

WIT Oklahoma Bar JOURNAL

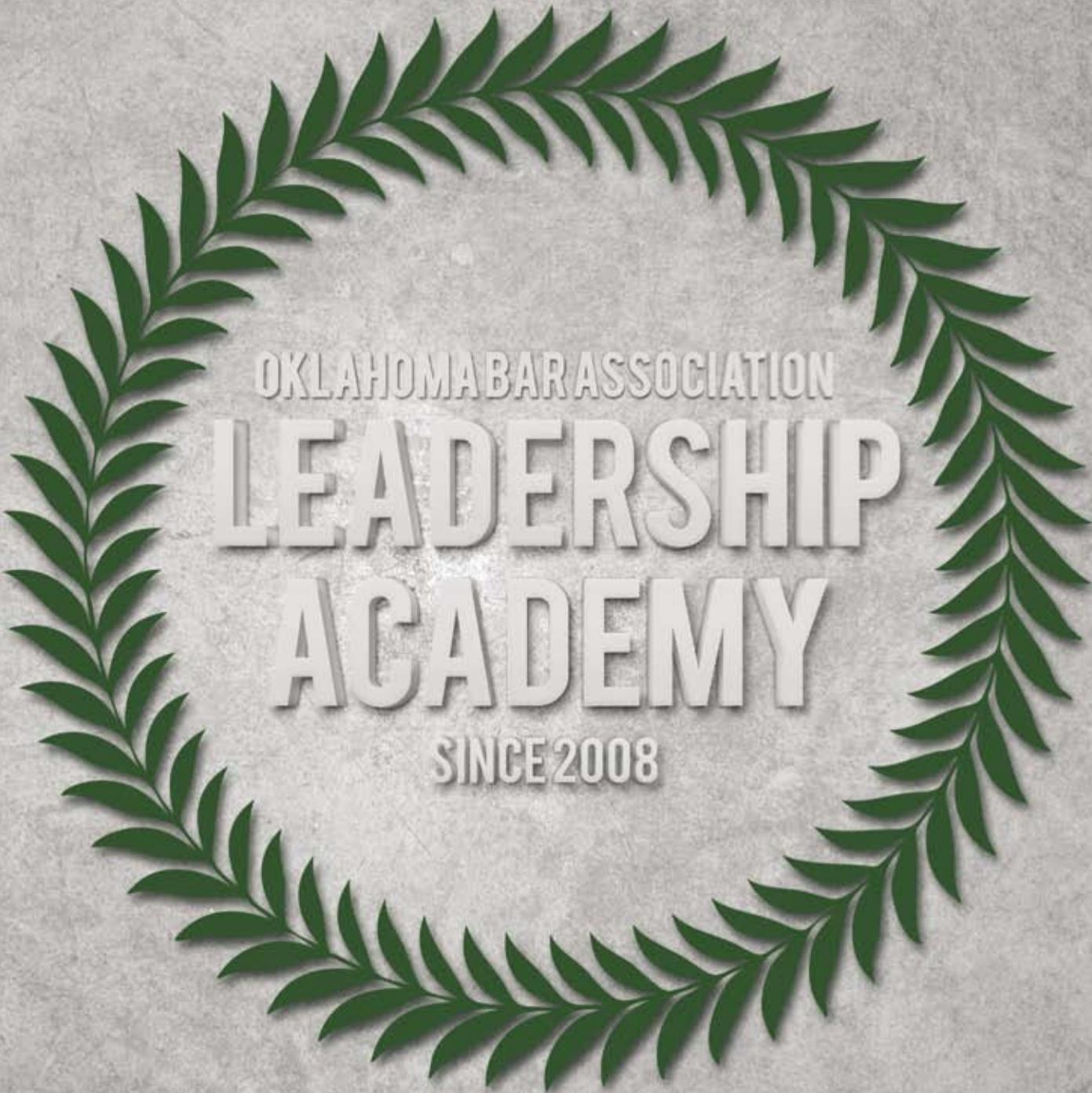
Volume 84 ♦ No. 14 ♦ May 18, 2013

Estate Planning & Probate

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- Leadership Academy
- OBA Day of Service
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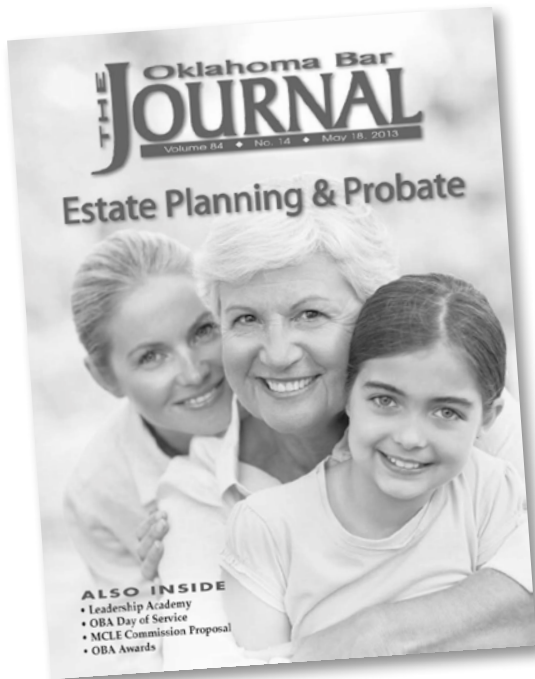
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Opposite Sides Find Common Ground

By Jim Stuart

Over the past several weeks, I have been privileged to attend Law Day activities sponsored by county bars throughout Oklahoma. The events were all very well attended with local lawyers coming together to celebrate Law Day and the theme “Realizing the Dream, Equality for All.” This year marks the 150th anniversary of the Emancipation Proclamation issued in 1863 by President Abraham Lincoln and the 50th anniversary of Rev. Martin Luther King’s stirring “I Have a Dream” speech.

In my travels across the state, I am pleased to report having seen a considerable number of young lawyers who have chosen to reside and practice in our smaller non-metro communities. This appears to me to be a healthy sign, particularly in view of the employment challenges facing new lawyers today.



President Stuart
practices in Shawnee.
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405-275-0700

*I was reminded
of a quote from
Justice Steven
Taylor, “Learn
to love justice
more than you
love victory.”*

One of the highlights was a joint presentation made in Pittsburg County by Oklahoma County District Attorney David Prater and Public Defender Bob Ravitz. Despite obvious differing perspectives and views due to their respective positions, both lawyers served as members of the Oklahoma Justice Commission established by the OBA in 2010, with the common goal of finding ways to eliminate wrongful convictions of the innocent in the Oklahoma criminal justice system.

Both were passionate about the commission’s findings and ways in which to

make needed reforms. It was quite refreshing. I was reminded of a quote from Justice Steven Taylor, “Learn to love justice more than you love victory.” I encourage you to read the 2013 commission report available on our OBA website. Special thanks to Chair Drew Edmondson and the commission members for their dedication and hard work.

DAY OF SERVICE

The OBA “Day of Service” is set for Sept. 20-21, giving Oklahoma lawyers the opportunity to show appreciation by giving back to their communities.

Mark your calendars now for this event. Coordination and the promotion of activities is being made through county bar presidents, OBA Board of Governors and the OBA Young Lawyers Division.

All lawyers are encouraged to participate, including those in private practice, public service, corporate counsel and members of the courts. Let’s all work together to make this a most memorable and professionally satisfying event.

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EVENTS CALENDAR

MAY 2013

20 **OBA Litigation Section meeting**; 12 p.m.; Oklahoma Bar Center,
Oklahoma City and OSU Tulsa, Tulsa; Contact Renée DeMoss 918-595-4800

**OBA Solo and Small Firm Conference Planning Committee
meeting**; 3 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Collin
Walke 405-235-1333

OBA Alternative Dispute Resolution Section meeting; 4 p.m.;
Oklahoma Bar Center, Oklahoma City; Contact Michael O'Neil 405-232-2020

OBA Civil Procedure and Evidence Code Committee meeting;
3:30 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar
Center, Tulsa; Contact James C. Milton 918-594-0523

22 **OBA Appellate Practice Section meeting**; 12 p.m.; Oklahoma Bar
Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact
Collin Walke 405-235-1333

23 **OBA Work/Life Balance Committee meeting**; 12 p.m.; Oklahoma Bar
Center, Oklahoma City; Contact Sarah Schumacher 405-752-5565

24 **OBA Professional Responsibility Commission meeting**; 9:30 a.m.;
Oklahoma Bar Center, Oklahoma City; Contact Dieadra Goss 405-416-7063

OBA Access to Justice Committee meeting; 10:30 a.m.; Oklahoma
Bar Center, Oklahoma City with teleconference; Contact Laurie Jones
405-208-5965

OBA Closes at 3 p.m. – Memorial Day Observed

27 **OBA Closed** – Memorial Day Observed

28 **OBA Bench and Bar Committee meeting**; 12 p.m.; Oklahoma Bar
Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact
Barbara Swinton 405-713-7109

29 **OBA Communications Committee joint meeting with Law Day
Committee**; 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa
County Bar Center, Tulsa; Contact Dick Pryor 405-740-2944 or
Richard Vreeland 405-360-6631

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

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

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Estate Planning

and PROBATE

Oklahoma Probate Code Looking ‘Bleeker,’ but Better

By Judge Jesse S. Harris, Gale Allison and Derek Weinbrenner

Beneficiaries of an estate put a lot of trust into their personal representative. The Oklahoma Probate Code has difficulty in protecting these beneficiaries; so much so, that *In the Matter of the Estate of Bleeker*¹ has effectively turned the Oklahoma Probate Code on its ear in an effort to give beneficiaries a route to action.

Bleeker means so much more, though. The Oklahoma Supreme Court opened up common law as a gap-filler to the probate code when it said, “While probate is governed by statutory procedure, substantive law in aid of probate’s legal mission of capturing and distributing a deceased person’s estate continues to be governed by common-law developments.”² It turns out the probate courts were always governed by the common law; the probate code does not inactively govern as the federal Commerce Clause might.

In *Bleeker*, Ilene McGehee (a beneficiary) was initially appointed administratrix for her nephew Joseph Odell Bleeker’s estate and requested an order for the other beneficiaries to turn over estate assets. She was later removed for failing to post a bond and inadvertently failing to file various estate papers. During this removal, she filed an ancillary petition to pursue the claim for the cash assets the other beneficiaries held. Arvest Trust Company succeeded her as the court-appointed personal representative, but it would not pursue the claim because “the probability of recovering cash from appellees [the other beneficiaries] was too remote to justify the expenditure of estate funds for its pursuit.” In

response, Ms. McGehee moved for leave to prosecute the claim on behalf of the estate, putting forth an argument in a vacuum: “that as an estate’s beneficiary she has standing to pursue a claim to collect missing estate assets when the estate’s court-appointed fiduciary manager refuses to do so.”³

Ultimately, this case went before the Oklahoma Supreme Court. Despite the general rule that “beneficiaries of an estate may not themselves prosecute an action to recover personality belonging to the decedent,”⁴ the Supreme Court recognized the development of common law by other states “which recognizes certain exceptions to the general rule of ancient vintage which may be invoked when some conduct by the personal representative — such as fraud, collusion or refusal to act — makes it necessary for beneficiaries to bring their own suit for the protection of an interest in the estate that would otherwise be lost.”⁵

Statutory procedures govern many areas of law that can be legislatively revised as necessary; yet, probate is a special statutory proceeding in which “procedural stages and special statutory remedies remain the same as they were

EXHIBIT A

P.R. = Personal Representative

O.P.C. = Oklahoma Probate Code

C.L. = Common Law

GENERAL RULE

Non-P.R. beneficiaries may not bring suit to recover personalty of decedent; only a P.R. may do so.
In the Matter of the Estate of Bleeker, 2007 OK 68, ¶ 13 (fns. 17, 18).

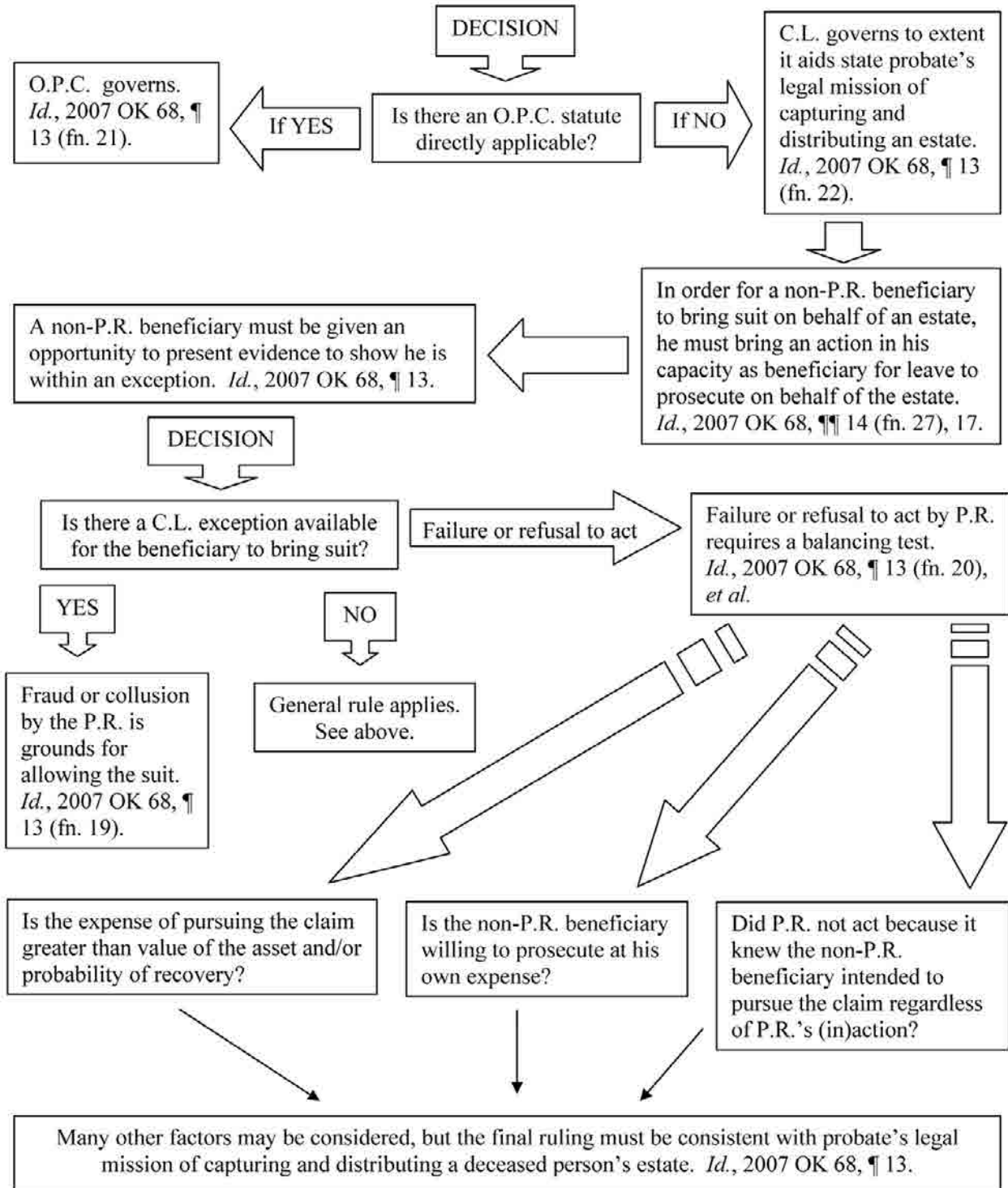
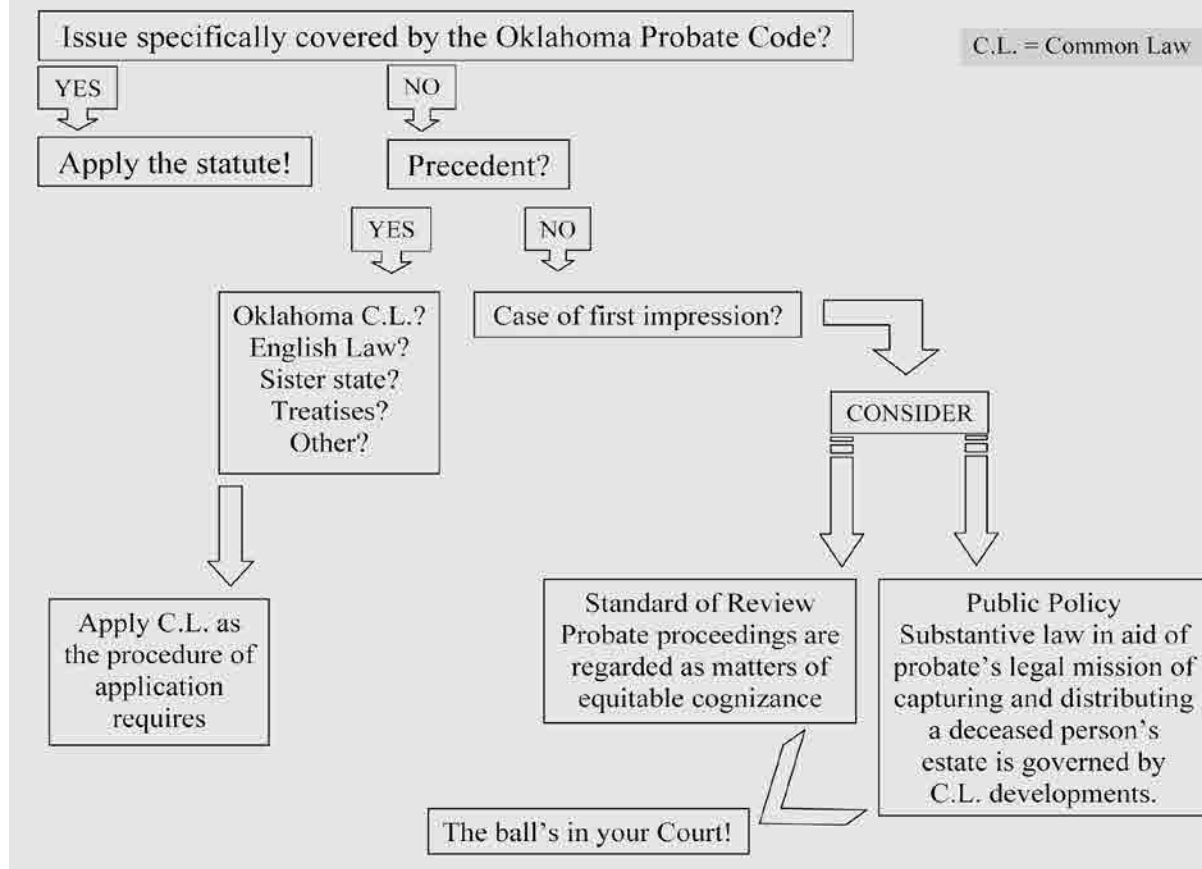


EXHIBIT B



in Oklahoma before 1969.”⁶ “The law confines [these remedies] to: 1) ascertaining whether decedent died testate or intestate, and if testate, 2) what testamentary disposition, if any, may be admitted to probate, 3) the administration of the estate’s assets and 4) the final account and distribution.”⁷ Therefore, the Oklahoma Supreme Court noted the authority of the Oklahoma Probate Code but gave its approval of applying common law to procedural and substantive probate issues not covered by the code.⁸

This ruling in *Bleeker* went much further than simply allowing Ms. McGehee the opportunity to present evidence of her claim against the other beneficiaries despite her removal as administratrix. It recognized that the Oklahoma Probate Code can have holes that may be filled by English precedent, laws of sister states or even judge-made rulings on cases of first impression. *Bleeker* notes that America’s entire probate regime patterned itself from English law, which used three different court systems to govern probate: (in this case) ecclesiastical for granting letters of administration, chancery

for disputes over accounts and common law for real property distribution.⁹ In other words, the root of Oklahoma’s Probate Code used statutory law to determine who should be the personal representative and equitable law to resolve disputes over accounts! Ms. McGehee may have been removed as administratrix by statutory procedure, but her right to resolution of the dispute of the cash assets should have been governed by equitable law.

The Uniform Probate Code (UPC) takes heed of the same roots as the Oklahoma Probate Code by leaving equity to the courts. Consistent with Oklahoma’s Probate Code, the UPC does not expressly address the situation presented in *Bleeker*, but UPC § 1-103 does expressly state, “Unless displaced by the particular provisions of the code, the principles of law and equity supplement its provisions.”¹⁰ *Bleeker* recognized Oklahoma’s version of UPC § 1-103 when the Court ruled that “nothing in that body of law [the Oklahoma Probate Code] expressly prohibits a court from granting a beneficiary leave to bring an action on behalf of the estate

when there are special circumstances that take the case out of the general rule.”¹¹ A majority of states have allowed evidence to be heard on this particular issue; therefore, “absent any Oklahoma legislative guidance on the point, we are constrained to follow the common law developed by other state jurisdictions.”¹²

The Oklahoma probate rules have changed. To be prepared, the practitioner might consider using a decision tree similar to Exhibits A and B to guide his or her argument.

1. *In the Matter of the Estate of Bleeker*, 2007 OK 68, 168 P.3d 774 (Okla. 2007).

2. *Id.* at ¶ 13 (citing 2 Sir Frederick Pollock and Frederic W. Maitland, *The History of English Law* 348 (2d ed. 1968); 1 J.G. Woerner & William F. Woerner, *A Treatise on the American Law of Administration* 472-79 (3d ed. 1923); Lewis M. Simes & Paul E. Basye, *The Organization of the Probate Court in America*, 42 Mich. L. Rev. 965, 967-74 (1944); Lewis M. Simes, *Problems in Probate Law* 388 (1946); Thomas E. Atkinson, *Brief History of English Testamentary Jurisdiction*, 8 Mo. L. Rev. 107 (1943); *Reaves v. Reaves*, 1905 OK 32, ¶ 14, 82 P. 490, 494, 15 Okl. 240; *Davis v. Baugh*, 33 Tenn. 477 (1853); *Crump v. Morgan*, 38 N.C. 91 (1843); *In re Davis' Estate*, 35 A.2d 880 (N.J. Err. & App. 1944); *S. v. S.*, 29 A.2d 325 (Del. Super. 1942)).

3. *Id.* at ¶¶ 2-7.

4. *Id.* at ¶ 13.

5. *Id.*

6. *Id.* at n. 21 (citing *Williams v. Mulvihill*, 1993 OK 5, ¶ 8, 846 P.2d 1097, 1102).

7. *Id.* at n. 21. See the probate procedure, Okla. Stat. tit. 58, § 1 (2001) *et seq.*

8. *Id.* at n. 21.

9. *Id.* at n. 22.

10. *Id.* at n. 28.

11. *Id.* at ¶ 14.

12. *Id.*

ABOUT THE AUTHORS



Judge Jesse S. Harris is 14th Judicial District of Oklahoma district court judge, serving as the probate division chief judge. He has a B.A. in economics from Brown University and a J.D. from George Washington University. He served as 14th Judicial District of Oklahoma criminal division chief judge and special district court judge prior to service in the probate division. He is an adjunct law professor and serves on the boards of directors of several charities.



Gale Allison is founder of The Allison Firm PLLC. She has a B.A. in English from the University of Georgia, a J.D. from the University of Tennessee and an LL.M. in tax from Emory University. She was an IRS estate and gift tax attorney before entering private practice. Licensed to practice in Oklahoma, Tennessee and Georgia, Ms. Allison is a nationwide speaker for continuing education professionals and lay groups.



Derek Weinbrenner is an associate of The Allison Firm PLLC. He has a B.A. in economics from the University of Oklahoma and a J.D. from the University of Tulsa. Mr. Weinbrenner is licensed to practice law in Oklahoma and is a competent communicator in Toastmasters International.



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Estate Planning

and PROBATE

An Olio of Basic Probate and Trust Practice

By Gerald E. Kelley and Michael W. Thom

Generally, a practitioner in probate and/or trust law finds the majority of his caseload to be both uncontested and perhaps uninteresting at times. However, certain novel issues occasionally arise which require more than the usual submission of general probate and/or trust pleadings. This article is an attempt to present an olio of practice pointers both in probate and in trust law. It is meant to be neither all-inclusive nor exhaustive in its approach but is aimed at denoting certain unique issues which arise from time to time and which the authors have dealt with over their years of practice.

CONSIDER TITLE TO ASSETS

The instrument of title for each asset in which the decedent held an interest should be carefully examined.

If the decedent created a trust but a particular asset is not titled in the name of the trust, language of conveyance might be found in the trust instrument itself which could suffice to establish transfer of title to the trust.

In most instances, an asset will not be considered to be held in joint tenancy unless the phrase "joint tenancy" appears in the instrument of title.¹ For example, a conveyance to "John and Mary, husband and wife" does not create a joint tenancy, but rather a tenancy in common. If the decedent held title as a joint tenant with another person who predeceased the decedent, the decedent's personal representative can file an affidavit of surviving joint tenant on behalf of the decedent.²

If the decedent inherited or was entitled by will to receive an asset from an ancestor whose estate was not administered, consider filing a joint administration of the decedent's estate and the ancestor's estate pursuant to 58 Okla. Stat. §714. Consideration might also be given to an affidavit executed pursuant to 16 Okla. Stat. §67, but generally, such an affidavit will not establish title until it has been of record for 10 years without challenge.³

If there appears to be no asset subject to administration other than a vehicle held solely by the decedent, title may be transferred through use of an affidavit available from a tag agent or the Oklahoma Tax Commission's Motor Vehicles division. Other personal property valued at a maximum of \$20,000 may also be transferable without an administration proceeding by use of an affidavit pursuant to 58 Okla. Stat. §393.

Where the decedent holds stock in a corporation, only the stock is an asset of the estate. Assets of the corporation are not assets of the

decedent's estate and the personal representative is not required to account for the corporation's activities.⁴ Instead, the corporate officers must account to the personal representative.

USE OF §239 CONSENTS

Provided that the probate court has made a determination of the identities of heirs and, as to a decedent who died testate, legatees and devisees, the use of consents obtained pursuant to 58 Okla. Stat. §239 can save a great deal of time and expense during the course of administration of the estate.

Upon the filing of a petition accompanied by acknowledged, written consents by all heirs, devisees and legatees (other than contingent devisees and legatees), persons authorized to act on behalf of any heir, devisee or legatee under any legal disability, and personal representatives of the estate of any deceased heir, devisee or legatee, the court may enter an order: 1) authorizing the personal representative to sell, grant, lease, mortgage or encumber any property and to execute and issue deeds, leases, bills of sale, notes, mortgages, easements and other documents of conveyance, without further judicial authorization and without a return of sale or confirmation of such sale or transaction and/or 2) waiving the filing of any accounting specified in the consents, or waiving the necessity for presentation to the court for approval of any such accounting.

The request for determination of identities of heirs, legatees and devisees is made pursuant to 58 Okla. Stat. §240 and is usually made in the initial petition. Notice of hearing the request must be given, so if the court is authorized by 58 Okla. Stat. §128 to appoint an administrator of the estate of an intestate decedent without notice and the petition also contains a request for determination under §240, the court is authorized to appoint the administrator *instantly* and set the petition for hearing with respect to the §240 request.⁵

If the request is not contained in the initial petition, it can be made by a later petition filed by the personal representative, which will be heard after 10 days' notice.⁶

Note that with respect to a testate decedent, consents by heirs who are neither legatees nor devisees are not required once three months have elapsed since the admission of the will to probate, provided there is no pending appeal of the admission of the will to probate, no post-

admission contest has been filed and the will contains a residuary disposition clause.⁷

The §240 determination is made solely to determine the identities of the persons who can execute §239 consents and is not controlling for purposes of disposition of the estate.⁸ The order entered pursuant to the petition or application filed with the §239 consents should so state. Even if no §240 determination has been made, the final accounting can be waived by "all persons entitled to distribution" pursuant to 58 Okla. Stat. §541.

THE 'NO-CONTEST' OR 'IN TERROREM' CLAUSE

The validity of an *in terrorem* or "no-contest" clause in a will has long been recognized in Oklahoma provided that the language of the clause does not contravene public policy or a rule of law.⁹ The use of a "no-contest" clause in a trust, if properly drawn, has also been recognized as valid.¹⁰

Such a clause is generally defined as an executory limitation employed to effect testamentary intentions. Sometimes referred to as a "forfeiture clause," it is a provision in a will or trust which requires forfeiture of a bequest, devise or distribution in the event of a contest of the will or trust. However, the Oklahoma courts have structured certain rules with respect to the attempted enforcement of such a clause.

First, "no-contest" clauses are to be strictly construed against forfeiture and reasonably construed in favor of the beneficiary.¹¹

Second, actions seeking construction or interpretation of a will or trust, attempting to resolve administrative concerns, challenging an executor's or trustee's suitability for appointment or questioning the actions of the executor or trustee have been held not to be contests.¹²

Third, the Oklahoma Supreme Court recognizes the "good faith or probable cause" exception to enforcing a "no-contest" clause. In *Westfahl*, the court held that the consensus rule is that a forfeiture clause should not be invoked if a contestant had probable cause to make the allegations.

The probable cause exception to *in terrorem* clauses is justified in part because of the public interest in opposing invalid donative transfers. See Restatement (Second) of Property §9.1, Comment a. According to Comment j of the

same section: "A factor which bears on the existence of probable cause is that the beneficiary relied upon the advice of disinterested counsel sought in good faith after a full disclosure of the facts."

A motion for interpretation of a will has been held not to constitute a contest to the terms of the will.¹³ There, the court noted that the challenging party did not contend that the will was not executed by the testator, the testator was not competent or the testator was acting under duress.

Another rule devised by the Oklahoma Supreme Court in determining whether a no-contest clause should be applied is that the no-contest clause, if enforced, can only be enforced as written and is to be interpreted reasonably in favor of the beneficiary. In *Westfahl*, the court held that no wider scope can be given to the verbiage employed than is plainly required, nor may the court place a strained or overly technical construction upon the language of such a clause. Forfeiture provisions in a will are to be strictly construed with forfeiture avoided if possible. The distributions provided for in a will cannot be divested unless the precise contingency for forfeiture specified by the decedent occurs.

In addition to the rules set forth above and their application to trusts, 60 Okla. Stat. §175.57 provides that a beneficiary has an inherent right to challenge a fiduciary's actions. Any clause in a trust which would prohibit a beneficiary's challenging the trustee's actions would arguably be held to be contrary to public policy.

Similarly, a "no-contest" clause which attempts to override the "probable cause" exception or to prohibit specific conduct recognized by Oklahoma law as not violating a no-contest clause should be held to be unenforceable. In *Barr v. Dawson*,¹⁴ the Court of Civil Appeals noted that while attacking the mental capacity of the testator or seeking to have the estate declared as community property is clearly a contest, actions seeking construction of a will, resolving administrative concerns, challenging an executor's suitability for appointment, and filing creditor's claims have been held not to be contests. The court cites with approval 80 Am. Jur. 2d Wills §§1337, 1340 (2002), and Annotation, Validity and Enforceability of Provision of Will or Trust Instrument for Forfeiture or Reduction of Share of Contesting Beneficiary.¹⁵

FACTORS CONSIDERED IN SETTING A TRUSTEE'S FEES

What are the factors the court should consider in setting a fee for a trustee? In *Isle v. Brady*,¹⁶ the Court of Civil Appeals addressed the issue. The court first cited the Oklahoma Trust Act at 60 Okla. Stat. §175.48, which provides that a trustee acting in a fiduciary capacity is entitled to receive such compensation or commission as provided for in the trust agreement or other contract. If the amount of such compensation or commission is not regulated by or stipulated in the trust agreement, the trustee may charge and deduct a reasonable compensation or commission for the services rendered and the responsibilities assumed. Section 175.48 further states that where the trustee is acting under appointment by a court, such compensation or commission shall be paid, irrespective of the provisions in the trust instrument, as allowed or approved by the court. The court also cited §175.57(D) of the Trust Act which states that in a judicial proceeding involving a trust, the court may in its discretion, as justice and equity may require, award costs and expenses, including reasonable attorney's fees, to any party, to be paid by another party or from the trust which is the subject of the controversy.

In *Swanson v. Bates*,¹⁷ the Oklahoma Supreme Court cited §175.48 in approving a trial court's conclusion that no other authority other than the statute is needed to determine whether the trustee's pay is reasonable compensation in the discretion of the court, taking into consideration the services rendered and the responsibilities assumed. In *Isle*, the court noted that Oklahoma law was not well established on the question of how court-appointed trustee's fees are to be determined, other than the language in *Swanson* directing the court to consider "the services rendered and the responsibilities assumed."

The Court of Civil Appeals referred to the Restatement (Third) of Trusts for appropriate guidance on the relative factors: 1) the trustee's skill, experience and facilities and the time devoted to trust duties; 2) the amount and character of the trust property; 3) the degree of difficulty, responsibility and risk assumed in the administration of the trust, including decisions with respect to discretionary distributions; 4) the nature and costs of services rendered by others; and 5) the quality of the trustee's performance. The court in *Isle* found further guidance in two additional factors: the customary fee for similar services in the locality and any time limitations

imposed by the court or the circumstances, citing *State ex rel. Burk vs. City of Oklahoma City*.¹⁸

REVOCABLE TRUSTS VIS A VIS FORCED SHARES

Can a revocable living trust be utilized to disinherit a surviving spouse? The Oklahoma Supreme Court answered in the negative in *Thomas vs. Bank of Oklahoma, N.A.*¹⁹ There the decedent had established a revocable living trust during her lifetime which directed that upon her death the assets would be divided equally between her surviving spouse and two of her children. The surviving spouse challenged the distributive provision of the trust alleging violation of 84 Okla. Stat. §44 (the “forced share” statute). The Oklahoma Supreme Court upheld the challenge in a narrowly-defined holding.

In doing so, the court recognized that it had long followed the rule that a spouse may give away his or her separate property during his or her lifetime providing the gift is complete and delivered and is not violative of the law or fraudulent. A married person may give away his or her property, during the marriage, for the purpose of preventing his or her spouse from acquiring an interest therein after his or her death, as long as the transfer is a *bona fide* gift and is accompanied by delivery. In that event, the surviving spouse cannot reach the property after the donor’s death. However, the contrary is true when those assets are placed in a revocable living trust because the settlor retains the power to dispose of the property during his or her lifetime so that there is no completed gift. In *Thomas*, the court ordered the trust estate to be “brought back into the probate estate” of the decedent for purposes of forced heirship under 84 Okla. Stat. §44.

Can the rule in *Thomas* be applied to protect children of the decedent as opposed to the surviving spouse? The Oklahoma Supreme Court in *The Matter of the Estate of Jackson*²⁰ declined to extend *Thomas* to an alleged pretermitted heir. The court noted that disposing of property is an inalienable natural right throughout a person’s lifetime. However, the right to control disposition of property after death and the right of inheritance are statutory.

“...the pretermitted heir statute is not a limitation on a testator’s power to dispose of his or her property but is an assurance that a child is not unintentionally omitted from a will.”

Under Oklahoma’s pretermitted heir statute, (84 Okla. stat. §132) the Legislature has also provided a statutory method for protecting the share of a child for whom a testator fails to provide and who is not named in the will. In *Jackson*, one claiming to be the son of the decedent sought to invoke the pretermitted heir statute in his quest for a share of the decedent’s assets which had been placed into a revocable *inter vivos* trust. The court declined to extend the rationale of *Thomas* to an alleged pretermitted heir, finding that 84 Okla. Stat. §132 specifically refers to the omission of a child in a “will,” and noting that the statute unam-

biguously pertains only to wills and does not encompass a situation where a child is omitted from a trust.

The court also noted the distinction between protecting the forced heir share of a spouse and the rights of a pretermitted heir. A spouse may not disinherit a surviving spouse even with a clear expression of intent to do so. In contrast, the pretermitted heir statute is not a limitation on a testator’s power to dispose of his or her property but is an assurance that a child is not unintentionally omitted from a will. The pretermitted heir statute does not secure a child with a minimum statutory share of a parent’s estate upon the death of a parent. A testator can disinherit a child if the will shows a clear intent to do so. The *Jackson* court held that limitation on a testator’s power to disinherit a spouse coupled with a testator’s power to disinherit a child prevents the extension of the *Thomas* decision to a child.

A PERSONAL REPRESENTATIVE CANNOT PURCHASE DIRECTLY FROM THE ESTATE BUT CAN PURCHASE THE INTEREST OF AN HEIR UNDER CERTAIN CONDITIONS

Under the probate code, a personal representative cannot purchase assets of the estate directly.²¹ However, in *Dees vs. Dees*,²² the Oklahoma Supreme Court confirmed that an administrator may purchase the interest of an heir where the heir is *sui juris* and is laboring under no disability, where no undue influence is

asserted, all the circumstances of the transaction are fair and open and no advantage is taken by the heir by concealment, misrepresentation or omission to state any important fact. The court looks upon such transactions with suspicion and will not uphold them unless it appears that such sales are fair and there is no fraud or concealment.

A CONFLICT OF INTEREST IS NOT A SUFFICIENT GROUND TO OPPOSE THE APPOINTMENT OF A PERSONAL REPRESENTATIVE BUT WANT OF INTEGRITY IS A SUFFICIENT GROUND

In *The Matter of the Estates of Nichols*²³ stands for the rule that an alleged conflict of interest is not a sufficient ground to oppose the appointment of a personal representative. However, if the proposed personal representative lacks integrity, the appointment may be denied.

In *Nichols*, an objection to the appointment of a personal representative was lodged alleging he was fundamentally unfit to serve in a fiduciary capacity due to a serious and substantial conflict of interest. In declining to deny the appointment of the proposed personal representative on that ground, the court referred to 58 Okla. Stat. §102, which addresses competency to serve as executor at the time the will is sought to be admitted to probate. Section 102 provides that no person is competent to serve as executor who at the time the will is admitted to probate is under the age of majority, convicted of an infamous crime, or adjudged by the court incompetent to execute the duties of the trust by reason of drunkenness, improvidence or want of understanding and integrity. An identical statute applies to administrators when the decedent has died intestate.²⁴

On the other hand, the court noted that 58 Okla. Stat. §§231 and 234 specifically pertain to the revocation of letters and the removal of an individual already serving as personal representative. The court clarified that the question of whether a testamentary nominee is competent to serve as personal representative must be determined under §102 (and presumably §126), which relates to the appointment of an executor, and not under §§231 and 234, which state the grounds for the removal of an executor.

The court noted that there is a strong presumption in favor of the competency of the testamentary nominee and that 58 Okla. Stat. §101 mandates the issuance of letters to the person nominated in the decedent's will if the

court finds that the person is competent to serve, unless a valid objection is filed under 58 Okla. Stat. §104. The party objecting to the appointment has the burden of overcoming the presumption of the testamentary nominee's competency to serve.

Pursuant to §102, the objecting party must show the nominee's "want of integrity." "Integrity" has been defined as "soundness of moral character, as shown by one's dealing with others in the making and performance of contracts, in fidelity and honesty in the discharge of trusts." In *Nichols*, the court declined to deny the appointment of the personal representative due to an alleged conflict of interest but did decline the appointment of the nominee due to evidence the court considered to be sufficient to establish the nominee's "want of integrity."

As noted, a conflict of interest is a sufficient ground for removal of a personal representative under 58 Okla. Stat. §234. Subsection (b) of the statute authorizes the court to remove a personal representative and appoint a special administrator solely with respect to the subject of the conflict of interest, leaving the original personal representative empowered to handle other matters.

FAILURE TO MAIL COPY OF FINAL ACCOUNT AND PETITION FOR DISTRIBUTION AND DISCHARGE

The failure to mail a copy of the final account and petition for distribution and discharge to all interested parties may well serve as a basis for setting aside any relief granted at the hearing on the pleading. The mere mailing of the notice of hearing is not sufficient to overcome the lack of due process in such a situation.

In *Booth v. McKnight*,²⁵ the Oklahoma Supreme Court faced the issue of whether the failure to mail a copy of the final account and petition for distribution invalidated the final decree based upon lack of due process. The final decree directed distribution of the estate in a manner different than that set forth in the final account and petition for distribution and discharge. Although the heirs were provided notice that a hearing would occur, they were not given notice that the probate court could enter a final order of distribution different than that set forth in the petition for distribution.

Booth is interesting in that it involved a collateral attack, brought in a quiet title action filed in one county, on a probate decree entered

in another county. The court held that a facially valid adjudication of a district court sitting in probate stands immune from collateral attack to the same extent as any other judgment. A court's power to decide a case includes the power to decide it wrongly, and when a court exercises judicial power over a subject, its judgment must stand undisturbed unless challenged by a timely appeal. But what if the probate court's decree is jurisdictionally flawed?

The *Booth* court found that a valid probate decree is one which, on the face of the judgment roll, shows the presence of three required elements of jurisdiction, which are that the court has jurisdiction of the person and subject matter as well as the power to render the entered decree. When an examination of the record reveals a want of one or more of these requirements, the probate decree is facially void and is subject to collateral attack by any interested party at any time and wherever venue may be proper. The passage of time will neither vitalize a facially flawed decree nor immunize its plainly fatal deficiency from collateral attack.

The court noted that at early common law, land and interests in land devolved directly from ancestor to heir without judicial intervention, with the title passing by descent to the heir immediately upon the ancestor's death. Oklahoma law unequivocally requires that the district court through the probate tribunal have cognizance over all of the decedent's assets, both real and personal. A final account is in the nature of a request for distribution of any remaining estate assets, discharge of the personal representative and closing of the estate. At the hearing on the final account, interested parties may object to the personal representative's conduct in administering the estate and to the proposed distribution. At that hearing, the probate court may direct distribution of each remaining asset, the payment of statutorily required fees and the closing of the proceeding. Normally, upon the expiration of the 30-day appeal period, the decree's terms become enforceable.

However, the core element of due process is the right to be heard, and that element would have no value unless advance notice is afforded of the hearing at a meaningful time and in a meaningful manner. A probate distribution hearing is an adversarial judicial proceeding in which the personal representative and heirs (or beneficiaries) often stand in an adversarial

position to one another. A final account is a pleading that, if approved, will have a conclusive effect upon the litigants' rights. The court's acceptance of the final account and entry of a decree closing the estate forever bars all subsequent claims against the estate and the personal representative. The final decree of distribution thus constitutes a state action depriving a person of property rights and is subject to full due process protection.

The court noted that the classic statement of constitutionally adequate notice is that which is reasonably calculated, under the circumstances, to inform interested persons of the pending litigation and to afford them an opportunity to advocate their interest in that cause. At a bare minimum, a constitutionally adequate notice must apprise one of the antagonist's pressed demands and the result consequent upon default.

The court held that since a copy of the final account and petition for distribution was not mailed to the heirs, the heirs were not adequately apprised of the action the probate court might take. Therefore, a probate decree, or any judgment for that matter, entered without proper notice is facially void. A decree so entered may be collaterally attacked in a county outside that of its entry. However, the collateral attack in another court is limited to a reconsideration of those parts of the void decree that might prove inefficacious.

In *Booth*, the court held that whenever two courts of concurrent jurisdiction attempt to assert their authority over the same subject matter, the tribunal that first assumes cognizance must be allowed to wield the acquired power to the exclusion of the other. A district court sitting in probate has unlimited jurisdiction to determine in whom an estate's property is to be vested and any rights held by any other persons in those assets. Upon a probate's commencement, the district court acquires exclusive cognizance over the estate which remains superior to every other tribunal. If the probate decree issued by the court stands tainted due to a lack of due process, the probate court still retains its cognizance over the probate assets in the decedent's estate. While another district court has the jurisdiction to enter an order, if venue is proper, allowing a collateral attack on the fatally defective final decree of the probate court, the original probate court must then decide how the estate will be distributed.

Note that while the attack on the probate decree in *Booth* was brought in a different county than that in which the decree had been entered and was therefore a collateral attack, the decree also might have been challenged in the probate proceeding itself.²⁶

In *Booth*, the court found that the notice of hearing the final account was facially insufficient because it did not notify the heirs that fees remained to be paid and the payment of such fees would cause the estate's assets to be dissipated. What if an order contains a facially apparent mistake of law? In *Holleyman v. Holleyman*,²⁷ the court found the trial court lacked subject matter jurisdiction based upon such a mistake. Dissenting, Justice Opala stated that the order in question contained only a mistake of law and did not render the order subject to collateral attack as jurisdictionally void, further stating it was improper to excessively use the term "jurisdiction" as a "mere synonym for error or for some other deficiency."

Further, the problem in *Booth* was the content of the notice, not the content of the final account, which did contain a request for payment of a personal representative's fee. The *Booth* holding suggests that any probate hearing notice which does not fully disclose the nature of the relief requested must be accompanied by a copy of the petition or other pleading stating that request. The authors believe that as a matter of practice, a notice of any probate hearing should be sent with a copy of the petition, application or other pleading to be heard, and the affidavit of mailing the notice should so state.

RELYING UPON AN ATTESTATION CLAUSE OF A WILL AS CREATING A PRESUMPTION OF DUE AND PROPER EXECUTION WHERE WITNESSES CANNOT BE LOCATED

The Oklahoma Supreme Court *In the Matter of Speers*²⁸ addressed the issue of the reliance upon an attestation clause so as to create a presumption of due and proper execution of a will where witnesses to the will could not be located. The court noted that when a will is offered for probate, the singular concern of the court is the factum of the will, which consists of three elements: 1) whether the will has been executed with the requisite statutory formalities; 2) whether the maker was competent to make the will at the time; and 3) whether the will was a product of undue influence, fraud or duress.

The burden of proof in a will contest is upon the proponents of the will to make a *prima facie* showing that the will is admissible to probate. The burden then shifts to the contestants to establish the issues presented by their contest.

The elements of a valid will and the method for making a self-proved will are found at 84 Okla. Stat. §55. Those statutory formalities are: 1) there must be two attesting witnesses; 2) the instrument must have been signed by the testator in the presence of both attesting witnesses or the testator must have acknowledged to both witnesses that the signature on the instrument was his; 3) the testator declared to both attesting witnesses that the instrument was his will, and 4) both attesting witnesses subscribed the instrument at the testator's request and in his presence. The proponents of a will must establish by a preponderance of the evidence that the will was executed and published according to law.

58 Okla. Stat. §43 provides that if the will is contested, all of the subscribing witnesses who are present in the county and who are of sound mind must be produced and examined, and the death, absence or insanity of any of them must be satisfactorily shown to the court. This statutory provision clearly reflects an intent that in the event a will is contested, the testimony of the subscribing witnesses is essential to prove the proper execution of the will. All of the subscribing witnesses must be present or their absence or death must be "satisfactorily shown."

The court in *Speers* determined that the term "satisfy" means to be free from doubt, suspense or uncertainty and to set the mind at rest, and satisfactory evidence, sometimes called "sufficient evidence," is an amount of proof which will ordinarily satisfy an unprejudiced mind beyond a reasonable doubt. With respect to the formalities of the execution of the will in accordance with 84 Okla. Stat. §55, the court noted that only substantial compliance relating to the publication of the will and attestation by the witnesses is required. The testator need not formally request that witnesses sign or expressly declare that the instrument is his will. It is sufficient if the testator, by words or conduct, conveys to the witnesses that the instrument is his will and that he desires that they witness it.

Where the attestation clause recites due execution of a will, it creates a *prima facie* case of due execution which can be overcome only by

clear and convincing evidence. In proceedings for probate of an instrument as a will, where the will appears to have been duly executed and attestation is established by proof of the handwriting of the witnesses (or otherwise), although their testimony is not available or they do not remember the transaction, it will be presumed, in the absence of evidence to the contrary, that the will was executed in compliance with all the requirements of the law.

THE AMENDMENT OF A POUR-OVER TRUST AFTER A WILL IS EXECUTED

The Court of Civil Appeals held in the case of *In the Matter of the Estate of Richardson*²⁹ that where a will poured over into a trust and the trust's provisions were amended after the will was executed, the amended provisions were not incorporated by reference and therefore did not constitute competent evidence of the testator's intent to omit an heir as required by Oklahoma's pretermitted heir statute.

The subject will designated the trust as beneficiary of the estate and did not refer to the testator's son either by name or by class. Approximately one year after the will was executed, the settlor amended the trust stating, in net effect, that he was intentionally omitting his son as a beneficiary under the trust. In the probate proceedings, the son challenged the distribution under the will and asserted a right as a pretermitted heir, claiming the will did not contain language strongly and convincingly disinheriting him. The executor argued that the will incorporated the trust by reference, which included the later amendment specifically providing that the son was to receive nothing. (Note that the issue here related to disinheritance under the testator's will, not under his trust, which distinguishes this case from *Jackson*, *supra*.)

The court first recognized that testators are presumed to intend to provide for the natural objects of their bounty. Unless it appears that the omission of a child was intentional, that child, or the issue of that child, must have the same share in the estate of the testator as if the testator had died intestate. The court further noted that the intent to omit a child from inheriting must appear on the "face of the will" in "strong and convincing language." Such intent to disinherit must appear from the four corners of the will, and circumstances under which the will was executed cannot be considered nor may extrinsic evidence be admitted to establish such

intent. In addition, simply leaving the entire estate to others is not sufficient to show an intent to omit a child.

The court noted that under 84 Okla. Stat. §154, several testamentary instruments, executed by the same testator, may be taken and construed together as one instrument. Such a rule is relevant in determining what constitutes the "face of the will." Also of importance is the doctrine of incorporation by reference. There are two factors required to successfully incorporate another document into a will by reference. First, the other document must be in existence when the will is executed, and second, the other document must be referred to in the will so as to reasonably identify the other document.

The *Richardson* court also discussed the issue of incorporation of a trust by reference into a will. The court explained that the reference to the trust in the will must show the testator's intent to incorporate the instrument into his will or at least his intent that the instrument should operate with his will in disposing of property left by him at his death. Once another document is incorporated by reference into a will, that document is operative as a part of the will. A document which is successfully incorporated by reference may constitute part of the "face of the will" for purposes of finding an intent to omit a natural heir on the "face of the will." Thus, the intent to omit may be found in an incorporated trust document. However, the will must clearly identify the trust and the trust must be in existence when the will was executed. The reference should exhibit the decedent's intention that the trust operate with his will to dispose of his property.

However, in *Richardson* the issue was whether an amendment to the trust which occurred **after** the will was executed may be considered as part of the "face of the will." In ruling that the later amendment may not be considered as part of the "face of the will," the court cited the Uniform Testamentary Additions to Trusts Act (UTATA).³⁰ While the UTATA statutorily recognizes incorporation of a trust in a will by reference (provided the trust is executed prior to or concurrent with the execution of the will) and permits the dispositive provisions of the trust to be amended after the will is executed, the court held that the UTATA does not expressly alter the requirements for incorporation by reference in all cases, or address the requirement of Oklahoma case law that intent to omit an

heir appear on the face of the will. The court then held that the UTATA's provisions do not "indicate that intent to omit an heir can be established in a trust document incorporated by reference in a will if the intent to omit is expressed in an amendment to the trust document made after the will was executed."

The court noted that much less stringent requirements are imposed by law to establish a trust as opposed to a will. The elements of the creation of a valid trust are simply the present intent by a competent settlor that a competent trustee hold and manage an ascertainable trust *res* for the benefit of sufficiently certain beneficiaries, accompanied by an act which constitutes a present, complete disposition of the trust property. Proper creation of a trust does not require the formalities of witnesses, attestation and notarization which safeguard the testator's wishes for the disposition of his estate in a will. The law will not allow a testator to disinherit a child by simply signing a trust amendment after the will is executed. Instead, the testator must execute a new will or codicil clearly expressing the intent to disinherit the child.

LITIGATION FOR THE RECOVERY OF ESTATE ASSETS BY PERSONS OTHER THAN THE ESTATE'S FIDUCIARY

Although the case of *In the Matter of the Estate of Bleeker*³¹ is discussed in detail in another article in this publication, the authors comment briefly upon its far-reaching implications. The issue in *Bleeker* was whether in particular circumstances the law permits persons other than the estate's fiduciary to bring litigation for the recovery of estate assets. Does an estate beneficiary have standing to seek leave to pursue an action to collect estate assets when the estate's court-appointed fiduciary manager refuses to do so? The Oklahoma Supreme Court answered in the affirmative.

The court in *Bleeker* found that the probate division of a district court may grant leave to an estate's beneficiary to prosecute an action on behalf of the estate which the personal representative chooses not to pursue. The court noted that as a general rule, beneficiaries of an estate may not themselves prosecute an action to recover personalty belonging to the decedent. (Heirs can pursue recovery of real property pursuant to 58 Okla. Stat. §290.) That claim must be brought by the personal representative. This is the general rule because title to a

decedent's personal property ordinarily vests in the personal representative of the estate for the benefit of the beneficiaries and creditors. However, the *Bleeker* court, relying upon a common law exception, found that some conduct by the personal representative, such as fraud, collusion or refusal to act, may make it necessary for beneficiaries to bring their own suit for the protection of an interest in the estate that would otherwise be lost.

Generally, the beneficiary seeking such leave must file an application and set it for an adversarial hearing after notice. The probate court will then consider the nature of the relief sought and other factors, including the expense of pursuing the claim and whether that expense is proposed to be borne by the applicant or the estate.

CHALLENGING JOINT TENANCY INSTRUMENTS

The 2011 case of *In the Matter of the Estate of Metz*³² presents another chapter regarding whether a challenge may be lodged as to property which is titled in joint tenancy upon the decedent's death, thereby placing it beyond the confines of the decedent's estate. Can the joint tenancy property nonetheless be drawn back into the estate by showing the decedent did not intend the surviving joint tenant to receive the property upon his death? Over the years, a series of cases permitted challenges based upon evidence which indicated the decedent actually did not intend the property to pass by way of joint tenancy.³³

Such a challenge was attempted, but ultimately not permitted to be made, in *Metz*. There, the decedent established a joint bank account naming his nephew as the other joint tenant with the understanding that the nephew would not exercise dominion or control over the account without the decedent's permission until the decedent's death. The account had been established utilizing a form which clearly established a joint tenancy between the decedent and his nephew with right of survivorship and not as tenants in common. The parties further agreed verbally that the nephew would not exercise any control over the account until his uncle's death unless the uncle agreed. During the uncle's lifetime, the nephew neither contributed money to nor withdrew money from the account.

The court initially noted that before determining whether certain property is a probate

asset, a district court must determine in whom title to property is vested pursuant to 58 Okla. Stat. §1. (As previously noted, the 1997 and 2001 amendments to the statute now authorize the probate court to make a determination as to whether the decedent held title to a particular asset without regard to the limitations on the probate court's power to do so which had been recognized under earlier case law.) Only property of a decedent is included the probate estate. The Oklahoma Supreme Court long recognized the common law doctrine of joint tenancies with right of survivorship, even before the enactment of statutory provisions addressing such ownership.

Following many of the recitations made in its earlier decision in *Raney v. Diehl*,³⁴ the court that noted that in 1945, the Oklahoma Legislature provided for estates held in joint tenancy and tenancy by the entirety by enacting 60 Okla. Stat. §74. The court noted that while the statute refers only to "joint tenancy" and does not expressly employ the term "survivorship," the court had historically held that the Legislature intended this well-defined common law term as a characteristic of joint tenancies.

In the case of two joint tenants, the concept of joint tenancy with right of survivorship permits each owner to alienate and hold his share at the same time he and the other joint tenant hold the entire property as by a single ownership. The unique characteristics of joint tenancies created at common law continue to prevail in modern times — namely the co-existence of the four unities: interest, title, time and possession. A joint tenancy results in only one interest, created by one conveyance, at the same time, and held jointly yet undivided by both tenants.

Upon a joint tenant's death, the decedent's interest terminates and the surviving tenant's interest simply continues. By operation of law, the surviving tenant becomes immediately vested with the property as a whole, and the joint tenancy property is excluded from the decedent's estate. There is no property interest remaining that a decedent's beneficiary may inherit or take under the decedent's will.

The court further noted that it had historically recognized two categories of joint tenancies with right of survivorship: those created by written instrument expressly declaring the relationship as prescribed by 60 Okla. Stat. §74 and those not created by words of joint tenancy or

survivorship but which were established because the party initiating the relationship intentionally and intelligently created essential elements of joint ownership and survivorship.

Single instruments containing an express written declaration to create a joint tenancy encompass the elements of intent and leave no question as to the creation of the relationship. Utilizing an instrument that expressly incorporates the words "as joint tenants with right of survivorship" or similar verbiage demonstrates the conveying party's intent. The effect of such language overcomes statutory or common law presumptions of tenancies in common.

In the second category, it is considerably more difficult to ascertain the party's intent. This difficulty is compounded where the words creating a joint tenancy with survivorship are absent and the parties' actions are contrary to joint tenancy ownership. (As an example of a case in which a joint tenancy was found under such circumstances, see *Cluck v. Ford*.³⁵)

In reviewing the document which created the joint tenancy in *Metz*, the court found the contract's express language reflected that the parties considered and unequivocally rejected ownership of the account as tenants in common and affirmatively indicated ownership as joint tenants with right of survivorship. This was a clear, explicit and unequivocal statement which demonstrated the decedent's intent to presently create survivorship rights in the nephew. The mere fact that the nephew never exercised dominion or control over the joint tenancy account did not defeat the unity of interest required to create the present estate. The trial court's consideration of evidence offered by heirs as to the parties' intent violated the basic rule of contract construction and thus was impermissible. The court stated that it would decline to look beyond the four corners of the contract to examine the parties' intent where the language employed is unambiguous, "[i]n the absence of fraud, accident, mistake or absurdity."

The court in *Metz* did not overrule many of its earlier decisions involving challenges to joint tenancy ownership, and in fact quoted from and cited several of them with approval. The problem in the case therefore appears to be the manner in which the personal representative raised the issue. It is not sufficient, under *Metz*, to allege only that the decedent's intent was not to create a joint tenancy, but rather the

personal representative must argue that the joint tenancy ownership resulted from fraud, accident, mistake or absurdity and then make proof accordingly. The *Metz* court does, however, appear to overrule by implication such cases as *Flesher v. Flesher*,³⁶ in which the personal representative was permitted to show that in creating the joint tenancy, there was no valid *inter vivos* gift, the donor did not part with dominion over the property during her lifetime and the surviving joint tenant held the property in trust for the benefit of the decedent's estate.

NOTICE OF REJECTION OF A CREDITOR'S CLAIM

The amendment to 58 Okla. Stat. §337 in 2008 provides that for proceedings commenced after Oct. 31, 2008, the 45-day time limit for a creditor to file suit on a rejected claim does not begin to run until the personal representative sends notice of rejection of the claim by first-class mail.³⁷ This rule applies whether the claim is affirmatively rejected by the personal representative or is deemed rejected by 30 days' inaction by the personal representative.

In both instances, however, the 45-day period cannot "extend past the date that a petition for final accounting is filed."

PLEADINGS RULES DO NOT APPLY IN PROBATE CASES

Since probate is a special, statutory proceeding, the rules for pleadings in civil actions do not apply in probate cases. To the extent that a pleading matter is not specifically addressed by the Probate Code, that matter is left to the sound discretion of the probate judge.

In *Estate of Wheeler, Matter of*,³⁸ the court held the "precise and detailed requirements for the pleadings [motion, response, objections] and the proceedings at a hearing are not prescribed in detail in the probate code. Therefore, those matters are left to the sound discretion of the probate judge."

In *Estate of Daly, Matter of*,³⁹ the court held that the pleading code does not apply to cases involving the probate code inasmuch as probate is a special area of law governed by its own statutory procedural code.

Nevertheless, some probate judges will, in the exercise of their discretion, elect to follow the rules of the pleading code as to matters not

specifically addressed by the Probate Code, e.g., motion practice.

Similarly, local court rules are not mandatory⁴⁰ but likely will be followed by the probate judge.

MOVING TO VACATE A PROBATE ORDER

The provisions of Title 12, Okla. Stat., §§1031-38, relating to vacatur of orders, apply in probate cases, but only with respect to a party who appeared at the hearing at which the order was entered and actively participated. A non-party or a party who either did not appear or appeared but did not actively participate can seek relief from the order only pursuant to 58 Okla. Stat. §723 and has no status to appeal from the entry of the order.⁴¹

The rule applies to an heir who was given notice but did not appear and to an heir who did appear but did not take an active part in the proceedings.⁴² See also *Booth v. McKnight*,⁴³ holding that a non-party cannot appeal from an order of the probate court, but can only file a motion to vacate pursuant to 58 Okla. Stat. §723.

The Oklahoma Supreme Court has referred to this distinction as one which is between "active participants in the probate" and heirs or others having an interest who did not actively participate in a particular hearing and are therefore "relegated to 'interested parties' status."⁴⁴

Note that the filing of a motion to vacate under §723 requires the attachment of an affidavit. Failure to attach the affidavit deprives the probate court of jurisdiction to consider the motion.⁴⁵

ESTATE TAX CONSIDERATIONS

While the repeal of Oklahoma's estate tax effective Jan. 1, 2010, and the now-permanent federal estate tax exemption of \$5,000,000 indexed for inflation will mean that estate tax is not a concern for many estates, federal estate tax law must still be considered if the decedent was survived by a spouse and if the combined estate of the decedent and the decedent's spouse might exceed the exemption amount.

A detailed discussion of estate taxes is beyond the scope of this article, but practitioners should be aware that federal estate tax law may necessitate that the personal representative consider filing a federal estate tax return even if the decedent's estate is not subject to federal estate tax in order to elect "portability." The election

(first adopted by Congress in late 2010 and then made permanent in early 2013) permits the surviving spouse's estate to use the portion of the exemption which was not used by the decedent's estate, referred to as the "deceased spouse's unused exemption" or "DSUE."

The surviving spouse's estate can use the DSUE only if a federal estate tax return is filed for the estate of the first spouse to die and that return contains a portability election. Relaxed reporting requirements are available where the only reason for filing the return is to elect portability, but nevertheless, a complete, properly prepared and timely filed (including extensions) return must be filed with the portability election made pursuant to the instructions for the return (Form 706).

Note that if a personal representative has been appointed by the court for the deceased spouse's estate, that person must sign the return and is the only person authorized to make the portability election.⁴⁶ In addition, the deceased spouse's will or trust may require the decedent's personal representative to make the portability election.

Generally, if the total value of the decedent's estate and his/her surviving spouse's estate might exceed the federal estate tax exemption amount, making the portability election must be considered.

We hope practitioners find these pointers helpful and we welcome comments.

1. 60 Okla. Stat. §74.
2. 58 Okla. Stat. §912.
3. See also 58 Okla. Stat. §393(D).
4. *In Re: Rose*, 2001 OK CIV APP 109, 32 P3d 221.
5. 58 Okla. Stat. §240(C).
6. 58 Okla. Stat. §240(B).
7. (See 58 Okla. Stat. §61).
8. 58 Okla. Stat. §240(D).
9. *In the Matter of the Estate of Westfahl*, 1983 OK 119, 674 P2d 121.
10. *In Re: Wallace Revocable Trust*, 2009 OK CIV APP 34, 219 P3d 596;
- Barr vs. Dawson*, 2007 OK CIV APP 38, 158 P3d 1073.
11. *In Re: The Estate of Massey*, 1998 OK CIV APP 116, 964 P2d 238 at ¶3.
12. *Barr vs. Dawson*, *supra*.
13. *In the Matter of the Estate of Eversole*, 1989 OK CIV APP 43, 787 P2d 470.
14. *Barr vs. Dawson*, *supra*.
15. 23 A.L.R. 4th 369 (1983). See also *Zukel v. Great West Managers, LLC*, 31 Kan. App. 2d 1098, 1101, 78 P3d 480 (2003), rev. denied 277 Kan. 928 (2004) (issue as to whether instrument was ambiguous).
16. *Isle vs. Brady*, 2012 OK CIV APP 99, 288 P3d 259.
17. *Swanson vs. Bates*, 1949 OK 231, 211 P2d 781.
18. *State ex rel. Burk vs. City of Oklahoma City*, 1979 OK 115, 598 P2d 659.
19. *Thomas vs. Bank of Oklahoma, N.A.*, 1984 OK 41, 684 P2d 553.
20. *The Matter of the Estate of Jackson*, 2008 OK 83, 194 P3d 1269.

21. 58 Okla. Stat. §496.
22. *Dees vs. Dees*, 1934 OK 697, 38 P2d 508.
23. *In The Matter of the Estates of Nichols*, 2007 OK CIV APP 120, 173 P3d 105.
24. 58 Okla. Stat. §126.
25. *Booth vs. McKnight*, 2003 OK 49, 70 P3d 855.
26. See *Williams v. Mulvihill*, 1993 OK 5, 846 P2d 1097 (and note that the limitation on the probate court's powers recognized in that case has since been changed by the amendments in 1997 and 2001 to 58 Okla. Stat. §1).
27. *Holleyman v. Holleyman*, 2003 OK 48, 78 P3d 921.
28. *In the Matter of Speers*, 2008 OK 16, 179 P3d 1265.
29. *In the Matter of the Estate of Richardson*, 2002 OK CIV APP 69, 50 P3d 584.
30. 84 Okla. Stat. §§ 301 *et seq.*
31. *In the Matter of the Estate of Bleeker*, 2007 OK 68, 168 P3d 774.
32. *In the Matter of the Estate of Metz*, 2011 OK 26, 256 P3d 45.
33. See, e.g., *Matter of Estate of Ingram*, 1994 OK 51, 874 P2d 1282; 1994 OK 51, 874 P2d 1282; *Raney v. Diehl*, 1971 OK 28, 482 P2d 585; *Peyton v. McCaslin*, 1966 OK 4, 417 P2d 316.
34. *Raney v. Diehl*, *supra*.
35. *Chuck v. Ford*, 2007 OK CIV APP 3, 152 P3d 279.
36. *Flesher v. Flesher*, 1953 OK 392, 258 P2d 899.
37. 58 Okla. Stat. §337(F).
38. *Estate of Wheeler*, *Matter of*, 1996 OK CIV APP 65, 919 P2d 460
39. *Estate of Daly*, *Matter of*, 1994 OK CIV APP 8, 870 P2d 795
40. See *Woods v. Computer Sciences Corp.*, 2011 OK CIV APP 17, 247 P3d 1201.
41. *In Re Estate of Goynes*, 1986 OK 69, 733 P2d 391; *Anderson v. Miller*, 1957 OK 67, 324 P2d 856; *Estate of Dorn*, *Matter of*, 1989 OK CIV APP 49, 787 P2d 1291.
42. *Anderson*, *supra*; *Goynes*, *supra*, ¶12.
43. *Booth v. McKnight*, *supra*, fn. 10
44. *Estate of Nation*, *Matter of*, 1992 OK 91, 834 P2d 442 (fn. 32).
45. *In Re: Davis' Estate*, 1961 OK 277, 366 P2d 931.
46. See 26 U.S.C. (Internal Revenue Code) §§2010(c)(4), 2010(c)(5) and 2203, and Temp. Regs. §§20.2010-0T *et seq.*

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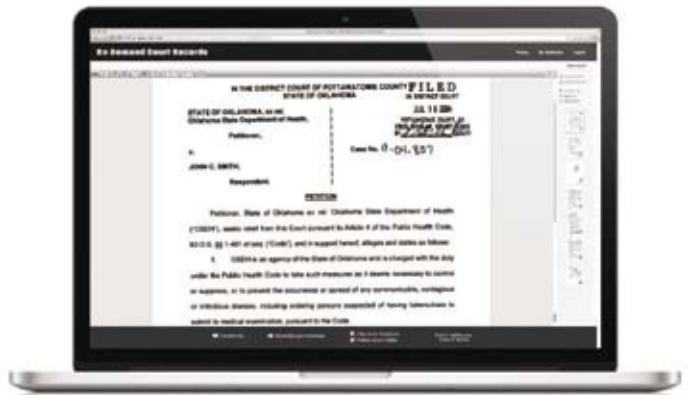
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When Wills and Trusts Are Challenged

For Love or Money: When Is Influence Due and Undue?

By Amy Piedmont and M. Joe Crosthwait Jr.

Lawsuits challenging the validity of wills and trusts based on undue influence have become increasingly more common. In many, if not most, cases, the persons alleged to be exerting the influence are family members or trusted others who use their position to unduly influence the elder for their own greed or financial gain. In a typical example, one sibling has been primarily responsible for providing care to one or both parents in the final stages of their life. The family had a “great” relationship for many years and it was “understood” that all property was to be divided equally upon the parents’ deaths. However, as the parents’ health deteriorated and they became more dependent on the one child for assistance, a new estate plan was implemented leaving the majority of the assets to their caregiver to the exclusion of the other children. Were such acts the result of undue influence by the caregiver, or the result of the parents feeling the child was “entitled” to more due to her assistance in their time of need? What is the burden of proof in such cases? How do you prove undue influence or defend against such a claim?

In other cases, the catalyst for a challenge and possible lawsuit stems from those heirs who feel jilted and “entitled” to inherit from the deceased. For example, a client’s deceased father had a large estate which he had represented and assured her for years would be split between her and her siblings. Without the client’s knowl-

edge, a few years before her father’s death, he had amended his estate plan to leave most, if not all, of his sizable estate to his new (and, not uncommonly, much younger) wife. According to your client, before his remarriage, the children had a loving relationship with their father. However, following his remarriage, communi-

cation was intermittent and all communication with their father was either monitored or restricted by the new wife. Is there a claim for undue influence? What is your client's recourse? How, as a lawyer, do you effect and protect a deceased client's dispositive intentions, and prevent yourself and your lawyering from coming under attack? This article discusses the burden of proof in establishing a claim of undue influence as well as steps estate planning attorneys can take to ensure that their clients' testamentary disposition is not subject to attack based on undue influence.

Upon a finding by the trial court 1) that a confidential relationship existed between the will maker and another, stronger party and 2) that the stronger party actively assisted in the preparation of procurement of the will, *a rebuttable presumption of undue influence at once arises that shifts to the will proponent the burden of producing evidence.*¹ A "confidential relationship" is generally synonymous with a "fiduciary relationship," Black's Law Dictionary 4th Ed. P. 370, and exists whenever trust and confidence are placed by one person in the integrity and fidelity of another.² Factors to be considered in applying the two-prong test include: a) whether the person charged with undue influence was not a natural object to the maker's bounty; b) whether the stronger person was a trusted or confidential advisor or agent of the will's maker; c) whether the stronger person was active and/or present in the procurement or preparation of the will; d) whether the will's maker was of advanced age or impaired faculties; and e) whether independent and disinterested advice regarding the testamentary disposition was given to the maker.³

NATURAL OBJECT OF THE MAKER'S BOUNTY

Undue influence has the legal meaning of *wrongful* influence. Influence acquired through affections is not, in itself, wrongful.⁴ "Influence gained by kindness and affection will not be regarded as 'undue'... even though it induces the testator to make an unequal or unjust disposition of his property in favor of those who contributed to his comfort and ministered to his wants, if such disposition is voluntarily made."⁵ "It is a reasonable assumption a testator may maintain warm affection for one who has been his companion and ministered to him during life's closing years. Thus, kindness and consideration shown a testator cannot be con-

sidered as constituting undue influence which destroys a will."⁶ It is not sufficient that the testator was influenced by the beneficiaries in the ordinary affairs of life, or that he was surrounded by them and in confidential relations with them at the time of its execution. The question becomes whether the testator was weak willed and, therefore, abnormally susceptible to being influenced by others?⁷ To be actionable the influence of another "must destroy the grantor's free agency...in effect, substitute the will of another for that of the grantor."⁸

A testator's wife is presumed to be the object of his affection and has a natural claim to his bounty.⁹ "It is not unusual that a husband leaves the lion's share of his estate to his wife. Indeed, it would be quite surprising if a man's behavior did not change in any respects after marriage. And tension between a spouse taken late in life and one's children is not abnormal."¹⁰ The natural preference of a testator is to leave more to those close to and helpful to the testator, especially a family member who completely devotes their effort and energy to the care of the testator, and renders such a preference a reasonable disposition of the testator's affairs.¹¹

When a parent's dispositive plan, either by gift or testamentary disposition, involves unequal distributions among children or unnatural dispositions, such as disinheritance of children in favor of a second spouse or caregiver, the attorney must take extra care to ensure that there is ample documentation in the file with respect to the capacity of the client to make the gift or to execute the testamentary document. Effort should be made to ensure that the client was free of undue influence. If capacity is an issue, a physician's certification should be obtained at the time the documents are signed or the gift made, and the certification should be retained. A videotaping might also be considered, but consider the possible adverse impact.¹²

STRONGER PERSON WAS A TRUSTED OR CONFIDENTIAL ADVISOR OF THE WILL'S MAKER AND WAS ACTIVE AND/OR PRESENT IN THE PROCUREMENT OR PREPARATION OF WILL

When a confidential relationship is shown to exist, very minimal evidence is sufficient to set aside a will on the ground of undue influence.¹³ A fiduciary, by definition, has a "confidential

relationship” and is a person in whom trust and confidence are placed by one person in the integrity and fidelity of such person.¹⁴ An attorney in fact and a primary caretaker qualify as confidential relationships.¹⁵ Participation in the execution of the will or other testamentary instruments is considered participation in its creation.¹⁶ Uncontroverted evidence of a testator’s strong will and positive character will negate any claim of undue influence based on a relationship between a man and a wife and even a man and his girlfriend.¹⁷

The question of undue influence can arise whenever the elderly client has another person present at the interview with the attorney. Consider the reasons why the elderly client may want another person present. Could it be that

“In order to establish capacity, testimony may be required from the testator’s physician, lawyers, business partners, friends and the like regarding whether he had the ability to make his own decisions and could understand the consequences of such decisions.”

the client wants someone for moral support or is the client a victim of undue influence? The attorney should try and ascertain why the client wants someone present, address those concerns of the client and interview the client alone. If the client insists on having another present, explain to the client the problems of the potential for undue influence and the possibility of destroying privileged communication. In some cases, the attorney may not be able to conduct the interview.¹⁸

WILL’S MAKER OF ADVANCED AGE OR IMPAIRED FACULTIES

In order for undue influence to be proven, it is not necessary to prove that the testator lacked testamentary capacity. However, should

the testator be shown to have limited or diminished capacity, such evidence further supports a claim that the will or trust was procured by the “stronger person’s” undue influence. The person contesting the testator’s capacity bears the burden of persuasion.¹⁹ Testamentary capacity is determined from the condition of the testator’s mind at the time of making the testamentary document at issue.²⁰ Testamentary capacity exists when a person possesses, in a general way, the ability to appreciate the character and extent of devised property, and understands the nature and effect of his testamentary act.²¹ A person is presumed to have testamentary capacity at the time he or she executes a will.²² Once again, the person contesting the testator’s capacity bears the burden of persuasion.²³

When a court ascertains a decedent’s testamentary capacity, it is appropriate for it to consider evidence of the testator’s mental capacity, appearance, conduct, habits and conversation both before and after the will is executed.²⁴ Although a testator may be physically weaker, it is not presumed that such weakness alone will have a detrimental effect on his ability to form and communicate his desires to his counsel, know the extent of his assets and understand the consequences of his actions. A person who does not have sufficient mind and vigor of intellect to transact business generally and make contracts can still be legally competent to make a will.²⁵ Further, no presumption of mental incapacity arises solely because a will makes an unequal distribution or gives property to person other than those who are natural objects of the testator’s bounty.²⁶ Regardless of the foregoing, a finding of undue influence makes testamentary capacity a moot issue.²⁷

In order to establish capacity, testimony may be required from the testator’s physician, lawyers, business partners, friends and the like regarding whether he had the ability to make his own decisions and could understand the consequences of such decisions. Evidence must be presented that the testator managed his own affairs, understood the nature and extent of his assets, and was able to interact normally with friends and colleagues on a daily basis. Again, an estate planning attorney’s notes and file documentation are vital to defeat a claim of lack of capacity as well as a claim of undue influence.

INDEPENDENT ADVICE REGARDING TESTAMENTARY DISPOSITION GIVEN

The term "independent advice" means that the donor had the preliminary benefit of conferring fully and privately upon the subject of his intended gift with a person who was not only competent to inform him correctly as to its effect, but who was, furthermore, so dissociated from the interest of the donee as to be in a position to advise the donor impartially and confidentially as to the consequences of his proposed benefaction.²⁸ The advice which the law requires is not a mere statement of the operation of a gift or bequest, but involves counseling with the donor or testator as to the effect of the transaction and whether or not she should enter into such a transaction.²⁹

When an attorney gives no substantial advice and functions as a mere scrivener, the presumption of undue influence is not overcome.³⁰ In other words, the independent advice is not "full."³¹ Thus, as an estate planning attorney, one must be sure to give full and complete counsel regarding the testator's estate plan and its ramifications. Further, the attorney should take copious notes regarding such discussions to be available should the validity of any instruments be called into question. Finally, when capacity or undue influence is or might become an issue, the attorney should consult with them as appropriate and encourage the client to seek additional counsel or consult his accountant, financial planner or other independent professional in order to further strengthen the validity of any testamentary disposition.

A presumption of undue influence arises from the proof of a confidential relationship between the testator and a beneficiary, coupled with activity of the beneficiary in the preparation of the will.³² The will proponent's successful rebuttal of the presumption restores the case to the procedural posture it would have if the presumption had never been operative. This means that contestants must prove the existence of undue influence by a preponderance of the evidence without the aid of the presumption.³³ Undue influence may be proved directly or circumstantially, but is ordinarily capable of proof only circumstantially.³⁴ In determining the question of undue influence, the court should take into consideration the association of the parties, the opportunity for undue influence afforded the person who is especially favored by the terms of the will, and the effect of the will upon those persons whom

we would naturally expect to be recipients of the testator's bounty.³⁵ Undue influence such as may invalidate a will, must be something which destroys the free agency of the testator at the time when the instrument is made, and which, in effect, substitutes the will of another for that of the testator. Mere suspicion that the undue influence was brought to bear is not sufficient to justify the setting aside of the will.³⁶

As an estate planning attorney, ensuring your client's desires regarding distribution of his assets upon his death is of the utmost importance. However, of equal importance is the protection of vulnerable persons from being unduly influenced by those who they trust. Proof of undue influence on a testator necessarily concerns matters and facts hidden from ordinary knowledge, and is provable in large measure only by circumstances.³⁷ Therefore, to ensure that a client's estate plan is upheld and free from undue influence of others, it is the attorney's responsibility to provide counsel regarding the client's estate plan and its ramifications and verify the client's understanding. Complete and thorough records of all such counseling and advice should be maintained together with supporting evidence such as reports regarding capacity from the client's physicians and complete memorandums to the file regarding execution as well as possible recording of the execution should be considered. Taking steps to ensure a presumption of undue influence cannot be established may be the difference between your client's testamentary dispositions being upheld or his assets being dissipated needlessly in litigation.

1. *Estate of Holcomb*, 2002 OK 90, ¶¶18-19, 63 P.3d 9 (emphasis in original).
2. *Fipps v. Stidham*, 1935 OK 858, ¶18, 50 P.2d 680; *Matter of Estate of Beal*, 1989 OK 23, ¶15, 769 P.2d 150.
3. *Matter of Estate of Maheras*, 1995 OK 40, ¶8, 897 P.2d 268.
4. *Estate of Webb*, 1993 OK 75, ¶28, 863 P.2d 1116(1993).
5. *Mackall v. Mackall*, 135 U.S. 167, 172, 10 S. Ct. 705, 34 L.Ed. 84 (1890).
6. *In re Estate of Newkirk*, 1969 OK 93, ¶17, 456 P.2d 104.
7. See *Estate of Webb*, 1993 OK at ¶27.
8. *Estate of Webb*, 1993 OK 75, ¶28, 863 P.2d 1116(1993); *Canfield v. Canfield*, 1934 OK 43, ¶¶8-10, 31 P.2d 152(1934).
9. *Holliday v. Holliday*, 1958 OK 162, ¶15, 327 P.2d 456 (1958); *In re Estate of Mowdy*, 1999 OK CIV APP 4, ¶4, 973 P.2d 345 (1999).
10. *Estate of Montgomery*, 881 S.W.2d 750, 757 (Tx. App.-Tyler 1994).
11. *In re Braken's Estate*, 1970 OK 185, ¶17, 475 P.2d 377, citing *In re Lacy*, 1967 OK 123, ¶29, 43 P.2d 366 (1967).
12. Thomas D. Begley, Jr. Et al., *Representing the Elderly Client* (Panel 2001) §2.03[A][2], p. 2-30.
13. *Estate of Carano*, 1994 OK 15, ¶33, 868 P.2d 699; *Anderson v. Davis*, 1952 OK 193, ¶0, 256 P. 1099.
14. *Matter of Estate of Beal*, 1989 OK 23, ¶15, 769 P.2d 150, 154 (1989), citing *Fipps v. Stidham*, 1935 OK 858, ¶18, 50 P.2d 680.
15. *Estate of Holcomb*, 2002 OK 90 at ¶22.
16. See, 79 Am. Jur. 2d, Wills " 428, 429.
17. *In re Estate of Newkirk*, 1969 OK 93, ¶18, 456 P.2d 104.

18. John J. Regan Et Al., *Tax, Estate & Financial Planning for the Elderly* (Matthew Bender 2001) §1.06[1], p. 1-12.
19. *Estate of Sneed*, 1998 OK 8, ¶9, 953 P.2d 1111.
20. *In re Groves' Estate*, 1957 OK 146, ¶10, 321 P.2d 381 (1958).
21. *Estate of Holcomb*, 2002 OK 90 at ¶9; *Matter of Estate of Sneed*, 1998 OK 8, ¶9, 953 P.2d 1111.
22. *Lazalle v. Estate of Crabtree*, 2009 OK CIV APP 79, ¶19, 225 P.3d 11.
23. *Estate of Sneed*, 1998 OK 8, ¶9.
24. *Estate of Sneed*, 1998 OK 8, ¶9, 935 P.2d 1111, 1117 (1998).
25. *In re Nitey's Estate*, 1935 OK 1218, ¶17, 53 P.2d 215.
26. *In re Estate of Newkirk*, 1969 OK 93, ¶13, 456 P.2d 104.
27. *Matter of Estate of Maheras*, 1995 OK 40, ¶14, 897 P.2d 268.
28. *In the Matter of the Estate of Maggie Carano*, 1994 OK 15, ¶38, 868 P.2d 699, citing *Anderson v. Davis*, 1952 OK 193, ¶16, 256 P. 1099.
29. *Estate of Holcomb*, 2002 OK 90 at ¶36.
30. *In Re Will of Moses*, 227 So.2d 829 (Miss. 1969); 79 Am.Jur.2d, Wills § 434.
31. See, *Edwards v. Urice*, 2009 OK CIV APP 20 ¶18, 220 P.3d 1145.
32. *In the Matter of the Estate of Seegers*, 1986 OK CIV APP 21, ¶11, 733 P.2d 418, citing *Anderson v. Davis*, 1952 OK 193, ¶28, 256 P. 1099; *Matter of Estate of Maheras*, 1995 OK 40, ¶8, 897 P.2d 268.
33. *Estate of Holcomb*, 2002 OK 90 at ¶42.
34. *Id.*
35. *Id.*
36. *Myers v. Myers*, 1927 OK 394, ¶33, 266 P. 452.
37. *In re Estate of Beal*, 1989 OK 23, ¶13, 769 P.2d 150.

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Estate Planning

and PROBATE

Paying Trustee Attorney Fees from the Trust Estate

By James C. Milton

Trustees in Oklahoma may doubt their abilities to pay attorney fees incurred in court proceedings regarding trusts.¹ These doubts may be warranted.

On June 14, 2011, the Oklahoma Supreme Court announced its decision in *May v. Oklahoma Bank*,² holding that “fees incurred as a result of the trustee’s negligence are not chargeable to the trust under the Oklahoma Trust Act.”³ When viewed in the context of the overall structure of the law governing payment of legal expenses from trust estates, the *May* decision may add some clarity in circumstances where the trustee must pay its own attorney fees.

But at the same time, the *May* decision adds a level of uncertainty for the trustee who attempts to predict how far the *May* decision might extend. Certainly, a trustee in Oklahoma cannot pay attorney fees from the trust if a court has determined that the attorney fees were necessitated by the trustee’s own negligence. But the scope of this rule is unclear, as is its interplay with the many equitable doctrines on payment of attorney fees from trusts.

As a default rule, a trustee operating under Oklahoma law may employ attorneys and other professionals, and may compensate the attorneys from the trust estate when the attorneys’ services are necessary in the administration of the trust.⁴ Many trust instruments mirror or supplement this default rule by specifically authorizing the trustee to retain counsel and pay legal expenses.⁵ But regardless of the presence of such language in the trust instrument, this rule is generally limited to those legal services that are necessary in the administration of the trust.

As a corollary, the trustee may also pay reasonable attorney fees from the trust estate if the legal services benefit the trust estate, even when the fees are charged by an attorney not employed by the trustee. In order to do so, the trustee must conclude that the legal services were “performed for the purpose of protecting and preserving the trust estate and in the interest of the beneficiaries generally.”⁶

The law protects trustees who work in the best interest of the trust. However, the rule announced in *May* falls at the other end of this spectrum: If the trustee incurs attorney fees as a result of the trustee’s own negligence, these fees cannot be paid from the trust estate. While this is a narrow rule, at first glance it might seem broader in scope than the court intended. Indeed, without a close examination of the complexities of the decision, the Court’s holding in *May* could be given far too sweeping an application. It is therefore prudent to look at the decision more closely.

The trustee in *May* failed to file a decree of partial distribution in the real estate records in Roger Mills County.⁷ If the decree had been filed in the county records, it would have been effective as record notice that the trust owned five acres of mineral interests.⁸ Eighteen years later, the trustee discovered that the trust’s royalties had been paid to the decedent’s widow instead of the trust.⁹ The trustee asserted a claim against the widow’s estate and recovered some of the

royalties.¹⁰ When the trustee paid its attorney fees from the trust, the trust's beneficiary objected.¹¹

In *May*, the appellant characterized the issue as one of fairness and sought a ruling on whether a trust's beneficiaries should bear the cost of recovering trust property when the loss of trust property resulted from the trustee's own negligence.¹²

Taken broadly, the *May* rule could seem to conflict with other equitable rules that encourage trustees to seek judicial resolution regarding doubtful or disputed issues. Litigation may result from a trustee's uncertainty regarding an issue of trust administration, a need for the court's instructions or an honest error on an uncertain issue. In such cases, litigation might comprise a necessary part of the trustee's duties, even where the court may ultimately determine that the trustee's position is incorrect. It is on this point that the court's decision in *May* could be applied in a manner that conflicts with the long-standing principle that "the element of the necessity or justification for the litigation is, other things being equal, of considerable importance in determining whether an allowance [for attorney fees] will be made."¹³

The principle of necessity and justification is vague, and by its very nature, conflicts with the prevailing-party approach to shifting attorney fees.¹⁴ If a beneficiary raises a claim regarding the trustee's conduct but the claim is *questionable* or *subject to doubts*, then it would be appropriate for the trustee to seek judicial guidance regarding the claim. The trustee may be uncertain regarding her position, or hold a good faith belief that her position is correct. Upon resolving the issue, the court should have the authority to allow payment of the trustee's attorney fees from the trust if the court determines that the litigation was reasonable and necessary, even if the court ultimately decides against the trustee's position.

Because of this, holding an incorrect position should not always mean that the trustee must bear its own attorney fees. For example, if a

beneficiary objects to a trustee's accounting, the trustee may be entitled to recover its fees in responding to the objection even if the court rules in favor of the beneficiary. In 1949, the Court of Chancery of Delaware delivered a definitive ruling regarding court fees in these cases. There, the court determined that attorney fees should be recoverable if the question

regarding the trustee's conduct does not "reflect on the reasonableness or good faith of the trustee, *e.g.*, whether to charge certain items to corpus or to income ..."¹⁵

“However, we conclude that whether a trustee should be awarded an attorney's fee for defending a suit involving his administration of the trust depends upon equitable considerations...”

This principle was applied and further explained in 1954 by the Texas Court of Civil Appeals.¹⁶ In *American National Bank v. Biggs*, the trustees were faced with a questionable or doubtful issue regarding payment of royalties — somewhat similar to the issue raised in *May*. "This posed a question of judgment and they took the question to their lawyer just as they should have done. In consequence, they formed an opinion, in good faith and on reasonable grounds, concerning the respective rights of the life

tenants and the remaindermen..."¹⁷ Because they addressed the question in good faith and on reasonable grounds, "they were justified in resisting the remaindermen's demands that they administer the trust in a different way. It may then be said that they were entitled to their attorney's fee ..."¹⁸

As shown above, there is a potential conflict between *May* and the necessary-and-reasonable doctrine expressed by the Texas Court of Civil Appeals in *Biggs*. This potential conflict may be best explained by the *Biggs* decision. "It is evident that only generalizations of the broadest kind can be drawn from authorities which we have cited. However, we conclude that whether a trustee should be awarded an attorney's fee for defending a suit involving his administration of the trust depends upon equitable considerations, that each case must be decided upon its own facts, that the success or failure of the trustee in the litigation may be a matter to be considered but does not necessarily determine the trustee's right to the fee, and that the trustee's good faith and the reason-

ableness of his actions are matters to be considered, at least when this good faith and reasonableness caused the trustee to attempt the performance of a duty which one so minded ought to have performed.”¹⁹ In other words, the equitable rules applicable to attorney fee payment in trust disputes are not hard and fast. The rules should not be applied in a vacuum. Even the rule announced in *May* could be outweighed by other rules of trust and equity, depending on the facts and circumstances of each case.

A close fact comparison can identify a fundamental distinction between *May* and *Biggs*. In *May*, the trustee relied upon the attorney, but the attorney failed to complete the steps necessary to ensure receipt of royalties.²⁰ In *Biggs*, the trustee also sought the attorney’s advice and relied upon it in good faith.

The attorney in *Biggs*, though, erred in interpreting an ambiguous trust instrument. This error was not “a mistake regarding the general law of trusts and trustees.”²¹ While this distinction depends on facts and equitable considerations, some guidance can be drawn from this comparison. If the trustee incurs attorney fees because the trustee or the attorney adopts an incorrect position on an issue where there could be honest debate, the rules of equity may allow payment of attorney fees from the trust. But if the attorney misses a step in trust administration, as was the case in *May*, then the trustee and the attorney should not expect the trust to pay fees incurred as a result.

It might be on this basis that the next case addressed by the Oklahoma Supreme Court might be distinguished from *May*. It may be that the *May* court viewed the trustee’s (and the lawyer’s) negligence to be of a sufficient degree to warrant denial of recovery of attorney fees from the trust. It may be that the next case involves a lesser degree of trustee or lawyer negligence — debatable negligence or no negligence at all.

These equitable rules — and others — often find their procedural footing in actions for breach of trust, or for instruction or supervision of trusts. Since 1999, shifting of attorney fees in these actions has been subject to Section 175.57(D) of the Oklahoma Trust Act, which provides: “In a judicial proceeding involving a trust, the court may in its discretion, as justice and equity may require, award costs and expenses, including reasonable

attorney’s fees, to any party, to be paid by another party or from the trust which is the subject of the controversy.”²²

If the trustee incurs attorney fees in defending against a claim of mismanagement, these fees can be paid from the trust estate on a prevailing-party theory based on the trial court’s equitable discretion. Oklahoma courts have long referenced the prevailing-party theory when shifting attorney fees in trust disputes.²³ But fee shifting in trust cases is based on equitable doctrines that consider more than just the prevailing-party status. In a 1990 decision, the Oklahoma Court of Civil Appeals considered such factors as whether the beneficiaries’ litigation benefited the beneficiaries themselves; whether the litigation benefited the trust res; and whether the trustee was guilty of fraud, malice, or oppression.²⁴

One method of avoiding disputes on this issue is to obtain the beneficiaries’ consent for attorney fee payment.²⁵ This approach presupposes that the claimant against the trust is not one of the trust’s beneficiaries. For this to work, the consent must be unanimous.²⁶

Another potential workaround could generate more problems than it solves. As noted in Section 175.24(A) of the Oklahoma Trust Act, the rule regarding payment of attorney fees from the trust estate may be modified by the trust instrument or court decree.²⁷ The settlor may provide in the trust instrument that the trustee may pay attorney fees for defense against claims made by beneficiaries. The drafting attorney should be cautious in using such a provision, however, because the provision could be viewed as an unenforceable exculpatory provision.²⁸ Likewise, the drafting attorney should take steps to ensure that such an unenforceable exculpatory provision does not negatively impact other provisions of the trust instrument. Finally, the trustee should be cautious if relying upon such a provision, given its possible vulnerability to challenge.

In short, cautious attorneys and trustees should take heed of the guidance provided by the Oklahoma Supreme Court in *May*, and take care to thoroughly acquaint themselves with the ruling.

Author’s note: Thanks to Dr. Mark Malaby of McPherson College in Kansas for invaluable assistance bringing this article together in final form, and to Henry Will for review and comments. Any errors are mine.

1. For similar doubts expressed with regard to California law and the laws of states that tend to follow California, see Richard D. Cleary & Thomas E. McCurnin, *New California Decision Puts Bank Trustees at Risk for Attorney Fees*, 127 Banking L.J. 328 (2010).

2. 2011 OK 52, 261 P.3d 1138.

3. *Id.*, 2011 OK 52, ¶ 1, 261 P.3d 1138, 1139. The opinion was corrected by order entered on September 30, 2011, with rehearing otherwise denied. The Oklahoma Trust Act is found at 60 Okla. Stat. §§ 175.1-175.57.

4. *May*, 2011 OK 53, ¶ 12, 261 P.3d at 1141; 60 Okla. Stat. § 175.24(A).

5. It is conceivable that the trust instrument may prohibit or otherwise restrict the trustee's authority to retain counsel and pay legal expenses. Such a provision may render the trust incapable of proper administration. In such event, it may be necessary to either reform the trust or terminate it.

6. *Moore v. Cavett*, 1961 OK 288, ¶ 28, 368 P.2d 224, 231. See also *Buck v. Cavett*, 1960 OK 150, ¶ 15, 353 P.2d 475, 478; *Crews v. Willis*, 1945 OK 174, ¶ 25, 159 P.2d 251, 258 (both following the rule that a beneficiary's action to protect and preserve his own interest, to recover damages against a trustee based on an alleged breach of the trust agreement, does not give rise to attorney fees). The rule in *Buck v. Cavett* and *Crews v. Willis* appears to have been replaced by the equitable authority granted by 60 Okla. Stat. § 175.57(D), which would allow the shifting of fees if a beneficiary successfully sues a trustee for breach of trust. But the rule of *Moore v. Cavett*, allowing a trustee to pay a beneficiary's attorney fees if expended for the protection and preservation of the trust estate, appears unaffected and remains in place as a background equitable rule in determining the trustee's authority to pay attorney fees.

7. *May*, 2011 OK 52, ¶ 6, 261 P.3d at 1140.

8. *Id.*

9. *Id.*, 2011 OK 52, ¶ 7, 261 P.3d at 1140.

10. *Id.*, 2011 OK 52, ¶ 8, 261 P.3d at 1140.

11. *Id.*, 2011 OK 52, ¶ 4-5, 261 P.3d at 1139-40.

12. Appellant's Brief in Chief, *May v. Oklahoma Bank*, No. 107707, at p. 5. Speaking for the Court, Vice Chief Justice Colbert stated the issue more succinctly: "[S]hould the Trust be financially responsible for [the trustee's] negligence?" *May*, 2011 OK 52, ¶ 13, 261 P.3d at 1141.

13. A.M. Swarthout, Annotation, *Allowance of Attorneys' Fees in, or Other Costs of, Litigation by Beneficiary Respecting Trust*, 9 A.L.R.2d 1132, 1192 (1950).

14. See Cleary & McCurnin *supra*, note 1, at 332-33.

15. *In re Sellers' Estate*, 67 A.2d 860, 874 (Del. Ch. 1949). The *Sellers' Estate* court set the issue of recovery of attorney fees for further hearing. *Id.*

16. *American Nat. Bank of Beaumont v. Biggs*, 274 S.W.2d 209, 221 (Tex. Civ. App.—Beaumont 1954, writ refused n.r.e.).

17. *Id.*

18. *Id.*

19. *Id.* at 222.

20. *May*, 2011 OK 52, ¶ 6, 261 P.3d at 1140.

21. *Biggs*, 274 S.W.2d at 222.

22. 60 Okla. Stat. § 175.57(D). Section 175.57(D) applies in any trust action — not just actions for breach of trust. *Corr v. Smith*, 2008 OK 12, ¶ 23, 178 P.3d 859, 864-65, *abrogated on other grounds by Russell v. Chase Investment Servs. Corp.*, 2009 OK 22, ¶ 24, 212 P.3d 1178, 1186.

23. See, e.g., *Brown v. Batt*, 1981 OK CIV APP 39, ¶ 21, 631 P.2d 1346, 1349 ("[W]e do not mean to imply the court, within its equitable powers, does not have the power to award Trustee his fees and expenses in a case where he is the prevailing party."). The court's decision in *Brown v. Batt* holds another important rule for the cautious trustee. If a fee application is necessary, it should be presented on a timely basis. The *Brown v. Batt* court found that the trustee's attorney waited too long when he made a verbal application for payment of attorney fees four months after the trial court had reached its decision.

24. *Robinson v. Kirbie*, 1990 OK CIV APP 45, ¶ 10, 793 P.2d 315, 319.

25. See 60 Okla. Stat. § 175.57(G) ("A beneficiary may not hold a trustee liable for a breach of trust if the beneficiary, while having capacity, consented to the conduct constituting the breach, released the trustee from liability for the breach, or ratified the transaction constituting the breach.").

26. See *Crews v. Willis*, 1945 OK 174, ¶ 10, 159 P.2d 251, 255 (holding that consent of the majority of beneficiaries does not authorize a trustee to do something not authorized by the trust instrument or law); 60 Okla. Stat. § 175.57(G) (providing, with certain exceptions, that a beneficiary cannot proceed against the trustee regarding an action if the beneficiary consented to the action).

27. 60 Okla. Stat. § 175.24(A), *quoted in May*, 2011 OK 52, ¶ 12, 261 P.3d at 1141.

28. See 60 Okla. Stat. § 175.57(F) for Oklahoma's statutory law on exculpatory provisions.

ABOUT THE AUTHOR



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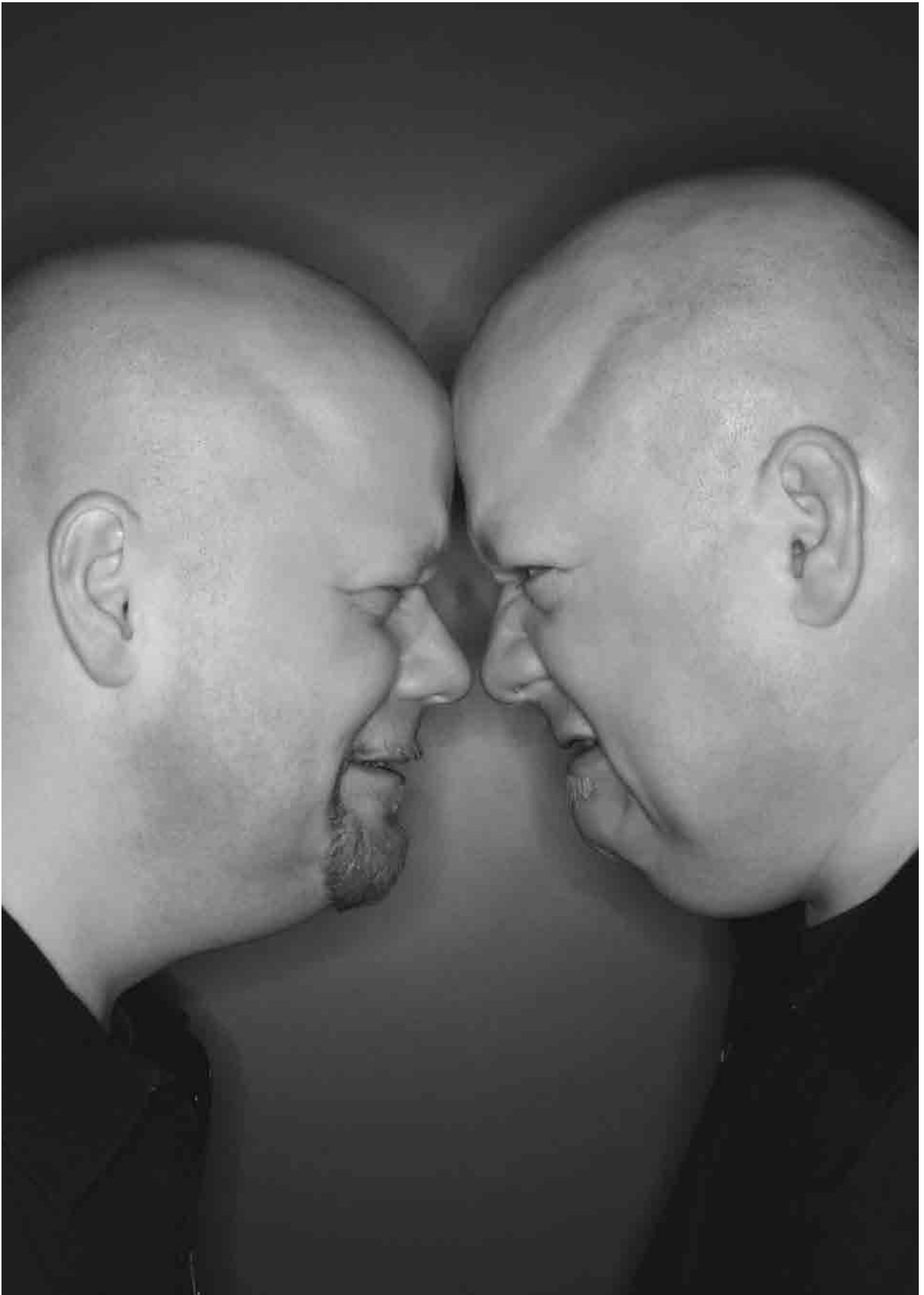
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Estate Planning

and PROBATE

Avoiding Family Feuds

By David Butler and Mara Kee Funk

One of the constants of probate practice is family disputes. One study suggests that actual will contests occur in one out of every 100 probated wills.¹ But every practitioner in estate planning knows that for every formal contest there are a dozen disappointments, disputes and non-judicial settlements over who gets dad's stuff.

The local child who tended mom's wants and needs in the last few years of her life ends up being the sole beneficiary to the exclusion of her far-flung siblings. The child who stayed on the farm and helped dad gets all of the farmland while the sisters who married and moved to the city only get the family picture albums.

Then there is the unpopular in-law spouse who, in mom's declining last year, spirits her off to California where mom stealthily creates an intervivos trust for all her property, makes the outlaw in-law the trustee, and her spouse (the brother we never liked much anyway) the sole beneficiary.

Anyone who has been in probate practice for any period of time has seen these situations and dozens more. As humans, we can be greedy, misinterpret the actions or intentions of our loved ones, have our feelings hurt, hold unreasonable grudges for ridiculously long periods, be insensitive to the feelings of others or sometimes simply be dishonest or mean. We will find innumerable ways to do all of the above and more.

The goal for the estate planning attorney is to minimize or eliminate opportunities for estate distribution planning misunderstandings. To do so requires understanding both the art and the

science of probate practice. Understanding the *science* (law and the facts) means the practitioner must be aware of and understand the legal consequences of intestacy and forced heir statutes; estate tax burdens, liabilities of estates and heirs for the debts of the decedent; legal requirements of competency and capacity and the nature of and need for independent counsel; the limits on restraints on alienation and the use and enforceability of *in terrorem* clauses and more. The lawyer has to know how to competently and correctly draft documents which comply with the law and fulfill the estate distribution desires of the client.

But lawyers are not called counselors without reason. The counselor must also actively practice the *art* of probate and estate planning. A good attorney must be cognizant of and counsel a client on the importance of communication amongst the family; the problems engendered by excessive secrecy and failure to share information; the importance of acknowledging sentiment and feelings in planning for disposition of an estate; and the necessity for being pragmatic about potential costs of contests and problems of litigation. The attorney must always ensure that the client has a full understanding of the possible consequences both good and bad of any proposed course of action. It is not the attorney's role to talk a client out of or into a particular course of action,

except where it is required in order to comply with the law. But it is absolutely a part of the counselor's role to ensure that the client understands the possible consequences of a particular course of action, including the non-legal, pragmatic, real-life outcomes.

We are not suggesting that the attorney try to "impose common sense" on a client. After all, the client has all of the history and knowledge of the family dynamics, and the attorney has only what he or she has been told. We are simply saying that when an attorney recognizes an unusual disposition or hears about internal family tensions, it is a situation which demands heightened sensitivity to and exploration of the issues to ensure that the client's true wishes are both clearly expressed and ultimately carried out.

In dealing with the existence or the possibility of family disputes in probate, the initial goal is preparing documents designed to, if possible, avoid the feud in the first place; and if that is unavoidable, to survive any legal challenges. In order to avoid feuds escalating into lawsuits, it is important to understand the legal bases for challenges to estate disposition plans, and strive to cover those bases in advance.

Whether the challenge is to a will, a trust, or an accomplished conveyance such as a gift or deed, the challenges generally fall into one or some combination of four categories:

- 1) Competence or capacity of the donor
- 2) Access to independent counsel by the donor
- 3) Undue influence over the donor
- 4) Defects in form of the instrument or action

CAPACITY

For any transfer of property or rights therein, or any appointment of an agent, such as a trustee or an attorney-in-fact, the donor or principal must possess legal capacity to accomplish the particular act. Legal capacity, like the concept of "homestead," is a situational concept. There is the homestead exemption from creditors, the homestead exemption from ad valorem taxation, the probate homestead and the general concept of homestead as a personal residence. Similarly, capacity is measured differently in the context of contracts, deeds, guardianships, conservatorships and the execution of wills.

In guardianships for example, the court is directed by statute² to make specific determinations of the ward's particular capacity to appoint an agent, enter contracts or make gifts or conveyances. Such a ward could have judicially determined legal capacity to make a gift but not to enter a contract. In conservatorships, the ward is statutorily deprived of the power to enter contracts creating obligations against his estate, "except for necessities."³

A testator must have "testamentary capacity" at the time of executing a will. The Oklahoma Supreme Court has defined testamentary capacity:

"A person has testamentary capacity when his mind and memory are such that he knows, in a general way the character and extent of his property, understands his relationship to the objects of his bounty and to those who ought to be in his mind on the occasion of making a will, and comprehends the nature and effect of the testamentary act."⁴

A testator could be "competent" in the lay sense of that term, but appear to be legally incapacitated from executing a will by reason of having been adjudicated as a ward in a guardianship. However, adjudication as an incompetent and having a guardian appointed does not necessarily deprive one of testamentary capacity.⁵ The degree of competency to handle business affairs is different from the degree of competency required to have testamentary capacity.⁶

Oklahoma has a statutory procedure to allow a ward under a guardianship or conservatorship to execute a will. Title 84 O. S. § 41 provides that the will of a ward must be executed and witnessed in the presence of the district court judge, who attests to the execution of the will. But the statute makes clear the judge has neither the duty nor the power to approve or disapprove of the contents of the will, and further that following the statutory procedure does not make an otherwise invalid will valid. Failure to follow the statutory procedure is fatal to probate of the will as a matter of law,⁷ but following the procedure does not guarantee admission; testamentary capacity must still be proved.⁸

Proof that a will was executed and attested in accordance with statute creates a presumption of testamentary capacity.⁹ Once the proponent

makes that *prima facie* case, the burden shifts to the contestant to prove incapacity.¹⁰

The requirements of 84 O. S. §§ 46 and 55¹¹ for two witnesses to every will (except holographic wills) is to ensure that witnesses will be available at the time the will is offered for probate to testify to the testator's capacity on the date of the will's execution and to establish the due execution and attestation.

Title 84 O. S. § 55 provides for self-proving wills, obviating the requirement to produce the witnesses to establish the *prima facie* case of due execution and attestation. Where the will is witnessed in the format provided by statute — with two attesting witnesses and one notary public — and where the testator makes the requisite representations when the will is executed, the self-proven will is admissible without witness testimony at the time of probate, and the presumption of capacity is a given.

However, 84 O.S. § 55, 7 takes away the presumption where there is a contest to the probate. Then the proponent must produce the witnesses and other evidentiary proof of capacity and due execution, even for a self-proven will.¹²

Some attorneys eschew the statutory self-proving provisions in favor of witnessing the wills themselves, in hopes that the family will be too embarrassed to ask the attorney to be a witness without allowing him the probate fee. This is a poor practice. It is sometimes difficult to find an attesting witness for an older will; and of course, both attesting witnesses are subject to predeceasing the testator. In addition, it is an extra and essentially unnecessary step in the probate which tends to increase costs. It simply means more time, work, and trouble for somebody else. Since we have a handy statutory presumption, use the self-proving provision in the statute. Serve your client, not yourself.

An attorney would rarely be involved with the drafting of a holographic will and would be a complete idiot to counsel its use in the likelihood of a family dispute. But you may miss the chance for advanced planning when the survivor walks into the office with the holographic will already written on the back of an envelope. Assuming it is dated — completely in the testator's handwriting — and signed, the attorney's thoughts immediately must turn to: 1) proving the handwriting; 2) establishing the "provenance" of the will (Where was it? How has it been kept? What is the chain of custody?); 3) finding independent witnesses who

can testify to the competency of the testator on or about the date of the holographic will's execution, and identify the handwriting. Lay persons familiar with the decedent's handwriting may identify it. The burden of establishing the *prima facie* case for admission of a holographic will to probate is essentially the same as for a formal will, apart from identifying the handwriting.¹³ Once the *prima facie* burden is met, the burden shifts to the contestant to produce evidence challenging the handwriting or capacity, or establishing undue influence.

The attorney drafting a will must always be cognizant of the competence and capacity issues from two standpoints. First, the attorney must be satisfied that the testatrix sitting before him in fact possesses testamentary capacity as defined by the Oklahoma Supreme Court. Most of the time if the client has testamentary capacity, it is apparent.

But the second concern is not only whether the client is presently competent; but also, in the event of a later challenge to the capacity of the client, how testamentary capacity on the date of will execution would be established. Where the challenged document is a will, the client is no longer available to testify, and capacity must be established by other witnesses familiar with the client contemporaneous with the period of the will's execution.

If the challenge is to a trust, an appointment of an attorney-in-fact or the execution and delivery of a deed, the client could still be living and well able to testify and ratify the action in open court, where competence and capacity could be judged.

But as we all tend to misplace our marbles gradually over time, the prudent attorney will plan ahead for the evidence needed later to establish capacity now.

One way to preserve evidence is to record a video of the execution of the will, trust or deed and to include an interview of the client in the recording sufficient to establish the client's competence, awareness and self-assurance. The interview might include questions regarding the date and day, questions about current events and questions about family members sufficient to show that the testatrix was well informed, well oriented in time and place and cognizant of the natural objects and beneficiaries of her bounty. As a part of the "art" of probate practice, it is best to keep these "dog-and-pony shows" as informal and conversa-

tional as possible. Too much formality and too many formal questions make the whole episode seem staged and scripted. It should not appear that the testatrix were reading the answers from a cue card, or had memorized the proper responses in advance. It is best to *ad lib* a little and engage the client in a conversation about some topics he or she finds important or interesting. Farmers may talk about weather, crops and cattle prices. Others may discuss business, hobbies, families or complain about the weather and politicians.

If the pressure of being recorded might cause the client to vapor lock, an alternative is to secure a physician's opinion, in writing, of the client's competence at the applicable time. The writing itself is hearsay,¹⁴ but does commit the expert physician to an opinion and provides the basis of the opinion by virtue of the examination. The mere existence of such a letter might be sufficient to dissuade a potential contestant from pursuing a legal challenge based on capacity alone.

It should be expected that the attorney, as well as any witnesses in the room, would be key witnesses to the client's capacity at the time of document's execution.¹⁵

Most of us routinely make a small production of the formalities involved in a will's execution, such as introducing the witnesses to the client, introducing the notary public for a self-proving will, asking the client if he or she desires the witnesses to act as witnesses, and asking the notary public to notarize the document, inquiring whether the client is under the influence of any medications which might affect the client's cognitive abilities, and whether any other person has influenced the client in any way to make the will. Unfortunately, this ceremony is so familiar to the law office denizens that any particular such undertaking will probably make little memorable impression on a legal assistant who might be called as a witness years later.

If the attorney has some expectation of a possible future challenge to a will, consideration should be given to confidentiality and privilege extension to the law firm's staff, utilizing

“ It should be expected that the attorney, as well as any witnesses in the room, would be key witnesses to the client's capacity at the time of document's execution. ”

staff persons as witnesses, inquiring of the testator about future anticipated problems or challenges to the will from family members and (with the client's permission) inquiring, before the witnesses, of the client's rationale and reasoning in making the particular distributions under the will. It might be well to spend several minutes going over this so that the witnesses gain a clear impression of the client's state of mind, competence, capacity, reasonableness and rationality (assuming there is some) of the particular disposition made, as well as an understanding of the

client's fears regarding a potential later challenge to his will and desire. It is also a prudent practice, if possible, to obtain a relatively younger witness, preferably with ties to the local community.

Illustrative of the value of spending time and going into details during the will execution comes from *In the Matter of the Estate of Holcomb*:¹⁶

Each of the parties who participated in the execution of the 1995 will testified. One of the witnesses testified that Mrs. Holcomb was alert, conversed with her attorney in complete sentences, and seemed to comprehend what was taking place. She watched people as they moved about in the room and replied to whomever spoke to her. Mrs. Holcomb's attorney testified that she and she alone provided him with the dispositive provisions of the 1995 will. She was able to offer him a reasonable explanation for devising her entire estate to Elaine. He testified that Mrs. Holcomb knew who her children were and understood in a general way what property she owned. He had no doubt that she possessed the requisite competence to execute the will. The neighbor who frequently visited Mrs. Holcomb also participated in the execution of the 1995 will as the decedent's proxy signer. She testified that she stayed after the will's execution and visited with Mrs. Holcomb for about thirty minutes. During their conversation Mrs. Holcomb told her she had left everything to Elaine because she was worried about Elaine's financial security.

Where there are language issues, be cautious about the requirement of publication of the testator's expression that the document is his last will, and his desire for the witnesses to attest to it. In *Hill v. Davis*¹⁷ admission to probate was denied because two of the three witnesses did not understand the Creek language, which was spoken by the testator in requesting attestation. Although one of the three witnesses understood Creek and repeated the request in English to the others. As the testator did not understand English, and the witnesses did not understand Creek, there was insufficient publication.¹⁸

Proving capacity ordinarily relies on showing the decedent's condition around the time of the will by indirect means. Typically one does not have a handy expert evaluation made by a physician or psychologist on the date of the will.

In determining whether a testator had capacity to make a will the court may consider evidence of the testator's mental status, appearance, conduct, acts, habits and conversation, both before and after execution of the will, as would tend to show his mental condition at time of will's execution.¹⁹

An unnatural disposition may be considered in determining testator's testamentary capacity.²⁰

INDEPENDENT COUNSEL

An issue in almost every will contest is the availability of independent counsel. Dad had used the same lawyer in Wewoka for 37 years, but Junior takes him to a tall-building estate planning specialist in Oklahoma City to draw up the new will or irrevocable trust. While most often a legitimate and prudent step, it can also raise many questions in the mind of a prospective contestant or a suspicious sibling about whether dad was deprived of the benefit of counsel from his lifelong friend and legal advisor, and taken to some strange attorney perhaps affiliated with Junior in some way.

A variation of this scenario is when Junior accompanies dad to see dad's longstanding attorney. Many county-seat (and even tall-building) attorneys have represented the family and many members of the family for a generation or two. Yet for the suspicious sibling in San José, and maybe for the court, the fact that Junior sat in on dad's estate planning sessions with the attorney may compromise the independence of the attorney's advice to dad, because dad was deprived of a private, confidential and privileged conference with counsel.

It is usually advisable for the estate planning specialist to coordinate the estate plan with the longtime "family attorney" where applicable, especially if other family members appear to be "involved" with the estate planning. Not only does this help to remove the suspicion that some secret plan was concocted between Junior and his chosen lawyer, it also helps ensure that the estate planning specialist is not being made an unwitting pawn in a devious scheme by a child known by the family attorney as a sheep with a grayish shade.

Experienced and reputable estate planning attorneys are already alert to any such attempted manipulation. Good family attorneys are professional enough to realize the value of their input and opinion in such situations, assisting in prudent and legitimate estate planning, and sharing their knowledge of the family history and dynamics. Putting the client's interest first always works out best for all parties.

The requirement and test of independent counsel has been frequently cited and relied upon by our Supreme Court. Independent advice has been held to mean:

[t]hat the donor had the preliminary benefit of conferring fully and privately upon the subject of his intended gift with a person who was not only competent to inform him correctly as to its legal effect, but who was, furthermore, so disassociated from the interests of the donee as to be in a position to advise with the donor impartially and confidentially as to the consequences to himself of his proposed benefaction.²¹

Where the testator is alleged to have been influenced by one in a fiduciary relationship, and there is a presumption of undue influence, there is the additional requirement that the independent advisor must be "sufficiently disassociated from the interest of the [confidential relationship] party" and can provide impartial and confidential advice.²²

UNDUE INFLUENCE

Another common ground for challenge often associated with lack of capacity and absence of independent counsel allegations, is the undue influence allegation made against a person who benefits from the testator's or donor's largesse.

Often the allegations of undue influence are made against individuals who are normally considered to be in a position of trust and influence and are often close family members,

spouses or children. The issue frequently arises in the circumstance where the local child cared for the parent, while the far-flung siblings only visited at Thanksgiving. When the parent leaves everything to the local sibling, the prodigal children return to contest the will, incensed. Or the parent's second spouse, the "step-monster," convinces the weak-willed parent to cut the children out of the will.

Less often, allegations are made against persons acting in more formal positions of trust and confidence, such as attorneys, guardians, bankers, trustees or the like who are not related by blood to the testator or donor.

Which party bears the burden of proof and the benefit of presumptions depends on whether the alleged influencer is in a fiduciary capacity or merely a family member or friend.

Ordinarily, the contestant alleging undue influence also bears the burden of producing evidence, but upon a finding by the trial court a) that a confidential relationship existed between the will maker and another, stronger party and b) that the stronger party actively assisted in the preparation or procurement of the will, a *rebuttable presumption of undue influence at once arises that shifts to the will proponent the burden of producing evidence.* [Emphasis original.]

In determining whether a contestant's evidence establishes the basic facts that give rise to the presumption of undue influence, consideration should be given to the following non-exclusive list of factors: 1) whether the alleged influencer was or was not a natural object of the maker's bounty; 2) whether the alleged influencer was a trusted or confidential advisor or agent of the will's maker; 3) whether the alleged influencer was present and/or active in the procurement or preparation of the testamentary instrument; 4) whether the will's maker was of advanced age or impaired faculties; and 5) whether independent and disinterested advice regarding the testamentary disposition was given to its maker.²³

The "participation in the procurement or preparation of the will" refers to influencing the substance of the testamentary act, and not to mere participation in the formalities of the will preparation or execution at the testator's direction.

Overcoming the presumption of undue influence by a fiduciary is most easily rebutted by showing a termination of the confidential relationship *and* independent advice.²⁴ While that is not the only means of rebutting the presumption, it is the most straightforward. But the presumption may be rebutted by any sufficient evidence.²⁵

Undue influence is related to the concepts of independent counsel and capacity. A strong-willed, clear-headed, assertive individual is much less likely to be unduly influenced in the distribution of the estate. Likewise, the concept of independent counsel is seen as a bulwark against the sort of undue influence which relies on fear or intimidation. Presumably, the client, given the opportunity to talk to his or her own attorney behind closed doors without anyone else present could speak honestly about threats, intimidation or other overt forms of attempted undue influence.

What is frequently attempted to be asserted is the more subtle sort of undue influence resulting from simply paying undue attention and catering to the whims and desires of the testator or donor. The ministrations of one child to a parent in declining health may be seen by that child as an honorable burden, but by that child's siblings as opportunistic buttering up.

It is important to recognize that sometimes the caring local child is acting absolutely honorably and is motivated only by love and concern for the parent, and there really are other siblings who are less deserving of the parent's gratitude.

On the other hand, there are occasions when the caregiver takes extraordinary steps to cut off communication between the parent and the other siblings, exhibiting the sort of behavior sometimes seen in divorce cases in parental alienation cases. It is simply another form of parental alienation, isolating the parent from the children rather than the children from the parent.²⁶

Cases of undue influence involving family members, especially children, are by far the more difficult to prove, as they are most often accompanied by a history of attentive caregiving by the accused influencer. In a courtroom, it is hard to separate concern for a parent's welfare from a calculated scheme to usurp the confidence and affection of the par-

ent, and alienate the parent from the other siblings.

There are innumerable fact permutations, but the general legal requirements to show undue influence are:

Undue influence, such as will invalidate a provision in a will, must be something which destroys the free agency of the testator and which, in effect, substitutes the will of another for that of the testator. It is not sufficient that the testator was influenced by the beneficiaries in the ordinary affairs of life or that he was surrounded by them and in confidential relations with them at the time of the execution of the will.

In determining the question of undue influence, the court should take into consideration the association of the parties, the opportunity for undue influence afforded the person who is especially favored by the terms of the will, and the effect of the will upon those persons whom we would naturally expect to be the recipients of his bounty.²⁷

For the attorney involved with and counseling to the parent during the period of care-giving, a part of the art of probate practice is encouraging the parent and the care-giving child to maintain free and open lines of communication with all of the other children. Often, the distant children do not begrudge favored treatment of their sibling who has sacrificed much time and perhaps money in the care of their mutual parent. Hard feelings are more often engendered by perceived isolation of the parent and the suspicion of ulterior motives on the part of the child, than by mere favored and deserved treatment of the child by the parent.

If your client, the parent, comes to you and desires to make an estate disposition which is very favorable to the local care-giving child, discuss the circumstances with your client and encourage him or her to evaluate the advisability of informing the other children of such desire. The advantage of doing that while the client is alive, competent and capable of

“...part of the art of probate practice is encouraging the parent and the care-giving child to maintain free and open lines of communication with all of the other children.”

explaining such desire to the other children can go a long way toward eliminating the suspicion by the distant siblings that the local child is involved in a nefarious scheme to pull the wool over the parent's eyes.

DEFECTS IN FORM OF INSTRUMENT OR ACTION

The easiest of the contests to estate disposition in terms of proof are challenges based strictly on the form of the instrument or the action. A failure of some essential element required to legally complete a deed, will or trust is fatal to its operation. For example, the execution of a deed without delivery is insufficient to complete the transfer of title. There must be some form of delivery, actual or constructive, to convey title.²⁸

Likewise, a defect in some statutory requisite for the validity of a will can be fatal to its admission to probate. A non-holographic will which is not witnessed by at least two persons is inadmissible in probate.²⁹ A will of a restricted Indian which fails to comply with federal statutes governing its execution, requiring both acknowledgement and approval by a state district judge, is inadmissible to probate.³⁰

The creation of a trust instrument, without actually transferring property to, “funding” the trust by deed or by transferring financial account ownership, defeats the trust.³¹

BURDEN OF PROOF

As every attorney who has tried a case knows, which party bears the burden of proof may determine who wins on a particular set of facts.

In the probate of a will, the proponent of a will bears the initial burden of making a *prima facie* case for the admission of the will to probate. The elements of a *prima facie* case for admission of a will to probate are 1) whether the will has been executed and attested in the manner and form required by the statutes; 2) whether the testator was competent to make a will at the time he made it; 3) and whether the testator was free from the disabilities which operate under our statutes to defeat the will.³²

Once the proponent has met the burden of the *prima facie* case for admissibility, the burden of going forward with the evidence and the burden of proof shift to the contestant. The contestant must overcome the presumption in favor of the validity of the will.³³ The contestant must prove by a preponderance of the evidence that the testator lacked testamentary capacity or that he was under duress, menace, fraud or undue influence at the time the will was executed, or that the will was not attested to as required by law.³⁴ Of course, as noted above, if the contestant establishes a confidential relationship and active procurement of the will by the fiduciary, the presumption of undue influence thus arising immediately shifts the burden of proof back to the proponent.³⁵

DRAFTING CONSIDERATIONS

Often, your client will tell you that he or she anticipates or fears some issues with the distribution from the trust, the probate of the will or backlash from a contemplated gift. What do you do?

You should probably do numerous things. Start with a careful interrogation of your client to determine the basis for his or her fears of challenges or family troubles; and have a frank discussion with the client on ways to minimize hard feelings and increase communication and understanding to head off such problems before they arise: the “art” of estate planning.

You must carefully implement the “science” of estate planning in drafting the instruments to accomplish the client’s desires.

In that drafting, the attorney must incorporate and reconcile three essential goals: first, ensure that the disposition will not run afoul of either statutory or common law prohibition. Also ensure that the document will be legally enforceable and, if a testamentary document, be admissible to probate. Second, ensure that the document as drafted will accurately carry out the client’s desires; third, the document should clearly state for the benefit of all interested parties the client’s desire, and to the extent allowed by the client, the explanation or rationale for the disposition decisions made by the client.

This last is often most difficult. Parents are understandably reluctant to openly state for the world that they are disappointed in the acts or behavior or attitude of a particular child. In such cases, it is nevertheless advisable to ac-

knowledge that the parent has given careful consideration to the property disposition and to any lesser share for a particular individual. A statement such as the following, contained in a will, could be beneficial in overcoming challenges based on undue influence, lack of capacity, or some variant of the “pretermitted child” argument:

I love each and all of my children very much, and I have given careful consideration to the division and distribution of my property as set forth herein. I believe it to be fair and equitable in accordance with my intentions, even though some, including some of my children, may see it otherwise. Please be assured that the provisions of this Will are the result of my careful consideration. I have intentionally made the division equitable, in my view, and not necessarily equal.

To help ensure the second goal stated above, that of ensuring the document will carry out the client’s desires, attorneys often include disincentives to challenge a will or other dispositive document, such as *in terrorem* clauses, also known as forfeiture or no contest clauses. *In terrorem* clauses are “executory limitations” utilized to effect testamentary intention, and are typically favored by the courts so long as they do not contravene a rule of law.³⁶ Known to “protect estates from costly, time consuming and vexatious litigation,” *in terrorem* clauses typically provide for forfeiture of a bequest or devise in the event a legatee or devisee should challenge the specific bequests in the will.³⁷ Oklahoma Courts tend to strictly construe forfeiture clauses and interpret the provisions reasonably in favor of the beneficiary, leaning against forfeiture, if possible.³⁸

Oklahoma courts have defined the term, “contest” as “any legal proceeding designed to result in the thwarting of the testator’s wishes as expressed in the will.”³⁹ Courts generally focus on the totality of the circumstances when determining whether an actual contest has taken place, focusing primarily on the language within the clause to ascertain whether the contest proceedings fit within the purview of the forfeiture clause.⁴⁰ Courts are split as to whether forfeiture clauses will be enforced if only good cause for a challenge is shown; however, the overwhelming view is that forfeiture clauses will *not* be enforced if the contestant has probable cause to challenge the will based

upon subsequent revocation by a later will or codicil, or forgery.⁴¹

WHEN PROBLEMS ARISE

No matter how careful the attorney, if you are engaged in estate planning, probate or trust practice, sooner or later you will be in the middle of a family feud. Some are relatively civil, some result in members of the family not speaking to one another ever again. Fortunately, weapons are rarely involved.

Whether you represent the contestant or the proponent, it is important to observe some ground rules in the art of probate practice with your client from the beginning. Fights over family estates are like divorces but with a longer history. In a mediation years ago, one of the authors represented one of a pair of 60-something siblings in a dispute over dad's estate. Mom, in her 90's, was still alive. In response to the latest offer via the mediator, the client turned and said "This is just like when we were kids. Momma always took his side."

You have to recognize upfront that these sorts of disputes are frequently about much more than money, and you have to acknowledge the roles that sentiment and sibling rivalry, and step-parent resentment, and years of family dysfunction, may play in the minds of the parties.

It is important that both you and your client acknowledge the existence and influence of these factors. Your client must understand and acknowledge the motivations of the opposing parties, as well as his own, and recognize that there is probably some legitimacy to their feelings, if not to their legal position.

You must insist that your client be pragmatic about costs. In a family feud of this sort, the ultimate emotional costs to the family can exceed the amount in issue, and the client should be advised of that in the beginning. Don't spend a lot of money and a lot of family goodwill fighting over the Green Ceramic Frog.

While it is not the attorney's role to be Dr. Phil, you should nevertheless ensure that your client understands that there will be an emotional cost as well as a possible financial one in the prosecution or defense of the claim or contest.

Where possible, encourage the client to not sweat the small stuff. If the dispute revolves around who is going to get personal items, mementos, and other items of sentimental

value, it can be as difficult as fighting over farms and financial accounts and stocks and Lamborghinis, but those are the sorts of disputes which are well suited to mediation or other forms of alternative dispute resolution, pointing toward a family settlement agreement or other non-judicial and agreed resolution. Courts often have only the choice of all or none, whereas the family can agree to split the baby, so all parties can get some share of both sentimental and financial satisfaction.

Family settlement agreements are not only recognized but encouraged by the courts in Oklahoma. That should always be the initial goal of any contest over a trust or probate or gift.⁴²

When achieved, a family settlement agreement almost always saves money, time, and reduces animosity among the parties. They may not kiss one another, but at least they won't go slash tires in the church parking lot.

Particularly in the case of problems arising during administration of an *intervivos* trust, or perhaps as a result of an *intervivos* gift, the best practice is most often early and forthright disclosure, communication, and openness, particularly where the settlor or donor is in a position to clearly state to any protestors his or her desires and rationale. A perception of secrecy only encourages suspicion that something must be wrong. Full disclosure of all the relevant facts may not make a disfavored party happy, but it at least removes the conspiratorial aura that there must be something wrong because it is being covered up.

CONCLUSION

Family contests to probates or trusts or gifts remain the relatively rare exception. The vast majority of estate planning steps are accepted and supported by family and survivors. But the few exceptional fights can be costly in money and continuing enmity, sometimes greatly disproportionate to the financial worth of the assets at issue.

While it is certainly not possible to always predict where or when a fight might occur, in those cases in which the attorney or the client has some inkling of possible future problems, a combination of sound advice to the client and cautious preparation of the documents and of the evidentiary groundwork can ensure the faithful implementation of client's estate

disposition plan and the defeat of any challenges to it.

Take some time to learn your client's concerns, and his or her rationale for treating the donees the way he or she wants. Review the law and make sure your documentation of her desired disposition is free from facial legal deficiencies, and analyze the possible bases for a future challenge to the plan. Then carefully plan the implementation of the client's desires with an eye not only to minimal procedural compliance today, but also to preserving the ability to produce the required evidence to repel any likely challenge which might come years down the road.

Embrace your role as counselor. Explore alternative dispute resolution. In families, avoiding the feud is virtually always the most laudable goal.

1. Taren R. Lord-Halvorson, *Why Wait Until We Die? Living Probate in a New Light*, 37 OKLA. CITY U. L. REV. 543, 552 (2012) (citing Jeffrey A. Schoenblum, *Will Contests — An Empirical Study*, 22 Real Prop. Prob. & Tr. J. 607, 613-14 (1987)).

2. 30 O.S. § 3-113, C.

3. 30 O.S. § 3-219, although a ward in a conservatorship may make a gift, including a gift to the conservator, if otherwise competent and free of undue influence. See *Conservatorship of Spindle*, 1986 OK 65, 733 P.2d 388.

4. *In re Martin's Estate*, 1948 OK 9, ¶ 6, 188 P.2d 862, 864.

5. *Groseclose v. Rice*, 1961 OK 251, 366 P.2d 465.

6. *In re Foley's Estate*, 1974 OK CIV APP 38, 531 P.2d 1075.

7. *Matter of Estate of Goodwin*, 1993 OK CIV APP 86, 854 P.2d 390.

8. *Matter of Estate of Long*, 1993 OK CIV APP 186, 871 P.2d 437.

9. *In re Lacy's Estate*, 1967 OK 123, 431 P.2d 366.

10. *Brown v. Brown*, 1955 OK 240, 287 P.2d 913.

11. 84 O.S. § 46 governs execution of nuncupative wills, which must be stated in the presence of two witnesses; section 55 governs written wills other than holographic wills.

12. 84 O.S. § 55, 7 and *Matter of Estate of Allen*, 1998 OK CIV APP 64, 964 P.2d 922.

13. See *Matter of Wilder's Estate*, 1976 OK 113, 554 P.2d 788, 789-90.

14. 12 O.S. § 2801.

15. See e.g. *Matter of the Estate of Holcomb*, 2002 OK 90, 63 P.3d 9.

16. *Holcomb*, 2002 OK 90 at ¶ 15, 63 P.3d 9.

17. *Hill v. Davis*, 1917 OK 340, 167 P. 465; see also *McCarty v. Weatherly*, 1922 OK 12, 204 P. 632 (involving an interpreter and the Chickasaw language).

18. For a proper publication involving the Seminole language, see *Estate of Samochee*, 1975 OK 143, 542 P.2d 498.

19. *Samochee*, *supra*, (citing *In re McCurtain's Estate*, 1962 OK 269, 377 P.2d 210); see also *Holcomb*, 2002 OK 90, 63 P.3d 9.

20. *Samochee*, *supra*, (citing *In re Estate of Lacy*, 1967 OK 123, 431 P.2d 366; *In re Smith's Estate*, 1946 OK 165, 172 P.2d 328).

21. *Anderson v. Davis*, 1952 OK 193, ¶ 16, 256 P.2d 1099, 1103.

22. *Holcomb*, *supra*, 2002 OK 90, ¶ 35, 63 P.3d 9.

23. *Holcomb*, *supra*, at 2002 OK 90, ¶¶ 18-19, 63 P.3d at 14-15.

24. *Matter of Estate of Maheras*, 1995 OK 40, 897 P.2d 268; *White v. Palmer*, 1971 OK 149, 498 P.2d at 1406; *Holcomb*, *supra*, 2002 OK 90, ¶ 32, 63 P.3d at 18-19.

25. *Holcomb*, *supra*, at 2002 OK 90, ¶ 32, 63 P.3d at 18-19.

26. See, e.g., *Id.*, *supra*, at 2002 OK 90, ¶¶ 24-31, 63 P.3d at 17-18.

27. *White v. Palmer*, 1971 OK 149, ¶¶ 26, 27, 498 P.2d 1401, 1406.

28. *Eldridge v. Vance*, 1929 OK 139, 280 P.570 (holding a warranty "deed" becomes operative as conveyance of title only from its delivery).

29. 84 O.S. § 55; *Price v. Price*, 1971 OK 6, 49 P.2d 952.

30. *Brown v. Rochester*, 1974 OK CIV APP 49, 527 P.2d 1141.

31. *Cameron v. Cameron*, 1923 OK 979, 220 P. 889.

32. *In re Coffman's Estate*, 1970 OK 171, ¶ 19, 474 P.2d 942, 946.

33. *In re Lillie's Estate*, 1945 OK 136, ¶ 15, 159 P.2d 542, 601.

34. *In re Elrod's Estate*, 1931 OK 603, ¶ 10, 6 P.2d 676, 677.

35. *Holcomb*, *supra*, at 2002 OK 90, ¶ 18, 63 P.3d at 14-15.

36. *Matter of Estate of Westfahl*, 1983 OK 119, ¶ 4, 674 P.2d 21, 23.

37. *Id.*

38. *Id.* at 23; see e.g., *Barr v. Dawson*, 2007 OK CIV APP 38, 158 P.3d 1073, 1075; *Matter of Estate of Eversole*, 1989 OK CIV APP 43, 787 P.2d 470, 473.

39. *Westfahl*, 1983 OK 119, ¶ 5, 674 P.2d at 24.

40. *Id.*

41. *Id.* ¶ 6, 674 P.2d at 25.

42. *Jernigan v. Jernigan*, 2006 OK 22, 138 P.3d 539, 547; *Dowell v. Dowell*, 1957 OK 212, 316 P.2d 850, 852 (holding public policy favors family settlement contracts of conflicting claims of decedent's estate).

ABOUT THE AUTHORS



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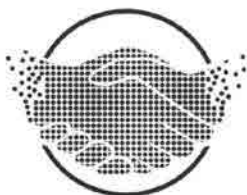


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NOTICE OF JUDICIAL VACANCY

The Judicial Nominating Commission has reopened the application process and seeks applicants to fill the following judicial office:

**Associate District Judge
Eighth Judicial District
Noble County, Oklahoma**

This vacancy is created by the retirement of the Honorable Dan Allen effective December 31, 2012.

To be appointed an Associate District Judge, an individual must be a registered voter of the applicable judicial district at the time (s)he takes the oath of office and assumes the duties of office. Additionally, prior to appointment, the appointee must have had a minimum of two years experience as a licensed practicing attorney, or as a judge of a court of record, or combination thereof, within the State of Oklahoma.

Application forms can be obtained on line at www.oscn.net by following the link to the Oklahoma Judicial Nominating Commission or by contacting Tammy Reaves, Administrative Office of the Courts, 2100 North Lincoln, Suite 3, Oklahoma City, OK 73105, (405) 556-9300, and should be submitted to the Chairman of the Commission at the same address **no later than 5:00 p.m., Friday, May 31, 2013. If applications are mailed, they must be postmarked by midnight, May 31, 2013.**

Heather Burrage, Chairman
Oklahoma Judicial Nominating Commission



Estate Planning

and PROBATE

Estate Planning for Indian Land in Oklahoma: A Practitioner's Guide

By Casey Ross-Petherick

Estate planning for individuals who own an interest in American Indian property requires navigation of a complex set of federal laws and regulations that apply specifically to interests in Indian land.¹ The rules that govern intestate succession, wills requisites and probate procedures for Indian land interests are vastly different than those for non-Indian land interests. This article provides foundational information on the Indian land base in Oklahoma, as well as an overview of the laws and regulations for wills and intestate succession that apply to Indian land interests.

INDIAN TERRITORY, ALLOTMENT AND OKLAHOMA STATEHOOD

Oklahoma is home to 38 federally recognized American Indian tribes. Prior to Oklahoma statehood, the majority of the state was comprised of Indian Reservations. A large portion of what is now the state of Oklahoma was designated as "Indian Territory," and served as a settling place for tribes that were removed from their aboriginal homelands under the federal removal policy that spanned the early to mid 1800s. In advance of Oklahoma statehood, the federal government initiated policy aimed at assimilating American Indians into non-Indian society. The vehicle for accomplishing this goal was the General Allotment Act (also referred to as the Dawes Act).² Through the process of allotment, reservations were divided into several parcels of property. Some parcels were allotted to individual Indians, while others were opened up for non-Indian settlement.

The 38 federally recognized tribes in Oklahoma comprise a very diverse group of tribal governments. Each is unique in its customs, traditions, cultural aspects and linguistic originations. Similarly, each tribe has its own distinct legal history. Although many tribes share common threads throughout times past, it is important for attorneys working in tribal communities to understand that each tribal government has its own history of government-to-government negotiations, its own history of treaties and in many cases, its own list of unique federal statutes that do not apply to other tribes. As a result of this individualist approach employed by the federal government in crafting its American Indian policy, practitioners must understand the general rules of federal Indian law, but must also look for deviations that are tribe-specific.

INDIAN LANDS IN OKLAHOMA: DIFFERENT TYPES OF ALLOTMENTS

Much like the fabric of Oklahoma's diverse tribal composition, the Indian land base within the state is unique in several aspects. The Gen-

eral Allotment Act and its amendments treated some tribes differently than others for a variety of policy reasons perceived by lawmakers at the time.

The general rule under the General Allotment Act was to allot individual parcels of property for Indian use, but rather than granting title in fee status, title was granted to the federal government as trustee. The corpus of the trust was the land, including surface interests, mineral interests and natural resource interests. The individual Indian allottee was a beneficiary of the trust. Under this trust or restricted land designation, all property transactions, including sales, leases and agreements for management of natural resources were overseen by the federal government, acting as trustee over the property.

One notable exception to this general rule of allotting land in trust or restricted status extended to the individual allottees of the Five Civilized Tribes (Five Tribes), which includes Cherokee Nation, Choctaw Nation, Chickasaw Nation, Muscogee (Creek) Nation and Seminole Nation. The Five Tribes were exempted from the General Allotment Act. Allotment of their lands was effectuated by an amendment to that act, known as the Curtis Act.³ Individual members of the Five Civilized Tribes were allotted their lands in fee status, where title to the land was vested in the individual Indian, but where the federal government imposed restrictions on alienation. Similar in some aspects to trust land allotments, Five Tribes restricted property allotments were overseen by the federal government, which did retain approval authority for property transactions, but did not engage in management of the property as a trustee.

Another exception to the general rule of trust or restricted allotments extends to individual allottees of the Osage Nation. Federal law specific to Osage Indian land interests severed the mineral interests of the Osage Reservation from the surface rights in the real property, and reserved those mineral interests to the tribe.⁴ The federal government maintained oversight of individual Osage allotments, but engaged in management under a set of rules developed specifically for these unique allotments.

Still today, there are no less than these three general allotment types spanning present in Oklahoma Indian Country. A survey of the legal histories of landholding of each of the 38

federally recognized tribes in the state would, no doubt, reveal additional differences. However, in the interest of formulating a general foundation that can be used by a practitioner navigating these complexities, this article will focus on the laws and regulations that apply to the three types of allotments already identified: 1) trust or restricted property allotments 2) Five Tribes restricted property allotments and 3) Osage allotments.

INDIAN LAND CONSOLIDATION

Several generations have come and gone since original Indian allottees were granted an interest in Indian land in the late 1800s and early 1900s. Until fairly recently, allotments descended through the general rules of intestate succession and probate that were applicable to non-Indian interests in the state where the Indian land interest was situated. That meant, if the Indian land interest was situated in Montana, then Montana state law applied. For Indian land interests in Oklahoma, Oklahoma state law applied. Indian land interests located in Oklahoma were probated through Oklahoma state courts. There was no uniformity in applicable law or forum for Indian land interests from state to state.

Another significant problem appeared with these original allotments, when the interests were distributed according to state law. The interests were becoming increasingly fractionated after being distributed through intestate succession from generation to generation. Congress tried, unsuccessfully, multiple times to pass legislation that would consolidate these Indian land interests.⁵

AIPRA FOR TRUST OR RESTRICTED PROPERTY ALLOTMENTS

The most recent attempt at Congressional intervention to limit further fractionation of Indian land interests was the American Indian Probate Reform Act (AIPRA).⁶ AIPRA, which was passed in 2004, sets forth a uniform probate code for Indian land interests regardless of location. AIPRA also created a federal administrative forum for probating Indian land interest estates. AIPRA applies to Indian trust allotments, but not to Five Tribes restricted property allotments, nor to Osage property allotments.

AIPRA restricts the class of “eligible heirs” who are eligible to inherit an interest in Indian trust or restricted land in Indian status. The statute defines “eligible heir” to include any of the

decedent's children, grandchildren, great grandchildren, full siblings, half siblings by blood and parents who are A) Indian (the word 'Indian' is specifically defined in AIPRA⁷); or B) lineal descendants within two degrees of consanguinity of an Indian or C) owners of a trust or restricted interest in the same parcel of Indian land being inherited from the decedent.⁸ There is no federally mandated blood quantum requirement for eligibility to inherit an interest in Indian trust or restricted land in Indian status, although a tribe may impose a blood quantum requirement for membership or citizenship purposes.

For testamentary dispositions AIPRA sets forth that a testator can devise his interest in trust or restricted Indian land to A) any lineal descendant of the testator; or B) any person who owns a pre-existing undivided trust or restricted interest in the same parcel of land; or C) the Indian tribe with jurisdiction over the interest in land; or D) any Indian.⁹

If land descends to a person who is not an "eligible heir," or is devised to a person not recognized by 25 U.S.C. §2206(b), the transfer still occurs, but the land does not maintain its Indian trust or restricted status and becomes fee land.

Another interesting aspect of AIPRA, which seeks to curtail fractionation of trust and restricted Indian land interests is commonly known as "the 5 percent rule." For purposes of intestate succession, AIPRA differentiates between a decedent's interests in Indian land that amount to less than 5 percent of the entire undivided ownership of the parcel of land.¹⁰ For less than 5 percent interests, AIPRA limits the surviving spouse interest to a life estate for a very limited set of circumstances, but in all other circumstances, the land will descend to the decedent's oldest surviving child, so long as that child is an eligible heir. If there is no such surviving eligible heir child, then to the decedent's oldest eligible heir grandchild. If there is no such surviving eligible heir grandchild, then to the decedent's oldest eligible heir great-grandchild. If there are no surviving eligible heir children, grandchildren or great grandchildren of the decedent, the property descends to the Indian tribe with jurisdiction over the interest.

Another significant provision of AIPRA that is intended to limit fractionation is the presumption of joint tenancy status. AIPRA specifies "if a testator devises his trust or restricted interests in

“ If land descends to a person who is not an ‘eligible heir,’ or is devised to a person not recognized by 25 U.S.C. § 2206(b), the transfer still occurs, but the land does not maintain its Indian trust or restricted status and becomes fee land. ”

the same parcel of land to more than one person, in the absence of clear and express language in the devise stating that the interest is to pass to the devisees as tenants in common, the devise shall be presumed to create a joint tenancy with the right of survivorship.”¹¹

AIPRA REGULATIONS FOR TRUST OR RESTRICTED PROPERTY ALLOTMENTS

AIPRA authorized the secretary of interior to promulgate rules to carry out the provisions of the new federal law. The secretary completed the rules in 2008, and they can be found in Title 25, Part 15 of the Code of Federal Regulations.¹² These regulations set forth the probate procedures for Indian trust or restricted interests that will be probated under AIPRA. Probates are initiated by the Bureau of Indian Affairs, and are completed at the Office of Hearings and Appeals, an administrative forum organized within the Department of Interior.

OKLAHOMA STATE LAW FOR FIVE TRIBES RESTRICTED PROPERTY ALLOTMENTS

Each of the Five Tribes restricted allotments are specifically excepted from AIPRA. The history of laws affecting property interests of the Five Tribes is complicatedly rich. Around the time of the Curtis Act, each of the Five Tribes was communicating separately with the federal government for statutory language specific to the needs of their tribal territories. This individualized approach created a wide array of statutes that were precisely crafted for the limited set of circumstances presented by each individual tribe. Some statutes differentiated within a specific tribe's territory depending on whether the land was a homestead allotment or a surplus

allotment. Other statutes applied to individual allottees who possessed a specific blood quantum of Five Tribes Indian blood, but not to individuals who possessed less Indian blood.¹³

The 1947 Act¹⁴ was the latest sweeping legislative action pertaining to Five Tribes restricted property allotments. This federal statute clarified that the applicable law for wills, intestate succession and probate for Five Tribes restricted property allotments is the law of the State of Oklahoma. The 1947 Act also clarified that the forum for probating or conveying these land interests is the Oklahoma District Courts. The 1947 Act also clarified the requirements for holding Five Tribes restricted property allotments in Indian status. One of the most significant differences between Five Tribes restricted property allotments and trust or restricted property allotments is the requirement for eligibility to own interests in Five Tribes restricted property allotments in Indian status. An individual must possess at least one-half degree of Indian blood of the Five Civilized tribes to be eligible to hold Five Tribes restricted property in Indian status. This is particularly interesting, since none of the Five Tribes require at least a one-half degree of Indian blood for their own membership or citizenship purposes.

Another significant imposition on Five Tribes restricted property allotments that is unique is the special requirement for full-blood will approvals. Pursuant to federal law, if a full-blood member of one of the Five Civilized Tribes writes a will that disinherits his parent, wife, spouse or children, the will is not valid unless acknowledged before and approved by a state court judge.^{15, 16} There is no parallel requirement for such will approvals in any forum for full-blood members of non-Five Civilized tribes. This law is still applied, and will invalidations are issued for noncompliance.

FEDERAL REGULATIONS FOR FIVE TRIBES RESTRICTED PROPERTY ALLOTMENTS

Federal involvement in Five Tribes restricted property allotments is typically limited to oversight and approval rather than management as a trustee. However, the secretary of interior has promulgated regulations in Title 25, Part 16 of the Code of Federal Regulations that set forth the Department of Interior's role in participating in probates of Five Tribes restricted property allotment probates in state court.

OSAGE ALLOTMENTS

Osage Allotments are unique, and cannot be categorized as trust or restricted Indian allotments under AIPRA, nor as Five Tribes restricted property allotments under other federal law. These property interests are very unique, due to the severing of mineral interests from surface interests and the common nature of ownership of the mineral interests by the tribe and its members. In fact, there are several statutes and federal regulations that apply only to Osage allotment interests. Oklahoma practitioners should recognize that these interests are unique, and should consult relevant federal and tribal law to best serve the needs of clients with interests in Osage allotments.

FEDERAL REGULATIONS FOR OSAGE ALLOTMENTS

The Secretary of Interior has promulgated regulations in Title 25, Part 17 of the Code of Federal Regulations that set forth the Department of Interior's role in participating in probates of wills of Osage Indians. These regulations set forth procedural requirement and the process for appeals from superintendent decisions on wills of Osage Indians.

CONCLUSION

My advice for an Oklahoma practitioner working on any Indian land issue, particularly an Indian allotment estate planning case or an Indian allotment probate is as follows:

- 1) Remember that each tribe in Oklahoma is unique. You must engage in tribe-specific research before you embark on representation of clients with interests in Oklahoma Indian Country.
- 2) Understand that in Oklahoma, we have three distinct Indian land statuses, each with different applicable laws, regulations and forums. Determine what type of Indian land interest is implicated and apply the relevant rules.
- 3) When you are in doubt, ask an expert. Oklahoma is home to many of the finest Indian Law practitioners in the United States. Oklahoma practitioners should reach out for assistance and leverage the resources right here in our state.

1. "Indian Country" is defined at 18 U.S.C. 1151, and includes (generally) Reservations, dependent Indian communities and allotments.

2. Act of Feb. 8, 1887 (24 Stat. 388).

3. Curtis Act of 1898 (30 Stat. 495).

4. Osage Allotment Act of June 28, 1906 (34 Stat.539).
5. See Indian Land Consolidation Act of 1983, P.L. 97-459; *Hodel v. Irving*, 481 U.S. 704 (1987); Indian Land Consolidation Act Amendments of 1984, P.L. 98-608; *Babbitt v. Youpee*, 519 U.S. 234 (1997).
6. P.L. 108-374, 118 Stat. 1773 (2004).
7. 25 U.S.C. §2201 (2).
8. 25 U.S.C. §2201(9).
9. 25 U.S.C. §2206(b).
10. 25 U.S.C. §2206 (a)(2)(D).
11. 25 U.S.C. §2206(c).
12. See 25 C.F.R. 15
13. For an exhaustive history of Five Tribes restricted property interests law, see "'Fatally Flawed:' State Court Approval of Conveyances by Indians of the Five Civilized Tribes-Time for Legislative Reform," by Tim Vollman and M. Sharon Blackwell, 25 *Tulsa Law Journal* 1 (1989).
14. Act of Aug. 4, 1947 (61 Stat 731).
15. Act of April 26, 1906 (34 Stat. 137), amended by Act of May 27, 1908 (35 Stat 312).
16. See also 58 O.S. §901.

ABOUT THE AUTHORS



Casey Ross-Petherick, J.D., M.B.A. (*Cherokee*) is the clinical professor for the Jodi Marquette American Indian Wills Clinic at OCU School of Law, where she also teaches American Indian law, advanced Indian law and tribal law. Professor Ross is of counsel at Hall Estill, where she focuses on American Indian Law.

Oklahoma Bar Association Management Assistance Program Assistant

The OBA seeks a staff assistant for the Management Assistance Program. The OBA Management Assistance Program has been nationally recognized for delivery of management and technology assistance to OBA members.

The MAP assistant assists the department director and other staff with many projects. Organization and proofreading skills are important, as well as a friendly customer service-oriented attitude.

Requirements:

Three or more years experience working in a law firm or legal department.

Fast, accurate keyboarding skills.

The ability to manage multiple projects and deadlines.

Proficiency in Microsoft Word

Proficiency in Microsoft PowerPoint and familiarity with other software applications and Internet tools is a plus, as is the willingness to learn new applications.

Excellent benefit package. EOE. Send resume and cover letter to cardb@okbar.org. Application deadline is 5:00 p.m. June 21, 2013.

The Search for Future Bar Leaders is Underway

By James T. "Jim" Stuart

I wholeheartedly agree with Admiral James B. Stockdale who once said, "Leadership must be based on goodwill." The Oklahoma Bar Association's Leadership Academy is about preparing those who want to serve our profession, our bar and our state. The academy is the perfect forum to promote my goal of recognizing and celebrating lawyers who volunteer, serve and give of themselves. It is my hope that this will foster the development of tomorrow's bar leaders.

The OBA has offered multiple leadership training opportunities in the past that have been well received and produced many current bar leaders. The OBA has offered a Leadership Conference in 2007 and three classes have graduated from the more extensive OBA Leadership Academy, one in 2008-2009, 2009-2010 and 2011-2012.

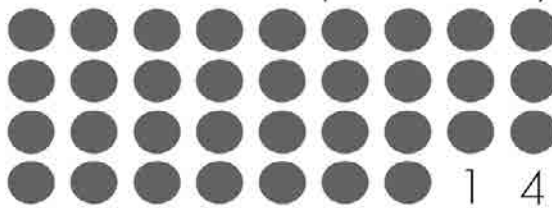
Between 25 and 30 OBA members will be selected to attend the 2013-2014 Leadership Academy. There will be four sessions, beginning in the early fall this year and culminating with a graduation ceremony in April 2014.

If you are selected and attend this program, of course, you will learn core principles of effective leadership; moreover, you will learn about the importance of servant leadership. You will learn how to communicate, motivate and succeed not only in your law career, but also in service to professional, political, judicial, civic and community organizations. You will also have a chance to meet and interact with some of the most accomplished legal and community leaders.

It is of extreme importance that the Leadership Academy participants include bar members who are from diverse backgrounds or who have historically been under represented in OBA leadership. All members are eligible to apply!

My thanks to the Leadership Academy Task Force, led by Bartlesville attorney Linda Thomas. The continued work of the task force is much appreciated.

Oklahoma Bar Association
2014 Leadership Academy



HOW DO I APPLY?

Fill out the application form online at www.okbar.org by July 1.

WHAT IS THE COST?

The OBA will pay for the program, accommodations and food, but participants will be responsible for their own travel.

WHY PARTICIPATE?

You will benefit personally and professionally by learning about professional leadership. You will be exposed to the legislative and judicial systems; you will interact with high-level state and local officials and judges, plus meet many attorneys from the private and public sectors.

QUESTIONS?

Call or email OBA Educational Programs Director Susan Damron Krug at 405-416-7028, 800-522-8065; SusanK@okbar.org.

Mr. Stuart is OBA president and practices in Shawnee.

OBA Day of Service

County Bar Associations Urged to Plan a Project Sept. 20-21

By Carol Manning

The legal profession is all about helping people — to right a wrong, to protect their rights and to be a voice for justice. OBA President James T. “Jim” Stuart wants to take it one step farther. His theme for this year is Oklahoma lawyers giving back.

“My goal is to include lawyers from all over the state, young and old, who will join together and participate in a day of service within their respective communities,” he said. President Stuart’s goal is for a community service project to take place in each county.

With 77 Oklahoma counties, just one day of service isn’t enough, so to allow county bar associations flexibility — both a Friday and Saturday were selected. Everyone knows that events are planned around college football games in the fall, and Sept. 20 or Sept. 21 were picked because OU and OSU have bye weeks.

Selecting the nonprofit organization to benefit from the service project is up to each county bar association — and so is the decision on the type of volunteer work that will be done. Tasks might be holding a fundraising drive, stocking a food pantry, cleaning up a homeless shelter, improving landscaping or teaching a lesson at area schools. With so many great organizations that make an impact on so many lives, it will be a difficult decision to pick only one. Larger counties are encouraged to organize several projects.



Ana Basora Walker paints a door at a homeless shelter in Lawton.

Pottawatomie County has already planned its service project in Shawnee. County bar members will be doing a general facelift, including paint, flooring and cabinets, for Youth and Family Resource Center’s “Hope House,” a facility which temporarily houses abused and neglected children.

LAW FIRMS AND CORPORATIONS

Many large law firms and corporations have a tradition of volunteer service – and have favorite nonprofit organizations they have relationships with. Well, their involvement in the OBA Day of Service is welcome, which can supplement a project of the county bar. Just like corporate athletic challenges pit one company against another for bragging rights, it’s hoped that law firms and corporations will compete for who can recruit the most volun-

teers to help their favorite nonprofit.

COORDINATING THE STATEWIDE PROJECT

Too big of a project to handle alone, helping President Stuart to achieve his ambitious goal is Joe Vorndran, Young Lawyers Division chairperson. OBA Board of Governors members will be working hand in hand with YLD members across the state to recruit county bar associations and others to participate in this statewide community service initiative.

HOW TO GET INVOLVED

Identify which nonprofit organization your county bar (law firm or company) wants to assist and what your members want to do to help. Email that information to Brandi Nowakowski at bnowakowski@thewestlawfirm.com. **Deadline: Aug. 19.** The OBA Communications Department will assist



YLD members work in the garden of a rescue mission in Oklahoma City.

all counties in being recognized in the media for their hard work in their communities.

Ms. Manning is OBA communications director.

Save the Date

Day of Service

Sept. 20 and 21

County Bars are urged to plan community service projects in their areas for these dates. More details coming soon!



MCLE Commission Proposes Elimination of Age Exemption

By Jack L. Brown

The requirements Oklahoma lawyers must fulfill in order to remain active members in good standing are often the subject of great discussion. Among those requirements is the satisfactory completion of mandatory continuing legal education (MCLE) each year. In the last several years, the MCLE Commission has engaged in an examination of the MCLE structure in regard to the elimination of MCLE Rule 2(d), among other rules. Rule 2(d) exempts an attorney who attains the age of 65 years before or during the calendar year that is being reported from all requirements of the MCLE rules.

Mandatory continuing legal education was first mandated in 1986 by the Oklahoma Supreme Court. At that time, many lawyers were retiring from practice at the age of 65. Lawyers today, along with the general population, are working well past 65 years of age. The National Organization of Bar Counsel and the Association of Professional Responsibility Lawyers appointed a joint committee on aging lawyers in August 2005 to study the challenges raised by aging lawyers. Its final report in 2007 states that "in the next decade the number of lawyers continuing to practice beyond the traditional age of retirement is likely to increase dramatically." The reasons given by the committee for the increase are:

- The steady increase in the past 50 years in the number of lawyers admitted to practice each year;
- The demographic shift in the elderly population. The shift is based upon the estimated number of adults over 65 in the U.S. will double in 25 years, from 35 million to 70 million. In addition, the proportion of elder adults will increase from about 13 percent to 20 percent of the total population;

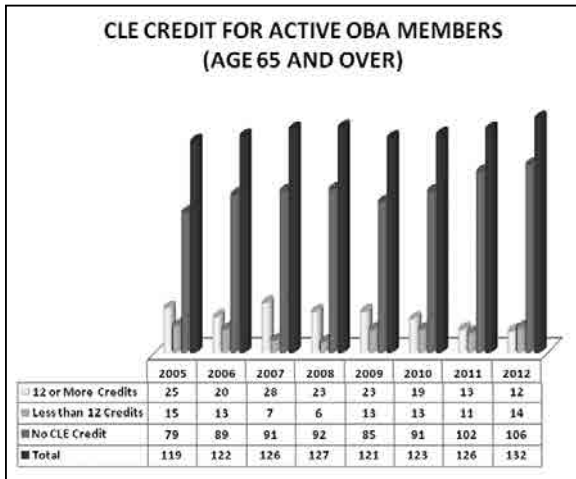
- The dramatic improvements in healthcare, which have extended professional work lives;
- The strong desire among many senior lawyers to continue making positive contributions to society; and
- The economic necessity, which will compel lawyers to continue working because their pensions or savings are insufficient to support themselves and their families.

In addition, the U.S. Census Bureau says the rate of participation of people 65 and older in the workforce increased from 12.1 percent in 1990 to 16.1 percent in 2010 — and increased again to 16.2 percent in 2011. Surveys show a growing number of workers 40 and over are also planning to work beyond retirement age.

The committee's data is supported by the OBA membership graph below. The graph evidences that almost half of the OBA membership is currently between the age of 50 and 69. Within a few years, this group will not be required to complete any CLE credit.



The next graph reflects the CLE credit for active OBA members age 65 and over. This graph evidences that the majority of 65 and older Oklahoma lawyers are not earning any CLE credit.



The MCLE proposal to eliminate the age 65 exemption from MCLE requirements encourages all active OBA members, regardless of age to stay current on changes in the law and maintain competent practice skills. Further, the rule change will assist the OBA's long-term goal of providing the best legal services to the people of Oklahoma. MCLE requirements provide public protection and should be in place for all active OBA practitioners, regardless of age. An exemption for an OBA member of any age who can report that he or she did nothing during the calendar year that would be considered practicing law in Oklahoma will remain a part of the MCLE rules and is unaffected by the proposal.

Mr. Brown practices in Tulsa and serves as the MCLE Commission chairperson.

PROPOSED RESOLUTION

Below is the MCLE draft resolution that will be submitted to the Board of Governors, and eventually the House of Delegates, this year for consideration and deliberation. The MCLE Commission is requesting written comments from OBA members beginning May 20 through June 20, 2013. All comments to the proposed rule change should be emailed to mclecomments@okbar.org. Comments may also be submitted by letter to the MCLE Commission at the OBA, P.O. Box 53036, Oklahoma City, OK 73152.

BE IT RESOLVED that the OBA recommends to the Oklahoma Supreme Court to amend Rule 2 of the Oklahoma MCLE Rules as follows:

(a) Effective January 1, 2015, except as provided herein, these rules shall apply to every active and senior member of the Oklahoma Bar Association as defined by Article II of the Rules Creating and Controlling the Oklahoma Bar Association.

~~(d) An attorney who attains the age of sixty-five (65) years of age before or during the calendar year which is being reported is exempt from all requirements of these rules except as provided in Rule 5.~~
An attorney having been granted an exemption based on attaining age 65 prior to January 1, 2015 shall be granted a continuing exemption.

**Comments
requested by
June 20**

All comments to the proposed rule change should be emailed to mclecomments@okbar.org. Comments may also be submitted by letter to the MCLE Commission at the OBA, P.O. Box 53036, Oklahoma City, OK 73152.

Show a Little Love, Nominate



The only real difference is that Oklahoma lawyers are making a real difference.

Stop. Take a second to think about why you became a lawyer. It probably wasn't for the leisurely hours and glamorous lifestyle. Probably, you wanted to do something meaningful with the gifts you were given. Well, we think that's pretty admirable. Award-worthy even.

While actors get Oscars and singers get Grammys, Oklahoma lawyers get OBA Awards. The only real difference is that Oklahoma lawyers are making a real difference. The OBA wants to recognize those attorneys and organizations that you think deserve praise.

Is it a colleague who showed you the ropes? An attorney friend who always amazes you? A teacher who blows the doors off the classroom when she teaches her Law Day unit? Whoever is amazing and inspirational, we want you to nominate them for an OBA Award.

YOU KNOW WHAT ASSUMING DOES...

A common pitfall with any awards nomination process is that some people are so obviously great, it's assumed they'll be nominated by someone else. How can they *not* get nominated, right? Well, sometimes they don't and it's tragic.

Deirdre Dexter, OBA Awards Committee chairperson, knows this phenomenon well.

"Every year lawyers and local bar associations around Oklahoma do wonderful things which reflect in such a positive way the service and activities of our profession. Yet every year these actions don't receive the recognition they deserve because we forget to submit nominations...or assume that someone else will submit the nomination. Let's make this year the year that each of us think about the actions and activities that deserve recognition and nominate those responsible for a well-deserved award," Ms. Dexter said.

HERE'S THE DEAL:

- Anyone can submit an award nomination, and anyone nominated can win.
- The deadline is August 17, but get your nomination in EARLY!
- Nominations don't have to be long; they can be as short as a one-page letter to the OBA Awards Committee.
- The entire nomination cannot exceed five single-sided, 8 1/2" x 11" pages. (This includes exhibits.)
- Make sure the name of the person being nominated and the person (or organization) making the nomination is on the nomination.
- If you think someone qualifies for awards in several categories, pick one award and only do one nomination. The OBA Awards Committee may consider the nominee for an award in a category other than one in which you nominate that person.
- You can mail, fax or email your nomination (pick one). Emails should be sent to awards@okbar.org. Fax: 405-416-7089. Mail: OBA Awards Committee, P.O. Box 53036, Oklahoma City, OK 73152

AWARDS UP FOR GRABS:

Outstanding County Bar Association Award
for meritorious efforts and activities
2012 Winners: Tulsa County Bar Association, Pittsburg County Bar Association

Hicks Epton Law Day Award
for individuals or organizations for noteworthy Law Day activities
2012 Winner: Ottawa County Bar Association

Golden Gavel Award
for OBA Committees and Sections performing with a high degree of excellence
2012 Winner: OBA Young Lawyers Division

Liberty Bell Award
for non-lawyers or lay organizations for promoting or publicizing matters regarding the legal system
2012 Winner: Ginnie Graham, *Tulsa World*

Outstanding Young Lawyer Award
for a member of the OBA Young Lawyers Division for service to the profession
2012 Winner: Roy D. Tucker, Muskogee

Earl Sneed Award
for outstanding continuing legal education contributions
2012 Winner: Donita Bourns Douglas, Oklahoma City

Award of Judicial Excellence
for excellence of character, job performance or achievement while a judge and service to the bench, bar and community
2012 Winner: Judge Stephen Friot, Oklahoma City

Fern Holland Courageous Lawyer Award
to an OBA member who has courageously performed in a manner befitting the highest ideals of our profession
2012 Winner: No award recipient in 2012.

Outstanding Service to the Public Award
for significant community service by an OBA member or bar-related entity
2012 Winner: Cleveland County Bar Association

Award for Outstanding Pro Bono Service
by an OBA member or bar-related entity
2012 Winners: Clark O. Brewster, Tulsa; Paul B. Naylor, Tulsa; Cindy Sooter Goble, Laurie Jones and G. Gail Stricklin, Oklahoma City

Joe Stamper Distinguished Service Award
to an OBA member for long-term service to the bar association or contributions to the legal profession
2012 Winner: Melissa G. DeLacerda, Stillwater

Neil E. Bogan Professionalism Award
to an OBA member practicing 10 years or more who for conduct, honesty, integrity and courtesy best represents the highest standards of the legal profession
2012 Winner: Robert S. Farris, Tulsa

John E. Shipp Award for Ethics

to an OBA member who has truly exemplified the ethics of the legal profession either by 1) acting in accordance with the highest ethical standards in the face of pressure to do otherwise or 2) by serving as a role model for ethics to the other members of the profession

2012 Winner: Rex Travis, Oklahoma City

Alma Wilson Award

for an OBA member who has made a significant contribution to improving the lives of Oklahoma children

2012 Winner: Frederic Dorwart, Tulsa

Trailblazer Award

to an OBA member or members who by their significant, unique visionary efforts have had a profound impact upon our profession and/or community and in doing so have blazed a trail for others to follow.

2012 Winner: Retired Judge Charles L. Owens, Oklahoma City

Top 10 Reasons You Should Nominate Someone for an OBA Award

- 10 Awards are awesome.
- 9 Awards impress potential clients.
- 8 Some people are awesome and deserve awards.
- 7 Feeling appreciated is good for health.
- 6 Awards are way better than a thank you card or a pat on the back.
- 5 Or flowers...
- 4 A nomination is a great way to show your admiration.
- 3 Being an award-winning attorney is never a bad thing.
- 2 Nominations highlight the great work being done by Oklahoma lawyers.
- 1 Awards encourage and recognize excellence.



NOMINATION WRITING TIPS

Award Committee Chair Deirdre Dexter shares these suggestions:

- A respected lawyer or judge has no chance of winning if he or she is not nominated.
 - County bars are encouraged to nominate themselves.
- Smaller bars have an equal chance to win because the number of members is considered in relation to the county bar activities accomplished for Law Day and/or for the entire year.
- A nomination that gives details or shares short stories about why a person deserves to win has a better chance of winning than submitting a bio. Don't assume committee members know your nominee.
 - Information about your nominee is better than letters of support. Don't put this off until the last minute; start writing your short, concise nomination today. Your nominee deserves to be considered for an OBA Award.

INDIVIDUALS FOR WHOM AWARDS ARE NAMED

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

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

FERN HOLLAND — Fern Holland's life was cut tragically short after just 33 years, but this young Tulsa attorney made an impact that will be remembered for years to come. Ms. Holland left private law practice to work as a human rights activist and to help bring democracy to Iraq. In 2004 she was working closely with Iraqi women on women's issues when her vehicle was ambushed by Iraqi gunmen, and she was killed. The Courageous Lawyer Award is named as a tribute to her.

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

JOHN E. SHIPP — John E. Shipp, an attorney from Idabel, served as 1985 OBA president and became the executive director of the association in 1998. Unfortunately his tenure was cut short

when his life was tragically taken that year in a plane crash. Mr. Shipp was known for his integrity, professionalism and high ethical standards. He had served two terms on the OBA Professional Responsibility Commission, serving as chairman for one year, and served two years on the Professional Responsibility Tribunal, serving as chief-master. The OBA's Award for Ethics bears his name.

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

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

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

Thanks to
YOU



Law Day was a **SUCCESS**

*Special thanks to those who partnered with the OBA
to support Law Day in Oklahoma:*

Supreme Court Chief Justice Tom Colbert

OBA President James T. "Jim" Stuart

OETA

Phyllis Walta

A. Laurie Koller

Carr & Carr Law Firm

D. A. Richard Smothermon, Pottawatomie and Lincoln counties

Pottawatomie County District Attorney's Office

Pittsburg County Bar Association

The Ruth Bader Ginsburg American Inn of Court

McIntyre Law Firm

Legal Aid of Western Oklahoma Inc.

Ramona Wolf

Randall Wood

Pierce Couch Hendrickson Baysinger and Green LLP

Courtney Powell

R. Scott Thompson

Lester, Loving & Davies PC

Kelsie M. Sullivan

Fellers, Snider, Blankenship, Bailey & Tippens PC

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Linda Herndon, Massage Therapist

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Redfish Advertising

Vital Outdoor Advertising

Volunteer lawyers and staff from the 77 county bar
associations in Oklahoma

Volunteers Make Law Day Successful

Lawyers from across the state observed Law Day 2013 with activities ranging from luncheons to award presentations to assisting Oklahomans with their calls for free legal advice. Hundreds of attorneys volunteered over the past few weeks to celebrate our freedom and educate the public on our legal rights and responsibilities. Take a look at some of the various activities in which volunteer attorneys made the day a success.



Buddy Neal, OCBA Law Day Chair Lauren Barghols Hanna and Steve Barghols attend the OCBA Law Day luncheon.



Journal Record Publisher Mary Mélon presents the Journal Record Award during the Oklahoma County Bar Association Law Day Luncheon. Seated to her left: OCBA President John Heatly, OBA President Jim Stuart, Judge David Lewis, Judge Glenn Jones and Robert Ravitz.



OCBA members take calls during the Ask A Lawyer event in Oklahoma City. From left: Allison Hart, OCBA Ask A Lawyer Chair Curtis Thomas and Rees Evans.



OBA Law Day Committee Co-Chair Jennifer Prilliman of Oklahoma City staffs the Ask A Lawyer hotline on May 2.

Custer County Bar Association members, including Judge Donna Dirickson, who served as local Law Day co-chair, hosted a Law Day courthouse project in which more than 300 area students participated.





Judge Jill Weedon, Custer County Law Day co-chair, presides over the "jury" of students who heard the case involving a farmer whose pig ate his neighbor's flowers.



During the Custer County Mock Trial, numerous volunteers played witnesses, police officers and litigants. The star of the show, at least with the students, was the participant who played the role of the offending pig.



TCBA members Mark Dixon and Mark Schwebke take calls for legal advice on May 2.



Tulsa County Law Day Chair Kimberly Moore-Waite and Ask A Lawyer chair Dan Crawford staff the phones at the Ask A Lawyer event held in Tulsa.



TCBA Executive Director Kevin Cousins presents an award to a local Law Day contest winner.

Realizing the Dream



New Electronic Forms are Here!



Need forms? The OBA/CLE Department is now selling 2013 Forms to OBA members who are interested. Updated forms for ten areas of law are currently online including:

- **Auto Accidents • Bankruptcy • Business/Corporate Law**
- **Criminal Law • Consumer Law • Estate Planning • Trust and Probate Law • More will be added as received!**

Purchase at www.okbar.org. Look for a link under right menu column. Family law forms are available from the Family Law Section.

oba • cle
continuing legal education



NOTICE OF JUDICIAL VACANCY

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

**Associate District Judge
Fourteenth Judicial District
Pawnee County, Oklahoma**

This vacancy is created by the retirement of the Honorable Matthew D. Henry effective August 1, 2013.

To be appointed an Associate District Judge, an individual must be a registered voter of the applicable judicial district at the time (s)he takes the oath of office and assumes the duties of office. Additionally, prior to appointment, the appointee must have had a minimum of two years experience as a licensed practicing attorney, or as a judge of a court of record, or combination thereof, within the State of Oklahoma.

Application forms can be obtained on line at www.oscn.net by following the link to the Oklahoma Judicial Nominating Commission or by contacting Tammy Reaves, Administrative Office of the Courts, 2100 North Lincoln, Suite 3, Oklahoma City, OK 73105, (405) 556-9300, and should be submitted to the Chairman of the Commission at the same address **no later than 5:00 p.m., Friday, May 31, 2013. If applications are mailed, they must be postmarked by midnight, May 31, 2013.**

Heather Burrage, Chairman
Oklahoma Judicial Nominating Commission

Legislative Action Quick as Session Nears End

By Duchess Bartmess

This year, *sine die* of the 54th Oklahoma Legislature first session will be no later than 5 p.m. on May 31, 2013, by operation of law [Oklahoma Constitution, Article 5, section 26]. Although there is speculation that the Legislature is working toward adjourning *sine die* before the last day, there is still much to be done. Already, the governor has taken action on more than 200 measures. However, there are still nearly 600 measures still alive and making their way through the system.

In addition to the limited number of measures being reviewed and watched by the OBA Legislative Monitoring Committee, there are other measures that could be of specific interest to bar members.

As always, you are encouraged to check the OBA website at www.okbar.org/members/legislative for the complete current language of the measures still active or which have been acted upon by the governor.

Action on measures still active is quick this time of year, so by the time you read this article final action on some of these measures may have already occurred. But for purposes of this report, as of May 10, 2013, the following is a report regarding some of the pending



measures that warrant review by bar members.

The governor has approved 232 measures and vetoed eight.

MEASURES VETOED BY GOVERNOR

HB 1941 — modified provisions regulating registering and licensing bail bondsmen

HJR 1023 — recreated Juvenile Justice Reform Committee

SB 817 — modified Uniform Consumer Credit Code regarding loan finance and handling charges

SB 854 — prohibited collective bargaining for police terminations involving excessive force

MEASURES APPROVED BY THE GOVERNOR OR STILL PENDING

CHILDREN & FAMILY LAW

Approved:

HB 2166

SB 200

Still pending:

SB 929

HB 1033

HB 2130

CIVIL LAW & PROCEDURE

Approved:

HB 1060

HB 1084

HB 1509

SB 580

Still pending:

SB 249

SB 433

SB 951

HB 1374

COMMERCIAL LAW, BUSINESS ENTITIES, INSURANCE & CONTRACTS

Approved:

HB 1087

HB 1646

HB 1792

HB 1829

SB 696

SB 697

Still pending:

SB 550

SB 594

SB 691

SB 1016

SB 1043
HB 1995
HB 2208

CONSTITUTIONAL LAW

Still pending:
HJR 1006
HJR 1032

COURTS, JUDICIARY & ATTORNEYS

Approved:
HB 2160
SB 484
SB 988

Still pending:
SB 361
SB 403
SB 455
SB 820
SB 1034

CRIMINAL LAW & PROCEDURE

Approved:
HB 1085
HB 1328
HB 1449
HB 1522
HB 1523
HB 1524
HB 1722
SB 1036

Still pending:
SB 849
SB 984
SB 1038
HB 1050
HB 1068
HB 1293
HB 1416
HB 1503

ENERGY, OIL/GAS, MINERALS, ENVIRONMENT & NATURAL RESOURCES

Approved:
SB 767

Still pending:
SB 78
SB 191
SB 500
SB 968
SB 971
HB 1416
HB 1104
HB 1525
HB 1656
HB 1769
HB 1932
HB 1937

GENERAL GOVERNMENT - LOCAL & STATE

Approved:
SB 670

Still pending:
SB 747
HB 1300
HB 1450
HB 1451
HB 2161

PROBATE, GUARDIANSHIP & TRUSTS

Approved:
HB 1547

Still pending:
SB 355
HB 2164

PUBLIC HEALTH, SAFETY & WELFARE

Approved:
SB 765
SB 975

REAL PROPERTY, LANDLORD & TENANT

Approved:
HB 1767
SB 292

Still pending:
SB 582
HB 1884
HB 2154

REVENUE & TAX

Approved:
HB 1265
SB 945

Still pending:
SB 339
SB 954
HB 1919

TRANSPORTATION & MOTOR VEHICLES

Approved:
HB 1082
SB 659

Still pending:
SB 860
HB 1103
HB 1105
HB 1112
HB 1441
HB 1516
HB 1931

WORKERS' COMPENSATION

Approved:
SB 250
SB1062
SB 1090

Still pending:
HB 1258
HB 1299
HB 2054

Remember, the OBA website not only provides the status and content of measures being considered by the Legislature, but also information on the history and the various amendments. Another option for the most current bill status is the Oklahoma State Legislature's website at www.oklegislature.gov.

For questions or assistance feel free to contact me at duchessb@swbell.net.

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



A Fair Impartial Independent Judiciary

THE SOVEREIGNTY SYMPOSIUM XXVI

SKIRVIN HILTON HOTEL

JUNE 5 - 6, 2013 ♦ OKLAHOMA CITY, OKLAHOMA

Stephen Mopope (Kiowa)

Flute Dance

Oklahoma Art in Public Places – The Oklahoma Judicial Center
Permanent Collection

The Sovereignty Symposium was established to provide a forum in which ideas concerning common legal issues could be exchanged in a scholarly, non-adversarial environment. The Supreme Court espouses no view on any of the issues, and the positions taken by the participants are not endorsed by the Supreme Court.

THE SOVEREIGNTY SYMPOSIUM AGENDA

Wednesday Morning

4.5 CLE credits / 1 ethics included

7:30 – 4:30 Registration (Honors Lounge)
8:00 – 8:30 Complimentary Continental Breakfast
10:30 – 10:45 Morning Coffee / Tea Break
12:00 – 1:00 Lunch on your own

8:30 – 5:30 PANEL A: TRIBAL ECONOMIC DEVELOPMENT Crystal Room

8:30 – 12:30 INITIATIVES FOR ECONOMIC DEVELOPMENT

MODERATOR: DR. JAMES C. COLLARD, Director of Planning and Economic Development, Citizen Potawatomi Nation
HONORABLE DAVID WALTERS, President, Walters Power International, Governor of Oklahoma, 1990-1994
DEE ALEXANDER, Senior Advisor on Native American Affairs, United States Department of Commerce
JONNA KIRSCHNER, ESQ., Executive Director and General Counsel, Oklahoma Department of Commerce
ROY H. WILLIAMS, President and CEO, Greater Oklahoma City Chamber of Commerce
GEORGE LEE, Vice-President, Red Devil, Inc., Chair, Oklahoma Governor's International Team
JANIE HIPP, ESQ., Director, Indigenous Food and Agriculture Initiative, University of Arkansas School of Law
TIM GATZ, Director of Capital Programs, Oklahoma Department of Transportation
JAY ADAMS, Tribal Liaison, Oklahoma Department of Transportation

8:30 – 12:30 PANEL B: VETERANS Grand Ballroom B

8:30 – 10:45 ISSUES FACING MILITARY MEMBERS PAST AND PRESENT

CO-MODERATORS: HONORABLE W. KEITH RAPP, Oklahoma Court of Civil Appeals
MAJOR GENERAL RITA ARAGON (ret.), (Choctaw/Cherokee), Oklahoma Secretary of Veterans Affairs
DEBORAH ANN REHEARD, ESQ., Past President (2011), Oklahoma Bar Association, Member, Judicial Nominating Commission
COLONEL BRENT WRIGHT ESQ. (Cherokee Nation) Staff Judge Advocate, Oklahoma National Guard, 138th Fighter Wing [ANG] [ACC]

COLONEL CURTIS ARNOLD, Construction Facilities Manager, Oklahoma National Guard

10:45 – 12:30 VETERANS AND DIVERSION COURT PROGRAMS – UNITED STATES DEPARTMENT OF VETERANS AFFAIRS

MODERATOR: HONORABLE DOUGLAS COMBS, (Muscogee Creek), Justice, Oklahoma Supreme Court
JOSEPH DUDLEY, Veterans Justice Outreach Specialist, Oklahoma City Veterans Administration Medical Center
DEVAN BROTHERTON, Tulsa County Veterans Treatment Court Liaison/Readjustment Counselor, Jack C. Montgomery Veterans Administration Medical Center
CATHERINE BURTON, ESQ., Assistant District Attorney, Oklahoma County,
PAULA WILLCOX, Veterans Justice Outreach Specialist

8:30 – 5:30 PANEL C: A FAIR, IMPARTIAL, AND INDEPENDENT JUDICIARY Centennial Ballroom

8:30 – 12:30 HISTORICAL ANALYSIS

MODERATOR: HONORABLE PHILLIP LUJAN, (Kiowa/Taos-Pueblo), Presiding Judge, Citizen Potawatomi Nation Tribal Court
BRUCE FISHER, Administrative Programs Officer, Oklahoma Historical Society
TERRY WEST, ESQ., General Counsel, Oklahoma Council on Judicial Complaints
MICKEY EDWARDS, Director, Aspen Institute-Rodel Fellowships in Public Leadership
THOMAS S. WALKER, (Wyandotte/Cherokee), Appellate Magistrate of the Court of Indian Offenses for the Southern Plains Region of Tribes, District Judge, (ret.), Brigadier General (ret.), Oklahoma National Guard
CATHY CHRISTENSEN, ESQ., Past President (2012), Oklahoma Bar Association

1:15 – 2:30 OPENING CEREMONY AND KEYNOTE ADDRESS Grand Ballroom D-F

MASTER OF CEREMONIES – HONORABLE RUDOLPH HARGRAVE, Justice, Oklahoma Supreme Court, Retired
PRESENTATION OF FLAGS
HONOR GUARDS:

Absentee Shawnee Veterans Association
Kiowa Black Leggings

DRUM: SOUTHERN NATION
 CAMP CALL: CHIEF GORDON YELLOWMAN, (*Cheyenne*)
 INVOCATION: BISHOP ROBERT E. HAYES JR., United Methodist Bishop of Oklahoma
 WELCOME: HONORABLE MARY FALLIN, Governor of Oklahoma
 WELCOME: JAMES T. STUART, President, Oklahoma Bar Association
 WELCOME AND INTRODUCTION OF JUSTICE
 SANDRA DAY O'CONNOR: HONORABLE TOM COLBERT, Chief Justice, Oklahoma Supreme Court
KEYNOTE: HONORABLE SANDRA DAY O'CONNOR, Justice, Supreme Court of the United States, Retired
 ADDRESS: HONORABLE TOM COLE, (*Chickasaw*), United States House of Representatives, Oklahoma District Four
 PRESENTATION OF AWARDS, HONORABLE YVONNE KAUGER, Justice, Oklahoma Supreme Court
 HONOR AND MEMORIAL SONGS: SOUTHERN NATION
 CLOSING PRAYER: BISHOP WILLIAM WANTLAND, (*Seminole, Chickasaw, Choctaw*), Chief Justice, Seminole Nation Supreme Court, former Bishop of the Diocese of Eau Claire

Wednesday Afternoon

4.5 CLE credits / 1 ethics included

2:30 – 2:45 Tea / Cookie Break for all Panels

2:45 – 5:30 PANEL A : TRIBAL ECONOMIC DEVELOPMENT (A Continuation of the Morning Panel) Crystal Room

TRIBAL AND LOCAL GOVERNMENT COOPERATION

MODERATOR: DR. JAMES C. COLLARD, Director of Planning and Economic Development, Citizen Potawatomi Nation
 HONORABLE JOHN A. BARRETT, (*Citizen Potawatomi Nation*), Chairman, Citizen Potawatomi Nation
 HONORABLE WALLACE COFFEY, (*Comanche*), Chairman, Comanche Nation of Oklahoma
 D. JAY HANNAH, (*Cherokee*), Executive Vice President, Financial Services, BancFirst
 HONORABLE FRED L. FITCH, Mayor, Lawton, Oklahoma
 HONORABLE WES MAINORD, Mayor, Shawnee, Oklahoma
 CAROLYN STAGER, Executive Director, Oklahoma Municipal League

2:45 – 5:30 PANEL B: THE ESSENTIALS OF TRIBAL SELF-GOVERNMENT AND SOVEREIGNTY Grand Ballroom A-B

MODERATORS: HONORABLE JERRY GOODMAN, Oklahoma Court of Civil Appeals
 ALEXANDER T. SKIBINE, (*Osage*), S.J. Quinney Professor of Law, S.J. Quinney College of Law, University of Utah
 ROBERT J. MILLER, (*Eastern Shawnee*), Professor of Law, Lewis and Clark Law School
 ELIZABETH A. KRONK, (*Sault Ste. Marie Tribe of Chippewa Indians*), Associate Professor of Law, University of Kansas School of Law, Director, Tribal Law and Government Center, Affiliated Professor, Indigenous Studies
 GEORGE T. SKIBINE, ESQ., (*Osage*), SNR Denton
 LINDSAY ROBERTSON, Professor of Law, University of Oklahoma College of Law, Faculty Director, American Indian Law and Policy Center, and Associate Director, Inter-American Center for Law and Culture
 CHAD SMITH, ESQ., (*Cherokee*), Chad Smith Consulting
 JOSE FRANCISCO CALI TZAY, (*Myan Caqchikel*), 2013 Fellow in Comparative and Indigenous Peoples Law, University of Oklahoma College of Law

2:45 – 5:30 PANEL C: A FAIR, IMPARTIAL, AND INDEPENDENT JUDICIARY (A Continuation of the Morning Panel) - Centennial Ballroom

MODERATOR: HONORABLE PHILLIP LUJAN, (*Kiowa/Taos-Pueblo*), Presiding Judge, Citizen Potawatomi Nation Tribal Court

2:45 – 3:15 ETHICS ADDRESS

HONORABLE JOHN REIF, Vice-Chief Justice, Oklahoma Supreme Court

3:15 – 4:45 THE JUDICIAL NOMINATING COMMISSION AND JUDICIAL RETENTION

CO-MODERATOR: DEBORAH REHEARD, ESQ., Past President (2011), Oklahoma Bar Association, Member, Judicial Nominating Commission
 DAVID HILL, Kimray Corporation, Former Member, Oklahoma Judicial Nominating Commission
 BARRY SWITZER, Former Member, Oklahoma Judicial Nominating Commission
 JENNY DUNNING, Oklahoma Judicial Nominating Commission
 HEATHER BURRAGE, ESQ., Chairperson, Oklahoma Judicial Nominating Commission
 WILLIAM P. BOWDEN, Major General (ret.), United States Air Force

4:45 – 5:30 CONVERSATION: HONORABLE SANDRA DAY O'CONNOR, Justice, Supreme Court of the United States, Retired

ROBERT HENRY, President, Oklahoma City University

2:45 – 5:30 PANEL D: TRUTH AND RECONCILIATION

MODERATOR: HONORABLE NOMA GURICH, Justice, Oklahoma Supreme Court
 BISHOP ROBERT E. HAYES, JR., Bishop of the United Methodist Conference of Oklahoma
 REVEREND DR. DAVID WILSON, (*Choctaw*) United Methodist Conference Superintendent, Oklahoma Indian Missionary Conference
 CHIEF GORDON YELLOWMAN, (*Cheyenne*), Director, Cheyenne and Arapaho Tribes Language Program
 C. BLUE CLARK, (*Muscogee Creek*), Professor of History, Native American Legal Research Center, Oklahoma City University
 CHIEF HARVEY PRATT, (*Cheyenne*), Oklahoma State Bureau of Investigation

6:30 RECEPTION – UNVEILING OF THE PAINTING HONORING JUSTICE SANDRA DAY O'CONNOR Oklahoma Judicial Center – 2100 North Lincoln Boulevard

Thursday Morning

4 CLE credits / 1 ethics included

7:30 – 4:30 Registration (Honors Lounge)

8:00 – 8:30 Complimentary Continental Breakfast

10:30 – 10:45 Morning Coffee / Tea Break

8:30 – 12:00 PANEL A: GAMING - Grand Ballroom D-E

CO-MODERATORS: MATTHEW MORGAN, (*Chickasaw*), Gaming Commissioner, Chickasaw Nation
 NANCY GREEN, ESQ., (*Choctaw*), Green Law Firm

8:30 – 9:15 REMARKS

HONORABLE TRACIE STEVENS, (*Tulalip*), Chair, National Indian Gaming Commission
 ERNEST STEVENS, JR., (*Oneida*), Chair, National Indian Gaming Association

9:15 – 10:30 COMPACT NEGOTIATIONS AND OKLAHOMA ISSUES UPDATE

JACQUE SECONDINE HENSLEY, (*Kaw*), Native American Liaison, Office of Governor Mary Fallin
 STEVE MULLINS, ESQ., General Counsel, Office of Governor Mary Fallin
 JEFFREY CARTMELL, ESQ., Deputy General Counsel, Office of Governor Mary Fallin

10:45 – 12:00 TRIBAL/STATE OF OKLAHOMA RELATIONSHIP – FEES AND TAXES, PROCEDURES, IMPACT OF GAMING DEVELOPMENT

WILLIAM NORMAN, ESQ., (*Muscogee Creek*), Hobbs Straus, Dean and Walker
 GARY PITCHLYNN, ESQ., (*Choctaw*), Pitchlynn Law Firm
 DEAN LUTHEY, ESQ., Gable Gotwals, General Counsel Oklahoma Indian Gaming Association

10:30 – 11:30 BOOK SIGNING JUSTICE SANDRA DAY O'CONNOR – OUT OF ORDER: STORIES FROM THE HISTORY OF THE SUPREME COURT

**8:30 – 12:30 PANEL B: CRIMINAL LAW/CROSS DEPUTIZATION
Grand Ballroom A-B**

MODERATOR: HONORABLE SANFORD C. COATS, ESQ.,
United States Attorney, Western District of Oklahoma
ARVO MIKKANEN, ESQ., (*Kiowa/Comanche*), Assistant U.S.
Attorney, Western District of Oklahoma
KURT G. GLASSCO, District Judge, District Court of Tulsa
County
HONORABLE DAVID LEWIS, Chief Judge, Oklahoma Court of
Criminal Appeals

**8:30 – 12:00 PANEL C: TRIBAL LANGUAGE PRESERVATION IN
THE TWENTY-FIRST CENTURY - Crystal Room**

MODERATOR: HONORABLE CHARLES TATE, (*Chickasaw*),
Supreme Court Justice for the Kickapoo Tribe of Oklahoma,
former Special Judge, District Court of Carter County
BLAKE WADE, Chief Executive Officer, The American Indian
Cultural Center and Museum, President, Oklahoma Business
Roundtable
JEROD IMPICHCHAACHAAHA' TATE, (*Chickasaw*), Composer
CHIEF GORDON YELLOWMAN, (*Cheyenne*), Director,
Cheyenne and Arapaho Tribes Language Program
HONORABLE GREG BIGLER, (*Yuchi*), District Judge,
Muscoogie-Creek Nation
HOLLY DAVIS, (*Cherokee*), Cherokee Immersion Charter School
VON ROYAL, Executive Director, One-Net

**8:30 – 12:00 PANEL D: THE STATUS OF TRUST ISSUES IN THE
WAKE OF JUDICIAL DECISIONS - Centennial Ballroom**

CO-MODERATORS: HONORABLE JOHN REIF, Vice-Chief
Justice, Oklahoma Supreme Court
LEAH HARJO WARE, (*Muscoogie Creek*), ESQ.
STACY LEEDS, (*Cherokee*), Dean, University of Arkansas School
of Law, Commissioner, United States Trust Commission
MICHAEL SMITH, Deputy Bureau Director, Field Operations,
United States Department of the Interior, Bureau of Indian
Affairs
JIM JAMES, Deputy Director of Field Operations, United States
Department of the Interior, Office of Special Trustee for
American Indians
DAVID SMITH, ESQ., Kilpatrick, Townsend and Stockton
MELODY MCCOY, ESQ., (*Cherokee*), Native American
Rights Fund
WILLIAM RICE, (*Keetoowah*), Associate Professor of Law,
University of Tulsa College of Law
MICHAEL ANDERSON, ESQ., (*Muscoogie Creek*)

Thursday Afternoon

4 CLE credits / 0 ethics included

3:30 – 3:45 Tea / Cookie Break for all Panels

**1:30 – 3:30 PANEL A: GAMING (A Continuation of the
Morning Panel) - Grand Ballroom D-E**

CO-MODERATORS: MATTHEW MORGAN, (*Chickasaw*),
Gaming Commissioner, Chickasaw Nation
NANCY GREEN, ESQ., (*Choctaw*), Green Law Firm

**1:30 – 3:30 SOVEREIGNTY ISSUES AND INTERNET GAMING
– JURISDICTION, OFF RESERVATION, ECONOMIC
ANALYSIS, SOCIAL GAMING, STRATEGIES**

ERNEST STEVENS, JR., (*Oneida*), Chair, National Indian
Gaming Association
JAMIE HUMMINGBIRD, (*Cherokee*), Cherokee Nation Gaming
Commission, Director and Chairman of the National Tribal
Gaming Commission Regulators
ALAN MEISTER, PH.D., Principal Economist, Nathan
Associates, Inc.
D. MICHAEL MCBRIDE, III, ESQ., Crowe & Dunlevy
DEAN LUTHEY, ESQ., Gable Gotwals, General Counsel
Oklahoma Indian Gaming Association

**3:45 – 5:00 LAND INTO TRUST AND OTHER REGULATORY
ISSUES – CARCIERI, ROLES OF NIGC AND BIA, COMPET-
ING INTERESTS, TAXATION ISSUES, NIGC UPDATE**

HONORABLE TRACIE STEVENS, (*Tulalip*), Chair, National
Indian Gaming Commission

SHEILA MORAGO, (*Gila River*), Executive Director, Oklahoma
Indian Gaming Association
ELIZABETH HOMER, ESQ. (*Osage*), Homer Law
GARY PITCHLYNN, ESQ. (*Choctaw*), Pitchlynn Law Firm
WILLIAM NORMAN, ESQ., (*Muscoogie Creek*), Hobbs Straus,
Dean and Walker

**1:30 – 5:00 PANEL B: THE ICWA AND OTHER CHILDREN'S
ISSUES - Crystal Room**

MODERATOR: HONORABLE JOHN FISCHER, Oklahoma
Court of Civil Appeals

STEVEN HAGER, ESQ., Oklahoma Indian Legal Services
SUE TATE, Court Improvement Project Coordinator, Oklahoma
Administrative Office of The Courts
SUSAN WORK, ESQ., Assistant Attorney General, Cherokee
Nation of Oklahoma
ANASTASIA PITTMAN, (*Seminole*), Oklahoma House of
Representatives
KELLY STONER, (*Cherokee*), Instructor in Law, Director of
the Native American Legal Resources Center, Oklahoma City
University
RITA HART, (*Choctaw and Jicarilla Apache*), OKDHS Tribal
Program Manager

**1:30 – 5:00 PANEL C: THE TRIBAL LAW AND ORDER ACT-
THE HOPI PERSPECTIVE - Grand Ballroom A-B**

MODERATOR: HONORABLE DAVID LEWIS, Chief Judge,
Oklahoma Court of Criminal Appeals
HONORABLE LEROY SHINGOITewa, (*Hopi*), Chairman,
Hopi Tribe, Kykotsmovi, Arizona
JILL ENGEL, ESQ., Chief Prosecutor, Hopi Tribe, Kykotsmovi,
Arizona
ROBERT J. LYTTLE, ESQ., General Counsel, Hopi Tribe,
Kykotsmovi, Arizona
MARILYN TEWA, (*Hopi*), Mishongnovi Village Representative,
Kykotsmovi, Arizona
MERVYN YOYETewa, (*Hopi*), Mishongnovi Village
Representative, Kykotsmovi, Arizona
JOHN TUCHI, Chief Assistant United States Attorney, Phoenix,
Arizona

**1:30 – 5:00 PANEL D: DEPARTMENT OF THE INTERIOR SEC-
RETARIAL COMMISSION ON INDIAN TRUST ADMINIS-
TRATION AND REFORM - Centennial Ballroom**

The five-member Secretarial Commission will share its drafts
recommendations regarding trust management and
administration, and invite feedback from attendees.

MODERATOR: STACY LEEDS, (*Cherokee*), Dean, University of
Arkansas School of Law, Commissioner, United States Trust
Commission
DR. PETERSON ZAH, (*Diné/Navajo*), Last Chairman of
the Navajo Tribal Council, First Elected President of the
Navajo Nation
TEX G. HALL, (*Mandan, Hidatsa, and Arikara Nation*), Chairman,
Three Affiliated Tribes, Past President of the National Congress
of American Indians, Chairman of the Inter Tribal Economic
Alliance, Chairman of the Great Plains Tribal Chairmen's
Association
ROBERT ANDERSON, (*Minnesota Chippewa Tribe Bois Forte
Band*), Professor of Law and Director of the Native American
Law Center at the University of Washington, Oneida Nation
Visiting Professor of Law, Harvard Law School
LIZZIE MARSTERS, Chief of Staff to the Deputy Secretary of
the Interior

A MEETING OF THE DEPARTMENT OF THE INTERIOR
SECRETARIAL COMMISSION ON INDIAN TRUST
ADMINISTRATION AND REFORM WILL BE HELD AT THE
OKLAHOMA JUDICIAL CENTER, 2100 NORTH LINCOLN
BOULEVARD, OKLAHOMA CITY, OKLAHOMA
ON JUNE 7, 2013 AT 8:30 AM

Commission Meetings are open to the public and information
about meetings is posted to:

<http://www.doi.gov/cobell/commission/index.cfm>

A Fair Impartial Independent Judiciary

THE SOVEREIGNTY SYMPOSIUM XXVI

June 5 - 6, 2013

Oklahoma City, Oklahoma

Registration Form

Name: _____ Occupation: _____

Address: _____

City _____ State _____ Zipcode _____

Billing Address if different from above: _____

City _____ State _____ Zipcode _____

Nametag should read: _____ Other: _____

Email Address: _____

Telephone: _____ Office: (____) _____ Cell: (____) _____ Fax: (____) _____

Tribal Affiliation (if applicable): _____

If Bar Association Member: _____ Bar # _____ State _____

17 hours of CLE credit for lawyers will be awarded, including 3 hours of ethics.

# of Persons	Registration Fee	Amount Enclosed
	\$250.00 (\$275.00 if postmarked after May 15, 2013)	
	\$150.00 June 6, 2013 only	
	Total Amount	

We ask that you register online at www.thesovereigntysymposium.com. This site also provides hotel registration information and a detailed agenda. For hotel registration please contact the Skirvin-Hilton Hotel at 1-405-272-3040. If you wish to register by paper, please mail this form to:

THE SOVEREIGNTY SYMPOSIUM, Inc.

The Oklahoma Judicial Center
2100 North Lincoln Boulevard, Suite 1
Oklahoma City, Oklahoma 73105-4914
www.thesovereigntysymposium.com

Presented By

The Oklahoma Supreme Court

The Oklahoma Bar Association
Indian Law Section
The University of Tulsa College of Law

The University of Oklahoma College of Law
Oklahoma City University School of Law
The Sovereignty Symposium, Inc.

Law Day, Again

By John Morris Williams

All the Law Day luncheons and activities are over. As the years run faster, I cannot believe it was already Law Day, again. I love the Law Day season. It provides a great opportunity to get out and be with OBA members across the state. Chief Justice Tom Colbert and Vice Chief Justice John Reif both gave excellent speeches at venues I visited.

The chief justice and vice chief justice are both very good speakers, and I highly recommend having them at your county bar association sometime in the next couple of years. They have totally different styles and having them both would not be repetitious. I am sure that they do not need the plug. However, I think sometimes we overlook some of our best resources because they are too obvious.

SOLO & SMALL FIRM CONFERENCE

Next month Vice Chief Justice Reif will be a speaker at the Solo & Small Firm Conference being held in Durant at the Choctaw Casino and Resort. If you have not attended the conference, you should plan on attending. As usual, the programming will be great, and the venue is very nice. If you do not want to chance Lady Luck, there is plenty to do without ever



going into the casino. We will have some wonderful social events and plenty of opportunities to catch up with old friends. It is an inviting time of year to be outdoors at the incredible pool, and the drive from any direction is really pretty. So come on down to "Dew-rant."

MCLE COMMISSION PROPOSAL

We are in the process of publicizing a change in the Mandatory Continuing Legal Education rules. The change would remove the age 65 exemption. Those who currently enjoy the exemption would be grandfathered or grandmothers in. It is anticipated the changes will become effective in 2014. The publication also asks for comments. If you have comments, please let me know so I can pass

them on the Board of Governors, House of Delegates and, ultimately, the Oklahoma Supreme Court, if the changes are accepted by the House of Delegates.

ANNUAL MEETING DELEGATES

Speaking of the House of Delegates, it is that time of year to start thinking about your Annual Meeting delegates. Each year we have counties that do not send a delegate. Please make a special effort this year to send delegates and have them attend. With the MCLE rule change and other important business that will be before the House of Delegates, it is extremely important that we hear from all counties. Otherwise, OBA members in counties without a delegate will be unrepresented.

JNC ELECTION

Soon we will be mailing the ballots for the Judicial Nominating Commission election for the districts that are up this year. Please be watching your mailbox, and if your district has an election, get your ballot in before the deadline.

NEW WEBSITE

Lastly, the OBA has launched its new website for www.okbar.org. It has been a long time coming. There were several thousand pages of content that had to be converted to the new format. We tried to

make sure it was perfect. With a project of this size, there are bound to be some imperfections. If you find a link that is not working or content that is not perfect, please send us an email. While we have all looked at it, as I said before, sometimes the familiar is hard to see. We apologize in advance for any imperfections.

PARTING LAW DAY THOUGHT

As we celebrate another Law Day, let us always be mindful of the privilege and opportunity we have to be engaged in

our great profession. Often we are misjudged and maligned by those whose freedoms to make such criticisms are in large part intact because of the work of lawyers guarding the gate of freedom. Thank goodness it was Law Day again. It is my prayer that 1,000 years from now that phrase will still be said.



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

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CN0311-8581-0415

Gathering Evidence – 21st Century Style

The Craigslist Killer Case and Boston Marathon Bombing Manhunt Demonstrate the Importance of Digital Clues

By Jim Calloway

Lawyers have always hired investigators and conducted investigations. But there are many more sources and types of evidence today — and there will be even more in the future.

At ABA TECHSHOW 2013, the attendees heard a great presentation titled, “On the Trail of the Craigslist Killer: A Case Study in Digital Forensics.” This presentation was given by Sharon D. Nelson, president of Sensei Enterprises Inc., (and my Digital Edge podcast teammate) and her husband, computer forensics expert John W. Simek, vice president of Sensei. It was a riveting tale of the fast-moving investigation in the aftermath of the April 14, 2009, murder of a young woman in a Boston hotel.

Less than two weeks after the ABA TECHSHOW, the world was watching as the hunt for the Boston Marathon bombing suspects took place. Many, many law enforcement officers were involved, as were digital forensics technicians from the FBI and other agencies. It is hard to imagine the amount of information reviewed by those investigators in a relatively short period of time.

Certainly, lawyers in private practice, and even most law enforcement investigations, cannot marshal the resources used in these two situations, not to mention at the speed with which these investigations occurred. Many of the techniques and tools seen in television shows like CSI are perhaps more dramatic than today’s reality. But there are still lessons in both of these two Boston homicide cases about evidence sources today that did not exist that long ago.

So let’s review these two investigations.

THE CRAIGSLIST KILLER

The Craigslist killer used Craigslist to schedule “appointments” with masseuses. The meetings were in hotel rooms and the room number was only given to the customer after the customer called from the hotel lobby. But something went wrong with the appointment on this day. Police were called when 26-year-old Julissa Brisman was found dead from gunshot wounds in the doorway of her room with a flexi-cuff plastic tie around one wrist. The shooter had left behind no apparent evidence.

Luckily the victim’s phone, which was found in the room had no lock code and police noticed a recent missed call. The call was from an associate who confirmed the 10 p.m. appointment with a person calling himself Andy M. She gave the police “Andy’s” phone number and email address. The number was for a “disposable” phone purchased locally that could not be associated with any individual and the email account was created shortly before the murder.

Hotel surveillance cameras had captured the image of a young man in a black leather jacket and a New York Yankees cap leaving the hotel right after the murder. At a nearby hotel two days earlier, a masseuse had been robbed at gunpoint and bound with plastic ties. Police believed the man in the videos at that scene showed the same suspect. Contact with her was also arranged through Craigslist.

Three days after Brisman’s murder, a woman who worked as an exotic dancer was attacked at a Holiday Inn Express in Warwick, R.I., by a man who had responded to an ad she had placed on Craigslist.

He was also caught on video leaving the scene and appeared to be the same suspect.

While the hotel videos were helpful, digital evidence actually identified the suspect and provided better evidence. Investigators located the IP address used to set up one of the web-based email accounts used to contact the women who advertised on Craigslist. It belonged to one Philip Markoff from Quincy, Mass., about 10 miles from Boston.

Once they had the name and location of a strong suspect, a search of Facebook located a page created by Markoff noting his engagement to Megan McAllister, about their upcoming wedding. They then staked out Philip's apartment. In what seems like a scene written for a movie, they followed Markoff to a BJ's Wholesale Club store and detectives followed him around and dusted for prints on cans he touched and the grocery cart he used since they had retrieved one good finger print from the first attack.

Only six days after the murder, police pulled over Megan and Philip and brought them in for questioning. His fiancé was aghast and said the accusation was impossible. Now that they had a good photo to show previous victims, the first victim identified Phillip as her attacker. With that evidence, a search of his apartment pursuant to a warrant revealed damning evidence, including a handgun hidden in a hollowed-out copy of "Gray's Anatomy," bullets, a disposable phone and a pair of shoes with Brismar's blood on them. Markoff later committed suicide in custody while awaiting trial.

BOSTON MARATHON BOMBING

The horror of the Boston Marathon bombing instantly grabbed the nation's attention. In addition to the massive amount of video from the various surveillance cameras in the area, members of the public who were present were asked to send the FBI photos and videos they had taken with their mobile devices.

“...Public spaces, particularly in urban areas, are now far more likely to be under digital video surveillance than any of us may have understood.”

The authorities ultimately made an appeal to the public by what must have been the most rapid sharing of “man-hunt” photographs to the most people — ever. Countless photographs and hours of video had been reviewed to isolate two suspects.

Public spaces, particularly in urban areas, are now far more likely to be under digital video surveillance than any of us may have understood. There is also a greatly increased amount of video recording in places of business. We have all seen video from convenience stores robberies provided by law enforcement in an attempt to identify the perpetrators.

Many readers might be surprised at how many stores, hotels and downtown areas have video surveillance now. It is probable that if you spend an afternoon shopping in a local mall, someone with access to all of the recorded videos with their timestamps combined with the time and motivation to review everything could probably reconstruct your entire visit to the mall. The Boston Marathon investigation also illustrates just how far we have come from the days when the state of the art was FBI “Most Wanted” photos and descriptions posted in post offices. As we now know, many people recognized the brothers from the images released and contacted the FBI.

The final shootout between the Boston Marathon bombing suspects and the police in Watertown was well-covered by the media, as was the “shelter in place” order given to residents as the remaining brother was sought.

What received a little less media attention was that the brothers were tracked to Watertown electronically. The victim whose leased Mercedes SUV was carjacked by the brothers escaped, running from where the suspects stopped him to a Shell filling station in Cambridge. He then told authorities that the SUV could be tracked, both by his iPhone left in the vehicle and by “mbrace,” a Mercedes satellite tracking system.

We are all familiar with the rest of that story.

These are just two investigations that demonstrate the nature of evidence is changing. Lawyers involved in the criminal justice system increasingly know of this, but often digital

evidence is important in civil cases and investigations.

A REALLY UNLUCKY DEFENDANT

Imagine a hypothetical case where a client had been charged with homicide based on a hit-and-run. Numerous witnesses saw him celebrating at his favorite bar. They tried to get him not to drive, but he insisted and stormed out of the bar. A witness who saw the car strike the pedestrian a few hours later gave police a description of the car and the tag number. When the police got to his home early that morning, there was damage to the front of the car, which was parked in the yard rather than the driveway. The most devastating evidence was a piece of torn material from the victim's clothing in the car's grill.

After the police pounded on his door for a while, he opened the door, smelling of alcohol and unsteady on his feet. His alibi was flimsy. He claimed he had gone to another bar, where he was mugged and his car stolen. He was unconscious for some time and when he woke up alone in the parking lot he walked home. He claimed to have no idea how his car ended up at his house. The only evidence even slightly supporting his story was a large knot on the back of his head.

Decades ago, even if the client convinced the lawyer that he did not commit the crime, it was pretty much a hopeless case. A jury would be extremely unlikely to believe the alibi. Even if he appeared very sincere and honest, evidence of his reputation as a hard drinker and his prior misdemeanor DUI conviction would discredit the story.

But today's lawyer might find hope from the records of his mobile phone calls trying to find someone to come pick him up. Maybe a friend even received a drunken call asking for a ride and would testify when he received it. Maybe the lawyer would be able to locate the records of which cell towers his phone "hit" on the drunken stroll home. But this defendant had used up his phone's battery earlier in the night.

Luckily, this defendant walked home through one convenience store parking lot, went inside another one to use the rest room and stumbled into an ATM even though he did not use it. Cameras at all three locations recorded good, time-stamped images of him. The hard-nosed prosecutor did not yield, noting that the time of the videos was well after the hit-and-run. The state's theory was now that defendant walked by the cameras after the hit-and-run to leave a false trail of evidence supporting his alibi. Defense counsel had a bad feeling now. He was certain the client was innocent and aware that the state had a very strong case.

The defendant knew he was facing a likely prison term. At a meeting at his home, he thanked his lawyer for uncovering the video evidence that would at least give him a fighting chance at trial. He remarked that he had no idea there were so many cameras recording people in public, but he wasn't surprised as his neighbor across the street had installed a camera after a recent burglary. Suddenly everyone got quiet. They all jumped up to visit the neighbor.

The neighbor's camera was set up to retain 10 days worth

of video on a hard drive instead of the usual 24 hours. On that night, the defendant was shown stumbling into his house. Twenty minutes later someone else parked the car in his yard. The camera showed a clear image of his face, as well as the face of the driver who had picked him up after parking the car, along with the tag number of the car. The driver of the other vehicle confessed after less than an hour of questioning, he had been a passenger in the stolen car. After the accident, they had used the street address on the insurance verification form to frame the lawyer's client.

THE FUTURE OF EVIDENCE

Potential video evidence and other digital evidence will only increase in amount in the upcoming years. More communities are installing more video cameras in public areas as a crime prevention tool. We have seen controversies from "red light" video cameras that record video and cause tickets to be issued with no human intervention.

A meteor exploded over Russia in February 2013. There were several videos of the explosion available because apparently Russian drivers extensively use dashboard cameras in cars because of bad experiences with insurance companies refusing to pay claims without convincing evidence. Is it possible such civilian dashcams might become popular in the U.S.?

Another example is that smart phones that are used to take pictures and are GPS-enabled are most likely storing the exact location of every picture taken within the metadata associated with the picture.

Parents whose children post pictures to Facebook or other social media may want to discuss that with their children and turn this feature off.

One of my co-workers leaves his house empty every day. Among the video security systems he has installed is a camera that instantly sends him a photograph of everyone who comes to his front door when he is away.

Almost all hotels have video surveillance. But if your client is certain her spouse met a paramour at a downtown Tulsa hotel on a certain day, will all of the downtown Tulsa hotels turn over the videos from the


lobbies on that day in response to a subpoena or will they resist, citing the privacy of their customers? Or can a lawyer in a family law case obtain the cell phone tower records that might show someone's travels on a certain day? Who now has the expertise and resources to review hours of digital video or cell phone tower records without compromising the evidentiary value? And what about the fact that many of these digital videos are recorded over and erased after 24 or 48 hours?

Prosecutors have complained about "the CSI effect," shorthand for jurors in criminal prosecutions expecting to see

the flashy investigative tools and techniques that appear on criminal investigation television series. But as more data is available, there are more potential ways to prove or disprove many allegations.

One picture may be worth a thousand words, but an exculpatory video might literally be worth a client's freedom.

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!


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WEBCAST

June 26

Oklahoma Legislative Update 2013

Presented by: Ray Vaughn
Oklahoma County Commissioner,
District 3, Edmond

Registrants will get a "hot off the press" education on what Oklahoma attorneys need to know about recent Oklahoma legislative actions in store for 2013/2014.

12:00 p.m.

Oklahoma Legislative Update 2013

Randy Grau, Member of the House of Representatives,
District 81, Edmond; Of Counsel, Cheek & Falcone PLLC,
Oklahoma City

Kay Floyd, Member of the House of Representatives,
District 88, Oklahoma City

Senator David Holt, District 30, Oklahoma City

1:50

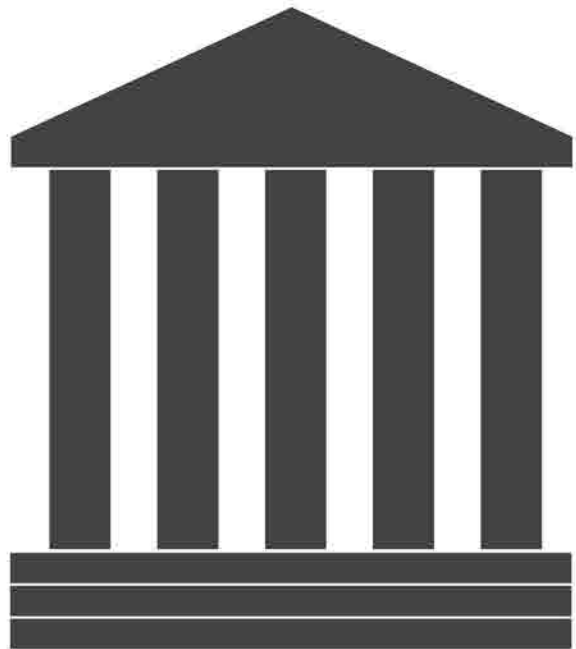
Adjourn

Webcast starts at noon.

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Q & A with OU Law Dean Joseph Harroz Jr.

By Travis Pickens

Q. *You have had a long association with President David Boren at OU, as vice president of executive affairs, General Counsel and now dean of the College of Law and university vice president. How has he influenced your leadership style and vision for the College of Law?*

President Boren is a true mentor and friend. I have had the opportunity to work with him in a variety of roles, including legislative director when he served in the United States Senate. His unique combination of remarkable talent, love for the university and state and tireless work ethic make him the ideal leader of our university.

President Boren maintains a passionate conviction that lawyers should serve both clients and society, including the public interest. This conviction has certainly influenced my own leadership style and vision for The University of Oklahoma College of Law (OU Law). I also follow President Boren in my desire to provide an exceptional, affordable legal education.

As an alumnus of OU Law, President Boren understands the college, its history and its mission. He is always available to counsel when I bring questions to him about strategic opportunities. I am grateful for his continued leadership and vision.

Q. *The OU College of Law has recently received some recognition from national publications. What are they?*

We are honored to receive recognition in a number of recent national surveys. These include being ranked as a "Best Law School" (top 15 percent) and "Best Value" (top 15) by *National Jurist*. We also experienced a 14-point jump in the latest *US News and World Report* ranking.

Q. *The OU College of Law recently created new J.D. certificates. Tell me about these and the benefit to your students.*

We are launching new certificate programs that enhance the J.D. degree and can be completed within the same three-year J.D. curriculum. The certificates



Joseph Harroz Jr.
Dean at OU College of Law

Joseph Harroz, Jr. became the 12th dean of the University of Oklahoma College of Law and seventh director of the OU Law Center on July 1, 2010. He is university vice president and teaches employment law.

He is an OU Phi Beta Kappa graduate with a B.A. in economics and a minor in zoology. He received his J.D. from Georgetown University Law Center and was an associate editor of the *Journal of Law and Policy in International Business*. While in Washington, D.C., Mr. Harroz served as legislative director and legal counsel to then-U.S. Senator David L. Boren.

Upon his return to Oklahoma, he joined Crowe and Dunlevy, practicing in the area of commercial litigation. In 1994, he began his service at OU, serving as vice president for executive affairs. In 1996, he was named general counsel of the University of Oklahoma, serving as chief legal counsel to the president, the OU Board of Regents, and the five campuses they oversee.

From 2008 to 2010 he was president of the second largest sleep diagnostic and therapy company in the nation. Mr. Harroz was a founding director of the Oklahoma Appleseed Center for Law and Justice, is a member of the Oklahoma Foundation for Excellence board and executive committee, and chairman and trustee of Waddell & Reed's Ivy Mutual Funds.

Dean Harroz has taught as an adjunct professor since 1997, frequently guest lecturing, and serving as a college advisory board member.

allow students to gain focused knowledge in energy law, natural resources law, Indian law or business entrepreneurship.

The certificates are designed to give students insights into these fields, to be attractive to employers hiring in these areas and to give students an advantage as they begin their careers. We worked with numerous companies, law firms and government agencies to create these certificates, which will be offered for the first time this fall.

Q *OU Law plans to launch a Master of Legal Studies degree this fall, pending State Regent approval this spring. What is this new degree and what needs does it meet in the workplace?*

We have heard from many who wish to gain legal knowledge in the areas for which OU Law is nationally and internationally recognized – energy and natural resources law and Indian law – to help them advance in the job they have presently or the job to which they aspire. To address this demand, we have created two Master of Legal Studies programs focused in these areas. The master’s degrees would allow students to gain relevant legal knowledge in 30 hours of coursework, compared to the 90 hours required to earn a J.D. The MLS in Indian Law would be offered online, providing students even more flexibility.

Q *OU College of Law students are contributing a high amount of hours of pro bono and volunteer legal work. What are the driving factors behind this?*

From the first day of orientation, OU Law communicates to students that service to society is both an honor and an obligation that comes with their degree. We begin with a convocation ceremony that includes an address from President David Boren and a professionalism pledge administered by Justice Steven Taylor. Modeled after the College of Medicine’s “White Coat Ceremony,” the convocation charges the class with an understanding of the obligations of the profession. It appears to be working. In fact, this year almost 90 percent of incoming students voluntarily committed to provide 50 to 100 pro bono hours by the end of their law school careers.

Our students have become increasingly engaged. In 2010, OU Law students provided 5,000 hours of pro bono volunteer service. In 2011, that number doubled to 10,000 hours. In 2012, students provided 13,500. This year, more than 14,500 hours were provided. We are so proud of our students’ understanding of commitment to service.

The OU Law community has also responded through donations to enhance student opportunities for public service. In the last two years, annual summer fellowship funding has grown from just a few thousand dollars to more than \$25,000. We are thankful for the partnership of many OU Law faculty, alumni and friends. Together, we are

developing lawyers who will continue their service long after they leave our building.

Q *You introduce yourself and sign correspondence simply as “Joe” to both students and alumni. Is that indicative of the law school culture, or is that simply your personal style?*

OU Law students and alumni have access to every member of the faculty and staff in the building, and that certainly includes me. They stop by to chat and email me, and I make a point to walk the building every day to visit with students. Students attend our alumni events, and there is a big emphasis on bringing the two groups together. The OU Law community spends a lot of time together. When you actually know someone, formality fades.

Q *What further goals do you have for the OU College of Law?*

There is no doubt the landscape of legal education (and education, more broadly) is changing, and we are focused on being at the forefront of innovation. We are developing new and dynamic classes and programs to ensure our students receive a world-class legal education. We will continue to be forward thinking to anticipate the needs of the evolving job markets. We will work with our alumni and friends to expand scholarships and opportunities for our students. Ultimately, we will remain focused on the need to graduate students who understand the special opportunities and obligations of service that are at the core of our noble profession.

Q What special efforts has the OU College of Law taken to enhance ethics and professionalism in the practice of law?

We emphasize the importance of the ethical and professional obligations of the legal profession throughout our students' law school careers. At the beginning of the year, all first-year students take a professionalism pledge, promising to conduct their profession with honesty and integrity and to work for the betterment of the profession and society. We want our students

to grasp the professional obligations they have as law students of academic integrity and service, and those of the legal profession with which they will soon be entrusted.

Our core academic curriculum includes ethical considerations in every area of the law, in addition to a required professional responsibility course. OU Law also maintains programming throughout the year featuring guest speakers sharing the significance of being an ethical and professional attorney. Finally, we hold an annual Professionalism Night for 1Ls sponsored

by McAfee & Taft. This year we hosted 155 first-year students at Devon Tower and covered the topics of professionalism in the workplace, business etiquette and professional dress. I am confident our students leave OU Law with the highest degree of ability and integrity in the practice of law.

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



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Meeting Summary

The Oklahoma Bar Association Board of Governors met at Postoak Lodge in Tulsa on Friday, Feb. 22, and Saturday, Feb. 23, 2013.

REPORT OF THE PRESIDENT

President Stuart reported he attended the Pottawatomie County Bar Association meeting, OBA Legislative Reading Day, Judge David Lewis swearing-in ceremony, meeting with Chief Justice Colbert regarding the budget, January and additional special board meeting, and ABA midyear meeting in Dallas including the House of Delegates and SCBP reception. He presided over the Southern Conference of Bar Presidents midyear meeting and made a presentation at the Pontotoc County Bar Association meeting in Ada. He participated in planning meetings regarding the Postoak retreat, OBA Day of Service, Southern Conference of Bar Presidents annual meeting, budget and Solo & Small Firm Conference.

REPORT OF THE VICE PRESIDENT

Vice President Caudle reported he attended the January board meeting, Board of Governors swearing-in ceremony and luncheon, dinner reception hosted by the has been governors and Past President Reheard, Comanche County Bar Association monthly meeting and CLE, special board meeting, portions of the ABA midyear

meetings and Day of Service planning meeting.

REPORT OF THE PRESIDENT-ELECT

President-Elect DeMoss reported she attended the has been party, Chief Justice Colbert's swearing in, meeting with the chief justice regarding the 2013 budget, special board meeting, planning meeting for 2014, OBA Law Schools Committee meeting, Tulsa County Bar Association past presidents meeting, meeting on human trafficking program, ABA Midyear House of Delegates meetings, National Conference of Bar Presidents meetings and Southern Conference of Bar Presidents meeting. She also participated in the presentation of the revised 2013 budget to the Oklahoma Supreme Court.

REPORT OF THE PAST PRESIDENT

Past President Christensen reported she attended the board swearing-in ceremony and luncheon, January board meeting, Southern Conference of Bar Presidents planning meeting, dinner reception hosted by the has been governors and Past President Reheard, swearing in for Chief Justice Colbert, swearing in for Chief Judge Lewis, ABA midyear meeting in Dallas, ABA House of Delegates at midyear and special meeting of the board on Jan. 29. She served as state delegate to the ABA Nominations Committee.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the has been party, staff web meeting, monthly staff celebration, staff directors meeting, Law Schools Committee meeting, two YLD meetings and roast, Southern Conference of Bar Presidents meeting planning meetings, Legislative Reading Day, swearing in of Judge Lewis as Court of Criminal Appeals chief judge, funeral for retired Justice Ralph Hodges, meeting with the chief justice on budget, meeting with Bob Burke regarding SCBP, ABA midyear, NABE and NCBP meetings, House Judiciary Committee meeting on OBA Legislative Agenda bill, lawyers legislative breakfast, meeting with Inreach regarding online CLE and SCBP meeting sponsorship, SCBP meeting and reception, and Supreme Court conference on the amended budget. He also finalized details for the presidential retreat, met with the head of the Kirkpatrick Foundation regarding an animal law project, worked on OBA Day at Capitol and met with President Stuart and others regarding human trafficking programming.

BOARD MEMBER REPORTS

Governor Coogan reported she attended the January board meeting, has been dinner and party, February Cleveland County Bar Association luncheon and CLE,

Justice is Sweet fundraiser by CCBA for Second Chance, Law Day Committee planning meeting and quarterly CCBA Friday after-work get together. **Governor Farris** reported he attended the board swearing-in ceremony and luncheon, January Board of Governors meeting, dinner and reception hosted by the has been governors and Past President Reheard, Tulsa County Bar Association "Call A Lawyer" segment on KJRH television, TCBA board meeting, TCBA past president's luncheon, OBA Work/Life Balance Committee meeting, ABA House of Delegates at midyear meeting in Dallas and Tulsa County Bar Foundation capital campaign meeting. **Governor Gifford** reported he did a presentation at a CLE for the Arkansas Bar Association. He also attended OBA Legislative Reading Day, Board of Governors swearing-in ceremony and luncheon, dinner reception hosted by the has been governors and Past President Reheard, swearing in for Chief Justice Tom Colbert, swearing in for Chief Judge David Lewis and special board meeting. **Governor Jackson**, unable to attend the meeting, reported via email that he attended the January Board of Governors meeting, swearing in of Board of Governors and luncheon, has been party, Garfield County Bar Association monthly meeting and special meeting of the Board of Governors. **Governor Hays** reported she attended the Board of Governors swearing-in ceremony and luncheon, January board meeting, dinner reception hosted by the has been governors and Past President Reheard, special board meeting, OBA Law Day Committee meeting, OBA Solo & Small

Firm Conference Planning Committee meeting, OBA Bench and Bar Committee meeting, OBA Family Law Section executive planning session, OBA Family Law Section monthly meeting for which she prepared and presented the budget report, OBA Family Law Section Leadership Retreat, Tulsa County Bar Association Family Law Section monthly meeting, TCBA Law Week Committee meeting and TCBA Board of Directors meeting at which she presented a report of Board of Governors matters. She also communicated with the OBA Law Day Committee, communicated with OBA FLS leadership regarding 2012 financial and 2013 planning and participated in a Women in Law Conference planning session and meeting preparation. **Governor Meyers** reported he attended the January board meeting, swearing-in ceremony of new officers and governors, has been festivities, special board meeting and Comanche County Bar Association meeting. **Governor Pappas** reported she attended the January Board of Governors meeting, board swearing-in ceremony, OACP executive retreat, has been party, Payne County Bar Association monthly meeting, special meeting of the board, plus OACP executive and monthly meetings. **Governor Parrott** reported she attended the January board meeting, board swearing-in ceremony and the luncheon afterward, has been party, funeral service for Justice Ralph Hodges, special board meeting, OBA Law Schools Committee meeting, OBA Bench and Bar Committee meeting and OBA Civil Procedure/Evidence Code Committee meeting. **Governor**

Smith, unable to attend the meeting, reported via email he attended the Board of Governors swearing-in ceremony, January board meeting and has been party. **Governor Stevens** reported he attended the January board meeting, Board of Governors swearing-in ceremony and luncheon, has been party, Cleveland County Bar Association after-work get together, OBA Legislative Reading Day, special board meeting and February CCBA meeting. **Governor Thomas**, not able to attend the meeting, reported via email that she attended the January board meeting, has been party, Washington County Bar Association monthly meeting and special January board meeting by telephone.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Vorndran reported it has been an exciting year so far for the YLD. The division conducted its annual New Director Orientation/Leadership Retreat on Jan. 19. In addition to teaching new members about their duties and responsibilities, they took the time to plan the year and to stuff bar exam kits for the February test-takers. Many YLD board members attended the ABA midyear meeting in Dallas, where Oklahoma had the largest delegation of any affiliate to the YLD programming. He said this demonstrated the dedication of board members since the majority paid all or part of their expenses. The Oklahoma contingent attended the YLD welcome reception, affiliate roundtable and the YLD House of Delegates. Conor Cleary of Tulsa attended as a delegate and was the opposition speaker to a resolution on

the house floor. He did an excellent job and represented Oklahoma well. The division conducted its February Board of Directors meeting while in Texas and completed additional planning for the year at hand and the OBA Day of Service. The YLD is focused on making the OBA Day of Service a great success and each YLD director is looking forward to working with his or her counterpart on the Board of Governors. He said the division is planning new ideas for the solo conference such as a networking event. He asked board members to participate. He estimated 60-70 recent law school graduates are looking for work and are willing to relocate to anywhere in the state. Governor Vorndran attended the January Board of Governors meeting, swearing-in ceremony and luncheon, Pottawatomie County Bar Association meeting, January YLD Board of Directors meeting, YLD New Director Orientation/ Leadership Retreat, roast and toast of Immediate Past YLD Chair Jennifer Castillo, ABA Midyear Meeting, ABA/YLD House of Delegates, ABA/YLD affiliate roundtable, Oklahoma ABA delegate dinner, ABA House of Delegates and Solo & Small Firm Conference Planning Committee planning meeting.

COMMITTEE LIAISON REPORTS

Governor Hays reported the Law Day Committee will soon judge contest entries, and the Ask A Lawyer TV show and statewide free legal advice will take place May 2. She said the Women in Law Committee will hold its first meeting Wednesday and start planning the annual conference. She also reported the Tulsa County

Bar Association will celebrate its 110th anniversary with a celebration on Oct. 4. Supreme Court Chief Justice Tom Colbert will be the keynote speaker for the TCBA Law Day luncheon, and the search for an executive director is underway to replace Sandra Cousins, who is retiring.

BOARD MEETING SCHEDULE

President Stuart reported that due to budget consideration the board will reduce its expenses and revise its plan for 2013 board meetings. Options to reduce expenses were discussed. Governor Vorndran reported the YLD will reduce its meetings from 12 to nine, and two of the meetings will be via conference call.

EXECUTIVE SESSION

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

MEETING RECESS AND RECONVENE

The board voted to recess the meeting until Saturday morning, Feb. 23. The next morning the board voted to reconvene the meeting.

EXECUTIVE SESSION

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

NEW OBA POLICY

The board voted to adopt a policy that OBA monies will not be used for alcohol at Board of Governors functions.

REIMBURSEMENT POLICY

Changes to the OBA Reimbursement Policy were discussed. The board decided to

table action on the reimbursement policy.

PROPOSED DISCIPLINE CONFLICT RULES

General Counsel Hendryx said Rules of Professional Conduct Committee Chair Paul Middleton reports his committee has drafted and approved proposed language to eliminate conflicts of interest for current Professional Responsibility Commission, Professional Responsibility Tribunal and Board of Governors members in addition to former PRC and PRT members. No such rules currently exist. Board members reviewed the proposed rules and voted to approve the proposed rules. Before sending the rules to the Supreme Court for its consideration, the board directed they be published in the *Oklahoma Bar Journal* giving bar members the opportunity to submit comments, which would be sent to Executive Director Williams.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx submitted annual reports for the Professional Responsibility Commission and Professional Responsibility Tribunal. A written status report of the PRC and OBA disciplinary matters for January 2013 was also submitted for the board's review.

OBA DAY OF SERVICE

President Stuart reported the idea for the day of service is for every county bar association to select a local charity and to organize a community service project to benefit that charity on a Friday or Saturday designated for OBA projects across the state. A list of 20 United Way organizations

in Oklahoma was compiled, and President Stuart said if a county bar doesn't want to pick just one organization that they can raise money for their local United Way organization, which benefits many projects. Governor Vorndran, as YLD chair, has identified a YLD contact person for many counties. President Stuart said the goal is for board members to partner with the YLD contact in their county, and he asked board members to contact the YLD member on the list to forge a partnership. Dates were discussed, and it was decided the Day of Service would be Sept. 20-21, since neither OU nor OSU had football games that weekend. President Stuart said he would like

to involve corporate law departments and law school organizations that routinely do community service. 2012 YLD Chair Jennifer Castillo has agreed to coordinate the participation of large firms. Ideas were to organize a corporate challenge with some type of reward for the winner and to give t-shirts to all participants. It was also suggested that photos and video be shot to document the project. The Communications Department was asked to start publishing "save the date" notices for the statewide event.

HUMAN TRAFFICKING

President Stuart reported that educating lawyers about human trafficking is an initia-

tive of ABA President Laurel Bellows, and he wants the OBA to support the effort. Oklahoma City lawyer Jimmy Goodman is co-chair of the ABA Task Force on Human Trafficking and will begin a three-year term on the ABA Board of Governors in August. He is the point person for this initiative in Oklahoma.

NEXT MEETING

The Board of Governors met at the Oklahoma Bar Center in Oklahoma City on April 19, 2013 and May 17, 2013. A summary of those actions will be published after the minutes are approved. The next board meeting will be held on June 21 at the Choctaw Casino Resort in Durant.

2013 TENTH CIRCUIT BENCH & BAR CONFERENCE

AUGUST 28-31, 2013

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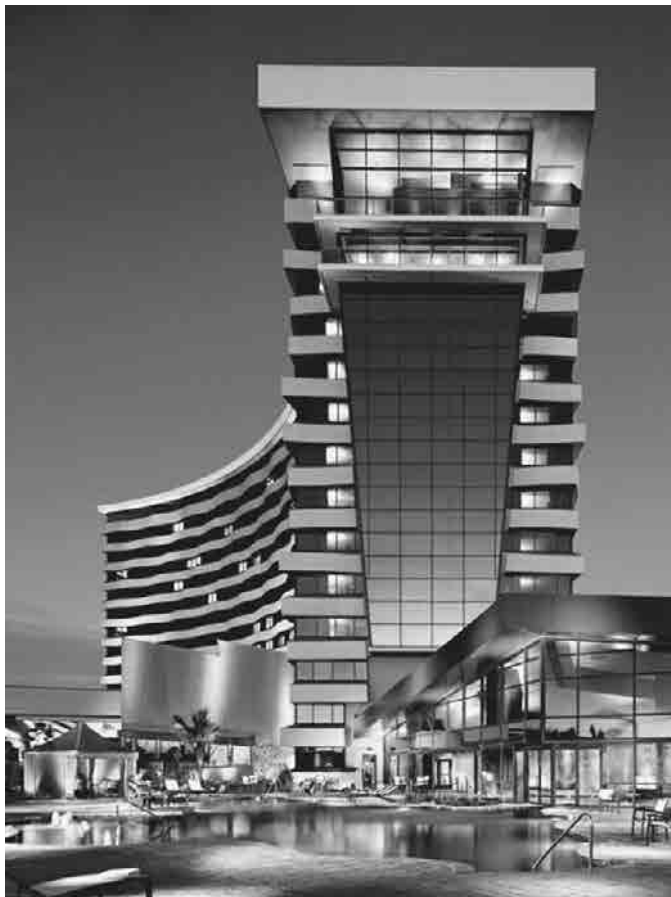
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JUNE 20-22, 2013 SOLO & SMALL FIRM CONFERENCE

And YLD Midyear Meeting

Join us for the OBA's Annual Solo & Small Firm Conference at the Choctaw Casino Resort in Durant. Enjoy food, fun and fellowship with fellow attorneys in a relaxing atmosphere! Get your MCLE for the whole year with topics ranging from practice management to criminal law to energy law, and everything in between. Register now at www.okbar.org/solo.

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Leave a Legacy

Plan Your Charitable Gift to OBF

By Susan Shields

The primary sources of OBF funding are IOLTA, Fellows dues, *cy pres* awards and other individual and organization contributions. However, charitable, planned giving is another increasingly important funding mechanism that maintains the OBF's grant-making endowment. Charitable, planned giving, over one's lifetime or at death, can take many forms. The "planning" involved in "planned giving" typically involves a donor making a charitable gift that will occur at a future date to support a non-profit charitable entity, such as the OBF.

Many OBF supporters would like to leave a legacy to the OBF after their deaths. The available options for charitable giving range from simple cash bequests to more complex planning through charitable trusts. The following are some common types of planned charitable gifts that we encourage you to consider incorporating into your own estate plan to support the OBF.¹

BEQUESTS

A simple form of planned charitable gift is a gift to charity in a will or trust that takes effect upon the death of the donor. For example, a person may provide for the following

type of specific bequest in his or her will or revocable trust:

"Upon my death, I leave the sum of \$50,000 (or 5 percent of my estate) to the Oklahoma Bar Foundation."

A donor may also leave all or a portion of the estate's residue or remainder (what is left over after specific bequests are made) to charity through a "residuary bequest." Another way to accomplish a gift at death is to complete a "pay on death" or "transfer on death" beneficiary designation for a bank account, investment account or certificate of deposit so that any remaining balance in the account will pass to the OBF following the account holder's death.

OUTRIGHT PLANNED GIFTS

While many planned gifts are deferred until a later date, this is not always the case. In many circumstances a donor may achieve greater income tax benefits by making a charitable gift today rather than including such a gift in his or her estate plan. Outright gifts can consist of any property that is transferred directly from a donor to a qualified charity such as the OBF — including cash, securities, automobiles, boats, artwork,

mineral interests, real estate and personal property.

Cash Gifts

Cash gifts are the simplest form of charitable gift for both the donor and the charity. In the case of a cash gift during lifetime, the total amount given to the OBF will usually generate a charitable income tax deduction on the donor's tax return. If the gift exceeds 50 percent of adjusted gross income, the deduction typically may be carried over up to five years or until the deduction is completely exhausted.

Gifts of Securities

Gifts of appreciated securities to the OBF can result in additional tax savings to the donor. The fair market value of the securities at the time the gift is made may be taken as an income tax charitable deduction. In most cases, no capital gains tax is paid on the built-in appreciation of the securities given away, so long as the securities are long term capital gain property. In general, the deduction limit for securities is 30 percent of adjusted gross income; however, any excess deduction can usually be carried over by the donor for the next five tax years.

Gifts of Tangible Property

Outright gifts can also be made of tangible personal property, including art, jewelry, antiques, automobiles, boats and other items. If the tangible property given is not related to the recipient's charitable purposes, then it is deductible only to the extent of its cost basis to the donor. Charitable gifts of automobiles valued at over \$500 are subject to special rules.

Gifts of Mineral Interests and Real Estate

Mineral interests and real estate may also be given away as a charitable gift. The tax treatment for gifts of land, mineral interests, farms, homes or other real property is generally the same as the treatment of appreciated securities.

GIFTS IN TRUST

A donor may wish to give assets to the OBF in a manner that will pay lifetime income to the donor or to a designated beneficiary. Alternatively, a donor may wish to give an income stream to the OBF for a term of years, retaining a reversionary remainder interest in the gifted assets. However, a donor is only entitled to a charitable deduction for income, gift or estate tax purposes when he or she makes a charitable contribution by means of a trust if the gifts are made in a qualifying charitable lead trust, a qualifying charitable remainder trust, or a pooled income fund. These types of charitable trusts require careful planning with your professional tax advisor but can be a win-win charitable gifting strategy for both the donor and the donor's family and the OBF providing benefits for many years.

CHARITABLE GIFT ANNUITY

A charitable gift annuity is a contract between the donor and the charity. The donor makes a gift of cash or appreciated securities qualifying for long-term capital gain treatment to the charity in exchange for the obligation of the charity to make fixed annual payments to the donor over his or her lifetime. The rate of return is based on the beneficiary's age at the time of entering into the annuity agreement. A charitable gift annuity also involves special planning with the donor and his or her tax advisor and the OBF.

LIFE INSURANCE

Another powerful tool for charitable planning is the donation of a life insurance policy to the OBF, perhaps because the original reasons for the purchase of the policy have been fulfilled. Donors may also choose to designate the OBF as the primary or contingent beneficiary of a life insurance policy. Estate tax benefits are generally realized by having these assets pass to charity. Donors who wish to name a charity as the beneficiary of their life insurance policy get leverage by making a charitable gift at a fraction of the face value of the policy.

GIFTS OF RETIREMENT PLAN ASSETS

Donors may also designate the OBF as a primary or secondary beneficiary of a qualified retirement account, such as an IRA or a 401(k) account after the donor's death. If the qualified plan assets pass to charity after the death of the account owner, an estate tax charitable deduction will be available and the income tax

liability that would be owed if the retirement assets passed to individual beneficiaries will be avoided.

The provision for tax-free distributions of up to \$100,000 from IRAs for donors age 70 ½ and older to public charities was also extended until Dec. 31, 2013 in the American Taxpayer Relief Act of 2012 which became effective on Jan. 2, 2013. This allows qualifying donors to direct the distribution of up to \$100,000 in 2013 to the OBF and exclude the amount distributed directly to charity from their gross income.

CONCLUSION

All contributions to the OBF are deductible for estate, gift and income tax purposes to the maximum extent allowed by law. Plan to consult with your professional advisors in order to create the perfect charitable gift program for you and your family, and consider including the OBF as a part of that plan. All of these charitable giving tools, from the simple to the complex, can be mixed and matched to leave a legacy to the OBF in a way that fits your own financial and family situation.

Ms. Shields is OBF president and can be reached at susan.shields@mcafeetaft.com.

1. Consult your professional tax advisor concerning the tax rules applicable to your own charitable giving. Reference may also be made to Internal Revenue Code Sections 170 et seq. and IRS Publication 526, "Charitable Contributions" for further information.

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Phone: _____ Email Address: _____

*The Oklahoma Bar Foundation was able to assist 28 different programs or projects this past year with the help and generosity of our OBF Fellows — providing free legal assistance for the poor and elderly; safe haven for the abused; protection and legal assistance to children; law-related education programs; court technology projects; other activities that improve the quality of justice for all Oklahomans. These programs affected more than 90,000 lives last year alone. These legal services were multiplied through more than 3,000 pro bono volunteers. The Oklahoma Bar legend of help continues with **YOU!***

<u>Amount</u>	<u>Category</u>
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Gideon's Children - Not Just in Criminal Law

By Rick Goralewicz

Almost like a perfect storm of justice, several powerful legal issues flowed together over the past two months. In March, lawyers and bar associations across the country celebrated the 50th Anniversary of SCOTUS' landmark decision in *Gideon* ensuring the right to counsel in criminal cases.

Also in March, the *New York Times* told the story of folks like Walter Bloss, an 89-year-old man evicted from his home of 43 years after a quarrel with his landlord. Mr. Bloss appeared for the eviction hearing *pro se*. Later, through the assistance of a legal services office, he gained a stay of the eviction while his case underwent appellate review. The *Times* observed: "Civil matters — including legal issues like home foreclosure, job loss, spousal abuse and parental custody — were not covered by [*Gideon*]." The article also reported Texas Chief Justice Wallace B. Jefferson's lament that: "Some of our most essential rights — those involving our families, our homes, our livelihoods — are the least protected." In April, the Maryland General Assembly passed a bill (SB262/HB129) to create the Task Force to Study Imple-

“The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law... He is unfamiliar with the rules of evidence...He lacks both the skill and knowledge adequately to prepare his defense, even though he has a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him.”

Gideon v. Wainwright

menting a Civil Right to Counsel. The task force, scheduled to issue its report in October 2014, will do a number of things, including the following:

1) study the current resources available to assist in providing counsel to low-income Marylanders compared to the depth of the unmet need, including the resulting burden on the court system and the stress on other public resources;

2) study whether low-income Marylanders should have the right to counsel at public expense in basic human needs cases, such as those involving shelter, sustenance, safety, health or child custody, including review and analysis of the Maryland Access to Justice Commission's "Implementing a Civil Right to Counsel in Maryland" report and each other previous report by a task force, commission, or workgroup on this issue;

3) study alternatives regarding the currently underserved citizenry of the state and the operation of the court system.

Thus we have, in the space of a few weeks, a celebration of the bright promise of *Gideon*: a recognition of the withholding of that promise for impoverished civil litigants and the affirmative steps of one state to remedy the latter. In fact, since SCOTUS' 1981 opinion in *Lassiter v. Department of Social Services*, the battle for a level playing field in many life-altering civil scenarios must be won, if at all, at the state level through the vehicle of state constitutions and the efforts of local lawyers and judges.

George Hausen, executive director of Legal Aid of North Carolina, phrased the issue this way: "As lawyers, we would be utterly shocked at legislation that explicitly closed access to the courts to all persons below a certain income level. But that which would shock our consciences if done explicitly is precisely what we have allowed to be done silently."

Pro se litigants dominate many civil dockets. We would not expect someone who could afford counsel to litigate issues such as the loss of a home or a child without an attorney; poor persons often must. Uniformly, those poor persons with access to counsel — whether through Legal Aid, pro bono volunteers or other charitable advocacy groups — fare better. Lack of access to

basic legal protections for a broad range of citizens lacking assets or the often serendipitous availability of pro bono representation has become the norm. Passive acceptance of this unacceptable standard defies both an underlying ethos of the legal profession and the explicit guarantee of the "open court" provision of the Oklahoma Constitution.

The "Civil Gideon" movement began in earnest a decade ago. Its aim is not to supply an attorney for all civil litigants, but for those with "life-altering" cases in aid of preservation of housing, sustenance and familial relations. Particularly as society and the justice process become evermore complex, we must keep in mind that the observations from *Gideon* at the start of this

article are not exclusive to the criminal arena alone.

Even its most ardent supporters do not tout "Civil Gideon" as a panacea. It stands as one column in a colonnade consisting of committed pro bono; adequately staffed and funded legal service programs; and meaningful *pro se* reform. While the cure may seem elusive, the need — together with the financial, emotional and societal costs — remains palpable. It's time a serious consideration of expanding the civil right to counsel occurs in Oklahoma — not as a magic cure but as one means to an end inextricably tied to the mission of this association.

Mr. Goralewicz is a Legal Aid attorney in Oklahoma City and is an Access to Justice Committee member.

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At Home



At Work



And on the Go

Time Flies

By Joe Vorndran

The OBA YLD has had an active couple of months, and there are no signs of slowing down with many more exciting events scheduled in our future. I would first like to offer a special thanks to LeAnne McGill and Tim Rogers who have been busy in their roles as co-chairs of the YLD New Attorney Orientation Committee. They have overseen the production and distribution of our "Bar Exam Survival Kits" to all February test takers, organized the reception at the Capitol immediately following the swearing-in of new OBA members and hosted social events in Oklahoma City and Tulsa to welcome our newest members and introduce them to the YLD. Each of these events was a great success and a wonderful resource for young lawyers to learn about their bar association.

YLD MIDYEAR MEETING

On the heels of this success, the YLD has begun to focus its energy on the YLD midyear meeting at the Solo & Small Firm Conference in June. As always, the Solo & Small Firm Conference Planning Committee has put together a wonderful slate of curricula and activities. In addition, the YLD is planning several new events, including a network-



LeAnne McGill and Tim Rogers, co-chairs of the YLD New Attorney Orientation Committee, prepared and distributed these "Bar Exam Survival Kits" to February test takers.

ing event geared toward pairing young lawyers and law students with mentors and potential employers, CLE and some poolside fun. We encourage young lawyers from across the state to participate in this great event.

DAY OF SERVICE

A central item of our mid-year meeting agenda will be the final planning and organization of the OBA Day of Service in September. The YLD Board of Directors in conjunction with the OBA Board of Governors has begun soliciting volunteers to help coordinate service projects across the state. If you would like to be involved at the community or statewide level, please contact the YLD Community Service Committee Chair, Brandi

Nowakowski at bnowakowski@thewestlawfirm.com.

As always, thank you for this opportunity to serve the OBA, and I look forward to seeing you at the Solo & Small Firm Conference in June.

Mr. Vorndran practices in Shawnee. He can be reached at joe@scdtlaw.com.



Like the YLD on Facebook! It's a great way to connect with fellow YLD members and see what's happening! **[facebook.com/obayld](https://www.facebook.com/obayld)**

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Redesigned to better serve you, our OBA members



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May

- 20 OBA Litigation Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa, Tulsa; Contact Renée DeMoss 918-595-4800
- OBA Solo and Small Firm Conference Planning Committee meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Collin Walke 405-235-1333
- OBA Alternative Dispute Resolution Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Michael O'Neil 405-232-2020
- OBA Civil Procedure and Evidence Code Committee meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact James C. Milton 918-594-0523
- 22 OBA Appellate Practice Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact Collin Walke 405-235-1333
- 23 OBA Work/Life Balance Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Sarah Schumacher 405-752-5565
- 24 OBA Professional Responsibility Commission meeting;** 9:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Dieadra Goss 405-416-7063
- OBA Access to Justice Committee meeting;** 10:30 a.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Laurie Jones 405-208-5965
- OBA Closes at 3 p.m. – Memorial Day Observed**
- 27 OBA Closed – Memorial Day Observed**
- 28 OBA Bench and Bar Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact Barbara Swinton 405-713-7109
- 29 OBA Communications Committee joint meeting with Law Day Committee;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact Dick Pryor 405-740-2944 or Richard Vreeland 405-360-6631

June

- 4 OBA Government and Administrative Law Practice Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Gary Payne 405-297-2413
- 5-6 Sovereignty Symposium;** 7:30 a.m.; Skirvin Hilton Hotel, 1 Park Ave., Oklahoma City; Contact Julie Rorie 405-556-9371
- 6 OBA Member Services Committee meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Sarah Schumacher 405-752-5565
- OBA Lawyers Helping Lawyers discussion group meeting;** 6 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.; University of Tulsa College of Law, John Rogers Hall, 3120 E. 4th Pl., Rm. 206, Tulsa; RSVP to Kim Reber kimreber@cabainc.com



- 7 OBA Board of Editors meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Carol Manning 405-416-7016
- OBA Law-related Education Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Suzanne Heggy 405-556-9612

- 11 OBA Law Day Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact Richard Vreeland 405-360-6631
- 12 OBA Diversity Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Kara I. Smith 405-923-8611
- 14 Oklahoma Black Lawyers Association meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Donna Watson 405-721-7776
- OBA Family Law Section;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and OSU Tulsa, NCB Room 222, Tulsa; Contact Donelle Ratheal 405-842-6342
- 15 OBA Title Exam Standards Committee meeting;** 9:30 a.m.; Stroud Conference Center, 218 W. Main St., Stroud; Contact Jeff Noble 405-942-4848
- 17 OBA Alternative Dispute Resolution Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Michael O'Neil 405-232-2020
- 18 OBA Bench and Bar Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact Barbara Swinton 405-713-7109
- OBA Civil Procedure and Evidence Code Committee meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact James C. Milton 918-594-0523
- 19 OBA Diversity Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Kara I. Smith 405-923-8611
- OBA Professional Responsibility Commission meeting;** 1:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Deadra Goss 405-416-7063
- OBA Women in Law Committee meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact Kim Hays 918-592-2800 or Susan Bussey 405-525-9144
- 20 OBA Professionalism Committee meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact Richard Woolery 918-227-4080
- Solo and Small Firm Conference registration;** 4 p.m.; Choctaw Resort, 4216 S. Hwy 69/75, Durant; Contact OBA CLE 405-416-7006
- 21-22 Solo and Small Firm Conference;** 8:25 a.m.; Choctaw Resort, 4216 S. Hwy 69/75, Durant; Contact OBA CLE 405-416-7006
- 21 OBA Board of Governors meeting at Solo and Small Firm Conference;** 9 a.m.; Choctaw Resort, 4216 S. Hwy 69/75, Durant; Contact OBA CLE 405-416-7006
- OBA Rules of Professional Conduct Committee meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Paul Middleton 405-231-2622
- 24 OBA Juvenile Law Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City and Tulsa County Bar Center, Tulsa; Contact Tsinena Thompson 405-232-4453
- 26 OBA Diversity Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Kara I. Smith 405-923-8611



Lawyers Giving Back

- **Cleveland County Bar Members Raise \$1,000 for Homeless Pets**

The Cleveland County Bar Association's recent fundraiser, "Justice is Sweet," involved CCBA members and Cleveland County Courthouse staff preparing baked goods and candies that were displayed and sampled at the courthouse on Valentine's Day. Participants "voted" for their favorites by placing their donations in a jar next to their entry. All proceeds were donated to Second Chance Animal Sanctuary. The Cleveland County Bar Foundation matched funds to round the donation to \$1,000.



Cleveland County Bar Association President Don Pope and President-Elect Alissa Hutter, present a \$1,000 donation to the Second Chance Animal Sanctuary of Norman.



- **McAfee & Taft Gift Elevates TU College of Law Experiential Learning Program**

McAfee & Taft has committed \$45,000 to the TU College of Law to build a comprehensive experiential learning program, recognizing that field study and externships offer law students essential professional development and training opportunities. The donation will help fund a new law school position, the assistant dean and director of experiential learning. With this position, the college accelerates its shift toward a hands-on teaching model that emulates medical education.

Lawyers Encouraged to Devote Time, Talent to Serving Communities in 2013

OBA President Jim Stuart is encouraging all Oklahoma lawyers and law firms to make giving back a top priority. During 2013, the *Oklahoma Bar Journal* is supporting this effort by spotlighting those lawyers and law firms who give of their time, talent and financial resources to make their communities a better place. Have a great story or photos to share? Email Lori Rasmussen at lorir@okbar.org.

Welcome New OBA Members!

Nearly 100 new lawyers were sworn in during a ceremony at the State Capitol on April 23. Check out some of the new faces and swearing in highlights in our online photo gallery at www.tinyurl.com/April2013Gallery.



Clinton High School Mock Trial Team Returns from Nationals



The Clinton High School Mock Trial team cuts up during an evening out in Indianapolis as they celebrate their hard work and accomplishments during the 2012-2013 Mock Trial season.

The Clinton High School Gold Team has returned from the National High School Mock Trial Championship, held May 9 – 11 in Indianapolis. After four rounds and grueling competition in the winners' bracket, the team placed 25th overall, with just 35 points separating them from the ultimate champion, Albuquerque Academy of New Mexico.

"I am so proud of this team," said Oklahoma Mock Trial Coordinator Judy Spencer. "This is one of the finest overall teams I have had the privilege of accompanying to national competition in 11 years. There were stellar performances from each student; all were chosen as best witness or best attorney during a round. I am looking forward to see what they do next year!"

The 2013-2014 Mock Trial Season gets underway this fall, with next year's state champion heading to Madison, Wis., for the 2014 national finals.

Aspiring Writers Take Note

We want to feature your work on "The Back Page." Submit articles related to the practice of law, or send us something humorous, transforming or intriguing. Poetry is an option too. Send submissions no more than two double-spaced pages (or 1 1/4 single-spaced pages) to OBA Communications Director Carol Manning, carolm@okbar.org.



Discipline Conflict Rules Proposed: Member Comments Requested

The Rules of Professional Conduct Committee has drafted and approved proposed language to eliminate conflicts of interest for current Professional Responsibility Commission (PRC), Professional Responsibility Tribunal (PRT) and Board of Governors members in addition to former PRC and PRT members. No such rules currently exist. Before submitting the proposed rules to the Supreme Court for its consideration, the OBA Board of Governors is publishing the proposal to allow members the opportunity to comment. The proposed rules are available online at www.tinyurl.com/proposedPRCrules. Send comments by June 3 to OBA Executive Director John Morris Williams; P.O. Box 53036, Oklahoma City, OK 73152; fax 405-416-7001; johnnw@okbar.org.

We're Going on Vacation

The *Oklahoma Bar Journal* theme issues are going on summer break. The next issue, devoted to criminal law, will be published Aug. 17. You'll still receive court material issues twice a month in June and July. Have a great summer!



Free LHL Discussion Groups Available to OBA Members

You are invited to attend upcoming Lawyers Helping Lawyers discussion groups, always the first Thursday of each month in Tulsa and Oklahoma City. Each meeting is facilitated by committee members and a licensed mental health professional. The topic for the June 6 meeting will be "The Challenges of Work, Relationships and Parenting." In Oklahoma City, the group meets from 6 – 7:30 p.m. at the office of Tom Cummings, 701 N.W. 13th Street. The Tulsa meeting time is 7 – 8:30 p.m. at the TU College of Law, John Rogers Hall, 3120 E. 4th Place, Room 206. There is no cost to attend and snacks will be provided. RSVPs to kimreber@cabainc.com are encouraged to ensure there is food for all.

Annual Meeting 2013: Save the Date!

It's not too early to docket the OBA 2013 Annual Meeting, set for Nov. 13-15 at the Sheraton Hotel in downtown Oklahoma City. On tap will be great CLE, bar business, annual awards presentations, as well as fun, food and camaraderie as always. Hope to see you there!

¿Habla Español? Or Do You Speak Another Language?

If you speak a language fluently in addition to English, the OBA encourages you to add that to your official roster information. Go to my.okbar.org and log in. Click on Roster Info Update — scroll down to the bottom — and you'll see the boxes in front of 10 different languages. If you are included in the OBA's free lawyer listing service called OklahomaFindALawyer.com, the information about languages on your listing there is automatically updated from the roster. Cool, don't you think?

Diversity Awards: Call for Nominations

The OBA's Diversity Committee is now accepting nominations for its Second Annual Ada Lois Sipuel Fisher Diversity Awards. All nominations must be received by June 14. Nominations are being accepted in the following categories: members of the judiciary; licensed attorneys; and groups and entities that have championed the cause of diversity. Visit www.tinyurl.com/diversity2013 to learn more, or for additional information please contact Kara I. Smith at 405-923-8611; kara.smith76@gmail.com.



*Ada Lois Sipuel Fisher
painting by Mitsuno
Ishii Reedy*

OBA Member Resignations

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

Kristine Nicole Aquino
OBA No. 30473
103 Marlin Avenue
Galveston, TX 77550

Charles Edward Brodt
OBA No. 10037
805 E. Covell Road
Edmond, OK 73034

Lynn Moore Ewing III
OBA No. 15070
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Kudos

Riggs Abney attorney **Ashley Webb** was selected by Rotary International District 6110 to participate in a four week Group Study Exchange program to Algeria. Mr. Webb was one of four non-Rotarian members selected from the four-state region. He traveled with his team to District 9010 in Algeria from mid-April to mid-May. During that time, he visited Algerian Rotarians and presented about Oklahoma to the Rotary Clubs around the country. The trip culminated with the regional conference that in Algiers on May 2-3 with attendees from Tunisia, Mauritania and Morocco.

OCU School of Law's Chapter of the Black Law Student Association will now be known as the **John E. Green** Black Law Student Association, named in honor of the longtime Oklahoma City civil rights advocate. The honor is in recognition of Green's legacy of positive legal, social and political change. He was the second African-American ever to graduate from the OU College of Law, the first African-American to serve in the office of the U.S. Attorney for the Western District of Oklahoma and the first African-American to serve on the OBA Board of Governors. He was crucial in the fight to desegregate Oklahoma City

and Oklahoma City Public Schools, serving as lead attorney in the *Dowell v. School Board of Oklahoma City Public Schools* case, which led to integrated classrooms. A ceremony marking the name change and honoring Mr. Green was held in April at OCU.

Gary W. Farabough of Pasley, Farabough and Mouledoux of Ardmore has been asked to serve on the Board of Trustees for the Oklahoma United Methodist foundation. He will also serve as a member of the Foundation's Finance Committee.

Robertson Cornell announces that **Melissa F. Cornell** has been named Fellow with the American Academy of Matrimonial Lawyers. To be named a Fellow, one must demonstrate substantial involvement in the matrimonial field and have endeavored to encourage the study, improve the practice and elevate the standards of matrimonial law.

Crowe and Dunlevy Director, **Adam W. Childers** has been named to the Oklahoma City Metropolitan Employer Council Board of Directors. The council is a cooperative education effort between the Oklahoma Employment Security Commission, Workforce Oklahoma partners and Oklahoma City area human resource professionals.

At The Podium

T Douglas Stump recently spoke at the 2013 American Immigration Lawyers Association Chapter Conference held in Krakow, Poland on March 8 and in Warsaw, Poland on March 12. He also served on a panel assembled to address immigrant and nonimmigrant visa processing and waivers in Europe and other posts overseas. Hardship waivers for unlawful presence and a detailed discussion of the administration's new stateside waiver processing were included in the panel discussion.

Phil Viles recently participated in a panel discussion at the Federal Bar Association's Indian Law Conference held just outside Santa Fe, N.M. The plenary session was titled "Harnessing Financial Forces and Creating, Protecting and Regulating Markets in Indian Country and Beyond."

Leonard Court of Crowe & Dunlevy presented "Elvis Has Left the Building: How Federal Regulatory Agencies Have Spun Out of Control" on May 8 at the Oklahoma Human Resources Conference in Norman.

Courtney Warmington of Crowe & Dunlevy presented "Sex, Drugs, and Rock and Roll: The Top 4 Employment Law Issues of 2013" at

the Oklahoma Human Resources Conference on May 9 in Norman. Her presentation covered the top legal issues facing employers in 2013 including the employment cases pending before the United States Supreme Court.

Adam Childers presented “Rock and Roll, Hoochie Koo: Jamming Out to Salacious Tales from the World of Sexual Harassment” at the Oklahoma Human Resources Conference on May 9 in Norman. The presentation focused on the current status of sexual harassment law in the United States and included an update on recent case law examples.

Daniel Johnson of Crowe & Dunlevy presented “Checking out of Hotel California – The Interplay and Overlap of the FMLA, ADA, and Oklahoma’s Workers’ Compensation Code” on May 9 at the Oklahoma Human Resources Conference in Norman.

Randall Snapp of Crowe & Dunlevy presented “‘School’s Out for Summer’ – but not Before a ‘Final Exam’ to Test Your HR Skills on Common Employment Law Issues” at the Oklahoma Human Resources Conference on May 10 in Norman.

Madalene Witterholt of Crowe & Dunlevy presented “Wasting Away in Workers’ Compville – A WC Update” at the Oklahoma Human Resources Conference on May 10 in Norman.

Toni Ellington presented a paper on “Education Reform, Public Policy, and Law: Inconsistencies between Today’s Classroom and the

Courtroom” at the Midwest Political Science Association Conference in Chicago, Ill. Her presentation was on school reform measures such as charter schools, voucher programs and alternative teacher certification programs, and how these reforms comply with the U.S. Constitution and state constitutions and law.

McAfee & Taft attorneys **Charlie Plumb, Paul Ross, and Nathan Whatley** presented “Guns or No Guns – Weighing Workplace Weapons Policies” during a nationally broadcast webinar on March 6.

Sharolyn C. Whiting-Ralston of McAfee & Taft presented “Employee Handbooks: Why They Are Important and What Should Be Included” at the Oklahoma Lumberman’s Association Meeting on March 14 in Lawton and on March 28 in Krebs.

McAfee & Taft attorney **Chris Paul** was a featured panelist for the Corrosion and Punishment Forum “Current Trends in Contractual Risk Transfer” at NACE International’s CORROSION 2013 Conference & Expo on March 20 in Orlando, Fla.

McAfee & Taft attorneys **Sam Fulkerson and Michael Lauderdale** presented “To Arbitrate or Not? That is the Question” during a nationally broadcast webinar on March.

McAfee & Taft attorneys **Bill Freudenrich and Brandon Long** presented “Health Care Reform: 2013 & Beyond” at the Stillwater Area Human Resource Association on April 18 in Stillwater.

On April 23 in Oklahoma City and on April 26 in Tulsa, McAfee & Taft attorneys **Roberta Felds, Bill G. Freudenrich, Sam Fulkerson, Lauren Barghols Hanna, Michael Lauderdale, Brandon Long, Kathy Neal, John Parahronis, Alison Patel, Charlie Plumb, Jim Prince, Tony Puckett, Natalie Ramsey, Paul Ross, Curtis Thomas, Nathan Whatley and Sharolyn Whiting-Ralston** were featured presenters for the “EmployerLINC2013: Government Gone Wild” seminar, an annual full-day seminar focusing on employment and employee benefits in Oklahoma City on April 23 and in Tulsa on April 26.

Mary Ellen Ternes of McAfee & Taft presented “Shale Oil & Gas Q&A Session: Environmental Regulatory and Enforcement Developments” and “Environmental Compliance Approaches in Manufacturing, and the Future of EPA Enforcement” at the American Institute of Chemical Engineers 2013 Spring Meeting and Global Congress on Process Safety held from April 29 – May 1 in San Antonio, Texas.

Charlie Plumb of McAfee & Taft presented “HR’s Guide to Leave Management: How to Avoid Legal Headaches When Coordinating FMLA Leave” during the nationally broadcast webinar by BLR and the Employers Counsel Network on May 9.

McAfee & Taft attorneys **Brandon Long and Jim Prince** presented “The Affordable Healthcare Act (PPACA): Are you Ready?” to community business leaders

in Tulsa on May 16 and will present in Oklahoma City on May 22.

Deirdre O. Dexter of Deirdre Dexter PLLC spoke on "Hiring and Terminating Employees in the Current Economy" at the Fundamentals of Employment Law Seminar in Tulsa on April 11.

Crowe & Dunlevy recently hosted a business seminar at Murray State College in Tishomingo during which attorneys discussed a variety of legal updates for business, including the Affordable Care Act, workers' compensation, discrimination claims, Department of Labor investigations, hiring and firing and how to deal with problem employees. More than 100 human resources professionals, business owners and others from across Southeastern Oklahoma attended the day-long seminar.

UCO Professor **Marty Ludlum** recently gave two presentations to Chien Hsin University in Jhongli, Taiwan. His presentations were on international trade and intercultural business.

On The Move

Crowe & Dunlevy recently announced **Daniel P. Johnson** has been named a director in the firm's Oklahoma City office. His practice focuses on employment litigation and he represents employers in work-related matters ranging from discrimination to whistleblower claims in state and federal

courts. He graduated with honors from the OU College of Law and served as note editor of the *Oklahoma Law Review*.

Patrick Keaney has been selected by the judges of the Eastern District of Oklahoma to serve as clerk of court. He was sworn in on March 13 and his service began on April 8. He began his career in 1985 as a career law clerk for Judge Frank H. Seay, a position he held for 28 years. He has a B.S. in accounting from OSU and a J.D. from TU. A public reception to recognize Mr. Keaney will be held on June 14, 2013 at 2 p.m. in room 315 at the United States Courthouse in Muskogee.

Eller & Detrich announces that **Daniel C. Cupps** has become a shareholder of the firm. His practice focuses on business transactions, mergers and acquisitions and financing and leasing. He holds a degree in accounting from OU and is a CPA. He earned his J.D. from TU in 2006.

John M. Hickey has joined Hall Estill's Tulsa office as a shareholder. His nearly 30 years of experience encompasses both federal and state courts involving construction litigation, complex commercial litigation, employment litigation, real estate litigation and commercial business transactions. Mr. Hickey holds J.D. from TU and a B.S. from Indiana University.

Jeffrey C. Rambach has joined Ungaretti & Harris LLP, a mid-sized Chicago-based law firm, as a partner in the trusts and estates practice. His practice focuses on addressing complex wealth

planning matters and tax issues. He holds a J.D. from Tulane University, an LL.M. in tax from Georgetown and a B.S. from Boston University.

Christopher M. Scaperlanda has joined McAfee & Taft. His state and federal litigation practice encompasses a broad range of commercial matters, including those involving insurance disputes, securities claims, directors' and officers' liability, contract disputes and other complex business litigation. Prior to joining the firm, he worked in private practice as a trial lawyer in Milwaukee, Wis., at Quarles & Brady LLP. He was also a research fellow for Marquette University Law School where he researched issues related to agricultural policy and its impact on small and medium-sized farmers and producers. Mr. Scaperlanda holds a J.D. from the University of Texas and a bachelor's degree in philosophy and theology from Notre Dame.

Phillip Viles has announced his retirement from the U.S. Department of the Interior effective May 4. Mr. Viles served as director of the Office of Trust Regulations, Policies and Procedures for the Office of Special Trustee for American Indians and later served as chief of the division of Capital Investment for the Office of Indian Energy and Economic Development. He managed the Indian Guaranteed Loan Program, working to secure bank loans for economic development projects for the benefit of American Indians and Alaskan Natives.

Drummond Law PLLC announces that **Wendy P. Drummond, Steven L. Hol-**

combe, Bryan M. Harrington and **L. Caroline Drummond** have joined the firm. Ms. Wendy P. Drummond earned a bachelor's degree in international studies at American University and graduated from TU College of Law in 2007. Her practice focuses on employment and labor law, probate and civil litigation. Mr. Holcombe completed his B.A. at Westminster College and earned his J.D. from TU in 1982. His practice focuses on litigation, commercial transactions, real estate, wills and probate and business law. Mr. Harrington holds both an M.A. and B.A. in economics from OU and a J.D. from OU. His practice focuses on bankruptcy and creditors rights, real property, complex civil litigation and appellate practice. Ms. L. Caroline Drummond completed her B.S. in secondary English from OSU and holds a J.D. from OU. Her practice focuses on general civil, domestic and criminal defense.

Hugh M. Robert has become a partner at the recently renamed law firm Sherwood, McCormick & Robert. He is a graduate from TU College of Law and also holds a bachelor's degree from that institution. While at TU, he was an editor of the *Energy Law Journal*. In 2010 he was recognized as the TU College of Law Distinguished Young Alumnus. His broad litigation experience includes business transactions and tort, business dissolution, oil and gas, nursing home/medical negligence, and personal injury cases. He also does private mediations on various types of cases including business torts, business disputes, business dissolutions, contract disputes,

personal injury and nonprofit and homeowners' association disputes.

Kristin Huffaker Greenshaw has been named associate general counsel at Sonic Corp. Her responsibilities will include providing legal advice on a broad range of topics including franchise law, litigation, contracts, advertising and marketing legal compliance and issues of employment law. Ms. Greenshaw graduated with a B.A. *summa cum laude* from OU and earned her J.D. with highest honors from OU College of Law. While in law school, she served as assistant managing editor of the *Oklahoma Law Review* and was elected to the Order of the Coif, among other honors. Prior to joining Sonic, she was a senior attorney for AT&T and an associate with Crowe & Dunlevy.

Wayne Falkenstein has joined RGG Law as of counsel attorney. Mr. Falkenstein's area of focus for the firm will be Social Security. He has served as Kingfisher County attorney, Kingfisher County judge, and has over 25 years of oil and gas title experience. He was also appointed United States administrative law judge assigned to Social Security in 1996. He has been a member of the OBA for 52 years.

Brian R. Swenson, formerly of Best & Sharp, is joining the practice of Carol L. Swenson. Mr. Swenson's practice will focus primarily on transactions and litigation. The new firm will be formed as Swenson & Swenson.

Evans & Davis is merging with the Balentine Law and the Heritage Law Center.

The firms will operate together under the name Evans & Davis. The firm will have offices in Edmond and Dallas, Texas. The primary focus is on estate planning and probate, business formation and succession planning and has recently expanded its practice to include a family and domestic law division.

Newton, O'Connor, Turner & Ketchum, PC, announces that **Jon M. Payne** has become a shareholder with the firm. His practices focuses on representing businesses in commercial litigation and labor and employment law matters.

Bill McKee has become a partner with Rhodes Hieronymus. His practice will focus on civil defense cases with an emphasis in construction litigation and automobile accidents. He holds a B.S. from the University of South Dakota and a J.D. with honors as well as a master's degree in taxation from TU. He is a member of the international legal fraternity Phi Delta Phi and a member of the Oklahoma Association of Defense Counsel.

David A. Tracy announces formation of the Tulsa Family Law Center PLLC. Mr. Tracy's practice is limited to family law, including litigation, appeals, mediation and collaborative practice. He is a member of the American Academy of Matrimonial Lawyers, the International Academy of Collaborative Professionals and the Oklahoma Academy of Collaborative Professionals. Mr. Tracy has been practicing law for 30 years. He received his J.D. from TU and holds a B.S. from OSU. The Tulsa Family

Law Center PLLC, is located at 320 S. Boston Ave., Suite 1130 in Tulsa.

Legal Aid Services of Oklahoma Inc., announces **Trista E. Wilson** as a new staff attorney in the Norman office. Ms. Wilson holds a B.A. in English language and literature from OSU and received her J.D. from OU in 2012. At OU, she served as a member of the *American Indian Law Review* and received the Salem Civil Rights Award for her efforts there. Her practice area focuses on foreclosure defense. She also serves on the Board of Directors of the ACLU of Oklahoma.

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 Law*

yers, 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:
Jarrod Beckstrom
Communications Dept.
Oklahoma Bar Association
405-416-7084
barbriefs@okbar.org

Articles for the Aug. 17
Issue must be received by
July 22.

IN MEMORIAM

Raymond Bays died April 9, 2013. Born July 29, 1944, he graduated from Stillwater High School in 1962. **He served in the Navy during the Vietnam War.** He graduated from OCU in 1978 and practiced law in Oklahoma City for many years.

Frantz C. Conrad of Enid died April 13. He was born in Dallas in 1922 and his family moved to Duncan seven years later. He attended Presbyterian Carroll College in Wasukessa, Wis., until **enlisting in the Army Air Corp.** During World War II, he was stationed in British Guiana where he served with the Ninth Weather Squadron providing weather information for troop movements. He completed his undergraduate studies at OU after the war and proceeded to earn his J.D. from OU.

Richard E. Coulson died May 9. He was born Sept. 17, 1942. After clerking for

District Court Judge Alfred P. Murrah, he became a professor of law at OCU from 1972 until his retirement, save for a brief period where he practiced bankruptcy law before returning to the university. Following his retirement from academia, he started to collect an oral history on judges from the Western District of the Federal Court of Oklahoma.

Dale Ray Gardner died on April 10. He was born on May 8, 1946, in Broken Arrow and grew up in Washington state. He attended Southern Illinois University for his undergraduate studies in history and later earned a master's in history from St. Mary's University (San Antonio, Texas) and his J.D. from TU. **He was a Vietnam Veteran and retired from the Army in 1999.** Following his retirement from the military, he was involved in private practice until 2005. At the time of his death, he was serving as President of the Sapulpa

Historical Society and was on the Board of Directors for Inverness Village, a retirement community in Tulsa.

Helen Maxine Larsen died Feb. 18, in Alexandria, Va. She was born in Howell County, Mo., on May 19, 1950. She began her professional career as a nurse's aide in Washington state and soon became a licensed practical nurse. While nursing, she began working on a bachelor's degree and as part of her studies, began providing investigative analysis for fraud of medical records for the Tennessee Valley Authority of Knoxville, Tenn., as part of the TVA police force. She soon became an investigator for the Tennessee Equal Employment Opportunity Commission (EEOC), investigating over 200 cases. She finished her bachelor's degree in policing from the University of Missouri – St. Louis. While pursuing her studies and her work with the TVA and

EEOC, she was also the executive director of the Missouri State Association of LPNs. Later, she became executive director of the National Association for Practical Nurse Education and Service (NAPNES), a position she held until her death. While serving as executive director of NAPNES, she earned her J.D. from the University of St. Louis. She then began working in Oklahoma as a staff lawyer with an insurance company and passed the bar in Oklahoma in 1992. Ms. Larsen founded several businesses in addition to her legal work and her work with NAPNES. She became a Questioned Document Examiner and Handwriting Analyst. With that knowledge and her legal background, she formed Advanced Presentation of Forensic Evidence to work with and conduct analyses to be used in court proceedings.

Daniel Wayne Lowe died May 2. He was born on February 8, 1954 and graduated from College High School. He attended OSU on a football scholarship and graduated in 1976. He then earned his J.D. from Loyola University in Chicago. Mr. Lowe started his practice in 1983 and expanded over the years to Dallas, San Antonio, Ft. Worth, Tulsa, Oklahoma

City and Chicago. His practice focused on workers' compensation, employment law, social security disability and personal injury. He was a member of the Oklahoma Cattlemen's Association and he raised Scottish Highland cattle on his ranch in Osage County. Memorial contributions can be made to Stop Joseph-Machado Disease.

William Charles Meadows died April 17. He was born March 21, 1925 in Tannehill. Directly after his high school graduation **he joined the Army Air Corps and served in World War II. He was a fighter pilot during the war flying a P-38 as part of the 80th Squadron nicknamed the "Headhunters."** After the war, he graduated from OCU and was a Chief Financial Officer at Woods Petroleum in Oklahoma City. He later went back to OCU to attain his J.D. and started a private practice following his graduation.

Monty Wayne Strout died May 8, 2013. Born Aug. 6, 1943, he grew up in Sand Springs and later attended OSU where he studied journalism and film. He went on to earn his J.D. from TU in 1979. He worked in the district attorney's office and went on establish a private

practice with offices in Stillwell and Tahlequah. He enjoyed fishing, golf, hunting, boating, traveling and restoring old cars.

Judge William Whistler died April 21. Born Oct. 9, 1928, he was the second of five children. **He joined the Army at the age of 17 in order to take advantage of the G.I. Bill. He was discharged in 1947 and enrolled at OU only to be called back into the Army to serve in the Korean Conflict after going through Officer Candidate School at Fort Sill.** In 1951 he enrolled in the OU College of Law. While in school, he served associate editor of the law review and was the chairman of the honor council. He graduated from OU in 1955 and joined Robert L. Cox as a collection attorney. He married Orcella Ford in 1956 and moved to Vinita where he joined a private practice. In 1967 he was elected as Associate District Judge of Craig County and went on to become the District Judge for the 12th Judicial District. He served on the Judicial Counsel for Southern Oklahoma and two terms on the Court of the Judiciary including two years on the Appellate Court of the Judiciary.

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OKC ATTORNEY HAS CLIENT INTERESTED IN PURCHASING producing and non-producing, large or small, mineral interests. For information, contact Tim Dowd, 211 N. Robinson, Suite 1300, OKC, OK 73102, phone 405-232-3722, fax 405-232-3746, timdowd@eliasbooks.com.

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DISTRICT COURT ASSOCIATE JUDGE - The Pawnee Nation of Oklahoma is accepting applications for the position of District Court Associate Judge. For a complete job description, please visit the Pawnee Nation website at www.pawneenation.org. To apply, submit a cover letter and curriculum vitae to the Pawnee Nation of Oklahoma, Attn: Vi Wills, Executive Secretary, P.O. Box 470, Pawnee, OK 74058. Applications may be emailed to vwills@pawneenation.org. For questions regarding the position; please call Suzie Kanuho, Court Clerk at 918-762-3011 or email at skanuho@pawneenation.org. The deadline to apply is 5 p.m. on Friday, May 24, 2013.

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THE OKLAHOMA HOUSE OF REPRESENTATIVES GENERAL COUNSEL POSITION: Additional information available at www.okhouse.gov under Information tab. Send résumé to leann@okhouse.gov.

POSITION WANTED

NON-OKLAHOMA ATTORNEY SEEKS FULL- OR PART-TIME POSITION as legal assistant or paralegal. Was law journal research editor, former staff attorney for U.S. 10th Circuit Court of Appeals. Extensive real estate, title insurance, hard-rock mineral, oil & gas, division order and water law experience. Qualified expert witness at OCC. Happy to do field work in or out of state. Can operate in my office or yours. Résumé and professional references available on request. Contract preferred. OKC office phone: 808-3530.

FIRST AMERICAN TITLE INSURANCE COMPANY seeks attorney for title examination and underwriting counsel in Oklahoma City. 3 to 5 years in real estate law and title examination preferred. All contacts will be kept confidential. Compensation commensurate with experience. Email résumé and references to hchapman@firstam.com.

FOR SALE

SPECTACULAR CLIFF-SIDE HOME on the south end of Grand Lake for sale. An easy weekday commute from Tulsa or weekend from OKC. Single-story brick traditional with four bedrooms, four baths, three-car garage, two kitchens, sprinkler system, alarm system. Mature trees, private setting and flawless water view from main living area and master. Back yard features expansive multi-tiered decking, cabana with brick fireplace and flower gardens. Perfect for entertaining on a "grand" scale. \$569,000. Also available, 30 x 30 adjacent garage for playthings; small office building in Disney, Okla. Call 918-782-7071.

BEACHFRONT CONDO IN GALVESTON: 2/2; Living and Master face the beach; fully furnished; Riviera I; out-of-state heirs ready to make deal. debrathomas@cox.net or 405-742-4507.

LAKEFRONT LAKE HOUSE FOR SALE on Oklahoma side of Lake Texoma. Great time to buy - mortgage rates are low! Steps from sandy beach, blocks from boat launch. 3/2, large windows open to million dollar view, new multi-level deck overlooking lake, wet-bar, tile floors, fireplace, outdoor shower, and sprinkler system. Secluded area next to Corp of Engineers forested property. Asking price: \$315,000. For more information, Diane Carruth cell: 580-564-5839; Office: 580-564-2346.

CLASSIFIED INFORMATION

CLASSIFIED RATES: \$1 per word with \$35 minimum per insertion. Additional \$15 for blind box. Blind box word count must include "Box __, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152." Display classified ads with bold headline and border are \$50 per inch. See www.okbar.org for issue dates and display rates.

DEADLINE: *Theme issues* 5 p.m. Monday before publication; *Court issues* 11 a.m. Tuesday before publication. All ads must be prepaid.

SEND AD (email preferred) stating number of times to be published to:

advertising@okbar.org, or

Emily Buchanan, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

Publication and contents of any advertisement is not to be deemed an endorsement of the views expressed therein, nor shall the publication of any advertisement be considered an endorsement of the procedure or service involved. All placement notices must be clearly non-discriminatory.

Law School Graduation Just the Beginning

By Craig Thompson

On May 11, 2013, it occurred twice, and on May 19, 2013, once. What's the significance of these dates? On each, the annual pilgrimage from law school to bar admission for the graduates of the state's three law schools begins. The vast majority of these graduates will sit for the Oklahoma bar exam in July, and most exam takers will soon be admitted as the newest colleagues of current Oklahoma Bar Association members. Graduation ceremonies for OU and TU on May 11 and for OCU on May 19. Maybe you remember that journey? Maybe you remember the anxiety that came along with it? But for most lawyers with whom I speak, that journey is a distant, misery-laden and, thankfully, forgotten part of their lives. It's only recently hit me, and it goes something like this:

GRADUATION: CELEBRATION & PRIDE

I think back to the beginning of law school and how distant a memory it seems today. I don't remember envisioning the finish line when I started in August 2010. But here I am, and with the celebration that surrounds graduation, I move forward with the pride that meeting this goal provides. I've also spent the last three years learning that law school didn't, and never will, fulfill those grandiose ideas of changing the world. But it certainly will help me change my little corner of it. I believe that law school has provided me with the tools to one day positively affect the lives of those who will look to me to help solve their problems. That is something to be proud of and should be a shared source of pride to all mem-



bers of this profession. Graduation is something to be proud of; it is a time to celebrate, but it is also a time to think about what's ahead.

BAR EXAM: ANXIETY, FEAR, MAYBE A LITTLE PANIC?

No rest for the weary. If the trudge through law school wasn't enough, SURPRISE! We tricked you. You have two more months to re-learn (or maybe learn for the first time) all the information that you thought you went to law school to learn. For those of you who excelled in law school, it doesn't matter. For those of you who struggled in law school, it doesn't matter. Everyone must take this last test to demonstrate to the Supreme Court and Board of Bar Examiners that you can meet a minimum level of competency to practice law. Study, study, study. Take the test. Wait, wait, wait. We'll tell you whether you passed in a month or so. Relax, enjoy yourself! No reason to be nervous, right?

WHAT'S NEXT?

You've now completed the most menacing three years of your life that will hopefully point you in the direction that you wanted to

go all along. But the journey isn't over; it's just beginning. You tried to do the right things. You networked among your future peers. You interned at that firm, court, organization or agency. You took classes that you had an interest in or thought would further your career. You worked hard to place yourself in a position of competency and marketability. But you still look back and question the very decision that brought you here in the first place. That's because you don't have any idea what you're doing, going to do or want to do. You may find yourself in the position of having an offer and being anxious and excited to get to work, while not really knowing if it will be a good fit or not. Or you may be like many of your fellow graduates that have no idea as to what comes next. But as one of my most admired professors and former OBA President Bill Conger would frequently say, "There will always be room for GOOD lawyers." Take heart and work hard to put yourself into that category.

The gratification that comes with meeting these milestones will have to wait. You'll have work to do, even if you don't have anywhere to do it. If you graduate from law school, pass the bar exam, are sworn in and handed that coveted license, you will find yourself at the start of a career that will be rewarding, challenging, stressful and important — all at the same time! Congratulations to all of my fellow 2013 law school graduates.

Let the pilgrimage begin.

Mr. Thompson is graduating from OCU Law and plans to sit for the Oklahoma bar exam in July.



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continuing legal education

WEBCAST

Substance Abuse and the Legal Profession

May 22

Presented by:
Rebecca Williams, LPC, CEAP,
CABA Employee Assistance Services,
Oklahoma City

Being a lawyer in today's fast paced world can often lead to high stressed lives. While there are many rewards to being a lawyer, there are also many pressures. Unfortunately, many turn to substance abuse as a way to cope. In particular, alcohol abuse in the legal profession is higher than any other profession. While the lawyer suffers greatly from his or her substance abuse, many others suffer greatly, including family and friends.

Topics Covered:

- Recognizing and responding to clients or colleagues with substance abuse.
- Identifying signs and symptoms of substance abuse.
- Resources and treatment options.

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