judging hundreds of entries is always a challenge for the Law Day Committee members; the caliber of the work we receive from students is always top notch! The winners have been announced, and the winning entries can be viewed at www.okbar.org/lawday and starting on page 877 of this issue.

FREE LEGAL ADVICE

Final preparations are under way for the statewide Ask A Lawyer call-in event, to be held on April 26, where for 12 nonstop hours free legal advice is provided to the public. The Ask A Lawyer call-in event is one of the best ways all Oklahoma bar members can participate in the national celebration of Law Day. This annual event gives us a unique opportunity to provide a valuable community service

while promoting a positive public image of attorneys and the OBA.

Callers statewide will be able to reach an attorney by calling 800-456-8525 throughout the day on April 26. The OBA and the committee work with each county Law Day chairperson in setting up a network of local phone numbers during the broadcast. Volunteer attorneys in each participating county staff the phones and answer questions for a predetermined time period. Oklahoma and Tulsa County attorneys work together to staff the toll-free, statewide phone number from 9 a.m. – 9 p.m.



Expert panelists (from left) Kimberly Hays, Phil Tucker and Noel Tucker field family law questions during the Ask A Lawyer TV show.

We Need Your Help

To make this community service project a success, the Law Day Committee needs your help! It takes a total of 30 attorneys for each two-hour shift to fully staff the statewide number. That effort, combined with the local county bars, creates a huge need for attorneys to step forward. To volunteer, contact your local county Law Day chairperson. The contact information for each county Law Day chairperson and the activities planned for each county are listed in a related story in this issue.

The Law Day Committee has again committed to branch out to the Latino community by offering free legal advice in Spanish. Each shift in Tulsa and Oklahoma City will need Spanish-speaking volunteers. If you speak Spanish or know non-attorneys who would volunteer to translate, we need your help!

DIRECTIVE AND PROCLAMATION

In continuing with OBA Law Day tradition, Chief Justice Taylor signed the Law Day directive, encouraging courts to host Law Day events. Gov. Mary Fallin has signed a proclamation designating May 1, 2012, as Law Day in Oklahoma. Both of those documents speak to the “No Courts, No Justice, No Freedom” Law Day theme and are available for your viewing in this issue.

GET INVOLVED

Every spring, planning for the following year’s celebration of Law Day begins even before the current Law Day festivities end, and we need your ideas! The annual event provides an exciting opportunity for all of us to educate

the public and remind everyone of the positive work attorneys do. We hope all of you will participate in Law Day, whether it is volunteering to provide free legal advice in your county, making a presentation to a local school group or organization, participating and recruiting town hall participants or joining us on the Law Day Committee. Additionally, if you have a story of helping a client or know of a good story to feature in the Ask A Lawyer TV Show, please share with us!

If you’d like to join this fun, yet hardworking committee, contact me at 405-522-3871 or at tizadi@odmhsas.org. With your commitment, we can continue to work toward our goal of creating an engaged, informed citizenry in Oklahoma!

Ms. Izadi practices in Oklahoma City and chairs the OBA Law Day Committee.



Kimberly Brasher and Linda Samuel-Jaha answer calls for legal advice during the 2011 Ask A Lawyer event in Oklahoma County.

¿Habla Español?



We need you!

Spanish-speaking attorneys are needed to give free legal advice on Ask A Lawyer day.

Non-attorney translators are also needed.

The OBA is reaching out to the Latino community, so we expect to hear from Spanish-speaking callers.

**When: Thursday, April 26
9 a.m. – 9 p.m. (two-hour shifts)**

**OETA Studios in
Oklahoma City and Tulsa**

To sign up:

Oklahoma City

Connie Creed • (405) 236-8421
connie@okcbar.org

Tulsa

Dan Crawford • (918) 660-0400
dan@boettcherlobaugh.com

¡Alli los miramos!

G GREEN



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

Thursday, April 26

9 a.m. to 9 p.m.

ASK A LAWYER

Free Legal Advice
Volunteer Lawyers Needed



Statewide Hotlines
Location: OETA Studios
Oklahoma City & Tulsa



Sign up for OKC, contact:
Connie Creed
connie@okcbar.org
405-236-8421
www.okcbar.org



Sign up for Tulsa, contact:
Dan Crawford
918-660-0400
dan@boettcherlobaugh.com

Other counties are also giving legal advice.
Contact your Law Day chairperson to volunteer.

LAW DAY 2012

CONTEST WINNERS

No Courts, No Justice, No Freedom

More than 1,400 students from across the state participated in the 2012 Law Day contests. This year's theme, "No Courts, No Justice, No Freedom," encouraged our youngest citizens to gain a greater understanding of the role of the judicial system that makes our democracy work, and further, that the courts are the safeguard of our liberty under the Constitution.

Art contests were offered to the younger students. The coloring contest for pre-kindergarteners, kindergarteners and transitional first graders was again a tremendous success. More than half of the total entries were coloring contest entries. First and second grade students could enter a drawing contest, while third and fourth graders could create a collage. Fifth graders could submit either a collage or creative writing, while sixth through eighth graders could choose between creative writing and visual arts.

The creative free for all category for ninth through 12th graders invited students to use their imaginations and choose any medium to demonstrate the Law Day theme. Law Day's YouTube contest was open to anyone and many entries were received during the contest's fourth year. One student was designated the "grand prize winner" for having submitted the best overall entry from all grades.

County bar associations will officially present the contest winners in their county with plaques and prize money later this school year.



Grand Prize Contest Winner

Madison Tryzbiak

Union 6th–7th Grade Center, Tulsa
Teacher: Leslie Thornbrugh



Video Contest Winners

Mike Hogsett and Kyle Fitzgerald

Christ the King School, Oklahoma City



Mike Hogsett

Kyle Fitzgerald



To see Mike and Kyle's video, go to www.okbar.org/lawday



☆ Coloring Contest Winners ☆ Pre-Kindergarten



1st Place Lana Behrends

Temple Elementary School
Temple

Teacher: Terri J. Hooper



2nd Place Albany Black

Graham Elementary School
Weleetka

Teacher: Mrs. Neal

Coloring Contest Winners ☆ Kindergarten



1st Place
Austin Buchanan

Virginia Smith Elementary
Harrah



2nd Place
Jazmyne Bayless

Temple Elementary
Temple
Teacher: Judy Dilbeck



Coloring Contest Winners ☆ Transitional First



1st Place Timothy Phipps

Pleasant Vale
Elementary School, Enid

Teacher: Mary Lassiter



2nd Place Isabelle Hammer

Stilwell Elementary School
Stilwell

Teacher: Dian Walker

Drawing Contest Winners ☆ First



1st Place
Shelby Gregory

Maryetta School, Stilwell

Teacher: Samilou Smith

2nd Place
Griffin Kidd

Horace Mann Elementary
Duncan

Teacher: Kendra Woods



Drawing Contest Winners ☆ Second



1st Place:

Janessa Chastain

Maryetta School
Stilwell

Teacher:
Samilou Smith



2nd Place
Austin Cox

Maryetta School
Stilwell

Teacher:
Samilou Smith



2nd Place
Thomas
Buchanan

Clara Reynolds Elementary
Harrah



Collage Contest Winners ☆ Third



1st Place
Karlie Jo Stanley

Maryetta School, Stilwell

Teacher: Samilou Smith



2nd Place
Huan (Tristan) Nguyen

Bishop John Carroll School
Oklahoma City

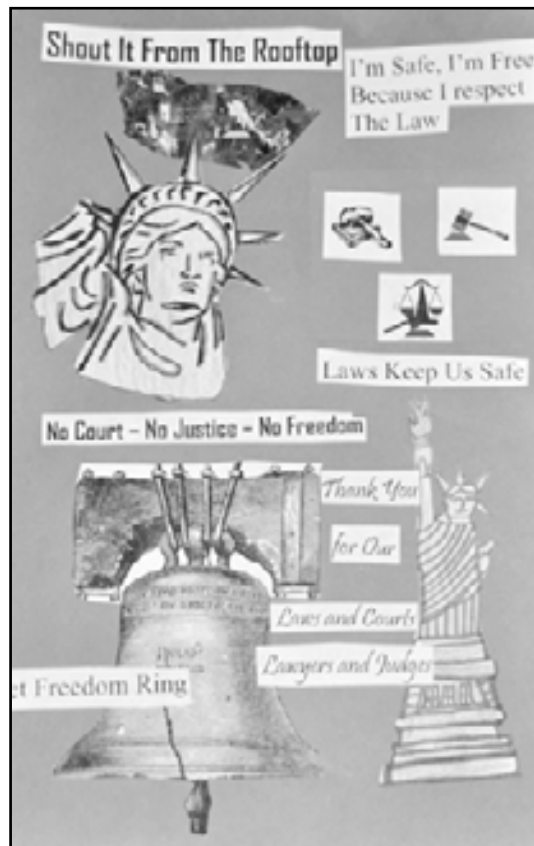
Teacher:
Mary Beth Hoffman

Collage Contest Winners ☆ Fourth



1st Place
Marco
Betancourt

McKinley School, Tulsa
Teacher: Carolyn Painter



2nd Place
Joe Hendrix

Shiloh Christian School
Tahlequah

Teacher:
Mollie Goosman

Collage Contest Winners ☆ Fifth



1st Place Jenna Dunn

Fisher Elementary
Oklahoma City

Teacher: Teresa Potter



2nd Place Megan Hatfield

McKinley School, Tulsa

Teacher: Carolyn Painter

Creative Writing Contest Winners ☆ Fifth



1st Place Emily Stuart

Angie Debo Elementary
Edmond

Teacher:
Tina Valentine

No Courts, No Justice, No Freedom

"Life without liberty is like a body without spirit," said Khalil Gibran. I think he means if we didn't have liberty, we'd become one of the world's worst countries. I believe we should have our court system to have justice and freedom because people need to have freedom, everyone deserves rights, and people can speak from what is true to them. I believe we need these to make our country the best country in the world. The laws are rules we should follow.

People need to have freedom because it makes them at least a bit happy when they have to go to court. They can think that they have some chance of winning. It gives them something to have in mind. We're innocent until we're proven guilty. In other countries, they're guilty until they're proven innocent. The fifty white stars on our flag, which are our states, are free.

Everyone deserves rights so that they can be one individual in the country. Some people do things they regret later on in life. They give you freedom and rights to live how you want. They also give you your choice of job. Rights protect the freedom everyone has.

People can speak for what is true to them in court. It gives them the right to prove themselves innocent or guilty. They say what they think it was. It gives them the chance to show the judges what is the truth that they see. It is a symbol that our country is free. They deserve to be heard.

I think we need these to make the United States of America one of the best countries. We should have our court system because people need to have freedom, everybody deserves rights, and people can speak for what is true to them. People deserve to have freedom through speech. Our country is call the United States for a reason. Just like Khalil Gibran said, "Life without liberty is like a

body without spirit." No courts, no justice, no freedom.



2nd Place Nevaeh Sheriff

Fisher Elementary
Moore Public Schools
(Cleveland County)

Teacher:
Teresa Potter

To read Nevaeh's poem, go to www.okbar.org/lawday.



Creative Writing Contest Winners ☆ Sixth

No Courts, No Justice, No Freedom

Oh how horrible it is to think about.

The sorrow, the unfairness, the broken promise of our country.

The United States wouldn't be the way it is

It would be a chain reaction; allow me to explain.

In my painting, it shows first a mallet; a mallet represents the courts.

The fire at the bottom represents what would happen without courts, justice or freedom. If we didn't have courts, there would be no law, no rules. Everyone would steal, argue, fight; basically there would be a total anarchy! There would be no justice.

Next, you see the blind-folded lady holding the scales. This represents justice. The same way with courts and fire; the fire destroys it, there would be no justice. If we didn't have courts, we wouldn't have justice. If we didn't have courts, we wouldn't have justice. If we didn't have justice, nothing would be fair. I mean, the world isn't fair anyways, but maybe the guilty would be mistaken as innocent, and the innocent as guilty. Nothing would be fair, so there would be more chaos added to the anarchy caused by no courts. If there were no justice, there would be no freedom.

After the lady, you see the Constitution. The Constitution is basically the foundation of America; I painted it being burned, along with the other symbols. In the Constitution, it states that we have courts to ensure justice, and justice to ensure freedom. The burning Constitution represents courts, justice and freedom all going away.

Next to the Constitution, you see an eagle. The eagle represents freedom.

I know it sounds harsh, but the eagle going down in flames represents no freedom. If there were no courts, there would be no justice. If there were no justice, there would be no freedom. If there were no freedom, people would be able to own other people. You would be able to own someone else, or they would be able to own you. Pretty much you couldn't decide what you would do; someone else would do that for you. Or maybe visa versa. Basically, the fire represents the chaos that would take place.

And last, the American flag, that is close to getting burned. The American Flag represents America, and what would happen if the flag touched the flames. It would get destroyed. If there were no courts, freedom, or justice, America would basically get destroyed. There would be chaos, and war, and all this other horrible stuff that America would be split in half. We have to keep ourselves from doing this. This could stand as a warning; this is what could happen if we lose our courts, our justice, and most importantly, our freedom.



1st Place Emma Banks

Duncan Middle School
Duncan

Teacher:
Carrie Caldwell

2nd Place Sara Salomon

St. Elizabeth Ann Seton School
Edmond

Teacher:
Joan Krauss

To read Sara's poem, go to www.okbar.org/lawday.



Creative Writing Contest Winners ★ Seventh



1st Place Caroline Sullivan

Duncan Middle School
Duncan

Teacher:
Haley Wilson

No Courts, No Justice, No Freedom

The majority of Americans do not realize how fortunate they are to live in a country with a fair judicial system. Many of the Middle East and North African countries have been battling for many years for an impartial judicial system like the one in the United States. Many citizens of other countries do not have this privilege. For example, Libya is just one of the countries fighting for a fair judicial system.

In recent months, the country of Libya has been in turmoil. The reason for this turmoil is because of Gaddafi's harsh and biased laws. Gaddafi wrote The Green Book; the book contained Gaddafi's laws in which all Libyans had to abide by. The book allowed Gaddafi to carry out inhumane acts on people who disobeyed his laws. For instance, if anyone tried to start a political party he would execute them. When teachers taught about political education they had to teach from The Green Book. The teachers dare not say anything against the rules in the book, for fear of being killed. These unruly laws were the reason for the Libyans overthrowing Gaddafi.

Most Americans do not stop and think about life in other countries, like Libya, because we are so fortunate. Americans are so well-off because we have even-handed courts and laws. Thanks to these laws we have rights that are guaranteed by the Constitution and the Bill of Rights. Case in point, all Americans have the right to choose their religion without fear of being punished. In America, if you have been accused to have done something against the law and are being prosecuted, you have the right to: (1) receive a written copy of the charge(s) that the government has accused you of violating, (2) have a lawyer defend you, if you cannot afford a lawyer, one will be appointed on your behalf, (3) the government has the burden of proof, (4) confront your accusers, (5) remain silent, (6) a trial by jury of your peers, and (7) unanimous verdict to be found guilty. In Libya if you are being accused of disobeying one of Gaddafi's laws you will simply be executed or sent to prison.

Libya and other countries are trying to achieve what Americans know as their everyday life. Libyans have protested the harsh laws of Gaddafi and overthrown him. Gaddafi's end of rein has partially accomplished Libya's goal for a fair judicial system. Libya needs to implement a judicial system that is run by judges that are fair, impartial, and will follow the law. Once Libya has a fair minded judicial system, its country will be headed in a positive direction for the current generations and the ones to follow.

The World has noticed what the United States has done for its people; and other countries are starting to follow America's footsteps. Libya is just one country in North Africa and the Middle East that has realized that with no courts you have no justice and no freedom. Democracy is an obtainable goal for many in the world.

2nd Place Sidni Blalock

Duncan Middle School,
Duncan

Teacher:
Julie Leippe



To read Sidni's poem, go to www.okbar.org/lawday.

Creative Writing Contest Winners ☆ Eighth

1st Place

Travis Nguyen

Ardmore Middle School,
Ardmore

Teacher:
Jelana Mosely

Sudden Death

I remember the situation I've been going through like it was yesterday. It occurred many months ago. I was strolling in the streets on my way to the store because we ran out of food and I was starving. Then suddenly, I hear a shriek coming from around the corner. I ran quickly as I could to observe the problem. As I turn the corner I hear another scream coming from one of the houses. I searched alert fully all over until I found the house. As I walked inside, I see the house all wrecked and two dead bodies laying there on the floor. I was shocked and scared; the murderer could still be inside. So I ran outside but then I was spotted by a nearby neighbor. Her face showed fear, and she quickly pulled her phone out and started dialing the police. I walked toward her and shouted, "It's not what you think!" but she kept backing up and replied, "Get away from me, I'm calling the cops!!" She then started to run in terror. I too ran as fast as I could home, I was scared and didn't know what to do. But it was too late; the cops were arriving but I just kept running faster and faster home. I barely made it, but I closed the door, and started trying to catch my breath.

My mother asked me, "What's going on sweetie?" I tried to explain to her what had just happened, but my explanation was hard to comprehend because at the same time I was gasping for air. The doorbell rang and my mother opened it. They then charged at me, grabbed me, shoved me to the ground, and handcuffed me before I even had any time to react. As I was struggling to get up they dragged me to their car and my mother shouted, "Don't take my boy away! He didn't do anything wrong!", but the police didn't care to listen. They tried to force me into the backseats but I fought back fiercely to get away. As I was fighting back, one cop came from behind and shocked me with a tazer. As my vision got blurrier I fell straight to the ground.

When I woke up I was locked up in a miniature room with bars. I was frightened because I didn't know what they were going to do with me or what's going to happen. A security guard then unlocked the bars and led me to a room, they were asking me questions and I answered them truthfully, then they whispered to each other but I couldn't comprehend their words. Soon after that I was told that I was going to the courthouse in about a week, and they locked me up again. I was thinking to myself, "A week? In this cold, dirty, and miserable place?" I started to cry, tears running down my face. I was really tired and then started to drift off to sleep after a couple of hours. I woke up hours later and it was morning, I rubbed my eyes and looked around. In the corner I spotted a tray with some food, I hurried over to it and I started to eat. I was starving and their food isn't that good but it'll work. I laid there for hours with nothing to do and bored to death. Then finally they unlocked the doors and let me outside. It didn't have much but at least I got more room to move around and fresh air to breathe. Soon after about half an hour, they took me inside again. While I was walking back to my cell, I saw other cells filled with prisoners. They looked all miserable and empty; I wonder if they were accused just like me.

Days have passed by and I couldn't determine what day it was, if it was Thursday or Friday, but it didn't matter. All I wanted to do was get out of this place. I was filled with anticipation to get out, and then finally the day came when I go to court. I looked around and I see my family right behind me with worry and hope on their face that I'll be released, while on my right I see people that were family and friends of the victims that died. They were all crying and depressed, and I kind of felt sad for their loss.

When the case ended I don't know why but I think they made a mistake and skipped me because I didn't get to tell my side of the story. The judge just asked the witness what she saw and the jury and judge just found me guilty. The judge just asked the witness what she saw and the jury and judge just found me guilty. My mouth opened in unjust, I couldn't believe they didn't even give me a chance to speak my side of the story. I was cuffed and hauled away, but then a well dressed man, looks like a lawyer, stood up and announced, "I demand for evidence!" I don't know why but I was relieved that he has said it because the judge has this mind changing face and told the guards to release me. He told me and my family to stay in the courthouse until they finish searching the house for clues of fingerprint of some sort. I thought it was going to take long but it didn't. After an hour the results come in negative that I was the murderer, and that I was innocent. As I walked out a free man, I burst with joy. I was relieved that I was on my way home. I couldn't help but to imagine that I could've still been in that cell for many years and imagine how our lives and nation would be like and how much terror and unjustness it would bring and cause if we didn't have our judicial system.

2nd Place

Sebastian Gomez

Sequoyah Middle School,
Edmond

Teacher:
Tammy McManis

To read Sebastian's poem,
go to www.okbar.org/lawday.

Visual Arts Contest Winners ☆ Sixth



1st Place Madison Tryzbiak

Union 6th–7th Grade Center,
Tulsa

Teacher:
Leslie Thornbrugh



Bailey Hooper

Temple Middle School
Temple

Teacher:
Terri Hooper



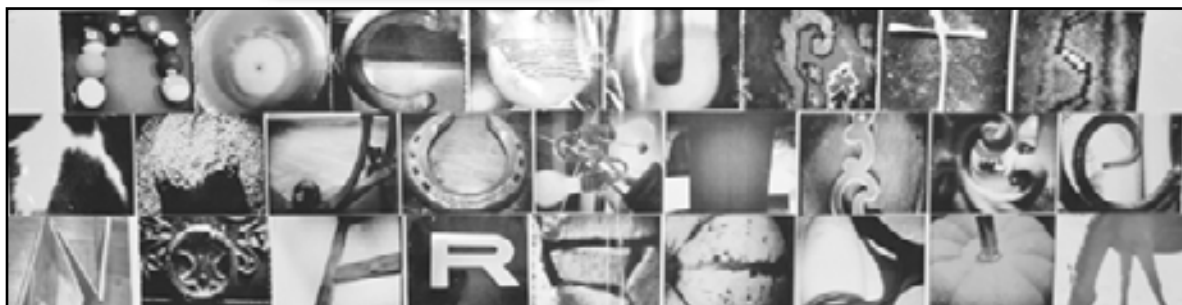
Visual Arts Contest Winners ☆ Seventh



1st Place Grace Rykard

Sequoyah Middle School
Edmond

Teacher:
Tammy McManis



2nd Place Sidni Blalock

Duncan Middle School
Duncan

Teacher:
Julie Leippe

Visual Arts Contest Winners ☆ Eighth



1st Place
Rachel Young

Collinsville Middle School
Collinsville

Teacher:
Janae Givens



2nd Place
Haley Riley

Duncan Middle School, Duncan

Teacher: Paula Belcher



Creative Free for All Contest Winners ☆ Ninth

Without our courts, we can have neither justice, nor Freedom. Without our courts administrating justice properly and fairly, chaos would reign. Americans live in a civil and safe society, a free society. Freedom. Meaning to enjoy political and civil liberty, to live and prosper as we so choose. It rings across the nation, over the grassy hills, over the plains, deserts, the roaring oceans, and in the ears of other countries that envy its tune.

We know the difference between right and wrong. We follow laws that are given to us, and our country abides by them. Without rules and guidelines, enforced by police and punished by our courts, chaos would reign.

Guardians of our liberties and protectors of our individual rights as American citizens, we look to our courts for guidance. Without their guidance, though, chaos would continue to reign.

Without knowledge of the future, our Constitution was deliberately and prudently written. Gratitude is owed to our forefathers who knew over two hundred years ago that our nation could not advance as a free society without a fair and balanced judicial system. For without courts, there is no justice. Without justice, there is no freedom!



1st Place Julia Drago

Lawton High School
Lawton

Teacher: Andi Janoe

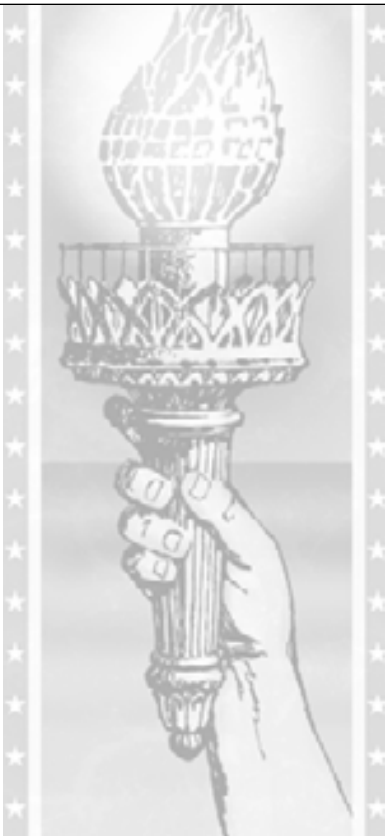


2nd Place Shawn Horne

Lawton High School
Lawton

Teacher:
Andi Janoe

*To read Shawn's poem,
go to www.okbar.org/lawday.*



Creative Free for All Contest Winners ☆ Tenth



1st Place
Brittney Regier

Oklahoma Bible Academy
Enid

Teacher:
Charlotte Williams



2nd Place
Elsa Mosely

Oklahoma Bible Academy
Enid

Teacher:
Charlotte Williams

☆ Creative Free for All Contest Winners ☆ Eleventh ☆ ☆ ☆



1st Place
Zach Young

Comanche High School
Comanche

Teacher: Arlyn Brantley



2nd Place
Jason North

Pawnee High School, Pawnee

Teacher: Becky Beagle



☆ Creative Free for All Contest Winners ☆ Twelfth



1st Place Patrick Bender

Edmond Memorial
High School, Edmond

Teacher:
Saxon Vandagriff

No Courts, No Justice, No Freedom

One day, the courts were shut down. Americans were not bothered by this, at first. Most of them had voted for it, after all. It had seemed like such a good idea at the time. The courthouses were expensive to maintain, the buildings were unsightly, and it seemed as if they were doing nothing to stop crime. Americans assumed that if having a court system did not eliminate crime, nothing would. In the coming months, they would learn of the horrible mistake that they had made.

Of course, America was not without any system of justice. There were many jails around the country in perfect working condition. Anyone caught breaking a law was immediately thrown in jail. This seemed perfect to most Americans, until it was put into practice. As there were no courts to determine one's guilt, Habeas Corpus was completely revoked. Anyone suspected of breaking a law was sent to jail. This made some people nervous, but they remained calm, assuring themselves that they would never break a law. However, many of them were soon proven wrong. Within one month, the amount of incarcerated people doubled, solely from the amount of people who received speeding tickets.

Soon, there was no room for all the arrested. Construction workers found themselves working around the clock to construct new jailhouses. While jails were under construction, criminals were forced to live in abandoned buildings. Some people wondered why the amount of prisoners never seemed to increase. They realized the answer much too late to do anything to prevent it. As there were no courts, no one could negotiate parole. Any offense, even a speeding ticket, was a life-sentence.

The non-speeding section of the population was not very concerned, as they saw a safer future. They believed that with no reckless drivers on the road, the rest of their lives would be far less dangerous. However, they were sorely mistaken. Many criminals saw the lack of courts as an opportunity. Although they knew that the police were still functioning, they still believed that they could get away with any crime that they wanted. Even if they were arrested, every crime had the same punishment. Even when in jail, they could still commit these same crimes without further punishment, as they would already be in jail. Due to this mindset, crime spread rapidly across America. The police were simple too busy to catch all of them. Many crimes went unreported, unsolved, or even unnoticed.

America's president, upon seeing this chain of events, saw only one possible solution. He gave the order to put the United States of America under martial law. He ordered the National Guard to spread across the entire country, imposing order on its citizens. As crime was rampant, the National Guard had to impose strict regulations. A curfew was put in place for the entire country, and the punishment for violation was, naturally, a life sentence in prison. Crime was almost completely eradicated, but Americans found themselves imprisoned in their own homes. Only now had every person begun to wonder what life would be like if the courts had remained.

The citizens of America had voted for the removal of the court system out of hope that it would create a better country. Instead, they unknowingly created a country where crime was rampant, and even the most law-abiding citizens were nervous about being punished for crimes. The solution to this, martial law, left the remaining citizens oppressed and restricted. Whether they were prisoners behind bars, or in their own houses, Americans, by abolishing courts, had no freedom.

2nd Place Brooke McCullough

Oklahoma Bible Academy, Enid

Teacher: Charlotte Williams

LAW DAY 2012

County Law Day Chairpersons

**Adair**

Joe Dean Adair
918-696-2172

Alfalfa

Marcus Jungman
580-596-3591

Atoka

Shannon Reasor
580-889-3343

Beaver

Todd Trippet
580-625-4597

Beckham

Cade Harris
580-225-5777

Bryan

Melissa Middleton
800-522-6170

Bryan

Jimmy Speed
918-924-5291

Canadian

J.P. Jordan
405-222-8721

Carter

Todd Hicks
580-223-5800

Cherokee

B.J. Baker

Choctaw

John Frank Wolf III
580-326-6427

Cimarron

Stan Manske
580-544-2571

Cleveland

Holly Iker
405-701-1949

Coal

Trae Gray
580-927-2314

Comanche

Mark Stoneman
580-585-4494

Cotton

Kathleen Flanagan
580-512-1332

Craig

Courtney Wolin
918-256-7511

Creek

Sheri Eastham
918-512-8560

Custer

Carissa King
580-323-3964

Dewey

Judge Rick Bozarth
580-328-5521

Garfield

Kaleb Hennigh
580-234-4334

Garfield

Robert Faulk
580-249-9100

Garvin

Russell Tacheira
405-238-2368

Grant

Judge Jack
Hammontree
580-395-2258

Greer

Judge Danny R.
Deaver
580-782-4020

Harmon

Judge Mike Warren
580-688-2553

Jackson

Ryan Howard
580-481-0766

Johnston

Dustin Rowe
580-371-9561

Kay

Pat Colloghan
580-765-9967

Kingfisher

Molly Neuman
405-853-7101

Kingfisher

Katy Schneider
405-375-4165

Kiowa

Tom Talley
580-726-2251

LeFlore

Jolyn Belk
918-647-8681

Lincoln

Sarah L.
Soderstrom-Bridge
405-258-1334

Logan

William Wheeler
405-260-3255

Logan

Sheri Mueller
405-282-7677

Marshall

Millicent Watson
580-795-7328

Mayes

David "Scooter"
DuVall
918-825-4558

McClain

Lee Shilling
405-527-0332

McCurtain

Kevin Sain
580-208-2880

Murray

Timothy Lance
580-622-2347

Muskogee

Lenora Gulley
918-682-1223

Noble

Judge Dan Allen
580-336-2433

Nowata

Linda Gambill-
Branstetter
918-273-2200

Okfuskee

Don McFarland
918-623-2717

Oklahoma

Richard Vreeland
405-488-6821



Oklahoma
Lauren Barghols
Hanna
405-235-9621

Okmulgee
Lou Ann Moudy
918-652-3328

Osage
Bransford
Shoemake
918-287-1812

Ottawa
John Weedn
918-542-3306

Ottawa
Becky Baird
918-542-5547

Pawnee
Patrick Pickerill
918-358-2244

Payne
Robyn Baker
405-533-3045

Pittsburg
Shiloh Renes
918-302-3700

Pittsburg
Matt Patterson
918-302-3700

Pontotoc
Christine Pappas
580-559-5640

Pottawatomie
George Wright
405-275-0700

Pushmataha
Charlie M. Rowland
580-298-2525

Pushmataha
Sean Huffman
580-298-5082

Roger Mills
Judge Pat Versteeg
580-497-3359

Rogers
Mark Solano
918-341-2131

Seminole
Judge Tim Olsen
405-257-3386

Seminole
Jack Cadenhead
405-382-6341

Sequoyah
Kent Ghahremani
918-775-5900

Stephens
Jamie Linzman
580-658-1447

Texas
Cory Hicks
580-338-6503

Tillman
Bradford Benson
580-335-3710

Tulsa
Rachel Gusman
918-582-6900

Washington
Jim Elias
918-336-4132

Washita
Judge Chris Kelly
580-832-3144

Woods
Westline Ritter
580-596-3109

Woodward
Justin Eilers
580-254-5556



NOTICE OF PUBLIC HEARING ON A PROPOSED CHANGE TO WORKERS' COMPENSATION COURT RULE 23 (EYE IMPAIRMENT)

The Oklahoma Workers' Compensation Court invites public input on a proposed change to Court Rule 23 to clarify that eye impairment is to be evaluated based on "uncorrected" vision as opposed to "corrected" vision. Determination of impairment to vision after an intraocular lens is implanted remains unchanged.

The Court will hold a public hearing per 85 O.S., Section 303(D) **on Wednesday, April 25, 2012 at 1:30 p.m. at the Workers' Compensation Court's Tulsa location, 210 Kerr State Office Building, 440 South Houston, Tulsa, Oklahoma.**

All comments and suggested revisions (including a brief statement of need and proposed wording) should be submitted in writing to Judge Owen T. Evans, Workers' Compensation Court, 210 Kerr State Office Building, 440 South Houston, Tulsa, Oklahoma 74127 or to Tish Sommer, Special Counsel, Workers' Compensation Court, 1915 North Stiles Avenue, Oklahoma City, Oklahoma 73105; or sent electronically to CourtRulesComments@owcc.state.ok.us. Comments will be accepted by the Court through **April 25, 2012.**

Copies of the proposed rules change are available for viewing at the Workers' Compensation Court's offices in Oklahoma City and Tulsa. The proposed change also is available online at:

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

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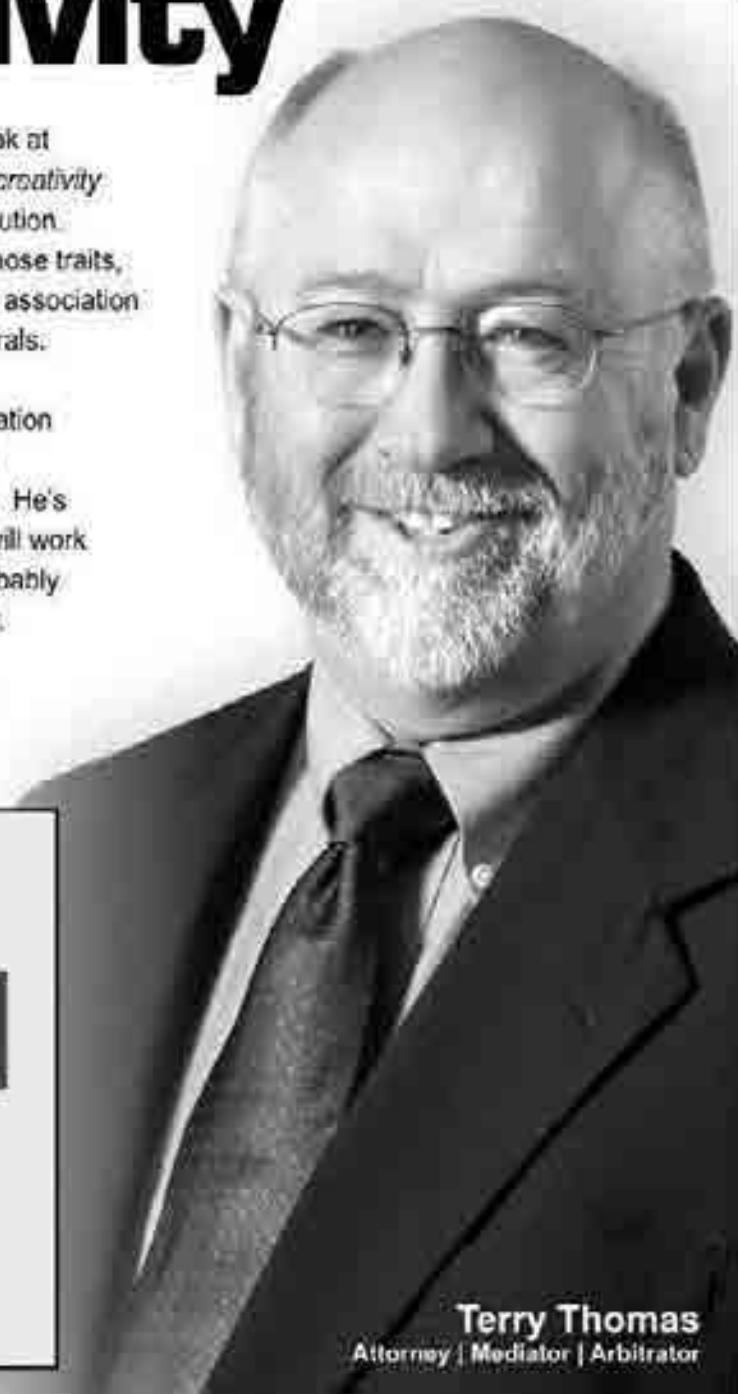
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Oklahoma City 405-228-0300

Nationwide 800-372-7540

Joseph H. Paull, President



Terry Thomas
Attorney | Mediator | Arbitrator

LAW DAY 2012

County Bar Association Activities

★ Beaver County Bar Association

The Beaver County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

★ Bryan County Bar Association

The Bryan County Bar Association will participate in the Ask a Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

Additionally, various attorneys in Bryan County will visit with local high school students to discuss a variety of topics. Topics will include child support/family law issues, criminal matters and economic/government matters.

★ Canadian County Bar Association

Canadian County will hold its annual Law Day activities on April 26 and 27. On April 26, both the Canadian County Courthouse and the Gary E. Miller - Children's Justice Center will have open houses from noon to 2 p.m.

In addition, members of the Canadian County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone. Members will be participating from the offices of the Denton Law Firm in Mustang from 6 - 8 p.m.

Finally, several members of the association will be visiting local high schools to talk with seniors regarding their rights and responsibilities upon turning 18.

★ Cimarron County Bar Association

The Cimarron County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

★ Cleveland County Bar Association

The Cleveland County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 7 – 8 p.m. on Thursday, April 26.

★ Custer County Bar Association

The Custer County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone. Legal questions will be accepted from 7 – 8 p.m. on Thursday, April 26.

★ Garvin County Bar Association

The Garvin County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

★ Grant County Bar Association

The Grant County Bar Association will participate in the Ask a Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 7 – 8 p.m. on April 26.

★ Jackson County Bar Association

The Jackson County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

★ Kingfisher County Bar Association

The Kingfisher County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

★ LeFlore County Bar Association

The LeFlore County Bar Association will kick off Law Day events on the morning of April 26. The first event will be a courthouse tour for kids attending Poteau schools in grades 5-7. The association will be rotating kids through at the same time to participate in a mock trial where Judge Sullivan will preside. That evening at 7 p.m., the association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

On May 1, the association will show *To Kill a Mockingbird* to Poteau High School students. Following the movie, Judge Singer will lead a panel discussion highlighting the Law Day theme, "No Courts, No Justice, No Freedom." High school students will then be invited to view the judges on the bench. During the Law Day festivities, Judge Knight will present the 2012 Quiz Bowl trophies to the winning schools and students.

★ Lincoln County Bar Association

Lincoln County will hold its Law Day activities May 4. The annual Law Day picnic will take place at 6 p.m. at the Chandler Senior Citizens Center.

★ Logan County Bar Association

The Logan County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

★ Mayes County Bar Association

The Mayes County Bar Association will be participating in the statewide Ask A Lawyer program by answering phone calls from the Mayes County community from 7 – 8 p.m. on April 26.

★ Muskogee County Bar Association

The Muskogee County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

★ Okfuskee County Bar Association

The Okfuskee County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone from 7 – 8 p.m. on Thursday, April 26.

★ Oklahoma County Bar Association

• Law Day Luncheon – May 1, Skirvin Hotel Grand Ballroom

The Oklahoma County Bar Association is sponsoring the luncheon this year featuring Dean Valerie K. Couch, former U.S. Magistrate Judge for the Western District of Oklahoma. *The Journal Record* will present this year's *Journal Record* Award as well as recognize the "Leadership in Law" Award recipients. The Liberty Bell Award and the Howard K. Berry Sr. Award will also be presented at this year's Law Day Luncheon. The centerpiece stuffed animals will be donated to the Oklahoma County Sheriff's Office. Tickets are available by calling the OCBA at 405-236-8421.

• Ask A Lawyer Program – April 26 at OETA

Volunteers will be handling phone calls from 8:45 a.m. to 9 p.m. Curtis Thomas will be chairing this subcommittee and volunteers may sign up by going on the OCBA website at www.okcbar.org or by calling the bar office at 405-236-8421.

• COALA Student Program

The Central Oklahoma Association of Legal Assistants (COALA) will be sponsoring high school and Legal Assistance Program students who will tour the Oklahoma County Courthouse and speak with various judges in the morning. Students will then attend the Law Day Luncheon.

• Douglass High School Moot Court Team

The OCBA Douglass High School Task Force will sponsor the moot court team members at the Law Day Luncheon where they will be recognized for their outstanding efforts this year.

• Civic Speakers

The OCBA Law Day Committee is providing lists of speakers at various civic clubs and other venues in Oklahoma County. These groups have been contacted in an

attempt to provide legal speakers during the Law Day week.

•Lawyers in the Library

The Oklahoma County Law Library is working with attorneys to provide one-on-one question and answer sessions at the Downtown Metropolitan Library on April 30. This will take place from 5-7:30 p.m.

★ Payne County Bar Association

The Payne County Bar Association has planned several events for Law Day. On April 30, the association will hold its annual Payne County Law Day banquet, where Judge Jerome A. Holmes, U.S. 10th Circuit Court of Appeals, will be the guest speaker. Judge Holmes will speak on the importance of the independence of the judiciary and the rule of law. The association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone. The Payne County Bar will participate in a face-to-face Ask A Lawyer program at the Stillwater Public Library on May 2. On May 3, Judge Phillip C. Corley of the Payne County District Court will preside over an Honor Docket to recognize the winners of the local Payne County Law Day Contest. On May 14, the PCBA will hold its annual bowling outing at the Frontier Lanes bowling alley in Stillwater.

★ Pontotoc County Bar Association

The Pontotoc County Bar Association is planning two events. First, the association will work with East Central University's ABA-approved legal studies program to present a Law Day program on Tuesday, April 24. All panels will be held in the Estep Room in the University Center on the ECU campus. Panels will be: Legal Ethics, 9-10 a.m.; Professions in the Law, 10-11 a.m.; Law and Order, 11-12 noon; Mentoring Lunch with the entire Pontotoc County Bar, 12-1:15 p.m.; and Career Advice from Recent Graduates, 1:15-2:15 p.m. All are welcome to attend this event at no cost. Lunch reservations are appreciated. In addition, the association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone April 26 beginning at 7 p.m.

★ Pushmataha County Bar Association

The Pushmataha County Bar Association will participate in the Ask A Lawyer program

in conjunction with the statewide campaign to answer legal questions by phone from 6 – 9 p.m. on April 26. The event will take place at the offices of Dennis & Brannam.

★ Rogers County Bar Association

The Rogers County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

★ Seminole County Bar Association

To open Law Week celebrations, several of Seminole County's young lawyers will speak to middle school students about the legal profession. Students will hear from young lawyers from both the District Attorney's Office and the criminal defense bar. Seminole County will also participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

The association will hold its annual Law Day activities on May 3. There will be CLE beginning at 8:30 a.m. in the Seminole County Courthouse in Wewoka. At noon, a Law Day luncheon will be held at the Rudolph Hargrave Community Center. Several Supreme Court justices are expected to attend. OBA President Cathy Christensen will be the featured speaker.

★ Sequoyah County Bar Association

The Sequoyah County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

★ Tulsa County Bar Association

•Naturalization Ceremony – Wednesday, April 11

As the kick-off event for Tulsa County's Law Week, the TCBA sponsored a naturalization ceremony April 11 at the U.S. District Court for the Northern District of Oklahoma. Approximately 45 new citizens from 25 different countries were sworn in during the ceremony, one of the most rewarding experiences welcoming new citizens to the United States of America. This event was a great reminder of how fortunate we are to be citizens of this great nation and great start to celebrating this year's Law Week theme "No Courts, No Justice, No Freedom."

- **Lawyers in the Library – Tuesday, April 24**

Last year's event was such a success that we have expanded our service locations to include the Tulsa County Law Library, Kendall-Whittier Library, Rudisill Regional Library and Martin Regional Library. Spanish and English speaking attorneys will be present at Kendall-Whittier Library and Martin Regional Library. For more information or to volunteer please contact Kimberly Moore-Waite at 918-295-9433 or kimberly.moore-waite@laok.org.

- **Community Law Day Fair – Wednesday, April 25**

Tulsa-area charitable and legal services organizations will gather together at Community Care College located at 4242 S. Sheridan to share and inform the public of all the services, programs and opportunities these organizations have to offer. Participating organizations include Legal Aid of Oklahoma Inc., CCC Paralegal Studies, Credit Counseling Centers of Oklahoma Inc., Tulsa CASA Inc., Tulsa County Bar Association Lawyer Referral Service and many more. This year's fair will also feature Tulsa County Special Judge Millie Otey's presentation on "What *Pro Se* Litigants can expect in Tulsa County Small Claims Actions and Landlord/Tenant Claims." Come join us for a day of community. The fair will be held from 11 a.m. to 2 p.m. For additional information please contact Amber Peckio-Garrett at 918-895-7216 or amber@garrettlawcenter.com.

- **Ask A Lawyer – Thursday, April 26**

Tulsa's participation in Ask A Lawyer will take place from 9 a.m. to 9 p.m. at OETA studios on the campus of OSU Tulsa. Many attorneys are needed to staff the all-day event to ensure we can answer all calls and provide this great service to the community. To sign up for a two-hour shift or for additional information please contact Dan Crawford at 918-660-0400 or dan@boettcherlobaugh.com.

- **Legal Civics in the School**

Under the direction of Judge Daman Cantrell, multiple events of various types are being planned, including mock trials, visits to the courthouse, roundtable discussions of issues facing young people, and youth court presentations. This year's Legal Civics in the School program will be expanded

to include elementary, middle and high school students at Carnegie Elementary, Lakeside, Thoreau Demonstration Academy and Owasso. For more information as to exact dates, times and scope of presentation, please contact Rachel Gusman at 918-359-6600 or rachel@gravesmclain.com.

- **Law Day Luncheon Banquet – Friday, April 27**

We are very pleased that the Hyatt Hotel located at 100 E. Second St. is hosting this year's banquet again. The keynote speaker for the luncheon is Craig Cooley, staff attorney with the Innocence Project. Seating for the luncheon will begin at 11:30 a.m. with lunch served at noon. For more information about seating, purchasing tickets or other questions please visit www.tulsabar.com or contact Kevin Cousins at 918-584-5243 or kevinc@tulsabar.com.

- **Student Poster/Poetry/Writing/Art Contest and Coloring Contest Awards Banquet – Monday, April 30**

The student winners of this year's contests will be honored with their awards at a small reception hosted by the TCBA/TCBF Law Week Committee at the Tulsa County Bar Center at 1446 S. Boston Ave. Students of all ages from across Tulsa County entered art projects honoring and reflecting this year's theme of "No Courts, No Justice, No Freedom." These wonderful projects will be displayed at the Tulsa County Courthouse in the Jury Assembly Room from April 10 to April 29. Come see the amazing talent of Tulsa County students!

- ★ **Wagoner County Bar Association**

The Wagoner County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

- ★ **Washington County Bar Association**

The Washington County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

- ★ **Woodward County Bar Association**

The Woodward County Bar Association will participate in the Ask A Lawyer program in conjunction with the statewide campaign to answer legal questions by phone.

You are not alone.



Men Helping Men

Oklahoma City • May 3, 2012

Time - 5:30-7 p.m.

Location

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

.....

Tulsa • April 26, 2011

Time - 5:30-7 p.m.

Location

The University of Tulsa College of Law
3120 East 4th Place, JRH 205
Tulsa, OK 74104

Women Helping Women.....

Oklahoma City • May 10, 2012

Time - 5:30-7 p.m.

Location

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

.....

Tulsa • May 3, 2012

Time - 5:30-7 p.m.

Location

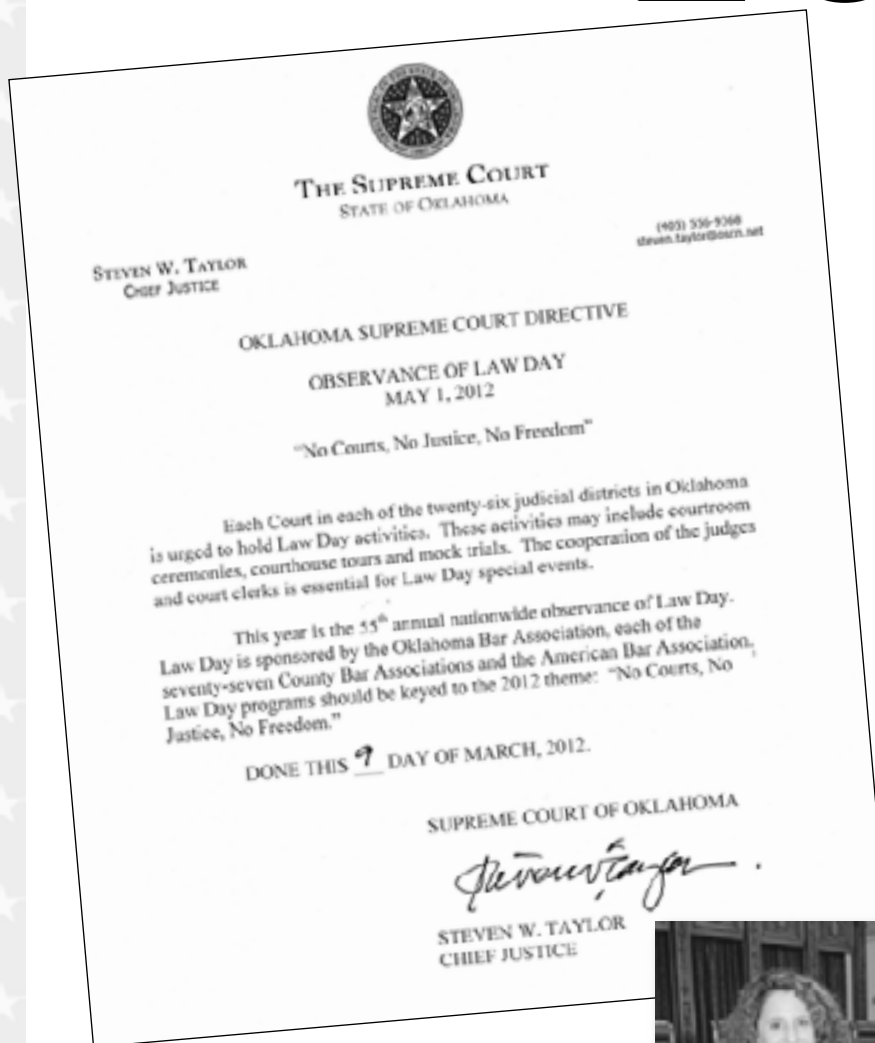
The University of Tulsa College of Law
3120 East 4th Place, JRH 205
Tulsa, OK 74104

Food and drink will be provided! Meetings are free and open to OBA members. Reservations are preferred (we want to have enough space and food for all.) For further information and to reserve your spot, please e-mail kimreber@cabainc.com.

LAWYERS HELPING LAWYERS ASSISTANCE PROGRAM



LAW DAY 2012



OBA President Cathy Christensen (right) and OBA Law Day Committee Chair Tina Izadi witness as Chief Justice Steven Taylor signs the Law Day directive.



STATE OF OKLAHOMA



EXECUTIVE DEPARTMENT

Proclamation

Whereas, Law Day is a celebration of our nation's great heritage of liberty, justice and equality under law; and

Whereas, this country was founded on the principle that voluntary adherence to the rule of law expands, rather than limits, the opportunities for freedom; and

Whereas, as Americans, we are proud of our heritage as a free nation and know that the law safeguards our rights and freedoms; and

Whereas, a viable democracy requires understanding of the basis and history of our laws; and

Whereas, the Law Day 2012 theme, "No Courts, No Justice, No Freedom" encourages citizens to gain a greater understanding of the role of the judicial system that makes our democracy work; and further, that the courts are the safeguard of our liberty under the Constitution;

Now, therefore, I, Mary Fallin, Governor of the State of Oklahoma, do hereby proclaim May 2, 2012 as

"Law Day"

in the state of Oklahoma and urge the citizens, schools, business and media to use this occasion to preserve and strengthen the rule of law.

In Witness Whereof, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed.



*Done at the Capitol, in the City of Oklahoma,
this 23rd day of February — the
Twenty Three hundred and twelve
year of the State of Oklahoma in the one
hundred and twenty year.*

Michelle L. Orr

Mary Fallin

**OBA/CLE AND
OKLAHOMA ATTORNEYS MUTUAL INSURANCE COMPANY
PRESENT:**

06



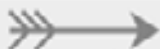
21



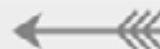
12

OBA Solo and Small Firm ★ Trial College ★

**THE WILL OF FORTUNE:
FROM PROBATE TO MALPRACTICE**



PROGRAM PLANNERS/MODERATORS



PHIL FRAM, OKLAHOMA ATTORNEYS MUTUAL INSURANCE, OKLAHOMA CITY
ALISON CAVE, OKLAHOMA ATTORNEYS MUTUAL INSURANCE, OKLAHOMA CITY
BILL BANDI, OKLAHOMA ATTORNEYS MUTUAL INSURANCE, OKLAHOMA CITY

TRIAL COLLEGE JUDGE

MICHAEL BURRAGE, WHITTEN BURRAGE LAW FIRM, OKLAHOMA CITY



MCLE

CREDIT



\$125

★ EARLY-BIRD. ★

At least 4 days
prior to seminar

\$150

LATE ★

4 days within
seminar date

REGISTRATION - 7:30 A.M.

7:45

WELCOME

- * INCLUDES INTRODUCTIONS
- * PHIL FRAM

9:15

FACT WITNESS EXAMINATION

- * WITNESS: ALISON CAVE
- * PLAINTIFF ATTORNEY: ALETIA TIMMONS
TIMMONS AND ASSOCIATES, OKLAHOMA CITY
- * DEFENDANT ATTORNEY: BETTY OUTHIER WILLIAMS
ATTORNEY AT LAW, MUSKOGEE

3:45

CLOSING STATEMENTS

- * PLAINTIFF ATTORNEY: GIL STEIDLEY
STEIDLEY & NEAL, PLLC, TULSA
- * DEFENDANT ATTORNEY: CHARLES ALDEN
ALDEN DABNEY, OKLAHOMA CITY

**DON'T MISS THIS
all-star CAST!**

1ST BREAK - 9 A.M.

8

OPENING STATEMENT

- * PLAINTIFF ATTORNEY: MICHAEL HOGAN
ALLFORD, VESTER, GREEN & HOGAN, MCALESTER
- * DEFENDANT ATTORNEY: JOE FARRIS
FELDMAN FRANDEN WOODARD & FARRIS, TULSA

**LUNCH (INCLUDED IN REGISTRATION)
11:45**

1 p.m.

EXPERT WITNESS EXAMINATION

PLAINTIFF EXPERT WITNESS: BILL BANDI
PLAINTIFF ATTORNEY: GEORGE CORBYN
CORBYN HAMPTON, OKLAHOMA CITY
DEFENDANT ATTORNEY: MURRAY ABOWITZ
ABOWITZ, TIMBERLAKE, DAHNKE & GISINGER, P.C.,
OKLAHOMA CITY

5 - WRAP UP

5:45 ADJOURN

* REGISTER AT WWW.OKBAR.ORG/CLE

2ND BREAK - 3:30 P.M.

Legal Aid Services of Oklahoma Inc.
presents
A SPRING SEMINAR: EVERYTHING BUT THE KITCHEN SINK

A Seminar for Volunteer Attorneys

Tuesday, May 1, 2012
Conference Center, OSU Tulsa, 700 North Greenwood, Room 150
MCLE Credit of 7 Hours

FREE for Attorneys Actively Serving on a Pro Bono Panel
To register, go to: www.probono.net/ok

AGENDA

- | | |
|---------------|--|
| 8:30 a.m. | Registration |
| 9 – 9:50 | “It’s As If It Never Happened...Or Is It? Expunging Your Adult Client’s Criminal Records” by Jimmy Bunn, Oklahoma State Bureau of Investigation |
| 9:50 – 10:05 | BREAK |
| 10:05 – 10:55 | “The Alphabet Soup of Special Education” by Adrienne Watt, Legal Aid Services of Oklahoma Inc. |
| 10:55 – 11:10 | BREAK |
| 11:10 – 12 | “What To Do When Your Client’s Bank Account or Wages Have Been Garnished” by John Kerr, Legal Aid Services of Oklahoma Inc. |
| 12 – 1:15 | LUNCH (On your Own) |
| 1:15 – 2:05 | “Creative Recipes in Family Law: They’ve Added What?” by Julie Goree, Eric Hallett, and Sara Cherry, Legal Aid Services of Oklahoma Inc. |
| 2:05 – 2:55 | “Unemployment Procedure” by John Miley, General Counsel, Oklahoma Employment Security Commission |
| 2:55 – 3:15 | BREAK |
| 3:15 – 4:05 | “Landlord-Tenant Basics: Defending Evictions” by Judge Millie Otey, Tulsa County District Court, and Kimberly Moore-Waite, Legal Aid Services of Oklahoma Inc. |
| 4:05 – 5 | “How I’d Like Evidence Presented in My Court” by Judge Millie Otey, Tulsa County District Court, Judge Doris Fransein, Tulsa County District Court, and Judge Terry Bitting, Tulsa County District Court |

Liability Insurance: Membership Has Its Privileges

By Philip R. Bruce and Paul M. Kolker

Governor Fallin recently signed a new bill into law that limits the types of damages plaintiff-motorists may recover if they fail to comply with the state's compulsory insurance law.¹ This type of law is commonly referred to as "no pay, no play" legislation. A growing number of states, including Alaska,² California,³ Iowa,⁴ Kansas,⁵ Louisiana,⁶ Michigan,⁷ New Jersey,⁸ North Dakota⁹ and Oregon,¹⁰ have enacted similar statutes. The policy rationale for these statutes is obvious: motorists should obtain insurance before getting behind the wheel. Oklahoma's newly enacted law contains three main parts: 1) the general rule, 2) exceptions to the general rule, and 3) who and when a party may assert the defense. This article briefly summarizes each part below and compares Oklahoma's law to the similar "no pay, no play" statutes in other jurisdictions.

THE GENERAL RULE

Under the new law, if a plaintiff-motorist lacks liability insurance on his vehicle, he may still sue, but his recovery will be limited to "medical costs, property damage and lost income."¹¹ By contrast, the prior law allowed all motorists — including uninsured ones — to also recover pain and suffering damages.¹² The new law does not *expressly* limit recovery for other forms of non-economic damages, such as disfigurement, loss of enjoyment of life or loss of consortium. However, the law may limit those damages as well because it does not equivocally enumerate these forms of recovery.

As discussed below, the new law does not apply when the tortfeasor acts intentionally.¹³ Thus, the statute does not limit punitive damages for intentional torts. But it is unclear whether the law limits Category I punitive

damages when the tortfeasor only acts recklessly.¹⁴ On the one hand, the law may limit Category I punitive damages because there is no facial exception to the law for reckless acts of the tortfeasor, and the plain language of the statute limits the "maximum amount" recoverable to medical costs, property damage and lost income.¹⁵ On the other hand, the law does not specifically limit — or even mention — punitive damages. Therefore, the courts may conclude the new law only limits actual damages and a plaintiff may still receive punitive damages but only in the amount of the newly limited actual damages or \$100,000, which is the amount allowed for Category I punitive damages.

EXCEPTIONS

Even if a claimant lacks automobile insurance at the time of an accident, he may still

pursue all available legal remedies (including pain and suffering) if one of the following seven exceptions applies:

First, an uninsured claimant may still recover all damages if a driver under the influence of drugs or alcohol injures him.¹⁶ For this exception to apply, the intoxicated driver must either be convicted of or plead guilty to driving under the influence.¹⁷ If the intoxicated driver dies as a result of the accident, the claimant must prove by a preponderance of the evidence that the tortfeasor was intoxicated.¹⁸ Alaska, California, Kansas, Louisiana, New Jersey and Oregon all have similar exceptions.¹⁹

Second, an uninsured passenger of a vehicle is exempt, but only if the passenger did not own the vehicle that was involved in the accident.²⁰

Third, an uninsured claimant is exempt for injuries caused by an automobile accident if he was not physically located within the motor vehicle involved in the accident.²¹ For example, an uninsured pedestrian is exempt if struck by a vehicle.

Fourth, this legislation does not apply to any wrongful death claim.²² Therefore, an estate may sue for the wrongful death of anyone injured in an automobile accident, even if none of the exceptions would otherwise apply had the claimant survived the accident.²³

Fifth, an uninsured claimant may still recover all damages if the other driver in the accident: a) intentionally caused the accident, b) left the scene of the accident or c) was committing a felony at the time of the accident.²⁴ Unless otherwise specified by statute, a felony is generally defined as a crime that is punishable by at least one year in prison.²⁵ Thus, if the other driver is speeding or committing other misdemeanor traffic violations, this exception will not apply. All the other states with “no pay, no play” statutes have similar exceptions.²⁶ Accordingly, case law from those states may be helpful when addressing any issues here.

Sixth, minors can always recover full damages, even if the child’s parents were uninsured motorists.²⁷ To qualify, the parent or parents must claim the child “as a dependent on the

federal income tax return.”²⁸ Although federal income tax returns allow different types of dependents beside children, this exception is arguably limited to children-dependents because the statute uses the words “parent or parents.”²⁹

Finally, the law provides a “grace” period that applies only if specific criteria are satisfied.³⁰ The grace period would only apply if 1) the claimant had a valid insurance policy that was terminated or nonrenewed for “failure to pay the premium,” and 2) the insurer failed to send notice to the claimant’s last known address at least 30 days prior to the accident.³¹ Notably, if the insurance policy was cancelled or nonrenewed for some other reason besides “failure to pay the premium,” the claimant may not be able to assert this exception even if notice was never provided.³²

ASSERTING THE LIMITATION: WHO AND WHEN

Each person “involved in the accident” and “found liable” for the claimant’s injuries may assert the limitation on damages.³³ Consequently, it appears the defense may not be asserted until *after* there is a finding of liability. The precondition of fault is odd, inasmuch as a violation of the compulsory liability law occurs well before the accident.

Louisiana and Oregon are the only other jurisdictions that require the defendant to “assert” the limitation.³⁴ In fact, Louisiana’s statute expressly states that the limitation is an affirmative defense and requires a defendant to assert it in the defendant’s first responsive pleading.³⁵ On its face, Oklahoma’s statute does not go that far. As such, there may be an open issue regarding whether an Oklahoma litigant must also specifically assert the limitation as an affirmative defense in an answer for the limitation to apply.

Until the courts sort that issue out, however, practitioners would be wise to assert the limitation as an affirmative defense. Oregon’s law may be particularly instructive on this point. Like Oklahoma, Oregon requires defendants to prove that the plaintiff did not have insurance.³⁶ Further, Oregon does not specifically name the limitation as an affirmative defense.

“Until the courts sort that issue out, however, practitioners would be wise to assert the limitation as an affirmative defense.”

Yet Oregon case law makes it clear that the limitation is, in fact, an affirmative defense.³⁷

But, while instructive, there may be some limitations on the applicability of Oregon's statute. Unlike Oklahoma's law, Oregon's statute only generally requires a party to assert the limitation; it does not require a party to assert the limitation after a finding of liability. Therefore, the applicability of Oregon law may be limited.

Because the responsible party must assert this limitation, it stands to reason that the liable party carries the burden of proof in this regard. One Louisiana case specifically held that the defendant asserting the limitation, as an affirmative defense, must prove by a preponderance of the evidence that the plaintiff-motorist did not have insurance.³⁸ Thus, Louisiana case law may be helpful to those practitioners facing issues about the sufficiency of evidence to meet this burden.

Another curious aspect of the new law is that it states a person must be "involved in the accident" to assert the limitation.³⁹ This raises the issue of whether a plaintiff, under the right circumstances, may avoid the limit on damages by suing a non-involved owner of a vehicle for negligent entrustment.

In one California case, *Day v. City of Fontana*, the court addressed a similar issue.⁴⁰ There, the plaintiff sued the city for creation of a dangerous condition on public property and for nuisance when overgrown shrubbery prevented the tortfeasor from seeing the plaintiff's vehicle.⁴¹ The city asserted the "no pay, no play" limitation, arguing that the court should broadly construe the statute.⁴² The plaintiff objected, contending that the statute only applied when a litigant's insurance was personally implicated in the lawsuit.⁴³ In the end, the court held that the limitation still applied because the lawsuit was one "arising out of the operation or use of [a] motor vehicle."⁴⁴

Oklahoma courts may likely follow *Fontana* because Oklahoma's statute contains very similar language.⁴⁵ Further, both statutes have the same general policy goal of incentivizing drivers to buy car insurance.

Another issue that might arise under the new law is whether it applies to product liability cases involving car accidents. Again, California law may be instructive. There, one court held that the limitation did not apply to a case

where a product defect caused a car wreck.⁴⁶ The court reasoned that it would not meet the policy aims of the "no pay, no play" legislation if it applied the limitation.⁴⁷ Intuitively, this makes sense because the "no pay, no play" legislation seeks to encourage drivers to take responsibility; it does not concern the corporate defendants at the heart of product liability cases. Oklahoma courts, however, may disagree, especially if an uninsured plaintiff injures another person in an accident caused by a defective product.

A final notable issue is whether Oklahoma's "no pay, no play" statute will apply to foreign uninsured motorists. In *Atkinson v. Boyne*, a Louisiana federal court found that the "no pay, no play" statute, in conjunction with Louisiana's compulsory insurance law, did not apply to foreign uninsured motorists if the foreign motorists' vehicles were not registered in Louisiana.⁴⁸ Whether Oklahoma courts would refuse to extend Oklahoma's "no pay, no play" statute under similar circumstances is an open question. However, there is a strong argument that the failure to apply the law would violate Oklahoma public policy. This is true regardless of whether a court applies the *lex loci contractus* rule or the most significant relationship test.⁴⁹ Simply put, the spirit and purpose of the law is to protect Oklahoma drivers, and an Oklahoma defendant would be penalized merely because the claimant resided out-of-state. Moreover, the foreign plaintiff would receive a benefit to which Oklahoma citizens are not entitled.

Undoubtedly, other issues beyond the scope of this article will arise.⁵⁰ Practitioners should be aware of the similar laws and persuasive case law from other jurisdictions. At the same time, however, attorneys should also understand that Oklahoma's law is unique; it has taken bits and pieces from other statutes, but it is certainly not patterned after any specific law. Thus, the lawyers and judges here will have to use their own Oklahoma ingenuity to mold and interpret any ambiguities in the statute.

1. See 47 O.S. §7-116 (2011) (effective Nov. 1, 2011).

2. Alaska Stat. §09.65.320 (2004).

3. Cal. Civ. Code §3333.4 (1996).

4. Iowa Code §321A.5 (2006).

5. Kan. Stat. §40-3130 (2011).

6. La. Rev. Stat. §32:866 (2007).

7. Mich. Comp. Laws §500.3113 (1986).

8. N.J. Rev. Stat. §39:6A-4.5 (2003).

9. N.D. Cent. Code §26.1-41-20 (2003).

10. Or. Rev. Stat. §31.715 (1999).

11. 47 O.S. §7-116(A) ("[T]he maximum amount that a plaintiff or claimant may receive, if the plaintiff or claimant is not in compliance with the Compulsory Insurance Law, shall be limited to the amount of

medical costs, property damage, and lost income and shall not include any award for pain and suffering.”).

12. See, e.g., *Edwards v. Chandler*, 1957 OK 45, 308 P.2d 295.

13. See 47 O.S. §7-116(B)(5).

14. See 23 O.S. §9.1(B).

15. 47 O.S. §7-116(A).

16. 47 O.S. §7-116(B)(1).

17. 47 O.S. §7-116(B)(1)(a).

18. 47 O.S. §7-116(B)(1)(b).

19. See Alaska Stat. §09.65.320(b)(1); Cal. Civ. Code §3333.4(c); Kan. Stat. §40-3130(b); La. Rev. Stat. §32:866(3)(a)(i); N.J. Rev. Stat. §39:6A-4.5(b); Or. Rev. Stat. §31.715(5)(c).

20. 47 O.S. §7-116(B)(2).

21. 47 O.S. §7-116(B)(3).

22. 47 O.S. §7-116(B)(4).

23. See *id.*

24. 47 O.S. §7-116(B)(5).

25. See 21 O.S. §9; 12 O.S. §2609.

26. See Alaska Stat. §09.65.320 (felony, intentional tort and fleeing the scene); Cal. Civ. Code §3333.4 (felony); Iowa Code §613.20 (felony); Kan. Stat. §40-3130 (felony); La. Rev. Stat. §32:866 (felony, intentional tort, and fleeing the scene); Mich. Comp. Laws §500.3113 (intentional tort); N.J. Rev. Stat. §39:6A-4.5 (intentional tort); N.D. Cent. Code §26.1-41-20 (intentional tort); Or. Rev. Stat. §31.715 (felony).

27. 47 O.S. §7-116(B)(6).

28. *Id.*

29. *Id.*

30. 47 O.S. §7-116(B)(7).

31. *Id.*

32. *Id.*

33. 47 O.S. §7-116(C) (“Each person who is involved in the accident which is the basis for the action or claim by the plaintiff or claimant and who is found liable for damages to the plaintiff or claimant may assert the limitation of recovery provided for in subsection A of this section, unless the provisions of subsection B of this section apply. The motor vehicle liability insurer of the person asserting the limitation of recovery also may assert the limitation.”).

34. La. Rev. Stat. §32:866(B); Or. Rev. Stat. §§31.715(1)-(2).

35. See La. Rev. Stat. §32:866(B); La. Code Civ. Proc. Art. 1005 (2009).

36. Or. Rev. Stat. §31.715(1)-(2).

37. *Lawson v. Hoke*, 77 P.3d 1160, 1162 (Or. Ct. App. 2003).

38. *Johnson v. Henderson*, 899 So. 2d 626, 627-28 (La. Ct. App. 2005).

39. 47 O.S. §7-116(C).

40. 19 P.3d 1196 (Cal. 2001).

41. *Id.* at 1199-200.

42. See *id.* at 1198-99.

43. See *id.* at 1202.

44. *Id.*

45. Compare Cal. Civ. Code §3333.4(a) (applying limitation to “any action to recover damages arising out of the operation or use of a motor vehicle...”), with 47 O.S. §7-116(A) (applying limitation to “any civil action involving the operation of a motor vehicle...”).

46. See *Hodges v. Super. Ct.*, 980 P.2d 433 (Cal. 1999).

47. *Id.* at 437.

48. See 178 F. Supp. 2d 670, 673 (E.D. La. 2001).

49. See 15 O.S. §162 (contract choice of law rule); *Bernal v. Charter County Mut. Ins. Co.*, 2009 OK 24, ¶ 12, 209 P.3d 309, 315 (tort choice of law rule).

50. One issue certainly beyond the scope of this article is the constitutionality of “no pay, no play” statutes. Suffice it to say, California, Louisiana, Michigan, and New Jersey have all addressed various constitutional issues, with each state upholding the constitutionality of their respective statutes. See *Quackenbush v. Super. Ct.*, 70 Cal. Rptr. 2d 271 (Cal. Ct. App. 1997); *Progressive Sec. Ins. Co. v. Foster*, 711 So.2d 675 (La. 1998); *Gersten v. Blackwell*, 314 N.W.2d 645 (Mich. Ct. App. 1982); *Caviglia v. Royal Tours of Am.*, 843 A.2d 125 (N.J. 2004); *Lawson v. Hoke*, 119 P.3d 210 (Or. 2005).

ABOUT THE AUTHORS



Philip R. Bruce primarily practices in the areas of business law, employment law, insurance defense and general litigation at the Tulsa law firm of Savage, O'Donnell, Affeldt, Weintraub & Johnson. He graduated from the University of Kentucky in 2008 and earned his J.D. from the OU College of Law in 2011, where he served as the symposium and articles editor for the *Oklahoma Law Review*.

Paul M. Kolker is a partner and shareholder at Pignato, Cooper, Kolker & Roberson PC where he devotes 100 percent of his time to civil litigation. He is a 2000 graduate of the OU College of Law.

Oklahoma Bar Journal Editorial Calendar

2012

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

■ August
Family Law
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The Dodd-Frank Act and the Future of State Commercial Transactions Law

By Alvin C. Harrell

INTRODUCTION

The 2010 enactment of the Dodd-Frank Act¹ has injected a whole new world (or several worlds, as noted below) of federal administrative law into many routine economic transactions.² While this is a trend that has been underway for decades,³ the Dodd-Frank Act represents another leap in that direction, with implications for state law, lawyers, businesses and consumers.

Despite obvious similarities between our state and federal systems of law, there are also significant differences, and those differences have widened over the past 100 years. Among other things, much of state law is either common law or common law-based,⁴ including basic elements of our traditional social compact as embodied in civil procedure and the substantive law of contracts, property and torts. This system of laws and doctrines protects party autonomy, property and personal rights, and private remedies. In combination with constitutional concepts of federalism, due process, individual rights and limited government,⁵ this has provided Americans with a nearly unique state law environment for private commercial and consumer transactions, including, *e.g.*, an emphasis on custom, usage, private agreements, and judicial remedies.⁶

In contrast, federal law (at least for commercial and consumer transactions) is largely and increasingly administrative law, typically involving a detailed and comprehensive normative structure with extensive public mandates administered by an authoritative regulatory agency.⁷

For at least 100 years, in fits and starts but seldom receding, this federal administrative state has been expanding at the expense of state and local law.⁸ In the area of consumer financial services, this trend has accelerated since the late 1960s,⁹ with a major expansion since 2006,¹⁰ and took another quantum leap forward with the Dodd-Frank Act¹¹ and creation of the Bureau of Consumer Financial Protection (CFPB).¹² These 2010 changes (generally effective July 21, 2011¹³) are likely to have significant, practical implications, not only for consumer and commercial transactions law, the industry, and consumers, but also for the legal profession and the future of state laws, agencies and courts.

DIFFERENT LAWS, DIFFERENT WORLDS

The New Non-Uniformity

Increasingly, private parties, issues, and transactions in the United States are subject to significantly different systems of rules, depending on whether they are operating primarily under state law or within the direct jurisdiction of a federal administrative agency. As the latter jurisdiction has expanded it has become more

difficult to avoid, but lawyers and other private parties whose daily activities traditionally have fallen outside its borders may be slow to react or even unaware of these changes.¹⁴ As noted here, the Dodd-Frank Act accelerates this trend. As a consequence, as discussed below (and despite the nationwide uniformity that is achieved by federal law), lawyers, consumers, creditors, merchants and other market participants may find themselves in very different legal worlds, depending on how their transaction is structured.¹⁵

Door Number One – CFPB Supervision

Behind this door lies the new legal world for non-depository “covered persons,” *i.e.*, consumer financial services providers (and their customers), that engage in certain types of activities and therefore fall within the direct supervisory and examination authority of the CFPB.¹⁶ For some of these service providers (*e.g.*, non-depository home mortgage loan originators), this is a significant reversal of fortune as compared to prior law, taking them from a primarily state-regulated legal environment directly to the world of comprehensive federal supervision, regulation and examination.¹⁷

This reinforces (and codifies) recent, significant changes in the home lending markets, with consolidation and federalization of the residential mortgage industry being among the most obvious. Already, a handful of federally-regulated financial institutions plays a dominant role in originating home mortgage loans (supported by federal funding sources), and this has been accompanied by an exodus of private risk-capital and independent, local mortgage lenders, leaving the mortgage markets largely dependent on federal agencies and federally-supervised (and subsidized) funding sources.¹⁸ This is a very different world (for lenders and borrowers alike) as compared to traditional American home mortgage markets and lending transactions.¹⁹

Door Number Two – Enumerated Federal Laws

Behind this second door lies a CFPB regulatory authority that is broader (covering a wider and seemingly comprehensive set of enumerated federal laws²⁰), yet can be considered to have less depth in the sense that CFPB examination authority may be limited (*e.g.*, as regards small banks²¹) and the regulatory authority may be limited by the scope of the enumerated consumer laws (*see, e.g.*, the scope provisions of the Truth in Lending Act (TILA)²²). Moreover,

while the resulting CFPB jurisdiction is clearly broad, it is not unlimited, and this may allow transactions to be structured in ways that account for that jurisdictional reach.

The obvious example is a business plan designed to avoid consumer financial services transactions. While not all of the enumerated consumer laws are limited to consumer transactions,²³ many are; this means that a business plan limited to commercial credit transactions should be largely outside the scope of the CFPA and the CFPB, and perhaps governed primarily by traditional state laws. Similarly, the focus of the enumerated consumer laws (and therefore the CFPA and the CFPB) is financial services transactions (with a focus on credit); cash sales transactions (by a seller not affiliated with or referring customers to a creditor²⁴) also should be significantly outside the scope of the CFPA and the CFPB.²⁵

For those parties and transactions within the scope of the enumerated consumer laws (and the CFPB’s authority to curb unfair, deceptive and abusive practices²⁶), there is considerable uncertainty, due to the broad, discretionary (and in some ways unprecedented) authority of the CFPB.²⁷ At the time of this writing probably no one (at least outside the CFPB) can say for sure how this authority will be interpreted and used.²⁸ Obviously, some traditional practices, state laws and legal standards are newly at risk.²⁹ Participants in this world of enumerated federal laws and other consumer transactions are likely to find at least some of their precepts challenged, and may find themselves in a legal environment that is different from the past in important ways.

Door Number Three – State Law

Here, perhaps, is a surprise — both for those who may be unaware they are entering doors number one and two, and for those eager that everyone else do so: Despite the quantum leaps forward in the scope of federal administrative law in recent decades (culminating, to date, in the Dodd-Frank Act), a significant range of transactions remains subject to traditional state law legal principles.³⁰

Partly this is because the legal “marketplace” has spoken, and often favors traditional private transactions, state law, and judicial remedies, to the extent they remain available. Two illustrations should suffice. First, despite the extensive public and private statutory remedies available under federal consumer finan-

cial laws, such as the TILA, much consumer-related litigation is still conducted in state court under traditional state laws (including contract, property, and tort law, state consumer protection laws such as the Uniform Consumer Credit Code (U3C), and the UCC³¹). In some of these cases, federal law is a mere adjunct to the underlying state causes of action.³² Partly this may reflect plaintiffs' preference for a favorable judicial forum (*i.e.*, forum shopping). But partly it is also a reflection of the fact that state legal norms and remedies often are more user-friendly, on both sides of the transaction.³³

Another example can be found in the context of check deposits and collections, involving the relationship between Federal Reserve Board (FRB) Regulation CC³⁴ and UCC Articles 3 and 4.³⁵ The scope of Regulation CC is broad as to aspects of the check collection process,³⁶ and it clearly preempts state law such as the UCC as to any inconsistency.³⁷ Yet, the overwhelming majority of the checking system case law is governed by the UCC,³⁸ and this case law is extensive despite the diminishing role of such transactions.³⁹ While all of this ultimately may change, as federal administrative law increasingly preempts the UCC,⁴⁰ for now it demonstrates a preference for state law, transactions and remedies on the part of many lawyers, merchants, creditors and consumers.

So, it is quite possible that such parties will desire to continue having their legal relations governed primarily by state law, rather than federal regulation. While this may not always be possible, especially for consumers, to the extent that it is possible private transactions may be increasingly differentiated by whether they are subject primarily to state or federal law — *e.g.*, according to the strata noted here: Some transactions (*e.g.*, residential home mortgage loans), possibly aided by federal subsidies or constrained by federal regulation, will go through door number one and be limited to transactions with large entities pursuant to comprehensive federal supervision;⁴¹ other transactions (*e.g.*, vehicle loans) may be conducted with consumers by a broader range of entities, pursuant to federal consumer financial laws with a limited scope, such as TILA, and

“A remaining important legal issue for all concerned is: how to determine which door the parties are entering.”

therefore will pass through door number two;⁴² still other transactions will pass through door number three and be covered primarily by traditional state laws and legal principles. Each of these transaction categories will be subject to a very different legal environment.

A remaining important legal issue for all concerned is: how to determine which door the parties are entering. This is likely to be a significant issue for practitioners, businesses and consumers in the years ahead, even more so than in the past. For example, the scope of TILA has seemed to diminish in importance in recent years, as creditors came to appreciate the litigation benefits of the TILA disclosures and embraced them almost across the board.⁴³ That may now change, if TILA under the CFPB is perceived to carry with it an increasingly onerous compliance burden.⁴⁴ Thus, where possible, it may become more important to conduct transactions (*e.g.*, cash transactions and commercial loans) outside the scope of TILA, in order to avoid unnecessary legal and compliance costs, risks, liabilities and other burdens. The implications of this are discussed below.

IMPLICATIONS FOR STATE LAW

A long-standing benefit of our common law-based federalist system has been the ability of private parties to structure transactions in creative ways so as to fit within (or outside of) applicable legal mandates.⁴⁵ This task has become increasingly difficult, and at the same time increasingly important, as federal administrative law has expanded these mandates in recent years. This requires consideration of the extent to which state laws (such as the UCC and related laws) still apply in an age of seemingly comprehensive federal administrative law and regulation.⁴⁶

The UCC remains the foundational state commercial law governing personal property transactions⁴⁷ and, of course, it has long been subject to extensive federal preemption⁴⁸ (or incorporation⁴⁹). But, as noted, and despite this preemption, UCC law and issues have continued to play a predominant role in private transactions (and litigation⁵⁰). Thus, an important question is: How and to what extent will

this continue to be the case in our emerging 21st century legal environment?

At this point, of course, the larger part of any answer is necessarily limited to speculation (or worse, pure guesswork), but that does not mean the exercise is irrelevant or useless. So, the following observations are offered.

As noted, the focus of the CFPA and CFPB is consumer protection,⁵¹ while the UCC governs commercial as well as many consumer transactions. Therefore, assuming Congress does not decide to wholly preempt state commercial laws, and assuming the CFPB does not branch too far in that direction,⁵² many commercial transactions and issues should continue to be governed largely by state law including the UCC. This should include, *e.g.*: commercial sales of goods (UCC Article 2); commercial equipment leases (Article 2A); negotiable instruments in commercial transactions (including promissory notes and drafts) (Articles 3 and 4);⁵³ letters of credit (Article 5);⁵⁴ documents of title (Article 7);⁵⁵ investment securities (Article 8);⁵⁶ and commercial personal property secured transactions (and related: consignments; sales of accounts, chattel paper, payment intangibles and promissory notes; agricultural lien priorities, etc.) (Article 9).⁵⁷

Thus, parties limiting themselves to commercial-purpose transactions may have legal relationships largely outside the scope of CFPB jurisdiction and rules,⁵⁸ thereby remaining within the scope of state laws including the UCC and traditional federal agencies such as the FRB and the Securities Exchange Commission (SEC) (and/or their state government counterparts).⁵⁹ Of course, this may be subject to change as to individual issues or UCC Articles. For example, in 2008 the sponsors of the UCC⁶⁰ formed a Study Committee on Financial Institution Regulation and Payment Issues⁶¹ to consider the need for possible revisions to UCC Articles 3 and 4.⁶² This committee included participation by a variety of federal agencies, including the FRB. While this project has now been postponed, it is possible that the results of such a project ultimately may include significant changes to UCC Article 3, perhaps affecting commercial as well as consumer transactions and reflecting an increased role for federal regulatory agencies.⁶³

Another possible example of an increased federal role in the UCC involves UCC Article 9. The rules in Article 9 Part 6 govern enforce-

ment of both commercial and consumer security interests (although in some instances there are separate provisions for each⁶⁴). If federal agencies, such as the CFPB or the FTC,⁶⁵ decide to preempt parts of Article 9 Part 6 as to consumer transactions (or even more broadly), *e.g.*, by issuing rules that designate certain prevailing practices as unfair, deceptive or abusive,⁶⁶ the spillover effects could affect commercial transactions as well. The same can be said for aspects of UCC Article 2 (governing sales of goods), even though the scope of the CFPB is directed at financial transactions.

Broadly speaking, then, personal property transactions governed by the UCC Articles or state laws directed at largely commercial transactions, and especially those that already operate in conjunction with existing federal agency law (*e.g.*, UCC Articles 4A, 5, 7 and 8),⁶⁷ should be mostly unaffected by the CFPA and related activities of the CFPB. The same should be true of commercial real estate transactions. Non-credit consumer transactions (*e.g.*, sales of goods under UCC Article 2) may be similarly unaffected, subject always, however, to the possible designation of a practice as posing risks to consumers or being unfair, deceptive or abusive.⁶⁸ Commercial transactions under UCC Article 9 should continue to be governed by that law, again subject to the designation of a practice as posing risks to consumers or being unfair, deceptive or abusive (and other potential spillover effects of federal rules directed at, *e.g.*, Article 9 Part 6). But interested parties relying on these distinctions will need to be aware of the respective and evolving parameters of state and federal laws, an increasing challenge given that these issues are in such a dramatic state of flux.

CONCLUSION

This analysis suggests that a significant (though diminished) swath of private transactions (primarily commercial and non-financial transactions) will remain largely subject to the UCC and other state laws.⁶⁹ This may be important, *e.g.*, to lawyers, businesses and their customers that rely on the intuitive, user-friendly nature of state contracts, tort and property laws (and the UCC) and cannot afford the costs and burdens of monitoring and compliance with the complex and ever-changing world of federal administrative law.⁷⁰

For many businesses, the alternative to state law is to go out of business, or at least to dis-

continue the lines of business subject to comprehensive federal laws and regulations.⁷¹ The result is likely to be a continuing trend toward consolidation (and concentration) in those industries (such as banking and home mortgage lending) that cannot escape the comprehensive federal regulatory umbrella.⁷² In some sectors of these markets, the results may be an economic concentration that will leave segments of society unserved by the private economy, and dependent on other sources such as the federal government.⁷³

But for those lawyers, businesses and customers who are able to fit their transactions into categories that are at least partly outside the scope of a seemingly comprehensive federal administrative law system — barring unforeseen developments — the UCC and other state common law-based legal structures will still exist⁷⁴ to provide a foundation for consensual private transactions. It is likely that identifying and understanding the boundaries and relationships of these strictures, transactions and issues will be an increasingly important part of the lawyer's role.

1. The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010).

2. See, e.g., *infra* notes 16 & 17.

3. See, e.g., Barkley Clark, "Secured Transactions," 42 *Bus. Law.* 1333, 1333-34 (1987) (FORWARD: GROWING FEDERAL PRESENCE IN THE LAW OF SECURED TRANSACTIONS).

4. Including codifications such as the Uniform Commercial Code (UCC).

5. For a recent discourse on these issues in a case on otherwise unrelated (criminal law) issues, see, e.g., *Bond v. United States*, 564 U.S. ___, 131 S.Ct. 2355, 2011 U.S. LEXIS 4558, 79 USLW 4490 (U.S. S.Ct. June 16, 2011) (illustrating the uniqueness of our federalist system). For another case, although the decision in the case is largely of only historical interest, at another point in the chronological spectrum, see also *Erie R.R.V. Tompkins*, 304 U.S. 64, 78 (1938) ("There is no federal general common law."). These issues are an important part of what is sometimes called "American exceptionalism." See, e.g., Victor Davis Hanson, Commentary, "a toast to American exceptionalism," *Oklahoman*, July 1, 2011, at 10A.

6. Of course, this emphasis has never been total; but it has been significant. See, e.g., UCC §1-103(a)(3).

7. Again, this is not a total emphasis, as illustrated by the extensive private litigation under the federal Truth in Lending Act. See, e.g., ROHNER & MILLER, *infra* note 22, Chs. 1 & 12. But this is correct as a generalization.

8. See, e.g., Clark, *supra* note 3.

9. A notable prior leap in this direction occurred with enactment of the federal Consumer Credit Protection Act, Pub. No. 90-321 (1968), but there have been many other examples since. See, e.g., ROHNER & MILLER, *infra* note 22, Ch. 1. Regarding federal regulation of the housing and mortgage markets, see also, e.g., Alvin C. Harrell, "The Great Credit Contraction: Who, What, When, Where and Why," 26 *Ga. St. Univ. L. Rev.* 1209 (2010).

10. See Harrell, *supra* note 9; *infra* notes 18-19.

11. See *supra* note 1.

12. *Id.*, Title X, §§1001-1067 (The Consumer Financial Protection Act, or CFPA).

13. See 75 Fed. Reg. 57252 (Sept. 20, 2010) (establishing the "designated transfer date" for transfer of regulatory functions to the CFPB).

14. In your author's experience, lawyers accustomed to the state law world of private contracts, negotiations, and judicial remedies sometimes are ill-prepared for representing clients in the very different world of federal administrative agencies.

15. This nonuniformity is more commonly recognized in the context of payment transactions (where this nonuniformity is sometimes cited as evidencing a need for a further expansion of federal law, to eliminate the disparities). See, e.g., Mark E. Budnitz, "Payment Systems Update 2005: Substitute Checks, Remotely-Created Items, Payroll Cards and Other New-Fangled Products," 59 *Consumer Fin. L.Q. Rep.* 3, at 9 (2005) (raising this issue). See also *infra* this text and notes 31-37. However, as discussed below, such nonuniformity is a far more prevalent phenomenon than this narrow example suggests. Ironically, then, the result of increasing federalization is sometimes more rather than less nonuniformity, although it is a nonuniformity based on parties and transactions rather than state borders.

16. Section 1002(b) of the Dodd-Frank Act, *supra* note 1, defines the term "covered person" to include any provider of consumer financial products or services (as defined at *id.* §1002(5)). Section 1002(15) denotes 30 activities that are deemed to be financial products or services subject to CFPB authority. Covered persons are subject to regulations issued by the CFPB pursuant to 18 "enumerated consumer laws" (see *id.* §1002(12)) or other "federal consumer financial law[s]" (as defined at *id.* §1002(14)), but are not necessarily subject to regular reporting requirements and examinations by the CFPB unless the covered person is also within the scope of Dodd-Frank Act §1024. The latter include covered persons who: originate, broker or service residential mortgage loans; provide mortgage loan modification or foreclosure relief services; are "larger participants" (to be defined by regulation); are found by the CFPB to be involved "in conduct that poses risks to consumers..."; make "private education loans[s]"; or make "payday loan[s]." See *id.* §1024(a). The inclusion of "conduct that poses risks to consumers" apparently gives the CFPB considerable leeway to expand its own jurisdiction. There is also a list of parties excluded from the CFPB, including lawyers while engaged in the practice of law. See *id.* §§1027-1029.

17. In some ways, the scope of this CFPB authority is relatively narrow (see *supra* note 16), but within that scope the authority is very deep. See, e.g., John L. Ropiequet, Christopher S. Naveja & Jason B. Hirsh, "The Dodd-Frank Act Changes the Consumer Finance Landscape," 64 *Consumer Fin. L.Q. Rep.* 284 (2010); Richard P. Hackett & Frank H. Bishop Jr., *Summary of the Consumer Financial Protection Act of 2010*, *id.*, at 295. It is sometimes said that home mortgage lenders were previously "unregulated." In your author's experience, this is a misnomer, as mortgage lending has long been one of the most heavily-regulated activities, at both state and federal levels. See also Niall Ferguson & Ted Forstmann, Opinion, "Back to Basics on Financial Reform," *Wall Str. J.*, April 23, 2010, at A19 ("[T]he crisis of 2007-2009 originated in one of the most highly regulated sectors of the financial system: the U.S. residential mortgage market."). See also Harrell, *supra* note 9. But there can be little doubt that the new world of CFPB supervision and examination is an entirely different matter.

18. See, e.g., Alvin C. Harrell, Commentary, "The Perils of Public Finance," 64 *Consumer Fin. L.Q. Rep.* 253, 254-56 (2010).

19. *Id.*, at 256-58; see also Nick Timiraos & Maurice Tamman, "Tighter Lending Crimps Housing," *Wall Str. J.*, June 25-26, 2011, at A1.

20. See *supra* note 16.

21. Compare, e.g., the direct and exclusive examination authority, with respect to federal consumer financial laws, as to insured depository institutions with total assets over \$10 billion (Dodd-Frank Act, *supra* note 1, §1025) with the CFPB's limited examination authority over smaller depository institutions (*id.* §1026).

22. 15 U.S.C. §§1601-1666j. See, e.g., RALPH J. ROHNER & FRED H. MILLER, *TRUTH IN LENDING* Ch. 2 (2000 & 2009 Suppl.). But see *supra* note 16 (referencing CFPB jurisdiction over other "conduct that poses risks to consumers"); *infra* notes 25 & 65.

23. See, e.g., the Equal Credit Opportunity Act (ECOA), 15 U.S.C. §§1691-1691f, designated an enumerated consumer law at Dodd-Frank Act, *supra* note 1, §1002(12)(D).

24. See 16 CFR pt. 433 (2010) (FTC Holder in Due Course Regulations).

25. See *supra* note 16; Dodd-Frank Act, *supra* note 1, §1027 (excluding cash sales of goods and services not covered by a federal consumer financial law, among other things). However, this does not bind the Federal Trade Commission (FTC). See FTC Act, 15 U.S.C. §45; Dodd-Frank Act, *supra* note 1, §1061(b)(5)(C) (retained authority of the FTC). See also *infra* notes 26 & 66; see generally *infra* this text and notes 30-44 (Door Number Three – State Law) and 45-68 (Implications for State Law).

26. See Dodd-Frank Act, *supra* note 1, §1031. See also *id.* §1405 (abusive, unfair, deceptive and predatory mortgage practices); *supra* note 16 (referencing the CFPB authority to regulate "conduct that poses risks to consumers").

27. See *supra* notes 16-17.

28. But see *infra* note 51.

29. See *infra* Part III. Your author is aware that a salient feature of the Dodd-Frank Act is its new limitations on federal preemption of

state law by the bank regulatory agencies. *See, e.g.,* Roland E. Brandel & Jeremy R. Mandell, "Preemption under the Consumer Financial Protection Act of 2010," 64 *Consumer Fin. L.Q. Rep.* 307 (2010). However, the preemption authority inherent in the CFPB jurisdiction over enumerated consumer laws and federal consumer financial laws opens the door to increased federal preemption of a different kind.

30. *See supra* this text and notes 23-25; discussion below; and *infra* this text and notes 45-68 (Implications for State Law).

31. For a sampling of the latter, *see* "Uniform Commercial Code Issues and Developments," 64 *Consumer Fin. L.Q. Rep.* 316 (2010); "Survey-Uniform Commercial Code," 65 *Bus. Law.* 1205 (2010). The U3C has been enacted in Oklahoma and is codified at Tit. 14A Okla. Stat. §§1-101 – 9-101.

32. *E.g.,* alleging a TILA violation as the basis for a state-law fraud claim.

33. This includes but is not limited to requirements for documentation of the transaction. *Compare, e.g.,* the documentation required for a small commercial real estate loan, governed primarily by state law, with that of a consumer home mortgage loan, governed heavily by federal law. As another example, one impetus for the Dodd-Frank Act, *supra* note 1, at least among plaintiffs' lawyers, was a desire to limit preemption of state laws by federal banking agencies. *See, e.g.,* Brandel & Mandell, *supra* note 29. Partly, it should be emphasized, this preference for state law may arise because the state law issues are governed by widely-accepted and easily understood common law principles and well-written uniform laws such as the U3C and UCC. But this merely emphasizes the point made in the text. Sometimes, it should be noted, the pressure for federal preemption comes from large, nationwide creditors seeking to overcome the patchwork of unrealistic and nonuniform laws in some states. Thus, a failure of the states to update and rationalize their laws is an invitation to pressures for federal preemption.

34. 12 CFR pt. 229. *See also infra* note 35, and *infra* this text and notes 45-68 (Implications for State Law).

35. *See, e.g.,* FRED H. MILLER & ALVIN C. HARRELL, THE LAW OF MODERN PAYMENT SYSTEMS AND NOTES ¶ 8.04 (2002 & 2008 Suppl.); *supra* note 14.

36. *See* 12 CFR pt. 229, Subpart C, 12 CFR §§229.30 – 229.43; Miller & Harrell, *supra* note 35.

37. *See supra* note 35. This is not a new issue. *See, e.g.,* Alvin C. Harrell, "UCC Article 4 and Regulation CC: Can They Ever be Reconciled?," 54 *Consumer Fin. L.Q. Rep.* 236 (2000).

38. For an illustrative sampling, *see, e.g.,* Alvin C. Harrell & Robert T. Luttrell III, "Current Issues in Negotiable Instruments Law, Deposit Accounts and Payment Transactions," 64 *Consumer Fin. L.Q. Rep.* 316 (2010); *supra* note 31.

39. *See, e.g.,* Robert T. Luttrell III & Alvin C. Harrell, "Update on Deposit Account, Negotiable Instrument, and Payment System Issues and Developments," 65 *Consumer Fin. L.Q. Rep.* [in press] (2011).

40. Potentially with a corresponding diminution in state law litigation, a trend that may impact the legal profession. *See, e.g., supra* notes 17, 29 & 33; *infra* this text and notes 45-68 (Implications for State Law).

41. *See, e.g.,* Robert A. Cook & Meghan Musselman, "Summary of the Mortgage Lending Provisions in the Dodd-Frank Wall Street Reform and Consumer Protection Act," 64 *Consumer Fin. L.Q. Rep.* 231 (2010); *supra* this text and notes 16-19 (Door Number One – CFPB Supervision). Obviously, this is a model followed in numerous other countries, but not (until recently) in the United States. *See, e.g.,* Harrell, *supra* note 18, at 256-257. Today, it is the new normal. *See, e.g., id.;* Timiraos & Tamman, *supra* note 19.

42. *See supra* this text and notes 20-29 (Door Number Two – Enumerated Federal Laws).

43. *See, e.g.,* ROHNER & MILLER, *supra* note 22, Ch. 2.

44. *See, e.g.,* sources cited *supra* at notes 16 & 17; *supra* this text at notes 29-30; *supra* note 37.

45. *See generally supra* note 5. Without suggesting a direct parallel, it can be noted that this phenomenon is not limited to the United States. *See, e.g.,* Andrew Collier, Opinion, "How China's Banks Break the Rules," *Wall Str. J.*, June 29, 2011, at A15. A significant difference, however, is that in the United States this has been possible within the law.

46. *See also supra* notes 26 – 29 and accompanying text.

47. *See, e.g.,* UCC §2-102 (Article 2 applies to "transactions in goods"); *id.* §9-109(a)(1) (Article 9 applies to "a transaction, regardless of form, that creates a security interest in personal property"). Other UCC Articles and scope provisions complete the almost comprehensive UCC coverage of personal property transactions, with the primary exception of sales, licenses and leases of general intangibles (some of which are covered by the Uniform Computer Information Act (UCITA), as applicable).

48. *See, e.g.,* the impact on UCC Articles 3 and 4 of: FRB Regulation CC (12 CFR pt. 229); and the Check Clearing for the 21st Century Act,

12 U.S.C. §§5001-5018 ("Check 21"). *See also supra* this text and notes 3, 15, 34-40.

49. *See, e.g.,* FRB Regulation J, 12 CFR pt. 210 (incorporating provisions of UCC Article 4A).

50. Again, the UCC Article 4/FRB Regulation CC example is instructive. *See, e.g., supra* this text and notes 34-40.

51. *See supra* note 16. However, as also noted, some of the enumerated consumer laws, *e.g.,* the ECOA, cover commercial as well as consumer transactions. *See supra* note 23. *See also supra* note 25, and *infra* note 65. As reported in the press, the CFPB has announced that it will focus initially on the following areas of law: "debt collection; consumer reporting; consumer credit and related activities; money transmitting; check cashing and related activities; prepaid cards; and debt-relief services... [plus] automobile loans and personal loans...." *See* Deborah Solomon & Maya Jackson Randall, "Agency Outlines Role," *Wall Str. J.*, June 24, 2011, at C3.

52. *See, e.g., supra* note 16 (CFPB authority over "conduct that poses risks to consumers").

53. *But see supra* this text and notes 34-40 and 48; discussion below at notes 60-63.

54. Subject, as now, to related laws such as: the Uniform Customs and Practice for Documentary Credits (UCP); the United Nations Convention on Independent Guarantees and Stand-by Letters of Credit; and Office of the Comptroller of the Currency (OCC) Interpretive Rulings, 12 C.F.R. §§7.1016 & 7.1017. *See generally* Alvin C. Harrell & Fred H. Miller, Commercial Transactions, Documents of Title, Letters of Credit, 15 WEST'S LEGAL FORMS Ch. 8 (4th ed. 2009).

55. Subject to related federal laws, such as: the United States Warehouse Act, 7 U.S.C.A. §§241 *et seq.*; the Federal Bills of Lading Act, 49 U.S.C.A. §§80101-80116; the Carmack Amendment to the Interstate Commerce Act, 49 U.S.C.A. §§11706, 14706 & 15906; the Harter Act, 46 U.S.C.A. §§190-195; and the Carriage of Goods by Sea Act, 46 U.S.C.A. §§1300-1315. *See generally* the administrative regulations applicable to interstate bills of lading, 49 C.F.R. §§1035.1 *et seq.*; Alvin C. Harrell & Fred H. Miller, Commercial Transactions, Documents of Title, Letters of Credit, 15 WEST'S LEGAL FORMS Ch. 1 (4th ed. 2009).

56. Subject to federal securities laws. For illustrations of the continuing relevance of UCC Article 8, *see, e.g.,* Howard Darmstadter, "Investment Securities," 65 *Bus. Law.* 1283 (2010).

57. *See* UCC §9-109 (scope of Article 9).

58. This is not limited to personal property transactions under the UCC; much the same can be said for commercial real estate transactions, governed by state real property law rather than the UCC. *But see supra* notes 50 & 52.

59. For banks, this includes state and federal bank regulatory agencies.

60. The Uniform Law Commission (ULC) and American Law Institute (ALI).

61. The chair was Professor Fred H. Miller and the reporter was Professor Linda J. Rusch.

62. While the initial focus was payment issues, the scope was subsequently redirected to focus on mortgage notes and loans, in response to the foreclosure crisis.

63. *See, e.g.,* Committee memorandum of Oct. 6, 2009, available at www.mcusl.org; Fred H. Miller, "UCC Study Committee on Payment Systems Postponed," 65 *Consumer Fin. L.Q. Rep.* 437 (2011).

64. *See, e.g.,* UCC §§9-613 and 9-614.

65. The FTC has, and under the Dodd-Frank Act retains (either exclusively or in conjunction with the CFPB), enforcement authority regarding: Section 5 of the FTC Act, 15 U.S.C. §45; TILA, 15 U.S.C. §§1601-1666j; the Consumer Leasing Act, 15 U.S.C. §§1667-1667f; Regulation Z, 12 CFR pt. 226; the ECOA, 15 U.S.C. §§1691-1691f and Regulation B, 12 CFR pt. 202; the Electronic Fund Transfer Act, 15 U.S.C. §§1693-1693r and Regulation E, 12 CFR pt. 205; and the Gramm-Leach-Bliley Act, 15 U.S.C. §§6801-6809. *See, e.g.,* FTC Public Roundtables: Protecting Consumers in the Sale and Leasing of Motor Vehicles, 76 Fed. Reg. 14014, n. 2 (March 15, 2011) (notice announcing public roundtables). *See also supra* note 25.

66. *See id.*, and *supra* notes 16 and 26.

67. *See supra* notes 47-50.

68. *See supra* notes 16, 25, 26, 51 & 65.

69. Consumer transactions will also remain subject to some state laws, including consumer protection laws, but this will be subject to an increasingly complex (and perhaps restrictive) overlay of federal regulations and supervision. *See, e.g., supra* notes 16-17, 25-27, and 65.

70. *See, e.g.,* Opinion, Review & Outlook, "Not So Cool Rules," *Wall Str. J.*, May 28-29, 2011, at A14 (noting the cost and impact of the federal regulatory burden on American businesses).

71. *Id.* In some instances that may, in fact, be the intention.

72. *See supra* this text and notes 16-19 (Door Number One – CFPB Supervision).

73. Perhaps the experience with national Prohibition offers some relevant lessons. *See, e.g.,* Opinion, Thomas Fleming, "Prohibition: A Cautionary Tale," *Wall Str. J.*, Jan. 4, 2010, at A17. *See also:* Alvin C. Harrell, "Commentary: Treasury/HUD Report on Reforming America's Housing Finance Market," 65 *Consumer Fin. L.Q. Rep.* 208 (2011); Fred H. Miller, "Prime Interest Rates for Subprime Borrowers?," 26 *Ga. St. Univ. L. Rev.* 1259 (2010); William M. Clark, "An Economic Analysis of the Oklahoma Installment Loan Industry," 60 *Consumer Fin. L.Q. Rep.* 487 (2006); Harrell, *supra* note 18.

74. At least in some states. Of course, states wishing to be in this category, so as to foster commercial transactions and economic growth, will need to update their commercial transaction laws by, *e.g.,* enacting the 2010 amendments to the uniform text of UCC Article 9 and companion reforms such as the Uniform Certificate of Title Act (UCOTA). A state's failure to maintain updated commercial transaction laws will be an invitation to increasing irrelevance. *See, e.g., supra* note 33.

ABOUT THE AUTHOR



Alvin C. Harrell is a professor of law at OCU School of Law and president of Home Savings and Loan Association of Oklahoma City. He is co-author of a dozen books, including "The Law of Modern Payment Systems and Notes" (with Professor Fred H. Miller). He is editor of the *Annual Survey of Consumer*

Financial Services Law in *The Business Lawyer*. He chaired the ABA UCC Committee Task Force on State Certificate of Title Laws.

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Session Past Halfway Mark

By Duchess Bartmess

The Oklahoma Legislature is more than halfway through the last regular session of the 53rd Oklahoma Legislature. This year, the Legislature is required by constitutional mandate to adjourn by 5 p.m., May 25, 2012. [Oklahoma Constitution, Article V, Section 26] The bulk of the legislation which will become law or be submitted to a vote of the people has not yet been finalized. There are several measures which have been signed by the governor, sent to the governor, or are on general order in each house of the Legislature.

The following are legislative matters requiring gubernatorial action which have been signed this session. [Oklahoma Constitution, Article VI, Section 11] It should be noted that measures signed this year include some left over from the 2011 first session.

MEASURES SIGNED BY THE GOVERNOR

HB2188 – prohibiting planting and commercially producing types of castor beans

HB2189 – prohibiting transporting castor beans in more than 50-pound containers

HB2443 – establishing the University Center at Ponca City



HB2658 – requirements for board of directors of corporations

HB2768 – changing the Board of Agriculture required number of meetings

SB91 – changes in election procedures for filling vacancies in congressional and state legislative offices

SB301 – modifying procedures for removing deceased voters from rolls

SB875 – exempting gun range employees, members and guests of gun clubs from liability

SB941 – discovery procedures regarding trial preparation materials

SB1210 – veteran facilities exempt from specified long-term care regulations

SB1304 – durable power of attorney – repealing duplicate section, retaining notice requirement

SB1316 – Governmental Tort Claims Act – adding exemption from liability

SB1321 – workers' compensation fraud – authorizing contracts with retired police officers for services

SB1704 – amending, merging and repealing multiple versions of statutes

SB1882 – Governmental Tort Claims Act – adding exemption from liability

SB1959 – apportionment of gross production taxes

MEASURES AWAITING GUBERNATORIAL ACTION

HB2211 – chairman county commissioners, designate person to serve on library board

HB2285 – extending dates for teachers to complete examinations

HB2310 – modifying general powers of the board of county commissioners

HB2499 – Regional Jail District Act

HB2580 – expanding list of family members authorized to file mental health petition

HB2618 – modifying general powers of the board of county commissioners

HB2619 – modifying exceptions to bidding procedures in counties

SB1164 – synthetic diesel defining

SB1228 – eliminate electronic student transfer report requirement

SB1287 – removing residency requirement for library board members

SB1466 – elections – duties and authority of notaries public with respect to ballots

SB1500 – Grand River Dam Authority – attend meetings using electronic means

SB1518 – feral swine control – prohibiting importation of live feral swine unless for slaughter

SB1592 – physical therapists to perform wellness services

SB1686 – airport operators to prohibit smoking in public indoor areas

SB1751 – Feral Swine Control Act – Judas pig tagging system

SB1882 – Governmental Tort Claims Act – adding exemption from liability

In addition to the measures which have been signed by the governor or are awaiting action by the governor, there are measures which are on general order, awaiting final legislative action. The following is a list of some of the measures which might be of interest to the general practitioner. As always, this is not a complete list of all

bills and joint resolutions considered still “alive” which could still be acted upon.

Members of the bar are encouraged to look at measures of particular interest. Checking for other measures on general order not listed here could also be of special interest and can be checked through the legislative website.

SOME OF THE SIGNIFICANT MEASURES ON GENERAL ORDER

Constitutional Amendments

HJR1001 – ad valorem; senior freeze; homestead exemption; qualifying income limit

HJR1082 – authorizing state officers to serve on active duty

SJR5 – limit annual increases in fair cash value of property

SJR37 – signature requirements for initiative and referendum petitions

SJR52 – expanding property tax exemption

Measures Addressing Civil Law and Procedure Issues

SB1314 – depositions – allowing attorney to provide counsel

SB1299 – modifying Nontestamentary Transfer of Property Act

HB1828 – court reporter salaries

HB2286 – division of certain military benefits

HB2289 – private process server licenses

HB2296 – prohibiting liability for owners who allow shelter during severe weather

HB2419 – prohibiting liability for owners of storm shelters for time prescribed

HB2521 – charitable clinic

Measures Addressing Criminal Law and Procedure Issues

SB237 – Uniform Controlled Dangerous Substances – Jimson Weed

SB783 – creating Drug Court and Community Sentencing Reform Task Force

SB805 – armed security guards, firearm authorization, waiver of disqualification

SB956 – expanding scope – adoption of rules – Electronic Monitoring Program

SB987 – first degree murder – expanding crime

SB1543 – Adding crime to 85 percent of sentence requirement

SB1551 – Corrections Act – qualifications of positions

SB1706 – drug–endangered Children’s Alliance Board

SB1734 – Uniform Controlled Dangerous Substances Act – investigative authority

HB2175 – Oklahoma Indigent Defense System; scope of responsibilities

Measures Addressing Tax Issues

SB4 – sales tax relief – time period for claims to be filed

SB456 – Quality Jobs Program – providing exclusion

SB517 – tax credits, exemptions, deductions – time limit which tax relief may be claimed

SB1131 – ad valorem – procedures relating to ad valorem assessment

SB1230 – tax administration – licensing and permitting procedures

SB1231 – due dates for submitting reports and remitting taxes

SB1234 – gross production tax – limit total refund paid during specified time period

SB1235 – Quality Jobs Program Act – circumstances for dismissal from program

SB1434 – petroleum and gas excise tax – transfer of revenue after specified date

SB1437 – income tax rates, contingent rate change, determination by Equalization Board

HB2510 – prohibiting certain acts related to sales tax exemptions

HB2576 – modifying assorted tax provisions

HB2616 – creating sales tax exemption for durable medical equipment

HB2645 – county excise boards; continuing education

HB2648 – appraisal records; ad valorem protests

HB2710 – retail establishments; tobacco products

HB3093 – exempting canoes from registration and excise tax

Measures Addressing Insurance Law Issues

SB57 – creating Health Care Choice Act

SB350 – confidentiality interpretation – examinations by insurance commissioner

SB411 – Insurance Department to establish a health care information system

SB558 – prohibit employer from requiring a military retiree to participate in health plan

Measures Addressing Motor Vehicle Law Issues

SB143 – reading proficiency tests from other states for driver licenses

SB189 – compulsory insurance – recovery of damages for motor vehicle accident

SB1874 – providing waiver of revocation, suspension, cancellation

HB2575 – providing alternative method to obtain salvage title

Measures Addressing Water Law Issues

SB1043 – water discharge permits

HB1910 – commercial drilling and plugging licenses

HB2835 – uses of gray water

HB2836 – floodplain management regulations

HB3055 – Water for 2060 Act

Measures Addressing Children and Education Issues

SB1 – Teacher Due Process Act of 1990

SB348 – creation of award and develop report card

SB534 – grounds for dismissal from school employment

HB2251 – modifying drug–endangered children provisions

HB2244 – eligibility criteria for alternative placement teaching certification

HB2251 – modifying drug–endangered children provisions

HB2306 – modifying and deleting certain school requirements

HB2727 – substitute teachers

HB2736 – providing for the outsourcing of certain DHS functions

Measures Addressing Public Health Law Issues

SB178 – State Board of Health to adopt adaptive standards of care in emergencies

SB329 – nursing homes – dispute arbitration

SB872 – emergency medical costs – payment of costs for certain medical care

SB1274 – creating Heartbeat Informed Consent Act

SB1279 – adding licensed alcohol and drug counselor and licensed behavioral practitioner to Professional Entity Act

SB1313 – delivery of service – persons authorized to accept or refuse service

SB1433 – unborn children – creating the Personhood Act

SB1694 – modifying Oklahoma Medicaid False Claims Act

HB2207 – public health; exempting certain foster homes from certain regulation

HB2266 – public health and safety; Public Health Delivery Act

This being an election year, there are also a number of measures addressing election laws. However, those usually do not impact the general practice of law, and for the sake of space, have not been included here. Anyone interested in election laws should consult the legislative website for “active” measures in that area.

And finally, the reader should be aware that a one line description of a particular measure may not reflect all of the significant provisions of that measure. This is another reason that a detailed review by the practitioner is encouraged.

OBA BILLS

SB941, which relates to discovery of trial preparation materials and experts passed both chambers and was signed into law by the governor on April 2, 2012.

Ms. Bartmess practices in Oklahoma City and chairs the Legislative Monitoring Committee.

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High School Mock Trial Committee Wraps Up Another Successful Year

By Jennifer Bruner

The 2012 OBA High School Mock Trial Competition presented Oklahoma students with a challenging murder trial, complete with opposing arson expert witnesses, disgruntled in-laws and testimony from friends and neighbors of the accused. The Mock Trial Case Development Committee of Christine Cave, Nicole Longwell, Dan Couch and Marsha Rogers masterfully wrote and created an interesting and emotionally charged set of facts that tested both student attorneys and student witnesses.

Special thanks go to Chief Homer Jones, Oklahoma City Fire Department assistant fire marshal and arson investigator, for his consultation and assistance in developing this case. The 2012 mock trial case is so well written and unique that the committee has already been contacted by other states who are interested in using the case for their future competitions. Our greatest thanks go to the Oklahoma Bar Foundation, which has enabled this program now in its 32nd year to continue to develop and grow year after year.

The OBA Mock Trial Committee would also like to recognize and extend its appreciation to the county bar associations that became actively involved



Mock Trial Committee members are (from left), Christine Cave, Dan Couch, Karolina Roberts, Marsha Rogers, Melissa Peros, Coordinator Judy Spencer, (above) Nicole Longwell, Joe Carson and Chair Jennifer Bruner. Other committee members are Erin Moore, Julie Austin Dewbery, Tai Du, Scott Inman, Jacob Rowe and Amanda Thrash.

in supporting schools within their county to develop a mock trial team, as well as providing coaching and financial assistance that enabled several schools and teams to participate in this year's competition.

Conducting numerous rounds of competition is no easy task, and it would not have been possible without the hundreds of lawyers and judges who volunteered their time – and many of them helped several times. Take a minute and glance at their names listed in this article. And I can't forget to thank the Young Lawyers Division, which continues its commitment to this program, and to my fellow committee mem-

bers who are responsible for another successful year.

This is an exciting time for the OBA Mock Trial Committee as we prepare our state champion from Clinton High School for the 2012 National Mock Trial Competition in May in Albuquerque, NM. Out of the 36 teams from 30 schools across the state that began competing in January, the top finishers were, in second place, Ada High School; third, Moore High School Team Red; fourth, Jenks High School Team A; fifth, Okarche High School; sixth, Jenks High School Team Mr. Roger's Neighborhood; seventh, McAlister High School, and eighth, Broken Arrow Team Black.

HELP RECRUIT TEAMS

Now that the 2012 Oklahoma Mock Trial Competition has come to an end, the Mock Trial Committee is seeking support from attorneys across the state to recruit additional schools to participate in the 2013 competition. If you know of a school or students interested in participating, if you would be interested in serving as an attorney coach — or if you'd like to join the Mock Trial Committee, please email mocktrial@okbar.org.

COACHING A TEAM REWARDING

"After serving as a scoring panelist or presiding judge at mock trial competitions for several years," Judge James Bland said, "I helped start a program at McAlester High School three years ago. My only regret now is that I waited so long. It is very rewarding to watch the students develop through their participation; however, I believe the best part is that, unlike some extracurricular activities, you can see the students themselves recognizing and appreciating their own development as it occurs. Their recognition of the many benefits they are receiving leads to great enthusiasm and commitment, which is in turn very fulfilling for the attorney and teacher coaches."

Judge Jill C. Weedon said of working with the winning Clinton team, "The legal team is student driven. They call team meetings at all times of day and night to work around jobs, sports, band and ballet. Every team member is dedicated to the project, and, at times, consumed by it. In the era of standardized testing, the Mock Trial Program is one of the few programs in education



Judging the final round to determine the state champion were (from left) Presiding Judge Edward Cunningham, Judge Shon Erwin, Judge Millie Otey, Justice Douglas Combs, Judge David B. Lewis and Judge Dana L. Rasure.

focusing on creativity and critical thinking. Mock trial students develop logic, public speaking, acting, and language skills, not to mention learning the rules of evidence. These students know how to present themselves, and they can think on their feet. The mock trial experience instills confidence and the ability to perform under pressure which will be lifelong assets."

NEW INITIATIVE

In addition, the Mock Trial Committee is starting a mock trial development initiative that will create instructional videos to provide guidance and assistance to students and schools who are just getting started or who have participated but now have new students involved. If you are interested in this program, now is the time to get involved and to help grow the program and enrich the lives of Oklahoma students. Work starts soon to prepare for next year's program that begins in the fall.

Ms. Bruner practices in Oklahoma City and chairs the High School Mock Trial Program Committee.

ATTORNEY COACHES

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Jennifer Barrett
Cheryl Blake
Judge James Bland
Gary Briggs
Kevin Buchanan
Mary Bundren
Judge Daman Cantrell
Lance Cargill
Martha Rupp Carter
Kristen Caruso
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Dietmar Caudle
Jason Chadwick*
Clayton Chamberlain
Gwen Clegg
Michael Clover
Amy Coble
Sharon Cole
Andrew Conway
Kris Cook



Clinton High School's winning team was coached by teacher Kathy Kelley and attorney coaches Judge Jill Weedon and Julie Strong.

Judge Sarah Hall
Matt Hall
Cheryl Hamby
W.S. Haselwood
Gaylon Hayes
Randy Henning
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Dana Jim
Jeff Keel
Tara Lemmon
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Kirk Olson
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Andy Balint
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Jeremy Beaver
Matt Beese
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Susie Bolin*
Mark Bonney**
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Rodney Brook
Elizabeth Brown

Michael Coulson
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Dan Crawford*
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Oklahoma iCivics Events to Feature Justice Sandra Day O'Connor

By Jeff Kelton

A study done by the Washington, D.C.-based educational think tank Thomas B. Fordham Institute, showed that only one state, South Carolina, earned an A rating when it came to teaching its students history of our nation's past. Several states earned a failing grade. The bad news, Oklahoma did not receive an A – the good news, we didn't fail miserably.

However, it's no surprise that millions of American kids lack the basic knowledge regarding the three branches of our government, democracy and the U.S. Constitution.

This information was so concerning, former U.S. Supreme Court Justice Sandra Day O'Connor stepped up to reverse that trend. Her vision, with help from Georgetown University Law School, Arizona State University and others, led to the development of www.icivics.org in 2009 – an interactive educational project that invites students to learn about civic education through different forums. On the site, children can read, watch videos, play games and even “Win the White House” – it's not as easy as it sounds – you try managing your own presidential campaign. However, the way in which the material is presented is fun and encourages participation.

Unfortunately, civic education is not hereditary and needs to be taught. Our teachers are the cornerstone of the education that our nation's children receive. Educators as well can access the site where they'll find valuable lesson plans, games, web quests and many other tools to take back and implement in the classroom.



Justice Sandra Day O'Connor

iCIVICS IN OKLAHOMA

Increasing knowledge of civic education is something that OBA President Cathy Christensen planned to address once she took the reins of OBA leadership — and due to the alarming statistics — the Oklahoma Bar Association and Oklahoma City University have created a partnership to introduce iCivics to Oklahoma educators and students. The partnership effort will kick off with an event Tues-



day, April 24, beginning at the Oklahoma Bar Center in Oklahoma City and ending at the Reed Center in Midwest City.

The event will include opportunities for both educators and students as it features two events during the day and an evening banquet that will cap off programming with Justice O'Connor as the keynote speaker.

"This country has thrived when our citizenry is educated, engaged and involved, it's essential to a successful democracy," Ms. Christensen said. "When our children learn and appreciate these historical lessons, they begin down the path toward success, both as an individual and as a member of this great nation. There is no doubt the OBA, Oklahoma City University, Justice O'Connor and our Oklahoma educators share the same goals."

OBA Law-related Education Coordinator Jane McConnell couldn't be more honored to have the former justice in Oklahoma City.

"To have someone of this magnitude help promote the importance of learning to the children of our state is a gift," Ms. McConnell said. "Justice O'Connor's program is supplemental to the core curriculum in social studies and by incorporating iCivics into students' lives, it reinforces their classroom learning."

A Conversation Webcast

The day will begin at the Oklahoma Bar Association where invited guests, students and educators will take part in the iCivics vision by enjoying "A Conversation with Justice O'Connor and Oklahoma Supreme Court Chief Justice Steven Taylor." This session will include at least 150 middle school and high school students and be available for live webcast to all Oklahoma schools.

► For details on how to view this session, teachers need to contact Mark Scheidewent at 405-416-7026, and students are encouraged to submit questions using the form at www.okbar.org/s/questions.

"An understanding of how this country was founded is of utmost importance, but many students either lack the interest in these topics or do not see how it plays into their everyday lives," said Ms. Christensen. "The iCivics program cures this disconnect by showing students the awesome power of an engaged citizenry, both in communal and individual terms."

Law School for Educators

At 1:30 p.m., speakers from around the state will cover a variety of law-related topics, covering issues such as free speech, search and seizure and the court system. This event requires registration and will take place at the

continued on next page

A Partnership in Civic Education: iCivics in Oklahoma

10 a.m.

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

A Conversation with Justice O'Connor and Oklahoma Supreme Court Chief Justice Steven Taylor

1:30 p.m.

Reed Center, Midwest City
5800 Will Rogers Road, Midwest City, OK
73110

Law School for Educators

7 p.m.

Reed Center, Midwest City

A Partnership in Civic Education: iCivics in Oklahoma Banquet

Keynote Speaker: Justice Sandra Day O'Connor

Reception prior to banquet at 6 p.m.

Reed Center in Midwest City but is free and available to anyone.

➤ To register, please visit www.okbar.org/s/educators.

President Christensen believes teachers are the foundation of this nation's education. "We are working to have the iCivics program implemented to improve our civics education across the state. Together with the iCivics program, our teachers will provide the monumental support needed to build civics education."

Ms. McConnell encourages every educator who wants to positively change lives to attend. "We want to inform and train educators with professional development on how to effectively use the iCivics program in their classrooms. Most importantly we want teachers to realize their role in molding students to become active citizens."

Partnership Banquet

The evening will come to a close with a reception at 6 p.m. followed by the banquet, "A Partnership in Civic Education: iCivics in Oklahoma" at 7 p.m. Don't miss Justice O'Connor address all attendants as the keynote speaker. Tickets are available to all for \$30.

To purchase a ticket, please use the form found at www.okbar.org/s/civicsbanquet.

SPONSORSHIPS AVAILABLE

As a sponsor, your support helps make the Conversation with the Justices, the Law School for Educators and the banquet affordable for our state's educators. Your support will provide an educational opportunity and materials that will directly benefit Oklahoma students.

This event is not a fundraiser and all money raised will be used to offset expenses of the day's events. Please show your support for civic education and Oklahoma educators.

➤ For sponsorship opportunities, please contact Cathy Christensen at cathychristensenlaw.com or 405-752-5565.

YOUR HELP IS NEEDED

Help Justice O'Connor spread this message! Encourage an educator to attend the professional development opportunity – Law School

for Educators. Invite your favorite student and educators to attend the banquet with you. Visit www.okbar.org/s/icivics for a complete list of events and registration for Law School for Educators and the banquet.

"The iCivics program does not exist in isolation. The goal is to build a lasting and continuing relationship between our educators and our community lawyers, etc., in order to collaborate on a system of civic education with one objective in mind – providing students with every opportunity possible to improve not only their lives, but also society as a whole," said Ms. Christensen.

Mr. Kelton is an OBA communications specialist.

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Diversity Committee Introduces New Awards

Nomination Deadline June 1



The Oklahoma Bar Association's Diversity Committee is seeking nominations for its first Ada Lois Sipuel Fisher Diversity Awards. All nominations must be received by June 1, 2012.

The Diversity Committee found it most befitting to name its award after Ada Lois Sipuel Fisher as she was indeed a champion of the cause of diversity as the first African-American woman to attend an all-white law school, the University of Oklahoma College of Law.

The Diversity Committee is accepting nominations in the following categories: members of the judiciary; licensed attorneys; and groups and entities that have championed the cause of diversity. The Diversity Committee will be paying tribute to the work and accomplishments of the award recipients at the Diversity Committee CLE and Awards Luncheon on Oct. 18, 2012, that is to be held at the Skirvin Hilton Hotel in downtown Oklahoma City.

This information regarding the selection criteria and nomination process may also be accessed at www.okbar.org. For additional information please contact Kara I. Smith at 405-923-8611.

SELECTION CRITERIA AND NOMINATION PROCESS

Three diversity awards will be given to a business, group or organization that has an office in the state of Oklahoma and has met one or more of the following criteria:

- Developed and implemented an effective equal opportunity program as demonstrated by the organization's commitment to the recruitment, retention and promotion of individuals of underrepresented populations regardless of race, ethnic origin, gender, religion, age, sexual orientation,

disability, or any other prohibited basis of discrimination

- Promoted diversity initiatives that establish and foster a more inclusive and equitable work environment
- Demonstrated continued corporate responsibility by devoting resources for the improvement of the community at large
- Exhibited insightful leadership to confront and resolve inequities through strategic decision-making, allocation of resources and establishment of priorities

Two more diversity awards will be given to licensed attorneys and an additional award will be given to a member of the Oklahoma judiciary who has met one or more of the following criteria:

- Demonstrated dedication to raising issues of diversity and protecting civil and human rights
- Led the development of innovative or contemporary measures to fight discrimination and the effects
- Fostered positive communication and actively promoted inter-group relations among populations of different backgrounds
- Participated in a variety of corporate and community events that promoted mutual

continued on next page

respect, acceptance, cooperation or tolerance and contributed to diversity awareness in the community and workplace

- Reached out to a diverse array of attorneys to understand firsthand the experiences of someone from a different background

NOMINATION SUBMISSION

- Include name, address and contact number of the nominee.
- Describe the nominee's contributions and accomplishments in the area of diversity.
- Identify the diversity award category (business/group/organization, licensed attorney or judiciary) in which the nominee is being nominated.

Submissions must be received by June 1, 2012. Submissions should not exceed five pages in length. Submit nominations to diversityawards@okbar.org.

Attention Business Owners

When was the last time you had your pension or 401(k) plan reviewed?

Ask yourself these questions ...

- | | |
|--|--|
| ▪ Am I receiving the maximum benefit from my annual plan contribution? | ▪ Do I have the ability to reward staff differently based on their importance to my company? |
| ▪ Is there a way to increase my plan contribution for my benefit while decreasing contributions to my employees? | ▪ Is my plan's design right for me and my company? |

*If your answer to any of these questions is "I don't know," you owe it to yourself to obtain a **NO COST** Retirement Plan Review*

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04/12

Welcome Home 45th!

By Deborah A. Reheard

It was just a year ago that many OBA members gathered at the Oklahoma City arena for the send-off of the 3,200 soldiers of the 45th Infantry Brigade Combat Team. But while a year may seem like a short time these days, it was many months of grueling battles in primitive conditions for our soldiers and many months of worry and anguish for those family and friends left behind on the home front.

The vast majority of the 45th who deployed to Afghanistan last spring are home now. Fourteen paid the ultimate price for our freedoms, giving their lives so that we may continue to enjoy living in the land of the free and the home of the brave. The homecomings held for our returning heroes had a different feel to them as family and friends filled the Air National Guard hangar at the Will Rogers Airport day after day as the soldiers returned in groups from 50 to more than 200 at a time.

Again, OBA members were there to welcome some of these groups home. It is amazing the number of lives the Iraq and Afghanistan wars have touched. At a recent CLE especially for lawyers committed to giving at least 20 hours of pro bono service for the Oklahoma Lawyers for America's Heroes program, attendees were asked to stand in this order — those who served or are serving in the military, those with a family member who has served or is serving, those with a friend who has served or is serving. By the end of the list, no one remained seated.

Oklahoma Lawyers for America's Heroes is nearly 18 months old now. In that short time, 500 lawyers have volunteered to give at least 20 hours of pro bono legal services to qualified service members, guard, reserves and veterans. Within the last few days, the program has helped its 1,000th hero. And that number only represents those who have been assigned a lawyer to assist



OBA 2011 President Deb Reheard talks with (from left) Oklahoma Army National Guard Adjunct General Myles Deering, OU All-American and Tampa Bay Buccaneers defensive tackle Gerald McCoy and OBA member Jeff Hargrave at a recent homecoming.

Photo: Oklahoma Army National Guard

them. Hundreds of others have had the benefit of legal advice without the need to assign a lawyer to them. But we cannot rest on our laurels. Our biggest battle lies ahead.

The toll that war takes on our heroes is vast and varied, and it is not just our citizen soldiers who are affected. Oklahomans are serving all around this world on active duty assignments no less dangerous than the mission the 45th recently completed. Many are returning with nightmares of the horrors they saw. As they try to re-enter society as a citizen soldier or remain on active duty in a non-combat mission, the adjustments can be hard. Some return from combat zones to fight their own private wars on the homefront — divorce, bankruptcy, foreclosures and identity theft. And many of our veterans of long ago wars face these same issues.

“...along the way, I promise you will be rewarded tenfold.”

And along the way, I promise you will be rewarded tenfold. And you will gain valuable knowledge. And you will feel good about being a lawyer. And as an added bonus, you will learn a new language full of acronyms and codes. So I leave you with this directive, my fellow OBA members:

Charlie Mike!
(Continue Mission)

Ms. Reheard is the OBA immediate past president and practices in Eufaula. She chairs the Military Assistance Committee.

MORE VOLUNTEER LAWYERS NEEDED

Oklahoma Lawyers for America's Heroes still needs your help to help those who fought for us. While they may be able to find medical, mental, employment and financial counseling through other sources provided by the government, they have nowhere to turn for legal assistance except to lawyers. We have a special skill set they need right now. Let's not leave them behind on this battlefield at home.

So, how can you help? Go to www.okbar.org/heroes and sign up to give at least 20 hours of pro bono service to a hero. Volunteers are needed in all counties with a great demand for family law attorneys in Oklahoma County. Join the Military and Veterans Law Section, new to the OBA in 2012. Join the Military Assistance Committee as it continues the work of the Military Assistance Task Force that was instrumental in developing the heroes program and whose members will be attending many events to render free legal assistance to our heroes, from veterans clinics to yellow ribbon pre- and post-deployment events.



NEW LEGAL EAGLES

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

Kimberly Adams, McAlester
Wayne Bailey, Tahlequah
Kathy Baker, Grove
Joseph P. Balkenbush,
Oklahoma City
Carl Barnes, Tulsa
Stephanie Bowden, Tulsa
Margo Bowles, Tulsa
Sherry Boyce, Stillwater
Peter Bradford, Oklahoma City
M. Renee Bull, Claremore
Martha Cherbini, Muskogee
Jason Christopher, Ada
Roger Coil, Oklahoma City

Katrina Conrad-Legler, Norman
Terri Craig, Wagoner
Gary Crews, Tulsa
Greg Dark, Oklahoma City
Denise Deason Toyne, Tahlequah
Rachael Dewberry, Oklahoma City
Susan Dobbins, Mustang
Valerie Dye, Tulsa
John Eagleton, Tulsa
Dan Erwin, Chandler
Kenneth Farley, Idabel
Roger Foster, Clinton
Shanita Gaines, Oklahoma City
Robert Gifford, Norman

John Graves, Oklahoma City
Elaine Green, McAlester
Mark Grober, Muskogee
Kristi Gundy, Norman
Jennifer Heflin, Tulsa
Sandra Helvey, Pauls Valley
Rex Hodges, Oklahoma City
Michael W. Hogan, McAlester
Millicent Hughes, Tulsa
Keith Jones, Tulsa
Jandra Jorgenson, Oklahoma City
David Kisner, Oklahoma City
Charles "Tom" Kite, Oklahoma City
Joel Korens, Tulsa

Hans Lehr, Tulsa
James Linehan, Oklahoma City
Chad Locke, Muskogee
Robert "Bob" Locke, Muskogee
Randy Long, Enid
Brad Mallett, Claremore
Mack Martin, Oklahoma City
Gaylene McCallum, Bartlesville
Gary McKnight, McAlester
Dan Nunley, Tulsa

Shannon Otteson-Gosa,
Tahlequah
Chance Pearson, Oklahoma City
Amy Piedmont, Midwest City
Sonja Porter, Oklahoma City
Donelle Ratheal, Oklahoma City
Amy Reimer Cable, McAlester
Bruce Shalon, Tulsa
Susan Shields, Oklahoma City
Kara Smith, Newalla

Bret A. Smith, Muskogee
Jeffrey Taylor, Oklahoma city
Pat Thompson, Perkins
Margaret Travis, Oklahoma City
Michael Trewitt, Ponca City
Victor R. Wandres, Tulsa
Ronald Wilkinson, Tulsa
Bryon Will, Oklahoma City
Danita Williams, Stigler

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



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Some Things I Have Learned

By John Williams

As much as we all rely on technology, it is a tool and tools break or sometimes do not work. Always have an alternative email address. There are many free email services available. I find that many people have “private” email addresses they seldom use. It seems odd to me that we put at least two phone numbers on our business correspondence, but only one email address. If you have mission critical email, one suggestion is to provide a second email address just in case one of the services might be down. Put your second email address in as a “cc” and request the recipient when replying to use the “reply all” function in answering your email. This way you are almost assured to get the reply even if your primary email goes down.

Google has a free app that can translate just about any language. While it is not a substitute for being conversant in a second language, it can come in handy. On an iPhone or an iPad you can either speak or write and it will instantaneously do the translation. If you speak into the phone it will translate in writing and will speak your words in the desired language. There are some applications for nominal costs that have additional features. These types of applications are also available for PCs and other types of devices.

Not all Bluetooth devices are equal. For example, if you have

a wireless printer and want to use it with portable devices like a phone, tablet or laptop, make sure there is compatibility. A quick Internet search to check compatibility can save you time and frustration. More and more, the newer devices seem to pair up easier. However, test before you buy, if you can.

If you have a good digital document management system and have offsite backup for all your critical documents you can suffer almost any disaster in your office and be in pretty good shape. On more than one occasion I have seen our own Jim Calloway go off to assist lawyers who have suffered complete devastation to their law office. If you have your files and information electronically stored and backed up offsite, the most you have lost is an office location, equipment and furnishings. Otherwise, you have lost a law practice. Ethics 2020 being developed by the ABA has requirements for lawyers to have a certain level of technical ability. Electronic filing is on its way and now is the time to invest in the equipment to scan and store your documents. This is an old message, but the time may be coming that you may have a professional responsibility issue and/or liability for loss of client data for failure to properly protect it.

We have just completed the technology audit that I have previously mentioned. As we

work through the recommendations in the next couple of years I am certain we will have some challenges. The audit called for us to change to a single operating platform and update a good deal of our software. In many ways it will be like remodeling and adding on to an old house. It will look great when we are through, but it will not be without challenges. Hopefully, in two years or so, the OBA will have a completely remodeled headquarters and be firmly in the 21st century with its technology. The system we are currently using was developed in 1999 and has served us well. The end game is to have a system that is current, user friendly, stable and most importantly enhance our member service model. It will be another tool. It will not be a substitute for friendly personal service.

Lastly, if your vision is as poor as mine and you mix your concentrated weed killer into the economy-sized window cleaner container it will still kill the weeds and they will be cleaner as they are dying.

Just some things I have learned...



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

Document Assembly for Lawyers

By Jim Calloway

Lawyers have always been interested in better ways to produce legal documents and correspondence.

Even before computers, memory typewriters allowed lawyers to reuse forms without retyping the entire document. It now sounds like something from the Stone Age, but many practicing lawyers remember the time when editing a document meant someone had to retype the whole thing and when a bottle of correction fluid was a part of every typist's arsenal.

What are some methods that can be used to automate the document drafting process today? This is an absolutely critical topic for all law offices to examine (or reexamine) in 2012, and it was the topic of one of my presentations at ABA TECHSHOW™ 2012. Today there are many pressures on all businesses to operate more efficiently. While legal documents are individually crafted for unique situations, there is also a certain amount of commonality and routine to many types of documents.

Clients are always going to be willing to pay top dollar for skilled legal tasks, be that litigation, negotiation, advice or formal opinions from the lawyer. But we will continue to see downward pressure on legal fees, and we are going to see more resistance from business

clients for paying large sums for merely "papering the deal."

If law firms were examined from a pure efficiency standard, it could be argued that many of the document drafting



and preparation processes are a bit cumbersome. But some of these practices, like double and triple proofreading, are the legal profession's method of quality control because legal documents are expected to be absolutely perfect. Any error in a legal document could have serious consequences for the client — and the law firm.

Still, one can understand frustration with paying a lawyer for proofing and reproofing a document several times. Exceptional law firms will

invest the time to bullet-proof the document production system, both to the client's economic benefit and to free the lawyer from the drudgery of re-proofing the same document repeatedly.

WAYS TO IMPROVE DOCUMENT PRODUCTION

Preparing for my document assembly presentation led me to note that there are now several methods of improving document production.

The basic level of improvement involves making better use of the features in the word processor you own. For example, lawyers who draft contracts may have dozens of "boiler plate" paragraphs that may or may not be included in a particular contract. These could include items like definitions, choice of law, severability, notice provisions, warranties and so on.

Lawyers can insert those paragraphs into documents in minutes, perhaps by copying and pasting from a master document. But now there are ways to insert standard paragraphs in a few seconds, rather than in a few minutes.

For example, Microsoft Word in the 2007 and 2010 editions has a feature called Quick Parts that allows a lawyer to store a library of paragraphs that can be quickly inserted into a document. When a Word user clicks on Insert and then Quick Parts,

a menu will drop down a list of these stored paragraphs that can be selected and inserted into a document.

Adding a paragraph to the Quick Parts list so it can be reused is extremely easy. You select (highlight) an existing paragraph in a Word Document or Outlook Email, and choose — Insert- Quick Parts- Save Selection to Quick Part Gallery. The next time you use Quick Parts that item will be included in your options. For more on Quick Parts see www.okbar.org/s/quickparts.

AutoCorrect is the Microsoft Word feature we are familiar with that magically corrects misspelled words right before our eyes. But a user can also create a unique set of letters that will expand into sentences or paragraphs. (Do not use real words for this purpose.) As an example, lawyers could create an addition to AutoCorrect named something like JimSig to expand to create the lawyer's signature block on a pleading. For more on AutoCorrect, see www.okbar.org/s/auto.

Another form of document assembly is having a client database, often in a practice management system, from which data can be pulled to be inserted into certain documents. That is a great benefit to those who have taken the time to set up their case management software properly. While document assembly had existed for a while in the installed practice management software universe, it has been interesting to watch all of the cloud-based practice management vendors announce document assembly solutions within the last several months. These include Clio, Rocket Matter, HoudiniESQ, Firm Manager from LexisNexis and MyCase.

Robert Ambrogi just published a review of the landscape titled Web-Based Practice Management Programs Add Document Assembly which is now online at www.okbar.org/s/docassembly. (You may have to sign up for a free subscription to Law Technology News to read it, but there's nothing wrong with doing that.)

“If you can
create documents
in minutes...
you probably don't
want to be charging
by the hour.”

Perhaps the market leader in document automation is Hotdocs™. It has enormous power. The knock on Hotdocs has been that its power means a great deal of study and training is required before usable automated documents can be prepared. For smaller law firms, this has been an obstacle. But my co-presenter at ABA TECHSHOW, Diane Ebersole, State Bar of Michigan practice management advisor, knows how to make Hotdocs sing and dance.

MICROSOFT WORD PLUG-INS

I'm particularly interested in the new generation of document assembly programs that function as plug-ins to Microsoft Word and utilize the hidden power of Word.

In particular, I examined two products: Pathagoras™ (www.pathagoras.com) and The Form Tool™ (www.theformtool.com). Both of these programs allow a lawyer to set up a document that can be automatically filled with absolutely no programming skills. Both programs allow you to save a client data file for future uses.

In Pathagoras, one can just replace the various variables in a document with the name of the variable surrounded by brackets. Then, Pathagoras can be used to scan the document and generate a table for all of the variables that need to be entered. Enter the information and the document will be completed in seconds, even if it is a long document with many instances of the variables being used.

The Form Tool has an interesting graphic interface that allows a user to customize his or her form documents into a fillable form. One particular feature of The Form Tool is that it retains at the bottom of the document the table that was used to place the data into the document. This means that the lawyer can easily proof a long document by carefully proofing the entries that were entered into the document assembly program.

Pathagoras has a free 90-day trial and The Form Tool has a free version and a Pro version. Pathagoras costs \$379 for the first user with discounted pricing for additional users. The Pro version of The Form Tool™ costs \$89.

After visiting the exhibition hall at ABA TECHSHOW, Bob Ambrogi wrote a nice review on his Law Sites blog titled 'TheFormTool': Smart, Simple

Document Assembly, and you can read it at Law Practice Tips www.okbar.org/s/formtool.

IMPLICATIONS FOR BILLING

Of course, one cannot discuss automating document assembly processes without also paying attention to the business implications. This is the classic case for employing a method other than hourly billing. Switching to charging a client a fee per document produced rather than charging based on the hours invested on that document presents a win-win for both lawyers and clients. For the client, it can lead to reduced costs. For the lawyer, after the investment of time in setting up the system, there will be much less time invested in a particular document.

In the future we will likely see more blended fee contracts with hourly rates charged for some tasks, along with a schedule of flat fees for certain documents.

Between the bloggers, tweeters and traditional media, there's a fair amount of online coverage of ABA TECHSHOW. The quote from me that was most tweeted during the conference was, "If you can create documents in minutes... you probably don't want to be charging by the hour." That observation still makes sense to me, two weeks after the show.

Editor's Note: A different version of this article previously appeared in the March 2012 edition of Lawyers USA and is published with permission.

Mr. Calloway is director of the OBA Management Assistance Program. Need a quick answer to a tech problem or help resolving a management dilemma? Contact him at 405-416-7008, 800-522-8065 or jimc@okbar.org. It's a free member benefit!

FROM THE PRESIDENT

cont'd from page 868

Without adequate funding, the courts cannot address issues concerning court organization and structure, case flow management and developing technology, all of which directly affect judicial efficiency and economy. Without adequate funding, the court faces challenges in successfully completing its charge in a democratic society — prompt and independent application of the rule of law. A fair and just legal system requires a firm and stable financial foundation.

State court judges must be adequately paid. Judgeships should be attractive to successful lawyers in the prime of their lives. In speaking about the erosion of federal judicial pay, Chief Justice John Roberts stated that the judiciary will soon be restricted to "(1) persons so wealthy that they can afford to be indifferent to the level of judicial compensation, or (2) people for whom the judicial salary represents a pay increase." The same caution applies for state court judges and their judicial pay. State judiciaries handle approximately 95 percent of all cases filed in the United States, according to the National Center for State Courts.

In keeping with the spirit of Law Day, I encourage you to communicate directly with legislators about court funding needs. Build relationships with state leaders and continue to discuss court funding issues with them long after Law Day. This is a topic deserving of year round discussion! The judiciary is a co-equal branch of government responsible for protecting our rights. It is essential that Oklahomans enjoy a judicial branch of government that is independent, adequately funded and compensated, and equipped for efficiency. The growth of our economy and the liberty of our citizens depend on it!

Law Day celebrations will occur in almost every one of Oklahoma's 77 counties. I hope you make it a personal priority to find the time to join your professional colleagues and celebrate Law Day events. Would you consider volunteering to lead a Law Day celebration in your local community at a civic event, school or church to explain what courts do and why they are so essential? Law Day is your opportunity to advocate for preservation of our justice system. Our courts, our justice and freedom each depend upon the other to guard our rights and preserve our free society. Showcase your advocacy skills and your love for our constitutional democracy, otherwise...No courts. No justice. No freedom.

You Don't Have to Clock Out at Five

Personal Behavior and Your Law License

By Gina L. Hendryx

The practice of law is a profession. The privilege to do so is earned through study, examination and licensure. Unlike other employment, your personal behavior can negatively impact the opportunity to pursue your profession. The following is a survey of cases, primarily from Oklahoma, that review personal choices which have impacted upon the professional's continued practice of law.

A lawyer may be disciplined for actions not related to the practice of law. Professional discipline may be warranted for personal behavior if that behavior reflects adversely on the lawyer's fitness to practice law. Oklahoma Rule of Professional Conduct 8.4 sets out when personal misconduct may be the basis for professional scrutiny.

OKLAHOMA RULES OF PROFESSIONAL CONDUCT CHAPTER 1, APP. 3-A MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8.4 Misconduct

- 1) It is professional misconduct for a lawyer to:
 - (a) violate or attempt to violate the Rules of Professional Conduct, knowingly

assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

Comment

[2] Many kinds of illegal conduct reflect adversely on fitness to practice law, such as offenses involving fraud and the offense of willful failure to file an income tax return. However, some kinds of offense carry no such implica-

tion. Traditionally, the distinction was drawn in terms of offenses involving "moral turpitude." That concept can be construed to include offenses concerning some matters of personal morality, such as adultery and comparable offenses, that have no specific connection to fitness for the practice of law. Although a lawyer is personally answerable to the entire criminal law, a lawyer should be professionally answerable only for offenses that indicate lack of those characteristics relevant to law practice. Offenses involving violence, dishonesty, breach of trust, or serious interference with the administration of justice are in that category. A pattern of repeated offenses, even ones of minor significance when considered separately, can indicate indifference to legal obligation.

TAX LAW VIOLATIONS

Violations of the tax code are included within the definition of ORPC 8.4 (b) when they are also criminal offenses. In *State ex rel. Oklahoma Bar Association v. Strickland*, 2011 OK 54, 256 P.3d 76, Strickland had pled guilty and had been sentenced for the offense of willful failure to file an income tax return for the year

2003. Upon *de novo* review, the Oklahoma Supreme Court held the appropriate professional discipline to be a public censure. In imposing discipline the court agreed with the following statement of the sentencing judge:

This is a serious offense. We have to promote respect for the law [because] our tax system depends on voluntary compliance and, if it seemed that someone who does not file their tax returns bears no [consequence], then that's not going to deter, help deter other folks from following in that path." *Strickland* at ¶12.

VIOLENT CRIMES

The Oklahoma Supreme Court has held that ORPC 8.4 (b) is violated when a lawyer engages in unlawful acts of violence. Attorney disciplinary proceedings were initiated after an attorney was arrested and charged with felony assault with a dangerous weapon. The attorney entered an *Alford* plea to the reduced charge of misdemeanor assault and battery. The charges stemmed from a physical altercation with a non-lawyer in the parking lot of a local business. The court noted that the altercation did not involve any attorney/client relationships. However, "[d]iscipline may be imposed on an attorney acting outside of an attorney-client relationship." *State ex rel. Oklahoma Bar Association v. Hayes*, 2011 OK 71, ¶13. The court suspended Hayes for 30 days and ordered him to pay the costs of the disciplinary investigation.

DRUG OFFENSES

Drug related offenses often lead to discipline for violating Rule 8.4 (b).

“Attorney discipline cases are determined on a case by case basis due to the different circumstances posed.”

The Oklahoma Supreme Court has several attorney discipline opinions wherein drug related offenses were the underlying violation.

Felony drug offenses are of great concern to this court, both because of their criminal nature and because addiction prevents an attorney from adequately caring for the legal affairs of his clients, putting the public in danger. (*Citations omitted*). *State ex rel. Oklahoma Bar Association v. Blackburn*, 1999 OK 17, ¶12, 976 P.3d 551.

ALCOHOL OFFENSES

Alcohol related offenses do not always equate to discipline charges.

Attorney discipline cases are determined on a case by case basis due to the different circumstances posed. This is especially true when alcohol related offenses are the basis for attorney discipline charges.

Discipline imposed in cases involving alcohol related crimes has ranged from the severe, when coupled with harm to clients, to censure, when no clients were involved. Probationary periods have often been

imposed in cases of alcohol-related offenses. While alcoholism alone is not enough to mitigate discipline, the fact that an attorney recognized his or her problem, sought and cooperated in treatment and was willing to undergo supervision has convinced the court that severe discipline need not be imposed. *State ex rel. Oklahoma Bar Association v. Carpenter*, 1992 OK 86, 363 P.2d 1123.

Most reported discipline cases involve multiple alcohol offenses. Minor criminal offenses that do not reflect adversely on a lawyer's fitness to practice law are not covered by Rule 8.4. Convictions for DUI do not facially demonstrate a lawyer's unfitness to practice law. All circumstances must be investigated including, but not limited to, previous charges, impact upon clients, other alcohol related offenses, etc. *See State of Oklahoma ex rel. Oklahoma Bar Association v. Armstrong*, 1992 OK 79, 848 P.2d 538.

SEX WITH CLIENTS

Sexual relationships between lawyer and client are often the basis for discipline proceedings. The Oklahoma Supreme Court first addressed the issue in 2005. In the discipline matter, the attorney was involved in a consensual sexual relationship with his divorce client. The lawyer had known his client for seven years prior to forming the attorney-client relationship. The complaint against the lawyer was filed by opposing counsel.

This case is the first in which this court has been presented with the issue of

whether a lawyer who engages in a sexual relationship with a client involved in a divorce proceeding violates the rules governing lawyers' conduct if the client admittedly consented to the relationship. ...This court unequivocally recognized that a lawyer's sexual advances toward a client exploit the attorney-client relationship and constitute professional misconduct which will result in discipline. *State ex rel. Oklahoma Bar Association v. Downes*, 2005 OK 33, §28-29, 121 P.3d 1058.

Subsequent to the *Downes* decision, the Oklahoma Supreme Court adopted significant changes to the ORPC. It is now a conflict of interest to have sexual relations with a client unless the sexual relationship existed prior to the client-lawyer relationship.

(j) A lawyer shall not have sexual relations with a client unless: 1) a consensual sexual relationship existed between them when the client-lawyer relationship commenced and 2) the relationship does not result in a violation of Rule 1.7(a)(2).

ORPC 1.8 (j).

PRE-ADMISSION CONDUCT

Lawyers may be disciplined for conduct that occurred prior to admission to the bar. In *State ex rel. Oklahoma Bar Association v. Flanery*, 1993 OK 97, 863 P.2d 1146, Flanery embezzled \$71,000 from relatives over a three-year period. The embezzlements ended about one or two months prior to Flanery being licensed as an attorney. The Oklahoma Supreme Court held it had jurisdiction to discipline the

attorney and ordered him disbarred for the conduct.

In attorney discipline matters, the Oklahoma Supreme Court functions as an adjudicative licensing authority that exercises exclusive original cognizance. *State ex rel. Oklahoma Bar Association v. Giger*, 2001 OK 96, ¶15, 37 P.3d 856.

The Oklahoma Supreme Court bears the ultimate responsibility for deciding whether misconduct has occurred and what discipline should be imposed. The important lesson to be learned from those who have been disciplined for nonlawyer conduct is that your actions away from the office can significantly impact your ability to practice law.

Ms. Hendryx is OBA general counsel.



February Meeting Summary

The Oklahoma Bar Association Board of Governors met at Post Oak Lodge in Tulsa on Friday, Feb. 17, 2012.

REPORT OF THE PRESIDENT

President Christensen reported she attended the swearing in at the Supreme Court Courtroom, January board meeting, has been dinner hosted by Past President Smallwood and other governors ending their service on the board, National Conference of Bar Presidents in New Orleans, Southern Conference of Bar Presidents in New Orleans, dinner conference with State School Superintendent Janet Barresi to discuss OBA LRE activities, several LHLAP Committee meetings, several meetings with CLE Director Douglas regarding 2012 CLE events, Solo and Small Firm Conference Committee meeting, governor's 2012 state of the state address, Section Leaders Council meeting, Professionalism Committee meeting and Technology Committee meeting. She had lunch with Supreme Court board liaison Justice Kauger, conducted transition meetings with Past President Reheard and President-Elect Stuart, presented a CLE to the Pontotoc County Bar Association, met with OCU representatives, Director Douglas and LRE Coordinator McConnell to continue planning the Justice O'Connor events, met with

Director Combs on budget issues and met with Executive Director Williams on several OBA matters.

REPORT OF THE VICE PRESIDENT

Vice President Stockwell reported she attended the swearing in, January board meeting, dinner hosted by the 2011 board has beens, Section Leaders Council meeting, Lawyers Helping Lawyers Assistance Program meeting, LHL Fundraising Subcommittee meeting and Technology Committee meeting.

REPORT OF THE PRESIDENT-ELECT

President-Elect Stuart reported he attended the January Board of Governors swearing in, has been party, January board meeting, OBA legislative overview, February Pottawatomie County Bar Association meeting, ABA midyear meeting in New Orleans and OBA Bar Center Facilities Committee meeting.

REPORT OF THE PAST PRESIDENT

Past President Reheard reported she attended the ceremonial swearing-in of President Christensen, Vice President Stockwell, President-Elect Stuart, Governors Smith, Hays, Parrott, Thomas and YLD Chair Kirkpatrick. She also attended the January board meeting, dinner hosted by 2011 board has beens, tran-

sition meetings with President Christensen and President-Elect Stuart, Section Leaders Council meeting, Military Assistance Committee meeting, Southern Conference of Bar Presidents meeting, National Conference of Bar Presidents meeting, ABA Oklahoma Delegates meeting and ABA House of Delegates.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the Lawyers Helping Lawyers Assistance Program meeting, tech audit review meeting, Section Leaders Council meeting, tech audit meeting, legislative reading day, NABE/NCPB meeting and staff meeting on tech governance. He spoke at the Bricktown Rotary meeting, met with the dean and staff at University of Tulsa and met with the designer on furniture for the LRE Department. He also made a site visit to Post Oak Lodge before the upcoming retreat.

BOARD MEMBER REPORTS

Governor DeMoss reported she attended the board meeting in January, swearing-in ceremony of new officers and governors, has been farewell party, OBA Diversity Committee meeting, OBA Section Leaders Council meeting and Tulsa County Bar Foundation board meeting. **Governor Devoll** reported he attended the swearing-in ceremony for

new Board of Governors members, board has been party, January Garfield County Bar Association meeting and January Board of Governors meeting. **Governor Hays** reported she attended the OBA Board of Governors swearing in, has been party, January board meeting, OBA Family Law Section January monthly meeting/CLE, OBA Solo and Small Firm Conference Planning Committee meeting, OBA Communications Committee meeting, OBA Family Law Section Leadership retreat, meeting with the OBA FLS chairperson and Tulsa County Bar Association Golf Tournament Committee meeting. She prepared the OBA Family Law Section monthly budget report, consulted with the Law Day Committee chairperson regarding meeting events and chaired the TCBA Family Law Section meeting. **Governor Meyers** reported he attended the swearing-in ceremony, January board meeting, has been party and January Comanche County Bar Association meeting. **Governor Pappas** reported she attended the board meeting in January, swearing-in ceremony of new officers and governors, has been farewell party, evening event for Payne County Bar Association women attorneys, OBA Technology Committee meeting and a Payne County Bar Association memorial service. **Governor Parrott** reported she attended the OBA swearing-in ceremony, January OBA board meeting and the has been party. **Governor Poarch** reported he attended the has been party and OBA Bench and Bar Committee meeting. **Governor Rivas** reported he attended the OBA Board of Governors swearing in, January Board of Governors meet-

ing and the has been party. **Governor Shields** reported she attended the OBA Board of Governors swearing in, has been party, January board meeting and ABA midyear meeting in New Orleans as president-elect of the Oklahoma Bar Foundation. She also worked on LHL Foundation tax exemption application matters. **Governor Smith** reported he attended the board swearing-in ceremony, January board meeting and has been party. He also met with the Muskogee County Law Day chair regarding Law Day plans. **Governor Thomas** reported she attended the swearing in at the Supreme Court, January Board of Governors meeting, has been party and Washington County Bar Association meeting.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Kirkpatrick reported the division will tape a video to accompany the legal guide for young adults that is being updated. She hosted the ABA YLD chair and ABA YLD secretary/treasurer for dinner in Oklahoma City, held an orientation for the newly elected OBA YLD board members, conducted the January OBA YLD board meeting and hosted the roast and toast of Roy Tucker, outgoing YLD chair. She also attended the board swearing-in ceremony, January board meeting, has been dinner and three events in New Orleans — ABA YLD Council Leadership meeting, ABA YLD Assembly at the ABA midyear meeting and ABA House of Delegates at the ABA midyear meeting.

COMMITTEE LIAISON REPORTS

Governor Hays reported the Law Day Committee received a total of 1,414 contest entries and the date for the Ask A Lawyer TV show and statewide free legal advice will be Thursday, April 26. She reported the Solo and Small Firm Conference Committee has finalized arrangements to move the conference to the Choctaw Casino Resort in Durant. Confirmation of speakers and their topics is almost complete. She said the Communications Committee is working on developing a CLE presentation for the OBA. Past President Reheard reported a Boot Camp CLE for Oklahoma Lawyers for America's Heroes volunteers will be held Feb. 22 in Tulsa. President Christensen shared the details of the March 27 LHL Foundation's CLE Banquet and Auction being planned by the Lawyers Helping Lawyers Assistance Program Committee.

PERSONNEL POLICY AMENDMENT – OPEN DOOR POLICY

President Christensen said this item was discussed at the December 2011 meeting, and an amendment was approved. However upon further review, no one could remember the exact amendment, and it was determined the intent of the amendment was already addressed in the proposed policy. The board approved the policy with no amendment.

COMMITTEE ON JUDICIAL ELECTIONS APPOINTMENT

The board approved President Christensen's recommendation to appoint lay person

Penny Stallings, Holdenville, to serve an eight-year term, expiring 12/31/19 on the Committee on Judicial Elections.

BOARD OF EDITORS APPOINTMENT

The board approved President Christensen's recommendation to appoint Judge Allen J. Welch, Oklahoma City, as associate editor to complete the unexpired term of Leslie Taylor, with a term that expires 12/31/13.

PRC ANNUAL REPORT

General Counsel Hendryx reviewed the requirement of the Professional Responsibility Commission to annually report its activities. She summarized the work of the Office of the General Counsel, which averages receiving six complaints each working day. She said the numbers contained in the report have stayed consistent with previous years. She also complimented MAP Director Calloway and Ethics Counsel Pickens on their classes taught for the diversion program. She said the number of private reprimands by the Supreme Court is down because more people are in the diversion program. She reported that Tommy Humphries has been hired to fill the new attorney position in her department.

PRT ANNUAL REPORT

General Counsel Hendryx reported the Professional Responsibility Tribunal has prepared its own report of its activities during the past year. She praised the PRT members who serve and noted the sacrifice they make in giving of their time.

SECTION LEADERS COUNCIL UPDATE

Past President Reheard reported the first meeting was held Jan. 30. Discussed at the meeting was that some sections were not functioning but still collecting dues. Subcommittees were created with Governor DeMoss chairing the review of section rules, and Mike Wofford to chair bylaws. She said the House Counsel Section has requested to be sunset. The next meeting will take place in late March.

OPEN RECORDS COMPLAINT

Executive Director Williams reported Attorney General Pruitt's office has said the OBA does not need to take any action on an Oklahoma open records complaint that was submitted to the AG office.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx briefed board members on the activities of a man who has made threats against OBA staff members periodically over the past two years. He lives out of state but traveled to Oklahoma City recently before returning home. The FBI was made aware of his actions, and extra security in the bar center was arranged. Board members praised Executive Director Williams and General Counsel Hendryx on the handling of the situation.

WEBSITE DEVELOPMENT

President Christensen said work on a redesign and reorganization of the OBA website needs to be back on the "to do" list as a long-term project. She said that once decisions are made on which operating system the OBA will use this

project will become a higher priority. Executive Director Williams stated there are 3,500 pages of content on the website. IS Manager Watson said it is not too early to begin content review.

OBA DIRECTOR RESIGNATION

President Christensen reported that Educational Programs Director Douglas has submitted her resignation to accept another position. Her last day will be March 2, 2012. Board members reviewed the job description, previous ad for the position and a proposed new advertisement.

PERSONNEL POLICY AMENDMENTS

President Christensen discussed board involvement in the hiring and firing process of management level positions. Executive Director Williams made comments, and discussion followed. The board voted to amend paragraph 5 to read:

No new management level positions shall be authorized or created without Board of Governors' approval. Board of Governors' approval shall be required to hire directors, coordinators, administrators and/or department heads.

The board voted to amend section Q. Dismissal to read:

Any employee may be dismissed at any time with or without cause. The Executive Director has the responsibility and authority for dismissal of a support staff employee. The Executive Director may delegate authority for dismissal of a support staff employee to the appropriate director,

coordinator, administrator and/or department head.

The board voted to add as the first paragraph to section Q:

The Board of Governors' approval shall be required to dismiss a director, coordinator, administrator and/or department head.

EXECUTIVE SESSION

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

NEXT MEETING

The Board of Governors met March 14, 2012, at the Oklaho-

ma Bar Center in Oklahoma City, and a summary of those actions will be published after the minutes are approved. The next board meeting will be held April 25, 2012, at the Oklahoma Bar Center in Oklahoma City.

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At Home



At Work



And on the Go

Cy Pres? S'il Vous Plait!

By Susan Shields

The *Cy Pres* doctrine (from the French term "*Cy Pres comme possible*," meaning "as near as possible") is a court-approved method of distributing a damage fund when the original purpose cannot be achieved. In recent years, *Cy Pres* awards have been a significant source of additional funding for the Oklahoma Bar Foundation (OBF), which for Oklahoma lawyers is the "next best use" in any type of class action case or other matter involving unallocated discretionary funds. The OBF's mission of improving access to justice for those less fortunate makes it an ideal match for class action *Cy Pres* awards, since an underlying premise for all class actions is to make access to justice a reality for people who otherwise would not be able to obtain the protection of the court system.

WHERE DOES A CY PRES AWARD COME FROM?

Typically at the conclusion of a class action where damages have been awarded to class members, a fund is created. After class members' claims are paid, there is frequently an amount remaining because members of the class cannot be located, not all members of a class collect their portion of

“The OBF’s mission of improving access to justice for those less fortunate makes it an ideal match for class action *Cy Pres* awards...”

the award, or it is not possible to determine each plaintiff's actual damages or share of the settlement fund. Under the doctrine of *Cy Pres*, judges and attorneys can recommend that residual funds be put to their "next best use" for the aggregate, indirect and prospective benefit of the class members.

Whatever the amount, the court must determine how to distribute these leftover funds.¹ In these instances, courts have the discretion to distribute the remaining funds to charitable organizations, such as the OBF, under the *Cy Pres* doctrine. When negotiating a fund settlement, class action practitioners should discuss a precise mechanism

for dealing with any residual funds that may remain at the end of any claims administration. A *Cy Pres* award supporting the OBF merits consideration during these negotiations. Oklahoma, unlike some other states, does not have a specific statute governing the allocation of residual funds in a class action context.² However, Oklahoma courts have often directed *Cy Pres* funds to the OBF. Likewise, federal courts under the Federal Rules of Civil Procedure frequently direct residual funds in federal class actions to charitable organizations such as the OBF. Often the driving force for *Cy Pres* awards to charitable organizations such as the OBF is the plaintiff's counsel, but defense counsel also frequently welcomes a *Cy Pres* remedy as a way for their client to resolve the case and obtain some positive publicity from the settlement. The OBF can be a resource in providing counsel with sample language for pleadings in directing *Cy Pres* awards to the OBF.

WHAT DOES THE OBF DO WITH CY PRES AWARDS?

Cy Pres awards have made possible a number of successful charitable projects and initiatives over the past several

years and have enabled the OBF to provide ongoing support for these efforts. The OBF uses a substantial portion of the *Cy Pres* awards received to support the court systems in Oklahoma and the work of our communities' pro bono and legal aid organizations, and *Cy Pres* awards play a critical part in the OBF's ability to provide that support. The OBF maintains a fund specifically for the benefit of Oklahoma district and appellate courts known as the "OBF District Court and Appellate Court Grant Fund." There is a separate grant cycle for the Court Grant Fund each year, with applicants completing a formal grant application and receiving a personal interview with the OBF Grants and Awards Committee. The primary purpose of the fund is for capital improvements and extraordinary expenditures of Oklahoma district and appellate courts necessary to promote the administration of justice.

Since 2006, the OBF has received over \$3.3 million in *Cy Pres* awards due to the generosity and forethought of Oklahoma attorneys and other counsel in various class action matters. These awards have allowed the OBF to make grant awards from the fund to 25 courts across the state in the total amount of \$218,337 through calendar year 2011 to

provide for such things as digital court reporting systems and sound equipment, audio visual equipment for the courts, technology upgrades and Wi-Fi systems for the district court of Tulsa County and the district court of Oklahoma County, waiting area improvements to the Juvenile Justice Center, educational displays, computer equipment and software, video equipment and other items. An additional approximate \$100,000 in awards is projected to be made by the OBF from the Court Grant Fund during 2012. The OBF Court Grant Fund allows the OBF to partner with Oklahoma counties to provide improvements to the courts that otherwise would not be possible, and provides funds for improvements to our court systems which benefit all users of Oklahoma courts thereby furthering the OBF mission of access to justice for all.

WHAT CAN YOU DO TO FURTHER THE CHARITABLE MISSION OF THE OBF?

The OBF's mission of "advancing education, citizenship and justice for all" makes it a perfect match for class action *Cy Pres* awards. Through the OBF's comprehensive grant award process, applicants and a panel of diverse individuals with a

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

Thanks to members of the Oklahoma Bar Association, the OBF has been fortunate to receive a number of generous *Cy Pres* awards since 2006. These awards have been key components for growth and outreach for the OBF's charitable missions and have enabled the OBF to provide for increases in overall grant awards for new initiatives across the state. Additional *Cy Pres* awards to the OBF can and will make a tremendous difference to benefit courts throughout Oklahoma and to further the other charitable missions of the OBF. **Please consider the OBF in any cases in which you are involved that have the potential of remaining *Cy Pres* fund distributions.**

Ms. Shields is president-elect of the Oklahoma Bar Foundation.

1. For a detailed look at *Cy Pres* awards and how they can be used, See *In re Holocaust Victim Asset Litig.*, 424 F.3d 158, 163 (2nd Cir. 2005), and Kevin M. Forde, "What Can a Court Do with Leftover Class Action Funds? Almost Anything!," 35 JUDGES' JOURNAL 9 (Summer, 1996).

2. Cal. Cod Civ. Proc. §384; 735 ILCS. §5/2-807; Mass. R. Vic. P. 23(e); N.C. Gen. Stat. §1-267.10; S.D. Codified Laws §16-2-57; and Wash. CR 23(f).



Oklahoma Bar Foundation *Cy Pres* Information Request

Contact Name: _____ Date: _____

Affiliation: _____

Address/City/State/Zip: _____

Email: _____ Phone: _____

☐ Please have someone contact me to further explore *Cy Pres* funds being awarded to the Oklahoma Bar Foundation.

☐ A *Cy Pres* award has already been designated to the Oklahoma Bar Foundation; please contact me for further information.

Oklahoma Bar Foundation ♦ P.O. Box 53036 ♦ Oklahoma City OK 73152-3036

Email: foundation@okbar.org ♦ Phone: 405-416-7070

Thank you for your support!

*Additional
Cy Pres awards
to the OBF can
and will make
a tremendous
difference...*

Committee to Help Take on Least Understood Branch Project

By Richard L. Rose

Politicians and interest groups regularly issue dark warnings to judges, simply because they disagree with the judges' decisions. There is no place for this in our country. A fair and impartial judiciary is essential to democracy and protects our rights under the Constitution. When our founders wrote the Constitution, they purposely shielded courts from political influence so judges could protect our freedom — a revolutionary idea.

This year the OBA Access to Justice Committee is focusing on projects designed to educate and empower the citizens of Oklahoma. The new project the committee has taken on this year is the Least Understood Branch (LUB) Project. To many Americans, what goes on in courtrooms, from the local courthouse to the U.S. Supreme Court, is a mystery. Such ignorance about one of the three branches of government reduces trust in the judicial system. This is an effort to focus on the judicial branch of government and its role in government.

As lawyers, generally we recognize the importance of fair and impartial courts in our democracy to every possible venue in their communities. The goal of the project is to

help citizens understand that judges are different from other elected officials. They do not

“The goal of the project is to help citizens understand that judges are different from other elected officials.”

represent any group or ideology. Their job is to take the facts of a case and apply the law to produce a decision that is true to the law, regardless of how they feel about the outcome and regardless of who is helped or hurt. Naturally, this can lead to unpopular decisions.

In furtherance of the LUB Project, the committee hopes to partner with the ABA on this project and to utilize the available ABA materials, in addition to developing customized materials for Oklahoma and a video to help educate Oklahomans on the importance of fair and impartial courts to our

democratic society. The training is meant to encourage and help judges and lawyers to spread their knowledge to classes and community groups and to prepare them for the kinds of questions and misconceptions they will face.

Mr. Rose practices in Oklahoma City and chairs the Access to Justice Committee.



April 27 to be YLD Community Day of Service in Oklahoma

By Jennifer Heald Kirkpatrick

As discussed in my first article of the year, the YLD is focusing on education this year. On April 27, 2012, we will be giving presentations based on the newly updated "You're 18 Now – It's Your Responsibility" legal guide in more than 50 high schools across the state for our third annual Community Day of Service. The legal guide is a pamphlet that provides information to high school seniors about the rights and responsibilities associated with turning 18 and becoming an adult. The YLD has prepared a short video for use in the presentations that highlights several areas of the guide in a fun and entertaining way. There is still time to get involved in this great project.

If you are interested in making a presentation on April 27, or know of a high school teach-

er who would like to have an attorney in the classroom, please contact Joe Vorndran at joe@scdtlaw.com.

You don't have to wait for April 27 for the release of the "You're 18 Now – It's Your Responsibility" to get involved in the classroom. In fact, the Lawyers in the Classroom program, sponsored by the Law-related Education Committee, has been assisting lawyers with the materials and training needed to get involved in the classroom for several years. First-year attorney Christa Evans worked with Lawyers in the Classroom to bring gifted and talented students from Cherokee to visit the Capitol and the Administrative Office of the Courts.

Highlights of the day-long program included a tour of the new Oklahoma Judicial Center

building led by Supreme Court Justice Yvonne Kauger. Justice Kauger also explained the appeals process and the educational path from law student to judge. As a parting gift, she bestowed each student with a poster illustrating Native American art. The students also spent time with Alternative Dispute Resolution Systems Director Sue Tate, House Speaker Pro Tempore Jeff Hickman, Sen. Patrick Anderson

Interested in making a presentation on April 27, or know of a high school teacher who would like to have an attorney in the classroom?

Contact Joe Vorndran at joe@scdtlaw.com.

continued on next page



Christa Evans and Sen. Patrick Anderson (both far left) pose with students and a teacher from Cherokee who came to Oklahoma City to visit the Capitol and Oklahoma Judicial Center.

and former Oklahoma Rep. Thad Balkman.

At the end of the day, Ms. Evans said that the students gained a newfound respect for lawyers. "After exposure to who we are and what we do, they understood the practice of law is a noble, helping profession," she said. She encourages attorneys to volunteer with the

organization saying, "Oklahoma Lawyers in the Classroom is an incredibly rewarding and fun way to get involved and promote civics education. I enjoyed the day just as much as the kids and would recommend the program to anyone."

For more information on how you can get involved with Lawyers in the Classroom,

please contact Law-related Education Committee Chair Suzanne Heggy at sheggy@okcca.net.

Ms. Kirkpatrick practices in Oklahoma City and chairs the YLD. She can be reached at jkirkpatrick@hallestill.com.

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Calendar

April

- 17 OBA Bench and Bar Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Barbara Swinton 405-713-7109
- 18 OBA Law Day Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Tina Izadi 405-522-3871
- OBA Women in Law Committee Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Deirdre Dexter 918-584-1600
- 19 OBA Access to Justice Committee Meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Rick Rose 405-236-0478
- OBA Work/Life Balance Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa and teleconference; Contact: Sarah Schumacher 405-752-5565
- OBA Justice Commission Subcommittee Meeting;** 1 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Drew Edmondson 405-235-5563
- OBA Justice Commission Meeting;** 2 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Drew Edmondson 405-235-5563
- 20 OBA Lawyers Helping Lawyers Assistance Program Training;** 12 p.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 and teleconference; Contact: Paul Middleton 405-235-7600
- 21 OBA Young Lawyers Division Officers Meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jennifer Kirkpatrick 405-553-2854
- 23 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
- 24 A Conversation with Justice Sandra Day O'Connor;** 10 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Jane McConnell 405-416-7024

- 25 OBA Board of Governors Meeting;** 9 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: John Morris Williams 405-416-7000
- OBA Clients' Security Fund Committee Meeting;** 2 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Micheal Salem 405-366-1234
- 26 OBA Leadership Academy;** 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Heidi McComb 405-416-7027
- OBA Ask A Lawyer;** OETA Studios, Oklahoma City and Tulsa; Free legal advice 9 a.m. – 9 p.m.; TV show 7– 8 p.m. Contact: Tina Izadi 405-522-3871
- New Admittee Swearing In Ceremony;** 10 a.m.; Supreme Court Ceremonial Courtroom, State Capitol; Contact: Board of Bar Examiners 405-416-7075
- Oklahoma Uniform Jury Instructions Meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Chuck Adams 918-631-2437
- OBA Men Helping Men Support Group;** 5:30 p.m.; The University of Tulsa College of Law; 3120 East 4th Place, Tulsa, John Rogers Hall (JRH 205); RSVP to: Kim Reber 405-840-3033
- 27 Oklahoma Association of Black Lawyers Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Donna Watson 405-721-7776



May

- 1 OBA Government and Administrative Law Practice Section Meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact: Tamar Scott 405-521-2635

- 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 University of Tulsa College of Law; 3120 East 4th Place, Tulsa, John Rogers Hall (JRH 205); RSVP to: Kim Reber 405-840-3033
- 4 OBA Law-Related Education Committee Meeting;** 9:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Suzanne Heggy 405-556-9612
- Oklahoma Uniform Jury Instructions Meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Chuck Adams 918-631-2437
- 8 OBA Legal Intern Committee Meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact: Candace Blalock 405-238-3486
- 9 OBA Diversity Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Kara Smith 405-923-8611
- OBA Professionalism Committee Meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa and teleconference; Contact: Judy Hamilton Morse 405-235-7759
- 10 Oklahoma Bar Foundation Meeting;** 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: Nancy Norsworthy 405-416-7070
- 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 Law-Related Education Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact: Suzanne Heggy 405-556-9612
- OBA Solo and Small Firm Conference Planning Committee Meeting;** 1:30 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Collin Walke 405-235-1333
- OBA Family Law Section Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: Tamera Childers 918-581-8200
- 15 OBA Bench and Bar Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Barbara Swinton 405-713-7109
- OBA Civil Procedure and Evidence Code Committee Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa; Contact: James Milton 918-591-5229
- 16 OBA Women in Law Committee Meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Deirdre Dexter 918-584-1600
- 17 OBA Work/Life Balance Committee Meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact: Sarah Schumacher 405-752-5565
- OBA Justice Commission Meeting;** 2 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Drew Edmondson 405-235-5563
- 18 OBA Board of Governors Meeting;** 9:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact: John Morris Williams 405-416-7000
- OBA Environmental Law Section Meeting;** 11:30 a.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact: Mike Wofford 405-319-3504
- 19 OBA Young Lawyers Division Officers Meeting;** Tulsa County Bar Center, Tulsa; Contact: Jennifer Kirkpatrick 405-553-2854
- 24 OBA Men Helping Men Support Group;** 5:30 p.m.; The University of Tulsa College of Law; 3120 East 4th Place, Tulsa, John Rogers Hall (JRH 205); RSVP to: Kim Reber 405-840-3033
- 28 OBA Closed – Memorial Day Observed**



OBA Office of the General Counsel Adds Two Employees

OBA General Counsel Gina Hendryx announces that Tommy Humphries has joined her staff as an assistant general counsel and Tanner Condley as an investigator. Both employees will concentrate their efforts on the unauthorized practice of law. "Bar members voiced their concerns about increased occurrences of UPL in Oklahoma, and OBA leadership took action by increasing department funding to make these new positions a priority," Ms. Hendryx said. "Our efforts to prosecute offenders will help protect the public from unscrupulous people who have not passed the bar from performing legal work."



Tanner Condley

Mr. Humphries formerly worked as an assistant district attorney in Osage County, was also in private practice, served as a municipal judge, and most recently was an assistant with the Oklahoma Attorney General for six years before coming to work for the OBA. He is a 2001 graduate of the TU College of Law and holds a bachelor's degree from UCO.

Mr. Condley comes to the OBA from Norman Public Schools, where he worked as a police officer. He has also served as an officer and as an investigator in the Special Investigations Division of the Tulsa Police Department. His B.A. degree in sociology with an emphasis in criminology is from OU.



Tommy Humphries

Lawyers Take Pledges to Support OETA

For more than 30 years, the OBA has partnered with OETA, Oklahoma's statewide PBS television station, to produce the Ask A Lawyer TV show as part of Law Day activities. Bar members showed their appreciation by volunteering to be part of Festival 2012, OETA's annual fundraising drive. Volunteers and



OBA President Cathy Christensen with OETA Festival emcee B.J. Wexler

other lawyers calling in donated more than \$6,100, keeping the OBA at the top "Underwriting Producers" donor level. More than \$30,000 was raised from the public around the state.

Volunteers who joined President Cathy Christensen were Melinda Alizadeh-Fard, John Claro, Brad Davenport, Brandi Duden, Jerrod Geiger, Sam Glover, Tina Izadi, Greg James, Mark Koss, Ernest Nalagan, Ed Oliver, Nancy Parrott, Robert Powell, Max Rhodes, Charles "Dick" Rouse, Ricki Sonders, Margaret Travis, Mary Travis, Richard Vreeland and John Morris Williams.

OBA Member Resignations

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

Bill F. Bryan
OBA No. 1259
95 S. Flagstone Path Cir.
The Woodlands,
TX 77381-6624

James Lewis Davies
OBA No. 20001
7250 Cedar Point Rd.
Oregon, OH 43616

Lonny Lane Walters
OBA No. 21919
23A E. 3rd St.
Kansas City,
MO 64106-1004

Only Success at Lawyers Helping Lawyers Banquet and Auction

It was a sold out crowd attending the recent Cornerstone Banquet and Auction benefitting Lawyers Helping Lawyers Foundation Inc. The evening was a huge success – thousands of dollars were raised that will go toward intervention services for lawyers combating mental health and substance abuse challenges. The event, sponsored by the Lawyers Helping Lawyers Assistance Program Committee and LHL Foundation Inc., was a kick-off for the foundation's revitalized fundraising drive this year.

Those unable to attend the Cornerstone Banquet and Auction still have the opportunity to assist the fundraising effort. Use the envelope provided in the Feb. 11 issue of the *Oklahoma Bar Journal* or visit www.lhlfoundation.org to find more information and how to help.



Do You Sing? And Not Just in the Shower?

The OBA Ethics Musical CLE program is always looking for talented singers and songwriters for this annual event. If interested in getting your 15 minutes of fame, contact Heidi McComb at 405-416-7027 or heidim@okbar.org. This is approved for CLE teaching credit.

Central Oklahoma attorneys Rees Evans, Jay Buxton and Randy Grau regularly participate in the Ethics Musical for fun. However, they have a passion for music and are spearheading an effort to form an *a capella* singing group made up entirely of lawyers. If there are enough responses, there could be a men's group and a women's group. The organizers hope to begin rehearsing soon with members who must have small group or solo singing experience, or both.

Its repertoire would be broad and the group would perform at bar functions, arts festivals and other public functions, and the like.

Mr. Evans is collecting the names and qualifications of possible singers. He asks that if you're interested in participating you email him your name, address, daytime phone, the part(s) which you sing, and a brief summary of your applicable musical experience. His email address is rees.evans@sbcglobal.net. For questions, he can be reached during the work week at 405-232-4311 and on weekends at 405-947-7295.

Kudos

Mike Voorhees has been elected chairman of the Board of Regents for Oklahoma City Community College and president of the South Oklahoma City Area School District Board of Trustees for the term beginning May 1, 2012. He is a member of the South Oklahoma City law firm Shelton Voorhees Law Group.

On The Move

Gov. Mary Fallin recently announced two judicial appointments. **Thomas E. Prince** has been appointed Oklahoma County district judge, while **A. Clark Jett** has been appointed to the position of associate district judge in Texas County. Judge Prince has been practicing law in Oklahoma since 1982, when he graduated from the OCU School of Law. Prior to his judicial appointment, he practiced business and corporate law, employment law, health law and a variety of other fields as a sole practitioner at the Prince Law Office in Edmond. Before that, he was a partner at York & Slater in Oklahoma City. He received his bachelor's degree from Southern Arkansas University, and he is a native of Idabel. Judge-elect Jett is a

partner at the Wright, Dale & Jett Law Firm in Guymon, where he has worked since 1977. He is a general practitioner with an emphasis on land titles and conveyances. He graduated from the OU College of Law in 1977 after earning his bachelor's degree at OU.

The Kingfisher law firm of Harrison & Mecklenburg Inc. announces that it has opened an office in Stillwater. The Stillwater office offers legal representation and services in the areas of corporate and commercial law, probate, estate planning, real estate, banking, trust, taxation, oil and gas, environmental, family law and general civil practice. The new office is located at 205 W. 7th, Suite 104, Stillwater, 74074. The firm also announces that **Kurt Bollenbach** and **Derrick Davies** have been elected as new shareholders, and that **Robyn R. Baker** has joined the firm. Mr. Bollenbach joined the firm in 2010 after serving as a judge advocate in Germany for the U.S. Army and as an assistant district attorney in Canadian County. He practices in the areas of real estate, general counsel, criminal law, business litigation and family law. Mr. Davies joined the firm in 2007 and practices in the areas of business organizations, estate planning, trusts, family business transfer planning, probate, business and personal taxation, business litigation, oil and gas, environmental and agricultural law. Ms. Baker joins the firm after practicing in business law firms in Indiana,

New Mexico and Oklahoma, and practices in the areas of real estate, banking, bankruptcy, civil litigation, commercial transactions, probate, oil and gas, and general civil practice. Ms. Baker and Mr. Davies practice in the Stillwater office, and Mr. Bollenbach practices in the Kingfisher office.

United States District Judge **Gregory K. Frizzell** is the new chief judge of the U.S. District Court for the Northern District of Oklahoma with a seven year term that commenced March 14. He was appointed to the federal bench in 2007 by President George W. Bush. He is a graduate of TU and the University of Michigan Law School. Prior to his appointment as a U.S. district judge, he served as law clerk for Judge Thomas R. Brett, U.S. District Court Judge for the Northern District of Oklahoma from 1984-1986. He also worked in private practice in Tulsa from 1986-1994; served as general counsel for the Oklahoma Tax Commission from 1995-1997; was a state district judge from 1997-2007; and served as presiding judge of the 14th Judicial District in 2006-2007.

The City of Tulsa is pleased to announce that **Shelton L. Benedict** has joined its legal department as the police legal advisor. He has practiced law in Oklahoma for more than 26 years. For the past 18 years, he has been engaged in a general private law practice representing businesses and individuals.

He served as an associate municipal judge for the city of Tulsa from 2008 until he joined the legal department, and he was an administrative law judge for the Oklahoma Corporation Commission for four years.

GableGotwals has named **Dean Luthey** to the firm's Tulsa office as a shareholder. He has argued appeals before the U.S. Supreme Court and various federal and state appellate courts and has handled matters in federal and state trial courts and agencies across the country. Among his clients have been major energy companies, Fortune 500 companies, Indian tribes, national churches, state and local governmental entities, insurance companies, Big Four accounting firms, law firms and health care providers.

Andrews Davis announces that **Lance E. Schneider** of Oklahoma City has become a shareholder with the firm. He joined the firm in 2009 as an experienced trial lawyer. His practice currently includes civil litigation, business development, distribution agreements and franchising, personal injury, intellectual property, lien, construction, receivership, bankruptcy, oil and gas, wrongful death, medical malpractice, estate, corporate, insurance and contract law. He graduated from UCO in 1999 with a bachelor of science degree. He received his J.D. in 2002 from the OU College of Law.

Doerner, Saunders, Daniel & Anderson LLP has named **Varley H. "Sandy" Taylor Jr.** of Tulsa as head of the firm's Trust, Estate Planning and Taxation Practice

Group. He recently retired from the TU College of Law, where he had served as associate professor of law since 2005. Prior to his faculty position at TU, he practiced law with Doerner Saunders since 1971, focusing on federal and state taxation, business planning, estate planning, elder law, non-profit organizations, intellectual property, the Employee Retirement Income Security Act and employee benefits. Since 2005, he has remained of counsel at Doerner Saunders. He is also the author and co-author of several tax handbooks. He received his B.A. from Princeton University in 1968, his J.D. from the University of Michigan in 1971, and his master of laws (taxation) from New York University in 1973.

Resolution Center Mediation and Arbitration LLC of Tulsa has announced that **Martin B. Bernert** has joined its panel of mediators and arbitrators. He concentrates his practice in the areas of wills and trusts, probate, real estate and business transactions. He also has a varied background in business, government and education, having served as the assistant city manager for the city of Norman, a consultant to both local and federal governmental agencies, a former adjunct professor at the University Center at Tulsa, general counsel for a privately held multi-state corporation, and as an arbitrator with the American Arbitration Association. He earned his B.A. in economics and M.P.A. from OU and is a graduate of the TU College of Law.

Conner & Winters LLP has named several attorneys

as partners at the firm. **Jason Coutant** of the firm's Tulsa office practices in the areas of mergers and acquisitions, securities regulation, and banking and finance. He has assisted companies ranging from privately held businesses to development-stage bulletin board corporations to Fortune 500 companies with a variety of matters, including business formation and planning, public and private offerings of securities, SEC compliance and acquisitions and dispositions. He earned a B.S. in accounting from OSU in 2002 graduating *magna cum laude*. He earned his J.D. with honors from the University of Texas School of Law in 2005. **Allison McGrath Gardner** of the firm's Tulsa office practices in the areas of tax-exempt organizations, employee benefits, and trusts and estates. Her experience consists of forming tax exempt organizations, obtaining tax exempt status, and advising on issues relating to maintaining tax exempt status and the unrelated business taxable income. In the area of employee benefits, her experience includes assisting businesses, churches, tax exempt organizations, and governmental entities in preparing and maintaining qualified retirement plans, tax deferred annuity plans, health and welfare plans, deferred compensation plans, and summary plan descriptions. She received her B.A. degree from the University of Virginia and her J.D. with distinction from the OU College of Law. **Kerri Kobbeman** of the firm's northwest Arkansas office works primarily in the litigation, labor and employment, and corporate practice groups. She has been engaged in a broad range of labor and

employment matters, including the defense of wrongful discharge and discrimination actions as well the enforcement of contractual covenants. She has also assisted clients with contract drafting and negotiation. In her litigation practice, Kobbeman has experience working in products liability litigation, commercial litigation, and federal and state energy regulatory matters. She also has experience in corporate and securities, and has assisted clients with mergers and acquisitions, tender offers and general corporate governance. She received her B.S. degree from McPherson College and her J.D. with honors from the University of Arkansas School of Law. **Paige N. Shelton** of the firm's Tulsa office practices in the areas of commercial litigation, residential and commercial construction, products liability, insurance, and labor and employment. Shelton has assisted clients in a variety of industries, including construction, health care, banking, manufacturing and telecommunications. Her experience includes trial practice in both state and federal courts on matters including claims for negligence, products liability, wrongful death, breach of contract, breach of warranty and fraud. She earned her B.A. degree with a double major in mathematics and economics from Vanderbilt University in 1997. She received her J.D. with highest honors from the TU College of Law in 2004 where she served as the managing editor of the *Law Review*. **Jeanette C. Timmons** works in the firm's Oklahoma City office and practices corporate and securities law for a wide variety of both public and

private companies. During the course of her career, she has been involved in all aspects of corporate finance and securities law, with a particular focus on representation of public and private companies in capital formation activities, mergers and acquisitions, corporate governance and securities regulation. Her practice also includes banking law, particularly as it relates to bank formations and acquisitions and bank holding company regulation, as well as broker-dealer and investment advisor compliance matters. She has served as chairperson of the OBA Business and Corporate Law Section and is a graduate of the OU College of Law.

Stephen Eck has been appointed vice president and general counsel for Oklahoma Christian University. He is currently serving as vice president for estate and planned giving and will retain those responsibilities. He will be responsible for handling a broad range of legal matters and regulatory issues. He joined Oklahoma Christian in 2000 as director for advancement of OC's Cascade College branch campus in Portland, Ore. He is a 1992 graduate of Oklahoma Christian, with a bachelor's degree in Bible. He also holds an MBA from MidAmerican Nazarene University in Kansas City and J.D. from OCU. He is also licensed to practice law in Kansas.

Mark D. Keyl announces the establishment of Keyl ADR Services LLC. The firm is located at 2 Redfern Trail, Petal, Miss., 39465, and will provide mediation and

arbitration services to its clients. Mr. Keyl served as an attorney with the U.S. Office of Disability, Adjudication and Review as well as with the Department of Homeland Security-FEMA from 2004 until 2011. He has been a labor arbitrator for the Federal Mediation and Conciliation Service since 2004. He can be contacted by email at mdkeyl@juno.com or by phone at 601-466-0200. He is also licensed to practiced in Mississippi.

Jeremy Z. Carter announces the relocation of his practice to Newcastle. After leaving a downtown Oklahoma City insurance defense firm to start a solo practice, he will now practice primarily in the areas of civil litigation, personal injury, insurance bad faith and estate planning. He can be reached at 405-392-3300 or jeremy@jzcarterlaw.com. The address is P.O. Box 255, 920 N.W. 32nd St., Newcastle, 73065.

Christine Cave and the Employers Legal Resource Center are pleased to announce that they have relocated their Oklahoma City offices. The new mailing address is 6307 Waterford Boulevard, Suite 250, Oklahoma City, 73118. The Employers Legal Resource Center works with small businesses and nonprofits and provides counseling, training and representation on employment and business-related matters. Ms. Cave can be reached by email at ccave@okemployerlaw.com and the telephone number remains 405-702-9797.

At The Podium

Chris A. Paul of the Tulsa Office of McAfee & Taft was a presenter at the Corrosion and Punishment Forum of the 2012 NACE International Corrosion Conference in March in Salt Lake City.

Luke Wallace and **David Humphreys** of Humphreys Wallace Humphreys PC in Tulsa presented at three sessions of the National Consumer Law Center's 2012 Fair Debt Collection Practices Act Conference in New Orleans. Their presentations included "proven direct and cross examination; a \$1.26 million verdict case history" and "TCPA and state law claims to include in your debt collection abuse case."

Oklahoma County Chief Deputy Court Clerk **Tim Rhodes** was recently the guest speaker to the Oklahoma City Commercial Lawyers

Association. His topics were local administrative orders, and an update on the electronic filing project being implemented by the Oklahoma Supreme Court. He was also the recent featured speaker in a meeting of the South Oklahoma City Lawyers Association. His comments included updates in Oklahoma County district court practices, judge assignments, docket changes and district court clerk procedures.

Porter Heath Morgan IV recently spoke at a CLE for the Colorado Creditor Bar Association in Denver in March. He spoke on the topic of "Recent Caselaw and Developments after *Porter v. Lego*" and participated in a discussion panel. He also serves as vice president of the Colorado Creditor Bar Association.

UCO Professor Marty Ludlum recently spoke to four classes at Arcada University in Helsinki, Finland. His presentations were on "Inter-cultural Issues in Trade and International Trade Law."

How to place an announcement: The *Oklahoma Bar Journal* welcomes short articles or news items about OBA members and upcoming meetings. If you are an OBA member and you've moved, become a partner, hired an associate, taken on a partner, received a promotion or an award, or given a talk or speech with statewide or national stature, we'd like to hear from you. Sections, committees, and county bar associations are encouraged to submit short stories about upcoming or recent activities. Honors bestowed by other publications (e.g., Super Lawyers, Best Lawyers, etc.) will not be accepted as announcements (Oklahoma-based publications are the exception.) Information selected for publication is printed at no cost, subject to editing, and printed as space permits. Submit news items via email to:

Lori Rasmussen
Communications Dept.
Oklahoma Bar Association
(405) 416-7017
barbriefs@okbar.org

Articles for the May 19 Issue must be received by April 23.

IN MEMORIAM

Almon E. Henson of Shawnee died March 9. He was born March 3, 1919, in Pauls Valley. He attended OU and ECU where he received a teacher's certificate. **He served in the military during World War II achieving the rank of staff sergeant with the 8th Army Air Corps stationed in England. He was handpicked to serve in Air Technical Intelligence where he headed a team that catalogued intelligence informa-**

tion found by scout teams in Germany. He attended OU Law School, graduating in 1948. He practiced law for 57 years in Shawnee, retiring from full time practice in 2005 at the age of 85. During his early years, he served as county attorney for Pottawatomie County and also as president of the Oklahoma Association of County Attorneys. He was named to serve as a special judge for the Oklahoma Court of Appeals on several

occasions, as well as serving as a justice for the Supreme Court of the Citizen Potawatomi and Iowa tribes of Oklahoma. He was awarded the OBA Ethics Award in 1998, and he was named Citizen of the Year by Shawnee Kiwanis Club in 2000. He was an active leader and supporter of numerous civic organizations and clubs. Memorial contributions may be made to the First Baptist Church of Shawnee building fund or the Oklaho-

ma Baptist University Vision for the Future campaign.

Patrick Michael Garrison of Edmond died March 21. He was born on August 6, 1951, in Slidell, La. He received his B.A. from the University of Southwestern Louisiana in 1973, his M.A. from UCO in 1996, and after his military retirement he received his J.D. in 2004 from the University of Oklahoma. **He served in the U.S. Air Force, achieving the rank of colonel. After a distinguished military career, his final active duty assignment was at Tulane University in New Orleans where he served as commander of the ROTC unit.** After his military service, he was employed as a prosecutor in the Oklahoma County District Attorney's Office. He was an active member of the Edmond First United Methodist Church, American Legion and the Oklahoma City Gun Club. Memorial donations may be

made to Food For Kids Back Pack Program in care of Regional Food Bank, or to the Wounded Warriors Project.

David Berry Miller of Tulsa died Feb. 12. He was born Jan. 8, 1941, and graduated from Harding High School. He attended OU, earning a B.S. in finance, also attending Southwestern School of Banking and Southern Methodist University, and he earned his J.D. from the OU College of Law. He worked as a business development manager at Farmers National Association. He was known throughout Tulsa as a mentor for young people, and he was an active member of First United Methodist Church for over 26 years. Memorial gifts can be made to the Berry Miller Foundation for Reconciliation and Mentorship of Fathers and Children, in care of Tulsa First United Methodist Church.

Romain S. Mossman died March 19. He was born on March 12, 1928, graduating from Perry High School in 1947. He graduated from Oklahoma A&M College (now OSU). **He was called into the U.S. Army, serving as a lieutenant during the Korean Conflict, assigned to an army quartermaster unit in Fairbanks, Alaska.** After discharge, he attended the OU College of Law, graduating in 1956. He worked in the office of the Noble County district attorney and later joined a law firm in Oklahoma City. In 1963 he moved his office to Woodward and represented clients throughout northwest Oklahoma. He served as legal counsel for the town of Fort Supply for many years. He was appointed Woodward municipal judge in 1994, adding the duties of the state's first non-metropolitan juvenile judge to his responsibilities, retiring in 2000.



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POSITIONS AVAILABLE

OK INSURANCE DEPARTMENT HAS AN OPENING for a general counsel. You can visit our website at www.oid.ok.gov to view the complete job posting and qualifications. The closing date for this job opening is 4/17/12.

POSITIONS AVAILABLE

LITIGATION FIRM WITH OFFICES IN DALLAS, TULSA AND OKLAHOMA CITY seeks two to three experienced litigators for the firm's Tulsa and Oklahoma City offices. New hires will be located in downtown Tulsa and downtown Oklahoma City. The firm is a litigation firm with a broad client base and a strong, growing presence in Oklahoma and Texas. The law firm recently was recognized as one of the 40 fastest growing companies in eastern Oklahoma, and the only law firm on the list. The firm seeks attorneys with 4 to 7 years of experience or more in litigation. Those seeking a top litigation environment in which to mentor and be mentored are encouraged to inquire. Salary is above the norm when compared with commensurate job opportunities. Please send resume to "Box C," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

PARALEGAL NEEDED for an Edmond AV-rated law firm. Seeking experienced paralegal to work on civil litigation, primarily involving employment and business matters. Paralegal must have good communication and writing skills, be organized, motivated and deal well with clients. Competitive salary, benefits and bonus based on experience and motivation. Send resume, references and salary requirements to acedeno@oklawpartners.com.

BUSY OKLAHOMA CITY PLAINTIFF'S FIRM seeking an attorney with 2 - 5 years of experience in civil litigation. Position will require legal research, writing, depositions and trial experience. Salary, benefits and bonus potential commensurate with experience and performance. Send resume and writing sample to: 210 Southeast 89th St., Oklahoma City, OK 73149, or by fax to 405-721-9503.

ASSOCIATE ATTORNEY: MILLS & JONES LLP, a downtown Oklahoma City, small AV-rated, insurance defense law firm specializing in commercial trucking litigation, seeks associate attorney with 3-4 years of litigation experience. A qualified candidate must have solid litigation experience, including a proven aptitude for performing legal research, drafting motions and briefs and conducting all phases of pretrial discovery. Salary is commensurate with experience. Please send resume, references and writing sample in confidence, via email to karen@millsfirm.com.

HOUSTON AV-RATED LAW FIRM SEEKS ATTORNEYS licensed in Oklahoma to join its growing oil and gas practice. Candidates should have 2+ years of experience in writing title opinions. Being also licensed in Texas, Kansas or New Mexico is a plus. Excellent pay and benefits for qualified individuals. Please send cover letter and resume in confidence. Send replies to "Box W" Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

HIGH-VOLUME TULSA SOCIAL SECURITY DISABILITY PRACTICE has an opening for an associate attorney with 3+ years experience. Competitive salary and bonus structure. Potential signing bonus. Send resume to "Box U," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

POSITIONS AVAILABLE

HEALTH CARE SERVICE CORPORATION, a Mutual Legal Reserve Company that does business as Blue Cross and Blue Shield in four states has an assistant general counsel opening in its legal division in Tulsa, Okla.: Basic function: This position is responsible for providing legal advice, support, and coordination of legal matters or projects relating to Oklahoma insurance code, benefit contract issues and health care operations. Candidate would counsel internal business management and assist litigation attorneys in Oklahoma. Candidate would also provide legal support to divisional management on specific business issues and represent the company in dealings with applicable regulatory bodies and government agencies. Job requirements: 1) Juris Doctor degree and a license to practice law in Oklahoma; 2) Experience as an attorney with demonstrated understanding/experience of the health care or insurance field. We are an equal opportunity employer dedicated to workforce diversity and a drug-free and smoke-free workplace. Drug screening and background investigation are required as a condition of employment. Please apply online by going to www.bcbsok.com.

MCAFEES & TAFT IS SEEKING AN APPLICANT to fill an accounting billing clerk position with our growing accounting department. The employee will be responsible for electronic billings for the firm. The ideal candidate will have previous law firm accounting experience, particularly, experience with electronic billings and Elite accounting system. He or she should have excellent Excel and ten key office skills. The starting salary is negotiable based on experience. Generous benefits package including paid parking, medical and life insurance. Other benefits include 401(k), profit sharing and a cafeteria plan for uninsured medical and daycare expenses. Please send resume, references and salary requirements to Judy Cross at judy.cross@mcafeetaft.com.

LITIGATION ATTORNEY WANTED for Oklahoma City office of an expanding national insurance defense firm. Candidate should have 4 to 8 years experience in litigation and must demonstrate strong client relations skills. Construction defect, professional liability, employment, bad faith and personal injury defense work helpful. Compensation package will reward skills, experience and existing relationships. Additional information may be found at www.helmsgreene.com. Please direct inquiries to Steve Greene at sgreene@helmsgreene.com or 770-206-3371.

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Casey at the Bar

A Tribute to Ernest L. Thayer's Poem

By James A. Purcell

*The charges weren't forgiving for the shackled throng that day:
Three counts of theft by taking and possession of cocaine.
And then when Jackson pleaded guilt, and Johnson did the same,
The sight of bricks and iron bars soon filled the client's brain.*

*Checking watches, keys in hand, bailiffs hoped to beat the rush,
while
A restless toddler's discordant cries disrupt'd the solemn hush.
The client's mother clasped her hands, and in this thought found
peace:
"If Casey's worth just half his fee, my son must be released!"*

*But - as was his right, of course - the DA took his time. You see,
'Twas election year in Tulsa, and some called him "soft on
crime."
So as the county's lawyer quoted, first King James, Rousseau,
Voltaire...
Rusty squeaks betrayed the nodding judge, reclining in his chair.*

*Then, "Objection," calmly rolled across young Casey's silver
tongue.
Silence... ne'er had one dared interrupt Cox's closing
monologue.
Yet in Casey's smugly crooked smile, shards of hope remained,
And sighs erupted 'round the room when the judge remarked,
"Sustained."*

*And while the state politely thanked all present for their time,
A deaf'ning click reverberated within the jurors' minds.
It echoed off the oaken walls as Casey capped his pen,
And soon Casey, mighty Casey, was standing once again.*

*Casey's buttons sparkled as he fastened them with grace;
His collar, starched and rigid, held his Windsor Knot in place.
And when, with practiced empathy, he grasp'd his client's arm,
All within the courthouse knew 'twas Casey at the Bar.*

*Twenty-four eyes grew wide as Casey neared the jury box;
A playful wink or quiet nod ensured each juror's trust.
Reminders of their own mistakes, and of pride before the fall,
Were eloquently crafted in his silken southern drawl.*



*"The man - no, boy - you see before you, wrapped in county
prison chains,
By the learned doctor's sound advice, is certified insane.
What's more, he's but a victim of his humble social class, who,
Diseased by drug addiction, quietly slipped between the cracks."*

*The prosecutor thinly veiled a chuckle 'neath his cough.
Brimm'd with matriarchal rage, the mother snarled at Cox.
Casey heard a furious scribbling, and was discreetly passed
a note:
"Don't let him get away with that!" his livid client wrote.*

*But Casey tapped the table twice, and gently mouthed "Enough."
He dusted off his jacket sleeve, and tugged upon his cuffs.
Casey's piercing gaze held fast, unfazed by Cox's smiles.
Casey knew the die was cast; for the jury's ears were his.*

*Pointing toward the client's mother, her kerchief soaked by tears,
He muses o'er the likely sentence: ten to twenty years.
As one hand clasps his Bible taut, the other pounds the bench;
Crescendo fades to reverent pause... 'til he breathily moans,
"I rest."*

*Oh, somewhere in the handle, autumn winds begin to blow,
And in Norman, students head to class, their books and bags
in tow,
And on the Kiamichi retired anglers crank their reels,
But there are no autumn plans for Casey - mighty Casey
must appeal.*

Mr. Purcell is a 3L at University of Georgia School of Law.

Intellectual Property Law - What You Don't Know Can Hurt You

May 4, 2012
Oklahoma Bar Center, OKC

May 11, 2012
Renaissance Hotel, Tulsa

Planner/Moderator:
Nick McCarthy, McCarthy Law Group, Norman



www.okbar.org/cle

8:30 a.m.
Registration and Continental Breakfast

9
Patent Law Protection
• Changes in patent law under the new America
Invent's Act
• Employee inventors and patent ownership issues with
employers
• Non-practicing entities (aka "patent trolls"): Who are
they and what do they want?

Matt Gibson, McAfee & Taft, Oklahoma City

9:50
Break

10
Practical Tips for Counseling Clients in Trademark
Selection, Protection and Enforcement
Julianna Deligans, Hall Estill, Oklahoma City

10:50
Who Owns the Software I Just Paid to Have Written? And
Other Software/Internet Related Copyright Issues
Terry Watt, Fellers Snider Blankenship Bailey &
Tippens, P.C. Tulsa

11:40
Networking lunch
(included in registration)

12:10
Trade Secret Protection
Randy McCarthy, Hall Estill, Oklahoma City

1
IP Ethics Considerations (ethics)
Randy McCarthy, Hall Estill, Oklahoma City

1:50
Break

2
Litigating the IP Dispute
Phillip Free, Hall Estill, Oklahoma City

2:50
Adjourn



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