

ETHICS Oklahoma Bar JOURNAL

Volume 83 ♦ No. 33 ♦ Dec. 8, 2012

Ethics & Professional Responsibility

Ethics Checklist

- Respect others
- Integrity
- Fair play
- Decency & courtesy
- Timely communications
- Be punctual
- Cooperation
- Civility
- Professional conduct
- Honesty
- Competence

ALSO INSIDE

- Annual Meeting Highlights
- Bar Journal 2012 Index

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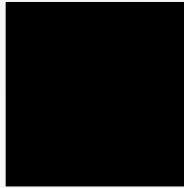
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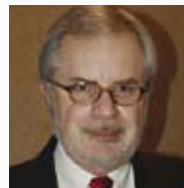
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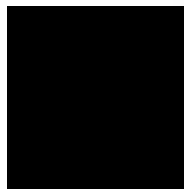
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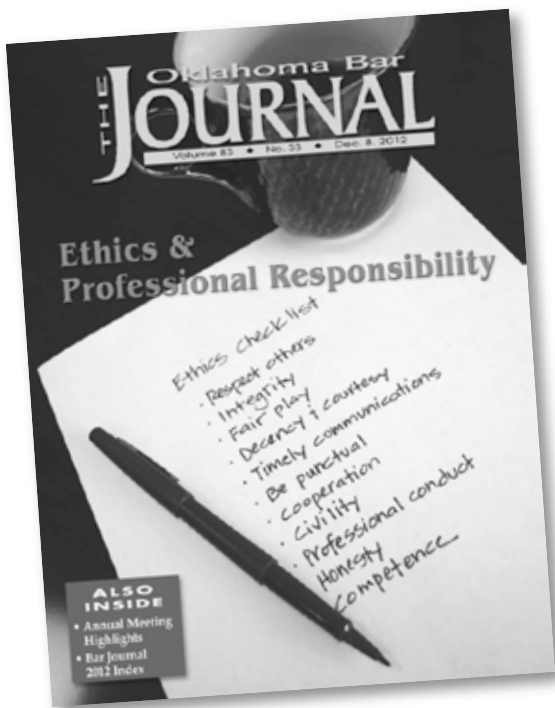
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EDITOR: PANDEE RAMIREZ

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A Winning Season for Team OBA

By Cathy Christensen

As I write my final president's letter of 2012, I harken back to my thoughts while drafting my first president's letter on New Year's Day 2012. At that time, I was in awe of the honor and responsibility of serving as your bar president — and thankful for your trust. Now, as my term comes to an end, I am truly humbled to have had this honor. Thank you for allowing me to serve as your president. It has been the opportunity of a lifetime, and I will forever cherish the experience and the memories. Serving as your bar president has been the highlight of my professional career.

I am grateful to the many people who assisted me this year, particularly my family, the entire OBA staff and directors, Executive Director John Morris Williams and General Counsel Gina Hendryx. Our bar association is one of the finest in the country. In many areas of programs and member service, the Oklahoma Bar Association is considered the "gold standard."



Cathy Christensen

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

I wish to thank the members of the Board of Governors for their hard work and devoted service to our association. Justice Yvonne Kauger served as the Supreme Court liaison to the board this year, and I very much appreciated her wisdom, humor and friendship. I am grateful for all of the OBA members who gave generously of their time and legal talent in service to this association through section and committee work and special projects.

I'd also like to thank all of the OBA members who may not currently be active in the bar association; but nonetheless, represent our profession well each and every day by your personal integrity and your demonstrated respect for the profession, your clients and the general public. Each of you gives back to the legal profession in many ways. We are members of an

honorable and noble profession — not because of the work of a few, but rather because of the slow and steady efforts of many. Each and every one of us represents the Oklahoma Bar Association and the

legal profession in our daily professional practice, our community involvement and our conduct.

No president can accomplish his or her presidential initiatives without the strength and power of teamwork. Working together as a team, OBA staff and committed volunteers came together and made 2012 a very successful year. We accomplished everything on my presidential initiative to-do list and then some!

SEASON HIGHLIGHTS

The OBA technology audit was completed earlier this year, and we are implementing the audit recommendations. The OBA has purchased and in-stalled new hardware and software, and more is on order. In another 12 months or so, www.okbar.org will have a more attractive appearance, be more functional and be a better tool for you to use in your law practice. Improvements in technology are not cheap, and change is not easy, but please be patient. Your OBA staff is working to pace im-

cont'd on page 2695

"We accomplished everything on my presidential initiative to-do list and then some."

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EVENTS CALENDAR

DECEMBER 2012

- 12 **OBA Technology Committee meeting;** 3 p.m.; Oklahoma Bar Center,
Oklahoma City with OSU Tulsa, Tulsa; Contact Gary Clark 405-744-1601
- 13 **OBA Diversity Committee meeting;** 12 p.m.; Oklahoma Bar Center,
Oklahoma City with Tulsa County Bar Center, Tulsa; Contact Kara Smith
405-923-8611
- 14 **Oklahoma Association of Black Lawyers meeting;** 12 p.m.;
Oklahoma Bar Center, Oklahoma City; Contact Donna Watson
405-721-7776
- OBA Board of Governors meeting;** 11 a.m.; Oklahoma Bar Center,
Oklahoma City; Contact John Morris Williams 405-416-7000
- 15 **OBA Young Lawyers Division meeting;** 10 a.m.; Oklahoma Bar
Center, Oklahoma City; Contact Jennifer Kirkpatrick 405-553-2854
- 17 **OBA Alternative Dispute Resolution Section meeting;**
4 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Michael O'Neil
415-232-2020
- 20 **Oklahoma Justice Commission meeting;** 2 p.m. Oklahoma Bar
Center, Oklahoma City; Contact Drew Edmondson 405-235-5563
- 24-25 **OBA Closed** – Christmas observed
- 31 **OBA Closed** – New Year's Day observed

JANUARY 2013

- 1 **OBA Closed** – New Year's Day observed
- 3 **OBA Lawyers Helping Lawyers discussion group meeting;**
7 p.m.; Office of Tom Cummings, 701 NW 13th St., Oklahoma City;
RSVP to Kim Reber kimreber@cabainc.com
- OBA Lawyers Helping Lawyers discussion group meeting;** 7
p.m.; The Street Law Firm, 400 S. Boston Ave, Ste. 1100 W., Tulsa; RSVP
to Kim Reber kimreber@cabainc.com
- 4 **Swearing-in ceremony of Chief Justice Tom Colbert and Vice
Chief Justice John Reif;** 1:30 p.m.; Supreme Court Ceremonial
Courtroom, State Capitol, Second Floor, Oklahoma City. Reception to
follow

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

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

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Bench and Bar Relations in the Digital Age

By Sheila Stinson and Collin R. Walke

Online social media accounts for attorneys are ubiquitous. Many attorneys use these accounts for advertising, research on clients or opposing counsel's clients, or to maintain contact with other members of the legal community. Given the new reality of online social media, the bench and bar must appreciate the effect of online relationships between the bench and bar. This article will examine the Oklahoma Judicial Ethics Advisory Panel's opinion as to the propriety of online "friendships" between the bench and bar, the test for when a judge must recuse from a case and the procedure for disqualifying a judge for violation of the Oklahoma Judicial Ethics Advisory Panel's opinion.

Obviously, there are many legitimate reasons why a judge would want to be a member of a social network — *e.g.*, "reconnecting with law school, college or even high school classmates; increased interaction with distant family members; staying in touch with former colleagues; or even monitoring the usage of that same social network by minor children in the judge's immediate family."¹ Moreover, a "complete separation of a judge from extra-judicial activities is neither possible nor wise; a judge should not become isolated from the community in which the judge lives."² Still, "as with any public media, social networking sites are fraught with peril for judges..."³

Given the "perils" of social networking sites for judges, a working understanding of when a

judge may "friend" an attorney is critical for the bench. Of course, "friendship" is a two-way street and attorneys must be just as sensitive to these "perils" as the bench. Failure to properly understand and appreciate the delicate nature of online friendships could result in a case being tried and adjudicated at the trial court level, only to have the matter appealed and determined that the trial court should have recused — resulting in a second trial on the exact same issues.

OKLAHOMA JUDICIAL ETHICS ADVISORY PANEL OPINION 2011-3

Judicial Ethics Opinion 2011-3, 2011 OK JUD ETH 3, determined that, with restrictions, a judge may hold an Internet social media account. A judge who owns an Internet social

media account cannot “add court staff, law enforcement officers, social workers, attorneys and others who may appear in his or her court as ‘friends’ on the account.”⁴ However, “a judge may hold a social networking account that includes as ‘friends’ any person who does not regularly appear or is unlikely to appear in the judge’s court as long as he does not use the network in a manner that would otherwise violate the Code of Judicial Conduct.”⁵

In arriving at this decision, the Judicial Ethics Advisory Panel reviewed several other states’ opinions and reports of disciplinary actions. According to the Judicial Ethics Advisory Panel,

[t]he common theme of the opinions rendered in other states deals with the conflict that may arise between the use of the social network and the duty of the Judge, found in all the Codes of Judicial Conduct, that is the duty of the Judge to maintain the dignity of judicial office at all times, and avoid impropriety and the appearance of impropriety in their professional and personal lives, and to ensure the greatest public confidence in their independence, impartiality, integrity and competence.⁶

“The test for appearance of impropriety is whether the conduct would create in reasonable minds, a perception that the judge violated this code or engaged in other conduct that reflects adversely on the judge’s honesty, impartiality, temperament or fitness to serve as a judge.”⁷ The Judicial Ethics Advisory Panel emphasized that whether a posting would mean that a party “was actually in a special position [in relation to the judge] is immaterial as it would or could convey that impression.”⁸

Ultimately, then, the Judicial Ethics Advisory Panel believes that the use of social media accounts by judges is generally appropriate. Nonetheless, the bench may not friend those people likely to appear before the court or otherwise use the social media in such a way as to give the perception that the judge’s impartiality, honesty, temperament or fitness to serve as a judge would be adversely affected.

This position is different than the opinion reached by the California Judicial Ethics Committee. That committee

held that just as judges are permitted to join social and civic organizations that include attorneys who may appear before

“...there is no discernible difference between a judge’s friendship with an attorney on a social networking site and a judge having lunch with an attorney, playing tennis with an attorney, or engaging in a myriad of other activities...”

them, the same considerations apply to interacting with lawyers on online social networking sites. “Accordingly, a per se prohibition of social networking with other lawyers who may appear before a judge is not mandated by the canons.”⁹

Instead, the court should look to several factors in determining whether to interact on social networking sites, such as: 1) the nature of the social networking site; 2) the number of “friends” on the page; 3) the manner in which the judge determines whom to add as a “friend” and 4) how regularly the attorney appears before the judge.

This opinion was also held by a minority number of members of the Florida Judicial Ethics Advisory Committee. Their opinion argued

The logical extension of the majority’s opinion is that judges cannot be friends with any lawyer who appears before the judge since there is no discernible difference between a judge’s friendship with an attorney on a social networking site and a judge having lunch with an attorney, playing tennis with an attorney, or engaging in a myriad of other activities with attorneys who appear before the judge...The exclusivity and selectivity by the judge in choosing to spend time and enjoyment with some attorneys and not others is far more apparent than “friendship” in the social networking setting of the Internet.¹⁰

Whatever persuasive value the above positions hold, they are clearly not the same as the recommendations of the Oklahoma Judicial Ethics

Advisory Panel. Therefore, a prudent attorney should avoid friending a judge if they regularly appear before that judge.

WHEN MUST A JUDGE RECUSE

If a judge is “friends” with an attorney who is before the court, when must the judge recuse? The simplest option is to “unfriend” or unfollow the attorney on the social media site. If the issue cannot be easily resolved, the general law of disqualification provides that “due process requires every litigant receive a decision that is the result of ‘the cold neutrality of an impartial judge.’”¹¹ Of course,

[n]ot only must the judges presiding over the courts be honest, unbiased, impartial, and disinterested in fact, but it is of the utmost importance that all doubt or suspicion to the contrary must be jealously guarded against, and, if possible, completely eliminated, if we are to maintain and give full force and effect to the high ideals and salutary safeguards written in the organic law of the state.¹²

Ultimately, a judge “shall disqualify himself or herself in any proceeding in which the judge’s impartiality might reasonably be questioned...”¹³ “The question of a judge’s appearance of impartiality is determined by an objective standard.”¹⁴

Taking into consideration both the general law governing recusal, and Judicial Ethics Opinion 2011-3, it is clear that a judge should recuse from a case in which the judge is “friends” with an attorney via an online social media account. The judge’s honest belief that he or she can be impartial is irrelevant.¹⁵

THE PROCEDURE FOR RECUSAL

Rule 15 of the Rules for District Courts governs the recusal process for trial court judges. According to Rule 15(a), “[b]efore filing any motion to disqualify a judge, an *in camera* request shall first be made to the judge to disqualify or transfer the case to another judge.”¹⁶ If the court does not satisfactorily resolve the request, then “not less than 10 days before the case is set for trial, a motion to disqualify a judge or to transfer a case to another judge may be filed and a copy delivered to the judge.”¹⁷

If the court still refuses to recuse, then the aggrieved party “may re-present his motion to the chief judge of the county in which the cause is pending.” If recusal of the chief judge is sought, then the motion to recuse should be set

with the presiding judge of the administrative district for rehearing. Importantly, whether the motion is set before the chief judge or the presiding judge, Rule 15(b) requires the written request for rehearing to be filed within five days of the refusal to recuse, not after the journal entry memorializing the refusal to recuse. The request for rehearing should be filed in the case, and a copy of the request should be “mailed or delivered to the chief judge or presiding judge, to the adverse party and to the judge who entered the original order.”

If the party seeking to recuse the judge fails yet again in his attempt, he “shall be granted not more than five days to institute a proceeding in the Supreme Court or the Court of Criminal Appeals for a *writ of mandamus*.” All civil cases in which a *writ of mandamus* is sought must be brought before the Oklahoma Supreme Court, and all criminal cases in which a *writ of mandamus* is sought must be brought before the Oklahoma Court of Criminal Appeals.

BENCH AND BAR RELATIONS

It is unclear why social media relationships are discouraged between the bench and bar. Actual interactions and acquaintanceship are encouraged between our bench and bar, through bar association events, through inn of court functions and other various entities. Sometimes, judges are simply friends with the attorneys that practice before them. Perhaps the reason why a virtual friendship is discouraged is because the social media friendship can be quantified, is potentially discoverable and maintains a virtual footprint of any interactions between the bench and bar.

1. New York Judicial Ethics Opinion 08-176 (2009).

2. Kentucky Judicial Ethics Opinion JE-119 (2010) (citation omitted).

3. *Id.*

4. Judicial Ethics Opinion 2011-3, 2011 OK JUD ETH 3, ¶¶1-4.

5. *Id.* at ¶7.

6. *Id.* at ¶6 (citing Preamble of Oklahoma Code of Judicial Conduct (2), Canon 1, Rule 1, 2, etc.).

7. *Id.* at ¶6 (citing Canon 1, Rule 214 (C)), “A judge shall not convey or permit others to convey the impression that any person or organization is in a position to influence the judge” (emphasis in original).

8. *Id.* at ¶8.

9. Maryland Judicial Ethics Committee, Opinion 2012-07 (2012) (citing California Judicial Ethics Committee Opinion 66).

10. Cynthia Gray, “The Too Friendly Judge? Social Networks and the Bench,” 93 *Judicature* 230, 237 (May-June 2010).

11. *Johnson v. Board of Governors of Registered Dentists of State of Oklahoma*, 913 P.2d 1339, 1347 (Okla.1996) (citing *Sadberry v. Wilson*, 441 P.2d 381, 382, 384 (Okla.1968); *Craig v. Walker*, 824 P.2d 1131, 1132 (Okla.1992)).

12. *State ex rel. Mayo v. Pitchford*, 141 P. 433, (Okla.1914) (citation omitted).

13. Okla. Stat. tit. 5, §2.11(A).

14. *Pierce v. Pierce*, 39 P.3d 791, 797 (Okla.2001) (citing *Johnson v. Board of Governors of Registered Dentists of State of Oklahoma*, 913 P.2d 1339, 1348 (Okla.1996)).

15. *Merritt v. Hunter*, 575 P.2d 623, 624 (Okla.1978)
16. Rule 15, Rules for District Courts of Oklahoma, 12 O.S. 1991, Ch. 2, App.
17. *Id.*

ABOUT THE AUTHORS



Sheila Stinson primarily practices in the areas of business litigation, medical malpractice defense and real estate transactions in the Oklahoma City firm of Kirk & Chaney. A native of Boise City, she graduated *magna cum laude* from UCO in 1999, and earned her J.D. from the OU College of Law in 2002. She frequently presents to students on the dangers of mismanagement of social media.



Collin Walke primarily practices in the areas of complex business litigation, family law and insurance defense in the Oklahoma City firm of Kirk & Chaney. He graduated *magna cum laude* from the OCU School of Law and earned his bachelor's degree in philosophy from OSU.



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**LAWYERS HELPING LAWYERS
DISCUSSION GROUP**





Client Communication: New Approaches to Old Problems

By Gina Hendryx

The Office of the General Counsel receives approximately 1,500 complaints annually alleging improper behavior by an Oklahoma licensed attorney. In 2011, the primary concern in 43 percent of the complaints was neglect of the client or the matter. And, this is not an anomaly. Year after year, the chief complaint received is that the lawyer is not being responsive to the client. Historically, clients complained of delay in the return of phone calls, not being informed of court dates, or kept up to date on the status of their matter. These concerns have not abated. However, with the increased methods of communication including social media, these concerns have morphed beyond the simple, “My lawyer won’t return my phone call.” Complaints now include neglect via Facebook, email, texting, Twitter and FaceTime.

Are you using one or more of these methods to keep a client informed? If so, it is important to remember that traditional rules of client confidentiality, diligence, and competence still apply to nontraditional approaches to client contact.

Oklahoma lawyers have a professional duty to keep their clients informed about their case or representation. Oklahoma Rule of Professional Conduct (ORPC) 1.4 requires the lawyer to:

- **Inform** the client of any decision or circumstance with respect to which the client’s informed consent is required by the rules;
- **Consult** with the client about the means by which the client’s objectives are to be accomplished;
- **Keep** the client reasonably informed about the status of the matter;
- **Promptly** comply with reasonable requests for information; and
- **Explain** any relevant limitation on the lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

The most common complaint is that the lawyer will not respond to the client's repeated requests for contact with the lawyer. Tandem to this complaint is that the matter is taking too long and the lawyer is neglecting the legal needs of the client. Along with the duty to keep the client informed, the lawyer must also act with reasonable diligence and promptness in representing a client (ORPC 1.3.). Studies have shown that clients often have unrealistic expectations when surveyed on anticipated response time to requests for information from their lawyers. While you may not be able to keep all of your clients informed and happy all of the time, the following suggestions derive from reviewing and investigating this most common of concerns.

SET YOUR CLIENT'S EXPECTATIONS

From the initial interview, set the guidelines for client contact. Have an office policy for returning calls and communicate same to your client. For example, "If I am unavailable by telephone, please leave a message. I return all of my calls on the same day they are received. Many days I do not return from court until late in the afternoon, but your telephone call will be returned." If your client knows that you will return the call at a certain time during the day, they will not become overanxious when they haven't heard from you in five or six hours. If you have someone who answers your office telephone, give that person sufficient information to relay to the client regarding when the call will be returned. Maybe your policy is that calls will be returned within 24 hours. The key is to let your client know your policy and then follow through with same.

SET YOUR CLIENT'S MODE FOR CONTACTING YOU

If you do not take/return calls after hours or on the weekends, then do not give clients your cell phone number. From the beginning of the attorney/client relationship, establish the best way for the client to get information to you. For example, "It is better for you to call my office and leave a message or send me an email. That way I will have a record of your call and can return it at the end of the day. Most days I am in court and my cell phone is turned off." There is nothing more frustrating for a client than calling the attorney's cell phone only to find that the phone has been turned off or that the message box is full. Determine from the beginning how you want your client to contact you,

deviate from that rule only in limited circumstances, and you will have a better attorney/client relationship.

ANTICIPATE YOUR CLIENT'S COMMUNICATION NEEDS

Your client is calling to find out if her case has been filed. You delay returning the call until you get the case filed. The client calls again...and again...This is a common scenario where the return call is put off until you get the work done. This causes the attorney to constantly be in "react" mode. Instead, choose several clients to email each week with an update on the status of their case. Anticipate the client's need for an update on the status of the matter. For example, "I anticipate filing your case by the end of next week. Just wanted to let you know that I am working on it and will finalize it as soon as possible." Communicating with the client even when you have nothing substantive to report lets the client know you are working on the matter, you haven't forgotten about her and can appease the otherwise fretful client.

FOLLOW THROUGH

No tip, suggestion or practice advice will work if not applied. Determine how, when and why you contact your client, explain same with your client at the outset of the representation, and then do what you say you will. Docket time daily to return phone calls and email. Prepare a list of clients to update the first of every week. Clear out your voicemail message boxes. Consistency will be rewarded with happy, non-complaining clients.

Regardless of the means employed to communicate with your clients, the duty to protect client confidential information remains the same. The lawyer's duty of confidentiality extends to present, former and prospective clients. Lawyers need to know the risks associated with electronically contacting clients and storing clients' information.

- Cell phones were once thought to be unsecured and conversations at risk to be "overheard." However, more recent authorities agree that the expectation of privacy on a cell phone is the same as that of a landline. This is bolstered by the fact that the unauthorized interception of electronic communications is a federal crime pursuant to the Electronic Communications Privacy Act.

- Email communications have had the same historical acceptance as cell phones. ABA Formal Ethics Opinion 99-413 (1999) states "Email communications, including those sent unencrypted over the Internet, pose no greater risk of interception or disclosure than other modes of communication commonly relied upon as having a reasonable expectation of privacy."
- Communicating via Facebook, however, has no expectation of privacy. Lawyers should be very leery of communicating with clients via social media including private messaging through these outlets.
- Likewise, texting can be problematic. Although performed via cell phone, records of same are kept by the service provider. Confidentiality cannot be assured. Confidential information to or from a client is better shared via another method of communication.

CONCLUSION

Regardless of the method or manner you choose to share information with your client, your ethical duties of confidentiality, diligence and communication must be considered. You must implement business practices and employ business tools calculated to protect client confidences and that assist you in providing diligent and informed representation.

ABOUT THE AUTHOR



Gina Hendryx is the general counsel for the Oklahoma Bar Association. A licensed attorney for nearly 30 years, she received her J.D. and B.S. degrees from OCU. She supervises a staff of 15 and serves as the association's chief disciplinary counsel. She works with the Professional Responsibility Commission and serves as a liaison to the OBA Board of Governors, OBA committees, the courts, and other local and national entities concerning lawyer ethics issues.

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Negotiating Settlements Effectively and Ethically

By Ellen Adams

The preamble to the Oklahoma Rules of Professional Conduct provides:

As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the rules of the adversary system. As negotiator, a lawyer seeks a result advantageous to the client but consistent with requirements of honest dealing with others...¹

When negotiating a settlement, an attorney is required to advise, advocate and negotiate on behalf of his or her client — however, it is a balance of these functions that allows an attorney to negotiate effectively. Knowing when to negotiate rather than to advocate with opposing counsel and when to advise your client rather than to adopt your client's position is necessary to dispute resolution. Yet, knowing how to effectively negotiate a settlement is only part of the challenge lawyers confront.

While a settlement should end litigation for the parties involved, a settlement may also mark the beginning of other disputes involving allegations of ethical misconduct against the attorneys representing the settling parties. While few of Oklahoma's rules of professional conduct address settlements directly, the rules apply in the context of settlements with the

same force as they would in the typical adversarial context. The purpose of this article is to review these ethical rules and to consider how each one applies to the various roles played by an attorney in the context of negotiating settlements. Further, this article aims to demonstrate how ethical behavior advances effective settlement negotiations.

THE COMPETENCIES OF COMPROMISE

One of the most basic ethical rules is to be competent in representation of your client.² Simply put, an attorney must have the requisite legal knowledge, skill, thoroughness and preparation to represent a client in a particular matter.³ Applying the rule in the context of settlement negotiations, an attorney must be able to determine the value and/or risk inherent in trying a particular case. Similarly, the

attorney should be able to reasonably determine the client's probability of success or defeat. No matter an attorney's aptitude at predicting case outcomes, an attorney must rigorously prepare for this analysis in order to provide a competent evaluation of the case to the client as an advisor, assert that position as an advocate to opposing counsel, and understand the true value of the case as a negotiator. Absent knowledge of the case's true value, an attorney will not be able to competently advise his or her client with respect to whether a settlement is in the client's best interest. Absent the requisite skill and preparation required to competently assess a case, an attorney will not be able to convince opposing counsel that his or her offer or counteroffer is reasonable in light of the claims or defenses at issue.

As a negotiator, one will always have the upper hand if one is able to educate opposing counsel on the law or the facts that are at issue, demonstrating readiness, willingness and ability to move forward with the case rather than to resolve it. If an attorney reaches the negotiation table after vigorous case preparation, then he or she will manifest the following to the other side: this will be a fight; I will always be prepared; I already have done the work that you are going to have to do and for which you will have to bill your client to understand this case. These inferences will impact the value of the settlement.

Being sufficiently competent to compromise a dispute also requires a different type of preparation and knowledge. An attorney must spend the time with his or her own client to determine what the client really wants to achieve and to manage the client's expectations. Having a thorough understanding of what your client wants to achieve will allow you to explore some more creative settlement options. Rather than simply negotiating dollars, you may be able to negotiate for equitable remedies. Further, if an attorney determines that his client wants the proverbial "victory," the attorney needs to explain what a settlement versus an actual trial likely will deliver. In other words, a client needs to understand that no one is going to deem him the victor or the

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“right” party in a settlement. Although the majority of disputes being litigated are heavily charged with emotion, the most effective negotiating occurs when the focus is on the facts. Thus, an attorney should prepare his client for settlement negotiations by advising the client that the most that conceivably can be achieved by a settlement is an exchange of something for value and an end to litigation.

Finally, after a compromise has been reached, an attorney must be competent enough to accurately document the agreement and to include any releases, warranties and indemnities that are necessary to put an end to the litigation. These core competencies are necessary for an attorney to both ethically and effectively compromise a dispute.

TO REACH A RESOLUTION, REACH OUT TO YOUR CLIENT

No matter how much skill, time and legal knowledge an attorney has applied in determining whether it is appropriate to settle, the ultimate decision whether to settle firmly resides with the client.⁴ Thus, if an attorney disagrees with his client, the attorney may not decide what is in the client's best interest. When such disagreements arise, an attorney should seek to resolve them as an advisor to the client by counseling regarding the risks and/or rewards of pursuing the matter to a final resolution. Such advice should be given candidly, referring not only to the law, but also to moral, economic, social and political factors as appropriate.⁵

Many of the disagreements that arise between attorney and client regarding settlement can be avoided altogether if communications regarding the case, settlement offers and strategies of reaching a client's objectives occur promptly and often. Rule 1.4 of the Oklahoma Rules of Professional Conduct imposes an ethical duty on attorneys to communicate with their clients. This rule recognizes that a client must be reasonably informed in order to actively participate in decision making about the case.⁶ Maintaining this level of communication throughout the representation of a client enables an attorney to quickly summarize the status and progress of

the case, including, importantly, any changes to the attorney's initial case evaluation, and to openly discuss the benefits or detriments of any settlement offer.

Without such ongoing communications from the attorney, a client will often be confused or at worst, feel misled and betrayed about the attorney's articulated likelihood of success in the case. For example, when a client first hears that he or she could be liable for opposing counsel's fees and costs at the negotiation table or from a mediator, then the client is going to doubt his attorney's competence and be reluctant to continue litigating the case regardless of his actual potential to prevail. Similarly, if an attorney fails to address the deficiencies in the client's case until the first settlement offer is made, the client may incorrectly perceive his attorney as unwilling to proceed to trial if the attorney advises his client to settle rather than to try the case.

Maintaining communications with one's client is an ethical obligation. An attorney is required to consult with his or her client with respect to settlement, including the strategy to be employed.⁷ Thus, even if an attorney feels that a settlement offer does not merit a response, the attorney is ethically obligated to discuss the offer with his client. Although most attorneys will routinely discuss settlement offers with clients, attorneys less routinely consult with their clients about the strategy to be employed in making and responding to settlement proposals. The comments to Rule 1.4 clearly contemplate that level of communication:

Adequacy of communication depends in part on the kind of advice or assistance that is involved. For example, when there is time to explain a proposal made in a negotiation, the lawyer should review all important provisions with the client before proceeding to an agreement. In litigation, a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that are likely to result in significant expense or to injure or coerce others. On the other hand, a lawyer ordinarily will not be expected to describe trial or negotiation strategy in detail. The guiding principle is that the lawyer should fulfill reasonable client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation.

Occasionally, a well-informed client may not want to pursue an attorney's recommended course of action, leading to disagreements between them.

If the lawyer and client cannot find a mutually-acceptable resolution of a disagreement on whether to settle a dispute, and the lawyer fundamentally disagrees with the client, the lawyer may need to withdraw from the representation.⁸ Conversely, the client may resolve the disagreement by discharging the lawyer.⁹ Ideally, the communication that has occurred throughout the case will assist the lawyer and the client in reaching an agreement as to the best course of action.

In any event, as previously stated, the ultimate decision with respect to settlement firmly resides with the client. Therefore, attorneys should not make, accept or reject any settlement offer without express authorization from the client. While every attorney should know that making a settlement offer or accepting/rejecting a settlement offer without the client's authorization is unethical, an attorney should be wary about taking any action in the context of settlement negotiations that he or she believes the client has implicitly authorized but for which no express authorization has been given. In settlement negotiations, an attorney's actions, while not the intent of the client, could bind the client. Thus, it is essential for the attorney to have the client's express authorization prior to making or accepting/rejecting any settlement offer.

MAKING DISCLOSURES IN YOUR DIALOGUE WITH OPPOSING COUNSEL

As discussed above, communicating with one's client allows an attorney to more effectively reach a final resolution to the underlying case through settlement. Of course, not to be ignored, final resolution cannot be achieved without extensive communication with opposing counsel as well. These communications with opposing counsel often may necessitate certain disclosures about the attorney's evaluation regarding the underlying merits of the dispute and about the client's propensity for settling the case. For an attorney, these communications require a balance of advocacy and accord, for which the ethical rules provide guidance.

While there should be a healthy reticence to share too much as an advocate, there is a necessity for dialogue as a negotiator. Nevertheless,

this dialogue must be guarded so that an attorney does not make any misrepresentation or representation for which he lacks client consent. Rule 4.1 of the Oklahoma Rules of Professional Conduct precludes an attorney from knowingly making a false statement of material fact or law to any third person, including opposing counsel, a witness or another party.¹⁰ The comments to Rule 4.1 instruct:

A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by partially true but misleading statements or omissions that are the equivalent of affirmative false statements. See Rule 8.4.

Although the comments demonstrate that there is no affirmative duty to inform opposing counsel of relevant facts, the comments also provide that certain omissions may constitute unethical misrepresentations. An attorney should carefully consider the consequences of failing to disclose a material fact — including injuring one's own reputation in the legal community, whether it may affect the enforceability of a consummated settlement agreement and whether disclosure may actually assist the parties in reaching a favorable resolution of the dispute.

If an attorney determines that failing to disclose a material fact will assist a fraudulent or perhaps even a criminal act by a client, then disclosure is required.¹¹ In the absence of any fraud or criminal wrongdoing, an attorney may feel an ethical obligation to inform opposing counsel of a fact that has yet to be disclosed in the litigation. In such case, the attorney should carefully review Rule 1.6, which precludes a lawyer from revealing information relating to the representation of a client without the client's informed consent.¹² Even if not ethically obligated, an attorney may determine that disclosure of a particular fact will facilitate a satisfactory conclusion of the matter. In compliance with Rule 1.6, an attorney who ethically and voluntarily informs opposing counsel of a fact that eventually will be discovered will be more effective at actually negotiating a settlement during the pendency of the case.¹³

With respect to the actual settlement, the comments to Rule 4.1 further provide:

[U]nder generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud.

Therefore, the rules contemplate that attorneys occasionally may engage in the same type of so-called "puffery" that often occurs in sales and other forms of negotiation when it comes to the actual dollar value of a settlement.

Although there may be some leniency within the ethical rules with respect to what is disclosed and what is kept in confidence during settlement negotiations, attorneys will negotiate far more effectively and ethically with the following standards of professionalism in mind:

We understand, and will impress upon our client, that reasonable people can disagree without being disagreeable; and that effective representation does not require, and in fact is impaired by, conduct which objectively can be characterized as uncivil, rude, abrasive, abusive, vulgar, antagonistic, obstructive or obnoxious. Ill feelings between clients will not dictate or influence a lawyer's attitude, demeanor, behavior or conduct. We will always look for opportunities to de-escalate a controversy and bring the parties together.

By implementing these standards of professionalism in all cases, settlements are much more likely to occur.

ETHICAL BEHAVIOR FOSTERS EFFECTIVE RESULTS

An attorney will only be able to resolve disputes through settlement by balancing the roles of advisor, advocate and negotiator. The rules-grounded approach outlined above should form a base of ethical behavior from which an attorney should proceed in working with clients, opposing counsel and the courts in undertaking and pursuing the settlement of disputes.

1. Oklahoma Rules of Professional Conduct, Preamble at ¶2.

2. 5 O.S. 1.1.

3. *Id.*

4. 5 O.S. 1.4.

5. 5 O.S. 2.1.

6. 5 O.S. 1.4; *see also* 5 O.S. 1.7-1.8 (An attorney is also bound to communicate to his clients about potential conflicts, which may arise during the context of a settlement when an attorney is representing multiple parties in the dispute.)

7. 5 O.S. 1.4.

8. 5 O.S. 1.16(b)(4).

9. 5 O.S. 1.16(a)(3).

10. 5 O.S. 4.1. While this article contemplates that each party is represented by counsel, additional rules govern those situations when an attorney is negotiating a settlement with an unrepresented party. *See* 5 O.S. 4.3 (“[a] lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer’s role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.”)

11. 5 O.S. 4.3.

12. *See* 5 O.S. 1.6.

13. *See generally* Deborah Schmedemann, “Navigating the Murky Waters of Untruth in Negotiation: Lessons for Ethical Lawyers,” *Carodozo J. of Conflict Resolution*, Vol. 12 (2010).

14. Standards of Professionalism, 2.7-2.8, adopted by the Oklahoma Board of Governors on April 20, 2006.

ABOUT THE AUTHOR




Ellen Adams is an associate attorney with the firm of GableGotwals in Oklahoma City. Her practice primarily consists of civil litigation defense in both state and federal courts. While her representation has focused on clients who are primarily in the energy industry, she has defended against claims

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A Checklist of Policies and Procedures for an Ethical Law Practice

By Travis Pickens

Whether you're a sole practitioner, a partner in a firm or anywhere else managing other lawyers, you must take reasonable steps to ensure your practice conforms to the *Oklahoma Rules of Professional Conduct*. You are also responsible for the conduct of the nonlawyers in your employ. Below is a checklist of best practices to follow that hopefully will protect you, your practice and your clients.

✓ **A Formalized Hiring Policy** — Develop a structured protocol for hiring staff. Call and question references, and get permission to do appropriate credit and background checks. Your safety from disciplinary violations is no greater than the people who work for you. Consider hiring certified legal assistants and paralegals who have already had training regarding a law practice and the *Oklahoma Rules of Professional Conduct*.

✓ **An 'In-House' Ethics Compliance Lawyer** — This should be a supervising lawyer or partner. Every firm or law department needs someone to be a "first-responder" and to take responsibility for putting in place the required measures for ethics compliance. My office can help this lawyer develop educational and training materials for staff orientations and updates.

✓ **Written Employment Contracts and/or Office Ethics Policies With Your Staff** — You will likely want to be wary of modifying "employment at will" but you will also want a commitment from your staff as to certain matters pertaining to maintaining professional ethics. You might prefer to do this in the form of a job description or as an office policy. Such may require them to:

- read the *Oklahoma Rules of Professional Conduct*
- abide by the *rules*
- participate in office ethics training
- report any potential concerns or violations of the *rules*
- maintain strict confidence of all client matters (e.g. including social network use)

✓ **New Employee Ethics Training** — This is an orientation for new staff generally covering the *rules*, their importance, consequences for violation and explanation of internal reporting procedures. Develop written materials, including a copy of the *rules* and comments. My office can be a resource for this.

✓ **Ongoing Ethics Updates For All Attorneys and Staff** — These are periodic reviews and updates as to ethics issues. They may be quarterly, for example, unless new developments dictate otherwise. They should cover new cases, new *rules*, and new ethics opinions. They should also be a forum for employees to express concerns as to existing procedures or ideas as to how they should be modified. My office can be a resource for this.

✓ **Conflict Controls** — Make sure this is carefully followed each and every time, and include your non-attorney staff in the distribution chain (they may have a better memory than you or have a relationship, business or personal, with someone you are about to sue). Keep a list of all clients you have represented and all matters that can be searched easily and accurately. Remember conflicts may be created by a wide variety of factors, *e.g.* current clients, former clients, third parties, the lawyer's own personal interest, prior employment, business transactions, who is paying the bill, book deals, co-defendants, ownership in the subject matter and/or a sexual relationship.

✓ **Docketing Procedures** — Double calendar (you and your assistant) your entries, set up reminders, and have daily offsite backup. Do not rely on someone else to calculate response times and deadlines unless they have been thoroughly trained, and never rely upon them exclusively. Always calculate important deadlines yourself, and then have someone double check your work.

✓ **Computer and File Safeguards** — Confidentiality and reliable uninterrupted access are the key considerations. Use an IT professional for this vital, ever-changing area. This is an ongoing process. Use daily offsite backup.

✓ **Website and Advertising Review** — Run all advertisements and website pages through the same person or committee for consistency and compliance. All content must be accurate and not deceptive. Certain key information, *e.g.* name and phone numbers, of course is included in every ad, but there are rules that

address content. By rule, ads and websites **must** contain:

- accurate, non-deceptive information
- lawyer's name or firm name responsible for the content
- office address
- jurisdictional limits of lawyers (if licensed elsewhere than Oklahoma)

Ads and websites **may** contain:

- telephone, email and fax numbers
- areas of law and types of services (but not "certified" unless patent or admiralty)
- how fees are determined
- foreign language ability
- references (with consent)
- clients typically represented (with consent)
- "other information that might invite the attention of those seeking legal assistance"
- awards and settlements (if you obtain the client's consent, it is accurate information and there is an appropriate disclaimer. See Oklahoma Ethics Opinion No. 320)

✓ **Keep a Hard Copy of Significant Oklahoma Ethics Opinions, With a Topical Index** — This is the one time a computer search is slower than the hard-copy version. Remember, *rule* changes may make a particular ethics opinion obsolete or merely helpful as to how to think about an issue. Also remember that the ethics opinions and those of my Office of Ethics Counsel are advisory guidance only and not binding. The Oklahoma Supreme Court remains the ultimate authority.

✓ **Fireproof Vault or Storage for Valuable Client Documents** — Do not become a long-term bailee of client property unless you absolutely must. If you do, then make sure to have the right kind of storage, or rent proper storage at a bank.

✓ **Carry Adequate Office Insurance** — This is the policy that covers office contents and liability. Make sure it includes adequate limits for all your contents, including but not limited to furniture, research books and disks, computer software, hardware, phone systems and other electronics. You should also have sufficient limits for valuable papers. Hired and non-owned coverage protects you from liability for an accident caused by a hired courier or employee making a delivery. Of course, you must also have workers' compensation insur-

ance for your attorneys and staff. Many lawyers and firms do not pay enough attention to this sort of insurance. Work with an experienced agent and ask specific coverage questions. By the way, it is a good idea to urge your attorneys to carry full liability coverage on their own vehicles, and a personal umbrella policy. An uninsured or underinsured attorney increases the chances the law firm will be sued for an accident.

✓ **Document Retention Policy** — This should be part of every fee agreement you use, either within the body of the agreement or as a separate attachment. See the Ethics Advisory posted on our webpage at www.okbar.org for details.

✓ **Fee Agreement** — You should use a written fee agreement for every client matter. Consider including at least the following:

- how the fee will be calculated, billed and collected: *e.g.* hourly rate, contingency fee or flat fee
- the specific client
- the scope of the representation (be precise)
- the client's obligations (*e.g.* timely payment, cooperation, etc.)
- how expenses will be paid
- interest charges on unpaid attorney fees (other law may apply)
- mediation and/or arbitration provisions in the event of a fee dispute
- venue and controlling law provisions
- refunds for unearned fees or unaccrued expenses
- when you may terminate representation
- when the client may terminate representation (anytime)
- how final billings, accountings and settlement statements will be done
- explanation of attorney's lien rights

✓ **Explanatory Materials** — These materials cover the information that is not necessarily fee related but still very important to the client and to your own interest in setting reasonable expectations for the client (and covering yourself). Consider including the following:

- office location
- hours of operation
- when telephone calls and email may be returned
- firm history
- biographical information, including awards and honors

- firm or department mission statement
- the "anatomy" and chronology of a lawsuit or other matter
- options such as mediation and arbitration for the client's dispute
- attorney-client privilege (and waiver)
- the confidentiality and evidentiary dangers of using social networks
- how trials (jury and non-jury) proceed
- how mediations proceed
- what litigation costs are typical
- the potential for being ordered to pay attorney fees and costs if the client does not prevail
- statutes of limitation and/or repose

✓ **Fee Split Provisions** — This is another area that can create some confusion. When you and someone *outside your firm* both work on a matter there are two ways to split fees:

1) Both lawyers work on the matter, but there is only one bill and you may split the fees in accordance with how much work each lawyer does on the matter

2) Only one lawyer actually works the matter, *but the other must assume joint representation for the matter* (*e.g.* includes both financial and ethical responsibility for the representation as if the lawyers were associated in a partnership)

Either way, the client must agree in writing to the arrangement and the overall fee must be reasonable.

✓ **Trust Account Training for Employee or Outside Staff** — You can delegate certain tasks pertaining to a trust account but you may not delegate the responsibility for it. In other words, someone else can make the deposits and do the books but you must supervise, monitor and be responsible for the account. It is a non-delegable duty. The OBA has ample resources to help you train yourself or your staff for proper trust accounting. There are CLE materials and *OBJ* articles and a recently produced webcast that are all available on the OBA website at www.okbar.org through archived CLE. My office can help you select a proper set of materials.

✓ **Develop a CLE Curriculum for Your Lawyers** — Be intentional about the continuing education you take, or pay for others to take. Set up a review process so that lawyers taking CLE paid for by the employer meet the educational goals of your department or firm. Recommend certain seminars for your associates or staffs.

✓ **Set Up a Review Process for Taking or Terminating a Representation** — Bad clients and matters can lead to unpaid fees and bar complaints. A bad client is someone or some entity that, for example, is dishonest, unreasonably does not follow your advice, and/or will not pay a reasonable fee for the services provided. These types usually go through several lawyers. Similarly, indelicate or hostile terminations of representations by lawyers lead to bar complaints that would otherwise not be filed. For both these stages, it is prudent to have more than one person evaluating the client, the matter, and the mode and timing of a withdrawal. In evaluating potential clients, it is often helpful to have a legal assistant sit in on the initial interview. They may pick up on things that you do not. Also, they make great witnesses in the event there is a dispute later as to what was said.

✓ **Develop Standard Protocols for First Consultations With Prospective Clients** — If you delve too far into a matter in the first meeting with a potential client that eventually does not hire you, you may learn information that you will be obligated to keep confidential and that will disqualify you or your firm from representing the adverse party. Until a potential client retains you to evaluate their matter and represent them, keep the initial exchange of information on a general level. For example, talk about the parties involved, the matter to be undertaken, the background and experience of your firm, fees and expenses and how you operate. This issue is more common in smaller communities where clients may be tempted to “conflict out” the other lawyers in town they see as a threat, or when clients are simply price shopping, but it is something to keep in mind no matter where you practice.

✓ **Select and Join Worthwhile Organizations and Associations Related to Your Practice** — The OBA and ABA offer a great value for the dues, as do other organizations and publications. The ABA also has the Center for Professional Responsibility, which for an additional charge, will give you access to research assistance, and all the ABA ethics opinions as well as updates on the Model Rules (the Oklahoma Rules vary a bit of course). The key here is to be selective and join only those organizations and associations that you will actually use and benefit from.

✓ **Purchase Adequate Professional Liability Insurance** — Carrying adequate professional liability insurance is not just for you; it is for

“Until a potential client retains you to evaluate their matter and represent them, keep the initial exchange of information on a general level.”

the client’s protection as well. For the protection it provides, it is relatively inexpensive and should be carried. One aspect of having insurance that often goes underappreciated is that it includes defense costs. The claim may be frivolous but you must still defend it, and you will want an independent, experienced attorney defending you.

✓ **Develop A Succession and Disaster Plan for Your Law Practice** — This issue is particularly important for sole practitioners. You should have a plan for the succession of your law practice just as you should for your personal estate. You should identify another lawyer with a similar practice who, in the event of your death or disability, can step in and notify clients and take whatever immediate action is necessary to protect their interests. This does not mean that the successor attorney must enter an appearance and continue the representation. Typically, what is involved is notifying the client, courts, opposing counsel and the OBA general counsel. Assuming representation is an option for the successor attorney but only if the client has given consent. Ultimately, the client always decides who will represent them and should be notified of that responsibility as soon as possible.

A disaster plan should be developed in the event of a major event that knocks out your practice, like a fire or tornado. There is a great deal of information on this from our management assistance program, Jim Calloway and from other jurisdictions.

✓ **Maintain Work/Life Balance and Face Issues Head On** — Much has been written about work/life balance, but what has not been emphasized as much is the direct impact imbalance has on the clients we serve. Indeed, imbalance or a substance or mental health issue makes ethical violations much more likely. Furthermore, if you are a supervising attor-

ney at your firm or department, you may be held personally responsible for enabling or ignoring an issue by a subordinate lawyer who impacts a client. Thankfully, the majority of us have matured to the point that we seek the quality help available to us through the Lawyers Helping Lawyers Assistance Program, the LHL Foundation Inc. and other providers.

✓ **Hire Great People.**

ABOUT THE AUTHOR



Travis Pickens serves as OBA ethics counsel. He is responsible for addressing ethics questions from OBA members, monitoring Diversion Program participants, teaching classes, speaking at continuing education programs and other law-related seminars and writing articles for *The Oklahoma Bar Journal* and other publications. A former litigator in private practice, he has served as co-chair of the Work/Life Balance Committee and as vice-chair of the Lawyers Helping Lawyers Assistance Program Committee.

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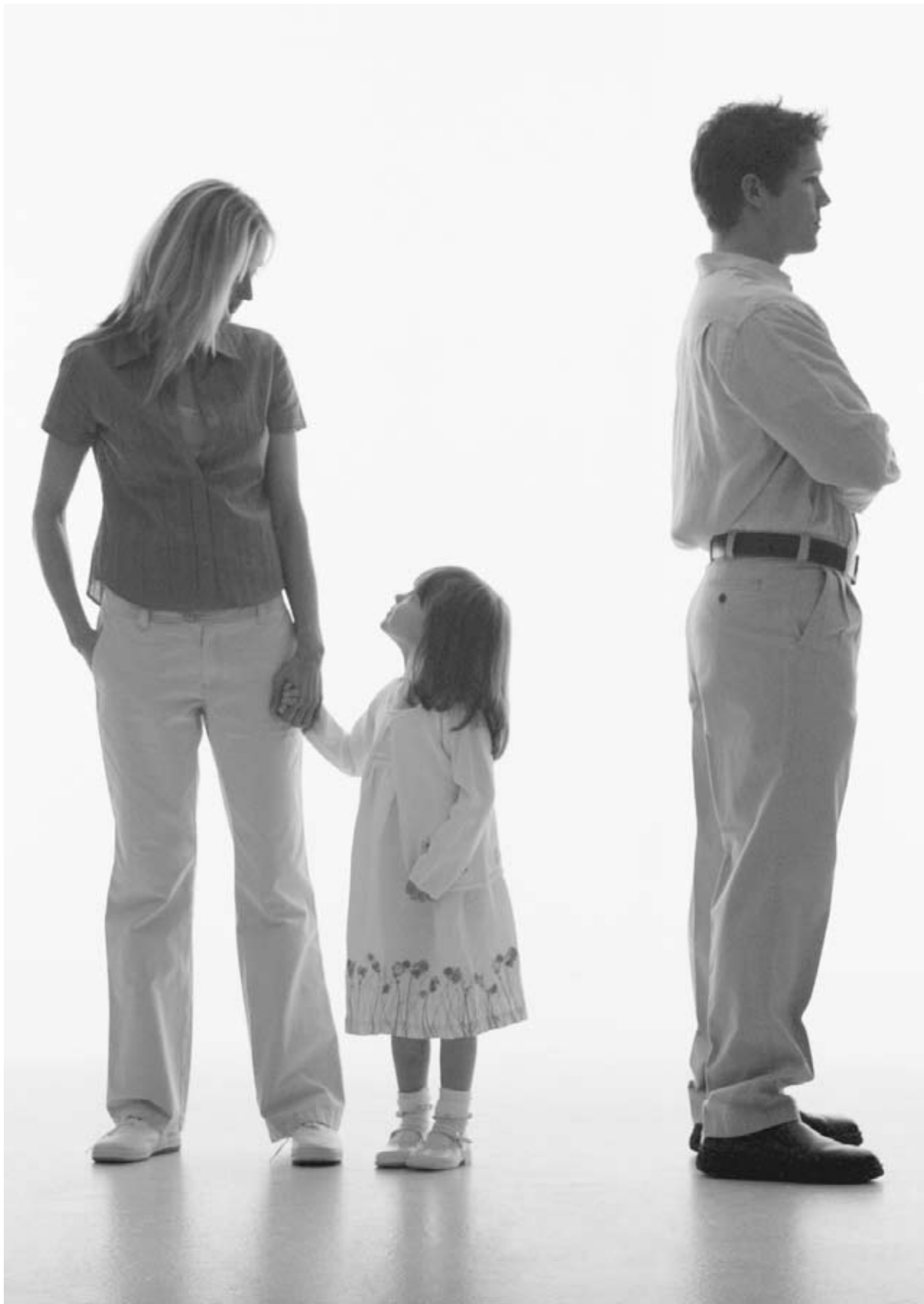
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Family Law Conflicts

When Can You Represent a New Client Against a Former Client in a New Divorce Matter?

By Jimmy Oliver

Family law attorneys have a unique conflict question that seems to be inherent in the practice of family law. The longer the attorney practices in the same locale the more frequently the question arises: Can you represent a client in a divorce and years later represent a new spouse who wants to terminate a subsequent marriage?

Typically the first client, referred to as "Client A," starts a new life after the first divorce which includes children and property acquired with his second wife, referred to as "Client B" in this discussion. What are the ethical considerations in the decision whether to represent Client B against Client A? Can you ever take the case?

Rule 1.9 of the Oklahoma Rules of Professional Conduct states that a lawyer who has formerly represented a client in a matter shall not later represent another person in the same or substantially related matter where that person's interests are materially adverse to the interest of the former client. Rule 1.9 (c) also states that a lawyer who represented a client in a matter shall not then use information related to that representation to the disadvantage of the former client. But how do these prohibitions apply to a family law attorney, especially in light of today's culture where it is not uncommon for people to marry more than

once in a lifetime or have children and potential custody battles with multiple partners?

The comments of Rule 1.9 help clarify what a "substantially related matter" means. Comment 2 states that the scope of "matter" depends on the particular situation or transaction. A lawyer is not allowed to take on a new client who has interests materially adverse to his former client if they involve the same specific transaction. For the purposes of this discussion, that would include representing the one spouse to modify a custody decision in a case where the attorney originally represented the other spouse. Here the subject matter of the dispute is the same: the same children.

IS THERE A DUTY OF LOYALTY TO A FORMER CLIENT?

In the case of *State ex. Rel. Oklahoma Bar Association v. Barry*, the Supreme Court addressed this topic and provided an example of what is prohibited by Rule 1.9. Here Mr. Barry initiated a divorce action for his client. He entered a

temporary order on her behalf and prepared a proposed decree of divorce. After discharging Mr. Barry, the client was later divorced from her husband. Two years later she remarried her ex-spouse. Three years after that the couple initiated a new divorce action, and Mr. Barry represented the client's husband.

Even though this was a new divorce action, the first divorce and the second were plainly related because the same marital assets and children were involved. Additionally, **both** parties remained the same. In this case the attorney had only switched sides.

The Supreme Court found that the attorney had violated Rule 1.9(a). The court, citing the comments of Rule 1.9, stated the disqualifications provided by Rule 1.9 are for the benefit of the former client. The rule protects the loyalty a client feels he or she is owed from a former attorney. This type of disqualification can only be waived by the client.¹

“It could be argued that by representing Client A, an attorney could have learned things about his personality or his past that could now be used against him in the subsequent litigation.”

Here the client did not waive the disqualification. She even sent Mr. Barry a letter expressing her concerns because the new divorce dealt with the same marital assets and children as the first divorce.²

THE RIGHT TO CHOOSE ONE'S OWN LEGAL REPRESENTATION

While it may be simple to determine when Rule 1.9 prohibits representation, it is less clear if representation is prohibited in a subsequent divorce where the only commonality is Client A? The comments of Rule 1.9 do allow for an attorney who regularly deals with certain types of problems to represent another client in a factually different problem of the same type,

even if the new representation involves a position adverse to the former client. This is the situation that arises in the practice of family law. Client A has, since you represented him in his first divorce, remarried and had more children and created a new marital estate with a new woman. The comments of Rule 1.9 seem to allow the attorney to represent the new wife even though that position would be adverse to Client A. In a family law case, the specific facts of the case can vary almost to infinity, however, the **types** of problems are rather limited: property division, child custody and support, and alimony. Therefore, a new divorce action where Client A has subsequently married Client B, had additional children with her and acquired a new marital estate, none of which were ever an issue during the prior representation of Client A (because these things did not even exist), cannot be seen as a substantially related matter.

It could be argued that by representing Client A, an attorney could have learned things about his personality or his past that could now be used against him in the subsequent litigation. However, Comment 3 provides an answer. The comment states that information that has been disclosed to the public or to other adverse parties will not typically be grounds for disqualification. To strengthen this argument it should be remembered that, in general, divorce and child custody proceedings are open to the public. Hearings and trials are held in open courtrooms and can be watched by anyone. The public can access pleadings and court minutes either electronically or by requesting the information from the court clerk. Typically, in contested divorce or custody proceedings, there is extensive discovery requested by both parties. This information passed between the two parties and to the general public further diminishes the possibility that the attorney has some secret fact that can be used against the former client in new litigation. Additionally, information learned in the previous representation of Client A can be deemed obsolete by the passage of time. Any information received during the prior representation of Client A could no longer be relevant due to the age of the information and thus not admissible for the new action. Comment 3 states that the passage of time should be considered in deciding if two matters are substantially related.

A family law practitioner deals regularly with the same issues, namely property divi-

sion, child custody and support, and alimony. Both Rule 1.9 and its comments suggest that a subsequent divorce or custody matter involving people or property not involved in the previous action cannot be seen as substantially related to the previous action. If the only common denominator between the two cases is Client A, to interpret Rule 1.9 to prohibit an attorney from representing a spouse in an entirely new matter against a former client would unduly restrict a successful and sought-out attorney from retaining new clients. This is magnified by today's society where many people marry numerous times in their lives or have children with multiple partners. Additionally, as the Supreme Court of Oklahoma has held, a narrow reading of Rule 1.9 could also restrict a client's ability to have the representation of his or her choice.

In *Towne v. Hubbard* the Oklahoma Supreme Court observed that "the right to the assistance of legal counsel includes the right to be represented by a legal practitioner of one's own choosing."³ Additionally, "Legal practitioners are not interchangeable commodities. Personal qualities and professional abilities differ from one attorney to another, making the choice of legal practitioner both in terms of the quality of the attorney-client relationship and the type of skillfulness of the professional services rendered." For these reasons the Oklahoma Supreme Court has adopted a high barrier a party must cross to validate the disqualification of his opponent's counsel.⁴ A party's ability to choose his own counsel can be set aside under certain circumstances but a showing must be made that it would threaten the integrity of the judicial process.

While these cases do not deal directly with a family law attorney representing a new client against a former client, the Supreme Court's language concerning the ability to choose one's own attorney and the burden to justify a disqualification seem to suggest that if an attorney can show that the new case is not substantially related to the prior matter, then he or she is free to represent Client B in the new litigation without violation of Rule 1.9.

When an attorney is faced with the situation posed at the beginning of this article, before agreeing to represent Client B, the attorney should consider if this new case is a factually

distinct matter to the prior representation of Client A. To determine this, the following questions should be analyzed:

- Was Client B a party of the prior litigation?
- Will the new litigation involve any of the prior parties (besides Client A)?
- Will any of the same property be at issue in this new matter?
- What is the length of time that has passed since the prior litigation?
- Was the prior litigation contested or presented as a waiver?

Like most matters in the practice of law, there is an argument that can be made for either side of this analysis. In the end the attorney will have to make a decision based on specific facts of the situation he or she is facing.

Don't assume you can't represent a new client against a former client in a new divorce case. Carefully analyze the situation and apply the ethical rules. A good family law attorney is one that both sides wish they had on their side. The longer you practice the more frequently this question will arise. Be familiar with the rules that govern this area so that when Client B comes into your office you can quickly determine if a conflict exists or if you are free to represent him or her in the new matter.

1. *State ex. Rel. Oklahoma Bar Association v. Barry*, 1998 OK 73, ¶4, 969 P.2d 975

2. *Id.*

3. *Towne v. Hubbard*, 2000 OK 30, ¶14, 3P3d 154, 160

4. *Hayes v. Central States Orthopedic Specialists, Inc.*, 2002 OK 30, ¶9, 51 P3d 562, 565, *Towne v. Hubbard*, *id.*

ABOUT THE AUTHOR



Jimmy Oliver practices law in Stillwater. In addition to family law, he works in the areas of probate, guardianship and criminal defense. After attending OSU, he graduated from OCU School of Law in 2010. He is a member of the Payne County Bar Association, and he is a member of the

OBA Family Law and Criminal Law sections. He is also a member of the Legal Aid Pro Bono Panel and is a recent graduate of Leadership Stillwater.

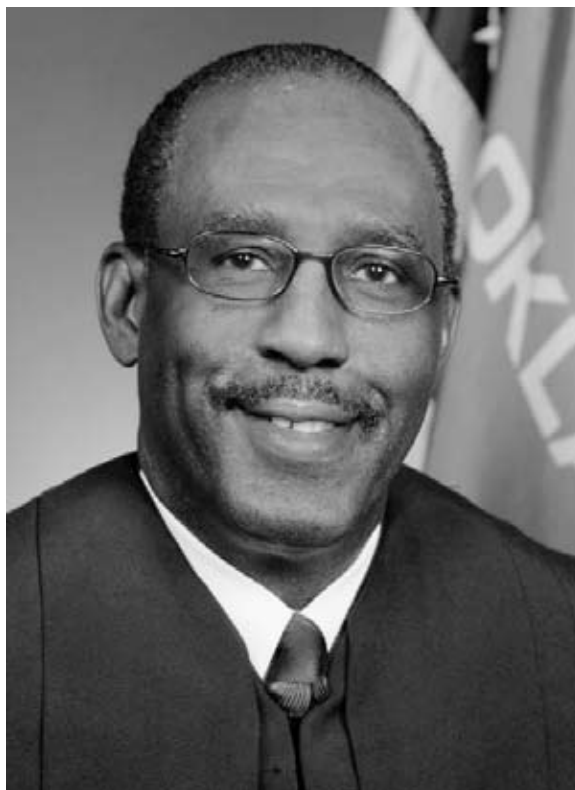
Justice Colbert to Serve as Chief Justice

Oklahoma Supreme Court Justice Tom Colbert has been elected by his fellow justices to become the next chief justice of the state's highest court. Justice John Reif will serve as vice chief justice.

The term, which begins Jan. 1, 2013, will make Oklahoma history because Justice Colbert is the first African-American to become chief justice. He also holds the distinction of being the first African-American vice chief justice and the first African-American on the court. He was originally appointed to the Supreme Court by Gov. Brad Henry in October 2004. Justice Colbert was appointed by Gov. Frank Keating to serve as a judge on the Oklahoma Court of Civil Appeals in 2000 and served until 2004.

Justice Colbert was born in Oklahoma City and graduated from Sapulpa High School. He attended Eastern Oklahoma State College and earned his Bachelor of Science degree from Kentucky State University in 1973. He was an All-American track and field competitor in college. He served in the U.S. Army and received an honorable discharge in 1975. He then earned a Master of Education degree from Eastern Kentucky University in 1976 and taught in the Chicago public schools.

He received his Juris Doctorate from the OU College of Law in 1982, was assistant dean at Marquette University Law School



Justice Tom Colbert

from 1982-1984 and then assistant district attorney in Oklahoma County from 1984-1986. He maintained a private law practice in Oklahoma City from 1986-2000.

Formal swearing-in ceremonies for Chief Justice Colbert and Vice Chief Justice Reif will be Friday, Jan. 4, 2013, at the State Capitol, Second Floor, at 1:30 p.m. with a reception to follow. The public is invited to attend.

Judge Lewis Named Presiding Judge

Judge David B. Lewis has been elected by his fellow judges as the next presiding judge of the Oklahoma Court of Criminal Appeals. The term, which begins Jan. 1, 2013, is historic because Judge Lewis is the first African-American to serve as presiding judge. He also holds the distinction of being the first African-American vice presiding judge and the first African-American on the court. Judge Clancy Smith will serve as vice presiding judge.

He was originally appointed to the court by Gov. Brad Henry on Aug. 5, 2005. Throughout his career, Judge Lewis has exemplified the highest ideals of the legal profession. From 1984 to 1987, he maintained a private law practice in Lawton. He served as assistant district attorney in Comanche County from 1987 to 1991. He held the position of special judge in Comanche County from 1991 to 1999. He was appointed by Gov. Frank Keating to serve as district judge of Comanche, Stephens, Cotton and Jefferson counties on April 2, 1999. He served as the chief judge of the Comanche County Courthouse in 2002.

He has received a number of awards and other public recognition over the years for his dedicated service to the legal community and the public. He was selected as a member of the Class of 2008 Henry Toll Fellowship Program of the Council of State Governments. He served as president of the Oklahoma Judicial Conference in 2004. Judge Lewis has served as board chairman of Reach Out and Read Oklahoma. He also serves on the Oklahoma Access to Justice Commission, Goodwill Industries of Lawton Board of Directors, Lawton Chamber of



Judge David B. Lewis

Commerce Board of Directors, Black Achievers Program Board of Directors, OBA Professionalism Committee and OBA National Mock Trial Task Force. In Lawton, he was also a member of the Kiwanis Club, served on the Christian Family Counseling Center Board of Directors and mentored in the public schools system.

He was born in Ardmore and graduated from Ardmore High School. He attended the University of Oklahoma and earned a bachelor's degree with high honors in business administration and economics. He went on to earn his Juris Doctorate from the OU College of Law in 1983.

House of Delegates Actions

The following bylaw amendment and resolution were submitted to the House of Delegates for vote at the 108th Oklahoma Bar Association Annual Meeting Friday, Nov. 16, 2012. Actions are as follows:

BYLAW AMENDMENT ARTICLE VIII LEGISLATIVE STUDIES AND PROPOSALS SECTION 6. PUBLICITY CONCERNING PROPOSALS

Before a proposal to place a measure upon the Legislative Program or to endorse it in principle is submitted to vote, by any method, it shall be published in at least one issue of the Journal of the Oklahoma Bar Association and posted on the OBA website; ~~at least three weeks prior to the vote, prior to the beginning of the Annual Meeting,~~ together with a notice and posting that it will be submitted to vote, specifying date, time, place and manner.

Action: Adopted

ADOPTED

RESOLUTION NO. ONE: ATTORNEY-CLIENT PRIVILEGE

BE IT RESOLVED by the House of Delegates of the Oklahoma Bar Association that the Association adopt, as part of its legislative program, as published in *The Oklahoma Bar Journal* and posted on the OBA website at www.okbar.org, proposed legislation amending 12 O.S. 2011, Section 2502, which relates to use of depositions in court proceedings; clarifying persons designated to testify under certain circumstances; and providing an effective date. (*Requires 60% affirmative vote for passage. OBA Bylaws Art. VIII Sec. 5*) (*Submitted by the Civil Procedure and Evidence Code Committee.*)

Action: Adopted

ADOPTED

TITLE EXAMINATION STANDARDS

Action: The Oklahoma Title Examination Standards revisions and additions published in *The Oklahoma Bar Journal* 83 2216 (Oct. 13, 2012) and posted to the website at www.okbar.org were approved in the proposed form. The revisions and additions are effective immediately.

All resolutions are available in their entirety at www.amokbar.org/barbusiness/resolutions.aspx

APPROVED



JAMES T. STUART
Shawnee
President



DIETMAR CAUDLE
Lawton
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Tulsa
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ROBERT D. GIFFORD II
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OBA 108th Annual Meeting

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Want to see more Annual Meeting photos? Check out our online photo gallery at www.okbar.org/s/2012. In addition, Party Pics was on hand with professional photographers who documented several of the social events. Those photos are available at www.okbar.org/s/partypics. You'll just need to enter an email address when you visit the site. Enjoy!

OBA President Cathy Christensen (center) presents President's Awards to Kara Smith and Jeffery Trevillion. Other President's Award winners were 2011 OBA President Deborah Reheard, OBA Vice President Peggy Stockwell, Ashley Rahill, Sarah Schumacher, David Swank and John J. Ditmars III.



OBA President-Elect Jim Stuart and his wife, Kathy, cut a rug during "At the Hop," the Thursday event social event.



OBA President Cathy Christensen, Sarah Schumacher and 2003 OBA President Melissa DeLacerda show off their poodle skirts during "At the Hop."



Donita Douglas (left) receives the Earl Sneed Award for outstanding continuing legal education contributions. OBA President Cathy Christensen presented a total of 25 awards during this year's Annual Meeting.

Annual Meeting keynote speaker Frank Deford presents an autographed copy of his book to OBA Vice President Peggy Stockwell.





Oklahoma Justice
Commission Chairperson
Drew Edmondson
addresses the OBA CLE
Plenary Session.



2013 OBA
President
Jim Stuart
is crowned
"homecoming king"
by "queen"
Cathy Christensen
during "At the Hop."



Speaker Morris Dees of
the Southern Poverty Law
Center discusses "With
Justice for All" during the
OBA CLE Plenary Session.



Oklahoma Supreme Court Chief
Justice-designate Tom Colbert
discusses the state of the court
during the General Assembly.



A contested seat on the
OBA Board of Governors
is decided during House
of Delegates voting.





2013 OBA President Jim Stuart chats with the OKC Thunder Girls during their visit to Annual Meeting.



Nationally recognized lawyer Andrew Vachss presents on family law and criminal law during the Wednesday CLE tracks.



Members of the Pittsburg County Bar Association, including 2011 OBA President Deborah Reheard, accept the Outstanding County Bar Association Award.

(From left) Jennifer Wall, lawyer Ashley Thompson, OBA Governor Renée DeMoss and OBA Governor Scott Pappas enjoy the Wednesday evening President's Tailgate Party.



2000 OBA President Joe Crosthwait makes the entrance of the night during "At the Hop."

Election Results: Lawyers in the Legislature

By Thad Balkman

One of the most common myths about government and politics is that there is an overabundance of lawyers in the Legislature. However, the facts do not support this myth. Following last month's general elections, there are now 22 lawyers in the Oklahoma Legislature, down from 26 at the beginning of the 53rd Legislature. Percentage wise, only 15 percent of the 149 member Legislature is comprised of lawyers. For this reason, I always applaud those in the legal profession who run for office. Whether they win or lose, their decision to place themselves in the arena, as President Theodore Roosevelt wrote, merits our praise and respect and is a positive reflection upon our profession.

The total number of attorneys in the Senate is presently nine. Incumbents **Brian Crain** from Tulsa and **Clark Jolley** from Edmond were re-elected to final four-year terms in the Senate.

In addition to Mr. Crain and Mr. Jolley, the other attorneys in the Senate are: **Patrick Anderson**, **Sean Burrage**, **David Holt**, **Tom Ivester**, **Rob Johnson**, **John Sparks** and **Anthony Sykes**. The Senate lost three lawyer legislators when **Richard Lerblance** and **Charlie Laster** did not run for re-election. **Jonathan Nichols** was term limited and could not run again, but he has been appointed chief legal counsel for the Senate by President Pro-Tempore Brian Bingman.

The total number of lawyers in the House is now 13. In addition, new Speaker of the House T.W. Shannon is a graduate of the OCU School of Law. The only incumbent attorney in the House on the ballot, Norman's **Aaron Stiles**, was re-elected to a second term. In addition to Mr. Shannon and Mr. Stiles, the other lawyers

returning to the House are **Randy Grau**, **Fred Jordan**, **Mark McCullough**, **Richard Morrisette**, **Ben Sherrer**, **John Trebilcock** and **Cory Williams**. There are five new attorneys in the House: **Scott Biggs**, **Jon Echols**, **Kay Floyd**, **Terry O'Donnell** and **David Perryman**. In addition to the lawyer legislators in the House, Oklahoma City attorney **Rick Rose** has been appointed chief of staff for Speaker Shannon.

Congratulations to both the newly elected and returning lawyer legislators in the Legislature. If history is an indicator, they will rise quickly through the ranks to positions of key influence within their caucuses and respective chambers in large part due to their training and experience as lawyers.

LAWYERS WHO RAN FOR OFFICE

The following OBA members also warrant our recognition and appreciation for also running for various state and congressional offices: **Paul Catalano**, **Steve Cortes**, **David Davis**, **Tom Guild**, **Julie Hall**, **John Olson**, **David Phillips III**, **Michael Romero**, **Dustin Rowe** and **Rob Wallace**.

THE THIRD BRANCH

The 2012 election cycle saw an unprecedented move by special interest groups participating in the retention election campaign. We are indebted to Oklahoma Bar Association President Cathy Christensen, the OBA Board of Governors, other OBA leaders and the OBA staff for leading the charge in properly educating the public on the judicial retention ballot and maintaining the integrity of the third branch of government.

Mr. Balkman is executive director of the Oklahoma Lawyers Association.



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Hunting License

By Shannon Forth

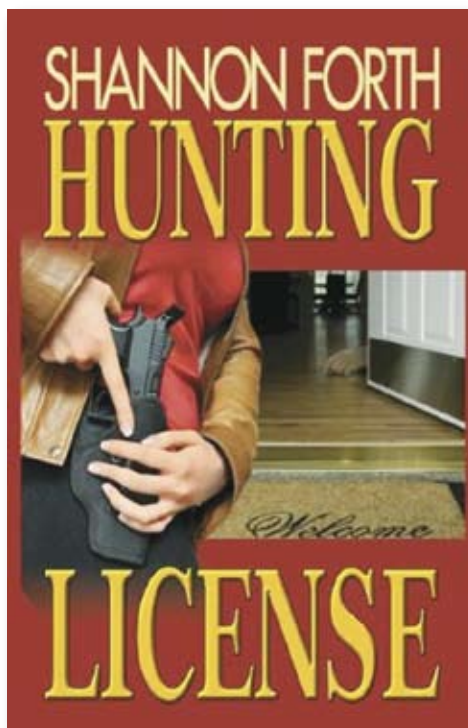
Reviewed by Emily Duensing

Simms Mitchell is “Oklahoma” through and through. She owns a ranch; she rides horses; she has an arsenal of guns and knows how to use them; and, like her home state, she’s had a brush with religious fanaticism in the past.

But Simms also has a secret — a secret from her deeply mysterious past — that continues to haunt and endanger her. This secret makes for a suspenseful and interesting first novel by Shannon Forth, who — like her protagonist — is a practicing Oklahoma attorney.

With an intriguing story line that keeps the reader involved, it is difficult to resist flipping to the end to see how the book resolves. Simms’ references to various aspects of her home state bring a familiarity that is both amusing and comforting to Oklahoma-native readers.

The author’s own insight into not only the practice of law, but also into friendship, love, and personal and professional



386 pages; paperback, \$16.95;
published by Four Dandelions
Publishing, LLC (first edition
December 2011)

loss, gives a deep dimension to the main character. These insights also provide a good contrast to the graphic scenes involving death and violence, which are *de rigueur* to any suspense or mystery tale.

The book’s only weakness is in its editing, unfortunately exhibited by a few typographical and grammatical errors. Though, despite these distractions, Ms. Forth’s unstrained and personal writing style alongside a compelling plot and the clearly local connection make *Hunting License* an enjoyable read. This is certainly a book worth taking along on vacation. These same qualities also make it easy to look forward to Ms. Forth’s next book in the ‘Simms

Mitchell’ series, *Liquor License*, with anticipation.

Ms. Duensing is a staff attorney/judicial assistant with the Oklahoma Court of Civil Appeals, Tulsa Division and is a member of the OBJ Board of Editors.

Call to Action: Volunteers Needed to Serve on OBA Committees

I am excited about the coming year and the opportunity to serve as your president in 2013. But I need your help to accomplish my goals for the association. The work of OBA committees is incredibly important. I'm a small firm lawyer in Shawnee and realize the sacrifice of time out of the office, but I can honestly say the opportunities for networking and service make it worthwhile.

Look over the committee list below. There has to be at least one that interests you. Make the commitment and get involved. Remember if you live in the Tulsa metro that videoconferencing connects you with other committee members at the bar center in Oklahoma City.

Signing up online at www.okbar.org is easy. Find the "Join a committee" link inside the "Get Involved" box at the bottom. Or if you still love paper, complete this form and either fax or mail it to the OBA. I'm making committee appointments now, so please let me hear from you soon.


Jim Stuart, President-Elect

Standing Committees

- | | | |
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| • Awards | • Group Insurance | • Professionalism |
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| • Bar Center Facilities | • Law-related Education | • Solo and Small Firm Conference Planning |
| • Bench and Bar | • Law Schools | • Strategic Planning |
| • Civil Procedure and Evidence Code | • Lawyers Helping Lawyers Assistance Program | • Uniform Laws |
| • Communications | • Legal Intern | • Women in Law |
| • Disaster Response and Relief | • Legislative Monitoring | • Work/Life Balance |
| | • Member Services | |
| | • Military Assistance | |

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

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Committee Name

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2nd Choice _____

3rd Choice _____

Have you ever served on this committee?

☐ Yes ☐ No

☐ Yes ☐ No

☐ Yes ☐ No

If so, when?
How long?

■ Please assign me to ☐ one ☐ two or ☐ three committees.

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

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

Fax: (405) 416-7001

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provements to the current system and make the transition easy for you.

This year the remodel of the bar center was completed. There is still minor work to do here and there, and a few offices are due furniture — but the remodel is done! Every phase of the project has been paid with cash each step of the way. The building is free from asbestos and has sufficient handicap access to the building, offices and bathrooms. Please take time to visit your bar center for CLE or just a quick tour. It is YOUR building.

My goal this year was to create new opportunities for law-related education. In April, in partnership with Oklahoma City University, the OBA hosted retired Justice Sandra Day O'Connor for three days of events. Justice O'Connor spoke to more than 1,100 high school and law school students, attorneys and laypeople about the third branch of government and the administration of justice.

This year, under the leadership of Chairperson Jennifer Kirkpatrick, the Young Lawyers Division increased their outreach to high schools during the weeks before and after Law Day. The OBA Law-related Education Department doubled its distribution of the newly revised *You're 18 Now — It's Your Responsibility* to high schools and middle schools across the state.

This year, during the election season, I am proud that as an association we stepped forward to continue to educate the public about the retention election and the importance of a fair and

impartial judiciary. Our website, CourtFacts.org, was mentioned positively by newspapers across the state and viewed 45,000 times!

NEW EVENTS

This year, the OBA hosted two new events that I hope will continue to be annual events for our association — a banquet and auction to raise money for and awareness of the Lawyers Helping Lawyers Foundation and LHL Assistance Program; and a Diversity Committee awards luncheon to recognize leaders in the effort to diversify our profession and the legal community. Both events were very successful and long overdue.

The Professionalism Committee will host a Professionalism Symposium this month with the Oklahoma law school deans and Oklahoma Supreme Court justices. Seating is limited so reserve your seat early! This Dec. 13 symposium at the Oklahoma Judicial Center will be awesome!

FINAL INNING AND IT'S A HOMERUN!

All in all — it has been a wild and wonderful year. Thank you again for allowing me the privilege of serving as your president. It has been an honor! I am so proud of the strength and unity of our bar association and its 17,300 members. We do good things for our community, our profession and the administration of justice. We are a profession with a substantial amount of honesty and integrity. I am proud to be a member of Team OBA. Thank you for this opportunity, and may God bless you and keep you.

Last Article of the Year

By John Morris Williams

I cannot believe this is my last article of the year. It seems the pages turn way too quickly these days. No complaints. It was a fun and exciting year.

First, to President Cathy Christensen. It was a fun and eventful year. Lawyers Helping Lawyers Foundation was finalized and funded. Big thanks to you! Sandra Day O'Connor. Thanks to you! Diversity Conference huge success, thanks to you! Great Annual Meeting, thanks to you! I would be remiss in not mentioning the multiple volunteers who participated and helped make these and all the other events possible. However, it was your leadership and charm that made things happen so well.

Also, Madame President, thanks for the kind words and good laughs we had. We all owe you a debt of gratitude for your work on the Court Facts website.

Now, down to business. Dues are due Jan. 2, 2013. You can pay online or by mail. Make sure if you are paying online that you carefully follow the instructions and wait for the acknowledgment

before navigating away. Mandatory continuing legal education (MCLE) hours need to be completed by Dec. 31, 2012. If you are late, it will cost you more. There are many seminars and online opportunities available through the OBA. I hope you will choose to shop with us!

“I would be remiss in not mentioning the multiple volunteers who participated and helped make these and all the other events possible.”

THE YEAR AHEAD

President-Elect James T. “Jim” Stuart has an exciting agenda planned for next year. I have termed it “A Year of Stuartship.” His primary focus will be on highlighting lawyers in community service and calling each of us to do more for our community and our state. If you check his resume, you will see he has practiced what he preaches. It will be an exciting and fun year!

I am using a lot of exclamation marks. I am doing so because I am truly excited

about what has happened and what is to come for the OBA.

If you have not already done so, join a section or committee. Both are easy to do. Just check off a section on your dues statement or go to www.okbar.org and under “committees” you can sign up for as many as three committees in less than 30 seconds. The committees and sections will have lots of activities this year, and you will be sorry if you don’t participate.

In closing. Thanks to the OBA officers, Board of Governors, staff and, of course, our incredible members for a wonderful year. It was a very good year for the OBA because of each of you. May the best of the season be yours.

I hope to see and work with each of you during our year of Stuartship.



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

Conquering Cloud Computing

Tips for Online File Storage

By Jim Calloway

Increasingly today, the question is not *whether* files should be stored online, but *where*. Online file storage and cloud computing have reached the point where most computer and smart phone users can no longer ignore the benefits. One can store thousands of files online where they can be accessed almost instantly. Many services now offer some online storage for free in hopes that you will upgrade when you exhaust all of that space.

This column is directed to anyone who wants to learn more about online file storage. Feel free to share it with your non-lawyer friends. There will be a follow up article early in 2013 about the lawyer's use of cloud storage for business files.

Last month at the OBA Law Office Management and Technology Section Annual Meeting, I gave a brief demonstration of Evernote. One of the attendees asked, "So, am I supposed to use this instead of Dropbox?" In response, I explained the different features of Evernote that are not in Dropbox. But my bottom line answer is, "Use both."

Thinking about that exchange later, I wondered whether there was any way to simplify the cloud storage selection process. The challenge isn't just with the different

options and prices of various cloud storage services. It is also with each of us. Very few people have the time or patience to examine many cloud services to pick the ones that meet our needs.

“One of the attendees asked, ‘So, am I supposed to use Evernote instead of Dropbox?’ My bottom line answer is, ‘Use both.’”

To start this analysis, complete the Needs Analysis Chart on the following page. When you complete this chart, you will not be able to total a column and get the correct answer. In fact you will need to fill it out multiple times for each type of information. Bank statements and credit card receipts should generate very different answers from family Christmas photos. But completing the chart means that you will have begun your “needs analysis.”

One example is digital photograph storage. If you want to share your photos with your friends and acquaintances, you would probably post them to Facebook or another social media site. If you were to share them with the world, allowing anyone to use them, there are photo-sharing sites like Flickr, Photobucket Pro or Smug Mug. If you do not want to share them but want to protect them from being lost or destroyed, you would make sure they were in a folder that was automatically backed up online, so they would be a part of your online backup file. Most people want their photos safely backed up, even if the best ones are shared online.

Since the topic today is personal files and records as contrasted with the digital files of a law firm, let's discuss what I deem to be some significant points:

- Convenience is the most important feature for most personal items. Lawyers are busy, but I rarely talk to anyone who has plenty of time to do everything they need or want to do. You will never fully realize the benefits of online file storage if it requires a manual login and several additional steps each time. We need to save or file most things in seconds if we are actually going to use our

NEEDS ANALYSIS CHART

	VERY IMPORTANT			NOT VERY IMPORTANT
Security				
Convenience				
Mobile Access				
Annual Expense				
Ease of Filing and Storage				
Ability to Edit				
Social Sharing (Automatic)				
Share Files as Desired				
Long-term free (or virtually free) storage				

online file storage. So for most items, we want either automatic file synchronization, “one click” filing or saving/filing via email. Otherwise this will be another useful idea that is never implemented.

- *Security is overrated.* That statement may shock some lawyers. Sure, if you are going to keep your tax returns and the backup information in an online storage site, you would want it to be a secure site. Likely, you would want to take the extra step of encrypting that file before uploading it (don’t lose *that* password!). But you also would not need to be able to access that file within seconds. But for the vast majority of personal files most people would save online, there are very few privacy or security issues, so convenience trumps security.
- Password-protected sites are still protected. That is the point I am trying to make very clear. Secure online storage is important for items

where the consequences of disclosure are profound. But a password requirement keeps all but the cyber-criminals from accessing your files.

- Sharing information is good. Many lawyers react to even the mention of social media sites as if they were evil or just crazy (of course, if they are family law lawyers they probably have some fair amount of evidence from Facebook to support their claim at this point!). Cloud computing services allow you to easily share all sorts of files, as opposed to wondering what the newest privacy policy change by Facebook really means.
- Using more than one online service is likely required, but certainly no more than three is the limit for most of us.
- Online backup is critical for most people and all businesses. But, for simplicity’s sake, it will be excluded from today’s discussion.

I’m all for privacy, but for much personal information (e.g. your child’s sports schedule, that online article you read on a great vacation spot, favorite recipes) convenience is more important than military grade security.

Many of us do not use these services because there is not enough time to do the research on what to use and to learn how to use it. But if you haven’t used online file storage, now is a good time to jump in. So spend some time thinking of what is really important to keep. Have a different process for that small set of information that needs to be very secure (or don’t place it online at all). A non-exhaustive list of materials that need to be kept secure would include:

- anything with finances that has an account number;
- anything with a Social Security number;
- medical records;
- personally identifiable information that could be used for

identity theft like birthdates (a warning too late for many); and

- files you want to keep private.

It may make sense to use Dropbox for most files and a different service for items you want to keep private and “permanently.” If you have not yet set up “two-factor authentication” for your online storage, you may want to refer back to my article, “Email Issues for Lawyers Today” found on page 1760 in the August 11, 2012, issue of the *Oklahoma Bar Journal* or at www.okbar.org/s/emailissues. But make sure when you set that up, you understand how you would access your files if your mobile phone is lost.

I’ve written about Dropbox many times before. It has been available for four years and has recently reached the 100-million-user milestone. It installs easily on your computer, creating a Dropbox folder under the Documents folder. Saving documents (or any files) to that folder means they will be synchronized with the Dropbox in the cloud and can be accessed by another authorized computer and your smart phone and tablet if you install the free Dropbox apps. Dropbox gives all users two gigabytes of free storage. That is a lot if you are just storing word processing and PDF files, but you can upgrade to Pro plans for 100 to 500 GB starting at \$9.99/month.

I think Dropbox has reasonable security. It uses Amazon Simple Storage Service (Amazon S3) Security, which means, among other things, that the file is safely encrypted in transit between all devices and Dropbox. However, the Drop-

box files are not encrypted while at rest on the service. If you want to upload files to Dropbox that are confidential in nature and you want to encrypt them yourself so that they will be encrypted at all times on Dropbox, your attention is directed to Viivo (www.viivo.com), a service that facilitates encrypting files when using Dropbox. Best of all it is free for personal or business use — at least for now. You can get the Viivo app for mobile devices as well. One commentator preferred BoxCryptor¹ for cloud-based encryption.

Dropbox is very popular and widely used. Many apps are designed to automatically save files to Dropbox. However, there are many services similar to Dropbox. Here are some of the best-known:

- Box – 5 GB free with additional paid storage available.
- SpiderOak – 2 GB free with additional paid storage available.
- SugarSync – \$50 per year, 30 GB storage with other plans available. There is a free trial but no free plan.
- Amazon Cloud – Creating an Amazon account gives 5 GB free storage with additional paid storage available.
- Microsoft Sky Drive – 25 GB free storage. A Windows Live ID is needed.
- Apple iCloud – iCloud customers are provided with

“A service that I have been using a lot more lately is Evernote, found at www.evernote.com.”

5 GB of free cloud storage. The FAQ’s state “Purchased music, movies, TV shows, apps, and books, as well as photos in your Photo Stream don’t count against your 5 GB of free storage.” Additional paid storage is available.

Some deem services like Box or SpiderOak more secure than Dropbox because the end user is the only one who has the encryption key; while at Dropbox there are a limited number of employees who could decrypt a file or provide account access in an appropriate situation, like the death of the account holder and an order from the probate court.

A service that I have been using a lot more lately is Evernote, found at www.evernote.com. Evernote is a very useful online service. I’m still learning and experimenting with what it can do. The free version gives you 60 MB of total uploads per month, but I strongly suggest that you consider the paid premium version at some point. If you start using Evernote a fair amount, you can hit the 60 MB threshold easily. The paid plan provides many more uploads and other features.

According to iMore.com,² “For \$5 /month or \$45/year you’ll get 1 GB of storage upload space per month as well as many other premium features including the following:

- Offline access
- No ads
- Extensive note history that allows you to view past versions of your notes (good if you're collaborating with others)
- 50 MB uploads per note
- Pin lock allowing you to lock your Evernote application to prevent unauthorized access
- PDF search"

But here's the point: These limits are for monthly uploads. The storage is unlimited. Many of us got excited when we learned Dropbox gave us 2 GB of total free storage. Evernote Premium gives us 1 GB to upload to permanent storage each month. I heard directly from an Evernote rep during a demo, "We don't have a limit on your total storage, just how much you upload each month." For \$45 annually, this sounds like a great deal to me.

With the Evernote notebook structure, you can be as organized or disorganized as you wish. Evernote is your place to take and save notes to keep "forever." But it also lets you keep random items from your computer or mobile device.

Really enjoy a bottle of wine? Snap a picture of the label and store it in Evernote for future reference. Reading a personal email and decide you would like to keep it? All of your Outlook emails have a nice "Add to Evernote button" on the toolbar. Want to quickly add items from your mobile phone? Add the custom email address you are given as an Evernote subscriber to your address book. Emailing to that address puts that photograph or forwarded email right into your Evernote.

You can save notes, reminders, photos, web clips and many other types of information. It is a superb way to save information permanently to the cloud from your phone or tablet.

I plan on writing more about Evernote for this column in 2013, but for now here are some recent reviews of Evernote:

- Evernote Review: Organizing Your Life on an iPhone
www.okbar.org/s/organize
- Evernote 5 for iOS Review
www.okbar.org/s/evernote5
- Evernote for Android Gets a Sexy Makeover

www.okbar.org/s/evernote-gets-makeover

If you are the pen-and-paper type and want to stay that way for your note-taking, then you may consider purchasing the newly announced Evernote Smart Notebook by Moleskine. This notebook is designed to easily save your handwritten notes into useable digital Evernote files by using your smart phone camera. See the promotional video here: http://evernote.com/getting_started/moleskine/.

The bottom line for me right now — Dropbox, Evernote and the iCloud to back up my iPhone. Stay tuned for a new look at cloud computing for lawyers in next year's *Oklahoma Bar Journal*.

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!

1. www.okbar.org/s/de2j6.
2. www.okbar.org/s/9uv6u.

Q & A with OCU Law Dean Couch

By Travis Pickens

Q. *You have described your career (private practice, federal judge, law school dean) as an “arc.” What do you mean by that?*

An arc brings to mind the shape and movement of a natural form. I look at my life and see that my work as a lawyer has followed a natural uninterrupted arc — beginning with my preparation as a law student, moving into work as a young and maturing trial lawyer, transitioning to the work of a judge for 13 years — and now a move into what could be the last section of the arc, my work as a law school dean and professor. Some might think I am suggesting a downward trajectory now, but no, I am describing a movement in the direction of a full circle. I am fortunate to return once again to school and help prepare another generation for the challenges and joys of what lies ahead.

Q. *Not many lawyers leave the federal bench before they retire. What drew you to become the dean of the OCU School of Law?*

When this opportunity came to me, I had been working as a judge for almost 13 years, and had enjoyed every minute. I was still constantly learning about how to be a

judge, and had not considered leaving. When I began discussions with people at the school, however, I became immediately intrigued. My reaction made me recognize that a part of me was ready for new work and new challenges. I had a choice — I could cross the bridge or stay where I was. I chose to cross the bridge and have not looked back with regret, not even for a day. I do miss being around my wonderful colleagues on the federal bench, and some days I miss the tranquility and autonomy of the environment. But I am now whole-heartedly committed to a busy new world, and I am having a wonderful time! It has been a little like emerging from a secure and comfortable cave and coming out into a wild garden. It’s a colorful and complex world.

Q. *As a judge, you have seen many lawyers practice before you. What are some of the common traits of the best lawyers?*

I think being a great lawyer is all about love. A great lawyer loves justice. And the love of justice necessarily drives a lawyer toward important habits of mind and work, such as maintaining a constant and intense focus on details, on strategic options, on ethical obligations and on



Valerie K. Couch
Dean and Professor of Law

Valerie Couch took the reins as dean of the Oklahoma City University School of Law on April 9, 2012. She is the school's 12th dean and first woman to hold that position. For 13 years, she served as a federal magistrate judge in the Western District of Oklahoma. Prior to her service on the bench, she worked for 16 years in private practice as a trial attorney with the Oklahoma City firm Hartzog Conger & Cason. She has served as president of the Oklahoma County Bar Association, president of the Oklahoma City chapter of the Federal Bar Association and president of the William J. Holloway Jr. Inn of Court. She currently serves as a Trustee on the national board of the American Inns of Court in Washington, D.C. and as a Trustee on the Board of Trustees of the Oklahoma Bar Foundation. She taught law school as an adjunct teacher for many years and serves on the editorial board of the *Federal Courts Law Review*. She is married to Dr. Joe Couch, a clinical psychologist, and they have two sons: Dan Couch, an attorney and member of the Oklahoma bar, and Ross Couch, who runs an independent business in Norman.

the overall interests a lawyer is called upon to serve. Great lawyers, young and old, view themselves above all as guardians of the rule of law. They make all decisions and all communications through that lens. Also, a great lawyer loves the facts, loves investigating and gathering the facts, and loves marshaling the facts. And a great lawyer loves to shape the dynamic mix of fact and legal principles into a just result. Great lawyers are resourceful and sophisticated problem solvers and love playing that role in service to others. It's all about love.

Q. Why is a career in law still something to aspire to?

A career in law makes you part of an indispensable profession. You become someone who is essential to our democratic society, essential to maintaining a stable economy and essential to protecting human rights and dignity. Choosing to be a lawyer is also like giving yourself a treasure trove of gifts: an education that prepares you for a huge variety of work, a license that gives you a way to earn a decent living, a credential that carries some clout — and someday you may have interesting friends who ask you a lot of hard questions.

Q. How do you stay inspired as a lawyer, and now dean?

When I was younger and struggling with the troubles of day to day practice, I would sometimes go into the ceremonial courtroom in the federal courthouse and look up at the smiling face of Judge Lee West's portrait on the wall. I always came away feeling that to be a lawyer — and a judge — is a great and joyful stroke of good fortune despite the occa-

sional discouraging day. Actually, all the portraits in that room inspired me to stay focused and be tenacious. Now that I am in this busy law school environment, I find inspiration all around me. I talk with students. I read. I meet with faculty who are planning new programs. I visit classes and watch the learning process in action. And I surround myself with smart people who care about the world.

Q. What is your philosophy of a great law school education and how is OCU School of Law endeavoring to practice that philosophy?

I fear this is going to be too long an answer, because a law school is so complex. But here goes...my list of must-haves for a great modern legal education:

- Rigorous courses taught by superb teachers dedicated to the incremental transformative nature of traditional law school teaching methods
- Rigorous courses taught by superb teachers dedicated to innovative teaching methods that prepare students for the realities of practicing law
- Rigorous writing and research instruction by superb teachers dedicated to student success
- Required courses on lawyering skills relevant to the way law is practiced now and how it will be practiced in the near future
- Ample opportunities for real-world experience through well-supervised clinics, externships and observations
- Mentors from the legal and business community who

help students build their professional identities and provide meaningful connections to the world in which they will work

- Constant well-integrated emphasis on professionalism, ethics and leadership, from day one
- A culture of opportunity
- A culture of excellence
- A teaching culture that is highly interdisciplinary
- A teaching culture that welcomes and values the contributions of strong adjunct faculty members from the legal community
- A curriculum that effectively addresses the highly globalized nature of today's practice of law
- An environment welcoming to a talented and diverse student body, faculty and staff
- Intellectual diversity throughout the curriculum
- An environment that fosters outreach into the world to solve problems, pro bono services to those in need and strong relationships with the community
- An institutional identity that makes the school a player in the world — that is, not aloof but rather in the middle of the action.

Although this "list" may not yet constitute a "philosophy," this is where I am right now in the evolution of my thinking about what makes a great law school. I must say — and I am at liberty to say since I am brand new here and cannot take the credit — that I have entered such a school. I am proud to be the dean of the

Oklahoma City University School of Law. We are moving downtown to the heart of the action — literally and figuratively. We are an essential player in our community and our state, and I can see nothing but good things ahead for us.

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



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Meeting Summary

The Oklahoma Bar Association Board of Governors met at the Kerr Conference Center in Poteau on Friday, Oct. 26, 2012.

WELCOME

Past OBA President Doug Sanders thanked board members for traveling to Poteau for their October board meeting. He said LeFlore County Bar Association members enjoyed having dinner with OBA board members the night before.

REPORT OF THE PRESIDENT

President Christensen reported she attended the Boiling Springs Institute and board meeting, OBF fundraising seminar, monthly staff celebration, Southern Conference of Bar Presidents meeting, Diversity Committee program and lunch, swearing in of Court of Civil Appeals Judge Goree, ABOTA program and Board of Governors reception at the University of Tulsa, and investiture of Dean Couch and reception that followed. She participated as a panelist at the Women in Law Conference, spoke at the new member swearing in, had lunch with Justice Gurich and the Ukrainian delegation and spoke at the press conference with the attorney general. She had meetings with OBA staff to develop the CourtFacts.org website, with Executive Director Williams regarding hiring the Heroes Program coordinator, with Attorney General

Office staff members regarding the Mortgage Foreclosure Settlement Fund programs and with bar staff regarding Annual Meeting planning. She continues to be busy dealing with the judicial retention issue and urged board members to be vocal in encouraging voter education.

REPORT OF THE PRESIDENT-ELECT

President-Elect Stuart reported he attended Boiling Springs Institute in Woodward, September board meeting, reception for Deans Valerie Couch and Janet Levit, investiture ceremony and reception for Dean Couch, Southern Conference of Bar Presidents in Asheville, N.C., Pottawatomie County Bar Association meeting, ABOTA event in Tulsa and press conference at the Attorney General's office regarding the mortgage foreclosure assistance program. He met with the CLE Department to plan programs and July Alaskan cruise, had lunch with Justice Gurich and Ukrainian delegation members and worked on committee appointments.

REPORT OF THE PAST PRESIDENT

Past President Reheard reported she attended the Boiling Springs Institute in Woodward, September board meeting, Southern Conference of Bar Presidents meeting in Asheville, N.C. and the Women in Law reception for Dean Couch and Dean Levit.

She met with the IT director regarding upgrades and improvements to the Heroes Program website and met with the CLE Department to plan the Heroes Boot Camp CLE. She chaired the Military Assistance Committee meeting, participated as a panelist at the Women in Law Conference, coordinated a recorded message on behalf of the OBA and Pros 4 Vets by former OU and NFL player Roy Williams to National Guard troops deploying to Afghanistan, gave a presentation to the Arkansas Bar Association Legal Assistance for Military Personnel Committee to assist the Arkansas bar in implementing a legal assistance program for veterans and servicemembers, planned a joint meeting of the Military and Veterans Law Section and Military Assistance Committee for Annual Meeting and participated as a panelist at the Women in Law Conference.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the Boiling Springs Institute, new member swearing in, lunch with Justice Gurich and the Ukrainian delegation, Justice Summers memorial service, various meetings on the CourtFacts.org website, OBF fundraising seminar, meeting with Legislative Reading Day chair and co-chair, Military Assistance Committee, monthly staff celebration, Southern Conference of Bar Presidents

meeting, Diversity Committee program and luncheon, swearing in of new Court of Appeals judge, investiture and reception for Dean Couch, press conference at Attorney General's Office on Mortgage Foreclosure Settlement Fund Program, OBA budget hearing, directors meeting and ABOTA program at the University of Tulsa. He participated in meetings for the OBA member group insurance trust, Lingo Construction and Rattan Consulting regarding work on the Heroes Program website. He took part in two conference call meetings with the OBA Member Survey Task Force and a conference with LawPay regarding Annual Meeting and other sponsorship opportunities. He also conducted interviews for the new Heroes Program coordinator.

BOARD MEMBER REPORTS

Governor DeMoss reported she attended the ABOTA/OBA event at the TU College of Law. **Governor Devoll** reported he attended the board meeting and seminar at Boiling Springs and spoke at the Garfield County Bar Association meeting. **Governor Hays** reported she attended the board dinner and September board meeting in Woodward, OBA Family Law Section monthly meeting for which she prepared and presented the budget report, Women in Law Conference, Mona Salyer Lambert Spotlight Award presentation, ABOTA program and board reception at the University of Tulsa, Tulsa County Bar Association Family Law Section meeting and TCBA "Turn Tulsa Pink" rally. She also participated in OBA FSL Annual Meeting planning, communicated with the Law Day and Communications

Committees, communicated the Board of Governors report to the TCBA Board of Directors and distributed information regarding the OBA CourtFacts.org website to courthouses and the law library. **Governor Meyers** reported he attended the Boiling Springs Institute and Comanche County Bar Association meeting. **Governor Parrott**, unable to attend the meeting, reported via email that she attended the Boiling Springs Institute, September board meeting, Oklahoma County Bar Association board meeting, funeral service for Justice Hardy Summers and reception for Dean Valerie Couch. **Governor Poarch** reported he attended the Boiling Springs Institute and September Board of Governors meeting. **Governor Rivas**, unable to attend the meeting, reported he attended the Boiling Springs Institute and September Board of Governors meeting. **Governor Shields** reported she attended the reception for Dean Valerie Couch and Dean Janet Levit, Women in Law Conference and Oklahoma County Bar Association meeting in addition to the investiture ceremony and reception for Dean Valerie Couch. **Governor Smith** reported he attended Muskogee County Bar Association meetings and the memorial services for Justice Hardy Summers. **Governor Thomas** reported she attended the Boiling Springs Institute at which she gave a CLE presentation, September board meeting, swearing-in ceremony for new bar members, September and October meetings of the Washington County Bar Association, reception for Dean Couch and Dean Levit, Women In Law Conference and the

ABOTA/OBA event at the TU College of Law.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Kirkpatrick, unable to attend the meeting, reported via email that she attended dinner with board members and the September board meeting in Woodward, Women in Law reception for Dean Valerie Couch and Dean Janet Levit, "Welcome to the OBA" reception hosted by the YLD for new members, ABA GP/Solo Small Firm conference in Seattle as a YLD Fellow, ABA YLD Fall conference in Charleston, S.C. and the OBA Diversity Awards luncheon. She also spoke at the swearing-in ceremonies, chaired the September YLD board meeting, participated as a panelist at the Women in Law Conference and moderated the OBA CLE/YLD Taking Care of Business seminar.

RESOLUTION

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

COMMITTEE LIAISON REPORTS

Vice President Stockwell reported the LHL Foundation has awarded a grant to a psychologist to assist a bar member. Past President Reheard reported the Heroes Program will receive \$15,000 from the attorney general's mortgage settlement fund to help program participants. She said the program is nearing the \$2 million mark in free legal services that have been donated by about 500 Oklahoma lawyers. More Oklahoma soldiers are deploying soon — 115 members of the Oklahoma National

Guard 1245th Transportation Company out of McAlester will be going to Afghanistan and the 1220th unit out of Muskogee will also be deployed. CLE employee Brandon Haynie filmed a video of former OU football player Roy Williams with a message of support to the troops, which was shown to soldiers deploying. Past President Reheard also reported the Military and Veterans Law Section and Military Assistance Committee will have Retired Rear Admiral Greg Slavonic as a guest speaker for their joint meeting at Annual Meeting. She announced Tanya Roland, an OBA member from Shawnee and a major in the Army Reserves, has been hired as the new Heroes Program coordinator. Governor DeMoss reported the Diversity Committee held its first awards event, which drew rave reviews with an outstanding keynote speaker. She also said Litigation Section members were sent a survey asking what benefits they most wanted. Responses included the need for programs and the suggestion to create a legislation subcommittee. Governor Pappas reported at the Law-related Education Committee meeting it was discussed adding short videos to the young adult guide on the web, and she said the LRE Department has conducted peer mediation training. A \$2,000 grant from the OBF allowed more young adult guides to be printed. Governor Hays reported the Communications Committee is finalizing its CLE webinar that will take place Dec. 5 and the Law Day Committee is developing segments for the Ask A Lawyer TV show.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reviewed a list of pending non-discipline litigation in which the OBA or an agent of the OBA is a defendant. She reported her office will receive a \$50,000 grant from the attorney general's mortgage settlement fund to add resources to aid in the investigation and prosecution of the unauthorized practice of law in mortgage foreclosure and loan modification representations. A written status report of OBA disciplinary matters for September 2012 has been submitted for the board's review.

PROPOSED AMENDMENTS TO LEGAL ETHICS ADVISORY PANEL RULES

Vice President Stockwell reported the Legal Ethics Advisory Panel, which has two divisions, usually gives a question to one division. However, a situation occurred in which a question was given to both divisions due to the first panel not being able to reach a consensus, and LEAP rules do not describe an approval procedure for utilizing both divisions. She shared insight into the proposed amendments that clarify the approval process for an opinion and provide a procedure to refer the matter to the Board of Governors should the required number of concurrences not be cast. The board approved the amended rules.

PROPOSED RESOLUTION AND BYLAWS AMENDMENT

Governor DeMoss reviewed a resolution submitted by the Civil Procedure and Evidence Code Committee to be considered by the House of Delegates. The resolution proposes

amendments to 12 O.S. 2011, Section 2502, which relates to use of depositions in court proceedings, clarifying persons designated to testify under certain circumstances and providing an effective date. The board voted to recommend the House of Delegates adopt the resolution. Executive Director Williams reviewed a proposed amendment to the OBA Bylaws that would change the requirement that a proposed legislative resolution be published in the *Oklahoma Bar Journal* at least three weeks prior to House of Delegates voting and allow more flexibility with requiring publication at any time prior to the beginning of the Annual Meeting. They voted to recommend the House of Delegates adopt the amendment. Executive Director Williams noted the OBA Bylaws Committee will present this proposed amendment.

OBA 2013 BUDGET

President-Elect Stuart reported the Budget Committee met and recommends the proposed budget be presented to the board. Administration Director Combs was asked to give an overview. Restricted funds were discussed.

ORDER GIVES BOARD OF BAR EXAMINERS MEMBERS MCLE CREDIT FOR SERVICES

President Christensen called the board's attention to a recent Supreme Court order effective immediately that grants Board of Bar Examiners members annual continuing legal education credit equal to all required MCLE credit for every year they serve as a bar examiner or associate.

OKLAHOMA MORTGAGE SETTLEMENT FUND

President Christensen explained Attorney General Scott Pruitt established the Oklahoma Mortgage Settlement Fund to provide justice and compensation to Oklahomans who were harmed by unfair banking practices during a mortgage modification or foreclosure process. A group of five national mortgage servicers settled claims of deceptive and misleading practices by providing a direct cash payment of \$18.6 million to Oklahoma. Much of those funds will be distributed directly to families that have already lost their homes through the foreclosure process, but some funds will be distributed as grants to partnering agencies and associa-

tions. President Christensen reviewed the grants the OBA will receive from the fund. One of the OBA grants will provide training for Oklahoma lawyers on mortgage foreclosures and related legal issues. CLE seminars will be held Dec. 4 in Oklahoma City and Dec. 5 in Tulsa to provide OBA members a primer on assisting Oklahomans facing mortgage-related issues.

EXECUTIVE SESSION

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

OBA 2013 BUDGET

The board voted not to approve the budget as presented and to send it back to committee.

PROPOSED PERSONNEL MANUAL AMENDMENT

The board voted to hire outside employment law counsel to examine employment law issues, if any, raised by amendments to the OBA Personnel Manual made in February 2012 and to authorize payment up to \$2,500 for legal services.

NEXT MEETING

The Board of Governors met at the Sheraton Hotel in downtown Oklahoma on Wednesday, Nov. 14, 2012, as part of the Annual Meeting. A summary of those actions will be published after the minutes are approved. The next board meeting will be held Friday, Dec. 14, 2012, at the Oklahoma Bar Center in Oklahoma City.

Oklahoma Bar Journal Editorial Calendar

2013

■ January

Meet Your OBA

Editor: Carol Manning

■ February

Indian Law

Editor: Mark Ramsey
mramsey@soonerlaw.com
Deadline: Oct. 1, 2012

■ March

Estate Planning & Probate

Editor: Pandee Ramirez
pandee@sbcglobal.net
Deadline: Oct. 1, 2012

■ April

Law Day

Editor: Carol Manning

■ May

Technology

Editor: Sandee Coogan
scoogan@coxinet.net
Deadline: Jan. 1, 2013

■ August

Criminal Law

Editor: January Windrix
janwindrix@yahoo.com
Deadline: May 1, 2013

■ September

Bar Convention

Editor: Carol Manning

■ October

Appellate Law

Editor: Emily Duensing
Emily.duensing@oscn.net
Deadline: May 1, 2013

■ November

Raising the Bar: Lawyers Who Make a Difference

Editor: Melissa DeLacerda
melissde@aol.com
Deadline: Aug. 1, 2013

■ December

Ethics & Professional Responsibility

Editor: Joe Vorndran
joe@scdtlaw.com
Deadline: Aug. 1, 2013

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

Counting on You

Consider the OBF for Your End-of-Year Donations

By Susan B. Shields

It's that time of year when the Oklahoma Bar Foundation asks you to make a contribution to the OBF as a part of your end-of-year charitable giving. The OBF funds the types of charitable programs and services that only lawyers and law firms care about. The charitable purposes of the OBF are accomplished through annual grant awards that advance the science of jurisprudence and promote the administration of justice throughout Oklahoma, giving funding for organizations that provide:

- free legal assistance to the poor and elderly
- safe haven for the abused
- protection and legal assistance to children

- law-related education programs for the public (including Oklahoma school children)
- law student scholarships for those we expect to follow our charge
- court grants and other activities that improve the quality of justice for all Oklahomans

YOUR DONATION MATTERS

OBF grants have totaled more than \$10.5 million, with about \$5 million of that amount given within the last five years alone. In these challenging economic times when other sources of funding for OBF grantees have been drastically cut or have completely gone away, contributions from people like you will help the

“The OBF funds the types of charitable programs and services that only law firms and lawyers care about.”

OBF be able to continue our mission of supporting law-related charities. Law-related charitable services are not an area other organizations or groups willingly support, and it is important that we as attorneys, help.

LIVES WE'VE TOUCHED

For those of us who have had the opportunity to visit and to talk with OBF grantees, it is the specific stories of the help provided through OBF grants that tug at our heart-strings and make us proud to be Oklahoma lawyers and OBF supporters. For example, we all know that legal service attorneys who handle domestic violence cases often see the unthinkable. One such case involved a situation that no child should ever have to experience.

Robin, an attorney in the Oklahoma City office of Legal Aid Services of Oklahoma,



Legal Aid Services Senior Project is one of 19 programs that receive OBF funding.

tells the story of Sandy, who was only 17 when she first came to LASO for help. Sandy's mother died approximately eight years ago and she had been living with her father and stepmother. This past summer her father became violent with her. Sandy filed a VPO and came to LASO for help. LASO assisted her in getting a three-year final order. Before coming to LASO, Sandy went to live with a friend, and the friend's mother was instrumental in getting her set up with Circle of Care, a girls' group home in Tahlequah. LASO also assisted the friend's mother in preparing a *pro se* guardianship. Robin walked through the paperwork with the guardian and got an emergency order so Sandy could go to Circle of Care to live. Her father was completely unresponsive in giving his consent for Sandy to be admitted to the group home. Now, Sandy is excelling. She recently turned 18 and the guardianship was dismissed. Sandy had been haunted by leaving her younger brother behind in the abusive home. The brother's situation became very bad and DHS was required to take him

into custody. The good news is that he was placed with a maternal aunt who had been visiting Sandy at the group home. Sandy would have faced further violence had LASO not helped. She is now a happy high school senior with good grades and is college bound. After closing Sandy's LASO case file, Robin concluded, "Today was a great day to be a lawyer!"

You have seen headlines ranking Oklahoma as being one of the top 10 worst states in the nation for women killed by men. We honor our legal service attorneys and the other Oklahoma Bar Foundation grantees who work to save the lives of those tormented by domestic abuse. The Oklahoma Bar Foundation's support of domestic violence intervention programs allows legal service practitioners like Robin to serve a larger spectrum of the needs of domestic abuse victims by providing OBF funding to "fill the gap" so the attorney will have more opportunity to protect the client.

IT'S UP TO YOU

Show your support for these important law-related organi-

zations by making a charitable gift to the Oklahoma Bar Foundation. If you are already a Fellow of the OBF and have met your initial pledge, please consider becoming a Sustaining Fellow by continuing your \$100 per year donation, or even better, become a Benefactor of the OBF by increasing your gift commitment to \$300 per year.

If you are not a Fellow, then now is the time to become one. Or, you can even make a one-time charitable donation to the OBF in the dollar amount of your choosing. Use the attached form or visit www.okbarfoundation.org to make your online gift today.

Your Oklahoma Bar Foundation funds the types of programs and charitable services that only lawyers and law firms care about. We can't do it without your help!

Thank you for your generous and loyal support of the OBF.

Ms. Shields is president-elect of the Oklahoma Bar Foundation and may be reached at susan.shields@mcafeetaft.com.

The work of the OBF is fulfilling a critical need for civil legal aid and other law-related services

- 2012 Grants = \$465,950
- 19 programs & 5 court projects received grants
- Your contributions to OBF make a significant difference in the lives of tens of thousands of Oklahomans each year
- With your help and generous support the good work will continue

For more information, visit www.okbar.org/obf



FELLOW ENROLLMENT FORM ☐ Attorney ☐ Non-Attorney

Name: _____

(name, as it should appear on your OBF Fellow Plaque)

County _____

Firm or other affiliation: _____

Mailing & delivery address: _____

City/State/Zip: _____

Phone: _____ EMail Address: _____

The Oklahoma Bar Foundation was able to assist 38 different projects or programs last year through the generosity of Oklahoma lawyers – providing free legal assistance for the poor and elderly, safe haven for the abused, protection and legal assistance to children, law-related education programs, and other activities that improve the quality of justice for all Oklahomans. The tradition of giving back continues with YOU.

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

_____ \$100 enclosed & bill annually

_____ Total amount enclosed, \$1,000

_____ *New Lawyer 1st Year*, \$25 enclosed & bill
Annually as stated

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

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

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

_____ **My charitable contribution to help offset the
Grant Program Crisis is enclosed**

GRANT PROGRAMS ARE IN CRISIS

JOIN TODAY AND HELP MORE
THAN 85,000 OKLAHOMANS
IN NEED.

GIVE TODAY AT
WWW.OKBARFOUNDATION.ORG

- To become a Fellow, the pledge is \$1,000 payable within a ten year period at \$100 each year; however, some may choose to pay the full amount or in greater increments over a shorter period of time.
- The OBF offers lesser payments for newer Oklahoma Bar Association members:
 - — First Year Lawyers: lawyers who pledge to become OBF Fellows on or before January 2, of the year immediately following their admission may pay only \$25 per year for 2 years, then only \$50 for 3 years, and then at least \$100 each year thereafter until the \$1,000 pledge is fulfilled.
 - — Within Three Years: lawyers admitted 3 years or less at the time of their OBF Fellow pledge may pay only \$50 per year for 4 years and then at least \$100 each year thereafter until the \$1,000 pledge is fulfilled.
- Sustaining Fellows are those who have completed the initial \$1,000 pledge and continue their \$100 annual contribution to help sustain grant programs.
- Benefactor Fellows is the highest leadership giving level and are those who have completed the initial \$1,000 pledge and pledge to pay at least \$300 annually to help fund important grant programs. Benefactors lead by example.

Your Signature & Date _____ OBA Bar# _____

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Many thanks for your support & generosity!

Limited Scope Representation

By Laurie W. Jones

The number of self-represented litigants has skyrocketed in the past ten years. California reports that 67 percent of petitioners in family law cases, 22 percent in probate cases, and 16 percent in general civil cases are self-represented; 47 percent of domestic relations and 98 percent of small claims cases in Utah involve no attorneys; and in New Hampshire, 85 percent of cases brought in its district courts (misdemeanors, juvenile, domestic violence, small claims) involve at least one party who is self-represented.¹ No statistics are currently available for Oklahoma, but anecdotal reports from judges indicate that the number of self-represented litigants is on the rise and is significant. The causes for self-representation include an inability to afford lawyers, decreasing government funds for legal aid services for those of limited means; and a preference for self-representation, aided by the availability of online information and forms.

Whatever the causes, the increased number of self-represented litigants adversely affects the administration of justice. Unfamiliar with the judicial process, self-represented litigants require time-consuming attention from court personnel. Procedural

or substantive missteps may require additional court proceedings, which can be frustrating to the litigant who can ill-afford the expense of repeated trips to the courthouse. A litigant may perceive or request that the judge play a more active role in his or her case.



“...the increased number of self-represented litigants adversely affects the administration of justice.”

Substantive rights may be lost, and questions of access to justice as well as securing fair and reasonable justice arise.

Forty-one states, including Oklahoma, have adopted ABA Model Rule 1.2(c) which states, “A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.” Limited scope representation (LSR),

also known as “unbundled legal services,” is the provision of legal services by a lawyer on only some portions of a client’s legal matter. This representation differs from traditional representation in which a lawyer handles all aspects of a legal matter from its beginning to its conclusion. Limited scope services are not second-class services as the lawyers must still provide competent representation and comply with all ethical and procedural rules in his or her jurisdiction.²

LSR can take many forms, such as advising a client on certain aspects of a transaction or a proposed course of conduct, reviewing or drafting pleadings to be filed by the client, participation at depositions or court hearings, or coaching a client on how to respond to or proceed in particular circumstances. In recent years, state judiciaries, bar and legal commentators have focused increased attention on LSR — particularly in the litigation context — due to the great increase in the number of self-represented litigants, especially in high-volume courts such as traffic court, small claims, housing and family law. Limited scope representation can benefit clients on both sides, the courts and the lawyers. The benefits of LSR are clear, although some prac-

tical issues affecting its full implementation are worthy of consideration.

The benefits of LSR are many. Clients benefit from the legal expertise of lawyers while paying for only the services needed most. Self-represented litigants gain a better understanding of the legal process and the substantive aspects of their case, and more concise and accurate legal and factual presentations result. The involvement of court personnel for assistance or guidance is reduced, thereby saving valuable staff time and resources. The need for judges to step in and render individualized attention decreases. The unauthorized practice of law is limited as legal consumers are discouraged from using non-lawyers and generic forms providers as sources of legal information and advice. Lawyers have the opportunity to obtain clients who would otherwise represent themselves, and thus the lawyers may reach an untapped market and generate additional income. Limited scope representation

positively impacts access to justice and administration of justice issues.

Critics of LSR note a professional reluctance to offer or provide less than a full traditional representation as it seems inconsistent with long-standing concepts of a lawyer's professional and ethical duties to a client. Concerns have been voiced about the quality of service LSR may offer. And finally, there may be practical impediments relating to procedures for properly appearing and withdrawing from a case, ensuring candor to the tribunal, communicating with represented parties, and professional liability. Recently, two states, Mississippi and Alabama, joined 18 other states that adopted specific court rules that provide additional guidance on LSR to address these concerns and to facilitate the provision of LSR.

The American Bar Association provides a number of resources on limited scope representation. These resources include the Handbook on

Limited Scope Legal Assistance, a whitepaper on unbundling, an unbundling training video and risk management materials, and the Pro Se/Unbundling Resource Center located online at www.okbar.org/s/unbundling. In Oklahoma, as the number of self-represented litigants continues to grow and implicates access to justice and administration of justice issues, innovation in the delivery of legal services must be considered.

Ms. Jones is an OBA Access to Justice Committee member. She serves as interim associate dean for Academic Affairs at OCU School of Law.

1. "Statewide Action Plan for Serving Self-Represented Litigants," Judicial Council of California-Task Force on Self-Represented Litigants, February 27, 2004; Committee on Resources for Self-Represented Parties, Strategic Planning Initiative, Report to the Judicial Council, July 25, 2006; Challenge to Justice, A Report on Self-Represented Litigants in New Hampshire Courts, Findings and Recommendations of the New Hampshire Supreme Court Task Force on Self-Representation, January 2004.

2. See Okla. RPC Rule 1.2(c) stating "A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent. See also, Cmts. 6, 7 (discussing when appropriate).

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At Home



At Work



And on the Go

YLD Year in Review

By Jennifer Heald Kirkpatrick

It has been an honor to serve as YLD chair. Before reflecting on some highlights of the past year, I would like to take this opportunity to recognize some people who have significantly contributed to my ability to serve. I would first like to thank my family for their assistance and unconditional love when life was hectic. I also thank my colleagues at Hall Estill for allowing me to make such a huge time commitment and for supporting me along the way.

I cannot recall a more successful year for the YLD. In January, we hosted ABA YLD Chair Michael Bergmann and Secretary/Treasurer Mario Sullivan for several events including the orientation for new board members, board meeting and roast of Immediate Past Chair Roy Tucker.

In February, the YLD board assembled Bar Exam Survival Kits and distributed them to all applicants taking the bar exam in Oklahoma City and Tulsa. We also had four delegates and an alternate attend and participate in the ABA YLD Assembly at the ABA Midyear Meeting. I also had the opportunity to represent the OBA YLD in the ABA House of Delegates.

In March, the YLD Mock Trial Committee held the Oklahoma state finals for high school students. I would like

to thank the OBA Mock Trial Committee, Chairperson Nicole Longwell and Mock Trial coordinator Judy Spencer for their continued efforts and support of this event. Congratulations go to the finalists, Clinton High School Gold Team and Ada High School Maroon Team.

ten and updated by the YLD and published by the OBA Law-related Education Department. Copies of the legal guide have been distributed to additional classrooms throughout the year. The event resulted in more than 30 lawyers volunteering almost 100 hours to give presenta-



The OBA YLD "king and queen" surrounded by the YLD Homecoming court

April was a busy month for the YLD, as we held our third annual Community Day of Service. This year's event involved YLD members and attorney volunteers visiting high school classrooms across the state to deliver presentations explaining how an individual's legal obligations change when he or she turns 18. The presentations were based on information contained in the recent publication titled "You're 18 Now: It's Your Responsibility," a legal guide for young adults rewritten

tions to more than 2,000 high school juniors and seniors in 40 high schools located in 25 counties. We were recognized by the ABA with a second place Award of Achievement for this event. I would like to again thank YLD Chair Elect Joe Vorndran, who also chairs the YLD Children and the Law Committee, who worked tirelessly to match schools with volunteer attorneys. Thanks also go to the YLD board members who jumped into this challenge with good grace and humor.

In April, we hosted a reception for new admittees after the swearing-in ceremonies in Oklahoma City. We also hosted "Welcome to the Bar" receptions in Oklahoma City and Tulsa designed for existing OBA YLD members to welcome the new admittees. Thank you to YLD Secretary LeAnne McGill and her New Admittee Committee Co-chair Tim Rogers for scheduling and arranging these events.



OBA Homecoming royalty: (from left) 2013 OBA President Jim Stuart, 2012 OBA President Cathy Christensen, 2012 OBA YLD Chair Jennifer Kirkpatrick and 2013 OBA YLD Chair Joe Vorndran

In May, the OBA YLD was represented by three officers at the ABA YLD Spring Conference, where we had the opportunity to highlight our Community Day of Service to other states as well as participate in leadership training.

We held our YLD Midyear Meeting in conjunction with the OBA Solo and Small Firm Conference in June at the Choctaw Casino Resort in Durant. YLD board members had the opportunity to attend CLE or just sit at the resort's fabulous pool area and catch up. We also hosted a hospitality suite for all YLD and OBA members attending the conference. In July, the YLD board

again prepared Bar Exam Survival Kits and distributed them to a record number of applicants taking the bar exam in Oklahoma City and Tulsa.

August was an exciting month. We sent four delegates and an alternate to the ABA YLD Assembly held during the ABA Annual Meeting. I was thrilled to accept two ABA Awards of Achievement on behalf of the OBA YLD during the assembly.

In September, we again hosted a reception for new admittees following the swearing-in ceremonies in Oklahoma City and "Welcome to the Bar" events in Oklahoma City and Tulsa. In October we co-sponsored "Taking Care of Business," with the OBA CLE Department.

This CLE, specifically for new lawyers, was designed to give attendees an opportunity to work in small groups to resolve real-life problems faced by attorneys in solo and small firm practice settings. I would like to thank YLD CLE Chair Bryon Will for his work in creating, scheduling and implementing this event.

November was another busy and exciting month beginning with the YLD Annual Meeting held in conjunction with the OBA Annual Meeting in Oklahoma City. At this meeting, election results for the 2013 YLD Board of Directors were announced. We hosted a reception honoring past OBA YLD chairs along

with Friends, Fellows and recipients of YLD awards for 2012. We sponsored a Nuts and Bolts CLE track and a hospitality suite for all Annual Meeting attendees. We also attended the President's Tailgate Party and danced the night away with other OBA members during the At the Hop event. I was even crowned YLD homecoming queen and held court with YLD Homecoming King Bryon Will, OBA Homecoming Queen Cathy Christensen and OBA Homecoming King Jim Stuart. The icing on the cake was accepting the OBA Golden Gavel Award on behalf of the YLD at the OBA House of Delegates along with Immediate Past YLD Chair Roy Tucker.

To say I am proud of all the YLD board accomplished this year is an understatement. To every member of the YLD board and executive committee — your dedication, commitment and hard work are off the charts. You not only supported my objectives, you also inspired me. Thank you, thank you, thank you.

Finally, I would like to thank John Morris Williams and the OBA staff for their help, guidance and assistance throughout the year.

As the final credits roll and I look ahead, I am pleased to pass the gavel to Joe Vorndran. He has been busy preparing for 2013 and I know that he and the other YLD officers will have another successful year.

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

December

- 12 OBA Technology Committee meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City with OSU Tulsa, Tulsa; Contact Gary Clark 405-744-1601
- 13 OBA Diversity Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with Tulsa County Bar Center, Tulsa; Contact Kara Smith 405-923-8611
- 14 OBA Board of Governors meeting;** 9 a.m.; Oklahoma Bar Center, Oklahoma City; Contact John Morris Williams 405-416-7000
Oklahoma Association of Black Lawyers meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Donna Watson 405-721-7776
- 15 OBA Young Lawyers Division meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Jennifer Kirkpatrick 405-553-2854
- 17 OBA Alternative Dispute Resolution Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Michael O'Neil 415-232-2020
- 20 Oklahoma Justice Commission meeting;** 2 p.m. Oklahoma Bar Center, Oklahoma City; Contact Drew Edmondson 405-235-5563

- 8 Government and Administrative Law Practice Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Tamar Scott 405-521-2635
- 11 OBA Board of Governors swearing-in ceremony;** 10 a.m. Supreme Court Ceremonial Courtroom, State Capitol, Second Floor, Oklahoma City; Contact: John Morris Williams, 405-416-7000
OBA Board of Governors meeting and luncheon; 11 a.m.; Oklahoma Bar Center, Oklahoma City; Contact John Morris Williams 405-416-7000



January

- 24-25 OBA Closed** – Christmas observed
- 31 OBA Closed** – New Year's Day observed
- 1 OBA Closed** – New Year's Day observed
- 3 OBA Lawyers Helping Lawyers discussion group meeting;** 7 p.m.; Office of Tom Cummings, 701 NW 13th St., Oklahoma City; RSVP to Kim Reber kimreber@cabainc.com
OBA Lawyers Helping Lawyers discussion group meeting; 7 p.m.; The Street Law Firm, 400 S. Boston Ave, Ste. 1100 W., Tulsa; RSVP to Kim Reber kimreber@cabainc.com
- 4 Swearing-in ceremony of Chief Justice Tom Colbert and Vice Chief Justice John Reif;** 1:30 p.m.; Supreme Court Ceremonial Courtroom, State Capitol, Second Floor, Oklahoma City. Reception to follow
- OBA Family Law Section;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa, NCB room 222, Tulsa; Tamera Childers 918-581-8200
- 16 OBA Law-Related Education Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Suzanne Heggy 405-556-9612
- 17 Oklahoma Justice Commission Meeting;** 2 p.m.; Oklahoma Bar Center, Oklahoma City; Contact: Drew Edmondson 405-235-5563
- 21 OBA Closed** – Martin Luther King, Jr. Day observed
- 22 OBA Legal Intern Committee meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Candace Blalock 405-238-0143
- 24 OBA Work/Life Balance Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with Tulsa County Bar Center, Tulsa; Contact Cheri Gray 405-229-5396

Lawyers Provide Thanksgiving Dinner for Thousands

More than 4,000 needy Oklahoma families enjoyed a traditional Thanksgiving meal at their own tables this year due to the efforts of a dedicated group of Oklahoma lawyers. Lawyers Against Hunger raised more than \$80,000 to buy turkeys and food boxes to be distributed in communities across the state.



Noble McIntyre presents a Thanksgiving turkey to a family during the Oklahoma City distribution at the McIntyre Law Firm. Lawyers also gathered to distribute hundreds of turkeys and boxes of food in Tulsa, El Reno and at the Law Offices of David Bernstein in Norman.

"This is a way we can give back to our community and state, and show that lawyers really care while addressing a very serious need in our state," says Hugh M. Robert, co-founder of Lawyers Against Hunger and attorney at Sherwood & McCormick. "I am fortunate to work at a firm that places an emphasis on community service. Our entire law firm shows up on the day of distribution and also helps in the planning process."

In the competition among all cities to see who could raise the most funds for the turkey distribution, Oklahoma City narrowly claimed victory on the last day, edging out Tulsa by only \$100.

"There are no losers in this competition, only winners from each community where we raised funds to help feed the hungry" said Noble McIntyre, co-founder of Lawyers Against Hunger, and attorney at McIntyre Law.

Lawyers Against Hunger, formally established in 2011, is a nonprofit organization dedicated to fighting hunger, increasing food security for those in need. New distribution sites are being planned for next year. To volunteer, donate, or for more information about Lawyers Against Hunger, visit www.lawyersagainsthunger.com.

New OBA Board Members to Take Oath

Ten new members of the OBA Board of Governors are set to be sworn in to their positions Jan. 11 at 10 a.m. in the Supreme Court Ceremonial Courtroom at the State Capitol. Officers set to take the oath and their new positions are James T. "Jim" Stuart, Shawnee, president; Renée DeMoss, Tulsa, president-elect; and Dietmar Caudle, Lawton, vice president.

To be sworn into the Board of Governors to represent their judicial districts for three-year terms are Sandee Coogan, Norman; Robert D. Gifford III, Oklahoma City; Douglas L. Jackson, Enid; and Richard Stevens, at large, Norman.

To be sworn into one-year terms on the board are Cathy Christensen, Oklahoma City, immediate past president; and Joe Vorndran, Shawnee, Young Lawyers Division Chairperson. Robert S. "Bob" Farris will serve the final year of Renée DeMoss' term as an at-large governor.

Volunteers Critical to OBA Success

Joining an OBA committee not only helps further the work of the association, but is a fun networking and social opportunity for you! President-Elect Jim Stuart invites all Oklahoma lawyers to sign up for an OBA committee or to re-enlist if your term is expiring. Signing up for a committee online is easy at www.okbar.org, or use the form in this issue.

Farris Appointed to Board of Governors

Tulsa attorney Robert S. Farris has been appointed to the OBA Board of Governors, filling the unexpired term of member-at-large Renée DeMoss, who is vacating the seat after her uncontested election as OBA president-elect. The vacancy will occur Jan. 1, 2013, and the at-large term expires Dec. 31, 2013.

Mr. Farris is an attorney in private practice with the firm of Rogers and Bell. Since 1991, he has been an adjunct professor at TU College of Law, where he teaches courses on wills, trusts and elder law and supervises law students working with the Boesche Legal Clinic. He has twice received the honor of Outstanding Adjunct Professor.

His community involvement consists of serving on the boards of St. John Medical Center, Tulsa Psychiatric Center, Parkside Psychiatric Hospital, Texas Presbyterian Children's Homes and Services and the Tulsa Historical Society.

He is a member of the National College of Probate Judges and a Fellow in the American

College of Trust and Estate Council. He is a member of the Tulsa County Bar Association and serves as the TCBA Delegate to the ABA House of Delegates. He has served as president of the TCBA, a member of the Tulsa Estate Planning Forum and Tulsa Probate and Title Lawyers Association and is a member of the Real Property, Probate and Trust Law Section of the ABA.

After beginning his career in private practice, he was appointed special judge for the Tulsa County District Court Probate Division and served from 1981-1990. He served as vice president of the Oklahoma Judicial Conference during his term on the bench. He received his J.D. from the TU College of Law in 1975.



Bob Farris

Judge Allen Announces Retirement

All OBA members are cordially invited to a retirement reception honoring Noble County Associate District Judge Dan Allen who is retiring after 22 years of service on the bench. The reception is set for Dec. 20, from 2 – 4 p.m. at the Noble County Courthouse in Perry, Third Floor, Courtroom A.

Holiday Hours

The Oklahoma Bar Center will be closed Monday, Dec. 24 and Tuesday, Dec. 25 for the Christmas holiday. In addition, the bar center will close Monday, Dec. 31 and Tuesday, Jan. 1, 2013, for the New Year's holiday.

End-of-the-Year Deadlines Approaching!

Dues are due Jan. 2, 2013. You can pay online or by mail. Make sure if you are paying online that you carefully follow the instructions and wait for the acknowledgment before navigating away. Mandatory Continuing Legal Education hours need to be completed by Dec. 31, 2012.

OBA Member Resignation

The following member has resigned as a member of the association and notice is hereby given of such resignation:

James R. Covington III
OBA No. 1956
424 S. 2nd St.
Springfield, IL 62701-1779

OBA Member Reinstatement

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

Stephen J. Korotash
OBA No. 5102
U.S. Secretary
801 Cherry St., 19th Floor
Fort Worth, TX 76102

Kudos

Judge Richard Osburn of the Mille Lacs Band District Court in Onamia, Minn., recently completed the general jurisdiction course at the National Judicial College in Reno, Nev. He earned the college's certificate in judicial development in tribal judicial skills. He expects to complete the requirements for certificates in dispute resolution and general jurisdiction in 2013.

Assistant U.S. Attorney Arvo Q. Mikkanen from the Western District of Oklahoma received the 2012 Attorney General's Award for Exceptional Service in Indian Country at the 60th Annual Attorney General's Awards Ceremony in Washington, D.C. He is recognized for his efforts to enhance law enforcement response to crime in Indian country. He is a member of the Kiowa Tribe of Oklahoma.

David L. Bryant was recently inducted as a Fellow of the American College of Trial Lawyers during the college's recent Annual Meeting in New York City. Fellowship is extended by invitation only to experienced trial lawyers who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality. Membership can never exceed 1 percent of the total lawyer

population of any state or province.

On The Move

Tanya Roland has joined the Oklahoma Bar Association as coordinator for the Oklahoma Lawyers for America's Heroes program. Her work involves matching volunteer attorneys with military servicemembers and veterans in need of pro bono legal assistance. She is a major in the U.S. Army Reserves, having served as a JAG officer in the Active Guard and Reserve Program from 2006-2011. She most recently worked as a grant writer at East Central University in Ada. She may be reached at 405-416-7086.

Hall Estill announces **Samantha Weyrauch** has joined the Tulsa office as special counsel, joining the health, estate planning, tax and business litigation practices. Prior to joining the firm she was an associate attorney at Barber & Bartz. She has published numerous articles related to health law in various journals and publications around the country. She received her B.S. degree in accounting and her M.B.A. from TU, and her J.D. from the TU College of Law. She is also a CPA.

Gary C. Rhodes announces his retirement from the practice of law. He was in

practice for 43 years. He may be reached at 8800 W. Waterloo Road, Edmond, 73025 or at 405-348-1564.

The Oklahoma City-based Sweet Law Firm is expanding its practice with a second office in Tulsa and the addition of three new partners: Oklahoma City-based **Vanessa A. Hicks** and **Curt Dewberry**, and Tulsa-based **W. Joseph Pickard**, who will manage the new Tulsa/Eastern Oklahoma practice. Ms. Hicks has represented hundreds of health care professionals in medical malpractice cases and in state board actions across the state. She has been instrumental in leading the coordination of the firm's national cases, supervising attorneys in mass torts throughout the United States. She is a 2008 graduate of the OU College of Law. Mr. Dewberry has represented hundreds of healthcare professionals in medical malpractice cases in state and federal courts. He is a graduate of the OU College of Law. Mr. Pickard served as a prosecutor for the Tulsa County District Attorney's office before leaving to join a private practice in 2004. His work focuses in the areas of general liability, products liability, premises liability, professional liability, environmental law and auto negligence. He is a graduate of OU and received his J.D. from the OU College of Law.

Thomas Alan Bates has been named Oklahoma's first assistant attorney general. He previously served as chief of the attorney general's Public Protection Unit, over-

seeing the Oklahoma Mortgage Settlement Fund and the Do Not Call Registry, and he was the lead assistant attorney general on all consumer protection litigation. He joined the attorney general's office in 1999, serving as chief of the Multicounty Grand Jury Unit. He was in private practice for five years prior to that. He is a 1994 graduate of the OCU School of Law.

The Tulsa law firm of Wilburn & Masterson announces the opening of its new office. The firm is located at 2421 E. Skelly Drive, Tulsa, 74105. The firm focuses its practice in the area of all types of insurance defense litigation. The firm also announces **David R. Fleury** has joined the firm as an associate. His practice will focus on insurance defense, coverage analysis and litigation. He graduated with a B.A. in political science from Southern Methodist University. He received his J.D. with honors from TU College of Law.

Joanna Kirschner has been appointed as the director of the Oklahoma Department of Commerce. She previously served as deputy director of the agency. She is a 1987 graduate of the Boston College Law School.

Shon T. Erwin was sworn in as a U.S. magistrate judge for the U.S. District Court for the Western District Court of Oklahoma in November. He has served the court as a part-time magistrate judge since 1995. He will be based in Lawton, but will perform his judicial duties both in Lawton and Oklahoma City. Prior to his full-time appointment, he was a partner in the Lawton law firm of

Godlove, Mayhall, Dzialo, Dutcher & Erwin.

McAfee & Taft announces **Jeremy M. Black** has joined the firm's Oklahoma City office in its tax and family wealth group. His practice is focused on federal, state and local tax planning for public and private corporations, limited liability companies, partnerships and individuals; tax structuring of complex business transactions; and providing general business advisory services to clients in a wide variety of industries. He graduated with a bachelor's degree in finance from OU and earned his J.D. from OU College of Law. The firm also welcomes **Sean S. Hunt** to the firm. He is a former landman and attorney for one of the nation's largest oil and gas companies. At McAfee & Taft, a significant portion of his practice is devoted to representing energy, oil and gas companies in a broad range of matters, including oil and gas property sales and acquisitions, drafting and reviewing title opinions, and negotiating and preparing joint operating agreements, oil and gas leases, and other contracts. He also represents other public and private entities in a broad range of business and commercial transactions. He earned his bachelor's degree in economics from OU and his J.D. from OU College of Law. In addition, **Suzanne E. Kern** has joined the firm's Tulsa office in its litigation group. Her state and federal litigation practice is focused on employment law, complex commercial litigation and the representation of manufacturers and distributors of automobiles, pharmaceuticals and

medical devices, consumer products and industrial products in the defense of product claims liability. She is a graduate of TU College of Law and earned her bachelor of business administration degree in marketing from OU.

Shelly Perkins joins Oklahoma City-Legacy Bank as trust officer and assistant corporate counsel. She will office at the bank's May and Memorial location in Oklahoma City. Before joining Legacy, she worked as an associate attorney at DeBee Gilchrist, a transactional law firm in Oklahoma City. Her focus included corporate, estate planning and nonprofit organizations. She earned her J.D. from OCU School of Law in 2007.

The law firm of Walker, Ferguson and Ferguson announces **Jon L. Derouen** is now a partner and shareholder of the firm. He graduated with his J.D. in 1998 from OCU School of Law and joined the firm as an associate attorney in 2001. Since that time, he has practiced in the area of workers' compensation defense. The firm also welcomes **Grant Spencer** to the firm as an associate attorney. He earned his B.S. in business administration from the University of Arkansas. In 2012, he received his law degree from OU College of Law. He will practice in the area of workers' compensation defense.

Sandra Benischek Harrison has been promoted to chief operating officer for the Oklahoma Department of Human Services. She was also named Oklahoma Public Employees Association

Administrator of the Year. She is a 2000 graduate of the OU College of Law.

The Tulsa law firm of Atkinson, Haskins, Nellis, Brittingham, Gladd & Carwile welcomes **Carol J. Allen** as a shareholder in the firm. She practices in the areas of general business and civil litigation, bankruptcy law, employment law and commercial litigation. In 1995, she graduated *summa cum laude* from Northeastern State University, earning her B.S. in criminal justice. She received her J.D. in 1998 from TU College of Law.

Aaron D. Gwartney joins The Bethany Law Center LLP, bringing experience related to the health care industry. His focus will be on health care, associations and tax exempt business organizations, trust and estate administration, probates and guardianships, and employment law. He spent 11 years as in-house counsel for Integrus Health Inc. before returning to private practice. He received his J.D. from OU College of Law in 1997.

Pray Walker welcomes two members to the firm. **Scott R. Helton** joins the firm as a shareholder. His practice focuses on complex business litigation as well as oil and gas litigation and products liability. He also provides counsel in the areas of estate planning, asset protection and business succession planning. He graduated in 2000 from Oklahoma Baptist University and earned a J.D. in 2003 from TU College of Law. **Lauren Pierce** joins the firm as an associate. Her work will focus on the firm's litigation section with emphasis on complex

business litigation, particularly contractual, construction and property disputes. She is a 2006 graduate of the University of Missouri and a 2009 graduate of the TU College of Law.

Sean Radcliffe of Englewood, Colo., joins Ciber, a global IT consulting company, as senior vice president and general counsel. He will serve as the company's chief legal advisor and secretary to the board of directors. He has practiced corporate law for nearly 20 years, most recently serving as vice president and chief legal counsel for HIS Inc. He has worked for the firms of Pray Walker and Conner & Winters in Tulsa, where he focused his practice in intellectual property related to software development and licensing, information technology rights, copyright issues and dispute resolution. He earned his J.D. from TU College of Law.



David A. Trissell recently delivered remarks at a Brussels conference titled "EU Governance of Global Emergencies" which was organized by the University of Ghent and Royal Flemish Academy of Belgium for Science and the Arts. The conference explored the legal aspects of the European Union's authority to respond to global emergencies — humanitarian, economic, military and emergency management — and Mr. Trissell

offered a U.S. perspective on the EU system for civil protection and emergency management.

Elder Law Attorney **Lee M. Holmes**, of the Elder Law Firm of Holmes, Holmes & Neisent, PLLC in Oklahoma City, was a recent speaker at the Chicago annual meeting of the Elder Law Council of Advanced Practitioners. His topic was Mineral Interests, how they affect Medicaid and how to represent clients with mineral interests.

Amir Farzaneh recently made a presentation on the new immigration policy "Deferred Action for Childhood Arrivals" to members of the Associated General Contractors of America Oklahoma City chapter. He also presented at CLE seminars held in Oklahoma City and Tulsa titled "Representing the Non-Citizen Client," speaking on the topic of "Real Property: Pitfalls of Buying and Selling Real Property for Non-Citizens."

Luke Wallace and **David Humphreys** of the Tulsa consumer protection law firm of Humphreys Wallace Humphreys PC gave a presentation in October at the 21st Annual Consumer Rights Litigation Conference in Seattle on the topic of "Building a Power Case Maximizing Consumer Damages."

Timothy C. Dowd spoke to the Oklahoma City Association of Professional Landmen on the topic of "Ten Recent Oil and Gas Cases." He also presented to an audience of more than 600 lawyers, landmen, and oil and gas industry personnel in Westminster, Colo., during the Rocky Mountain Mineral

Law Foundation Special Institute on Horizontal Oil and Gas Development speaking on the topic of "Conflicting Agreements When Drilling a Horizontal Well."

Shelton Voorhees Law Group attorneys **Douglas J. Shelton** and **Bryan K. Walkley** spoke at a recent National Business Institute seminar titled "Dirty Litigation Tactics: How to Deal With the 'Rambo' Litigator" in Oklahoma City.

Charlie Plumb of Tulsa moderated the opening keynote, "Employment Law Outlook for 2013 and Beyond," at the 17th Annual Employment Issues Symposium in Las Vegas, Nev. In November, he presented "Updating Your Workplace Drug and Alcohol Testing Policy" at Western Oklahoma Human Resources in Weatherford and "Social Media Challenges" at the Oklahoma Association of College and University Business Officers Fall Conference in Tulsa.

McAfee & Taft attorneys **Bill Freudenrich** and **Brandon Long** presented "The Affordable Care Act" at the Tulsa Area Human Resources Association Annual Employment Law in November.

Mary Ellen Ternes of Oklahoma City presented "Water Law and Policy: Implications for Water Sourcing in Shale Development" at the AIChE-A&WMA Joint Workshop: "Shale Oil and Gas E&P — Water Challenges

and Opportunities" in November in Pittsburgh, Penn.

Attorney **Chris Paul** of Tulsa recently presented "New Records Requirements for Pipeline Integrity – Costs and Underwriter Reactions" at the Marsh and McAfee & Taft 8th Annual Midstream Roundtable in Tulsa. He practices with the firm of McAfee & Taft.

Vani Singhal of Tulsa recently presented "Exploring Device Manufacturers' Duty to Train Physicians on the Effective Use of a Particular Device" at the 17th Annual Drug and Medical Device Litigation Conference in New York City. She practices with the firm of McAfee & Taft.

Eric L. Johnson, a consumer financial services attorney with Phillips Murrah PC was a presenter at the Oklahoma Automobile Dealers Association's 2012 Annual Meeting held in Oklahoma City. His presentation titled "Caught in a Compliance Riptide and Dragged Out to Sea" focused on the latest actions by federal and state regulators and how those actions are impacting automobile dealers.

Randall J. Wood recently presented at a Sterling Education Seminar in Oklahoma City. He presented papers on "The Expanding Agenda of the National Labor Relations Board" and "Employment Law Issues in the Workplace — 2012." He

is a partner with the firm of Pierce Couch Hendrickson Baysinger & Green.

Donna De Simone of Riggs Abney Neal Turpen Orbison & Lewis was a featured speaker on "Legal Implications of the Technology Explosion" at the November meeting of Executive Women International.

Compiled by Amanda Dale.

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 Jan. 12, 2013 issue must be received by Dec. 10, 2012.

Jo Nan Allen of Sand Springs died Dec. 1. She was born July 16, 1942, in Caddo County. She excelled in school and was the valedictorian of her senior class and a member of the 4-H Club. She was involved in the United Methodist Church as a young girl and continued her involvement throughout her life. She attended OCU while working as a youth director at Wesley United Methodist Church in Oklahoma City. After raising her family, she went back to school to pursue a law degree. She entered the OU College of Law at age 53, the oldest in her class, graduating in 1997. She actively practiced family law for the next 15 years, often performing pro bono work out of her strong sense of service to others. Memorial contributions may be made to the Jo Nan Allen Memorial Fund of Sand Springs United Methodist Church.

Danny Ray Beltz of Stroud died Nov. 14. He was born July 30, 1941, in Garber. He graduated from Stroud High School in 1959, attending OU and earned his law degree in 1968. He was a sole practitioner with the Beltz Law Office, and he served as a municipal judge for towns in Lincoln and Creek counties. He was a member of the First United Methodist Church, Stroud Masonic Lodge and Boy Scouts. Memorial donations may be made to BSA Troop 36.

Theodore (Ted) P. Gibson of Tulsa died Nov. 7. He was born July 4, 1931, in Muskogee. He received his

undergraduate degree from Brown University and his law degree from TU College of Law in 1960. He practiced with the firms of Ungerman, Grabel, Ungerman; Houston and Klein; Tips and Gibson; and most recently at the Jarboe Law Firm as of counsel. He was active in the Tulsa County Bar Association and the OBA, receiving his 50-year certificate and pin in 2010. He served as TCBA delegate and/or alternate at the OBA Annual Meetings from 2004-2009, and he was a member of the MCLE Commission from 2009-2012. He also served on the TCBA Attorney Complaint and Fee Arbitration Committee. He enjoyed playing tennis and the friendships he developed along the way. Memorial contributions may be made to the Clarehouse, Tulsa; Roxey Ballet, Lambertville, N.J.; or Ekone Ranch Summer Camps, Goldendale, Wash.

Charles Henry Lohah of Hominy died Nov. 22. He was born Sept. 24, 1934, and attended Hominy schools. He graduated from Benedictine Heights College in Tulsa with a bachelor's degree in philosophy. He went on to complete law school at the TU College of Law. **His military service included service with the Oklahoma National Guard, the U.S. Air Force, the Oklahoma Air National Guard and the Air Force Reserve.** He served as an investigator for the U.S. Labor Department in Montgomery, Ala., and returned to Hominy in 1964 where he practiced law and then served as assistant county attorney. He was later appointed and then elected

associate district judge for Osage County. During this time, he served as a board member and legal counsel to the Osage Nation Organization, a cause to which he remained dedicated throughout his life. He served on many boards and advisory committees related to tribal issues, rights and opportunity advancement. Of his many achievements, he was most proud of being selected to serve as the first chief judge of the Osage Nation Supreme Court under the Osage Nation Constitution of 2004.

Robert A. Manchester III of Oklahoma City died Nov. 16. He was born April 10, 1941, and raised in Canfield, Ohio. He graduated from OCU School of Law. From 1984 to the present, he served as chief municipal judge for the City of The Village. He was a member of the Oklahoma County Bar Association and the Oklahoma Criminal Defense Lawyers Association, earning its Lord Thomas Award. He was also a member of the Governor's Commission on the Status of Women. He received the OBA President's Award in 2011 for his pro bono work on behalf of veterans, and he founded the Marine Corps War Memorial Foundation. For more than 20 years, he was an active hot air balloonist, known as "Balloonist Barrister." He was a frequent traveler with the ability to befriend people throughout the world. Among his survivors are OBA members Susan J. Manchester, his wife; and Robert A. Manchester IV, his son.

William Wendell Metcalf of Hobart died Oct. 20. He was born July 3, 1925, graduating from Hobart High School in 1943. **He was drafted into the U.S. Army in 1944, serving with the 133rd Regiment, 34th Infantry Division in Anzio, Italy.** He graduated from Harvard University in 1950, and in 1953 he graduated from the OU College of Law. He served in the Oklahoma House of Representatives from 1955-1964. He was a self taught horticulturist who enjoyed his lawn and classical music. He was a member of Saints Peter and Paul Catholic Church.

Retired District Judge **William Robert Saied** of Oklahoma City died Nov. 24. He was born May 9, 1921, in Ranger, Texas. He graduated from Northwest Classen High School in Oklahoma City in 1940. **During World War II, he enlisted in the U.S. Army Air Corps, serving in intelligence in the Pacific Theater.** In 1949, he graduated from OU College of Law. He was elected Jackson county attorney, represented the State Insurance Fund and served as an assistant attorney for Oklahoma County. He was appointed to serve as Oklahoma County District Court Judge in 1976. He was later elected president of the Oklahoma Judicial Conference, served as presiding judge of the 7th Judicial Court, and served as faculty advisor and professor at the National Judicial College. He also taught at the American Academy of Judicial Education and at various judicial seminars throughout the United States. He founded the Big Brothers Big Sisters Club in Oklahoma and the organization estab-

lished the Judge William R. Saied Lifetime Achievement Award. He received numerous awards and honors for community service. He was a member of Crown Heights United Methodist Church, where he taught Sunday school. He later became an active member of St. Elijah Orthodox Christian Church. He enjoyed travel, literature and writing short stories and plays.

David T. Scott of Perryton, Texas, died July 7. He was born Dec. 11, 1958. He received a B.A. with honors from McMurry University in Abilene, Texas in 1980. He graduated from Texas Tech University with a law degree in 1983. An attorney in private practice, he focused in the area of criminal law in the Oklahoma and Texas panhandles from 1991 to 2008. He was later elected county attorney for Ochiltree County in Texas. He was president of the Northwest Texas Panhandle Bar Association. He was active in his community as a City Council member and served in many capacities, including president of the Perryton Rotary Club and Perryton Activity Center, as well as scoutmaster for the Boy Scouts. He was past president of Top of Texas Rural Rail Transportation District and past chairman of the Ochiltree Republican Party.

Robert Steen Smith of Tulsa died Oct. 24. He was born Oct. 19, 1923, in Holdenville. **He served the country in the U.S. Army Air Corps, serving in the Philippines during World War II.** After honorable discharge in 1946, he enrolled at OU and graduated with a B.S. in business in

1949. He began working for the Oklahoma Natural Gas Company, where he worked for 37 years until his retirement. He served as the company's vice president, secretary and assistant treasurer. He received his J.D. in 1971 from TU College of Law. He was active in Tulsa's Kiwanis Club and attended First United Methodist Church of Tulsa. Memorial donations may be made to St. Francis Hospice of Tulsa or Smile Train of Washington, D.C.

Katherine Ingle Stokes of Sallisaw died Oct. 28. She was born on July 16, 1917, in Shamrock. She graduated from the OCU School of Law. Originally a school teacher, she served as county attorney for Sequoyah County from 1959-1960, and was later in private practice. She also maintained a private tax preparation business until her retirement in 1994. Her personal interests included traveling and painting.

Leo Howard Whinery Sr. of Norman died Nov. 11. He was born Sept. 20, 1926, in Kansas City, Kan. **He went on to serve in the U.S. Army Air Corps from 1945 to 1946.** He received B.A. and LL.B degrees from the University of Missouri at Kansas City and later an LL.M from Columbia University. He was a faculty member at OU College of Law from 1959 until his retirement in 2003. He also served as a judge with the Norman Municipal Court from 1960 to 1978 and was presiding judge from 1970 to 1978. He was widely published and was a frequent lecturer, primarily in the field of sentencing and evidence, and he served on many faculty,

state and national legal committees. He was a member of the Oklahoma Trial Lawyers Association, American Law Institute, ABA and the Missouri Bar Association. He was a faculty member of the National Judicial College in Reno, Nev., from 1973 to present. A skilled equestrian, he was active in the breeding of Trakehner horses at his Cedar Crest Farm in southeast Nor-

man. Donations may be made in his memory to the OU College of Law Scholarship fund.

Don Edward Williams of Tulsa died Nov. 25. He was born Dec. 12, 1942, in Oklahoma City. He earned an accounting degree from TU in 1965 and received his J.D. from the TU College of Law in 1967. Since 1976, he has been a partner at Naylor, Wil-

liams & Tracy Inc., concentrating on domestic relations and family law matters. Legal group affiliations include the TCBA and the American Academy of Matrimonial Lawyers as a matrimonial arbitrator mediator. He was former chairman of the TCBA Family Law Section and a former referee for the District Court of Tulsa County Juvenile Division.

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Getting Dissed at the Mall

By Margaret Travis

I got dissed recently by the 12-year-old working at the makeup counter at the mall.

I needed some makeup — mine having reached that dreaded barren-bottle status. Even leaving it balanced on its top all the time, it wouldn't give up any more makeup. Time to go talk to those young, perky, made-up cosmetic pushers.

I took my empty bottle of foundation. It amazes me how many different types of makeup they have within the same line. They all have names I'm sure were meant to be descriptive, but just serve to confuse me until I think my head is going to explode.

I was at the makeup counter late on a Sunday afternoon with my empty bottle in my hot little hand. It was late on a Sunday afternoon for several reasons. I'd managed to get most of the stuff I needed to do that weekend done relatively early. There were no soccer games that weekend and not because I'd prayed for rain and been rewarded for my efforts. My son and my husband were hanging Halloween decorations on the front porch.

I showed her my empty bottle, and she wandered away. She asked if there was anything else I needed. Drat! There actually was, but I didn't bring it with me. Drat! Drat! Drat!

I weighed the chances that I'd be able to get to the mall *alone* within the next few weeks; two soccer games next weekend, my husband committed to helping clean out his mother's house, I needed to work. Things didn't look good.



I decided I'd try to go it alone and describe to her what I wanted, "Powder. In the square compact. That you can carry in your purse. Not that loose stuff that gets all over the counter when you open it. Powder. In the pressed form."

And she looked at me and smiled her cheerful, lipstick painted smile, "Do you want the Stay-MatteSheerPressedPowder, the SoftFinishPressedPowder, the SuperPowderDoubleFaceMakeup or the GentleLightPressedPowder?" I looked at her and said, "Powder," while making a square with the thumb and forefingers of both hands. I felt like a deer caught in the headlights of a GMC pickup truck full of hunters with guns and knives. I couldn't just go with cheap. Three of them were the same price, and the more expensive one only cost a dollar or two more. I know that because I asked.

So she proceeded to explain to me the virtues of each. This one is oil absorbing. This one is moistur-

izing. This one absorbs light. I'm not at all clear why one would need that. One helps cover lines, shadows and evens out skin tones, and she gave me that look that said, "It's the one you need, Honey." I picked a powder.

They always give free samples when you buy stuff. Usually it's nice stuff you can use but would never really buy — eye-puffiness reducer, lip stuff to keep your lipstick on longer, stuff to keep your eye makeup on longer. She came out with a product called "Advanced Stop Signs" that carries the notation that it "targets lines and dark spots."

She showed it to me and dropped it into my bag. She told me, "I think you'll lllloovvvee this." I don't know how she could possibly know that. She didn't look old enough to drive a car, much less be pushing makeup to middle-aged women at the mall. She had flawless skin; the kind that doesn't require any artificial assistance to glow.

I'll admit it kind of made me mad. It's bad enough that at 49, I still have acne. It's bad enough, I have gray hairs that stick out at funny angles. It's bad enough that my moisturizer has the words *age*, *time* and *fighting* on the front of the bottle. It's bad enough that I know what lines and dark spots are all about and from time to time, worry about them. It's bad enough that I probably will lllloovvvee the product that "targets lines and dark spots."

But she doesn't have to rub my face in it.

Ms. Travis practices in Oklahoma City.

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