

# THE Oklahoma Bar JOURNAL

Volume 84 ♦ No. 23 ♦ Sept. 14, 2013

2013 OBA ANNUAL MEETING

## LAWYERS DEFENDERS OF LIBERTY

NOV. 13-15 • SHERATON HOTEL • OKLAHOMA CITY

SOCIAL EVENTS • BAR BUSINESS • CLE • ENTERTAINMENT

# 2013 Women in Law Conference

and Mona Salyer Lambird Spotlight Awards Luncheon

## Communication Across Generations, Gender and Culture



September 27

University of Central Oklahoma  
George Nigh Center

Edmond, OK

Cosponsored  
by the OBA  
Women in Law  
Committee

Program Planners/Moderators:

Kimberly K. Hays, OBA Women in Law Co-Chair;  
Kimberly K. Hays, P.L.L.C., Tulsa  
Susan Bussey, OBA Women in Law Co-Chair; Executive  
Director, Oklahoma Merit Protection Commission, Oklahoma City

Featuring  
Special Guests:

CLE Keynote:

**Sarah Wald**, Chief of Staff and Senior Advisor to  
the Dean of the Kennedy School at Harvard University

Luncheon Keynote:

**Stacy L. Leeds**, Dean, University of Arkansas  
School of Law

Afternoon CLE:

- 1 Modern Slavery in Oklahoma: Presented by Jasmine A. Majid and Craig Williams.
- 2 Communicating With the Bench (ethics), Moderated by Representative Kay Floyd, Oklahoma City  
Panel Includes Judge Rebecca Brett Nightingale, Tulsa County District Court, Tulsa  
Special District Court Judge Barbara Hatfield, Canadian County District Court, El Reno  
Judge Lisa Davis, Oklahoma County District Court, Oklahoma City
- 3 From Typewriters to iPads: How Generational Diversity is Transforming the Workplace.  
Presented by Bill Fournet

Seminar starts at 9:30 a.m. and adjourns at 4:10 p.m.

For program details and to register, log on to: [www.okbar.org/members/cle](http://www.okbar.org/members/cle)

Approved for 6 hours MCLE credit/1 ethics.

\$125 for CLE and luncheon early-bird registrations with payment received at least four full business days prior to the seminar date; \$30 for luncheon only and \$50 for luncheon plus 1 hour MCLE/Ethics credit. A fee of \$25 will be assessed for registrations within four full business days.



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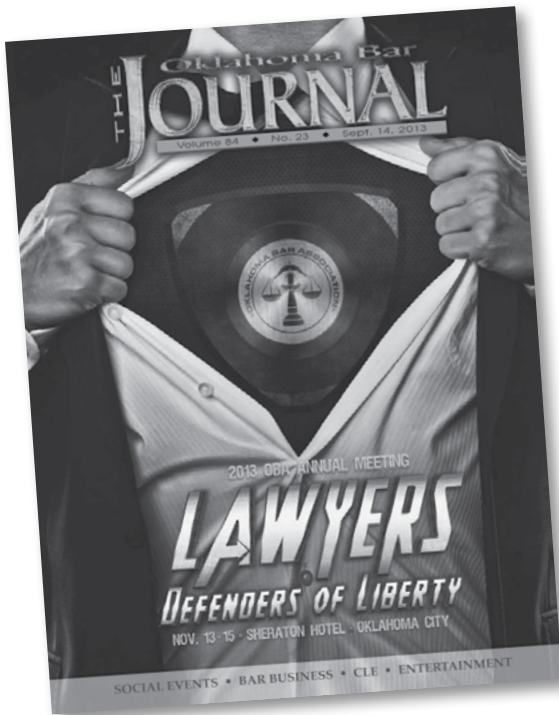
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THEME:  
**OBA ANNUAL MEETING**

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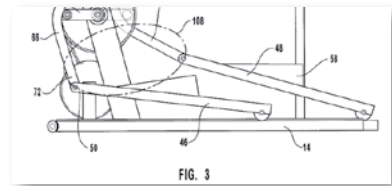


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## Annual Meeting Worth Your Time

By Jim Stuart

On Nov. 13-15 the OBA Annual Meeting will be held at the Sheraton Hotel in downtown Oklahoma City. Our theme this year is “Lawyers: Defenders of Liberty.” I encourage all OBA members to attend. The scheduled events are highlighted throughout this issue. They are varied and intended to appeal to all OBA members.

Each year you may ask: “Why should I attend the Annual Meeting?” It means more time out of the office and more work when I return. The answer is fairly simple. The Annual Meeting provides an opportunity for Oklahoma lawyers to gather under common interests and goals, to learn about and to discuss current legal issues and challenges facing us

in the practice of law.

It’s also a lot of fun. There is no substitute for face-to-face interaction with other lawyers.

I’ve noticed that each year I take away something from the experience that I didn’t expect. One year I settled a lawsuit by running into another lawyer, and in doing so we provided a valuable service to our clients. I always learn something new about technology from Jim Calloway. It’s a perfect time to catch up on year-end CLE.

Consistent with this year’s theme, at the annual luncheon I will be presenting

Florida lawyer Jose Baez, who successfully defended Casey Anthony, accused of murdering her infant child. His story about representing the most hated woman

in America is compelling. Annual luncheon seating is sure to fill up fast, so don’t wait.

### DELEGATE PARTICIPATION IMPORTANT

I also want to make a plea to all counties to elect and send their representatives to the House of Delegates.

In recent years several counties have failed to send a delegate. Representation in bar governance matters is essential. One of the topics this year is a proposal to eliminate the age 65 exemption from mandatory CLE. I expect lively discussion on this particular topic.

Take a moment, send in your registration form, and join me and your fellow Oklahoma lawyers in making this year’s Annual Meeting a meaningful event. I look forward to seeing you there!

*There is no substitute for face-to-face interaction with other lawyers.*



President Stuart  
practices in Shawnee.  
jim@scdtlaw.com  
405-275-0700

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# EVENTS CALENDAR

## SEPTEMBER 2013

- 17 **OBA Communications Committee meeting**; 12:15 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference with Doerner, Saunders, Daniel & Anderson LLP, Williams Center Tower II, Two West Second St., Ste. 700, Tulsa; Contact Dick Pryor 405-740-2944
- 18 **OBA Alternative Dispute Resolution Section meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Jeffrey Love 405-286-9191
- Ruth Bader Ginsburg Inn of Court**; 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Donald Lynn Babb 405-235-1611
- 19 **OBA Board of Governors meeting**; 11 a.m.; Oklahoma Bar Center, Oklahoma City; Contact John Morris Williams 405-416-7000
- Oklahoma Bar Foundation Trustee meeting**; 3:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Nancy Norsworthy 405-416-7070
- 20 **OBA Law Schools Committee meeting**; 10 a.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Kenneth Delashaw 580-276-3136
- 21 **OBA Title Exam Standards Committee meeting**; 9 a.m.; Tulsa County Bar Center, Tulsa; Contact Jeff Noble 405-942-4848
- 23 **OBA Law-related Education PROS Training – Elementary Session**; 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Suzanne Heggy 405-556-9612
- OBA Litigation Section meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Renée DeMoss 918-595-4800
- OBA Juvenile Law Section meeting**; 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Tsinena Thompson 405-232-4453
- 24 **OBA Law-related Education PROS Training – Secondary Session**; 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Suzanne Heggy 405-556-9612
- OBA Bench and Bar Committee meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Barbara Swinton 405-713-7109
- OBA Mock Trial Committee meeting**; 5:30 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Judy Spencer 405-755-1066
- 25 **New Admittee Swearing In Ceremony**; 9 a.m.; House of Representatives, State Capitol; Contact Board of Bar Examiners 405-416-7075

**For more events go to [www.okbar.org/calendar](http://www.okbar.org/calendar)**

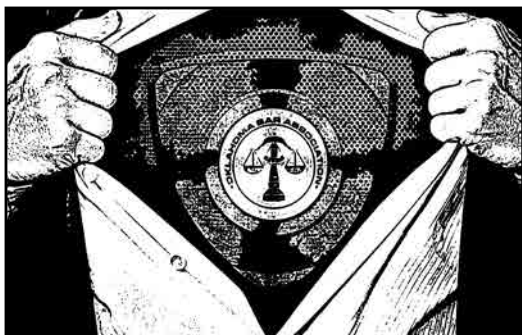
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# Annual Meeting HIGHLIGHTS

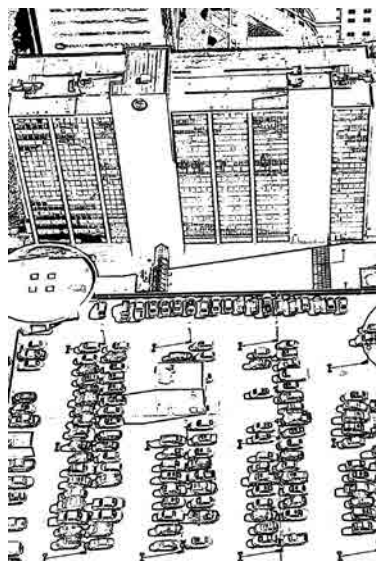
## President's Legal Superhero Reception



Not all superheroes have super powers in the traditional sense. Regular folks like Atticus Finch and Perry Mason proved to have powers of their own - astonishing integrity, spectacular honesty and a powerful work ethic - which are traits even more important than flying or honing in on Spidey senses. This year's President's Reception celebrates these legal superheroes with hors d'oeuvres, a cash bar and the chance to mingle with other OBA Avengers. Reception is from 7 - 9:30 p.m., and attendance is included in registration fee. Bring a sidekick for no additional cost. Each person attending receives two beverage tickets.

## What does my Annual Meeting registration fee include?

This year, team up with the other OBA Defenders of Liberty at their Oklahoma City Sheraton Hotel headquarters. Your registration fee includes Wednesday and Thursday super-powered breakfast in the top-secret hospitality area and Wednesday evening's President's Legal Superhero Reception. Wednesday and Thursday afternoon, if you need a break from fighting injustice, break treats will be available in the hospitality area. Fee also includes Thursday evening's OBA Sections event - The Best of Oklahoma: Art, Music, Food & Wine, a chocolate convention gift and Vendors Expo. Cape and mask are optional.



## Annual Luncheon

Florida attorney Jose Baez will serve as the keynote speaker during the Annual Luncheon. As lead defense counsel in the case of *Florida v. Casey Anthony*, Mr. Baez upheld his professional responsibility to ensure effective counsel for his client, no matter how unpopular the accused party may be. Mr. Baez, who also teaches a class in trial techniques at Harvard Law School, shares his unique insight on the topic of "Why Casey Anthony was Found Not Guilty." The OBA will honor its own superheroes when OBA awards are presented during the Annual Luncheon, which takes place from noon - 1:45 p.m. on Thursday, Nov. 14. Cost is \$35 with Annual Meeting registration. Seating is limited, so register early!

## OBA Sections Present The Best of Oklahoma: Art, Music, Food & Wine

Even classier than a Bruce Wayne cocktail party, this new OBA section-sponsored event highlights Oklahoma's finest. On Thursday, Nov. 14, from 7 - 9 p.m. Oklahoma City pianist Tommy Nix will set the mood on the ivories as wine flows and succulent passed hors d'oeuvres make their way around the ballroom adorned in local art available for purchase. Unwind from the day, meet and mingle with section leaders and join your fellow OBA members for an evening of culture and enjoyment. Annual Meeting registration not required.

Sponsors: OBA Sections



## Leadership Academy

During Annual Meeting, the 25 participants of the fourth annual OBA Leadership Academy will attend a session aimed at developing the association's future leaders. On Thursday, Nov. 14 from 2 - 5 p.m., attendees will learn about the how the OBA works, listen to insight from former academy participants, and find out more about the Lawyers for Heroes program, Wills for Heroes, Law Day and the ABA. Social events are also planned for Wednesday and Thursday evening. On Friday morning, the Leadership Class will serve as tellers for the Board of Governors elections during the House of Delegates. Annual Meeting registration is encouraged, but not required for Leadership Academy participants.

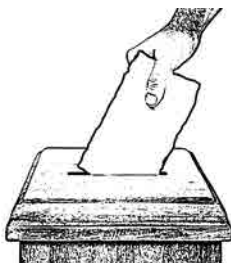


## President's Breakfast



As the Annual Meeting comes to a close on Friday, Nov. 15, President Jim Stuart invites you to join him at the President's Breakfast, a long-standing tradition when OBA presidents host a unique program reflecting his or her interests. Cost: \$25.

## General Assembly & House of Delegates



The important business of the association will be conducted Friday, Nov. 15 beginning at 9 a.m. Resolutions will be voted upon, leaders will be elected and awards will be presented. Do not miss your chance to participate in the governance of your professional association. County bar presidents need to submit the names of delegates and alternates ASAP to OBA Executive Director John Morris Williams. The delegate certification form

is online at [www.okbar.org/members/DelegateCert](http://www.okbar.org/members/DelegateCert). Either mail the form to Mr. Williams at OBA, P. O. Box 53036, Oklahoma City, OK 73152-3036, or fax to 405-416-7001.

## How do I register?

Register for all "Lawyers: Defenders of Liberty" events in a flash using the Annual Meeting registration form found on page 1753 or online at [www.amokbar.org](http://www.amokbar.org). Send paper forms with payment by mail to OBA Annual Meeting, P.O. Box 53036, Oklahoma City, OK 73152 or fax with credit card information to 405-416-7092. For the best price, register by Oct. 21. Questions? Contact Mark Schneidewent at 405-416-7026, 800-522-8065 or [marks@okbar.org](mailto:marks@okbar.org).



## Annual Meeting

# Florida Defense Attorney Jose Baez to Deliver Keynote Address

Florida lawyer Jose Baez will present "Why Casey Anthony Was Found Not Guilty" during the Annual Luncheon to be held in conjunction with the OBA Annual Meeting on Thursday, Nov. 14 at noon.

Mr. Baez appeared on the lecture circuit after successfully defending his client, Casey Anthony, in her high-profile 2011 murder trial. OBA President Jim Stuart chose Mr. Baez to speak after hearing his recent presentation to the Arkansas Bar Association.

"I found his speech to be thought-provoking," said Mr. Stuart. "He talked about his dedication to representing an unpopular client, and his professional obligation to present a vigorous defense for Ms. Anthony. He took a courageous stance; he knew he would be criticized in light of the significant media attention the case received. Yet he took the case, did his job despite threats and harassment and produced a successful outcome for his client."

Mr. Baez's presentation fits into this year's Annual Meeting theme "Lawyers: Defenders of Liberty" precisely because he stood up for the rights of an accused person who was entitled to a fair trial under the law.

"The defense in the Anthony case reminds me of our Founding Father John Adams, who defended British soldiers after the Boston Massacre. Both men put their careers and reputations on the line to ensure the legitimacy of our legal system. Every Oklahoma lawyer has taken an oath to uphold and defend the Constitution. The experiences of Mr. Baez remind all lawyers of our professional responsibility to our clients and to society at large to see that justice is preserved," Mr. Stuart said.



Jose Baez

The principal lawyer with the Baez Law Firm of Coral Gables and Orlando, Fla., Mr. Baez's practice has a particular emphasis on representing clients in complex and high profile criminal and civil cases. He is also known for representing many victims of negligence and serious crimes. He also serves on the faculty at Harvard Law School, where he teaches trial techniques to second- and third-year law students. He is

fluent in Spanish and Portuguese and is active in various charitable endeavors in the Hispanic community.

Make plans now to attend Mr. Baez's address to the Annual Luncheon, one of the premiere events during each year's convention. The cost to attend the luncheon is \$35 with Annual Meeting registration. Seating is limited, so register now!

## Annual Meeting President's Reception Inspired by Legal Superheroes

**“You can only protect your liberties in this world by protecting the other man's freedom.”**

*Clarence Darrow*

Justice Oliver Wendell Holmes, Jr., Constance Baker Motley, Clarence Darrow and Thurgood Marshall. Atticus Finch, Perry Mason, Vinny Gambini and Elle Woods. Legal heroes, whether they existed in the flesh or on page or screen, inspire many current and aspiring attorneys who are motivated by these iconic figures and characters and their commitment to justice.

The President's Legal Superhero Reception encourages all attendees to draw inspiration from



**“The life of the law has not been logic; it has been experience.”**

*Oliver Wendell Holmes Jr.*

those heroes as well as their fellow bar members at the event that will feature hors d'oeuvres (don't worry, the famous shrimp will be back), a cash bar and an opportunity to mix and mingle with Oklahoma's legal heroes.

The reception is on Nov. 13, 2013, from 7 – 9:30 p.m., and attendance is included in the annual meeting registration fee. Bring a sidekick for no additional cost. Each person attending receives two beverage tickets.

**“Our courts have their faults, as does any human institution, but in this country our courts are the great levelers, and in our courts all men are created equal.”**

*Atticus Finch*

# Annual Meeting

## CLE to the Rescue!

By Susan Damron Krug

To be a great defender of justice, it is important to get the right training. Hey, Captain America didn't join the other super-powered Avengers by sitting around trying to figure out what color of tights he would wear, right? No way!

Regardless of your practice area, rigorous training is needed to prepare you for everyday challenges. There's no one better to provide that training than the leading superhero of continuing legal education, OBA/CLE.

Register now for CLE during Annual Meeting, and rest assured that you will be better prepared to fight injustice for those in need.

We will kick things off with a "boom" during Wednesday's multi-track CLE sessions. This year, criminal and juvenile law team up to put you at the top of your game so you can thwart any evil case that comes your way. The ever-popular recent developments track will offer the latest legal updates, and the health law track will include a fast and furious review of this year's top developments.

Among the other hot topics, this track features former Oklahoma State Insurance Commissioner - the Wonder Woman of health care — Kim Holland. Ms. Holland currently serves as the executive director responsible for state affairs of Blue Cross Blue Shield's Washington, D.C. office. No doubt she will bring up-to-the-minute news on one of the leading issues of the year: healthcare reform.

Last but not least, the mastermind himself, Flash (a.k.a. Jim Calloway), will serve up a technology track packed with all of the latest tricks and tools that you can apply to your practice, regardless of your superpower. His infa-

mous sidekick, nationally known expert and e-discovery beast Bret Burney, will wow you with his ability to find electronic data and produce winning evidence in a single bound. This track goes far beyond mere technology.

On Thursday, it will be time to put your capes on for a morning plenary session offering three hours of MCLE credit including ethics. During this program, OETA's Dick Pryor will moderate a panel discussion among Jose Baez, our Annual Meeting keynote speaker best known for his defense of Casey Anthony; Oklahoma County District Attorney David Prater; Jacqui Ford, Jacquelyn Ford Law, P.C., Oklahoma City; and from TV News 9, Adrianna Iwasinski. This will prove to be a lively and interesting session as they discuss *Media and the High-Profile Case*. The dynamic duo, David McKenzie and Pamela Stillings, will also present on *Hearsay and the Confrontation Clause*. Last but not least, Oklahoma's own Avenger, Garvin Isaacs, Garvin A. Isaacs, Inc., Oklahoma City will also bring his arsenal of war stories on *Creative Voir Dire in the Digital Age*.

Remember, becoming a superhero is not an overnight task. You need time and effort. As the great Ida B. Wells once said, "One had better die fighting against injustice than to die like a dog or a rat in a trap." Register for OBA/CLE and rest assured, we will keep you fighting on the right side of the law.

Additional details about all of these programs are available in this *bar journal* and at [www.amokbar.org](http://www.amokbar.org).

Ms. Krug is director of OBA Continuing Legal Education.



Kim Holland



Jose Baez



Garvin Isaacs



Dick Pryor

	<b>Juvenile/Criminal Law Track</b> Qualifies for 6 hrs. juvenile law training per 10 A O.S. Sec. 1-8-10(B)1 Ben Brown Gail Stricklin	<b>Health Law Track</b>  Cori Loomis	<b>Recent Developments</b>	<b>Technology Track</b>  Jim Calloway
<b>9-9:50</b>	<b>Fundamentals of the Indian Child Welfare Act (ICWA)</b>  Kelly Stoner	<b>2013 A Year in Review A Fast and Furious Review of This Year's Top Developments</b> cosponsored by the Health Law Section Karen Rieger Cori Loomis		<b>PDF Tips and Tricks That Will Change Your Practice</b>  Bret Burney Jim Calloway
<b>10-10:50</b>	<b>The Trauma Informed Attorney</b>  Jackie Steyn	<b>Licensure Board Issues: Update on Rules and Navigating Disciplinary Proceedings</b>  Kim Stevens, RN, JD Elizabeth Scott	<b>Criminal Law Update</b>  Barry Derryberry Andrea Miller	<b>How to Use Technology to Market Your Law Practice</b>  Bret Burney Jim Calloway
<b>11-11:50</b>	<b>Best Practices for Show Cause Hearing: Balancing Needs of Child with Rights of Parents</b> Panel TBD Judge Warren Hollis officiating	<b>Health Care Reform Update</b>  Kim Holland <i>Session sponsored by Oklahoma Health Lawyers Association</i>	<b>Family Law Update</b>  Professor Robert G. Spector	<b>iLitigate on an iPad</b>  Bret Burney Jim Calloway
<b>2-2:50</b>	<b>Ethics</b>  Ben Brown Tsinena Thompson	<b>Advanced Stark and AKS Compliance: Case Studies and Hypotheticals</b>  Elizabeth Tyrrell Greg Frogge Pat Rogers	<b>Employment Law Update</b>  David Strecker	<b>E-Discovery Update</b>  Bret Burney
<b>3-3:50</b>	<b>Expungement</b>  Dave Stockwell	<b>HIPAA and Health Information Exchange: Big Data, Big Issues</b>  Teresa Burkett	<b>Insurance Law Update</b>  Rex Travis	<b>21st Century Ethics and Technology – Cloud Services and Mobile Devices (Ethics)</b>  Bret Burney Jim Calloway
<b>4-4:50</b>	<b>DUI</b>  Charles Sifers	<b>Health Care Litigation Update: Impact of Oklahoma SCT Decision on Lawsuit Reform and Provider Liability</b>  John Wiggins	<b>Civility Matters (Ethics)</b>  Bill Grimm Dan Folluo John Woodard Gary Homsey G. Calvin Sharpe Ed Cunningham J. Michael Gassett	<b>50 Hot Technology Tips in 50 Minutes</b>  Bret Burney Jim Calloway



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Moura A.J. Robertson and Melissa F. Cornell have over 30 years of combined experience and only practice family law. They are AV Preeminent® rated by Martindale-Hubbel, each certified fellows of the AAML, included in The Best Lawyers in America® in divorce and mediation, and are recognized by Super Lawyers® as being top professionals in their field.

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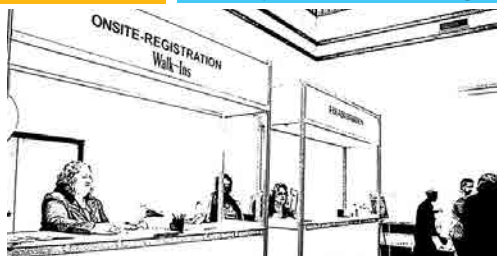


# OBA/CLE PLENARY SESSION

This seminar has been approved for 3 hours MCLE credit including 1 hour ethics

**8:30 a.m.**

Early that morning...



REGISTRATION

**9 a.m.**

Media and the  
High-Profile Case

**Moderator:** Dick Pryor, Oklahoma Educational Television Authority (OETA)

**Jose Baez**, Baez Law Firm, Coral Gables and Orlando, Fla.  
**David Prater**, District Attorney District #7; **Jacqui Ford**, Jacquelyn Ford Law, P.C., 2011 Clarence Darrow Recipient, Oklahoma City; **Adrianna Iwasinski**, TV News9



**9:50 a.m.**

Later...

**10 a.m.**

Hearsay and the  
Confrontation Clause

The Apostle Paul, the American Revolution  
and Beyond

**David McKenzie**, Office of the Public Defender of Oklahoma County; 1997 Clarence Darrow Recipient, Oklahoma City

**Pamela Stillings**, The Law Office of Pamela Stillings, Oklahoma City

**10:50 a.m.**

Creative Voir Dire in the  
Digital Age

**Garvin Isaacs**, Garvin A. Isaacs, Inc., Oklahoma City (ethics)



**11:45 a.m.**

**Adjourn!**





## Annual Meeting OBA Sections Present

An Evening With Oklahoma's Best: Art, Music, Food and Wine



November 14 ♦ 7 p.m. ♦ Sheraton Ballroom

### **Oklahoma's blossoming food and art scenes**

rank among the state's best kept secrets. The OBA sections invite you to attend "An Evening with Oklahoma's Best" to sample world-class art, music, food and wine, all from Oklahoma.

# 2013 Resolutions

The following resolutions will be submitted to the House of Delegates at the 109th Oklahoma Bar Association Annual Meeting at 10 a.m. Friday, Nov. 15, 2013, at the Sheraton Hotel in Oklahoma City.

## RESOLUTION NO. 1: REPEAL OF CONTINUING LEGAL EDUCATION EXEMPTION FOR MEMBERS OVER AGE OF 65

**BE IT RESOLVED** by the House of Delegates of the Oklahoma Bar Association that the Association adopt, as part of its legislative program, as published in *The Oklahoma Bar Journal* and posted on the OBA website at [www.okbar.org](http://www.okbar.org), proposed legislation amending 5 O.S. 2003, ch. 1, app. 1-B, Rule 2 of the Rules for Mandatory Continuing Legal Education. *(Requires 60% affirmative vote for passage. OBA Bylaws Art. VIII Sec. 5) (Submitted by the MCLE Commission.)*

(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.

(b) An attorney is exempt from the educational requirements of these rules for the calendar year during which he or she was first admitted to practice.

(c) All Judges who, during the entire reporting period, are by Constitution, law or regulation prohibited from the private practice of law, members of the United States Congress, members of the Oklahoma Legislature, the Attorney General of the State of Oklahoma and members of the armed forces on full time active duty shall be exempt from the educational requirements of these rules.

(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.~~

(e) An attorney who, during the entire reporting period, is a nonresident of the State of Oklahoma and did not practice law in the State of Oklahoma is exempt from the educational requirements of these rules.

(f) An attorney who files an affidavit with the Commission on Mandatory Continuing Legal Education of the Oklahoma Bar Association stating that the attorney did not practice law during the reporting period is exempt from the educational requirements of these rules.

(g) Any person claiming an exemption hereunder is required to file an annual report in compliance with these rules and regulations.

## RESOLUTION NO. TWO: APPOINTMENT OF DISCOVERY MASTER

**BE IT RESOLVED** by the House of Delegates of the Oklahoma Bar Association that the Association adopt, as part of its legislative program, as published in *The Oklahoma Bar Journal* and posted on the OBA website at [www.okbar.org](http://www.okbar.org), proposed legislation creating new law to be codified at 12 O.S. 2011, Section 2053, which relates to the appointment of a discovery master in court proceedings; identifying the requirements and circumstances for the appointment of a discovery master and effective date. *(Requires 60% affirmative vote for passage. OBA Bylaws Art. VIII Sec. 5) (Submitted by the Civil Procedure and Evidence Code Committee.)*

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW To be codified at 12 O.S. 2011, Section 2053 , Discovery Masters, to read as follows:

## SECTION 2.

### (A) Appointment.

(1) Scope. Unless a statute provides otherwise, on motion by a party or on its own motion, upon hearing unless waived, a court may in its discretion appoint a discovery master to:

(a) perform duties related to discovery, consented to by the parties; or

(b) address pretrial and posttrial discovery matters to facilitate effective and timely resolution.

(2) Required Findings. An order appointing a discovery master under paragraph (A)(1)(b) of this section must contain the following findings by the Court:

(a) The appointment and referral are necessary in the administration of justice due to the nature, complexity, or volume of the materials involved, or for other exceptional circumstances; and

(b) the likely benefit of the appointment of a discovery master outweighs its burden or expense, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, the importance of the referred issues in resolving the matter or proceeding in which the appointment is made; and

(c) the appointment will not improperly burden the rights of the parties to access the courts.

(3) Possible Expense or Delay. In appointing a discovery master, the court must consider the fairness of imposing the likely expenses on the parties and must protect against unreasonable expense or delay. Such appointment should not be routinely made.

### (B) Disqualification.

(1) In General. A discovery master must not have a relationship to the parties, attorneys, action, or court that would require disqualification of a judge, unless the parties, with the court's approval, consent to the appointment after the

• discovery master discloses any potential grounds for disqualification.

• (2) Disclosure. The discovery master must disclose any possible conflicts within fourteen (14) days of appointment.

• (3) Motions to Disqualify. A motion to disqualify a discovery master must be made within fourteen (14) days of the discovery master's disclosure of the conflict. The discovery master will rule originally on any motion to disqualify.

• (4) Review by Assigned Judge. Any interested party who deems himself aggrieved by the refusal of a discovery master to grant a motion to disqualify may re-present his motion to the Judge assigned to the case by filing in the case within five (5) days from the date of said refusal a written request for re-hearing. A copy of the request shall be mailed or delivered to the Judge assigned to the case, to the adverse party and to the discovery master.

• (5) Review by Presiding Judge. Any interested party who deems himself aggrieved by the refusal of the Judge assigned to the case to grant a motion to disqualify the discovery master may re-present his motion to the Presiding Judge of the county in which the cause is pending. A copy of the request shall be mailed or delivered to the Presiding Judge, to the adverse party, to the Judge assigned to the case, and to the discovery master.

• (6) Review by Supreme Court. If the hearing before the Presiding Judge results in an order adverse to the movant, he shall be granted not more than five (5) days to institute a proceeding in the Supreme Court for a writ of mandamus. The Supreme Court will not entertain an original proceeding to disqualify a discovery master unless it is shown that the relief sought was previously denied by the discovery master, the Judge assigned to the case, and the Presiding Judge, in accordance with this Section. An order favorable to the moving party may not be reviewed by appeal or other method.

### (C) Order Appointing a Discovery Master.

• (1) Notice. Before appointing a discovery master, the court must give the parties notice and an opportunity to be heard unless waived. Any party may suggest candidates for appointment.

• (2) Contents. The appointing order must direct the discovery master to proceed with all reasonable diligence and must state:

(a) the discovery master's duties, including any investigation or enforcement duties, and any limits on the discovery master's authority under paragraph (C) of this section;

(b) the circumstances, if any, in which the discovery master may communicate ex parte with a party;

(c) any limitations on the discovery master's communications with the court;

(d) the nature of the materials to be preserved and filed as the record of the discovery master's activities;

(e) the time limits, method of filing the record, other procedures, and standards for reviewing the discovery master's orders, findings, and recommendations; and

(f) the basis, terms, and procedure for fixing the discovery master's compensation under paragraph (G) of this section.

The Court shall have the discretion to direct the discovery master to circulate a proposed appointing order to the parties and provide a time period for the parties to comment prior to the order's entry.

(3) Amending. The order may be amended at any time after notice to the parties and an opportunity to be heard.

(4) Oath. Before the order appointing shall take effect, the discovery master shall execute and file an oath that he or she will faithfully execute the duties imposed by the order of appointment and any amendments thereto.

#### (D) Discovery Master's Authority.

(1) In General. Unless the appointing order directs otherwise, a discovery master may:

(a) regulate all proceedings and respond to all discovery motions of the parties within the scope of appointment, including resolving all discovery disputes between the parties,

(b) call discovery conferences under Rule 5 of the Rules for District Courts, at the request of a party or on the discovery master's own motion;

(c) set procedures for the timing and orderly presentation of discovery disputes for resolution;

(d) take all appropriate measures to perform the assigned duties fairly and efficiently; and

(e) if conducting an evidentiary hearing, exercise the appointing court's power to take and record evidence, including compelling appearance of witnesses or production of documents in connection with these duties.

(2) Sanctions. The discovery master may recommend any sanction provided by Section 2004.1, 3226.1, or 3237 of this Title.

(E) Discovery Master's Orders, Reports, and Recommendations. A discovery master who issues an order, report, or recommendation must file it and promptly serve a copy on each party. The clerk must enter the order, report, or recommendation on the docket.

(F) Action on the Discovery Master's Order, Report, or Recommendations.

(1) Time to Object or Move to Adopt or Modify. A party may file objections to — or a motion to adopt or modify — the discovery master's order, report, or recommendations no later than 14 days after a copy is filed, unless this Section or the court sets a different time. If no objection or motion to adopt or modify is filed, the district court may approve the discovery master's order, report, or recommendations without further notice or hearing.

(2) Action Generally. Upon the filing of objections to — or a motion to adopt or modify — the discovery master's order, report, or recommendation within the time permitted, any party may respond within 15 days after the objections or motion is filed. Objections and motions may be decided by the court without a hearing, and where this is done, the court shall notify the parties of its ruling by mail. In acting on a discovery master's order, report, or recommendations, the court may receive evidence; and may adopt or affirm, modify, wholly or partly reject or reverse, or resubmit to the discovery master with instructions.

(3) Reviewing Factual Findings. The court must decide de novo all objections to findings of fact made or recommended by a discovery master, unless the parties, with the court's approval, stipulate that:

(a) the findings will be reviewed for clear error; or

(b) the findings of a discovery master appointed under paragraph (A)(1) of this section will be final.

(4) Reviewing Legal Conclusions. The court must decide de novo all objections to conclusions of law made or recommended by a discovery master.

(5) Reviewing Procedural Matters. Unless the appointing order establishes a different standard of review, the court may set aside a discovery master's ruling on a procedural matter only for an abuse of discretion.

(G) Compensation.

(1) Fixing Compensation. Before or after judgment, the court must fix the discovery master's compensation on the basis and terms stated in the appointing order, but the court may set a new basis and terms after giving notice and an opportunity to be heard.

(2) Payment. The compensation must be paid either:

(a) by a party or parties; or

(b) from a fund or subject matter of the action within the court's control.

(3) Allocating Payment. The court must allocate payment after considering the nature and amount of the controversy, the parties' means, and the extent to which any party is more responsible than other parties for the reference to a discovery master. An interim allocation may be amended to reflect a decision on the merits.

(H) Other Statutes. A referee or master appointed under the authority of another statute or provision is subject to this section only when the order referring a matter to the referee or master states that the reference is made under this section. Nothing in this section shall be construed to replace or supersede any other statute or provision authorizing the appointment of a referee or master.

SECTION 3. This act shall become effective November 1, 2014.

## RESOLUTION DEADLINE

OBA Bylaws Ch. 1, App. 2, Article VIII, Sec. 6 state "Before a proposal to place a measure upon the Legislative Program or to endorse it in principle is submitted to vote, by any method, it shall be published in at least one issue of the Journal of the Oklahoma Bar Association and posted on the OBA web site, prior to the beginning of the Annual Meeting, together with a notice that it will be submitted to vote, specifying date, time, place and manner." A proposal must be sent in bill format to Executive Director John Morris Williams by Monday, Nov. 4, 2013, for publication in the *Oklahoma Bar Journal* Nov. 9, 2013, issue. **For resolutions to receive a recommendation from the Board of Governors, a proposal must be received by Sept. 25, 2013. For resolutions to be published in the official General Assembly & House of Delegates publication, a proposal must be received by Oct. 28, 2013.**

**YOU ARE NOT ALONE.** [WWW.OKBAR.ORG/MEMBERS/LAWYERSHELPINGLAWYERS](http://WWW.OKBAR.ORG/MEMBERS/LAWYERSHELPINGLAWYERS)  
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# Annual Meeting House of Delegates

Dear County Bar Presidents:

Thank you to the County Bar Presidents of:

Adair, Alfalfa, Beaver, Beckham, Bryan,  
 \*\*Canadian, Cherokee, Choctaw, Cleveland,  
 Coal, Comanche, Cotton, \*\*Craig, Custer, Dewey,  
 Ellis, Garfield, Garvin, Grady, Grant, Harper,  
 Johnston, Kay, Kingfisher, Kiowa, Logan, Mayes,  
 McClain, McCurtain, McIntosh, Muskogee, Okla-  
 homa, Payne, Pittsburg, Pushmataha, Rogers,  
 Seminole, Texas, Tulsa, Wagoner, Washington,  
 Washita, Woods and Woodward counties for  
 submitting your delegate and alternate selections  
 for the upcoming OBA Annual Meeting.  
 (\*\*Reported, awaiting election)

Listed below are the counties that have not sent  
 their delegate and alternate selections to the offices  
 of the Oklahoma Bar Association as of Sept. 10,  
 2013. Please help us by sending the names of your  
 delegates and alternates now. *In order to have your  
 delegates/alternates certified, mail or fax delegate  
 certifications to OBA Executive Director John Morris  
 Williams, P.O. Box 53036, Oklahoma City, OK  
 73152-3036, or fax 405-416-7001.*

Atoka	Jackson	Okfuskee
Blaine	Jefferson	Okmulgee
Caddo	Latimer	Osage
Carter	LeFlore	Ottawa
Cimarron	Lincoln	Pawnee
Creek	Love	Pontotoc
Delaware	Major	Pottawatomie
Greer	Marshall	Roger Mills
Harmon	Murray	Sequoyah
Haskell	Noble	Stephens
Hughes	Nowata	Tillman

- In accordance with the Bylaws of the Oklahoma
- Bar Association (5 OS, Ch. 1, App. 2), "The
- House of Delegates shall be composed of one del-
- egate or alternate from each County of the State,
- who shall be an active or senior member of the
- Bar of such County, as certified by the Executive
- Director at the opening of the annual meeting; pro-
- viding that each County where the active or senior
- resident members of the Bar exceed fifty shall be
- entitled to one additional delegate or alternate for
- each additional fifty active or senior members or
- major fraction thereof. In the absence of the elect-
- ed delegate(s), the alternate(s) shall be certified to
- vote in the stead of the delegate. In no event shall
- any County elect more than thirty (30) members to
- the House of Delegates."

- "A member shall be deemed to be a resident, ...
- of the County in which is located his or her mailing
- address for the Journal of the Association."

## RESOLUTION DEADLINE

- OBA Bylaws Ch. 1, App. 2, Article VIII, Sec.
- 6 state "Before a proposal to place a measure
- upon the Legislative Program or to endorse it in
- principle is submitted to vote, by any method, it
- shall be published in at least one issue of the
- Journal of the Oklahoma Bar Association and
- posted on the OBA website, prior to the begin-
- ning of the Annual Meeting, together with a
- notice that it will be submitted to vote, specifying
- date, time, place and manner." A proposal must
- be sent in bill format to Executive Director John
- Morris Williams by Monday, Nov. 4, 2013, for
- publication in the *Oklahoma Bar Journal* Nov. 9,
- 2013, issue. **For resolutions to receive a**
- **recommendation from the Board of Gover-**
- **nors, a proposal must be received by Sept.**
- **25, 2013. For resolutions to be published**
- **in the official General Assembly & House**
- **of Delegates publication, a proposal must**
- **be received by Oct. 28, 2013.**

# 2014 OBA Board of Governors Vacancies

## OFFICERS

### President-Elect

Current: Renée DeMoss, Tulsa

Ms. DeMoss automatically becomes

OBA president Jan. 1, 2014

(One-year term: 2014)

Nominee: **David A. Poarch Jr., Norman**

### Vice President

Current: Dietmar Caudle, Lawton

(One-year term: 2014)

Nominee: **Susan S. Shields, Oklahoma City**

## BOARD OF GOVERNORS

### Supreme Court Judicial District Two

Current: Gerald C. Dennis, Antlers

Atoka, Bryan, Choctaw, Haskell, Johnston, Latimer,

LeFlore, McCurtain, McIntosh, Marshall, Pittsburg,

Pushmataha and Sequoyah counties

(Three-year term: 2014-2016)

Nominee: **Kevin T. Sain, Idabel**

### Supreme Court Judicial District Eight

Current: D. Scott Pappas, Stillwater

Coal, Hughes, Lincoln, Logan, Noble, Okfuskee,

Payne, Pontotoc, Pottawatomie and Seminole

counties

(Three-year term: 2014-2016)

Nominee: **James R. Marshall, Shawnee**

### Supreme Court Judicial District Nine

Current: O. Chris Meyers II, Lawton

Caddo, Canadian, Comanche, Cotton, Greer,

Harmon, Jackson, Kiowa and Tillman counties

(Three-year term: 2014-2016)

Nominee: **John W. Kinslow, Lawton**

### Member-At-Large

Current: Robert S. "Bob" Farris, Tulsa

(Three-year term: 2014-2016)

Nominee: **Deirdre O'Neil Dexter, Sand Springs**

### Summary of Nominations Rules

Not less than 60 days prior to the Annual Meeting, 25 or more voting members of the OBA within the Supreme Court Judicial District from which the member of the Board of Governors is to be elected that year, shall file with the Executive Director, a

- signed petition (which may be in parts) nominating
- a candidate for the office of member of the Board of
- Governors for and from such Judicial District, or
- one or more County Bar Associations within the
- Judicial District may file a nominating resolution
- nominating such a candidate.

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

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

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

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

- Elections for contested positions will be held at the
- House of Delegates meeting Nov. 15, during the
- Nov. 13-15 OBA Annual Meeting. Terms of the
- present OBA officers and governors will terminate
- Dec. 31, 2013.

- Nomination and resolution forms can be found at
- [www.amokbar.org](http://www.amokbar.org).

## NOTICE

- The nominating petition deadline was 5 p.m.,
- Sept. 13, 2013. This issue went to press before
- the deadline, and the list of nominees may not be
- complete. Check the Annual Meeting website at
- [www.amokbar.org](http://www.amokbar.org) for the final list.

# OBA Nominating Petitions

(See Article II and Article III of the OBA Bylaws)

## OFFICERS

### PRESIDENT-ELECT

#### DAVID A. POARCH JR., NORMAN

Nominating Petitions have been filed nominating David A. Poarch Jr. for election of President Elect of the Oklahoma Bar Association Board of Governors for a one-year term beginning Jan. 1, 2014. Fifty of the names thereon are set forth below:

Andrew M. "Andy" Coats, William G. "Bill" Paul, James T. "Jim" Stuart, Renee DeMoss, Cathy M. Christensen, Deborah A. Reheard, David K. Petty, Harry A. Woods Jr., Melissa DeLacerda, William J. "Willie" Baker, Charles D. "Buddy" Neal Jr., M. Joe Crosthwait Jr., William R. Grimm, Joseph W. Morris, Guy Clark, Nancy Parrott, O.Chris Meyers, Joe Vorndran, Kimberly Hays, C.D. Northcutt, Robert Don Gifford II, Douglas L. Jackson, Allen E. Barrow Jr., Robert Sartin, Sarah J. Schumacher, Brooke S. Murphy, Peggy Stockwell, Ted Roberts, Sanford Coats, Kenneth L. Delashaw, Betty Outhier Williams, Scott Pruitt, R. Forney Sandlin, Tom Wolfe, Lynn A. Pringle, Roy Tucker, Reta Strubhar, Chuck Chesnut, Michael C. Mayhall, Linda S. Thomas, Daniel Sprouse, Michael P. Sullivan, William A. Gossett, Mart Tisdal, Sam T. Allen IV, Dietmar Caudle, R. Lindsay Bailey, David Swank, Dan Webber Jr., Micheal Salem and Cheryl B. Wattley

A total of 203 signatures appear on the petitions.

Nominating Resolutions have been received from the following counties: Cleveland, Garfield, Love and Pottawatomie

### VICE PRESIDENT

#### SUSAN S. SHIELDS, OKLAHOMA CITY

Nominating Petitions have been filed nominating Susan S. Shields for election of Vice President of the Oklahoma Bar Association Board of Governors for a one-year term beginning Jan. 1, 2014. Fifty of the names thereon are set forth below:

Jennifer Callahan, Richard Nix, Mike Lauderdale, T. Michael Blake, Steven Cole, Richard D. Craig, Elizabeth Tyrrell, John Robertson, Kurt Rupert, Amy Sine, Armand Paliotta, Charles E. Geister III, Steven C. Davis, J. Christian Guzzy, Jon H. Trudgeon, Melanie Jester, Cynda Ottaway, Roger Stong, Karen S. Rieger, Eric S. Fisher, James W.

Larimore, Michael S. Laird, Cannon Miles Tolbert, Stacey D. Spivey, James Holloman, Cathy Christensen, Robert G. Gifford II, Linda S. Thomas, Glenn A. Devoll, Douglas L. Jackson, Richard L. McKnight, M. Joe Crosthwait Jr., Angela Ailles Bahm, Renee DeMoss, James T. Stuart, John Heatly, Robert G. McCampbell, Michael Burrage, Reggie N. Whitten, Richard Propester, Joel W. Harmon, Cori Loomis, Zane Anderson, Kari A. Hoffhines, Barbara Moschovidis, Ben Butts, Warren Bickford, Travis Jett, McKenzie Anderson and Ronald Ricketts

A total of 136 signatures appear on the petitions.

## BOARD OF GOVERNORS

### SUPREME COURT JUDICIAL DISTRICT No. 2

#### KEVIN T. SAIN, IDABEL

Nominating Petitions have been filed nominating Kevin T. Sain for election of Supreme Court Judicial District No. 2 of the Oklahoma Bar Association Board of Governors for a three-year term beginning Jan. 1, 2014.

A total of 35 signatures appear on the petitions.

Nominating Resolutions have been received from the following county: McCurtain

### SUPREME COURT JUDICIAL DISTRICT No. 8

#### JAMES R. MARSHALL, SHAWNEE

Nominating Petitions have been filed nominating James R. Marshall for election of Supreme Court Judicial District No. 8 of the Oklahoma Bar Association Board of Governors for a three-year term beginning Jan. 1, 2014. Twenty-five of the names thereon are set forth below:

Dale V. Beard, Robert Booth II, H. Ned Burleson II, Robert A. Butler, Russell S. Cochran, Robert S. Duran Jr., Matt Griffith, W. S. Haselwood, Karen Henson, James J. Hodgins, Gregory B. Jackson, Charles M. Laster, Larry K. Lenora, Shelley Levisay, Kelli McCullar, Benjamin McCullar, Tracy L. McDaniel, Joseph E. McKimmey, Adam Panter, Jim Cole Pettis, Greg Pollard, William D. Simpson, Sarah Soderstrom-Bridge, James T.

Stuart, H. Edward Terry, Gregory A. Upton, Joe Vorndran and George Wright.

A total of 29 signatures appear on the petitions.

A Nominating Resolution has been received from the following county: Pottawatomie

### **SUPREME COURT JUDICIAL DISTRICT No. 9**

#### **JOHN W. KINSLOW, LAWTON**

Nominating Petitions have been filed nominating John W. Kinslow for election of Supreme Court Judicial District No. 9 of the Oklahoma Bar Association Board of Governors for a three-year term beginning Jan. 1, 2014. Twenty-five of the names thereon are set forth below:

Dietmar K. Caudle, O. Chris Meyers II, C. E. Wade Jr., John C. Mackey, Ernest F. Godlove, Jerry Cude, Ana Basora Walker, David L. Butler, Robert E. Prince, Hyman Z. Copeland, Scott Ray, J. W. Doolin, Stephen K. Newcombe, Robin Rochelle, John N. Fleur, Mark Stoneman, Emmitt Tayloe, Robert L. Ross, Jordan Cabelka, Lisa Shaw, Aimee Vardeman, A. Brad Cox, Carole Brown, Luwana John and Irma S. Newburn.

A total of 44 signatures appear on the petitions.

### **MEMBER-AT-LARGE**

#### **DEIRDRE O'NEIL DEXTER, SAND SPRINGS**

Nominating Petitions have been filed nominating Deirdre O'Neil Dexter for election of Member at Large of the Oklahoma Bar Association Board of Governors for a three-year term beginning Jan. 1, 2014. Fifty of the names thereon are set forth below:

Stephen D. Beam, Cathy M. Christensen, Renee DeMoss, William R. Grimm, Bob Farris, Linda S. Thomas, Steven L. Barghols, Julie Bates, Gerald M. Bender, Michael Bigheart, John B. Boozer, M. Courtney Briggs, Jack L. Brown, David Butler, John D. Clayman, Tim E. DeClerck, Paul Demuro, Glenn A. Devoll, Michael Ellis Esmond, James David Ezzell, William E. Farrior, Roberta Browning Fields, Jon Ford, Ron Franklin, James R. Gotwals, Daniel B. Graves, Brad Gungoll, Amy K. Hart, Frank X. Henke IV, Dennis W. Hladik, Dan Holean, R. Victor Kennemer III, Larry D. Lahman, Karen Langdon, Larry D. Leonard, Grant Lloyd, Leslie L. Lynch, Clark McKeever, William Chad McLain, Gordon Melson, Tom L. Newby, Lauren Ottaway, Leonard Pataki, Robert B. Sartin, Eric R. Schelin, Susan Shields, Daniel Sprouse, James M. Sturdivant, Anne B. Sublett and Betty Outhier Williams

A total of 140 signatures appear on the petitions.

**More than 40 counties are participating.  
Is yours one of them?**

**OKLAHOMA BAR ASSOCIATION**  
**DAY OF SERVICE**  
*September 20-21, 2013*



**Send your county's project to  
Brandi Nowakowski at [bnowakowski@thewestlawfirm.com](mailto:bnowakowski@thewestlawfirm.com)**

# Program of Events

All events will be held at the Sheraton Hotel unless otherwise specified.  
 Submit meeting room and hospitality suite requests to Craig Combs at [craigc@okbar.org](mailto:craigc@okbar.org).  
 Submit meeting program information to Lori Rasmussen at [lorir@okbar.org](mailto:lorir@okbar.org).

## WEDNESDAY, NOVEMBER 13

OBA Registration ..... 8 a.m. – 5 p.m.

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

OBA/CLE Seminar ..... 9 a.m. – 5 p.m.

*See seminar program for speakers  
 and complete agenda*

Health Law  
 Juvenile/Criminal Law  
 Recent Developments  
 Technology

OU College of Law  
 Alumni Reception  
 and Luncheon ..... Noon – 1:30 p.m.  
*Skirvin Hotel*

OCU School of Law  
 Alumni Reception  
 and Luncheon ..... Noon – 1:30 p.m.

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

President's Legal Superheroes  
 Reception ..... 7 – 9:30 p.m.  
*(Free for everyone with  
 meeting registration)*



## THURSDAY, NOVEMBER 14

OBA Registration ..... 8 a.m. – 5 p.m.

OBA/CLE Plenary Session ..... 9 – 11:40 a.m.

OBA Annual Luncheon  
 for Members, Spouses  
 and Guests ..... Noon – 1:45 p.m.  
*(\$35 with meeting registration)*

Featuring:



**Jose Baez**  
 The Baez Law Firm  
 Coral Gables  
 & Orlando, Fla.

TOPIC: *Why Casey Anthony was Found  
 Not Guilty*

OBA Sections Present –  
 The Best of Oklahoma:  
 Art, Music, Food & Wine ..... 7 – 9 p.m.  
*(Annual Meeting registration not required  
 for admission)*



*Artwork by Nick Hermes*

# FRIDAY, NOVEMBER 15

President's Breakfast ..... 7:30 – 9 a.m.  
 (\$25 with meeting  
 registration)

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

Oklahoma Bar Association  
 House of Delegates ..... 10 a.m. – Noon  
*Election of Officers & Members  
 of the Board of Governors  
 Approval of Title Examination Standards  
 Resolutions*

## OKLAHOMA BAR JOURNAL EDITORIAL CALENDAR

### 2013

- October  
**Appellate Law**  
 Editor: Emily Duensing  
 emily.duensing@oscn.net  
 Deadline: May 1, 2013
- November  
**Raising the Bar: Lawyers  
 Who Make a Difference**  
 Editor: Melissa DeLacerda  
 melissde@aol.com  
 Deadline: Aug. 1, 2013
- December  
**Ethics & Professional  
 Responsibility**  
 Editor: Joe Vorndran  
 joe@scdtlaw.com  
 Deadline: Aug. 1, 2013

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

### 2014

- January  
**Meet Your OBA**  
 Editor: Carol Manning
- February  
**Alternate Dispute Resolution**  
 Editor: Judge Megan Simpson  
 megan.simpson@oscn.net  
 Deadline: Oct. 1, 2013
- March  
**Business Litigation**  
 Editor: Mark Ramsey  
 mramsey@soonerlaw.com  
 Deadline: Oct. 1, 2013
- April  
**Law Day**  
 Editor: Carol Manning
- May  
**Diversity in the Law**  
 Editor: January Windrix  
 janwindrix@yahoo.com  
 Deadline: Jan. 1, 2014

- August  
**Children and the Law**  
 Editor: Sandee Coogan  
 scoogan@coxinet.net  
 Deadline: May 1, 2014
- September  
**Bar Convention**  
 Editor: Carol Manning
- October  
**Health Care**  
 Editor: Emily Duensing  
 emily.duensing@oscn.net  
 Deadline: May 1, 2014
- November  
**President's Topic**  
 Editor: Melissa DeLacerda  
 melissde@aol.com  
 Deadline: Aug. 1, 2014
- December  
**Ethics & Professional  
 Responsibility**  
 Editor: Judge Allen Welch  
 allen.welch@oscn.net  
 Deadline: Aug. 1, 2014



# 2013 OBA ANNUAL MEETING REGISTRATION

Please complete a separate form for each registrant.

Name \_\_\_\_\_

Email \_\_\_\_\_

Badge Name (if different from roster) \_\_\_\_\_ Bar No. \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ Phone \_\_\_\_\_

Name of Non-Attorney Guest \_\_\_\_\_

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

## Check all that apply:

- ☐ Judiciary ☐ OBF Past President ☐ OBA Past President
- ☐ YLD Officer ☐ YLD Board Member ☐ YLD Past President
- ☐ Board Bar Examiner ☐ OBF Fellow
- ☐ 2013 OBA Award Winner ☐ Heroes Program volunteer
- ☐ Delegate ☐ Alternate ☐ County Bar President:

County \_\_\_\_\_

## ☐ **YES! Register me for the 2013 Annual Meeting, November 13-15 in OKC. Registration fee includes:**

Wednesday & Thursday continental breakfast in hospitality area

President's Reception • Wednesday & Thursday afternoon break treats in hospitality area

OBA Sections Present The Best of Oklahoma: Art, Music, Food & Wine

Chocolate convention gift • Vendors Expo

☐ MEMBER: ☐ \$80 through Oct. 21; \$85 after Oct. 21 .....\$ \_\_\_\_\_

☐ NEW MEMBER (Admitted after Jan. 1, 2013): ☐ Free through Oct. 21; \$25 after Oct. 21 ...\$ \_\_\_\_\_

## REGISTER

☐ **BY MAIL** with payment or credit card information to:  
OBA Annual Meeting  
P.O. Box 53036  
Okla. City, OK 73152

☐ **FAX** with credit card information to:  
(405) 416-7092

☐ **ONLINE** at [www.amokbar.org](http://www.amokbar.org)

**CANCELLATION POLICY** - Full refunds will be given through Nov. 6, 2013. No refunds will be issued after that date.

## HOTEL ACCOMMODATIONS:

Fees do not include hotel accommodations. For reservations call Sheraton Hotel at 405-235-2780.  
Call by Oct. 21 and mention "Oklahoma Bar Association 2013" for a special room rate of \$102 per night.  
To make reservations online, visit [www.starwoodmeeting.com/Book/OKBarAssociation2013](http://www.starwoodmeeting.com/Book/OKBarAssociation2013)  
For hospitality suites, contact Craig Combs at 405-416-7040 or email: [craigc@okbar.org](mailto:craigc@okbar.org).

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

- ☐ Wednesday President's Reception
- ☐ OBA Sections Present The Best of Oklahoma: Art, Music, Food & Wine

### I will be attending the following ticketed events in addition to my registration fee:

- ☐ Wednesday: CLE Multitrack only, 6 MCLE hours (\$125 through Oct. 21; \$150 after Oct. 21; \$25 for new members through Oct. 21; \$50 after Oct. 21) ..... \$ \_\_\_\_\_
- ☐ Wed. & Thurs.: CLE Multitrack and Plenary 9 MCLE hours (\$175 through Oct. 21; \$200 after Oct. 21; \$50 for new members through Oct. 21; \$75 after Oct. 21) ..... \$ \_\_\_\_\_
- ☐ Thursday: CLE Plenary only, 3 MCLE hours (\$75 through Oct. 21; \$100 after Oct. 21; \$25 for new members through Oct. 21; \$50 after Oct. 21) ..... \$ \_\_\_\_\_
- ☐ Thursday: Annual Luncheon (\_\_\_\_\_ number of tickets @ \$35 each) ..... \$ \_\_\_\_\_
- ☐ Friday: President's Breakfast (\_\_\_\_\_ number of tickets @ \$25 each) ..... \$ \_\_\_\_\_

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

- ☐ Wednesday: Law School Luncheon ☐ OCU ☐ OU ☐ TU  
(\_\_\_\_\_ number of tickets @ \$35 each) ..... \$ \_\_\_\_\_

**TOTAL COST (including front and back page of Registration Form) \$ \_\_\_\_\_**

## PAYMENT OPTIONS:

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

Card # \_\_\_\_\_ Exp. Date \_\_\_\_\_

Authorized Signature \_\_\_\_\_

## QUESTIONS?

Contact Mark Schneidewent  
at 405-416-7026; 800-522-8065  
or [marks@okbar.org](mailto:marks@okbar.org).

# YOU'RE INVITED

# OPENING YOUR LAW PRACTICE

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## CLE Credit

This course has been approved by the Oklahoma Bar Association Mandatory Continuing Legal Education Commission for 0 hours of mandatory CLE credit, including 0 hour of ethics.

## Tuition

This program is free, but you must register to attend. Contact Renee Montgomery at (405) 416-7029 to register.

**Program Planner/Moderator** - Jim Calloway, Director, Management Assistance Program,  
Oklahoma Bar Association

## Schedule

- 8:30 a.m. **Registration and Continental Breakfast**
- 9:00 **The Starting Line**  
Jim Calloway, Director, OBA Management Assistance Program
- 9:30 **It's All About the Clients**  
Jim Calloway
- 11:00 **Break**
- 11:10 **How to Manage-Everything!**  
Jim Calloway
- 12:00 p.m. **Lunch provided by Oklahoma Attorneys Mutual Insurance Company**
- 12:30 **Malpractice Insurance and Other Risk Management Issues**  
Phil Fraim, President, Oklahoma Attorneys Mutual Insurance Company
- 1:00 **Professional in the Practice of Law**  
Judge David Lewis, Presiding Judge, Oklahoma Court of Criminal Appeals
- 1:30 **Break**
- 1:40 **Trust Accounting and Legal Ethics**  
Gina Hendryx, OBA General Counsel
- 2:40 **Break**
- 2:50 **Equipping the Law Office**  
Jim Calloway, Director, OBA Management Assistance Program
- 3:30 **Your Money: Accounting and Tax for Law Firms**  
Ted Blodgett, CPA, CVA, JD, Gray, Blodgett and Company, CPA's
- 4:30 **Adjourn**

# Defending Against Reckless Patent Enforcement Should Not Be an Ordinary Cost of Doing Business

By Mitchell “Mick” McCarthy

When it comes to the particularity with which a patentee must plead a patent infringement lawsuit, an accused infringer can be completely deprived of clear notice of what the patentee’s theory is for infringement. That levies a highly disproportionate burden on the party accused of infringement: “a patent complaint requires remarkably little information...yet this simple, nonspecific complaint has a nuisance value of a few hundred thousand dollars the minute it is filed and served.”<sup>1</sup>

## PATENTEES USING THE COURTROOM TO CHILL LEGITIMATE COMPETITION: UNSCRUPULOUS AND ILL-ADVISED

This is not an anti-patent piece. Patents have been and must continue to be crucial to incentivizing the technological advancement and economic growth of American society. A patent, arising from Congress’ enumerated powers,<sup>2</sup> grants its owner the legal right to prevent others from making or using the invention covered by the patent, for the term of the patent. A time-limited legal right to stop some competition is justified because ultimately it benefits society. Incentivizing invention by a limited monopoly right on what the patent covers encourages investment in research and design. A patent creates an incubation environment suited for commercializing innovation, thereby advancing our society technologically and economically.

However, too often a weak patent is used by its owner to stop legitimate competition. By “weak patent” it is meant a patent that covers a narrow scope of technology but is nonethe-

less asserted more broadly by its owner against a competing design. What a patent covers, the patent scope, is defined by the language of its claims. Claims are written in an odd mixture of technical and legal jargon that reads to the layman like a foreign language; we’ll call it “patentese.” Patent attorneys use patentese to write claims in the form of extremely long sentences chocked full of terms you don’t hear around the water cooler, like “abuttingly” and “protuberant.” Terms like those are used to make the claim broader. To infringe the patent, an alleged infringing device or method must include every element recited by the language of at least one claim in the patent.

Your client can legitimately compete against a patented invention without infringing the patent by simply not including one of the elements of every claim in a competing design. When this is intentionally done it is called a “design-around.” Designing around a patent is entirely legal, ethical and theoretically encouraged in our free-enterprise economic system for fostering legitimate competition. In fact, one of the most popular CLE seminars for

many years is titled "Designing Around Valid U.S. Patents."<sup>3</sup>

However, all has not been well lately. This article discusses how precarious it has been to be the accused infringer in a system where patentees with weak patents bring nuisance lawsuits to quash legitimate competition.

Patentees have quashed legitimate competition because patent litigation is extraordinarily expensive. Justice Story<sup>4</sup> called patent litigation the "sport of kings." According to statistics published by the American Intellectual Property Law Association (AIPLA), the median cost of patent litigation through the end of discovery for controversies involving asserted damages in the range of \$1-25 million, is \$2.5 million for each party. Those same statistics reveal that where the dispute is for less than \$1 million, the litigation cost averages about \$600,000 for each side. Leveraging the high cost of defending against a patent infringement lawsuit, while settled in the safe harbor of low pleading requirements, an unscrupulous or ill-advised patentee can game the system to make no fast or easy way out for an unsuspecting accused infringer.<sup>5</sup> Typically, such an accused infringer is forced to win a round or two just in order to get a meaningful offer on the table, then settle on business judgment rather than spend more money for legal justice. The situation defeats a strong public interest that weak patents be reined in or invalidated by complete adjudication.<sup>6</sup>

Patentees have also quashed legitimate competition because patent litigation fee shifting has been decided on an uneven playing field. Statutory relief from the generally followed "American Rule" is entirely defined by the term "exceptional" in the context of the 14 words of 35 USC §285: "[t]he court in exceptional cases may award reasonable attorney fees to the prevailing party."

Determining whether a case is exceptional, and hence eligible for fee shifting under §285, is a two-step process. First, the district court must determine whether the facts of the case are sufficient to warrant deeming the case exceptional. That factual determination is reviewed for clear error on appeal. After deeming a case exceptional, the district court must then determine whether the award of attorney fees is appropriate. That determination is reviewed for abuse of discretion on appeal.<sup>7</sup>

Generally, the Federal Circuit has rejected expansive readings of §285, limiting fee shifting awards to those cases where, by clear and convincing evidence, it was shown that at least one of the following occurred: inequitable conduct before the Patent and Trademark Office (PTO) in obtaining the patent-in-suit; litigation misconduct, or vexatious, unjustified, or otherwise bad faith litigation; filing a frivolous lawsuit; or willful infringement.<sup>8</sup>

Because of that last category, willful infringement, the patentee as the prevailing party can get the case deemed exceptional merely by proving willfulness. In exception to its general treatment, the Federal Circuit has adopted a more expansive reading of §285 to find exceptionality by willful infringement where the defendant was merely "objectively reckless." That is, by showing that the accused infringer was or should have been aware of an objectively high likelihood that the patentee would prevail.<sup>9</sup> An accused infringer can have an objectively reasonable argument for noninfringement and still be found to be a willful infringer, and hence be on the hook for fee shifting. Moreover, when the accused infringer is found to be a willful infringer, on appeal the burden has actually shifted to the district court to explain why fee shifting to the prevailing patentee should not occur.<sup>10</sup>

In contrast, when the accused infringer is the prevailing party exceptionality has been much more difficult to prove; hence, the uneven playing field. The burden for the prevailing wrongfully accused defendant is that absent litigation misconduct or inequitable conduct before the PTO, the Federal Circuit has historically permitted the award of attorney fees to a prevailing defendant only if both 1) the litigation is brought in subjective bad faith, and 2) the litigation is objectively baseless.<sup>11</sup>

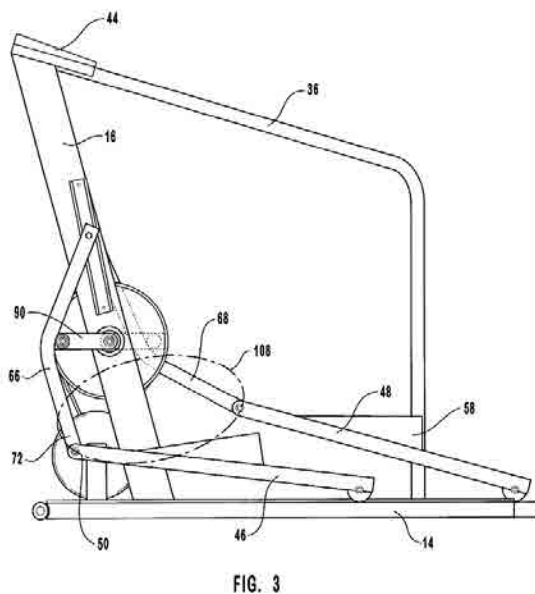
There is a presumption that the assertion of infringement of a duly granted patent is made in good faith.<sup>12</sup> Ultimately, the determination of infringement must run the course of a two-step process. In the first step, the patent-in-suit claims are interpreted as a matter of law by the district court. In the second step, the alleged infringing device is compared to the scope of the claim(s) as defined by the district court.<sup>13</sup> The first step typically requires discovery, proposed claim interpretation briefing by both parties for disputed claim terms, and a hearing on the disputed claim terms known as a Markman Hearing. As discussed below, the thresh-

old requirements of particularity for filing and maintaining a patent infringement lawsuit are low. It is possible for an accused infringer to complete discovery and be in receipt of the Markman Hearing Order, and yet in trial preparation only able to speculate as to what the patentee's infringement contentions are.

An accused infringer who prevails on summary judgment of noninfringement is left to taste the bitter gall of the high and unexpected cost it paid to legitimately compete. The question in many circles is, under what circumstances could the district court find precedential indication of clear and convincing evidence of bad faith by a patentee bringing an objectively baseless lawsuit and, as is within its discretion, deem the case exceptional and shift fees to the prevailing accused infringer? A couple of recent cases are illustrative of outcomes at the margins; the traditional view followed by an emerging hopeful view.

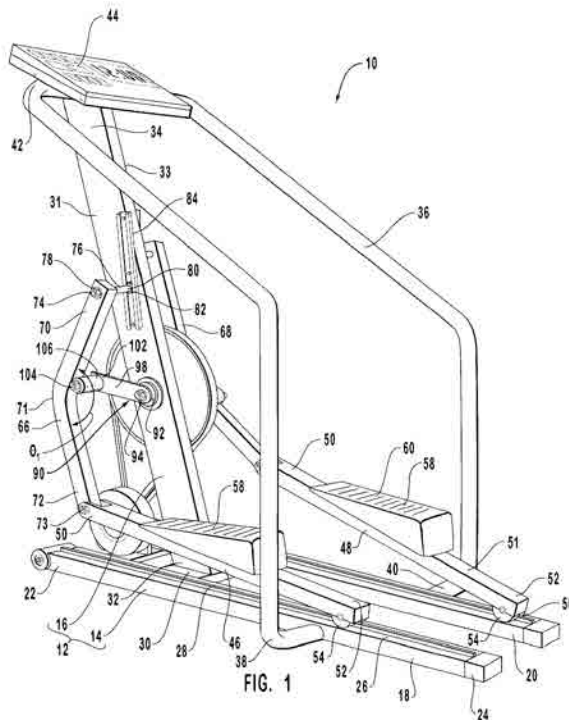
#### NO FEE SHIFTING TO PREVAILING ACCUSED INFRINGER – *ICON V. OCTANE*

Icon owns U.S. Patent 6,019,710 ('710 patent) entitled "Exercising Device with Elliptical Movement."<sup>14</sup> This patented elliptical exercising machine is designed primarily to require less floor space than prior art designs. Figure 3 of the '710 patent depicts the elliptical path 108 of the forward ends of foot rails 46, 48 upon which a user stands to simulate a running motion during exercise:



('710 patent FIG. 3)

Figure 1 of the '710 patent shows the linkage assembly in more detail, which includes stroke rails 66, 68 connected at lower ends to each of the foot rails 46, 48:



('710 patent FIG. 1)

Each stroke rail 66, 68 near its middle is connected to a crank 90, and the upper end of each stroke rail 66, 68 is connected to the frame 12 by a pin 76 that slides up and down in linear movement within a c-shaped channel 84.

Icon sued Octane for infringement of the '710 patent, the case winding up in the District Court of Minnesota. The only independent claim<sup>15</sup> of the '710 patent that Icon asserted against Octane is claim 1, which requires in pertinent part that an infringing device include a stroke rail having a top end ("first end" in claim) that is connected to the frame to move in linear reciprocating displacement:

1. An exercise apparatus comprising:
  - (a) a frame configured for resting on a ground surface;
  - (b) a pair of spaced apart foot rails each having a first end and an opposing second end, each foot rail being configured to receive a corresponding foot of a user;

- (c) a pair of stroke rails each having a first end and an opposing second end, the second end of each stroke rail being hingedly attached to the first end of a corresponding foot rail;
- (d) means for connecting each stroke rail to the frame such that *linear reciprocating displacement* of the first end of each stroke rail results in displacement of the second end of each stroke rail in a substantially elliptical path; and
- (e) means for selectively varying the size of the substantially elliptical path that the second end of each stroke rail travels.<sup>16</sup>

When the PTO issues a patent it often makes a written statement in the record indicating the reasons for determining that the patent application claimed a patentable invention. Here, the PTO made it expressly clear that Icon's connection of the stroke rail to the frame in a way that requires linear reciprocating displacement of the top end of the stroke rail and elliptical movement of the bottom end of the stroke rail was one of the features that made Icon's elliptical device patentable:

The prior art fails to show or teach applicant's claimed exercise apparatus comprising a frame; a pair of foot rails having foot supports; a pair of *stroke rails* each having one end hingedly connected to a respective foot rail and having *the opposite end connected to the frame for linear reciprocating movement* and for producing an elliptical path.<sup>17</sup>

Icon made no response in the written record rebutting or otherwise clarifying the PTO's characterization that the "linear reciprocating displacement" term in claim 1 means that the top end of the stroke rail performs "linear reciprocating movement."

Octane found itself defending against patent infringement despite the fact that its accused device does not have a linkage component that connects the forward end of its foot rail to the frame; nothing like the stroke rail in the '710 patent. Beyond that fact, Octane's alleged infringing device does not have any linkage component whatsoever that moves along a linear reciprocating displacement; the only possible linkage component that Icon could point to in the alleged infringing device moves along a curved (arcuate) path.

**“When the PTO issues a patent it often makes a written statement in the record indicating the reasons for determining that the patent application claimed a patentable invention.”**

Not to be deterred, Icon waxed eloquently for 15 pages in its claim interpretation brief that the "linear reciprocating displacement" claim term is not necessarily limited to "linear reciprocating movement," in direct contradiction to the reasoning the Patent Office allowed the '710 patent.<sup>18</sup> Ultimately, Icon argued in its briefing and at the Markman Hearing for a definition of the claim term "linear reciprocating displacement" that would broaden it to include the arcuate motion of the alleged infringing device. Despite being directly contrary to the written prosecution history<sup>19</sup> in obtaining the '710 patent, Icon requested that the Court adopt this definition for the claim term "linear reciprocating displacement:"

A change in position from a first point to a second point followed by a change in position from the second point back to the first point, where the change in position from one point to the other results in a net change in position along a line. *Linear reciprocating displacement does not require movement along a linear path.*<sup>20</sup>

The court rejected Icon's proposed claim construction in favor of the plain meaning of the claim term, as is entirely consistent with the PTO's interpretation that it requires linear movement.<sup>21</sup> That did not deter Icon from subsequently presenting testimony at trial that the alleged infringing device has a linkage that satisfies the "linear reciprocating displacement" requirement of claim 1 of the '710 patent. However, that testimony was based on Icon's technical expert report which relied entirely on Icon's proposed definition for the term "linear reciprocating displacement" that was rejected by the district court. The district court granted Octane's motion to strike the expert testimony as inadmissible for being contrary to the district court's interpretation.

Octane prevailed on summary judgment of noninfringement, in pertinent part due to the court's finding that the alleged infringing device does not have any structure that performs the "linear reciprocating displacement" requirement of the '710 patent. The summary judgment was affirmed on appeal to the Federal Circuit.<sup>22</sup>

Octane moved to have the case ruled exceptional in order to recover its attorney fees and costs. Octane's predominant argument for fee shifting was that Icon had sued for infringement relying on an interpretation of the '710 patent that was entirely different than what it knew it had obtained from the PTO. That is, Octane argued that the "linear reciprocating displacement" requirement was not an insignificant factor in obtaining the '710 patent because the PTO had specifically identified that as a reason why the '710 patent was allowed. Octane argued that Icon's clearly unreasonable claim interpretation assertions inferred bad faith litigation justifying the fee shifting to the prevailing accused infringer on summary judgment.

The district court strictly applied the *Brooks*<sup>23</sup> standard and found that Icon neither filed and maintained an objectively baseless lawsuit nor acted with any subjective bad faith.<sup>24</sup>

On appeal, and in the alternative, Octane argued that the standard for finding a case exceptional in these circumstances should be lowered to "objectively unreasonable" to rebalance what Octane argued is an existing imbalance of power to large companies that bring frivolous patent infringement lawsuits to drive smaller companies out of business by outspending them in court. Octane's appeal on its motion for fees and its call for revisiting the exceptionality standard was summarily dismissed by the Federal Circuit without comment.

#### **FEE SHIFTING TO PREVAILING ACCUSED INFRINGER – MARCTEC V. JOHNSON & JOHNSON**

MarcTec owns U.S. Patent 7,217,290 ('290 patent) titled "Surgical Devices Containing a Heat Bondable Material With a Therapeutic Agent" and U.S. Patent 7,128,753 ('753 patent) entitled "Surgical Devices Having a Polymeric Material With a Therapeutic Agent and Methods for Making Same."<sup>25</sup> These patents have identical descriptions and drawings, having issued from the latest patent applications filed in 2002 in a long line of continuation applica-

tions stemming from the original application filed in 1990 which is now U.S. Patent 5,163,960.

During prosecution of the patents-in-suit (the '290 patent and the '753 patent) the originally filed claims were rejected over U.S. Patent 5,102,417 ('417 patent) previously issued to Dr. Palmaz, the inventor of the balloon-expandable coronary stent. In distinguishing its invention over the '417 patent, MarcTec made written arguments in the PTO prosecution history record that its invention is a surgical device that does not include non-surgical devices like the stents that are covered by the '417 patent. MarcTec also amended the claims to add the emphasized language below that explicitly requires the application of heat, arguing in the PTO written record that its invention is distinguishable over the '417 patent which does not require the application of heat:

1. An implant for implantation in a human body comprising: a tubular member having a channel and mechanically expandable upon activation of a delivery mechanism from a contracted condition in which the tubular member has a first cross sectional size in a plane perpendicular to a longitudinal central axis of the tubular member to an expanded condition in which at least a portion of the tubular member has a second cross sectional size in a plane perpendicular to the longitudinal central axis of the tubular member, the second cross sectional size being larger than the first cross sectional size to thereby lock the tubular member against tissue in the human body; and a first component bonded to at least a portion of the tubular member and formed of a heat bondable material that includes a therapeutic agent selected from the group consisting of a tissue ingrowth promoter and an antibiotic, wherein *the heat bondable material is non-flowable and non-adherent at room temperature and becomes flowable, tacky, and adherent upon the application of heat.*<sup>26</sup>

2. A surgical device for implantation in a body comprising: an implant, at least a portion of which is expandable; and *a polymeric material bonded to the implant, wherein the polymeric material is a thermoplastic, includes a therapeutic agent, is non-flowable and non-adherent at room temperature, and becomes flowable, tacky, and adherent upon the application of heat.*<sup>27</sup>

MarcTec sued Cordis (and parent Johnson & Johnson) in the Southern District Court of Illinois. MarcTec alleged that Cordis' Cypher stent infringed the '290 and '753 patents, seeking \$168 million dollars in damages for just the first two years after issuance of the patents.

Cordis thus found itself defending against patent infringement despite the fact its accused device is a stent — the same technology MarcTec disclaimed in the PTO written record to obtain the patents-in-suit. Further, the alleged infringing device has a polymer/drug coating that is applied and adheres at room temperature without any use of heat, contrary to that required by the claims of the patents-in-suit.

MarcTec argued in its claim interpretation briefing and Markman Hearing that the district court should effectively ignore the language it added to the claims to obtain the patents-in-suit, alleging that it is improper to limit a product claim to a particular process of manufacture (i.e. heat bonding).<sup>28</sup> The court rejected MarcTec's position as legal error and construed the claims to mean what the language plainly states, that the alleged infringing device must have a bonding that includes the application of heat to infringe.

Undeterred, MarcTec proceeded to trial by blazing a trail of what the district court viewed were mischaracterizations of the facts and the law. The district court criticized MarcTec for arguing old law, rejected by *Philips*,<sup>29</sup> that the meaning of the claims should not be interpreted in view of the disclosure of the specification.<sup>30</sup> MarcTec further argued, in view of its distinguishing comments in the PTO written record, that the Cypher stent allegedly isn't a stent at all but rather it is an "expandable intraluminal vascular graft," in contradiction to admissions of its own witness testimony. The court found MarcTec's expert testimony inadmissible where it pointed to processes in the manufacture of the Cypher stent that occur long before or long after the application of polymers to the stent, and that have nothing to do with bonding whatsoever. The court expressly criticized MarcTec for presenting such testimony that "did not address the requirements of the court's claim construction and is irrelevant to the question of infringement."<sup>31</sup> The court also found inadmissible, as junk science, the testimony of MarcTec's expert Dr. Sojka who testified that the alleged infringing device was made by a process that sprayed droplets at speeds approaching the

speed of sound, and that allegedly creates a condition that increases the temperature of the droplets in a way that cannot be measured — for five millionths (0.000005) of a second.

Cordis prevailed in the district court on summary judgment of noninfringement. The court ruled that it was clearly baseless for MarcTec, having represented to the Patent Office that the claimed invention excludes stents, to then turn around and assert the patents-in-suit against the Cypher stent. The court reasoned that in this case the patentee had been manifestly unreasonable in initially assessing infringement and then in continuing to assert infringement in court, and that behavior is a proper inference of bad faith.<sup>32</sup> Accordingly, Cordis also prevailed on its motion to deem the case exceptional. Given the finding of exceptionality in view of the facts of the case, the district court ruled it is within the discretion of the trial judge to assess a reasonable award under §285.<sup>33</sup> The district court thereby awarded Cordis \$3,873,865.01 in attorney fees and \$809,788.02 in expert fees and expenses.

Cordis' summary judgment of noninfringement and award of fees was affirmed by the Federal Circuit on appeal.<sup>34</sup> Importantly, the Federal Circuit found the requisite bad faith for exceptionality existed wholly separate from any litigation misconduct. That is, the court affirmed the district court's fee shifting to the defendant by concluding that the facts showed that MarcTec persisted in continuing a case it knew it did not have, and could only do so by mischaracterizing the facts and the law: "After careful consideration and review of the record, we agree with the district court that MarcTec's proposed claim construction, which ignored the entirety of the specification and the prosecution history, and thus was unsupported by the intrinsic record, was frivolous and supports a finding of bad faith."<sup>35</sup> The court went on to clarify that litigation misconduct formed a separate and independent basis for the fee shifting to defendants: "In addition to finding that MarcTec filed an objectively baseless lawsuit in bad faith, the district court further found that MarcTec engaged in litigation misconduct. This finding provides a separate and independent basis for the court's decision to award attorney fees."<sup>36</sup>

## WHAT CAN BE GLEANED FROM THESE CASES AT THE MARGINS?

Fee shifting to a prevailing accused infringer is entirely within the discretion of the district court and reviewable on appeal for clear error. Federal Circuit precedence from *MarcTec* says a baseless claim can reveal itself and ripen into bad faith during litigation when the patentee continues beyond a point the patentee knows or should know there is no infringement. There are red flags indicating when that path is being trodden.

### *Asserting a Different Patent Than What the PTO Issued*

In *Icon* the Federal Circuit stated what the accused infringer knew the day it was served with the lawsuit: “If ICON had wanted the claim to cover other types of nonlinear motion, such as an arcuate path, it could have simply omitted the term “linear” to broaden the claims.”<sup>37</sup>

The prosecution history is intrinsic evidence of what the claims mean. It is part and parcel of the entirety of the intrinsic record serving notice to the public, especially to the accused infringer, of what the patent covers. Accordingly, evidence that the patentee is arguing either a claim interpretation or an infringement contention that is contrary to the PTO prosecution history should raise a red flag that doing so may infer bad faith.

There’s a simple reason why *Icon* needed the court to interpret the claim language “linear reciprocating displacement” to include arcuate movement, contrary to the PTO prosecution history; the broader meaning was necessary for *Icon* to show infringement. We can’t prevent a patentee from its day in court to argue “linear” means “arcuate.” However, at the end of the day, dressing that argument up in a big red bow of briefing 15 pages of tenuous arguments upon more tenuous premises does not change the clear fact that the patentee knew or should have known that “linear” is different than “arcuate.” Continuing to press an obviously losing argument just to bleed the accused party of cash can fairly infer bad faith sufficient to shift fees to the prevailing accused infringer.

The result in *Icon* can be distinguished because the “linear reciprocating displacement” language is part of a “means plus function” type of claim that must properly be interpreted in accordance with the guidance of 35 U.S.C. 112(6). Completion of that analysis is lengthy

and complex, and not necessary to an understanding of the point here. Suffice it to say, even a good number of patent examiners and patent attorneys don’t understand how to properly interpret means plus function claims.

Notwithstanding *Icon*’s success in obfuscating the means plus function claim, noticeably missing in Octane’s arguments in the record is an emphasis that *Icon*’s infringement contention for the “linear reciprocating displacement” requirement was entirely contrary to the meaning of the term in the patent that *Icon* bargained for with the PTO.

*MarcTec* presents a balanced rationale that although a patentee is entitled to its day in court, the cumulative facts as litigation proceeds can eventually ripen to the point that it can rightly be said that the only reason for continuing the lawsuit is bad faith. The patentee in *MarcTec* asked the court to ignore explicitly recited claim language that was added to the claims to make them allowable over a prior art patent, along with written arguments in the record that the patent-in-suit does not cover a stent. As stated by the *MarcTec* court with acute clarity, “having represented to the PTO that the claims exclude stents in order to obtain allowance, *MarcTec* cannot turn around in litigation and assert the patents-in-suit against the Cypher stent.”<sup>38</sup>

A red flag should arise whenever evidence shows that the patentee might be arguing a claim interpretation or infringement contention that is contrary to the prosecution history in the PTO in obtaining the patent-in-suit.

### *Infringement Contentions That Are Inconsistent With the Court’s Claim Definitions*

The district court is the gatekeeper of the meaning of the asserted claims, and as such it must guard against a patentee who loses in the Markman Order but nonetheless subsequently argues its asserted meaning anyway. The district court in *Icon* let its guard down. After losing its claim construction argument that “linear reciprocating displacement” does not require linear movement, the patentee nonetheless used its losing definition as the basis for arguing in opposition to summary judgment. Incredibly, the district court effectively said “no harm, no foul” in stating the following:

At the summary judgment state, *Icon* argued that claim 1(d) was literally infringed because structures in Octane’s machine “convert linear

reciprocating displacement at the first end of the actuator-casting stroke rail into a “substantially elliptical path” at the second end of the stroke rail.” *In support, Icon relied on page 7 of its expert’s report, which employed the proposed construction of “linear reciprocating displacement” that was rejected by the Court. Icon now characterizes this assertion as “not an argument that Octane’s machines had “linear reciprocating displacement” but rather an argument that the claim did not require a structure that created linear reciprocating displacement, only a structure that performed the claimed “connecting” function.” This assertion suggests Icon did not intend to be misleading in its summary judgment argument, but merely to reargue a point that had been previously decided against it. Although arguably confused and repetitive, and ultimately unavailing, Icon’s summary judgment argument was not objectively baseless.”*<sup>39</sup>

The district court in *Icon* left open the idea that there could be some objectively reasonable basis for the patentee to present its infringement contentions upon a claim interpretation that the court had already rejected.

To the contrary, in *MarcTec* the Federal Circuit commended the district court for standing guard over its claim interpretations as the matter of law that they are, such as in explaining its reasoning for affirming the fee shifting to the prevailing accused infringer:

The court found that, even after it had evidence that the Cypher stent’s coating is applied at room temperature and does not bond using heat, MarcTec continued to pursue its frivolous case “by relying on mischaracterizations of the claim construction adopted by this Court....”<sup>40</sup>

The court should recognize the red flag waving whenever evidence shows that the patentee is arguing an infringement contention that is contrary to the court’s claim interpretation.

## LEVEL THE PLAYING FIELD

The uncertainty and concomitant unfair competitive advantage to an unscrupulous or ill-advised patentee will remain burdensome to parties accused of infringement until something happens to make it more predictable whether the outcome of a case is more likely akin to *Icon* or *MarcTec*. Your clients, people who respect the technology rights of others and compete legitimately but nonetheless find themselves accused of patent infringement,

should be treated equally to the accuser when adjudication is complete and fee shifting is decided.<sup>41</sup> Defending against reckless patent enforcement should not be an ordinary cost of doing business, any longer.

1. M. Craig Tyler, “Patent Pirates Search for Texas Treasure,” *Texas Lawyer*, Sept. 20, 2004, at 1, available at [goo.gl/3SeKG1](http://goo.gl/3SeKG1).

2. U.S. Constitution Article 1 Section 8: “The Congress shall have Power...To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries....”

3. <http://goo.gl/vMikBj>.

4. Rudolph Telscher, *Patent Litigation: The Sport of Kings*; Justice Joseph Story (Sept. 18, 1779 – Sept. 10, 1845) was an American lawyer and jurist who served on the U.S. Supreme Court from 1811 to 1845.

5. Except for a few district courts outside Oklahoma that have followed the ND CA in promulgating patent specific local rules requiring an affirmative assertion of infringement contentions by a date certain; see Travis Jensen’s summary at [www.localpatentrules.com](http://www.localpatentrules.com).

6. See *Lear, Inc. v. Adkins*, 395 U.S. 653, 670-71 (1969); *Blouder-Tongue Laboratories, Inc. v. University of Illinois Foundation*, 402 U.S. 313, 343, 350 (1971); *Brulotte v. Thys Co.*, 379 U.S. 29, 32-33 (1946); *Morton Salt Co. v. G.S. Supergerm Co.*, 314 U.S. 488, 493 (1942).

7. *Cybor Corp. v. FAS Techs., Inc.*, 138 F.3d 1448, 1460 (Fed. Cir. 1998) (*en banc*).

8. *Epcon Gas Sys., Inc. v. Bauer Compressors, Inc.*, 279 F.3d 1022, 1034 (Fed. Cir. 2002).

9. *In re Seagate Technology, LLC*, 497 F.3d 1360, 1371 (Fed. Cir. 2007) (*en banc*).

10. *Wedgetail Ltd. v. Huddleston Deluxe, Inc.*, 576 F.3d 1302, 1305-06 (Fed. Cir. 2009).

11. *Brooks Furniture Mfg., Inc. v. Dutailier Int’l, Inc.*, 393 F.3d 1378, 1381 (Fed. Cir. 2005).

12. *Springs Willow Fashions, LP v. Novo Indus., L.P.*, 323 F.3d 989, 999 (Fed. Cir. 2003).

13. *Markman v. Westview Instruments, Inc.*, 52 F.3d 967, 976 (Fed. Cir. 1995).

14. *Icon Health & Fitness, Inc. v. Octane Fitness, LLC*, 2012 WL 5237021 (Fed. Cir. 2012).

15. By law, if the alleged infringing device does not infringe an independent claim it also does not infringe any other claim depending from the independent claim.

16. ‘710 patent claim 1 (emphasis added).

17. Excerpt of the Notice of Allowance in Icon’s patent application for the ‘710 patent (emphases added).

18. *Icon Health & Fitness, Inc. v. Octane Fitness, LLC*, 9-cv-319, 2011 WL 2457914 (D. Minn 2011), Icon’s Claim Construction Brief [doc. 131] pp. 15-31.

19. The “prosecution history” is the publicly available written record of correspondence between the patent applicant and the PTO in obtaining the patent-in-suit.

20. *Icon Health & Fitness, Inc. v. Octane Fitness, LLC*, 9-cv-319, 2011 WL 2457914 (D. Minn 2011), Markman Order [doc. 144] pg. 8 (emphases added).

21. *Id.* pg. 9.

22. *Icon Health & Fitness, Inc. v. Octane Fitness, LLC*, 2012 WL 5237021 (Fed. Cir. 2012).

23. Note 11.

24. *Icon Health & Fitness, Inc. v. Octane Fitness, LLC*, 9-cv-319, 2011 WL 2457914 (D. Minn) Order [doc. 220].

25. *MarcTec, LLC v. Johnson & Johnson*, 664 F.3d 907 (Fed. Cir. 2012).

26. ‘290 patent claim 1 (emphasis added).

27. ‘753 patent claim 1 (emphases added).

28. *MarcTec, LLC v. Johnson & Johnson* 7-cv-825, 2010 WL 680490 (S.D. Ill. 2010) Markman Order [doc. 175] pg. 24.

29. *Philips v. AWH Corp.*, 415 F.3d 1303, 1320-21 (Fed. Cir. 2005) (*en banc*).

30. The “specification” generally includes everything in the originally filed patent application.

31. *MarcTec, LLC v. Johnson & Johnson*, 7-cv-825, 2010 WL 680490 para. 20 (S.D. Ill. 2010).

32. *MarcTec, LLC v. Johnson & Johnson*, 7-cv-825, 2010 WL 680490 para. 33 (S.D. Ill. 2010); citing *Eltech Sys. Corp. v. PPG Indus., Inc.*, 903 F.2d 805, 811 (Fed. Cir. 1990).

33. *MarcTec, LLC v. Johnson & Johnson*, 7-cv-825, 2010 WL 680490 para. 37 (S.D. Ill. 2010); citing *Takeda Chem. Indus., Ltd. v. Mylan Labs., Inc.*, 549 F.3d 1381, 1385 (Fed. Cir. 2008).

34. *MarcTec, LLC v. Johnson & Johnson*, 664 F.3d 907 (Fed. Cir. 2012).

35. *Id.* at 918.

36. *Id.* at 919.

37. *Icon Health & Fitness, Inc. v. Octane Fitness, LLC*, 2012 WL 5237021, \*4 (Fed. Cir. 2012).

38. *MarcTec, LLC v. Johnson & Johnson*, 664 F.3d 907, 915 (Fed. Cir. 2012).

39. *Icon Health & Fitness, Inc. v. Octane Fitness, LLC*, 9-cv-319, 2011 WL 2457914 (D. Minn. 2011), Order on Fees [doc. 220] (emphases added).

40. Note 38 (emphasis added).

41. This issue is squarely on appeal in *Media Queue, LLC v. Netflix, Inc.*, 2010-1199, -1344 (Fed. Cir.).

## ABOUT THE AUTHOR



Mitchell “Mick” McCarthy is a registered patent attorney concentrating in intellectual property procurement and commercialization. He has lived most of his life in the Oklahoma City metro area. He has 20 years of experience as a licensed patent practitioner, and

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Heather Burrage, Chairman  
Oklahoma Judicial Nominating Commission

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# Oklahoma Supreme Court Addresses the Role and Importance of Good Faith in Commercial Transactions

By Alvin C. Harrell

On Oct. 30, 2012, the Oklahoma Supreme Court decided a significant case<sup>1</sup> addressing Uniform Commercial Code (UCC)<sup>2</sup> Articles 2 and 9 (and contract-related good faith issues), in the context of an unpaid sale of goods to an insolvent buyer whose rights were subject to a prior security interest. The focal point of the decision is UCC section 2-403, which gives priority to the security interest (as against the unpaid seller) on these facts, if the secured party acted in good faith. This article analyzes the UCC issues presented in this case.

Section 2-403 is an important UCC provision, illustrating an intersection of issues from UCC Articles 2 and 9 and resolving questions that periodically arise in litigation in Oklahoma and elsewhere.<sup>3</sup> Section 2-403 is an Article 2 version of a fundamental principle that runs throughout the UCC: the protection of innocent purchasers.<sup>4</sup>

Basically, section 2-403 recognizes three types of sales of goods transactions in which an innocent purchaser (including a secured party) or buyer who meets the stated qualifications<sup>5</sup> can obtain clear title to the goods being purchased (*i.e.*, ownership free of adverse claims) even though the seller did not have clear title.<sup>6</sup> The three scenarios are: 1) a transaction of purchase;<sup>7</sup> 2) a seller with voidable title;<sup>8</sup> and 3) an entrustment by the previous owner to a merchant seller who deals in goods of that kind.<sup>9</sup> In its Oct. 30, 2012, decision in *Bank of Beaver City*,<sup>10</sup> the Oklahoma Supreme Court issued a split decision dealing with the transaction of purchase and voidable title issues governed by section 2-403(1).<sup>11</sup>

## FACTS AND ARGUMENTS IN THE BANK OF BEAVER CITY CASE

*Bank of Beaver City* involved a fairly common scenario in which the Bank of Beaver City (the bank) financed a cattle operation, Lucky Moon Land and Livestock, Inc. (Lucky, or the debtor), secured by a UCC Article 9 security interest in all of the debtor's existing and after-acquired cattle.<sup>12</sup> Barretts' Livestock, Inc. (Barretts', or the seller) sold cattle to Lucky on a deferred payment basis (the cattle were delivered to Lucky, with payment due a few weeks later).<sup>13</sup> When the cattle were sold and delivered to Lucky, the debtor (Lucky) acquired rights in the cattle as collateral subject to the after-acquired property security interest of the bank.<sup>14</sup> Under the general first-in-time priority rule governing Article 9 security interests, the bank's prior perfected security interest gave it priority over the unsecured claim of Barretts' to payment.<sup>15</sup> In addition, the specific rules governing transactions of purchase and voidable title at section 2-403(1) and limitations on the seller's right to reclaim at section 2-702 make clear that

a GFP takes priority over the seller's right to reclaim.<sup>16</sup>

In *Bank of Beaver City*, Barretts' argued that this result did not apply because: 1) the bank did not take its security interest in good faith (as required for GFP status under sections 1-201(b)(20) and 2-403(1)); and 2) the bank did not have priority under Article 9 because this lack of good faith prevented the bank from acquiring rights in the collateral under section 2-403(1) sufficient for the bank's security interest to attach.<sup>17</sup> The latter argument is doomed to failure, given that Article 9 "rights in the collateral" (as required for attachment of the security interest under section 9-203) do not require that the secured party (here the bank) act in good faith or prevail as a GFP under section 2-403(1). Attachment of a security interest is governed by Article 9 section 9-203 and has nothing to do with good faith or section 2-403. It requires only that the bank's debtor have rights in the collateral, which clearly was the case here.

Moreover, the priority rules of Article 9 mean that a perfected security interest will be enforceable against the debtor and third-party claims such as unperfected liens and security interests, even though the debtor may be subject to those claims and those claims may prevent the debtor from having clear title.<sup>18</sup> All that is required in order for a security interest to "attach" is for the debtor to have rights in the collateral;<sup>19</sup> perfection then provides the security interest with priority over most subsequent and unperfected claims.<sup>20</sup> Section 2-403 and the parties' good faith generally are irrelevant to this analysis.<sup>21</sup>

### SELLER'S RIGHT TO RECLAIM

However, the *Bank of Beaver City* scenario contains the seeds of another argument, also raised in the case: Since Barretts' was asserting a seller's right to reclaim under section 2-702,<sup>22</sup> the debtor's ownership of the goods was potentially subject to this right; and since the bank's security interest extended only to the debtor's rights in the collateral, absent application of section 2-403(1) the security interest would attach only to the debtor's limited ownership rights. Thus, absent section 2-403(1) the bank could "foreclose" against the debtor's interest but would remain subject to the seller's statutory right to reclaim the goods.<sup>23</sup> However, if the bank is a GFP for purposes of section 2-403(1) it will take the debtor's rights free of

any claims against those rights by Barretts' as the seller who conveyed voidable title in a transaction of purchase.<sup>24</sup> Thus, section 2-403(1) was crucial in determining the bank's priority as against the seller's right to reclaim.<sup>25</sup>

### GOOD FAITH REQUIREMENT

This raised the ultimate issue in the *Bank of Beaver City* case: Whether the bank acted in good faith so as to be a GFP under section 2-403(1) when it acquired its security interest.<sup>26</sup> Barretts' argued that the bank failed to meet the test of good faith because it was "intimately involved" in the debtor's operations, e.g., being aware of dishonored checks drawn by the debtor (including those drawn to Barretts')<sup>27</sup> and knowing of the debtor's "deteriorating financial condition."<sup>28</sup> However, the majority opinion rejected this argument and appropriately distinguished these relatively routine matters from cases like *Monsanto Co. v. Heller*,<sup>29</sup> where the bank "had a deep relationship with its debtor . . . and exercised considerable control over its business practices."<sup>30</sup> Thus, in *Bank of Beaver City* the majority held that the bank was a GFP entitled to priority over the seller's right to reclaim, pursuant to section 2-403(1).

In one of the most important aspects of the *Bank of Beaver City* majority opinion, the court observed that the bank owed a duty of good faith only to the party with whom it dealt (the debtor), and not to a third party (such as Barretts').<sup>31</sup> This is inherent in the UCC definition of good faith in UCC Article 1 section 1-201(b)(20), which requires "reasonable commercial standards of fair dealing," and is also reflected in the substantive rule at UCC section 1-304: "Every contract or duty within [the UCC] imposes an obligation of good faith in its performance and enforcement."<sup>32</sup> By its terms, this duty of "fair dealing" logically can extend only to one with whom a person contractually deals.<sup>33</sup> It should be clear, therefore, that a person cannot owe a duty of good faith to the entire world,<sup>34</sup> but only to those with whom the person deals (owing them a duty to act honestly and observe reasonable commercial standards of fair dealing).<sup>35</sup>

Thus, in *Bank of Beaver City*, the bank owed no duty to Barretts', and knowledge by the bank that its debtor was experiencing financial difficulties or wrote checks to Barretts' on insufficient funds was not unfair to its debtor (Lucky), and did not breach any duty of good faith.<sup>36</sup> The bank thus qualified as a GFP under

section 2-403(1) and took free of the claims of Barretts' as an unpaid seller.<sup>37</sup>

## CONCURRING OPINION

*Bank of Beaver City* was a split decision of the Oklahoma Supreme Court, with the majority opinion written by Justice Kauger and a concurring opinion by Justice Combs (also joined by Chief Justice Taylor and Justice Kauger) expressing concern as to how Barretts' could protect itself in these circumstances.<sup>38</sup> The concurring opinion notes (perhaps with more credence than is deserved) the argument of Barretts' that it could not pass title to the debtor (Lucky) without receiving payment in full (despite consummation of the sale of goods and the delivery of possession — see UCC section 2-401), and therefore the bank's security interest did not attach.<sup>39</sup> However much one might sympathize with the plight of Barretts', this argument is without merit (otherwise a buyer would not obtain ownership in a credit sale) and does not deserve even a hint of approval in a Supreme Court opinion.<sup>40</sup> As to how Barretts' could protect itself, the oddball and potentially troublesome non-uniform amendment to section 2-403 that was enacted in Colorado, cited with approval in the concurring opinion,<sup>41</sup> simply creates a secret lien in favor of certain sellers. It is unnecessary in view of the seller's ability to perfect a purchase-money security interest (PMSI) under Article 9, which (in contrast to a secret lien) provides full notice to the world.<sup>42</sup> It is not clear why a statutory secret lien would be preferable as a matter of public policy.

The concurring opinion indicates that, *i.e.*, some kind of secret lien is necessary to protect the seller's "free market enterprise" because otherwise the unsecured credit seller may not get paid. But this is a risk assumed by all unsecured credit sellers, and other creditors, in any type of transaction.<sup>43</sup> There is no apparent reason to create another special exception, essentially in the form a secret lien, for this class of transactions, especially when public notice in the form of a PMSI is so readily available.<sup>44</sup> This would be a step backwards, toward a balkanized legal system of the type that the UCC and Article 9 so importantly replaced.<sup>45</sup>

## JUSTICE WATTS' DISSENT

A separate dissenting opinion (written by Justice Watts and joined by Justices Colbert and Reif) characterized the issue in *Bank of Beaver City* as one of "contested facts" that should

be remanded to the trier of fact.<sup>46</sup> This dissent cites both the uniform text and Oklahoma Comments to UCC Article 9 (stating that the Oklahoma comments "are even more instructive").<sup>47</sup> However, if anything, these comments (and basic contract law) support the majority position that the contractual duty of good faith (including "fair dealing") runs only to the person with whom one is dealing contractually, and not to third parties or the world at large.<sup>48</sup> Moreover, the legal standard of good faith is an issue of law, not fact; if, on the alleged facts, the bank owed no duty to Barretts', then facts relating to the bank's treatment of Barretts' interests are irrelevant and there is nothing for the trier of fact to reconsider.

This dissent states that there are remaining issues of fact to be resolved, namely whether the bank "is in bed with the debtor, . . . through knowledge of [the debtor's] poor financial condition and that [the debtor was] selling cattle out of trust [and had] numerous overdraft checks . . . ." <sup>49</sup> The dissent emphasizes that the bank honored numerous checks drawn on insufficient funds (overdraft checks) in the past, even with knowledge of the above facts, and then suddenly began to "dishonor checks to the livestock company in an attempt to increase its own collateral and financial positions." <sup>50</sup> The dissent then concludes: "If the bank did act in the way described, they owe a duty to the 3rd party." <sup>51</sup>

The problem is that there is no basis for that conclusion in section 2-403(1) (as alleged in the case), and no basis elsewhere in the law absent a more comprehensive control of the debtor than that stated in the alleged facts, *e.g.*, control that effectively converts the bank into the debtor's partner.<sup>52</sup> Moreover, the stated facts have little or nothing to do with the duty of good faith owed by the bank (the relevant issue under section 2-403), which as noted runs only to the debtor in this scenario,<sup>53</sup> provides no basis for imposing a duty to third persons or the world at large, and requires only that the bank treat its customer honestly and fairly.<sup>54</sup> In this context, the bank was perfectly within its rights to protect itself (indeed had an obligation to do so), as any prudent person would.<sup>55</sup> Even if the worst that Barretts' asserted is true, the bank would not have breached any duty of good faith and the outcome of the case under section 2-403(1) would not change. It was Barretts', not the bank, which had a duty to protect the interests of Barretts'.<sup>56</sup>

## JUSTICE GURICH'S DISSENT

An additional dissent was written by Justice Gurich, also joined by Vice Chief Justice Colbert and Justice Reif.<sup>57</sup> This dissent directly rejects the holding of the majority that the good faith requirement of section 2-403 does not extend to third parties, stating that "[s]uch a holding is not supported by the [UCC or] case law interpreting the [UCC]."<sup>58</sup> All of the cases cited in support of this proposition were decided under the "old" definition of good faith (requiring only honesty fact, prior to enactment of the 2001 revisions to the uniform text of UCC Article 1 adding the "fair dealing" requirement).<sup>59</sup> Whatever the shortcomings of the new definition,<sup>60</sup> it does make more clear that the duty of good faith runs only to those with whom one deals.<sup>61</sup>

Logically, it must be so; otherwise every person in the world could sue every other person for acting unfairly.<sup>62</sup> Just as the debtor in *Bank of Beaver City* could not assert the bank's rights as a defense to its liability to Barretts',<sup>63</sup> so also Barretts' cannot assert claims arising from its transaction with the debtor as the basis for liability of the bank.<sup>64</sup>

Who then can assert rights based on a lack of good faith under section 2-403(1)? The answer is that a reclaiming seller can assert priority over a competing purchaser under section 2-403(1) (based on a lack of the competing purchaser's good faith or other requisites for GFP status), but only to the extent the requisites for GFP status as required in section 2-403(1) are not met by the competing purchaser; and those requisites arise only in the relation between the purchaser (here the bank) and its debtor (here, Lucky). On the facts of *Bank of Beaver City*, Barretts' can argue against the bank's good faith and thus its status as a GFP, but only on the basis that the bank breached its duty of good faith to the debtor, not that the bank owed such a duty to Barretts'.

In effect, section 2-403(1) protects the purchaser (here, the bank) in a transaction such as that in *Bank of Beaver City*, but only if the purchaser acted in good faith (and gave value) to the other party (here the debtor) in the "purchase" transaction.<sup>65</sup> Third parties (such as a reclaiming seller) may attack the purchaser's GFP status when that is relevant to their priority, e.g., on grounds that the purchaser acted dishonestly toward the debtor, or treated the debtor unfairly in the context of commercial

standards, or failed to give value to the debtor,<sup>66</sup> but cannot claim that these duties are owed to the third party (absent privity or some equivalent, not alleged here).<sup>67</sup> In other words, Barretts' cannot logically assert that the bank owed or breached a duty of good faith to Barretts', or that the bank's duty of good faith to the debtor required that the bank treat Barretts' fairly. But if the bank breached its duty of good faith to the debtor, Barretts' can assert this in contesting the bank's claim to priority as a GFP under section 2-403(1).

Thus, it is not correct to conclude, as in the Gurich dissent, that the majority decision in *Bank of Beaver City* "bars all future third parties from defeating a secured lender's interest under [section] 2-403 regardless of how egregiously the lender has acted."<sup>68</sup>

## CONCLUSION

In the final analysis, the majority stated the matter succinctly in observing that "a lender's duty of good faith [does] not require that it be ignorant of third party claims . . . or [that it] continue financing a doomed business enterprise,"<sup>69</sup> and holding that "[t]he good faith requirement does not extend to unpaid sellers such as Barretts."<sup>70</sup> It is always difficult to allocate losses between innocent parties (a common occurrence when a debtor becomes insolvent), but in this instance the law seems clear and it is important for future transactions that this continue to be the case.

1. *Bank of Beaver City v. Barretts' Livestock, Inc.*, and *Tri-State Feeders, Inc. v. Morris*, 2012 OK 89, 295 P.3d 1088, 2012 WL 5334761 (Okla. S.Ct.). As noted in this article, the court issued four opinions in the case: A majority opinion, a concurring opinion, and two dissenting opinions.

2. The Oklahoma UCC is codified at Okla. Stat. Ann. tit. 12A §§1-101 – 11-107 (2004, 1998, 2001 & 2013 Supp.). For ease of reference, this article generally references the uniform text of the UCC, prior to the 2010 uniform text amendments. At this writing, Oklahoma has not yet enacted the 2010 uniform text amendments. Regarding the 2010 amendments, see generally Alvin C. Harrell, "The 2010 Amendments to the Uniform Text of Article 9," 65 *Consumer Fin. L. Q. Rep.* 138 (2011).

3. For a sampling of previous cases, see, e.g., *State v. Skaggs*, 140 P.3d 576 (Okla. Civ. App. 2006), and the listing of pertinent cases in Justice Gurich's dissenting opinion in *Bank of Beaver City*, 295 P.3d at 1095, n.2, 2012 WL 5334761, at \*6, n.2; see also *infra* note 57 and accompanying text.

4. Sometimes this protection runs to a good faith purchaser for value (GFP) and sometimes to a buyer in ordinary course of business (BIOCOB). Cf., e.g., UCC §2-403(1), (2). Other examples of similar UCC protections include Article 3 §§3-305 and 3-306 (protecting a holder in due course) and Article 9 §9-320 (protecting a BIOCOB). The distinctions between a GFP and BIOCOB can be significant because, e.g., a UCC Article 9 secured party can be a GFP but not a BIOCOB. See, e.g., definitions at UCC §1-201(b) (9), (29), (30); *infra* note 8.

5. E.g., as either a GFP or a BIOCOB in the stated circumstances. See *supra* note 4.

6. E.g., due to claims against the seller by a prior, unpaid seller as in *Bank of Beaver City*. See UCC §2-403(1). This is an exception to the general rule, in contracts and property law, that a transferee takes only the rights of the transferor. See, e.g., *id.* (stating the general rule before providing the three exceptions).

7. *Id.* This runs in favor of a GFP. *Id.*

8. *Id.* This also runs in favor of a GFP. *Id.* It is clear that a secured party can be a purchaser (see UCC §1-201 (b) (29), (30)) and therefore a GFP if the security interest is taken in good faith and for value. Regarding value see UCC §1-204.

9. UCC §2-403(2). This protects only a BIOCOP. *Id.* The *Bank of Beaver City* case did not involve this scenario.

10. 295 P.3d 1088, 2012 WL 5334761.

11. As noted below, these issues in the case are confused somewhat by an additional allegation that the bank's security interest did not attach under UCC §9-203. See *infra* this text and notes 17-23 & 39.

12. *Bank of Beaver City*, 295 P.3d at 1089-90, ¶¶4 & 5, 2012 WL 5334761, at \*1, ¶¶4 & 5. A security interest in after-acquired property is expressly permitted by UCC §9-204.

13. *Bank of Beaver City*, 295 P.3d at 1089-90, ¶¶4 & 5, 2012 WL 5334761, at \*1, ¶¶4 & 5.

14. See UCC Article 9 §§9-203 & 9-204; (attachment of the security interest); UCC §2-401 (passage of title to the buyer). See also *infra* notes 17 & 25.

15. See *id.* §§9-201, 9-202, 9-317 & 9-322 (UCC Article 9 priorities); UCC §2-703 (seller's remedies).

16. See: UCC §2-403(1); *id.* §2-702(3). A secured party (here, the bank) can qualify as a GFP. See *supra* note 4.

17. See *Bank of Beaver City*, 295 P.3d at 1090, ¶7, 2012 WL 5334761, at \*2, ¶7 (citing UCC §§1-201(20), 2-403, 9-203 & 9-308). Note that the requirement for attachment of the security interest is that the debtor, not the secured party, have "rights in the collateral." Moreover, attachment is governed by UCC Article 9, not §2-403. See UCC §9-203(b)(2). Clearly in this case the debtor acquired rights in the collateral in buying the cattle from Barretts'. See UCC §2-401; *infra* note 25. However, see further discussion of this issue below, at notes 22 - 25 and accompanying text.

18. See, e.g., UCC §§9-317 & 9-322. This is a basic point that is not always made clear in some case law. See, e.g., Alvin C. Harrell, "Security Interest v. Non-Code Interest: An Analysis of the Ramifications of *Utica National Bank & Trust v. Associated Producers*," 6 *Okl. City Univ. L. Rev.* 519 (1981).

19. Along with meeting the other requirements for attachment at UCC §9-203. These other requirements are not implicated here.

20. See UCC §§9-203, & 9-317 - 9-332.

21. This is an intentional policy choice in the UCC, designed to avoid subjective considerations that could require a trial to resolve every priority dispute if good faith was an issue (a danger illustrated in the *Bank of Beaver City* case). There are, of course, exceptions, where a resolution of priorities based on good faith is appropriate, as in §2-403(1). In addition to §2-403, these exceptions include instances governed by UCC §§9-330 - 9-332, e.g., where holder in due course status or a lack of collusion is relevant to priority. These other issues are not implicated here.

22. This is sometimes a difficult assertion to sustain, due to the limits of §2-702. The remainder of this discussion will assume those requirements were met, as appropriate for a summary judgment motion. If not, however, Barretts' would have standing only as a general, unsecured creditor.

23. See UCC §2-702. Note that, in this instance, the right to reclaim offers rights superior to a lien or security interest, essentially on the theory that the debtor's rights in the collateral (and therefore also the security interest) are subject to the seller's right to reclaim, which otherwise would be subordinate to the bank's prior, perfected security interest under Article 9 §§9-201, 9-202 & 9-317;

24. See UCC §2-403(1); *Bank of Beaver City*, 295 P.3d at 1091 ¶8, 2012 WL 5334761, at \*2, ¶8.

25. Note again that this is a question as to the priority of the bank as a GFP under §2-403(1), not a question as to attachment of the bank's security interest under §9-203. Thus, arguments that the bank's security interest did not attach are misplaced. See also *supra* note 17.

26. *Bank of Beaver City*, 295 P.3d at 1091 ¶9, 2012 WL 5334761, at \*2, ¶9.

27. It can be noted here that this is not an unusual experience in the banking business. See, e.g., Alvin C. Harrell, "Some Surprising New (and Old) Perspectives on Check-Kiting," 57 *Consumer Fin. L.Q. Rep.* 214 (2003) (noting the commonality of checking account overdrafts due to customers running short of funds, and some confusion about these issues within the legal community).

28. Once again it can be noted that this is not unusual. *Id.*

29. 449 N.E. 2d 993 (Ill. App. 1903), noted in *Bank of Beaver City*, 295 P.3d at 1091, ¶10, 2012 WL 5334761, at \*3, ¶10.

30. *Bank of Beaver City*, 295 P.3d at 1091-92, ¶10, 2012 WL 5334761, at \*3, ¶10 (citing *Monsanto*, 449 N.E. 2d at 994-95).

31. *Id.* at ¶¶11-15, 2012 WL 5334761, at \*3, ¶¶11-15. See also *infra* this text and notes 32 - 34 & 48 - 49.

32. UCC §§1-201(b)(20) & 1-304. See also *id.* §1-304 cmt. 1.

33. Obviously a person cannot deal, fairly or unfairly, with a person as to whom one has no dealings. This basic point is sometimes, but not always, recognized in the case law. See, e.g., *Any Kind Checks Cashed, Inc. v. Talcott*, 830 So.2d 160 (D. Ct. App. Fla. 2002) (after correctly citing UCC Article 3 §3-103 cmt. 4 as distinguishing between good faith (including fair dealing) and ordinary care, and noting that fair dealing raises the question: "fairness to whom[?]," the court presented an analysis that seems to dart back-and-forth among the concepts of good faith, notice, and ordinary care without recognizing any distinctions, ultimately "taking a global view" that apparently contemplates a contractual duty of fairness running in favor of the entire world); *Maine Family Fed. Credit Union v. Sun Life Assurance Co. of Canada*, 727 A.2d 335 (Me. 1999) (cited with approval in *Talcott*), is another well-known case that makes essentially the same error. See also *infra* notes 34 & 48 - 49.

34. An idea that is absurd and unworkable on its face, and can lead to confused reasoning such as that in the cases cited *supra* at note 33. Such reasoning defies logic (and the law). After all, the basis for a duty of good faith is a contract, and the law requires privity as a prerequisite to a claim for breach of a duty arising from contract. See, e.g., *supra* notes 32-33 & *infra* notes 48-49.

It should be emphasized, however, that the priority rights determined under §2-403 are not limited to those with privity. Section 2-403 resolves the priorities of competing claims between parties not in privity with each other, just like the other UCC priority rules (e.g., at §§9-317 & 9-322). However, the §2-403 priorities depend in part on GFP status, and that status must be established as between parties in privity with each other. See, e.g., *supra* notes 32 - 33; and discussion of Justice Gurich's dissent, *infra*.

There is a separate issue, as to whether a breach of the duty of good faith can constitute an independent claim. There is a split of authority on this issue, but the majority and better view is no. See, e.g., Jennifer S. Martin, "Sales," 66 *Bus. Law.* 1083, 1094 n. 97 (2010) (citing a minority view case and contrasting UCC §1-304 cmt. 1 and PEB Commentary No. 10 (Feb. 10, 1994)). As noted in the Oklahoma Code Comment to §1-304 (Okla. Stat. tit. 12A §1-304), revised section 1-304 is intended to reject the minority view and cases like *Beshara v. Southern National Bank*, 928 P.2d 280 (Okla. S.Ct. 1996). In any event, this issue is not implicated in the *Bank of Beaver City* case. In the context of a holder in due course (HDC) issue under UCC Article 3, of course, HDC status can be defeated by reason of the holder having notice of a claim or defense under UCC §3-302; but that is yet another issue (not requiring privity) and not involved in a determination of good faith under §2-403. See generally Fred H. Miller & Alvin C. Harrell, *The Law of Modern Payment Systems and Notes* ¶3.03 (2002 & 2008 Supp.).

35. See *supra* notes 32 - 34.

36. *Bank of Beaver City*, 295 P.3d at 1092-93, ¶¶12-15, 2012 WL 5334761, at \*3-4, ¶¶12 - 15 (citing, e.g., *Shell Oil Co. v. Mills Oil Co., Inc.*, 717 F.2d 208 (5th Cir. 1983)). See, e.g., UCC Article 1 §1-201, cmt. 20. See also *supra* notes 32 - 34 & *infra* notes 47 - 48. This is a very different scenario from one where a secured party exercises control over its debtor to the detriment of other creditors. But there was no apparent evidence or allegations of that here. See, e.g., *infra* note 49.

37. *Bank of Beaver City*, 295 P.3d at 1093, ¶17, 2012 WL 5334761, at \*4, ¶17.

38. *Bank of Beaver City*, 295 P.3d at 1094, ¶¶1 - 3, 2012 WL 5334761, at \*4, ¶¶1 - 3 (Combs, J., joined by Taylor, C.J. & Kauger, J., concurring). The simple answer, it would seem, is: Do not sell goods on unsecured credit to an insolvent buyer; taking a purchase-money security interest under UCC Article 9 seems a better idea. See *infra* notes 43 - 44. There were also two dissents, as noted below.

39. *Bank of Beaver City*, 295 P.3d at 1094 ¶¶1-3, 2012 WL 5334761, at \*4, ¶¶1 - 3.

40. It should be emphasized that the concurring opinion does not suggest approval of this argument; it merely cites it in expressing concern for the plight of Barretts'. *Id.*

41. *Id.*

42. See *infra* note 43.

43. The majority opinion cites *Matter of Samuels & Co., Inc.*, 526 F.2d 1238 (5th Cir. 1976), a well-known case noting that the original UCC definition of good faith for purposes of a GFP (old UCC §1-201(19), (33) & (44)) "did not expressly or impliedly include lack of knowledge of third-party claims as an element." *Bank of Beaver City*, 295 P.3d at 1092, ¶13 at nn.15 & 18-19, 2012 WL 5334761, at \*4, ¶13 at nn.15 & 18-19 (quoting *Samuels*, 526 F.2d at 1243-44). Cf. current UCC §1-201(b)(20) (additionally requiring "observance of reasonable commercial standards of fair dealing" — but not a lack of notice; see *supra* notes 32-34). *Samuels* led Congress to enact the federal Packers and Stockyards Act, Pub. L. No. 94-410, §8, 90 Stat. 1251 (1976), codified as amended at 7 U.S.C. §§196 (livestock) & 197 (poultry), effectively overruling *Samuels* by creating a statutory trust for certain sellers of livestock and poultry.

Subsequently, the Perishable Agricultural Commodities Act, 7 U.S.C. §499e, did the same for certain agricultural commodities; and Oklahoma followed suit with a state statutory trust for sellers of dairy products, in Okla. Stat. tit. 2 §§751-756. *See also* Harrell & Miller, *infra* note 45, at 597-98. Parties interested in these issues also should consider the impact of the Federal Food Security Act of 1985, Pub. L. No. 99-198, Tit. XIII, §1324 (codified as amended at 7 U.S.C. §1631). *See also* Harrell & Miller, *infra* note 45, at 602-05; *see generally*: Drew L. Kershen & Alvin C. Harrell, "Agricultural Finance — Comparing the Current and Revised Article 9", 33 U.C.C. L.J. 169 (2000); Harrell & Miller, *infra* note 45, ch. 16 (Agricultural Finance). Ultimately these agricultural trust fund statutes inspired a series of somewhat similar state statutes designed to provide equivalent protections for sales of oil and gas minerals by royalty owners. *See, e.g.*, Fred H. Miller & Alvin C. Harrell, "Aftermath of the *Sem-Group* Case — Oklahoma Enacts the Oil and Gas Owners' Lien Act of 2010," 81 Okla. Bar Ass'n J. 2818 (2010). None of these agricultural trust fund statutes was an issue in the Supreme Court opinions in the *Bank of Beaver City* case.

44. UCC §9-324(d) & (e) provide a specific framework for a seller like Barretts' to claim priority via a PMSI in livestock. *See also*: *Id.*, cmt. 10; Kershen & Harrell, *supra* note 43. Even the dissenting opinion of Justices Watts, Colbert and Reif in *Bank of Beaver City*, despite essentially arguing in favor of Barretts' position, concedes that "the livestock company was sloppy in not filing a financing statement." *See infra* note 56. Regarding a PMSI in livestock, *see also* Harrell & Miller, *infra* note 45, at 595-96.

45. *See, e.g.*, Alvin C. Harrell & Fred H. Miller, *The Law of Personal Property Secured Transactions Under the Uniform Commercial Code and Related Laws* 4 - 5 (2001).

46. *Bank of Beaver City*, 295 P.3d at 1095, ¶3, 2012 WL 5334761, at \*5, ¶3 (Watts, J. joined by Colbert, V.C.J. & Reif, J., dissenting) (quoting the majority opinion). *But cf. infra* note 48.

47. 295 P.3d at 1094-95, ¶2, 2012 WL 5334761, at \*5, ¶2.

48. *See, e.g.*, *supra* notes 32 & 34. Many of the cases construing the good faith requirement arise in the context of UCC Articles 3 and 4, *e.g.*, when parties claim that a bank owes a duty (based on good faith or similar concepts) to non-customers, or there is a claim to HDC status. Claims based on a duty to non-customers are almost universally rejected. *See, e.g.*: Alvin C. Harrell, Case Note: "Supreme Court of South Carolina Rejects Tort of Negligent Enablement," 57 *Consumer Fin. L.Q. Rep.* 96 (2003); 13 *West's Legal Forms, Commercial Transactions, Negotiable Instruments* §3.19 (Bradford Stone, Fred H. Miller & Alvin C. Harrell, 1998 & 2011-2012 Supp.) (discussing good faith and notice under the UCC). *See also*: *Continental Bank N.A. v. Modansky*, 997 F.2d 309 (7th Cir. 1993) (there is no duty of good faith in negotiating contract terms); *Susitna Ltd. v. Pacific First Federal*, 846 P.2d 438 (Ore. App. 1993) (there is no fiduciary duty in a contractual relation); *Roberts v. Wells Fargo AG Credit Corp.*, 900 F.2d 1169 (10th Cir. 1993) (same). This case law makes clear that the duty of good faith is limited to performance and enforcement of a contract between the contracting parties. *See also* UCC §1-304 & cmt. 1. Without more than the facts in *Bank of Beaver City*, as stated in the Supreme Court opinions, there do not appear to be any "contested facts" relating to the duty of good faith that would provide the basis for a remand. *See also infra* note 49.

49. This suggests an entirely different issue from whether the bank exercised good faith in its dealings with the debtor for purposes of §2-403(1). The quoted language does not address the issue of good faith; it does not suggest any element of unfairness in the way the bank treated the debtor. Quite the contrary, it suggests that the bank may have treated the debtor too favorably (which is not a breach of the duty of good faith). Note also that being "in bed" with a debtor is not a legally-defined standard. Presumably the dissent is inferring that there might have been some kind of control relationship or other collusion between the bank and the debtor. *See, e.g.*, *supra* this text and notes 27-29. But this is a very different thing from the issue of whether the bank was treating its debtor fairly, as required by the duty of good faith. It can be noted again that the factors cited by the dissent (knowledge of the debtor's poor financial condition; tolerating the debtor selling goods "out of trust"; and paying overdrafts) are not evidence of either "control" by the bank or unfairness to its customer. *See, e.g.*, Alvin C. Harrell, Case Note: "Matter of Fabricators — Equitable Subordination and Insider Control," 48 *Consumer Fin. L.Q. Rep.* 110 (1994) (noting the elements of "control"); Peter G. Pierce III & Alvin C. Harrell, "Financiers as Fiduciaries: an Examination of Recent Trends in Lender Liability," 42 *Okla. L. Rev.* 79 (1989) (same, and the impact of good faith); *supra* note 48.

50. *Bank of Beaver City*, 295 P.3d at 1095, ¶3, 2012 WL 5334761, at \*5, ¶3 (dissenting op.).

51. *Id.*, ¶4.

52. As noted, there was no apparent evidence of control in this case. *See supra* notes 36 & 49.

53. *See supra* this text and notes 32-34 & 48 - 49.

54. *See, e.g., id.*

55. An analogy would be a check-kiting scenario. *See, e.g.*, Harrell, *supra* note 27; Miller & Harrell, *supra* note 34, at 126 - 27.

56. Which Barretts' could easily have done, as even the dissent admits. *See Bank of Beaver City*, 295 P.3d at 1095, ¶5, 2012 WL 5334761, at \*6, ¶5. The dissent characterized the bank's behavior as "devious." *Id.* But on the facts as stated that is neither accurate nor relevant. Your author appreciates that the standard for defeating a summary judgment motion is low, but it should be necessary at least to cite an argument that supports the desired legal position. In *Bank of Beaver City* the arguments of Barretts' did not state a cause of action because the alleged facts did not indicate the breach of any duty. *See also supra* notes 42 - 43.

57. *Bank of Beaver City*, 295 P.3d at 1095-96, ¶1, 2012 WL 5334761, at \*6, ¶1 (Gurich, J., joined by Colbert, V.C.J. & Reif, J., dissenting).

58. *Id.* (citing various authorities).

59. *Id.*, at n. 2. This change in the definition of good faith should not make any difference as to the issues in this case, as (by its nature) good faith is a duty that can run only to those with whom one has dealt. However, the UCC change makes this point even more clear on the facts of this case. *See supra* notes 32-34.

60. As apparent in some of the cases. *See, e.g., supra* notes 33 - 34 & 48 - 49.

61. *See supra* this text and notes 31 - 36 & 48 - 49.

62. *See, e.g., id.*

63. UCC Article 3, applicable to this case to the extent that Barretts' was seeking to enforce dishonored checks written by the debtor, expressly recognizes this: "[In] an action to enforce the obligation of a party to pay an instrument, the obligor may not assert . . . a defense . . . or claim . . . of another person . . ." UCC §3-305(c).

64. This is the most basic of legal principles. Absent privity or some other basis for a duty, one cannot assert the legal rights of others. *See, e.g., supra* note 63.

65. UCC §§1-201(b)(29), (30) & 2-403(1). This basic point is reinforced by the reference to a "good faith purchase," indicating that it is the purchase that must be in good faith, and the requirement for the purchaser to give "value." Obviously, the obligation to give value, like the obligation to act in good faith, could not run directly to third parties or the world at large.

66. This standard is all that can be reasonable expected of any purchaser.

67. *See, e.g., supra* notes 33 - 34 & 48 - 49.

68. *Bank of Beaver City*, 295 P.3d at 1096, ¶1, 2012 WL 5334761, at \*6, ¶1 (dissenting op.). Most if not all of the cases cited *id.* at n. 2 properly interpret §2-403(1) and are contrary to the conclusion quoted in the text above.

69. *Bank of Beaver City*, 295 P.3d at 1092-93, at ¶¶14 & 15, 2012 WL 5334761, at \*4, ¶¶14 & 15 (citations omitted).

70. *Id.* at ¶17.

## ABOUT THE AUTHOR



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# Taxation Law Section

## New Oklahoma Taxpayer Appeal Procedure

By Sheppard F. Miers Jr.

The Oklahoma Uniform Tax Procedure Code was amended in the 2013 session of the Oklahoma Legislation to provide an important alternative taxpayer right of appeal from Oklahoma Tax Commission orders assessing a tax or additional tax or denying a claim for refund. The change amended 68 O. S. 2011, §225.

### **TAXPAYER MAY APPEAL TO SUPREME COURT OR APPEAL FOR TRIAL DE NOVO IN DISTRICT COURT**

Under this change of state tax procedure, a taxpayer shall have the right to either 1) appeal from a Tax Commission final order to the Supreme Court of Oklahoma, or 2) in lieu of appeal to the Supreme Court, opt to file an appeal for a trial *de novo* from a Tax Commission final order in the district court.<sup>1</sup>

The new right to appeal for a trial *de novo* in district court will give taxpayers an opportunity for a trial level hearing in a forum independent of the Tax Commission in at least two situations where it has not previously been available.

### **NEW APPEAL PROCEDURE EFFECTIVE FOR TAX PERIODS BEGINNING AFTER NOVEMBER 1, 2013**

The new alternative procedure of appeal for trial *de novo* in the district court shall be applicable for tax periods beginning after the legislation effective date of Nov. 1, 2013. This generally would mean for tax periods beginning Jan. 1, 2014. If the order of the Tax Commission affecting the taxpayer applies to multiple tax periods which begin before and after the effective date of Nov. 1, 2013, the appeal for a trial *de novo* in district court shall be available to the taxpayer.<sup>2</sup>

### **TIME FOR FILING APPEAL 30 DAYS FOR BOTH ALTERNATIVES**

Under each alternative appeal procedure a taxpayer must file an appeal within 30 days after the date of mailing to the taxpayer of the Tax Commission order being appealed.<sup>3</sup>

### **NO BOND REQUIRED TO APPEAL**

The statute as amended does not require a taxpayer to give bond in an appeal of a final Tax Commission order to the Supreme Court, or an appeal for a trial *de novo* in district court.<sup>4</sup>

### **NO PAYMENT OF TAX, PENALTY, INTEREST REQUIRED TO APPEAL**

The statute as amended does not require that the taxpayer pay the amount of disputed tax assessed, penalty or interest in order to appeal from a final order of the Tax Commission.<sup>5</sup>

### **APPEAL TO SUPREME COURT ALTERNATIVE; RECORD FOR APPEAL**

If a taxpayer does not opt to file an appeal for a trial *de novo* in district court, and appeals to the Supreme Court of Oklahoma, the appeal will generally proceed in the Supreme Court without presentation of further evidence. Under that alternative appeal procedure, which has historically applied, the prior law remains in effect providing that the taxpayer shall request that the Tax Commission prepare for filing with the Supreme Court within 30 days, the record of the appeal (taxpayer protest proceeding at Tax Commission) certified by the Tax Commission. The taxpayer may receive a copy from the Tax Commission on request.<sup>6</sup>

## **VENUE OF APPEAL FOR TRIAL *DE NOVO* IN DISTRICT COURT**

Under the new procedure, a taxpayer may opt to file an appeal for a trial *de novo* from a Tax Commission order in the district court of Oklahoma County or the county in which the taxpayer resides. For a taxpayer that is a corporation or other entity with offices or places of business within several counties in different judicial districts the statute does not specify in which district court the taxpayer must file or explicitly limit the place for filing or a trial *de novo* to a particular district court.<sup>7</sup>

## **SCOPE OF RIGHT TO APPEAL FOR TRIAL *DE NOVO* IN DISTRICT COURT**

The new alternative taxpayer appeal for a trial *de novo* in district court appears to apply primarily, perhaps exclusively, to two circumstances involving Tax Commission administrative actions and Tax Commission orders affecting the taxpayer.

The alternative appeal for a trial *de novo* in district court will apply to a final order of the Tax Commission assessing a tax or an additional tax, such as after Tax Commission audit of a return filed by the taxpayer. This appears to relate to a Tax Commission order issued under taxpayer protest of proposed assessment procedures provided for under 68 O. S. §221. Under those procedures it would apply when the Tax Commission has mailed notice of the proposed assessment to the taxpayer, the taxpayer has timely filed written protest of the proposed assessment with the Tax Commission and has requested a hearing before the Tax Commission, and after the hearing at which the Tax Commission has entered a final order containing findings of fact and conclusions of law on the protest and mailed it to the taxpayer.<sup>8</sup>

The new alternative appeal for a trial *de novo* in district court procedure will also apply to a final order of the Tax Commission that is a denial of a claim for refund of the taxpayer. This appears to relate to the procedures under which a taxpayer files a claim for refund or an amended income tax return seeking refund with the Tax Commission, for tax that the taxpayer has paid in error, the Tax Commission has denied the refund, the taxpayer has demanded a hearing on the denial, and after hearing the matter the Tax Commission has entered a final order denying the claim for refund.<sup>9</sup>

Thus, the new alternative of filing for an appeal for a trial *de novo* in district court appears to be intended to be available primarily for cases in which the taxpayer must first follow administrative procedures at the Tax Commission that include the taxpayer protest, request for and conduct of an administrative hearing and entering of a final order of the Tax Commission that has been mailed to the taxpayer. Filing an appeal for trial a *de novo* in district court under 68 O. S. §225, as amended, before those administrative procedures are followed and completed at the Tax Commission does not appear to be contemplated.

The right of appeal of a taxpayer aggrieved by any other kind of order, ruling, or finding of the Tax Commission and which is not a final order of the Tax Commission assessing tax or additional tax or denying a claim for refund appears to remain solely by a taxpayer appeal to the Supreme Court of Oklahoma.

## **APPEAL FOR TRIAL *DE NOVO* IN DISTRICT COURT HEARD BY JUDGE**

A jury trial does not appear on the face of the statute to be authorized if an appeal for a trial *de novo* in district court is filed by a taxpayer pursuant to 68 O. S. §225. If the taxpayer files an appeal for a trial *de novo* in district court and the amount in dispute exceeds \$10,000, the trial *de novo* must be heard by a district or associate district judge sitting without a jury. If the amount in dispute does not exceed \$10,000, the trial *de novo* may be heard by a special judge sitting without a jury.<sup>10</sup>

## **APPEAL FOR TRIAL *DE NOVO* IN DISTRICT COURT; NEW TRIAL ON FACTS AND LAW**

A trial *de novo* in district court after an administrative hearing of a taxpayer protest has historically been provided under the Ad Valorem Tax Code. That procedure applies to taxpayer protests of property tax assessments which are initially considered by the county assessor and then heard by the county board of equalization.<sup>11</sup> In that context a trial *de novo* has been held to mean that the district court does not need to give deference to the lower tribunal (county board of equalization) decision, and conducts a new trial on questions of both law and fact.<sup>12</sup> This meaning of trial *de novo* would presumably also be applied to a trial *de novo* appeal filed by a taxpayer with respect to a Tax Commission final order pursuant to 68 O. S. §225.

## INTEREST ON REFUNDS ALLOWED ON APPEAL

In the case of a taxpayer appeal of the denial of a claim for refund, if a refund is allowed, the taxpayer shall be entitled to interest on the refunded taxes at the rate of 1.25 percent per month.<sup>13</sup>

## APPEAL FROM A DISTRICT COURT TRIAL *DE NOVO* BY TAXPAYER OR TAX COMMISSION

A district court final order resulting from a trial *de novo* in district court shall be appealable to the Supreme Court of Oklahoma by either party (the taxpayer or Tax Commission).<sup>14</sup>

## PRE-EXISTING DISTRICT COURT PROTEST PROCEDURE AND APPEAL UNCHANGED

The new appeal for a trial *de novo* procedure under 68 O. S. §225, is separate and distinct from the district court taxpayer protest action provided under 68 O. S. §226. The latter provides an additional remedy for a taxpayer aggrieved by the provisions any state tax law or who resists the collection of or enforcement of the rules and regulations of the Tax Commission, including a protest based on being an unlawful burden on interstate commerce, collection being violation of federal law or the U.S. Constitution, or jurisdiction being vested in U.S. courts. A taxpayer generally must exhaust the administrative remedies prescribed by law prior to appealing to the Supreme Court from an order of the Tax Commission, except in cases involving constitutional issues as provided under 68 O. S. §226(c).<sup>15</sup> The protest procedure under 68 O. S. §226 provides a district court trial level hearing as an additional remedy instead of administrative protest and hearing before the Tax Commission. A taxpayer must pay any of taxes or additional taxes to have its protest heard in district court under this procedure. A taxpayer appeal from a district court final decision in an action brought under 68 O. S. §226 is not expressly provided for in that statute, is not covered under 68 O. S. §225 (which relates to orders of the Tax Commission) and is instead presumably authorized under general civil procedure provisions gov-

erning appeal of final orders of district courts to the Supreme Court of Oklahoma.<sup>16</sup>

## TAX COMMISSION JEOPARDY ACTIONS IN DISTRICT COURT AND APPEALS

The new alternative right of appeal for trial *de novo* in district court from a Tax Commission final order assessing tax or denying a claim for refund under 68 O. S. §225 may also not apply to certain district court actions that may be brought by the Tax Commission. Such court actions can be brought by the Tax Commission for specified defaults by a taxpayer or for collection without assessment in case of false or fraudulent returns or failure to file returns.<sup>17</sup> In these cases a taxpayer appeal from a final order of a district court (rather a final order of the Tax Commission) in such an action may more likely be provided for under general civil procedure provisions governing appeal of final orders of district courts to the Supreme Court of Oklahoma.<sup>18</sup>

1. 68 O. S. 2011, §225, as amended by Laws 2013, SB 864, c. 287, §1, eff. January 1, 2014 [hereinafter 68 O. S. §225]. The Oklahoma Supreme Court Rules governing appellate procedure may be modified in light of the amendment of 68 O. S. §225. See 12 O. S. Appendix I, Part IV(e), Appeals From The Tax Commission.

2. 68 O. S. §225(D).

3. 68 O. S. §225(B); 68 O.S., 2011, §§221(G), 228.

4. 68 O. S. §225.

5. *Id.*

6. 68 O. S. §225(B.)

7. 68 O. S. §225(D).

8. 68 O. S. §225(D); 68 O. S. 2011, §221.

9. 68 O. S. §225(A), (D); 68 O. S. 2011, §§207, 227, 2373 and 228.

10. 68 O. S. §225(A), (D).

11. 68 O. S. 2011, 2880.1.

12. *Jackson v. Board of Equalization of Pushmataha County*, 1995 OK CIV APP 35, 892 P. 2d 673.

13. 68 O. S. §225(E); 68 O. S. 2011, §217(A).

14. 68 O. S. §225(D).

15. OAC §710:1-5-43; *Cimarron Industries, Inc. v. Oklahoma Tax Commission*, 1980 OK 190, 621 P.2d 539.

16. 12 O. S. 2011, §§952, 953, 990A; 12 O. S. Appendix 1, Oklahoma Supreme Court Rules, Part II, Appeals From Judgment Or Final Order Of The District Court.

17. 68 O. S. 2011, §§222, 223(C).

18. 12 O. S. 2011, §§952, 953, 990A; 12 O. S. Appendix 1, Oklahoma Supreme Court Rules, Part II, Appeals From Judgment Or Final Order Of The District Court.

### ABOUT THE AUTHOR

Sheppard F. Miers Jr. is a shareholder in the Tulsa office of Gable & Gotwals and practices in the areas of federal and state taxation.

OKLAHOMA CORPORATION COMMISSION  
2013 OIL AND GAS INSTITUTE

**"BRIGHT HORIZONS: RECENT TRENDS IN OKLAHOMA  
OIL AND GAS CONSERVATION LAW AND PRACTICE"**

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Office of General Counsel	

Friday, October 18, 2013, 8:30 a.m. to 4:30 p.m.  
Perkins Auditorium, Schusterman Learning Center, Schusterman Center,  
University of Oklahoma-Tulsa, 4502 East 41st Street, Tulsa, Oklahoma

AGENDA

- 8:00 – 8:30 Registration Perkins Auditorium  
8:30 – 8:45 **Welcome** The Honorable Patrice Douglas, Chairman, Corporation Commission  
The Honorable Bob Anthony, Vice Chairman, Corporation Commission  
The Honorable Dana Murphy, Commissioner, Corporation Commission  
Lisa Silvestri, Attorney at Law, Chairman, OBA Energy & Natural Resources Law Section
- 8:45 – 10:00 **"Expansion of The Parallel Universe" – Ongoing Issues and Challenges of OCC Regulation in the Changing World of Multi-Unit Shale Wells, Horizontal Wells and Vertical Wells**  
Moderator: The Honorable Dana Murphy, Commissioner,  
Oklahoma Corporation Commission  
Panel: Richard Grimes, Attorney at Law; Terry Stowers, Attorney at Law & National Association of Royalty Owners;  
Lloyd Tinsley, Senior Land Advisor, Devon Energy Production Corp.
- 10:00 – 10:15 Mid-Morning Break
- 10:15 – 11:30 **"Federal Regulations: How They Impact Oklahoma's Air, Water and Land"**  
Moderator: The Honorable Patrice Douglas, Chairman,  
Oklahoma Corporation Commission  
Panel: Tim Baker, Pollution Abatement Dept., Oil and Gas Conservation Div.; Mary Ellen Ternes,  
Attorney at Law; Darren Smith, Devon Energy Corp.
- 11:30 – 12:30 Catered Lunch Founders Hall
- 12:30 – 1:00 **Mock OCC Hearing: "Multiunit Horizontal Well Applications in Oklahoma (Base Application and Pooling Application)"**  
OCC Staff; Greg Mahaffey, Attorney at Law; Steve McNamara, Attorney at Law; Witnesses from Newfield Mid-Continent Exploration Company, Tulsa
- 1:00 – 2:00 **Ethics Discussion: "Ethics in the Oil Patch – Interacting Ethically with State Agencies"**  
Professor Drew Kershen, Emeritus Professor of Law,  
Oklahoma University College of Law
- 2:00 – 3:00 **"Judicial Perspectives on Natural Resources Adjudication"**  
Moderator: Professor Owen L. Anderson,  
Eugene Kuntz Professor of Law,  
Oklahoma University College of Law  
Panel: The Honorable Valerie Couch, Dean, Oklahoma City University School of Law; The Honorable Deborah Barnes,  
Judge, Oklahoma Court of Civil Appeals-Tulsa; ALJ Patricia MacGuigan, Oil and Gas Appellate Referee, OCC; ALJ Susan Osburn, Deputy Oil and Gas Administrative Law Judge, OCC
- 3:00 – 3:15 Mid-Afternoon Break
- 3:15 – 4:15 **"Practice Pointers: Preparing the Land Witness for the OCC's Oil and Gas Conservation Hearings"**  
Moderator: ALJ Michael Decker,  
Director, Office of Administrative Proceedings  
Panel: Michael D. Stack, Attorney at Law; David Pepper, Attorney at Law; Rick Spellman, Vice President, Land, Strat  
Land Exploration; ALJ Curtis Johnson, Deputy Oil and Gas Administrative Law Judge, OCC; ALJ David Leavitt, Deputy  
Oil and Gas Administrative Law Judge, OCC
- 4:15 – 4:30 **Evaluation and Acknowledgements** ALJ Michael Decker

Please find the registration form online at [www.occeweb.com](http://www.occeweb.com) – "Hot Topics" menu. Send completed registration form and check: C/o Ms. Stacy Marsee, Office of Administrative Proceedings, Oklahoma Corporation Commission, P.O. Box 52000, Oklahoma City, Oklahoma 73152-2000, Telephone: (405) 521-2756, Facsimile: (405) 522-2229, [s.marsee@occemail.com](mailto:s.marsee@occemail.com). Seating is limited, so register promptly; telephone if you fail to receive confirmation e-mail in response to registration. **Fee: \$75.00 (pre-registration by COB Wednesday, October 16, 2013) \$85.00 (registration at the door). Please make checks payable to: "Oklahoma Corporation Commission, 2013 Oil and Gas Institute." No credit cards please.** Applications for continuing education accreditation are pending with the Oklahoma Bar Association's Mandatory Continuing Legal Education Commission and the American Association of Petroleum Landmanagers (AAPL). Additional inquiries to: ALJ Michael Decker, OAP Director (405) 521-2241, [m.decker@occemail.com](mailto:m.decker@occemail.com).

# Taxation Law Section

## 2013 Oklahoma Tax Legislation

By Sheppard F. Miers Jr.

Legislation enacted in the 2013 session of the Oklahoma Legislature included the changes described below, which are some of the new Oklahoma state laws on taxation.

### INCOME TAX

#### *Individual Income Tax Rate Reduction*

The Oklahoma income tax rate for individual taxpayers was amended. For all taxable years beginning on or after Jan. 1, 2015, the Oklahoma income tax is to be imposed upon individuals at graduated marginal rates, with a maximum rate of 5 percent for the 2015 tax year and any subsequent tax year unless the rate is decreased further based upon a determination of revenue growth by the state board of equalization. If the state board of equalization determines that the estimated revenue growth in the general revenue fund of the state treasury is equal to or greater than the amount by which the income tax revenue for the tax year is estimated to be reduced by a 0.15 percent decrease in the top marginal individual income tax rate, such top marginal income tax rate shall be reduced to 4.85 percent, effective on Jan. 1, 2016. The process for estimating revenue growth in excess of such a rate reduction would be repeated for subsequent years, if estimated revenue growth is not sufficient to authorize a rate reduction beginning in 2016.<sup>1</sup>

#### *Clean-Burning Motor Vehicle Fuel Credit*

The Oklahoma income tax one-time credit allowed for investments in qualified clean-burning motor vehicle fuel property was amended. Equipment installed to modify a motor vehicle to one that may be propelled by compressed natural gas, liquefied natural gas or liquefied petroleum gas must be new and not previously used to modify or retrofit any vehicle propelled by gasoline or diesel fuel. It must be installed by an alternative fuels equipment technician who is certified in accordance

with the Alternative Fuels Technician Certification Act, meet all federal motor vehicle safety standards, or for any commercial vehicle, follow the federal motor carrier safety regulations or Oklahoma intrastate motor carrier regulations. The credit was extended to be allowed for tax years beginning before Jan. 1, 2020.<sup>2</sup>

#### *Tornado Relief Credit*

For tax years beginning after December 31, 2011, a credit against the Oklahoma income tax shall be allowed for owners of residential real property whose primary residence was damaged or destroyed in a natural disaster that was a weather or fire event for which a presidential major disaster declaration was issued, occurring in calendar year 2012 or 2013. The amount of the credit shall be the difference between the ad valorem property tax paid on such property and improvements in the year prior to the damage or destruction and the amount of ad valorem property tax paid on the property and improvements the first year after the improvement is complete. For purposes of the credit, the amount of ad valorem property tax paid the first year after the improvement is complete shall be based on the same or similar square footage as the property which was damaged or destroyed. The credit shall be a refundable credit. Eligible taxpayers shall be entitled to claim this credit for five consecutive years. After the first year the credit is claimed, the amount of the credit shall be 80 percent of the previous year's credit. If the taxpayer has no income tax liability, or if the credit exceeds the amount of the income tax liability of the taxpayer, then the credit, or balance thereof, shall be paid out in the same manner and out of the same fund as refunds of income taxes are paid and so much of the fund as is necessary for such purposes is to be appropriated. To qualify for the credit, 1) the property must have been damaged or destroyed by a natural disaster during calendar year 2012 or 2013, 2)

the property must be within an area which has been declared a federal disaster area, 3) the property must be the primary residence of the owner both prior to and after the natural disaster, 4) the owner must have been granted a homestead exemption or be eligible to claim a homestead exemption both prior to and after the natural disaster, 5) the primary residence shall be repaired or rebuilt on the same property as it existed prior to the natural disaster, and 6) the primary residence shall be repaired or rebuilt and used as the primary residence no later than Dec. 31, 2015, with respect to the calendar year 2012 or 2013 natural disaster. The credit shall not be allowed if the property is transferred or title is changed or conveyed. Any credit claimed and allowed prior to the transfer of the property or the change or conveyance of title shall not be affected. The Oklahoma Tax Commission is required to promulgate any necessary rules and develop any necessary forms to implement the allowance of the credit.<sup>3</sup>

#### *Percentage Depletion Deduction Net Income Limitation*

The definition of taxable income in the Oklahoma Income Tax Act was amended to provide for tax years beginning on or after Jan. 1, 2014, the allowance of a deduction for depletion of 22 percent of the gross income derived from the properties during the taxable year for major oil companies shall not exceed 50 percent of the net income of the taxpayer (computed without allowance for depletion) from the property.<sup>4</sup>

#### *Coal Production Credit*

The credit allowed for Oklahoma-mined coal purchased by persons in Oklahoma burning coal to generate heat, light or power for use in manufacturing operations in Oklahoma was extended until Dec. 31, 2021. The authorized transferability of credits was extended through Dec. 31, 2013. For credits earned on and after Jan. 1, 2014, but not used by the taxpayer the Oklahoma Tax Commission shall, at the taxpayer's election, refund directly to the taxpayer 85 percent of the face amount of such credits. This direct refund of the credit shall be available to all taxpayers. The amount of any direct refund of credits actually received at the 85 percent level by a taxpayer shall not be subject to Oklahoma income tax. If a pass-through entity does not file a claim for a direct refund, the pass-through entity shall allocate the credit to one or more of the shareholders, partners or members of the pass-through entity up to the

amount of the credit or refund to which the pass-through entity is entitled.<sup>5</sup>

#### *Zero-Emission Facilities Electricity Generation Credit*

The credit allowed for taxpayer for the taxpayer's production and sale of electricity generated by qualifying zero-emission facilities, using eligible renewable resources of wind, moving water, sun or geothermal energy constructed and located in Oklahoma was extended to apply to facilities placed in service before Jan. 1, 2021. The authorized transferability of credits was extended through Dec. 31, 2013. For credits earned on and after Jan. 1, 2014, but not used by the taxpayer, the Oklahoma Tax Commission shall, at the taxpayer's election, refund directly to the taxpayer 85 percent of the face amount of such credits. This direct refund of the credit shall be available to all taxpayers. The amount of any direct refund of credits actually received at the 85 percent level by a taxpayer shall not be subject to Oklahoma income tax. If a pass-through entity does not file a claim for a direct refund, the pass-through entity shall allocate the credit to one or more of the shareholders, partners or members of the pass-through entity up to the amount of the credit or refund to which the pass-through entity is entitled.<sup>6</sup>

#### *Foster Care Expenses Deduction*

A deduction will be allowed for a taxpayer who contracts with a child-placing agency in the maximum amount of \$2,500 for single persons and \$5,000 for married persons filing a joint return for expense incurred to provide care for a foster child.<sup>7</sup>

#### *Income Tax Credits and Deductions Repealed*

A number of Oklahoma income tax credits were repealed, which are the credits allowed for 1) qualified direct costs associated with the operation of a business enterprise the principal purpose of which is the rearing of specially trained canines; 2) gas used or consumed in Oklahoma in operation of a manufacturing plant; 3) 20 percent of the net investment cost of investment for recycling, reuse or source reduction of any hazardous waste; 4) monies contributed to the energy conservation assistance fund of 50 percent of the amount contributed to the fund for the taxable year; 5) qualifying projects in Oklahoma engaged in an industry which the Oklahoma Space Industry Development Authority is authorized to promote; 6) employers incurring child care services expenses for employees;

7) property damaged or destroyed by a tornado or similar cyclonic winds on May 3, 1999, October 9, 2001, or May 8 or 9, 2003; 8) a small business operating in the state for any amount paid to the U.S. Small Business Administration as a guaranty fee pursuant to the obtaining of financing guaranteed by the Small Business Administration; 9) investment in a renewable energy system; 10) food service establishments for immunizations against hepatitis A; 11) tourism development; 12) a qualifying ethanol production facility; 13) a qualifying biodiesel facility; 14) the amount of ad valorem taxes exempted pursuant for an enterprise locating a new facility within or expanding an existing facility within an enterprise zone if such facility is also located within an incentive district; 15) costs of a dry fire hydrant, meaning nonpressurized pipes permanently installed in lakes, farm ponds and streams that provide a ready means of drawing water; 16) electric motor vehicle manufacturers for manufactured electric motor vehicles; 17) any state banking association, national banking association or credit union domiciled in Oklahoma for the amount of the origination fee paid by the banking association or credit union to the United States Department of Education pursuant to the "Stafford" loan guaranty program for an Oklahoma resident; 18) \$500 for each new employee, not to exceed 50 new employees, for a net increase in the number of full-time-equivalent employees engaged in computer services, data processing or research and development in Oklahoma, including employees engaged in support services and income tax deductions; 19) in the case of resident individuals for amounts received as dividends or distributions of earnings from savings and loan associations or credit unions located in Oklahoma and interest received on savings accounts and time deposits from such sources or from state and national banks or trust companies located in Oklahoma, not to exceed the total of \$100 per individual or \$200 per couple filing a joint return; 20) money contributed to a political party or to a candidate or candidate committee not to exceed \$100 in any one tax year; and 21) 50 percent of any capital gain of any resident taxpayer who sells to the state any real property in which the taxpayer is the record owner and which was the site of a historic battle during the 19th century and is or has been designated a national historic landmark.<sup>8</sup>

## SALES AND USE TAX

### *Registered Farmers Market Not Special Event*

A "special event," subject to Oklahoma sales tax requirements under which the special event sponsor must identify vendors at the event and supervise and accomplish sales tax collection, shall not include a registered farmers market which is a designated area in which farmers, growers and producers from a defined region gather on a regularly scheduled basis to sell at retail nonpotentially hazardous farm food products and whole-shell eggs to the public.<sup>9</sup>

### *Direct Payment Permit*

The authorization for purchasers of tangible personal property to apply to the Oklahoma Tax Commission for a direct payment permit and pay sales and use tax directly rather than to the vendor was modified. The right to apply for a sales tax direct payment permit will now be available 1) to every person who makes purchases of \$800,000.00 or more annually in taxable items for use in Oklahoma enterprises or 2) for every person who makes purchases of drugs for treatment of humans, medical appliances, medical devices and other medical equipment, including eyeglasses, contact lenses, hearing aids, prosthetic devices, durable medical equipment and mobility enhancing equipment for administration or distribution by a practitioner who is authorized by law to administer or distribute such items, and the cost of such items will be reimbursed under Medicare or Medicaid.<sup>10</sup>

### *Common Carrier Rolling Stock Exemption*

The sales tax exemption for sales of rolling stock (locomotives, autocars and railroad cars) when sold or leased by the manufacturer for use or consumption by a common carrier directly in the rendition of public service was extended for sales made before July 1, 2019.<sup>11</sup>

### *Tornado Sales Tax Relief; Inventory Withdrawals*

The Oklahoma Sales Tax Code imposing sales tax on the sales value of all tangible personal property which has been purchased for resale, manufacturing, or further processing, and withdrawn from stock in trade for use or consumption was amended to provide that sales tax shall not be due for any such withdrawal of tangible personal property which has been donated for the purpose of assisting persons affected by a tornado occurring in the calendar year 2013 for which a Presidential Major Disaster Declaration was issued.<sup>12</sup>

*Tornado Sales Tax Relief; Vendor Collection Fee Allowance Despite Delinquent Reporting*

The vendor deduction of 1 percent of the sales tax due allowed to compensate the vendor for keeping sales tax records, filing reports and remitting the tax when due, will not be denied for delinquent filing and reporting by a vendor if the Oklahoma Tax Commission determines the reason a report or payment of tax was delinquent was due to a tornado occurring in calendar year 2013 for which a Presidential Major Disaster Declaration was issued.<sup>13</sup>

**AD VALOREM TAX**

*Reassessment of Damaged Property*

The procedure for reassessment of improvements or real property or personal property destroyed or damaged by fire, storms, floodwaters or other cause during any year was changed to provide that the county assessor shall determine the amount of damage and reassess the property for that year and present the reassessment to the board of tax roll corrections for its consideration.<sup>14</sup>

*Tangible Personal Property Used in Disposal Systems*

The required listing and assessment of taxable tangible personal property was amended to provide that the value of taxable tangible personal property used in commercial disposal systems of waste materials from the production of oil and gas shall not include any contract rights or leases for the use of such systems nor any value associated with the wellbore or non-recoverable down-hole material, including casing.<sup>15</sup>

*Release of Liens of Oklahoma Health Care Authority*

The statute providing for sale of real property for delinquent taxes was amended to provide that the county treasurers shall provide to the Oklahoma Health Care Authority (OHCA) a list of properties that will be sold at tax resales, the OHCA shall produce a list for each county of properties on which OHCA has liens, and county treasurers shall make the list of properties with OHCA liens available to potential buyers at the tax resales. The OHCA shall file a release of the liens on properties defined as blighted properties under 11 O.S. §38-101 upon request of the county treasurer. The filing of the lien release shall not extinguish the debt owed to OHCA which may be enforced through any legal means available to OHCA.<sup>16</sup>

*Tornado Relief; Homestead Exemption*

The Ad Valorem Tax Code was amended to provide that the person actually owning, residing and domiciled in the residence as of the date of a tornado shall be deemed to be the record owner of the residence on such date if the deed or other evidence of ownership of such person, executed on or before such date, is of record in the office of the county clerk on or before such date. However, such provisions shall only apply to any person who is eligible to claim the income tax credit pursuant to 68 O.S. 2357.29 with respect to the tornado or to any person whose primary residence was damaged or destroyed in the tornado and who purchased or built a new primary residence at a location in Oklahoma other than the location of the damaged or destroyed residence. For any owner of real property who is eligible to claim the income tax credit pursuant to 68 O.S. 2357.29 with respect to the 2013 tornado or for any owner of real property whose primary residence was damaged or destroyed in the 2013 tornado and who purchased or built a new primary residence at a location in Oklahoma other than the location of the damaged or destroyed residence, the application for a homestead exemption may be filed after March 15, 2014, but no later than June 1, 2014, and the homestead exemption shall be granted for such year.<sup>17</sup>

**GROSS PRODUCTION TAX**

*Gross Production Tax Payment Exemption from Ad Valorem Tax*

The exemption from ad valorem tax of equipment, machinery, tools, material or property that is actually necessary and being used and in use in the production of asphalt or of ores bearing lead, zinc, jack or copper or of oil or gas by reason of payment of gross production tax was amended. The exemption shall include the wellbore and non-recoverable down-hole material, including casing actually used in the disposal of waste materials produced with such oil or gas, and including all materials and equipment of disposal systems and the lines transporting the waste materials, serving one or more wells.<sup>18</sup>

*Gross Production Tax Reporting*

Tax administration procedures for gross production tax were amended to eliminate specified reporting requirements and eliminate certain procedures related to release of information on production.<sup>19</sup>

## MOTOR FUEL TAX

### *Motor Fuel Tax Collected on Liquefied Natural Gas*

The Oklahoma motor fuel tax was amended to impose a motor fuel tax on all liquefied natural gas used or consumed in the state at a rate of \$.05 per diesel gallon equivalent (dge) until the Oklahoma income tax credit authorized for qualified clean-burning motor vehicle fuel property expires, at which time the tax shall equal the tax rate imposed on diesel fuel using diesel gallon equivalent, which shall be equal to 6.06 pounds of liquefied natural gas. The tax on special fuels was amended to no longer apply to liquefied natural gas.<sup>20</sup>

## MOTOR VEHICLES

### *Tornado Relief; Vehicle Registration Fee*

A credit shall be allowed with respect to the fee for registration of a vehicle which is a replacement for a vehicle which was destroyed by a tornado in calendar year 2013 for which a presidential major disaster declaration was issued, and which was registered pursuant to the provisions of 47 O.S. 1132 on the date of destruction. The credit shall be a prorated amount based on the fee paid for the registration of the destroyed vehicle for the period of registration remaining as of the date of destruction and shall be applied to the registration fee for the replacement vehicle pursuant to the provisions of 47 O.S. 1132. The credit will in no event be refunded.<sup>21</sup>

### *Tornado Relief; Excise Tax Credit*

A credit shall be allowed with respect to the Oklahoma motor vehicle excise tax generally levied in Oklahoma. The credit shall be allowed for a vehicle which is a replacement for a vehicle which was destroyed by a tornado in calendar year 2013 for which a Presidential Major Disaster Declaration was issued, and upon which excise tax had been paid on or after Jan. 1, 2012.<sup>22</sup>

### *Excise Tax Exemption; Repossession*

A transfer certificate of title shall be issued without payment of the motor vehicle excise tax for any vehicle on which ownership is transferred by a reposessor directly back to the owner or owners from whom the vehicle was repossessed. Ownership must be assigned by the reposessor within 30 days of issuance of the repossession title and be identical to that

reflected in the vehicle title record immediately prior to the repossession.<sup>23</sup>

## TOBACCO TAX

### *Fine for Possession of Untaxed Tobacco*

Any person in possession of more than 1,000 small or large cigars or 216 ounces of chewing or smoking tobacco products in packages or containers for which tax required by law has not been paid shall be punished by fine of not more than \$5,000 for a first offense and not more than \$20,000 for subsequent offenses.<sup>24</sup>

## ECONOMIC DEVELOPMENT; TAX/FINANCIAL INCENTIVES

### *Quality Jobs Program Act Modified*

The Oklahoma Quality Jobs Program Act was amended to provide additional types of business that constitute a qualifying basic industry to include certain wired telecommunications carriers and securities, commodities contracts and investment activities and to modify the description of activities related to pipeline transportation of refined petroleum products. An establishment that has qualified for payments under the act shall be required to repay all incentive payments received if the establishment is determined by the Oklahoma Tax Commission to no longer have business operations in Oklahoma within three years from the beginning of the calendar quarter for which the first incentive payment claim is filed. The qualifying increased payroll requirement was amended to provide that if an establishment fails to achieve the required gross payroll within three years of the start date, the establishment shall not make a new or renewal application for incentive payments authorized pursuant to the act for a period of 12 months from the last day of the last month of the three-year period during which the required gross payroll amount was not achieved.<sup>25</sup>

### *21st Century Quality Jobs Incentive Act*

The wage requirements for qualification under the 21st Century Quality Jobs Incentive Act were modified with respect to an annualized wage payment requirement, health care premiums and a limit on the average wage requirement and adjustment thereof.<sup>26</sup>

## TAX ADMINISTRATION AND PROCEDURE

### *Taxpayer Appeal of Tax Commission Order*

The Oklahoma Uniform Tax Procedure Code was amended to provide an alternative right of appeal to taxpayers from Oklahoma Tax Commission final orders assessing a tax or additional tax or denying a claim for refund. A taxpayer shall have the right to either 1) appeal to the Supreme Court of Oklahoma or 2) in lieu of an appeal to the Supreme Court, opt to file an appeal for trial *de novo* in the district court of Oklahoma County or the county in which the taxpayer resides. Under each alternative the taxpayer must file an appeal within 30 days after the date of mailing to the taxpayer of the tax commission order being appealed. If the taxpayer files an appeal for trial *de novo* in district court and the amount in dispute exceeds \$10,000, the trial *de novo* must be heard by a district or associate district judge sitting without a jury. If the amount in dispute does not exceed \$10,000, the trial *de novo* may be heard by a special judge sitting without a jury. An order resulting from trial *de novo* in district court shall be appealable directly to the Supreme Court of Oklahoma by either party (the taxpayer or tax commission). In an appeal of an Oklahoma Tax Commission order to the Supreme Court, or an appeal for a trial *de novo* in district court, the party appealing shall not be required to give bond. A taxpayer will not be subject to being required to pay the amount of disputed tax assessed, penalty or interest as a condition precedent to the right to prosecute an appeal. In the case of an appeal of the denial of a claim for refund, if a refund is allowed, the taxpayer will be entitled to interest on the refunded taxes at the rate of 1.25 percent per month.<sup>27</sup>

### *State Agency Intercept of Income Tax Refund*

The provisions of the Oklahoma Uniform Tax Procedure Code authorizing a state agency seeking to collect a debt from an individual to request the amount owed be deducted from any state income tax refund due to that individual was amended to no longer provide that it shall not apply to any debt owed to a state agency for health care or medical services.<sup>28</sup>

### *Tax Commission Municipal Lodging Tax Collection*

The Oklahoma Tax Commission is authorized to enter into an agreement with any

municipality for the collection of a municipally imposed lodging tax.<sup>29</sup>

## TAX AND FISCAL POLICY

### *Tax Incentive Review Committee Repeal*

The authorization of a system to quantify costs and benefits of existing tax incentives and an Incentive Review Committee was repealed.<sup>30</sup>

*The author acknowledges information and assistance he received on the subject of this article from Joanie Raff, Legislative Analyst, Staff of the Oklahoma Senate.*

1. HB 2032, amending 68 O.S. Supp. 2012, §§2352, 2355; adding 68 O.S. Supp. 2013, §2355.1E; effective July 1, 2013.
2. HB1718, amending 68 O.S. 2011, §2357.22; effective April 13, 2013; HB 2005, amending 68 O.S. 2011, §2357.22; effective Nov. 1, 2013.
3. SB 330, adding 68 O.S. Supp. 2013, §2357.29A; effective May 13, 2013.
4. SB 166, amending 68 O.S. 2011, §2353(10); effective Nov. 1, 2013.
5. SB 343, amending 68 O.S. 2011, §2357.11; effective Jan. 1, 2014.
6. SB 343, amending 68 O.S. 2011, §2357.32A; effective Jan. 1, 2014.
7. HB 1919, adding 68 O.S. Supp. 2013, §2358. 5-1; effective Nov. 1, 2013.
8. HB 1248, repealing 68 O.S. 2011, §2357.203; effective Nov. 1, 2013; HB 2308, amending and repealing 68 O.S. 2011, §§2357, 2357.6, 2357.13, 2357.26, 23 57.29; 2357.30, 2357.22, 2357.33, 2357.34, 2357.66, 2357.67, 2357.81; 2357.102, 2357.402, 2370.3, 2370.3, 54006, 2358.E, 2358.3, 2357.24, 27A O.S. 2011, §2-11-303, effective Jan. 1, 2014.
9. HB 1039, amending 68 O.S. 2011, §1364.2; effective July 1, 2013.
10. HB 1399, amending 68 O.S. Supp. 2012, §1364.1; effective July 1, 2013.
11. HB 2310, amending 68 O.S. 2011, §1357; effective Nov. 1, 2013.
12. SB 330, amending 68 O.S. 2011, §1362; effective May 13, 2013.
13. SB 330, amending 68 O.S. 2011, §1367.1; effective May 13, 2013.
14. HB 1265, amending 68 O.S. 2011, §§2817.K, 2871.C.6; effective Nov. 1, 2013.
15. SB 166, amending 68 O.S. 2011, §2817; effective Nov. 1, 2013.
16. SB 292, amending 68 O.S. 2011, §3129; effective Nov. 1, 2013.
17. SB 330, amending 68 O.S. 2011, §§2888, 2892; effective May 13, 2013.
18. SB 166, amending 68 O.S. 2011, §§1001(T), 1001.1; effective Nov. 1, 2013.
19. SB 332, amending 68 O.S. 2011, §§1010, 1024; effective Nov. 1, 2013.
20. SB 519, amending 68 O.S. 2011, §§500.3, 500.4, 500.6, 500.28, 500.33, 701, 723; effective Jan. 1, 2014.
21. SB 330, amending 47 O.S. 2011, §1132.3; effective May 13, 2013.
22. SB 330, amending 68 O.S. 2011, §2103.1; effective May 13, 2013.
23. SB 678, amending 68 O.S. 2011, §2105; effective Nov. 1, 2013.
24. HB 1104, amending 68 O.S. 2011, §§412, 418; effective July 1, 2013.
25. SB 613, amending 68 O.S. 2011, §§3603, 3604, 68 O.S. Supp. 2012, §3606; effective Nov. 1, 2013.
26. SB 613, amending 68 O.S. 2011, §3914; effective Nov. 1, 2013.
27. SB 864, amending 68 O.S. 2011, §225; effective Jan. 1, 2014.
28. SB 945, amending 68 O.S. Supp. 2012, §205.2; effective April 13, 2014.
29. HB, 1874, adding 68 O.S. Supp. 2013, §2702.1; effective ninety days after adjournment of the 2013 session of the Legislature.
30. HB 1455, repealing 68 O.S. 2011, §205.4; effective Nov. 1, 2013.

## ABOUT THE AUTHOR

Sheppard F. Miers Jr. is a shareholder in the Tulsa office of Gable & Gotwals and practices in the areas of federal and state taxation.

# Communication Across Generations, Gender and Culture

By Kimberly Hays

This year, the theme for the Women in Law Conference is *Communication Across Generations, Gender and Culture*. The conference is scheduled for Sept. 27 at the University of Central Oklahoma Nigh University Center in Edmond.

Sarah Wald will be the featured presenter during the morning CLE session which will cover *Communicating Across the Gender Gap: What Lawyers Need to Know*. Ms. Wald is currently the chief of



Sarah Wald

staff and senior advisor to the dean at the John F. Kennedy School of Government at Harvard University as well as adjunct lecturer in public policy. She teaches seminars on gender communications to practicing lawyers around the

country. Her legal publications have appeared in the *Harvard Women's Law Review*, the *Administrative Law Journal* and the *Widener Law Review*.

As Ms. Wald explains, "Communication always goes two ways. What we say may not be what others hear, and, whether we like it or not, what others hear and how you are perceived is often dependent on whether you are a man or woman." Whether you are a man or a woman in law, she will uncover these differences as well as discuss special issues in gender communication as it pertains to the lawyer.

Stacy Leeds will give the keynote presentation during the luncheon and Mona Salyer Lambird Spotlight Awards presentation. Ms. Leeds is the dean of the University of Arkansas School of Law. She received her J.D. from the University of Tulsa and has focused her teaching and extensive research on property, natural resources and American Indian law.

Among her many honors, she was awarded the prestigious Fletcher Fellowship to support her work on tribal

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sovereignty and citizenship issues. As a Fletcher Fellow, she was named a nonresident fellow of the W.E.B. DuBois



Stacy Leeds

Institute at Harvard University during the 2008-09 academic years. In addition, Ms. Leeds has served as a judge for many tribes including the Cherokee Nation, where she was the first woman and youngest person ever to serve as a Supreme Court justice. Ms. Leeds, a citizen of the Cherokee Nation, is the first American Indian woman to serve as dean of a law school. Her knowledge of Native American culture will lend

itself nicely to this year's theme.

Following the luncheon, CLE will continue with an afternoon program beginning with an update on *Modern Slavery in Oklahoma* as part of the OBA initiative to join the fight against human trafficking. Most people in Oklahoma think human trafficking is something that happens some place far away. The truth is, Oklahoma is a prime state for modern day slavery recruitment. This presentation, given by Jasmine Majid and Craig Williams, will give you a better understanding of the issues you may encounter



Jasmine Majid

and how the legal community is impacted.

Ms. Majid is an experienced attorney who represents individuals, corporations and educational and research institutions in all aspects of immigration law and policy. Prior to joining Phillips Murrah in January 2013, Ms. Majid worked in Washington, D.C., as direc-

tor of regulatory affairs and policy analyst with each of the five federal agencies responsible for implementing immigration laws in the United States. A passionate community advocate, Ms. Majid has devoted her time and expertise to help establish successful pro bono and pro se legal service programs, free health care clinics for immigrant women and protocol for handling pro bono representation for children trafficked into the U.S. and trapped in the quagmire of our immigration policies and laws. Mr. Williams is a senior agent with the Oklahoma Bureau of Narcotics and Dangerous Drugs and is currently assigned to the Human Trafficking Division. During this session, Mr. Williams and Ms. Majid will also provide valuable information on how to recognize human trafficking and how you can assist child victims and adult victims of sex and labor trafficking.

In addition to this afternoon session, Rep. Kay Floyd will moderate a panel on "Communicating With the Bench." Panelists include Special District Court Judge Barbara Hatfield, Canadian County District Court, El Reno; Judge Rebecca Brett Nightingale, Tulsa County District Court, Tulsa; and Judge Lisa Davis, Oklahoma County District Court, Oklahoma City.



Bill Fournet

Bill Fournet is the founder, president and CEO of The Persimmon Group. In addition to leading The Persimmon Group since its inception, he also leads the practice areas of leadership development, business transformation and team performance. Mr. Fournet will conclude the conference, focusing on communication across generations with his presentation "From Typewriters to iPads: How Generational Diversity is Transforming the Workplace."

The Women in Law Conference is planned annually by the OBA Women in Law Committee and is made possible by the generous support of sponsors. The conference is priced to include opportunities to participate in the CLE and luncheon or luncheon only. For details and registration, visit [www.tinyurl.com/2013WomenInLaw](http://www.tinyurl.com/2013WomenInLaw).

Ms. Hays is the co-chair of the OBA Women in Law Committee together with Susan Bussey.

# The Complete Idiot's Guide to Parliamentary Procedure

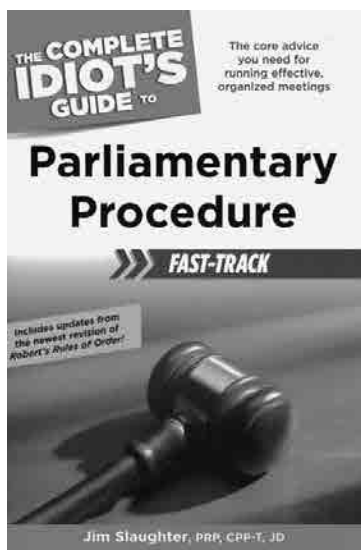
By Jim Slaughter

Reviewed by Melissa DeLacerda

Lawyers are frequently asked to comment on parliamentary procedure in charitable meetings, business meetings, boards, committee meetings and yearly conventions. Learning the rules of parliamentary procedure is a useful tool for every attorney. *The Complete Idiot's Guide to Parliamentary Procedure* is a quick, easy guide to mastering the basics.

The author is an attorney and a past president of the American College of Parliamentary Lawyers. He has put together a simple, easily read book to put the reader on a fast track to mastering the basics of parliamentary procedure. The book is softback and is 150 pages long. *Robert's Rules of Order* is more than 700 pages long. Having a small, concise and easy-to-read guide makes it much more convenient and likely to be used than *Robert's Rules*.

The first two chapters examine fundamental concepts that are necessary to using parliamentary procedure. There are four chapters that explain how motions are



**150 pages, paperback, \$12.95.  
Published by Alpha Books  
(Penguin Group USA Inc.).  
First Edition 2012**

used in the conduct of meetings. There is a chapter on voting, with all of the frequently asked questions about voting included. Chapter 8 deals with officers and elections, and Chapter 9 deals with types of meetings and the quorums for each. Final chapters suggest how to conduct a meeting and set an agenda for maximum efficiency. A chapter is included

on minutes and how best to record what happens at a meeting.

The book includes an appendix which is a parliamentary motions guide in chart form. The chart provides wording for each motion and whether the motions require a second, allow debate and what vote is required.

*The Complete Idiots Guide to Parliamentary Procedure* is written in the style of the entire series of Complete Idiot's Guides. It has text with pointers included on each subject. The headings in the chapters are concise and specific to each individual question one could have about parliamentary procedure, making it easy to navigate and find the answer to any question.

The book's reasonable price, small size and simple organization make it a must have for the lawyer's library.

*Ms. DeLacerda practices in Stillwater and serves as chair of the Oklahoma Bar Journal Board of Editors.*

# Things Aren't Like They Used to Be

*By John Morris Williams*

As we continue the building process for our next generation of technology, I am very reminded that things just aren't like they used to be. Ten years ago when I became your executive director, I was asked in an interview what were my biggest fears. I stated then I feared not being able to keep up with the speed of change in our brave new world of technology. Certainly there was no great insight in predicting change. It is inevitable.

Social media was not unheard of 10 years ago. Today it is not only social, it may be essential to marketing and business communications. I have a Facebook account and a few other such accounts. To be honest, I don't participate much. However, I do look and read a lot about my "friends." Some of them offer practice advice, advice on products and some good humor. Many lawyers use social media as effective marketing and communication tools for clients and prospective clients. I remember when we used to network through social events. Now networking has become something more common on a handheld device than at a cocktail party.

There are many studies out that demonstrate the value of

having a website and various social media outlets for the purpose of marketing legal services. Once upon a time capturing the great domain name was the way to go. Most of the catchy names were taken long ago. Now, buying one's way to the top of search engines is

**“Things are not like they used to be, and as a profession we must accept the challenges and create new opportunities.”**

often utilized. The new generation of such marketing includes joining, for a fee, an Internet group that has national marketing capabilities. A search on these bigger sites will provide a list of lawyers by location and practice. There was a time when television marketing was a matter of some controversy. It seems that Internet marketing and advertising has come upon us and all other professions without the stir of TV advertisement. The ethical rules apply equally. The access is at

least a thousand fold over a local television station. With the use of web technology, a solo or small firm practice in a nonurban area can have worldwide exposure.

Now enter into the world of web-based legal providers and the multijurisdictional implications of the various online legal service providers. A non-licensed person with a location within the boundaries of our state who is providing legal services is one thing. An out-of-state, or even out of the country, online provider is much harder to detect and prosecute for the unauthorized practice of law. This is no longer a prediction of the future. It is here and upon us. The task of protecting the public from unauthorized and poor quality legal services in this new age of online services is large and will become increasingly more difficult.

Things are not like they used to be, and as a profession we must accept the challenges and create new opportunities. A great website does not make great legal services. However, competent lawyers cannot ignore the need to have an electronic presence in the marketplace. Studies show that within certain demographic groups the first place they

search for any goods and services is the Internet. For many lawyers a presence on the web and use of other electronic services and tools has become essential. The OBA Management Assistance Program offers skill and expertise in these areas, and we are looking at ways to expand services and training opportunities to our members. At this year's Annual Meeting we will once again be offering a full-day track of technology training. If you have not paid attention to the current trends in technology, this would be a great way to catch up.


**“At this year's Annual Meeting we will once again be offering a full-day track of technology training.”**

Things truly are not like they used to be for our association or for many of our members in this “online” world. As we move to our next generation of technology here at the OBA,

we have engaged a sizeable group of members to help us develop our systems to maximize value to our membership. Your input and suggestions are always welcome. By the end of 2014 we hope to be through the implementation process and fully launched. At the beginning of 2015 I suspect that we will start planning for the next upgrade. It is inevitable.



To contact Executive Director Williams, email him at [johnw@okbar.org](mailto:johnw@okbar.org).




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OKCRPLA has been meeting since before 1973, provides ten CLE breakfast programs a year on real property related topics and annually recognizes OU and OCU law students for academic achievement in real property law. OKCRPLA invites OBA members to attend the October 2013 meeting free of charge. Due to limited seating, please make your reservation by **Friday, October 4, 2013** by contacting the OKCRPLA at [okcrpla@gmail.com](mailto:okcrpla@gmail.com).

# The Virtual Law Practice

## Are We All Virtual Lawyers Now?

By Jim Calloway

Many lawyers have never considered being involved with virtual law practice. Some have probably never even heard the term before. Telecommuting or working from home is probably something almost every lawyer has done from time to time, particularly since technology tools allow you to do so much more effectively now. But there is value in thinking about this practice style, even if you would never consider adopting it.

Virtual law practices were reported as becoming less common by the 2013 American Bar Association Legal Technology Survey Report. This survey result gave rise to online chatter, with many who had criticized the concept saying they were right after all, and those who supported the concept noting that even if the survey was accurate, it was a small change — perhaps within the survey margin of error.

It is true that differences between the 2012 and 2013 survey were not monumental. The number of lawyers who answered that their law practice was a “virtual” law practice declined this year to 5 percent from 7 percent the year before. The percentage of lawyers who said they some-

times telecommute dropped from 78 percent in 2012 to 73 percent this year. The primary lessons to be learned from these surveys are that relatively few lawyers operate from what they would term a “virtual law practice,” and a large majority telecommute, at least occasionally.



Telecommuting sounds good to many lawyers, especially after a challenging day at the office. There’s a nice, romantic thought of working in casual clothes, looking over a beautiful lake or ocean view. But the reality of telecommuting is often about being forced to stay home with a sick child or an evening spent working at home until late.

Personally, I’ve always thought that the terms “virtual lawyer” or “virtual law practice” were a little silly. Now, they are no sillier than terms like “blogs,” “wikis,” “dongles,” “Bluetooth” or oth-

ers that creative technology people have made a part of our everyday language.<sup>1</sup> No offense is intended to Stephanie Kimbro, Richard Granat, Mark Lauritsen and other pioneers in this area. I understand the terms were meant to refer to online delivery of legal services as opposed to the traditional law firm location. But what do you think of when you hear the term virtual lawyer?

“Virtual” means “almost or nearly as described, but not completely or according to strict definition” or “not physically existing as such but made by software to appear to do so.” So, if “not the real thing, but made to look like it” is the street definition of virtual, who would want to be a virtual lawyer? My guess is some survey respondents contemplating that question decided they are not virtual lawyers because they are “real” lawyers. There are also some law firms that provide some virtual services but primarily operate from a physical location, providing legal services in the traditional way. So they would also answer as not being virtual lawyers.

Those who self-identified on the survey as virtual defined the term as including “lack of traditional physical office (58

percent),” “minimal in-person contact with clients (52 percent)” and “use of web-based tools for client interaction (46 percent).”

There is no doubt that today’s technology tools really do allow a lawyer to work from virtually (pun intended) anywhere. We have seen other labels applied to the same practice setting like “mobile lawyer” and “home-based law practices.” Some law firms identify themselves as virtual because they mainly deliver legal services online, while others use the term because the lawyers — and often staff — work remotely, even though the firm may have a central location that is open during business hours with offices and meeting rooms that can be scheduled for use.

While most lawyers would not identify themselves as virtual lawyers, almost every lawyer in private practice has had a “virtual” attorney-client relationship, if that means that the lawyer and the client never actually met face-to-face. Phone calls and the post office facilitated representing an out-of-state client before fax machines and Internet communications.

If every time you email a document or a question to a client, you are virtually serving the client, then perhaps we are all virtual lawyers. Depending on how you define the term, it could be that 5 percent or 100 percent of lawyers are in virtual practice.

From my reading, I think of a virtual law practice as being the delivery of unbundled legal services by online systems, with automation and other technology tools being utilized to their potential.

**“If every time you email a document or a question to a client, you are virtually serving the client, then perhaps we are all virtual lawyers.”**

There is certainly some attraction to the idea of having a completely open schedule with no client appointments and no scheduled meetings. If your preferred method of work is having the mornings free for activities and working in the afternoons and evenings, you could do that. And every lawyer smiles at the idea of waking in the morning and logging in to learn that three clients had paid their remaining fees and downloaded the work done for them. Making money while you sleep probably has a universal attraction.

But if you have a busy law practice, virtual or otherwise, you may set your schedule to always pick your children up at school or to coach one of their sports teams. But with clients there will be deadlines; and no law practice, virtual or otherwise, can run itself.

There are many challenges with a virtual law practice today. Several years ago, it was much easier to get your name out online than it is today. It is difficult to get on the first page of Google search results without paying a fair amount of money; and the model for virtual law practices was to have very low over-

head and pass the savings along to clients. There are many free social media tools available today, but right now, the investment for social media is time — another scarce commodity. As we have seen, social media sites are attempting to monetize their sites, so it is likely the future will bring an investment in both time and money to market via social media.

I do not doubt the delivery of online legal services will grow, but we have not seen the final evolution of the business model yet.<sup>2</sup> One area I think will see huge growth in the near future is computer-to-computer video conferencing. If you have been representing a business owner for years and you need to have a quick chat, why should either of you drive across town to accomplish that? Many computers that have built-in webcams and external webcams are now very inexpensive. There are several services that provide cheap or free video conference and/or screen sharing to review documents for a few participants. These include Skype, Google+ Hangouts, Join.me,<sup>3</sup> Zoom,<sup>4</sup> Facetime, Adobe Connect, WebEx Meetings, GoToMeeting, Microsoft Lync and many others.

For this month’s Digital Edge podcast, Sharon Nelson and I interviewed Robert Ambrogi, a seasoned legal technology journalist for his take on virtual law practice and the survey results. You can find the interview online at [www.legaltalknetwork.com/podcasts/](http://www.legaltalknetwork.com/podcasts/) or on iTunes.

And now as a reward for all of you who read through this entire article even though you were not really considering a virtual practice, here are my

thoughts on the virtual tools most every lawyer would want to use today:

## **VIRTUAL PRACTICE TOOLS FOR 'REAL' LAWYERS**

### *Access to email on your smart phone*

Email is a business reality today. If you are at a doctor's appointment or an automobile repair, responding to a few emails and deleting pointless ones while you wait is certainly better than working longer at the end of the day.

### *Access to your office calendar on your smart phone*

This has become a necessity today. Lawyers live by their calendars. You may still carry a physical pocket docket book if you want; but after you synchronize the smart phone with your calendar at work and use it a few times, even the most technophobic lawyer will ditch the old-style pocket-book. You never can tell when or where you will be approached by a potential client. If that client pulls out their smart phone to schedule an appointment, you had better be able to accommodate them or risk looking seriously out-of-touch.

### *Remote access to client and office files*

You may not want to regularly do this, but you need to be able to do so when needed. Services like GoTo MyPC and LogMeIn have provided remote access tools for some time. A secure VPN (Virtual Private Network) connection may be preferred by other firms. Other lawyers may address this need by taking their

laptop workstations home or on the road. Cloud computing-based practice management systems provide full access to client files from anywhere the lawyer can have Internet access. Have a plan for how you do this and make sure you have all information stored on your phone so you can easily log in when required.

### *Digital client files with scanned images of all pleadings and correspondence.*

Cue "Repeating Broken Record" by the artist Callo-way. Yes, you have heard this one many times before. Remote access is of limited help if all you can access is the word processing documents you drafted. Using paper files only leaves the law firm vulnerable to disaster, whether it is destruction of the office and all the files or just a temporary situation when you are unexpectedly not allowed to access your office for days.

### *A website of some kind*

Most law firms now have some webpage, Facebook page or other online presence. It is hard to imagine not making it easy for potential clients to locate you online.

For those wanting to learn more about virtual law practices, your attention is directed to Stephanie Kimbro's blog<sup>5</sup> and her book, *Virtual Law Practice: How to Deliver Legal Services Online*.<sup>6</sup> Richard Granat writes a blog on elaw-yring<sup>7</sup> and provides virtual practice support for lawyers.<sup>8</sup> Marc Lauritsen is founder and president of Capstone Practice Systems which provides document automation systems for law firms and wrote *The Lawyer's Guide to Working Smarter with Knowledge Tools*.<sup>9</sup> For many years, Mr. Lauritsen and Mr. Granat both served as chair, vice-chair or co-chairs for the ABA Law Practice Management Section's elaw-yring group.

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

1. OK, no one really uses "dongle" in their everyday language — at least no lawyer. But it is certainly a goofy term. I do like the term elawyring, however. It kind of has that superhero feel. Faster than a speeding bullet, the lawyer filed his brief and saved the day.

2. Is "final evolution" an oxymoron?

3. <https://join.me>.

4. [www.zoom.us](http://www.zoom.us).

5. <http://virtuallawpractice.org/>.

6. [www.amazon.com/Virtual-Law-Practice-Deliver-Services/dp/1604428287](http://www.amazon.com/Virtual-Law-Practice-Deliver-Services/dp/1604428287).

7. [www.elawyringredux.com/](http://www.elawyringredux.com/).

8. [www.directlaw.com](http://www.directlaw.com).

9. [www.amazon.com/Lawyers-Guide-Working-Smarter-Knowledge/dp/1604428260/](http://www.amazon.com/Lawyers-Guide-Working-Smarter-Knowledge/dp/1604428260/).



# Emergency Checklist in the Event of Death, Incapacity or Disappearance

By Travis Pickens

Firms, associations of lawyers, legal departments and solo practitioners should have a documented procedure in place anticipating the potential for a sudden death, incapacity or disappearance of a lawyer. For solo lawyers, it is particularly important.<sup>1</sup>

Personal incapacity to practice law is defined in RGDP Rule 10.1 as:

- a) Suffering from mental or physical illness of such character as to render the person afflicted incapable of managing himself, his affairs or the affairs of others with the integrity and competence requisite for the proper practice of law;
- b) Active misfeasance or repeated neglect of duty in respect to the affairs of a client, whether in matters pending before a tribunal or in other matters constituting the practice of law; or
- c) Habitual use of alcoholic beverages or liquids of any alcoholic content, hallucinogens, sedatives, drugs, or other mentally or physically disabling substances of any character whatsoever to any

## CHECKLIST ANTICIPATING A LAWYER'S DEATH, INCAPACITY OR DISAPPEARANCE (EMERGENCY PLANNING)

- ✓ Select an emergency attorney. The selection is critically important. Ideal attributes include impeccable character, same or similar practice, known and liked by your family and staff, excellent communication skills and conflict sensitive.
- ✓ Use fee agreements and explanatory materials that state you have arranged for an emergency attorney to close your practice in the unlikely event of your sudden death, incapacity or disappearance (get your client's informed consent).
- ✓ Use a thorough and up-to-date office procedure manual that covers all the office details, from passwords to stored files. Make certain one can easily find or generate a list of current clients, matters and contact information for not only clients but any other key people and suppliers to your practice.
- ✓ Make sure all deadlines are clearly calendared.
- ✓ Document your files well. Anticipate questions that might arise about a particularly tricky or complex case (or problem client) and prepare a memo to file with details.
- ✓ Keep all time and billing records clear, detailed and up-to-date.
- ✓ Return original documents to a client immediately if possible, and no later than the end of a case or matter. Avoid keeping wills, valuable papers or other client property.
- ✓ Have a written agreement with your emergency attorney that outlines the responsibilities involved in closing your practice. Reciprocal agreements are encouraged. Require that the Office of General Counsel be notified immediately by the emergency attorney (RGDP 12.1). Arrange for compensation for the emergency attorney if appropriate.

extent which impairs or tends to impair ability to conduct efficiently and properly the affairs undertaken for a client in the practice of law.

In my office, I have learned that the “disappearance” of a lawyer is typically due to a debilitating mental or physical condition that leaves the lawyer either unable or unwilling to respond to letters, emails, telephone calls or any other effort to contact them. It can also mean they have left the state or country in an effort to avoid contact due to personal or legal problems. Sometimes, a lawyer is simply emotionally overwhelmed or deeply depressed, unable to deal with mail, email, telephone calls or even someone knocking on their own residence door.

In firms and legal departments, dealing with the sudden loss or incapacity of a lawyer happens somewhat naturally, the other lawyers and staff generally know what the lawyer was working on, but even then usually not everything. With office sharing lawyers and solo practitioners, it is typically much different and far more difficult. Regardless, a documented plan for every lawyer is a necessity.

This checklist for solos is a tool you may use to create your own plan. Every practice and lawyer is different, but this is a starting place for thinking about how best to protect your clients in the event of your sudden death, incapacity or disappearance. The checklist is available on the OBA website

at [www.okbar.org/members/EthicsCounsel/EthicsFAQ](http://www.okbar.org/members/EthicsCounsel/EthicsFAQ).

*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](mailto:travis@okbar.org) or 405-416-7055; 800-522-8065.*

1. ORPC 1.3 Comment [5].

✓ Work with your bank to determine the best method to have a second signatory on your accounts, and whether it can be conditioned upon timing or events.

✓ Familiarize your emergency attorney with your office systems and keep him or her apprised of changes.

✓ Introduce your emergency attorney to your office staff and make sure your office staff is fully informed of this planning. Make sure the staff has the information to contact the emergency attorney 24/7/365. If you practice without regular staff, make sure your emergency attorney knows whom to contact (e.g. the landlord) to gain access to your office.

✓ Inform your spouse/partner or closest living relative, the designated personal representative of your estate, and all key professionals (e.g. malpractice carrier, CPAs), of this planning and how to contact the emergency attorney.

✓ Periodically destroy files according to ethical guidelines and your document retention agreement.

✓ Provide a set of keys and passwords to your emergency attorney.

✓ Renew the written agreement with your emergency attorney each year and keep the identity of the lawyer current in your fee agreement.

This form is adapted from the Oregon State Bar Professional Liability Fund handbook, “Planning Ahead: A Guide to Protecting Your Clients’ Interests in the Event of Your Disability or Death,” Copyright 2011. All rights are reserved except OBA members may use this material for assistance with their own law practice.



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# Meeting Summary

*The Oklahoma Bar Association Board of Governors met at the Oklahoma Bar Center in Oklahoma City on Friday, July 19, 2013.*

## REPORT OF THE PRESIDENT

President Stuart reported he attended the Solo & Small Firm Conference in Durant and meetings regarding the OBA Annual Meeting, Southern Conference of Bar Presidents Conference, Lawyers Helping Lawyers and Oklahoma Bar Foundation. He presented a CLE on oil and gas at the Solo & Small Firm Conference, presented 50- and 60-year membership pins at the Oklahoma County Bar Association luncheon, worked on selecting Leadership Academy participants and delivered an address to the judicial conference in Norman.

## REPORT OF THE VICE PRESIDENT

Vice President Caudle reported he attended the Solo & Small Firm Conference, Board of Governors meeting, Oklahoma Bar Foundation trustees meeting and Comanche County Bar Association luncheon.

## REPORT OF THE PRESIDENT-ELECT

President-Elect DeMoss reported she attended the board meeting in Durant, Solo & Small Firm Conference, Oklahoma County Bar Association annual awards luncheon, Financial Planning Subcommittee meeting and Tulsa

County Bar Association Capital Campaign meeting. She worked on matters for the OBA Strategic Planning Committee, Litigation Section, Law Schools Committee, Leadership Academy and planning for 2014 programs.

## REPORT OF THE PAST PRESIDENT

Past President Christensen reported she attended the Solo and Small Firm Conference in Durant, June Board of Governors meeting, SCBP planning meeting, lawyers in the classroom meetings and Law-related Education meetings. She worked on Lawyers Helping Lawyers banquet planning and participated in planning discussions with President-Elect DeMoss.

## REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended Solo & Small Firm Conference and the monthly staff celebration. He attended meetings regarding timelines for new software going live, OBA Annual Meeting planning meeting, Oklahoma Bar Foundation, Bar Association Technology Committee meeting, SCBP planning meeting and several meetings regarding bar association technology. He communicated with Chief Justice Colbert regarding changes in the method and timing for submission of applications for suspension for noncompliance with dues and MCLE rules, had phone conferences with technology vendors

regarding new association management software and integration and upgrades of ancillary software, and conducted the JNC election.

## BOARD MEMBER REPORTS

**Governor Farris**, unable to attend the meeting, reported via email that he attended the American College of Trust and Estate Counsel CLE seminar in Philadelphia, OBA Work/Life Balance Committee meeting via teleconference and Tulsa County Bar Foundation Capital Campaign Committee meeting. **Governor Gifford** reported he attended the Oklahoma County Bar Association board of directors meeting, Solo & Small Firm Conference and Board of Governors meeting in Durant. He also made three presentations — “A Cornucopia of Criminal Law” CLE at the Solo & Small Firm Conference, “Human Trafficking in Oklahoma” to the Central Oklahoma Association of Legal Assistants and “Obtaining Military Records & Basics of Military Law” CLE to the Oklahoma Criminal Defense Lawyers Association at the Criminal Defense Institute conference. **Governor Hays** reported she attended the Solo & Small Firm Conference at which she presented on CLE topic, “Family Law Legislative Update,” communicated with OBA Family Law Section leadership regarding Trial Advocacy Institute 2014, presented an OBA Board of Governors report to the Tulsa County Bar Association board of directors,

conducted the Women in Law Committee meeting, participated in conference planning, studied various reimbursement policy alternatives and attended the subcommittee meeting, prepared the Family Law Section budget for the month, communicated with FLS Budget Committee members regarding 2014 budget preparation, participated in the Long Range Planning Subcommittee meeting by phone and distributed disaster relief fliers to church, TCBA and the Tulsa County courthouse.

**Governor Jackson** reported he attended the Solo & Small Firm Conference and June Board of Governors meeting.

**Governor Pappas** reported she submitted an article on a lawyer in her district for the *Oklahoma Bar Journal*. **Governor Parrott** reported she attended the Solo & Small Firm Conference, June Board of Governors meeting, Oklahoma County Bar Association board of directors meeting and OCBA annual awards luncheon. **Governor Smith**, unable to attend the meeting, reported via email that he attended the June Board of Governors meeting, Solo & Small Firm Conference and travel reimbursement policy subcommittee meeting.

**Governor Stevens** reported he attended the June Board of Governors meeting, Solo & Small Firm Conference, July Cleveland County Bar Association meeting and Oklahoma Judicial Conference reception.

**Governor Thomas** reported she attended the board meeting at the Solo & Small Firm Conference and Washington County Bar Association meetings in June and July. She also worked with President Stuart and President-Elect DeMoss on the selection of the Leadership Academy participants.

## REPORT OF THE YOUNG LAWYERS DIVISION

Governor Vorndran reported he attended the June Board of Governors meeting, Solo & Small Firm Conference and YLD networking event. He also chaired the June YLD meeting.

## REPORT OF THE SUPREME COURT LIAISON

Justice Kauger reported the court is in its cessation of conferences period. She said she attended the Oklahoma Judicial Conference at which Retired Judge Donald Worthington was presented with the Justice Hodges/Justice Lavender Award.

## COMMITTEE LIAISON REPORTS

Past President Christensen reported the Lawyers Helping Lawyers Assistance Program Committee and Work/Life Balance Committee are joining forces again to sponsor a banquet and auction on Sept. 10 at the Oklahoma Bar Center. She requested that board members donate auction items. She also reported the Bench and Bar Committee discussed judicial performance evaluations. A justice from North Carolina spoke on that state's project. No decision was made. Governor Hays reported the keynote speaker for the Women in Law Conference on Sept. 27 at the George Nigh Center at the University of Central Oklahoma in Edmond will be Sarah Wald, and the featured presenter at the luncheon will be Stacy L. Leeds. Sponsorship opportunities are available ranging from \$5,000 to \$250. She reported the Tulsa County Bar Association has hired Lauren Monnet as its new Membership & CLE Director. The TCBA annual luncheon will be

held Aug. 22 at the Hyatt Regency Hotel with Mike Turpen as the keynote speaker. The county bar will also hold a household item drive to benefit the Tulsa Day Center for the Homeless and a Think Pink community event supporting breast cancer awareness will be held in October.

## REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported the Professional Responsibility Tribunal held its annual meeting and Vice-Chief Justice John Reif attended. They elected Tulsa lawyer William LaSorsa as chief and Midwest City lawyer M. Joe Crosthwait Jr. as vice chief. The governor has appointed lay people to the PRT, and one vacancy still exists on the Professional Responsibility Commission. Written status reports of the PRC and OBA disciplinary matters for June 2013 were submitted for the board's review.

## REIMBURSEMENT POLICY SUBCOMMITTEE UPDATE

President-Elect DeMoss has prepared a draft that is still under review.

## SUPREME COURT DISTRICT 5 VACANCY

The board discussed candidates for the vacancy, which was created upon the death of Governor Sandee Coogan. The board asked Executive Director Williams to contact potential candidates discussed and ask them to submit résumés if they are interested. Résumés will be reviewed at the August meeting. Staff was directed to publish a notice of the vacancy once in the *Oklahoma Bar Journal* and once in the E-News. Deadline to submit a résumé will be Aug. 7. Vice President Caudle was asked to

contact county bar presidents in District 5.

### **PROFESSIONAL RESPONSIBILITY TRIBUNAL APPOINTMENTS**

The board approved President Stuart's recommendation to appoint Noel Tucker, Edmond, and John Heatly, Oklahoma City, for three-year terms expiring June 30, 2016.

### **JUDICIAL NOMINATING COMMISSION ELECTION RESULTS**

Executive Director Williams announced that Mike Mordy, Ardmore, was elected to the District 3 position, and Peggy Stockwell, Norman, was elected to the District 4 seat.

### **FORENSIC REVIEW BOARD NOMINEES**

President Stuart said the OBA was asked for three OBA members to be recommended to the governor by Sept. 1 for the governor to select one person to appoint to the Forensic Review Board. President Stuart is recommending that current board member Michael Segler, Yukon, be included. Two additional candidates are

needed, and board members were asked to help recruit nominees.

### **DAY OF SERVICE PROGRESS REPORT**

Governor Vorndran reported that YLD member Brandi Nowakowski is compiling a master list of community service projects planned for Sept. 20-21. The first deadline to submit information is soon and once that deadline passes, follow-up by phone will come next. Governor Pappas suggested the board consider doing a project following its September meeting. Ideas were discussed. Governor Thomas and Governor Pappas will contact local nonprofit organizations to assess their needs.

### **OKLAHOMA BAR JOURNAL ARTICLES**

President Stuart reminded board members who have not submitted an article about an unsung hero in their district to do so soon. Past President DeLacerda will be contacting those who have missed the deadline.

### **OBA ANNUAL MEETING**

President Stuart announced that the annual luncheon keynote speaker will be defense attorney Jose Baez, who will speak on "Why Casey Anthony was Found Not Guilty." The meeting will be held Nov. 13-15 at the Sheraton Hotel in downtown Oklahoma City. President Stuart said he heard Mr. Baez speak at the Arkansas Bar Association annual meeting and enjoyed his presentation. Efforts are being made to keep costs down for the meeting. Executive Director Williams shared an idea for a Thursday social event that will involve participation by the sections. Board members were given an update on construction taking place at the hotel, which will make less space available than last year.

### **NEXT MEETING**

The Board of Governors met at the Oklahoma Bar Center in Oklahoma City on Aug. 16, 2013. A summary of those actions will be published after the minutes are approved. The next board meeting will be held at 11 a.m. on Thursday, Sept. 19, 2013, at the Oklahoma Bar Center.



# Your OBF is Hard at Work

By Susan Shields

On Aug. 23, 2013, the Oklahoma Bar Foundation Grants and Awards Committee, chaired by Judge Millie Otey of Tulsa, met to consider the OBF annual grant applications. This year, the OBF received a total of 19 grant applications, all from previous grantees supported by the OBF. The amount of the grants requested was approximately \$590,000, compared to the OBF grant budget of \$325,000 for the 2013 grant cycle. There was also an added \$7,135 from the 2012 Annual Meeting fundraising efforts.

## WORKING HARD TO RAISE FUNDS

As the OBF has reported previously, IOLTA revenues are down drastically due to the very low (almost zero) interest rate environment. The OBF is powerless to combat the low interest rates that impact the OBF's grant budget, but each member of the OBA should be grateful to the hard-working volunteers on the OBF Board of Trustees who have stepped up to raise funds by recruiting new OBF Fellows, asking existing Fellows who have completed their initial pledge to become Sustaining or Benefactor Fellows, asking sections, county bar associations and other associations and groups to become participants in the new "OBF Community Fellows Program" and raising awareness about the ability of lawyers handling class action matters to help direct *cy pres* funds to the OBF. Each of these revenue streams is critically important for the

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## SUCCESS STORIES

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*Center for Children and Families, Inc.  
(Cleveland County)*

### Keaton

Keaton is a beautiful 1 1/2-year-old boy who came to Divorce Visitation Arbitration Program (DVA) approximately one year ago. At that time, Keaton had never met his biological father, Jim, and demonstrated a high level of discomfort during the first few months of supervised visits. DVA staff stayed in the visitation room during these supervised visits to help establish a bond with the biological father. DVA staff slowly transitioned out of the visitation room, which has been an ongoing process. Improvements have recently been made, and Keaton is becoming increasingly affectionate with Jim. Over the course of the last year, Jim and Keaton's relationship has started to blossom. Keaton is showing more comfort in his interactions with his father by greeting him with a hug and/or kiss when coming to the CCFI. With each new visit, Jim and Keaton are developing a stronger bond, which is evident through their body language and other non-verbal cues. During their last visit together, Keaton fell asleep in Jim's arms. With CCFI services, Keaton is learning the benefit of a safe, consistent and loving relationship with his biological father.

*Community Crisis Center (Delaware County)*

### Janet

Janet got pregnant in high school and raised her son alone. Her son grew up to be a fine young man and married and had a son of his own. Later, Janet also married; but unfortunately, her husband was abusive. Tragically, Janet's son and his wife were killed in a terrible car crash. The maternal grandparents got custody of the baby. Janet was not able to get regular visitation with her grandson because of the abusive relationship she was in. Janet was devastated that her grandson would not know about his father since she could not have a close relationship with him. This helped her resolve to get out of the abusive marriage. She came to our shelter last January for help. The OBF advocate assisted Janet in getting transitional housing through our programs and stabilizing her finances. The OBF advocate was able to help Janet get legal counsel through Legal Advocates of Indian Country. Janet was able to get a divorce from her abusive husband.

Now, Janet lives in peace and is able to have regular visitation with her grandson. Now Janet's grandson can learn about this father from the grandmother who loved her son so much.

continued success of the OBF to meet the needs of grantees in providing legal services for the most needy Oklahomans — often children and abused women, supplying funds for law-related education and enhancing initiatives for justice.

The OBF will report on the approval of its 2013 grants next month. While OBF Trustees work hard on fundraising, giving away OBF grants is what OBF Trustees love to do

best — it's the OBF's reason for existence. We strive to raise increased OBF dollars for the sole purpose of giving more away.

### HOW CAN YOU HELP?

If you are not a Fellow, become one. If you are already a Fellow, increase your commitment to become a Sustaining or Benefactor Fellow. If you are a member of a county bar, section or another organization that has

not already become a Community Fellow, urge your organization to commit. Our collective dollars ensure that the OBF's support of Legal Aid, Tulsa Lawyers for Children, Oklahoma Lawyers for Children, Teen Court, Oklahoma High School Mock and a host of other important services will continue for years to come.

*Ms. Shields is OBF president and can be reached at [susan.shields@mcafeetaft.com](mailto:susan.shields@mcafeetaft.com).*

## *Tributes and Memorials*

Tribute and Memorial Gifts offer a simple and meaningful way to honor people who have played an important role in your life or whose accomplishments you would like to recognize. Graduating from law school, passing the bar, marking a milestone birthday, celebrating a colleague's retirement are just some of the many occasions for which making a tribute gift to the Oklahoma Bar Foundation can be especially meaningful for you and the person you wish to honor or for the family and friends of the person you wish to remember. A Memorial gift in lieu of flowers is a fitting way to express your feelings and honor a departed friend, colleague or loved one.

Tributes and memorials gifts are a great way to acknowledge the people you care about while helping to ensure that low-income and disadvantaged Oklahomans can access the legal advice and assistance they need or that school children learn about rights, responsibilities and the rule of law.

The OBF will send the person you designate a card notifying them that you made a special remembrance gift in their honor or in memory of a loved one to help the OBF continue working to make Oklahoma a fairer and better place for everyone. Gifts will be used in meeting the on-going mission of the Oklahoma Bar Foundation, Lawyers Transforming Lives through the advancement of education, citizenship and justice for all.

MAKE YOUR TRIBUTE OR MEMORIAL GIFT TODAY AT: [WWW.OKBARFOUNDATION.ORG/MAKE-A-CONTRIBUTION](http://WWW.OKBARFOUNDATION.ORG/MAKE-A-CONTRIBUTION)

OR IF YOU PREFER, PLEASE MAKE CHECKS PAYABLE TO:

OKLAHOMA BAR FOUNDATION P. O. BOX 53036 OKLAHOMA CITY OK 73152-3036

E-MAIL: • [FOUNDATION@OKBAR.ORG](mailto:FOUNDATION@OKBAR.ORG) • PHONE: 405-416-7070

*The OBF respects the privacy of donors and will not sell or share your personal information.*



# OKLAHOMA BAR FOUNDATION

## 2013 OBF Community Fellow Enrollment Form

### UNITE TO PROVIDE HELP FOR THOSE IN NEED AS AN OBF COMMUNITY FELLOW

☐ OBA Section or Committee ☐ Law Firm/Office ☐ County Bar Assoc. ☐ IOLTA Bank ☐ Corporation/Business ☐ Other Group

Group Name: \_\_\_\_\_

Contact: \_\_\_\_\_

Mailing & Delivery Address: \_\_\_\_\_

City/State/Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ E-Mail: \_\_\_\_\_

**The OBF Community Fellows is a new benevolent program of the Oklahoma Bar Foundation allowing organizations and groups to unite with individual lawyers who are OBF Fellows to support a common cause: *The promotion of justice, provision of law-related services, and advancement of public awareness and better understanding of the law.***

#### The OBF Provides Funding For:

- Free legal assistance for the poor and elderly
- Safe haven for the abused
- Protection and legal assistance for children
- Public law-related education programs, including programs for school children
- Other activities that improve the quality of justice for all Oklahomans

***OBF NEEDS YOUR HELP TO  
SERVE OKLAHOMANS  
IN NEED!***

**GIVE TODAY AT  
[WWW.OKBARFOUNDATION.ORG](http://WWW.OKBARFOUNDATION.ORG)**

### Choose from three tiers of OBF Community Fellow support to pledge your group's help:

\$ \_\_\_\_\_ **Patron** \$2,500 or more per year  
\$ \_\_\_\_\_ **Partner** \$1,000 - \$2,499 per year  
\$ \_\_\_\_\_ **Supporter** \$250 - \$999 per year

Signature & Date: \_\_\_\_\_ OBA Bar# \_\_\_\_\_

Print Name & Title: \_\_\_\_\_

OBF Sponsor: \_\_\_\_\_

Please kindly make checks payable to: Oklahoma Bar Foundation P O Box 53036 Oklahoma City OK 73152-3036

Phone: (405) 416-7070 • E-Mail: [foundation@okbar.org](mailto:foundation@okbar.org)

**Thank you for your generosity and support!**

# University of Tulsa College of Law Continues Public Service Efforts

By Christy M. Caves

University of Tulsa College of Law students proudly serve their school, their community and their profession. In support of the college's belief in instilling a life-long commitment to public service, we have been working on new projects allowing our law students new opportunities to assist the underserved and underrepresented in our community.

## RECENT ENDEAVORS

On June 15, TU Law students, alumni and staff teamed up to provide critical legal assistance at a free immigration law clinic held at the Boesche Legal Clinic. The clinic was organized to provide assistance to individuals applying for Deferred Action for Childhood Arrivals (DACA), a program announced last summer by the Department of Homeland Security.

The DACA program allows undocumented young adults to request deferred action on their immigration status for a period of two years, subject to renewal. The clinic volunteers, who included law students enrolled in a summer immigration law course taught by Professor Elizabeth McCormick,

participated in a day-long DACA training on June 14 organized by Ms. McCormick and Laura Bachman, staff attorney with the legal clinic's Tulsa Immigrant Resource Network and adjunct faculty member at TU Law.

TU Law also recently founded a student-led public interest board, responsible for carrying out the college's mission to promote public service within our legal community. Six students were selected to serve on the executive council from a group of extremely qualified applicants. Its first project on the horizon for this school year includes a required public service day during orientation for all first-year law students at the Community Food Bank of Oklahoma and Catholic Charities of Tulsa. From the outset, we stress that service to the community is at the core of the legal profession, and these first steps into the legal profession are the perfect way to emphasize that and make a real difference in people's lives. Additional new projects include supporting Legal Aid's LiveHelp Project, Tulsa Lawyers for Children, the Courthouse Assistance Pro-

gram, Lawyers for Hunger and the Tulsa Area Urban Debate League, among other ventures.

## FUTURE PROJECTS

In January 2014, the TU College of Law will open the Lobeck Taylor Family Advocacy Clinic. In the new clinic, students will learn essential skills by representing clients, particularly at-risk families, in civil law matters. The clinic will work closely with existing social and legal service providers in the Tulsa community. Cases may involve legal issues related to domestic violence, housing, public benefits, consumer debt or collateral challenges that stem from clients' involvement in the criminal justice system. Clinic students may also advocate for broader law reform and system changes in collaboration with community-based Tulsa organizations.

Assistant Clinical Professor of Law Anna E. Carpenter will oversee the creation of the new clinic. Ms. Carpenter joined the University of Tulsa College of Law faculty this summer, coming to TU from Georgetown University Law Center, where she was a clinical teaching fellow and

a supervising attorney of the Community Justice Project. Ms. Carpenter's extensive experience as an advocate for at-risk populations will broaden and strengthen TU Law's commitment to developing excellent lawyers and community-minded citizens, while supporting the underserved in our community.

### MAKING GREAT STRIDES

TU Law students continue to make great strides supporting local nonprofit organizations through externships which allow them to gain academic credit for their legal work under licensed attorney supervision. The externship opportunities with nonprofits create a mutually beneficial

situation as students gain hands-on practical learning while helping to serve the legal needs of our community. So far this year, students have assisted various local public service entities including Catholic Charities, Legal Aid Services of Oklahoma Inc., Family and Children's Services Women in Recovery and Domestic Violence Intervention Services. Students help serve the under-represented by contributing to a wide variety of areas of need ranging from family law to bankruptcy, housing, disability and immigration among others. Our externship program allows them the opportunity to fulfill the legal needs of vulnerable citizens while

gaining practical experience and learning the importance and reward of lifelong pro bono work, including a potential future career in the nonprofit sector.

These recent projects represent just a piece of TU Law's longstanding commitment to public service, and we always seek new ideas on how our law students can make a difference.

*Ms. Caves is assistant dean and director of experiential learning at the University of Tulsa College of Law. For questions, she may be contacted at [christy-caves@utulsa.edu](mailto:christy-caves@utulsa.edu) or 918-631-2421.*

## NOTICE OF JUDICIAL VACANCY

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

### **District Judge First Judicial District, Office 1 Texas County**

This vacancy is due to the retirement of the Honorable Greg A. Zigler, effective January 1, 2014.

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

Application forms can be obtained on line at [www.oscn.net](http://www.oscn.net) under the link to Judicial Nominating Commission, or by contacting Tammy Reaves, Administrative Office of the Courts, 2100 N. Lincoln, Suite 3, Oklahoma City, Oklahoma 73105, (405) 556-9862. Applications must be submitted to the Chairman of the Commission at the same address **no later than 5:00 p.m., Friday, September 27, 2013. If applications are mailed, they must be postmarked by midnight, September 27, 2013.**

Heather Burrage, Chairman  
Oklahoma Judicial Nominating Commission

# OBA Annual Meeting: A Good Place to Start

By Joe Vorndran

The YLD chair typically uses this article to promote the elections to the YLD Board of Directors and attendance at the OBA Annual Meeting. When I began thinking about these two topics, it became impossible for me to separate them. It is because I chose to attend Annual Meeting in 2006 that I became involved in the YLD (well, that and a few cocktails and a very persuasive director). I have attended every year since and count my memories of Annual Meeting as some of my fondest.

The Oklahoma Bar Association may be a mandatory bar, but under its umbrella exists a thriving network of volunteers who represent committees, sections and divisions with pride and enthusiasm. Perhaps the greatest strength of our bar association is the simple fact that there is a way for every lawyer to be involved and impact our profession in a positive manner. The epicenter of this passion and involvement is the OBA Annual Meeting.

I invite you to attend the OBA Annual Meeting and the various YLD events taking place at the meeting. The YLD board meeting will take place on Wednesday, Nov. 14, 2013.

Join us in the YLD hospitality suite following the President's Reception Wednesday night for a late-night celebration. I also hope you'll join me and other YLD members at the OBA Sections Present the Best of Oklahoma: Art, Music, Food & Wine on Thursday evening, Nov. 15.

**“ I invite you  
to attend the OBA  
Annual Meeting and  
the various YLD events  
taking place at the  
meeting. ”**

## YLD LEADERS WANTED

For YLD members looking to get involved, I encourage you to submit a nominating petition and run for the YLD Board of Directors. Keep reading to find a list of open seats and the election procedure. Information can also be found on the YLD webpage. I also want to encourage all YLD members to vote. You don't even have to buy a stamp to

submit your ballot, as the ballots will be circulated electronically in late October.

Finally, I want to congratulate all those who passed the July bar exam and welcome you to the OBA. I look forward to meeting you at the swearing-in ceremonies on Sept. 25. I hope that you will all join YLD officers, directors and members at the Welcome to the OBA receptions, which will be held at McNellie's in Oklahoma City and Tulsa on Sept. 26.

## RUN FOR THE OBA YLD BOARD OF DIRECTORS

**Deadline: Sept. 27 at 5 p.m.**

If you are interested in becoming more involved in the OBA YLD, consider running for a position on the YLD Board of Directors. The YLD Board has monthly meetings that are typically held on Saturday mornings in Tulsa or Oklahoma City.

Nominating petitions must be submitted by 5 p.m. on Friday, Sept. 27, 2013. Questions can be directed to Jennifer Heald Castillo, Nominating Committee chairperson, at [jcastillo@hallestill.com](mailto:jcastillo@hallestill.com).

## Officers:

### *Chairperson-Elect*

**Qualifications:** Any member of the division having previously served for at least one year on the OBA YLD Board of Directors.

**Term:** One-year term (Jan. 1, 2014 – Dec. 31, 2014). The chairperson-elect automatically becomes the chairperson of the division for 2015.

### *Treasurer*

**Qualifications:** Any member of the OBA YLD Board of Directors may be elected by the membership of the division to serve in this office.

**Term:** One-year term (Jan. 1, 2014 – Dec. 31, 2014).

### *Secretary*

**Qualifications:** Any member of the OBA YLD Board of Directors may be elected by the membership of the division to serve in this office.

**Term:** One-year term (Jan. 1, 2014 – Dec. 31, 2014).

### *Board of Directors: (Two-year terms)*

The following directorships are open for election for a two-year term from Jan. 1, 2014, to Dec. 31, 2015.

**DISTRICT NO. 2:** Atoka, Bryan, Choctaw, Haskell, Johnston, Latimer, LeFlore, McCurtain,

## Tips From The Nominating Committee Chairperson

- The OBA YLD website has a sample nominating petition to give you an idea of format and information required by OBA Bylaws. You can also request a nominating petition from the Nominating Committee.
  - Signatures on the nominating petitions do not have to be from young lawyers in your own district (the restriction on districts only applies to voting).
  - Take your petition to local county bar meetings or to the courthouse and introduce yourself to other young lawyers while asking them to sign – it's a good way to start networking.
  - You can have more than one petition for the same position and add the total number of original signatures – if you live in a rural area, you may want to fax or email petitions to colleagues and have them return the petitions with original signatures by snail mail.
  - Don't wait until the last minute – the Nominating Committee will not accept nominating petitions received after 5 p.m. on Friday, Sept. 27, 2013.
  - Membership eligibility extends to Dec. 31 of any year which you are eligible.
  - Membership eligibility starts from the date of your first admission to the practice of law, even if outside of the state of Oklahoma.
- All candidates' photographs and brief biographical data are required to be published in the *OBJ*. All biographical data must be submitted by email. Petitions submitted without a photograph and/or brief résumé are subject to being disqualified at the discretion of the Nominating Committee.

McIntosh, Marshall, Pittsburg, Pushmataha and Sequoyah counties (1 seat).

**DISTRICT NO. 3:** Oklahoma County (2 seats).

**DISTRICT NO. 4:** Alfalfa, Beaver, Beckham, Blaine, Cimarron, Custer, Dewey, Ellis, Garfield, Harper, Kingfisher, Major, Roger Mills, Texas, Washita, Woods and Woodward counties (1 seat).

**DISTRICT NO. 6:** Tulsa County (1 seat).

### **DISTRICT NO. 8:**

Coal, Hughes, Lincoln, Logan, Noble, Okfuskee, Payne, Pontotoc, Pottawatomie and Seminole counties (1 seat).

### **AT LARGE:**

Statewide (2 seats).

### **AT LARGE RURAL:**

Any county other than Tulsa County or Oklahoma County (1 seat).

### **Nominating Procedure:**

Article 5 of the Division Bylaws requires that any eligible member wishing to run for office must submit a nominating petition to the Nominating Committee. The petition must be signed by at least 10 members of the OBA YLD. The original petition must be submitted by 5 p.m. on Friday, Sept. 27, 2013. A separate petition must be filed for each opening, except that a petition for a directorship shall be valid for one-year and two-year terms and at-large position.

A person must be eligible for division membership for the entire term for which elected.

### **Eligibility:**

All OBA members in good standing who were admitted to the practice of law 10 years ago or less are members of the OBA YLD. Membership is automatic – if you were first admitted to the practice of law in 2003 or later, you are a member of the OBA YLD!

### Election Procedure:

Article 5 of the Division Bylaws governs the election procedure. In October a list of all eligible candidates and ballots will be published in the *OBJ*. Deadlines for voting will be published with the ballots. All members of the division may vote for officers and at-large directorships. Only those members with the OBA roster addresses within a subject judicial district may vote for that district's director. The

members of the Nominating Committee shall only vote in the event of a tie. Please see OBA YLD Bylaws online for additional information at [www.okbar.org/members/YLD/Bylaws](http://www.okbar.org/members/YLD/Bylaws).

### Deadline:

Nominating petitions, accompanied by photograph and brief resume (in electronic form) for publication in the *OBJ*, must be received by the Nominating Committee chair-

person no later than **5 p.m. on Friday, Sept. 27, 2013**, at the following address:

Jennifer Heald Castillo  
Hall, Estill, Hardwick,  
Gable, Golden & Nelson, P.C.  
100 N. Broadway, Suite 2900  
Oklahoma City, OK 73102  
Tel: 405-553-2854  
[jcastillo@hallestill.com](mailto:jcastillo@hallestill.com)

*Mr. Vorndran practices in Shawnee and serves as the YLD chairperson. He can be reached at [joe@sdtlaw.com](mailto:joe@sdtlaw.com).*

# Wills, Trusts & Estates

7.5 HOURS OF  
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— MEETS —

## gender, race & class

Keynote Speaker **Alfred L. Brophy**

*Judge John J. Parker Distinguished Professor of Law  
University of North Carolina, Chapel Hill*



Commentator **William P. LaPiana**

*Rita and Joseph Solomon Professor of Wills, Trusts, and Estates  
New York Law School*

**September 28, 2013 • 8:30AM to 5:15PM • Sarkeys Law Center**

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## September

- 17 OBA Communications Committee meeting;** 12:15 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference with Doerner, Saunders, Daniel & Anderson LLP, Williams Center Tower II, Two West Second St., Ste. 700, Tulsa; Contact Dick Pryor 405-740-2944
- 18 OBA Alternative Dispute Resolution Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Jeffrey Love 405-286-9191
- Ruth Bader Ginsburg Inn of Court;** 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Donald Lynn Babb 405-235-1611
- 19 OBA Board of Governors meeting;** 11 a.m.; Oklahoma Bar Center, Oklahoma City; Contact John Morris Williams 405-416-7000
- Oklahoma Bar Foundation Trustee meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Nancy Norsworthy 405-416-7070
- 20 OBA Law Schools Committee meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Kenneth Delashaw 580-276-3136
- 21 OBA Title Exam Standards Committee meeting;** 9 a.m.; Tulsa County Bar Center, Tulsa; Contact Jeff Noble 405-942-4848
- 23 OBA Law-related Education PROS Training – Elementary Session;** 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Suzanne Heggy 405-556-9612
- OBA Litigation Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Renée DeMoss 918-595-4800
- OBA Juvenile Law Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Tsinena Thompson 405-232-4453
- 24 OBA Law-related Education PROS Training – Secondary Session;** 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Suzanne Heggy 405-556-9612
- OBA Bench and Bar Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Judge Barbara Swinton 405-713-7109



- OBA Mock Trial Committee meeting;** 5:30 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Judy Spencer 405-755-1066
- 25 New Admittee Swearing In Ceremony;** 9 a.m.; House of Representatives, State Capitol; Contact Board of Bar Examiners 405-416-7075
- 26 OBA Work/Life Balance Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Sara Schumacher 405-752-5565
- OBA Professionalism Committee meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Judge Richard Woolery 918-227-4080
- 27 OBA Professional Responsibility Commission meeting;** 9:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Diadra Goss 405-416-7063
- OBA Appellate Practice Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Collin Walke 405-235-1333

## October

- 1 OBA Management Assistance Program presents Opening Your Law Practice;** 9 a.m.; Tulsa County Bar Center, Tulsa; Contact Jim Calloway 405-416-7000
- OBA Government and Administrative Law Practice Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Gary Payne 405-297-2413
- 3 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 HEALTH LAW SECTION

*Please join us...*

**Wednesday, November 13, 2013**

In conjunction with the OBA Annual Meeting, the Health Law Section will be sponsoring a 6 hour CLE Track on Wednesday, November 13. Kim Holland, former Oklahoma Insurance Commissioner and current Executive Director of State Affairs for Blue Cross and Blue Shield, will be a featured speaker on health care reform from 11-11:50 a.m. See the Annual Meeting Schedule for the times and topics of the other presentations and for registration information.



12-1 p.m.

**Networking Lunch and  
Hot Topics Presentations**

Physician Collaboration – Recent Antitrust Opinion  
on NPHO: Mike Joseph, McAfee & Taft

Medicaid and Insure Oklahoma Update –  
Oklahoma Health Care Authority Attorney

Health Care Innovation Update – Jan Slater,  
Oklahoma Center for Healthcare Improvement

1-1:50 p.m.

**OBA Health Law Section  
and Oklahoma Health  
Lawyers Association  
Business Meetings**

5-6 p.m.

**Networking Cocktail  
Reception**

*Plan to Attend!*

### **Norman Attorney Appointed to OBA Board**

Norman attorney Jim Drummond has been appointed to the OBA Board of Governors, filling the seat of Supreme Court Judicial District 5 representative Sandee Coogan, who died in May. As District 5 governor, Mr. Drummond will represent an area comprised of Carter, Cleveland, Garvin, Grady, Jefferson, Love, McClain, Murray and Stephens counties. His term begins immediately and will expire Dec. 31, 2015.

"Jim Drummond makes an excellent addition to our governing board," said OBA President Jim Stuart of Shawnee. "He is an outstanding attorney who has an active history of distinguished service to the association. I believe he will be an essential member of our team while maintaining his busy practice in Norman."

Mr. Drummond is a private criminal defense lawyer handling trials and criminal appeals in federal and state courts in Oklahoma and Texas. He has extensive experience handling capital crime matters; from 2007-2008, he served as supervisor of the Oklahoma-Western Capital Habeas Corpus Unit, representing clients in all three Oklahoma federal judicial districts.

He is also licensed in Texas (active) and Arizona (inactive), as well as in all Oklahoma federal district courts, the Fifth, Sixth and Tenth Circuit Courts of Appeals, and the U.S. Supreme Court.

He currently serves as chair of the OBA Legal Ethics Advisory Panel. From 2001-2006 he was a voting member the Oklahoma Sentencing Commission, mandated to make recommendations to the Legislature on sentencing policy and to supervise the Oklahoma Criminal Justice Resource Center. He serves on the Criminal Justice Act Standing Committee for the Tenth Circuit Court of Appeals. He has co-produced a two-day seminar on defending methamphetamine cases and has presented at numerous other seminars, including most recently the effect of the *CSI* television series on jury deliberations in criminal cases and the forensic science of crime scenes. He and his wife, Deborah King Drummond, live in Norman.



*Jim Drummond*

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### **Register Now for Opening Your Law Practice Seminar**

The semi-annual "Opening Your Law Practice" seminar is set for Oct. 1 in Tulsa and Oct. 8 in Oklahoma City. This free seminar is perfect for lawyers setting up



practice, whether they are newly admitted, returning to private practice, or just venturing out on their own. The program will address the nuts and bolts of setting up a law practice, including marketing, law office technology, client relations, professionalism, financial management, ethics and trust

accounting, malpractice insurance and risk management. Register online at [www.okbar.org/members/CLE/2013/NewLawPractice](http://www.okbar.org/members/CLE/2013/NewLawPractice) or contact Renee Montgomery, [reneem@okbar.org](mailto:reneem@okbar.org), 405-416-7029.

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### **Lawyers Needed to Coach High School Mock Trial Teams**

Have you considered working with students to increase their self-confidence and knowledge about our justice system? The time commitment is flexible and lasts about two months. The OBA's Mock Trial Program is seeking attorney coaches, who will be assisted by teacher coaches in Oklahoma, Tulsa, Canadian, Cleveland, Payne and Kingfisher counties. Schools are still registering, so the list is not final yet. If you have questions or are interested, contact Coordinator Judy Spencer, [mocktrial@okbar.org](mailto:mocktrial@okbar.org), 405-755-1466.

## Get Involved in the Young Lawyers Division

If you have been a lawyer less than 10 years and are interested in becoming more involved in the OBA Young Lawyers Division, consider running for a position on the YLD Board of Directors. The YLD Board of Directors has monthly meetings that are typically held on Saturday mornings in Tulsa and/or Oklahoma City. Submit nominating petitions containing no less than 10 signatures no later than 5 p.m., Sept. 27, to Jennifer Castillo at [jcastillo@hallestill.com](mailto:jcastillo@hallestill.com). More information is available at [www.okbar.org/members/YLD/NominatingInfo](http://www.okbar.org/members/YLD/NominatingInfo).

## OBA Day of Service Is Here!

It's not too late to get involved in the OBA Day of Service! More than 40 county bar associations and legal organizations have already signed up, supporting President Jim Stuart's vision of celebrating attorneys who serve and give back. The OBA Young Lawyers Division is helping coordinate activities; if you'd like to learn more about the Day of Service or want to submit a project, email YLD Community Service Committee Chairperson Brandi Nowakowski at [bnowakowski@thewestlawfirm.com](mailto:bnowakowski@thewestlawfirm.com) ASAP!



## Free LHL Discussion Groups Available to OBA Members

"Practicing While Sick or Injured" will be the topic of the Oct. 3 meetings of the Lawyers Helping Lawyers discussion groups in Oklahoma City and Tulsa. Each meeting, always the first Thursday of each month, is facilitated by committee members and a licensed mental health professional. In Oklahoma City, the group meets from 6 – 7:30 p.m. at the office of Tom Cummings, 701 N.W. 13th St. 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 are encouraged to ensure there is food for all.

## 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](mailto:carolm@okbar.org).



## OBA Leadership Academy 4 Gets Underway

*OBA Leadership Academy 4 participants attended their first of five sessions Sept. 11-12 in Oklahoma City. Future bar leaders took time out from their training to enjoy a scenic sunset cruise along the Oklahoma River.*

*(From left) Lorena Rivas Tiemann, Tulsa; Blake Lynch, McAlester; Jimmy Oliver, Stillwater; Adam Christensen, Oklahoma City; and Ashley Rahill, Oklahoma City.*



*Mary Caldwell of Oklahoma City puts leadership training into action as she takes the helm during the Oklahoma River cruise.*

# Kudos

**Robert H. Mitchell** of Sweet Law in Oklahoma City received the OU Physicians Professional Liability Defense Panel Outstanding Service Award in recognition of his service to OU's health care providers and physicians over the past 40 years.

**Roy John Martin**, general counsel for the Oklahoma Department of Consumer Credit in Oklahoma City, was recently appointed by the State Regulatory Registry Board of Managers to serve on the Mortgage Testing and Education Board.

**Dwight L. Smith** of Dwight L. Smith PLLC in Tulsa was elected to a third consecutive three-year term as a member of the ABA's House of Delegates representing the Solo, Small Firm and General Practice Division at the ABA's Annual Meeting in San Francisco. Mr. Smith was also appointed Chair of the ABA Standing Committee on the Delivery of Legal Services.

The Tulsa County Bar Association presented numerous awards at its annual banquet in August. The award winners were: **Daniel Gomez** at Conner & Winters, Outstanding Young Lawyer; **Judge Doris Fransein**, Outstanding Senior Lawyer; **Kathy Neal** of McAfee & Taft, Neil Bogan Professionalism Award; **Sarah E. Hansel** of

Hall, Estill, Hardwick, Gable, Golden & Nelson PC, Roger R. Scott Community Service Award; **G. Michael Lewis** of Doerner, Saunders, Daniel & Anderson LLP, James C. Lang Mentoring Award; and **Norma Eagleton** of Eagleton, Eagleton & Harrison Inc., Gary C. Clark Distinguished Service Award.

**Judge Milley Otey**; **Leonard Pataki** of Sheehan Pipe Line Construction Co.; **Fred Slicker** of Slicker Law Firm PC; and **Bill Newton** of Newton, O'Connor, Turner & Ketchum PC were awarded the Tulsa County Bar Association's Golden Rule Awards.

Tulsa County Bar Association President **Jim Gottwals** presented the following President's Awards at the TCBA annual banquet: **Faith Orlowski** of Sneed Lang PC for assistance throughout the year; **Judge William Kellogg** for his efforts building a bridge between the judiciary and the bar; **Christy Caves** of TU Law School and **Grant Lloyd** of Richards & Connor PLLP for their efforts in the TCBA mentoring program; **Michael Ashworth** of Schroeder & Associates for his efforts on the Bench and Bar and Think Pink project; **Zach Smith** of Gorospe & Smith and **Brandon Heimdale** of the TCBA for their efforts renovating the TCBA website; and **Leonard Pataki** of Doerner, Saunders, Daniel & Anderson LLP, **Judge Jane Wiseman** and **Molly Aspan** of Hall, Estill, Hardwick, Gable, Golden & Nelson PC, **Chad McLain** of Graves

McLain PLLC and **Robert Sartin** of Barrow & Grimm who were all members of the TCBA executive director search committee. Additionally, the Tulsa County Bar Foundation presented awards to four attorneys: **Bill Sanders** of Explorer Pipeline Company was recognized for his role on the TCBF Golf Committee; **Kimberly Moore-Waite** of Legal Aid Services of Oklahoma for her service as Law Week chair; **Matthew Farris** of Rogers and Bell served as Community Outreach chair; and **Chad McLain** of Graves McLain PLLC for his work on the Capital Campaign Committee.

**Donita Bourns Douglas** has been elected president of the Association of Continuing Legal Education (ACLEA), an organization devoted to improving the performance of continuing legal education professionals. Ms. Douglas is vice president of professional services for InReach.

# On The Move

**Crowe & Dunlevy** announces that **Gary A. Bryant**, former Crowe & Dunlevy attorney and partner at Mock, Schwabe, Waldo, Elder, Reeves & Bryant has joined the firm's Oklahoma City office as a director.

**Ross Molina Oliveros PC** announces the opening

of its new Oklahoma City office. **John Morozuk** recently joined the firm and will manage its Oklahoma City office. Mr. Morozuk's practice focuses on pipeline gathering and transportation, oil and gas marketing, natural gas storage and processing as well as exploration and production law.

**Jeremy R. Fitzpatrick** of Oklahoma City has joined RKI Exploration & Production LLC as legal and regulatory director. He will be responsible for the company's legal and compliance matters. Previously Mr. Fitzpatrick served in various capacities at the Kirkpatrick Oil Company. He earned his undergraduate and law degrees from OU.

**GableGotwals** announces **Adam C. Doverspike** has joined the firm as an associate in the Tulsa office. His practice will focus on energy industry litigation. Mr. Doverspike clerked for Chief Judge Gregory K. Frizzell and practiced for three years in Sidley Austin LLP's Washington D.C. Energy Practice Group. He graduated from the Duke School of Law in 2009.

**Kris Ted Ledford** announces the formation of Ledford Law Firm PLLC. His practice will focus on representation of plaintiffs and defendants in civil litigation matters. Mr. Ledford's plaintiff's practice focuses on representing businesses and individuals in cases involving commercial disputes, personal injury, insurance bad faith, medical malpractice, wrongful termination and toxic torts. The law office is located at

Heritage Professional Plaza, 425 E. 22nd St., Suite 101, Owasso. The firm's phone number is 918-376-4610.

**Mercy Health Inc.** recently named **A. Brooke Timmons**, vice president of government relations. Brooke will be responsible for directing state and federal legislative issues and positions for the corporation. Ms. Timmons earned her J.D. from TU in 1998.

**Michael May** of Tulsa and **Cody Thomas** of Edmond have joined Pray Walker's energy law group as associates and will focus on energy law and title examination. Mr. May is a 2011 graduate of OU Law School and Mr. Thomas graduated from OCU College of Law in 2011.

## At The Podium

**Tammy Wescott**, Tulsa County assistant district attorney, presented "The Proactive Prosecutor in Alternative Courts" at the 19th Annual National Association of Drug Court Professionals Training Conference in Washington, D.C.

**John D. Rothman** of Dispute Resolution Consultants presented "Ethical Challenges & Dilemmas in Mediation and Arbitration" at the Oklahoma Paralegal Association at its summer seminar.

**Michael C. Turpen** of Riggs, Abney, Neal, Turpen, Orbison and Lewis

presented the keynote address "Seven Reasons Why Being an Attorney is the Best Job in the Whole Wide World" at the Tulsa County Bar Association's annual meeting and banquet.

**William B. Federman** of Federman & Sherwood spoke at the Business Law Section of the 2013 ABA annual meeting in San Francisco. His speech addressed issues involving securities class actions as well as shareholder derivative lawsuits.

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

Submit news items via email to: Jarrod Beckstrom  
Communications Dept.  
Oklahoma Bar Association  
(405) 416-7084  
barbriefs@okbar.org

**Articles for the Oct. 12 Issue must be received by Sept. 16.**

**R**obert “Bob” Beck of Norman died on Aug. 7, 2013. He was born Sept. 14, 1947 in Indianapolis, Ind. He graduated Putnam City High School. Following graduation, he served two-years in the U.S. Army. He received his bachelor’s degree from OSU and after working for Kodak and as a reporter in Rochester, N.Y., he moved back to Oklahoma and earned his law degree from OU in 1978. He practiced law in Edmond and later became a judge in the Oklahoma City court system. Mr. Beck served several years as a judge and then resumed practicing law in Oklahoma City. He spent the last half of his career working with computers and eventually worked at CompuServe and co-authored several books on computer software. Memorial donations can be made to The Best Friends Animal Society.

**P**aul C. Duncan of Oklahoma City died Sept. 5, 2013. Born Oct. 1, 1940, he was a graduate of Northwest Classen High School where he was president of the honor society. He earned his undergraduate and law degrees from OU, being admitted to the bar in 1964. Following graduation, he entered private practice at Pierce, Mock, Duncan, Couch and Hendrickson. In 1971, Mr. Duncan became civil division chief for Attorney General Larry Derryberry, a post he held for eight years. He returned to private practice from 1978 to 1990, then served as general counsel to the Oklahoma State and Education Employees Group Insurance Board. He retired in 2010. Mr. Duncan was Gold

Life Master duplicate bridge player. He was also a fervent OU football fan, attending every home game from 1952 to 2001 when family illnesses caused him to miss a few. A memorial service is planned for Monday, Sept. 16 at 10:30 a.m. at Church of the Servant, 14343 N. MacArthur, Oklahoma City. Memorial contributions can be made in Mr. Duncan’s name to the Muscular Dystrophy Association or the University of Oklahoma General Scholarship Fund.

**W**illiam Haden “Bill” Haworth of Ft. Gibson died Sept. 1, 2013. He was born on Sept. 26, 1926 in Ft. Gibson. He graduated from Ft. Gibson High School where he played basketball. He served in World War II and served in the Pacific theater. Trained as a sharpshooter, he often served as chauffeur to the staff general and visiting dignitaries, including John Wayne who employed Mr. Haworth after he was discharged. He was elected to the Oklahoma House of Representatives at the age of 21 and earned his undergraduate degree from Northeastern State College and his law degree from TU while serving in the legislature. He served 10 years in the lower house and served as floor leader and minority whip. He was also elected to one term in the state senate in 1962. After leaving the legislature, he operated The Haworth Company, an insurance, real estate and investment firm. He served as district judge from 1972 to 1977. He loved politics, ranching, business, boating, his animals and a good

game of cards. He was a member of the Cattlemen’s Association, Wagoner County Farm Bureau, Bedouin Shrine Temple and was a 32nd degree mason.

**R**oger Owen Housley of Norman died on Aug. 4, 2013. He was born on April 10, 1945 and was raised in Cushing. He graduated as class president from Cushing High School in 1963. He received his bachelor’s degree from OU in 1967 and went on to graduate number one in his class from the OU College of Law in 1970. Mr. Housley also served as editor of the *OU Law Review*. He began his career in McAlester where he practiced law until 1978 and served as president of the Pittsburg Country Bar Association. He began work in private practice in Norman in 1978. Aside from his family, he loved adventure and was an avid traveler, skier and SCUBA diver. Memorial donations can be made to a charitable organization of the giver’s choice.

**J**ohn Richard Kunkel died on Aug. 23, 2013. He was born in Norman on Dec. 7, 1935. He graduated from Norman High School in 1953. He received his bachelor’s degree from OU in 1956 and his J.D. from OU in 1959. He was the owner of Norman Supply Company from 1979 until 2013. He was a passionate golfer and shared his love of the game with friends and family regularly. Memorial donations can be made to the OU Foundation.

**S**teven Mortimer of Yukon died on Aug. 7, 2013. He was born July 31, 1970. He earned his J.D. from OU and was admitted to the bar in 2003.

**G**ary Edison Payne of Oklahoma City died on Aug. 27, 2013. Gary was born on Oct. 31, 1944 in Denison, Texas and grew up in Madill. He received his bachelor's degree from OSU. **He served in the Oklahoma Army National Guard while attending law school.** He received his law degree from the OU College of Law in 1969. He was elected to Oklahoma House of Representatives in 1968 where he represented Atoka, Coal, Love and Marshall Counties. He had a long, distinguished law career in Atoka, Oklahoma City and Edmond. He was a current board member of the National Association of Administrative Law Judges. He served on the Edmond School Board and was chief administrative law judge for the Oklahoma State Department of Health and more recently a municipal judge for the City of Oklahoma City. Memorial donations can be made to the Oklahoma Baptist Home for Children or the Quail Springs Baptist Church Student Missions.

**A**lma Faye Posey Washington of Oklahoma City died Sept. 31, 2013. She was a graduate of Douglass High School and earned her undergraduate degree from Central State College in 1967. In 1984 she received her J.D. from OCU. She was a member of Zeta Phi Beta Sorority, holding local, regional and national offices.

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### ZOMBIES, RUN!

Like to run? Afraid of zombies? Check out the mobile app *Zombies, Run!* Available for iOS and Android. If a zombie chasing after you isn't motivation to run a little faster, we don't know what is!



[www.okbar.org/members/worklifebalance/tips](http://www.okbar.org/members/worklifebalance/tips)

### ONLINE CLE

Online and video CLE seminars make it easy to cram some last-minute CLE into these last few months of 2013.



[www.okbar.org/members/CLE](http://www.okbar.org/members/CLE)



### PHOTO GALLERY

The Second Annual Lawyers Helping Lawyers Assistance Program Cornerstone Banquet was a hit! Relive the memories by checking out the online photo gallery.

[www.lhlfoundation.org/events](http://www.lhlfoundation.org/events)

## SERVICES

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**STATE RANKINGS.** Recent Births to Unmarried Women 2011. Utah ranked 1st Oklahoma ranked 40th. <http://www.census.gov/prod/2013pubs/acs-21.pdf> Ask how the Mormons do it. Contact Choate, Water Engineering, 209 East Broadway Avenue, Seminole, 74868, 405-382-8883, PottawatomieOK@live.com.

## OFFICE SPACE

**MIDTOWN TULSA LAW OFFICE SUITES** located near TU, four miles from downtown, includes 5 newly renovated offices, reception area, kitchen, large conference room, outdoor patios, parking lot. For more information call 918-582-6900.

**OFFICE SPACE AVAILABLE** 71st & Yale. Executive and smaller offices available. Conference room, reception area, kitchen, wifi internet and telephone available. Rent is negotiable. Traditional and virtual tenancy are possible. Interested contact Paul Gee pgee@bladesgeelaw.com or David Blades dblades@bladesgeelaw.com or (918) 814-3411.

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OFFICE SHARE FOR RENT: NW Classen, OKC. Telephone, library, waiting area, receptionist, telephone answering service, desk, chair, file cabinet, included in rent; one for \$290, \$390, and \$450 per mo. Free parking. No lease required Gene or Charles 405-525-6671.

SOUTH OKLAHOMA CITY LAW FIRM seeks attorney for office sharing arrangement. Rent is negotiable. The firm may refer clients, and or have available additional legal work. Inquiries should contact Reese Allen at 405-691-2555 or by fax at 405-691-5172.

DOWNTOWN OKC AV FIRM has office space available for sharing arrangement. Rent is negotiable. Includes office space and overhead costs such as firm phone, copier, fax, conference room and receptionist services. The firm may refer clients or have available additional legal work. Inquiries should contact Megan at 405-605-2375.

## POSITIONS AVAILABLE

COLLINS, ZORN & WAGNER PC, an AV-rated Oklahoma City firm, seeks an EXPERIENCED PARALEGAL for assistance in preparing cases for trial and attending trials across the state. Position requires computer knowledge, trial assistance experience, organization, self-motivation and all aspects of moving a case toward trial. Please submit résumé and salary requirements to "Box BB," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, 73152.

LAW FIRM SEEKING ASSOCIATE ATTORNEY in downtown Oklahoma City, with 3-10 years experience in Indian Law and litigation, with a commitment to representing tribes and tribal organizations. Preference will be given to attorneys with demonstrated experience and/or education in American Indian Law. Applicant must be licensed to practice in at least one jurisdiction; membership in good standing in the Oklahoma Bar is preferred, if not a member of the Oklahoma Bar, the applicant must pass the Oklahoma Bar within 15 months. Applicant should possess excellent analytical, writing and speaking skills and be self-motivated. Compensation commensurate with experience. Excellent benefits. Please submit the following required documents: a cover letter that illustrates your commitment to promoting tribal government and Indian rights, current résumé, legal writing sample, proof of bar admission, and contact information for three professional references to: [legalapplications@yahoo.com](mailto:legalapplications@yahoo.com).

## POSITIONS AVAILABLE

THE CITY OF ARDMORE is seeking qualified candidates for the newly created position of City Attorney. Applicants must be members in good standing of the Oklahoma Bar Association with a minimum of four (4) years of experience in general areas of practice including commercial and real estate transactions. Preference will be given to applicants with experience in representing governmental entities. The City offers excellent benefits and competitive salaries. Interested candidates should submit an application, along with a writing sample, to the attention of the Human Resources Director at 23 S. Washington, Ardmore, Oklahoma 73402 by September 30, 2013.

AV RATED, OKLAHOMA CITY INSURANCE DEFENSE LAW FIRM, located in Bricktown, with emphasis on commercial trucking litigation, seeks associate attorney with 3-4 years of litigation experience and excellent writing skills. Compensation package is commensurate with level of experience. Please send résumé in confidence via email to [shawna@millsfirm.com](mailto:shawna@millsfirm.com).

THE LATIMER COUNTY DISTRICT ATTORNEY'S OFFICE is seeking an Assistant District Attorney for its Wilburton Office. The office is a one-attorney office. Primary responsibilities include the criminal prosecution of all felony and misdemeanor cases, provide advice to local law enforcement and county officials, and perform other duties as assigned. Salary DOE. Applicant must have a J.D. from an accredited law school; legal experience in criminal law and prior courtroom experience preferred. Must be member of good standing with the Oklahoma State Bar. Applicants may submit a résumé, postmarked no later than SEPTEMBER 30, 2013, to the following address: District Attorney's Office, 100 S. Broadway, Room 300, Poteau, OK 74953, 918-647-2245, Fax: 918-647-3209.

OFFICE MANAGER/LEGAL SECRETARY NEEDED FOR SMALL DOWNTOWN OKC FIRM. Excellent bookkeeping and organizational skills required. Civil and criminal experience preferred. Competitive salary and benefits. Send résumé, references, and writing sample to "Box G," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

SMALL TULSA LITIGATION FIRM seeks experienced research, discovery, and brief writing attorney. Prefer 3+ years experience, but will consider all candidates with strong writing abilities. Excellent opportunity for growth. Salary plus bonuses and benefits. Please submit a cover letter, résumé and writing samples to: "Box CC," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

NW OKC LAW FIRM SEEKS LEGAL ASSISTANT. Should possess knowledge of Microsoft Office. Duties include document drafting, client relations, and case management. Civil, domestic, PI, and/or med-mal experience preferred. FT or PT. Attention to detail and proof reading is very important. Submit résumé and references via fax 405-767-0529.

## POSITIONS AVAILABLE

COLLINS, ZORN & WAGNER PC, an AV-rated Oklahoma City firm, seeks COMPETENT AND CONFIDENT ATTORNEY with 1-3 years experience. Firm specializes in civil rights, employment law and insurance defense cases. Position will emphasize trial prep; must be able to conduct discovery, take depositions and attend court proceedings throughout the state and in Federal Court. Please submit résumé and salary requirements to "Box AA," Oklahoma Bar Association, PO Box 53036, Oklahoma City, OK 73152.

OKLAHOMA COURT OF CRIMINAL APPEALS LAW CLERK POSITION. Immediate opening. Permanent position for Law Clerk to Judge Clancy Smith, Court of Criminal Appeals. Duties will include review of felony and capital cases on certiorari, direct appeal and post-conviction, involving: review of briefs, the original trial records, evidence and transcripts, research of applicable law, recommending case dispositions; as well as drafting memoranda to the judges, orders, opinions for publication and in summary form and special opinions. Criminal law, appellate procedure and constitutional law experience preferred. Excellent research and writing skills required. Please send résumé with references and writing sample to the attention of Clancy Smith, Vice Presiding Judge, Court of Criminal Appeals, 2100 N. Lincoln, Suite 2, Oklahoma City, OK 73105. Applications to be received by September 16, 2013. An Equal Opportunity Employer.

ABOWITZ, TIMBERLAKE, DAHNKE & GISINGER, a mid-sized AV-rated law firm located in downtown Oklahoma City, is seeking to add an Associate Attorney with at least 5-7 years' experience in litigation. Successful candidate must have good research & writing skills, the ability to manage a fast paced case load, depositions, motions, trial experience, as well experience in insurance coverage disputes. Our firm offers a competitive salary & benefits. Please submit résumé, references, salary requirements & writing sample to Diana Akerman at [diana.akerman@abowitzlaw.com](mailto:diana.akerman@abowitzlaw.com).

INSPECTOR GENERAL - Under administrative direction of Commissioner or designee & serving as an ombudsman by, receiving, investigating, evaluating & presenting facts & findings concerning complaints or problems identified by or concerning Department personnel. In add, this position will partner w/other state agencies as needed to conduct internal investigation. Requires: Bachelor's degree & at least 5 yrs of prof. exp. in field of administrative investigations or law enforcement or an equivalent combination of education and exp. Pref. may be given to individuals who have been certified by Council for Law Enforcement and Education Training (CLEET). \$70,000+. ODMHSAS offers excellent benefit & retirement packages; Send résumé w/cover letter referencing job title & #2014-11 CO to address below w/copy of your most recent performance evaluation. Reasonable accommodation to individuals w/disabilities may be provided upon request. Application period: 08-28-13 - 9-27-12. EOE [humanresources@odmhsas.org](mailto:humanresources@odmhsas.org).

## POSITIONS AVAILABLE

DOWNTOWN OKLAHOMA CITY, 10 LAWYER, AV RATED FIRM SEEKS ATTORNEY, a man or woman of character (organized, determination, humility and loyalty) with 3-5 years experience in estate planning and commercial law and background in accounting. An advanced degree in accounting or CPA is preferred. Bonus opportunity is available and salary is commensurate with experience. Applications will be kept in the strictest confidence. Under cover letter, send résumé and transcripts to "Box E," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

NW OKC LAW FIRM SEEKS FULL-TIME LEGAL SECRETARY. Criminal law experience preferred. Should possess knowledge in Microsoft Office. Duties include scheduling, maintaining files, filing, and other duties as needed. Submit résumé and references via fax 405-767-0529.

THE MUSCOGEE (CREEK) NATION IS SEEKING APPLICATIONS for the position of Assistant Attorney General. The Assistant Attorney General is directly responsible to the Attorney General and will assist in carrying out any function, duty or responsibility delegated to the Attorney General. The Assistant Attorney General will provide assistance, advice and counsel to National Council Representatives, Officers and employees of the Muscogee (Creek) Nation and Boards and Committees on matters of official interest. Applicant must be a graduate of an accredited law school, knowledgeable and/or have experience of Federal Indian Law, licensed to practice law in any state and must be in good standing with that jurisdiction, willing to become licensed to practice law in Oklahoma, must be a member of the Muscogee Nation Bar Association in good standing, or be eligible to become a member. Submit résumé, job application, salary requirement, list of references and writing sample no later than May 10, 2013 to Muscogee (Creek) Nation Personnel Services, P.O. Box 580, Okmulgee, OK 74447. Please visit [www.muscogeenation-nsn.gov](http://www.muscogeenation-nsn.gov) for the job application.

SMALL TULSA FIRM seeks associate with 0-3 years experience. We are looking for a highly motivated person who will handle probate and estate planning matters. Attention to details required. Helpful if candidate has real estate and oil and gas background, as well as familiarity with guns and carry licenses. Excellent opportunity for growth. Salary plus bonuses. Please submit résumé and salary requirements to "Box L," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

THE OKLAHOMA TAX COMMISSION, LEGAL DIVISION seeks an attorney for an opening in its OKC office, Protests/Litigation Section. Applicants must be licensed to practice law in Oklahoma. 0-5 years' experience preferred. Submit résumé and writing sample to Abby Dillsaver, Deputy General Counsel, 120 N. Robinson, Suite 2000W, Oklahoma City, OK 73102-7801. The OTC is an equal opportunity employer.

## POSITIONS AVAILABLE

FENTON, FENTON, SMITH, RENEAU & MOON, AN AV RATED OKLAHOMA CITY FIRM, seeks an associate attorney with 0-3 years' experience. Excellent research and writing skills essential. Deposition experience a plus. The attorney will work with partners on insurance defense, medical malpractice and products liability cases. Health insurance and other benefits included. Résumé, transcript and writing sample are required. Send résumés to Attn: Denise Abston, 211 N. Robinson, Ste. 800N, Oklahoma City, OK 73102.

LITIGATION PARALEGAL. Love's Travel Stops & Country Stores, Inc. seeks a full-time litigation paralegal. To view the job description and apply for the position please visit our website at [www.loves.com/jobs](http://www.loves.com/jobs).

## 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](http://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:

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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.

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OKLAHOMA CHILD SUPPORT SERVICES,  
a division of the Oklahoma Department of Human Services  
Announcement 13-M161U

### ATTORNEY IV, Tulsa OCSS II

OKLAHOMA CHILD SUPPORT SERVICES is seeking a full-time attorney for our Tulsa OCSS II Office located at 3840 S. 103rd E. Ave., Ste. 109 Tulsa, Oklahoma 74146. The position involves negotiation with other attorneys and customers as well as preparation and trial of cases in child support related hearings in district and administrative courts. In addition, the successful candidate will help establish partnership networks and participate in community outreach activities within the service area in an effort to educate others regarding our services and their beneficial impact on families. In depth knowledge of family law related to paternity establishment, child support, and medical support matters is preferred. Preference may also be given to candidates who live in or are willing to relocate to the service area.

Active membership in the Oklahoma Bar Association is required. This position has alternate hiring levels. The beginning salary is at least \$40,255.08 annually with an outstanding benefits package including health & dental insurance, paid leave & retirement. Interested individuals must send a cover letter noting announcement number # **13-M161U**, an OKDHS Application (Form 11PE012E), resume, three reference letters, and a copy of current OBA card to: Department of Human Services, Human Resource Management Division, Box 25352, Oklahoma City, OK 73125 or email the same to [jobs@okdhs.org](mailto:jobs@okdhs.org). OKDHS Application (Form 11PE012E) may found at <http://www.okdhs.org/librabry/forms/hrmd>. Applications must be received no earlier than 8:00 am on September 13, 2013, and no later than 5:00 pm on October 2, 2013. For additional information about this job opportunity, please email [Marian.Amoah@okdhs.org](mailto:Marian.Amoah@okdhs.org).

**THE STATE OF OKLAHOMA IS AN EQUAL OPPORTUNITY EMPLOYER**

# May It Please the Court

By Lisbeth McCarty

Years ago, I was sitting in the courtroom of the late Judge Twyla Mason Gray in Oklahoma County, waiting for an evidentiary hearing to begin. Before the evidentiary hearing, Judge Gray was presiding over a revocation hearing.

I was happy I was not the defendant's lawyer in that case, because the defendant was, proverbially, his own worst enemy. The state's evidence showed that a few weeks after having received a suspended sentence, the defendant had snatched a purse from a woman in Bricktown. Alert pedestrians had thwarted the crime by tackling the defendant. That attempt at a purse-snatching was what had



caused the state to file an application to revoke.

Judge Gray, with what appeared to be patience tinged with exasperation,

said to the defendant, "It wasn't that long ago when you were before me. When I gave you the suspended sentence, I told you that you were not supposed to drink, take drugs or engage in any criminal activity."

The defendant, who apparently had not ever understood the four-syllable word "activity," then blurted out with the utmost sincerity, "But Judge, you never told me I couldn't do any new crimes!"

I'm pretty sure I saw Judge Gray attempt to suppress a smile as she pronounced her verdict: Suspended sentence revoked in full.

*Ms. McCarty practices in Norman.*

# NEW CHALLENGES *for* NONPROFIT ORGANIZATIONS

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## **Registration for Nonprofit Organization Executives**

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