

THE Oklahoma Bar JOURNAL

Volume 85 ♦ No. 5 ♦ Feb. 15, 2014



Alternative Dispute Resolution

ALSO INSIDE

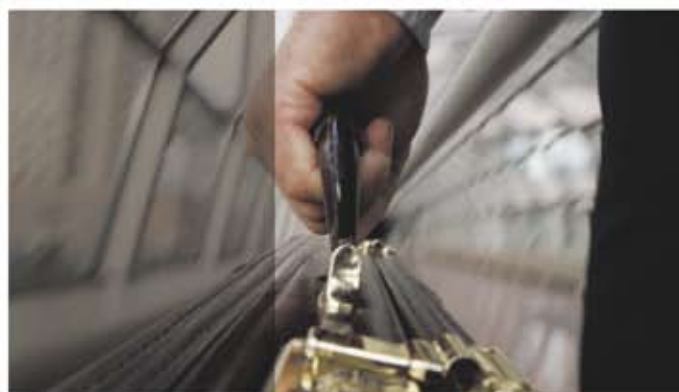
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ALTERNATIVE DISPUTE RESOLUTION
EDITOR: JUDGE MEGAN SIMPSON

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Protecting Oklahoma from Judicial Regression

By Renée DeMoss

All OBA members should be aware of proposed bills coming out of the Oklahoma Legislature concerning Oklahoma's judiciary and the courts. Although it is not certain at this point which measures, if any, will survive the legislative process, various bills have been introduced that would essentially eliminate the independence of the third branch of government — the one branch designed to be free from politics. Some proposed bills would, in fact, allow the legislative and executive branches to control Oklahoma courts, contrary to our Constitution.

Oklahoma lawyers must be prepared to help preserve our democracy. We must ensure that our judges are able to reach decisions based only on the facts and law of a case, free from political pressure or other outside influences.

Bills proposed by our elected representatives would destroy our current non-partisan system of selecting justices and appellate judges and would: 1) give the governor, speaker of the House and Senate president pro tempore the power to decide who becomes a justice or appellate judge, 2) require our judiciary to undergo subjective "performance evaluations" in non-public sessions by non-lawyer political appointees of the governor and House and Senate leaders on issues such as legal knowledge, communication skills and administrative performance, 3) limit the number of years certain judiciary members can serve on the bench, 4) remove justices and appellate judges from the bench at age 75 and 5) increase the percentage requirement for retention of justices and appellate judges from a majority to 60 percent.¹

PROPOSALS INJECT POLITICS

Many of these proposals are promoted under the title of "Judicial Reform," which is, quite simply, a mischaracterization. This is not reform — it is regression. These proposals would inject politics into Oklahoma courts and take us back in time to a system that easily lends itself to corruption, which Oklahomans have already lived through.

Until the 1960s, Oklahoma judges obtained positions on the bench by running in contested party elections. Then, in 1965, a bribery scandal involving three Oklahoma Supreme Court justices came to light. Ultimately, Justice N.S. Corn testified that he took a bribe of \$150,000 to orchestrate the reversal

of a tax case for an Oklahoma business. Of the \$150,000, he paid \$7,500 each to two other justices to secure their votes. The cover story, if needed, was that the funds were for campaign expenses. All three justices were jailed, impeached or resigned. The events garnered national attention. *Newsweek* magazine called Ok-

lahoma's system "Cash and Carry Justice." *Time* magazine proclaimed that "little in U.S. judicial history comes close to matching this scandal."²

This scandal led to judicial reform in Oklahoma. The method of contested judicial elections for selecting appellate judges was scrapped. After considerable debate and an analysis of virtually every other possible system of judicial selection, the Judicial Nominating Commission (JNC) was proposed, and the OBA House of Delegates voted to approve and endorse it in principle in 1967. In 1969, Oklahoma voters overwhelmingly approved amendments to the

cont'd on page 361

*OBA members
must be
vigilant in
preserving our
democracy
and protecting
our judiciary.*



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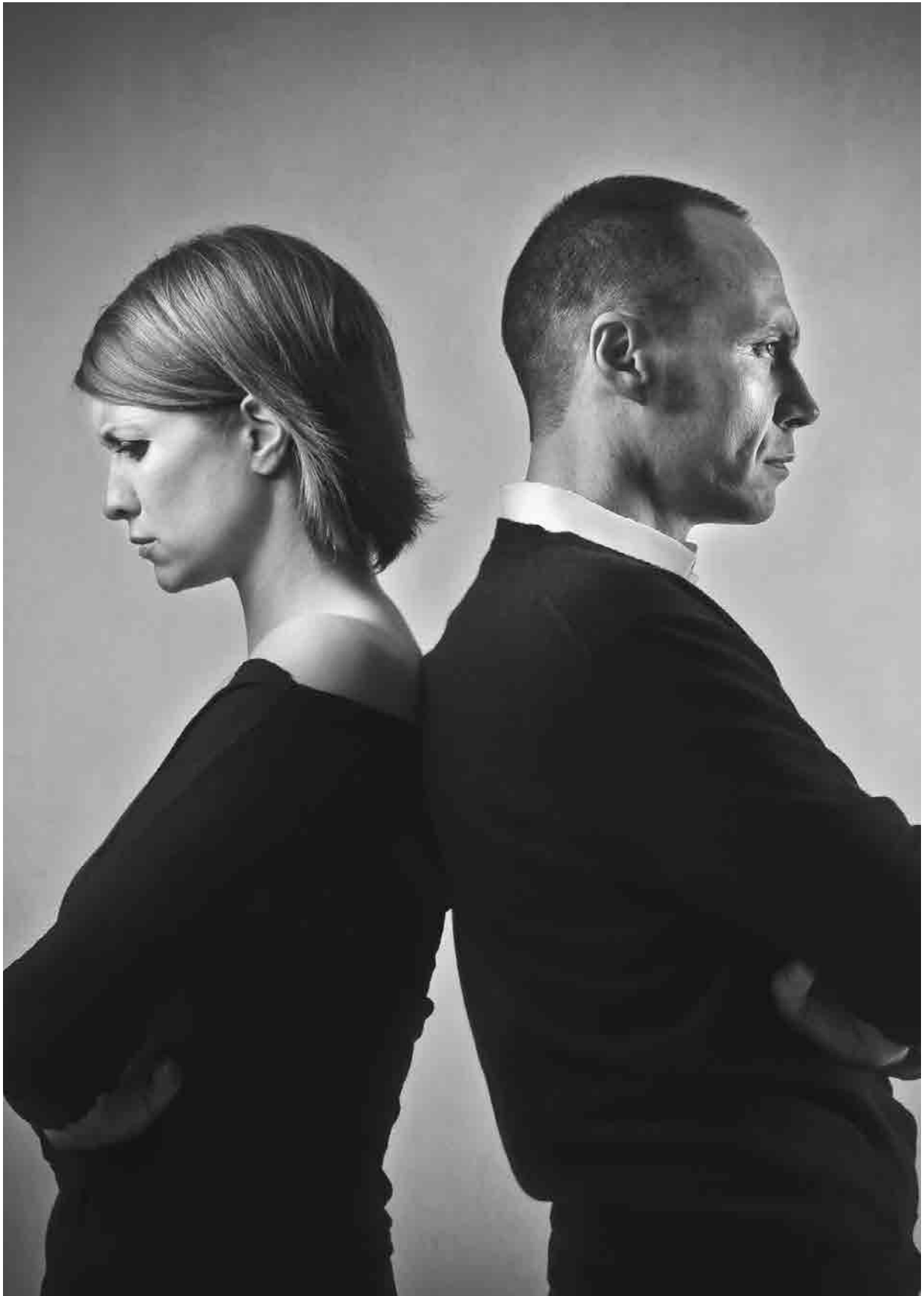
FEBRUARY 2014

- 17 **OBA Closed** – President's Day observed
- 18 **OBA Bench and Bar Committee meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City with OSU Tulsa, Tulsa; Contact Judge David Lewis 405-556-9611
- OBA Communications Committee meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City with Doerner Saunders Law Firm, 2 W. 2nd St. #700, Tulsa; Contact Dick Pryor 405-740-2944
- OBA Work/Life Balance Committee meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Sarah Schumacher 405-752-5565
- OBA Legal Intern Committee meeting**; 3 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Candace Blalock 405-238-0143
- OBA Government and Administrative Law Practice Section meeting**; 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Scott Boughton 405-717-8957
- 19 **OBA Professionalism Committee meeting**; 1:30 p.m.; Oklahoma Bar Center, Oklahoma City with OSU Tulsa, Tulsa; Contact Frederick Slicker 918-496-9020
- 19-20 **OBA Law-related Education Close-Up program**; 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Jane McConnell 405-416-7024
- 20 **OBA Women in Law Committee meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Allison Thompson 918-295-3604
- OBA Mock Trial Committee meeting**; 5:30 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Judy Spencer 405-755-1066
- 21 **OBA Professional Responsibility Commission meeting**; 9:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Dieadra Goss 405-416-7063
- OBA Access to Justice Committee meeting**; 10 a.m.; Oklahoma Bar Center, Oklahoma City with OSU Tulsa, Tulsa; Contact Laurie Jones 405-208-5354
- OBA Taxation Law Section meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Abby Dillsaver 405-319-8550
- For more events go to www.okbar.org/calendar**

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

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THE OKLAHOMA BAR JOURNAL (ISSN 0030-1655) IS PUBLISHED THREE TIMES A MONTH IN JANUARY, FEBRUARY, MARCH, APRIL, MAY, AUGUST, SEPTEMBER, OCTOBER, NOVEMBER AND DECEMBER AND BIMONTHLY IN JUNE AND JULY BY THE OKLAHOMA BAR ASSOCIATION, 1901 N. LINCOLN BOULEVARD, OKLAHOMA CITY, OKLAHOMA 73105. PERIODICALS POSTAGE PAID AT OKLAHOMA CITY, OK. POSTMASTER: SEND ADDRESS CHANGES TO THE OKLAHOMA BAR ASSOCIATION, P.O. BOX 53036, OKLAHOMA CITY, OK 73152-3036. SUBSCRIPTIONS ARE \$60 PER YEAR EXCEPT FOR LAW STUDENTS REGISTERED WITH THE OKLAHOMA BAR ASSOCIATION, WHO MAY SUBSCRIBE FOR \$25. ACTIVE MEMBER SUBSCRIPTIONS ARE INCLUDED AS A PORTION OF ANNUAL DUES. ANY OPINION EXPRESSED HEREIN IS THAT OF THE AUTHOR AND NOT NECESSARILY THAT OF THE OKLAHOMA BAR ASSOCIATION, OR THE OKLAHOMA BAR JOURNAL BOARD OF EDITORS.



Oklahoma Academy of Collaborative Professionals

By Jon Ford

In recent years, a collaborative approach to domestic litigation has become more popular nationwide. In light of this trend toward an alternative to litigation, the Oklahoma Academy of Collaborative Professionals (OACP) has been formed as a part of the Oklahoma Bar Association's Family Law Section. Members of the OACP include attorneys, mental health professionals and financial neutrals such as CPAs and financial consultants, who work together using the collaborative process to reach a resolution to domestic issues. The collaborative process is one that ensures that each marriage partner has accurate information, sound legal advice, solid support in problem solving and decision making and has help to lay groundwork for respectful working relationships among the parties after the actual process is completed.

OACP is associated with the International Academy of Collaborative Professionals (IACP) which includes members from all 50 states and over 20 foreign countries. This entity sets the standards and protocols for collaborative professional teams so that each functions consistently with the other. As a member of IACP, Oklahoma professionals who choose to participate agree to abide by these uniform standards. To become a member of OACP, a person must be a licensed professional in one of the three categories mentioned above. Additionally, each attorney who desires membership must be a member or associate member of the OBA Family Law Section and complete 10 hours of collaborative law training and 40 additional hours of training in mediation, all offered at least

annually in Oklahoma. Annual dues for OACP membership are \$200 for new members and \$150 for renewals. The next training will be on May 29 and 30 in Tulsa.

Collaborative dissolution cases can range from those with many issues to those that are focused on just one or two areas of contention. The parties may be without significant property or may be very wealthy. They may have no children of the marriage or children of ages from birth to virtually the age of majority. There may be unique concerns that need to be addressed, such as a special needs child or a long-time family business or land to be divided. The parties may or may not be in complete emotional turmoil, and there may or may not be a high level of drama in the context of the

dissolution action and the surrounding issues; however, if a protective order is in place, the collaborative approach is not an option, as this denotes a relationship dynamic that would not be appropriate for true collaborative efforts.

To begin the process, one party expresses an interest in collaborative resolution to his or her attorney or counselor. That professional contacts the professional engaged with the other party to begin the dialogue about whether both parties are willing to further explore the collaborative option. If there are children involved, collaborative professionals will stress the importance of placing co-parenting as the first priority for the parties. If both parties are interested, each one will review and sign a participation agreement. This agreement delineates the broad terms of a collaborative approach. Parties agree to:

- a. Be respectful of the other party.
- b. Be transparent in providing financial information to the other spouse.
- c. Be fully cooperative in providing information and documents requested.
- d. Waive litigation until agreed-to decree is signed and presented to judge for approval.
- e. Release their attorneys and coaches if either party proceeds with litigation or if the matter does not settle. This disqualification from participation in litigation is central to the collaborative process and ensures the attorneys are committed to settlement.

Either party may file a petition for dissolution of marriage in an Oklahoma district court to start the clock running for the 90-day waiting period if there are minor children involved. Then, a team is formed, the structure of which is determined by the issues being faced in each individual case. There will always be an attorney for each of the parties, but there may be between one and three coaches participating. The parties could share a coach, each party could have his or her own or there could be one coach for each party plus an additional coach that would act as a child advocate if there is a special needs child or children who wish to have a voice in any custody or visitation issues that affect them directly. Additionally, there can be a financial neutral if there is a substantial amount of property, a unique financial circumstance or one party who lacks financial knowledge.

To start the process, each party is asked to make a list of objectives and immediate needs to be addressed. After these lists are generated, the professional members of the team meet to discuss the parties and the general goals that have been brought to light by the parties' lists. This briefing process develops the case personality. Professionals are able to strategize their approach to maximize the results of the first

Incorporating Early Settlement Mediation in Collaborative Divorce

By Marcy A. Thomas

While recently attending an advanced training on collaborative law, held by the Oklahoma Academy of Collaborative Law Professionals, it became apparent that many attorneys are not aware of all of the services available to their clients.

Collaborative law is defined as a "process by which both parties and their counsel contractually commit themselves to resolving their differences justly and equitably without resort, or threat of resort, to the courts. If the parties do not reach settlement, the attorneys must withdraw and send clients to trial attorneys."¹ There are numerous attorneys already practicing this type of law throughout Oklahoma.

There are various models of the collaborative law process. Each model is similar in that they all include attorneys. Some models include mental health professionals and some financial advisors. Each model is discussed with the client to ensure that their case is handled in the correct fashion. If additional professionals are added to the process, they too are contractually bound.

One such model in collaborative law is referred to as a MediCollab. This model was developed in California and has seen much success all over the United States. In this model, each party hires a collaborative law attorney, and they agree to attend mediation with a neutral mediator. The attorneys may attend, or may choose not to, depending on their level of comfort with their client's ability to effectively communicate settlement options. After the mediation session or sessions, the mediator gives the attorneys a memorandum of understanding so the attorneys can prepare the proper paperwork to present to the court.

Early Settlement Mediation is made up of 12 regional offices throughout Oklahoma. This program is authorized and funded through the Okla-

meeting with the parties and the entire team. Once the professionals have briefed the meeting, the parties and their respective professionals agree to an agenda for the first meeting. Only the agreed items included on the agenda may be discussed during the initial meeting.

The meeting itself may last not last longer than two hours. The parties and all involved

homa Dispute Resolution Act.² The fee for the mediation service is included in every civil filing fee collected by the courts, or \$5 per party should there be no case filed. Using Early Settlement Mediation helps the collaborative lawyer to conserve his or her client's money.

"Family and divorce mediators for early settlement are required to complete forty hours of training specific to divorce issues and must mediate or co-mediate for 12 clock hours while supervised and work with three to five different families before they are recommended for state certification."³ The success rate for the Early Settlement Mediation program in family and divorce cases is similar to that of a private, hourly fee based mediator. **In 2012 alone, 1,449 family and divorce mediations were held with 997 (65 percent) resulting in partial (208) or complete (729) agreements.**

Using Early Settlement Mediation when following the MediCollab model of collaborative law not only saves the parties money, it also offers a high level of confidentiality. They are guaranteed to have a neutral, certified, third party mediator at each session and can return as often as they would like.

Collaborative law was developed with the goal of allowing parties to go through the process of a divorce civilly. Incorporating your local Early Settlement Mediation program aids this goal and enhances the necessary communication between clients without additional fees.

More information can be found at: www.oscn.net/static/adr/default.aspx.

Ms. Thomas is the director of the Early Settlement Mediation program at Rogers State University in Bartlesville. She is a 2012 graduate of the TU College of Law.

1. Levine Trusch, Norma. "Working with Neutrals." Powerpoint presentation. Oklahoma State University, Tulsa, OK, 20 Sept 2013.

2. 12 O.S. Supp. 1997, §1801 *et seq.*

3. Sue Darst Tate, 2012 Annual Report, Alternative Dispute Resolution System, (Oct. 12, 2013, 8:17 AM) <http://www.oscn.net/static/adr/Documents/ADRSReport2012.pdf>.

4. *Id.* at 5.

team professionals may attend that meeting. The use of a flip chart is imperative to list issues, alternative solutions and resolutions in a way that all members of the team and the parties themselves are able to reference them throughout the meeting. Parties list optional resolutions in a typical brainstorming approach until a resolution is reached that is satisfactory to both parties. Team professionals will frequently point out successful resolutions as they are reached throughout the process as a way of acknowledging progress. If an emo-

“ Collaborative dissolution proceedings can have any number of benefits, ranging from short-term practical benefits to long-term benefits that are not as tangible. ”

tional outbreak occurs, a coach and his or her party may take a break to regroup, and an attorney and his or her client may privately confer at any point during the process. This meeting is also an appropriate time for the child advocate and/or the financial neutral to report information that will be helpful in the resolution process. Immediately after the first meeting, the professionals will meet to debrief and plan for the next meeting, which will follow the same format as the initial meeting. This process is repeated in the same form as many times as is necessary for the issues to be resolved in their entirety. Once all the issues are resolved by agreement, one of the attorneys prepares an agreed-to decree of dissolution to be submitted to the judge on the case for approval and filing.

Collaborative dissolution proceedings can have any number of benefits, ranging from short-term practical benefits to long-term benefits that are not as tangible. One obvious benefit to the process is that attorney fees and attendant costs are usually much less than in traditional domestic litigation. This reduction is simply due to the number of hours that the attorney spends preparing for and attending

the meetings. Since the issues addressed and the time set for the meetings is predetermined, unlike litigation, the attorneys are able to more accurately predict costs of a collaborative approach. Although it might seem on the surface that engaging a full interdisciplinary team to address the parties' goals would be prohibitively expensive, it actually remains a much more cost-effective way to resolve all issues, as everyone whose expertise might be required is located in the same meeting at the same time, so answers to relevant questions are readily available. Most professionals also charge more for courtroom time to testify, and less for office time to consult or prepare, so parties can receive essentially the same information they would receive in the courtroom from the witness stand for a lower hourly rate. Also, parties can make agreements regarding real world objectives that are simply outside the purview of the court, for instance, payment of college expenses on behalf of a child who has reached the age of majority or co-parenting issues that reach beyond the scope of the court but can be contractually agreed upon by the parents.

In a greater sense, the collaborative approach creates resolution to highly polarized issues that is focused on shared agreements between the stakeholders rather than the typical "scorched earth" approach found in domestic litigation under a traditional approach. With everyone, sometimes including children, sharing in the solution, co-parenting is a realistic outcome and expectation of the parties. Collaborative resolution allows the children who live through parents' dissolution to see a model from both parents of a civil and functional way to handle high conflict or difficult situations. Because the collaborative approach allows people to maintain self-respect and respect for others during a time of high stress, the process itself supports positive choices and supports agreement and consensus that the adversarial process by its very nature does not. Collaboration also creates the framework for settling future disputes between the parties and models a form of discussion that reduces confrontational interaction and counterproductive

communication. Due to this learned approach to problem solving, fewer, if any, motions to modify are ever filed in domestic cases resolved through collaboration. Because the parties no longer reside within the same household, effective dealings between them, as well as within the newly created family dynamic, become even more essential. Parties who share children will be required to maintain some type of relationship for the foreseeable future, if not forever, so it is important that the relationship be functional.

OACP maintains a website regarding all aspects of the collaborative approach, as well as details for potential clients and professionals interested in learning more about the approach or membership in OACP, as well as contact information for current professional members. That information can be found at www.YourDivorceChoice.com.

Collaborative approach to resolution of legal issues is the wave of the future. Although OACP focuses on domestic litigation as it involves the highest level of emotion in all areas of the adversarial process, it can be applied to every type of case in which there are issues to be resolved. By working together, parties complete the process with a sense of investment in the outcome that they helped to create and a better experience with the legal system in general. Through this approach, attorneys can contribute in a meaningful way to a better perception of the profession and a more viable way for families to move forward in relationship to one another.

ABOUT THE AUTHOR

Jon Ford has practiced law in Enid for 43 years. In 2010-2012, he served with Scott Pappas from Stillwater as co-president of the Oklahoma Academy of Collaborative Professionals. Mr. Ford is active in the OBA Family Law Section. He is a co-senior editor of the *FLS Practice Manual*.

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Returning Justice to the Community: Restorative Justice to Reform Oklahoma Juvenile Justice System

By Danielle Fields

Reform of the Oklahoma Juvenile Justice System is on the horizon. After the Legislature called for reform by passing the House Joint Resolution 1023,¹ Gov. Mary Fallin authorized the establishment of the Oklahoma Juvenile Justice Reform Committee (JJRC) by executive order on May 16, 2013.² The purpose of the JJRC is to study the current system and code, compare it to other states' systems and codes and report recommendations for improvement or propose statutes necessary to promote public safety, treatment and prevention of juvenile delinquency. A report is due sometime in early 2014.³ The executive order adds to the H.J.R. 1023 by requesting the final report include *"Oklahoma's recidivism rates and any systemic changes to help decrease this rate."*⁴

This article explores how the existing programs sponsored by the Alternative Dispute Resolution (ADR) System in Oklahoma could be utilized in collaboration with local Oklahoma Juvenile Affairs agencies to decrease the juvenile offender recidivism rate, increase public safety and meet treatment and prevention goals.⁵ Next, the article explores how currently available restorative justice programs could be utilized by local communities. The Norman Early Settlement program is suggested as a model for other communities to adopt. The focus of this article is utilization of victim offender mediation (VOM) as intervention and diversionary program; including integration into the current system and overcoming barriers to implementation.

THE PROBLEM

*"The problems of juvenile delinquency and violent youth crime cannot be meaningfully addressed until [we] refocus on the underlying causes of juvenile delinquency and provide our children with guidance instead of punishment."*⁶

The current juvenile justice system has strayed from the original mission and instead focuses on retributive-based justice system or punitive sentencing and treatment of juvenile delinquents.⁷ Over 100 years ago, the juvenile court system was created upon a rehabilitative-based juvenile justice system. The goal was to treat the delinquency and rehabilitate juveniles because our country realized that youth are fundamentally and categorically different than adults.⁸ Broad discretion was given to juvenile

court judges upon the doctrine of *parens patriae* to protect rather than punish young offenders.⁹ The original juvenile justice system's goal was treatment rather than punishment by using methods such as confidentiality of juvenile records, individualized treatment of juveniles through informal court procedures and separate incarceration of juveniles from adults.¹⁰

Another problem is the lack of attention for less serious offenses by young offenders. Typically the less serious crimes are dismissed. Due to limited state funding and resources juvenile courts have to conserve their scarce resources for the most serious cases.¹¹ Unfortunately, these serious cases typically arrive after a long chain of prior arrests for less serious charges, for which the court imposed limited consequences on the juvenile in order to conserve resources.¹² A study by the U.S. Department of Justice found that very young juvenile delinquents have a greater percentage of serious, violent and repeated pattern of offenses than older onset delinquents.¹³ Thus, the earlier a juvenile is involved in court, the greater his or her risk of returning to court. In other words, early court involvement combined with a lack of meaningful intervention can put the youth on the "pathway to serious, violent, and chronic offending."¹⁴ Young offenders are not held accountable for their less serious offenses at the time when the problems are apparent and courts have the authority to affect change.¹⁵ The juvenile justice system fails at the goal of prevention because it fails to intervene before these problem behaviors become ingrained.¹⁶ Instead of a wake-up call, the juvenile gets the message that the offense was no big deal.¹⁷

According to the National Center for Juvenile Justice, juvenile courts have an opportunity to intervene in the lives of a large percentage of youth. Early intervention may halt the juvenile's court career and reduce the drain on the court's limited resources.¹⁸ However, evidence suggests that retributive-based measures, such as removing troubled and delinquent children from the home and placing them in custody, is expensive and often less effective than community-based supervision and treatment.¹⁹ In addition, juveniles in custody may emerge with very little competency, less prepared for adult life and reintegration into the community, and thus more likely to recidivate.²⁰ Additionally, other trends in the juvenile justice system, such as lowering the age of accountability and automatic transfers

to the adult criminal system, have not proven effective.²¹ Public safety is not improved by adult incarceration or incarceration as a juvenile because, in both circumstances, the system has failed to divert children from a life of crime.²²

Using a retributive-based juvenile justice system is not accomplishing the goals of public safety, offender accountability and victim restoration. To return to the goal of the original juvenile justice system to rehabilitate our youth, the focus should be on early intervention of young offenders by community-based diversionary programs that focus on offender accountability and reintegration into the community.

THE SOLUTION: RETURNING JUSTICE TO THE COMMUNITY

The solution suggested by reform groups like the National Juvenile Justice Network is to "increase access to community-based services that work to ameliorate youth's problems and attend to youth development."²³ A restorative justice solution requires placing juvenile justice back in the hands of the communities through the implementation and integration of community-based, restorative justice programs. Restorative justice proponents recommend early intervention and treatment programs in schools, in courthouses and in our community to derail the "school to prison pipeline" that has become a buzz phrase in our education system, criminal justice system and our communities. Restorative justice can teach students how to be productive citizens, reduce recidivism rates and create safer communities.

WHAT IS RESTORATIVE JUSTICE?

Restorative justice treats crime first as a conflict between individuals resulting in injuries to victims, communities and the offenders themselves, and second as a law-breaking offense against the state.²⁴ Restorative justice seeks to restore the victim and reintegrate the offender into the community.²⁵ One definition of restorative justice according to criminologist Tony Marshall is: "a process whereby all the parties with a stake in a particular offence (sic) come together to resolve collectively how to deal with the aftermath of the offence and its implications for the future."²⁶ Another definition, according to Howard Zehr, is a process that involves, to the extent possible, those who have a stake in a specific offense and to collectively identify and address the harms, needs and obligations, in order to heal and put things

as right as possible.²⁷ The stakeholders include the victim and offender, but also the offender's family, the victim's supporters and the community harmed by the crime.²⁸

The advantages of restorative justice may positively impact the victim, the offender and the community in any of five ways. First, restorative justice focuses on the offender by addressing offender accountability, treatment and reintegration. Offender accountability is encouraged through processes that address the consequences of the criminal behavior to the victim and the community. The offender is involved directly in deciding how to make amends for his or her crimes, which may be more effective in internalizing the effects and consequences of their actions.²⁹ The restorative process uses "re-integrative shaming" to encourage empathy and personal responsibility and reintegration into the community.³⁰

Second, restorative justice focuses on victim restoration.³¹ In the traditional justice system, victims are largely ignored and the victim may even feel as if the offender "got away with it."³² Restorative justice is victim-centered and gives the victim a voice in the process.³³ It allows the victim to confront the offender face-to-face, convey their outrage and pain caused by the offense.³⁴ The victim can begin to heal from the harm caused by the juvenile by receiving an apology from the offender and some kind of reparation for the harm.³⁵

Third, restorative justice encourages parental participation and family restoration.³⁶ The process respects the integrity of the family unit. Restorative justice processes such as VOM or family group conferencing are designed to empower the family to help solve their own problems.³⁷

Fourth, restorative justice focuses on prevention, treatment and competency development programs for youth. By encouraging personal transformation, the process can bring out the underlying harms and factors that contributed to the juvenile's behavior including family breakdown, addictions and poor interpersonal skills.³⁸ Healing can begin by referring the juvenile and his or her parents to appropriate treatment and competency development programs.³⁹ The goal is to get the offender matched with community resources to empower the juvenile to make their own way out of the destructive cycle of delinquency.⁴⁰

Fifth, restorative justice focuses on public safety by teaching the young offender the skills they need to live peacefully in the future, while also insisting that they accept responsibility for their past.⁴¹ Through collaboration with the community, the offender is reintegrated by appropriate community service and reintegration programs.⁴²

The success of the restorative justice is ultimately measured by the improved safety of the community.⁴³ The measures of success include 1) recidivism rates, which measure the ability to deter juveniles from future offenses; 2) juvenile accountability by completing community service or paying victim restitution; and 3) competency development by completion of GED, enrollment in higher education or obtaining gainful employment.

Community-based restorative justice programs, such as VOM, used as an intervention or diversionary programs, can impact recidivism. VOM offers a unique opportunity to develop the competencies of the offender. The VOM offers the juvenile the opportunity to take responsibility and be held accountable for his or her actions in a confidential, conflict resolution framework that balances the needs and responsibilities of the victims, the offenders and the community. The VOM involves the victim, the juvenile offender and both parties' support persons meeting face-to-face in a structured, secure environment with a trained, neutral mediator acting as a facilitator. The goal is to bring restoration, healing, reconciliation and, if possible, negotiate restitution. Reintegrating the offender into the community can be accomplished during the process because the victim and the offender collaborate to develop ways to repair the damage caused by the offense and to provide consequences for the crime.⁴⁴

RESTORATIVE JUSTICE PROGRAMS AROUND AMERICA

Indiana

One approach to juvenile justice reform is at the local level or a grass-roots approach. Indiana has several successful restorative justice programs because of the discretion which the Indiana legislature gave to the local courts to implement restorative justice process and outcomes in the juvenile justice system. For example, the purpose clause for Indiana's delinquency proceedings recognizes the importance of family and children and the state's role in

“The conclusion of the experiment was that ‘conferences may offer a more effective intervention in early offending.’”

protection and strengthening of that family unit.⁴⁵ The code also states the juvenile justice system should treat children as “persons in need of care, protection, treatment and rehabilitation” while enforcing the accountability of children and parents. Specifically, the Indiana Code Section 33-14-10-5, states that the victim must be offered the opportunity to participate in a victim-offender mediation reconciliation program, if one exists.⁴⁶

The impact of using victim-offender mediation reconciliation programs was measured by the Hudson Institute Crime Control Policy Center which held a restorative justice experiment.⁴⁷ The title of the experiment’s report was “Returning Justice to the Community” because the participation with the community in rehabilitation of the offender was the focus of the experiment. The VOM reconciliation program was led by police officers trained with REAL Justice and were referred to as “restorative justice conferences.”⁴⁸ Procedurally it was considered a diversion program within the juvenile division of the Marion Superior Court for first-time appearances by young offenders (14 years and younger).⁴⁹ The participants included the juvenile offender, the parent, other family members and supporters,⁵⁰ the victim and their supporters and the conference coordinator. The agenda of the conference included the following: 1) the coordinator guides the juvenile through a series of questions to help the youth accept responsibility for the behavior and understand the impact to the victim, their family and the community; 2) the victim gives an impact statement and is given opportunity to ask the juvenile questions; 3) the supporters are given the opportunity to voice how the offense affected them; 4) the group begins to work out an agreement for the juvenile to repair the harm, 5) the juvenile voluntarily apologizes to the victim and the group; 6) the juvenile is asked whether the reparation agree-

ment is fair and the victim is asked whether they are satisfied with the agreement.⁵¹

The conclusion of the experiment was that “conferences may offer a more effective intervention in early offending.”⁵² The results showed that for youths successfully completing their diversion program, there was a statistically significant reduction in re-arrest after six months, with similar results after 12 months.⁵³ The Hudson Institute Experiment was relatively simple to implement, fairly inexpensive to operate and very successful.

Pennsylvania

Pennsylvania has been successful in a top-down or legislatively mandated integration of restorative justice principles into their juvenile justice system.⁵⁴ In 1995, the legislature of Pennsylvania amended the purpose clause of the Juvenile Act to reflect the principles of restorative justice and a balanced approach to juvenile probation.⁵⁵ Act 1995-33 or Act 33 amended the purpose clause to be interpreted and construed to achieve three broad goals: 1) the protection of the community, 2) the imposition of accountability for offenses committed and 3) the development of competencies to enable children to become responsible and productive members of the community.⁵⁶ In 1996, a statewide policy forum was held called the “Community, Victim and Offender: Changing Roles in Juvenile Justice” to introduce the new juvenile justice philosophy to practitioners and policymakers.⁵⁷ Funding was made available to train judges, probation officers, district attorneys, public defenders and victim advocates.⁵⁸ Further in 1997, victim restoration, community protection and youth redemption was introduced into the Juvenile Act’s mission statement by the Juvenile Justice and Delinquency Prevention Committee (JJDP) of the Pennsylvania Commission on Crime and Delinquency.⁵⁹ In 2003, a benchmark was issued by the Juvenile Court Judges’ Commission (JCJC) to explore what restorative justice entails for Pennsylvania judges on and off the bench.⁶⁰

In Pennsylvania, the judge’s role in implementation of the restorative justice programs was essential for success. The legislature provided statutory guidelines, procedural protections and programs to assist in the implementation. Court rules required the judges to consider victim impact statements in deciding disposition, a restitution be identified, quantified and collected in

timely manner and the disposition order to give a payment schedule to the juvenile.⁶¹

The JCJC provided a benchbook of strategies and best practices guidelines for judges to order restorative justice interventions. The judge was encouraged to write creative court orders focusing on juvenile accountability including: submission of written apologies to victims, direct services performed for the victims, payment of fees to fund victim restitution programs, community service programs chosen by the victim which allow the offender to “earn” the fee, participation in victim and crime impact awareness classes and work on crime-scene clean-up crews.⁶² The benchbook states that one of the roles of the judge is to be the “community energizer and enabler” because “the principles of balanced and restorative justice require the community to play a larger role throughout the juvenile justice process.”⁶³

In Bethlehem, Penn., an experiment was held over an 18-month period for first-time juvenile offenders arrested for select misdemeanor and summary offenses.⁶⁴ The diversionary restorative justice program was a victim-offender mediation facilitated by police trained by REAL Justice. The goal of program was “to encourage young offenders to achieve empathy towards their victims and take responsibility for their crimes, allow victims to move toward forgiveness and healing and empower citizens to appropriately address their own local problems.” The effectiveness was measured in three categories: community protection, accountability and competency development. In terms of community protection 87 percent of cases were closed without adjudication for new offense, 86 percent of cases were closed without a finding of a serious probation violation during the period of supervision.⁶⁵ In accountability: 92 percent completed all community service assigned and 84 percent paid all restitution imposed by the time of case-closing. In competency development: 77 percent were gainfully occupied, whether by attending school, working on GED or employed when their cases were closed.⁶⁶

RESTORATIVE JUSTICE PROGRAMS AVAILABLE IN OKLAHOMA

In Oklahoma there are at least two restorative justice programs available for immediate implementation by communities: peer mediation in the education system and VOM in the juvenile justice system. Both programs are

available for immediate referrals through local early settlement centers, the ADR system’s local, community-based mediation centers. The Office of the City Attorney of the City of Norman currently uses VOM as a diversion program by referring all citizen-signed complaints to Norman’s Early Settlement program. Integration of this program into the Office of the City Attorney can be used as a model for other communities in Oklahoma. Integration of the Early Settlement VOM program into the local community’s juvenile justice system has been impeded by barriers to implementation, including but not limited to, 1) a lack of education on the program’s availability and the benefits of restorative justice, and 2) a perception by district attorneys (DAs), judges, and attorneys that the mediation program is run by individuals who have no experience in working in the real world of criminal justice and who are likely to just get in the way.⁶⁷

Peer mediation programs can be used in schools to teach students interpersonal conflict resolution skills. The OBA worked closely with Early Settlement to create the curriculum for the Oklahoma peer mediation program. In peer mediation, two trained student mediators sit down face-to-face with two students in conflict. The peer mediators facilitate a resolution to the conflict which can be reduced to a mutually acceptable agreement. More information on this program is available from Phil Johnson, the peer mediation specialist and director of Early Settlement-Central,⁶⁸ and Jane McConnell, the OBA law-related education coordinator.

USING VOM IN YOUR COMMUNITY

Oklahoma is one of the few states in the country with legislative support for victim-offender mediation programs to be used for community-based delinquency prevention and diversion programs.⁶⁹ VOM can be implemented at all levels from the juvenile court judge, the DA, school administrators, law enforcement or by community members prior to filing a complaint against the juvenile. The referrals to Early Settlement can be sent as a diversion program, informal probation, probation or as a part of non-secure custody plans.

Restorative justice programs could be used in the majority of cases where a juvenile has committed a crime that directly impacts the victim, but would not be considered serious enough to require custody in a secure detention facility. For example, in 2011, the majority

(59 percent) of cases referred to OJA were handled without the DA filing a petition to send the juvenile to adjudication.⁷⁰ If no petition is filed, the assistant district attorney will decide to either to dismiss the case, divert the case by referring to a community-based program or to enter into informal probation. Informal probation is where the district attorney decides to enter into an agreement with the juvenile in which further adverse action is contingent upon whether the juvenile successfully follows and agreed upon program. In 2011, 13 percent of cases where a petition was filed were dismissed.

Even when the case is not dismissed, the juvenile is adjudicated as a delinquent, mediation may be ordered by the court as part of the treatment plan. The adjudicated juvenile delinquent is typically made a ward of the court at the disposition hearing and remains in the parent's custody.⁷¹

USING THE OFFICE OF THE CITY ATTORNEY IN NORMAN AS A RESTORATIVE JUSTICE MODEL

The city attorney's office in Norman uses a variety of programs to intervene in the life of the juvenile offender. The successful integration of Early Settlement and other restorative justice programs into the city attorney's office by the City of Norman can be a model for other cities and counties. Since 1988 Norman's Office of the City Attorney has fully funded and used Early Settlement to schedule VOM for citizen-signed misdemeanor criminal complaints, including but not limited to those involving juvenile offenders. The City Attorney's Office reviews all incoming citizen-signed criminal complaints and sends referrals to Early Settlement based upon the potential continued contact between the parties, possibility of restitution, resolution of the disputed issues and overall benefit to the community. Although the purpose of the VOM program is to reduce the number of criminal charges filed within the municipal court system, cases can be also be referred to the Norman program by other City departments, police officers, attorneys, apartment managers, schools, neighborhood associations, real estate agents, etc. In fiscal year 2013, more than 40 percent of the referrals received to the program were found to be appropriate for actual mediations and scheduled with the parties.⁷² Of the mediations held in the same fiscal year, greater than 84 percent settle. The greatest advantage of agreements made in mediation is

the durability because "people keep agreements they make themselves."⁷³

In 1992, Norman's office of the city attorney decided to become more proactive in reducing juvenile crime by creating a juvenile offender program. In an interview Rick Knighton, assistant city attorney, explained an agreement was made with the district attorney to allow the Norman municipal court to adjudicate misdemeanor juvenile offenses.⁷⁴ In the past the district court was forced to conserve resources for the most serious juvenile offenses. Typically petitions were not filed for misdemeanors committed by a juvenile; instead the Juvenile Services Unit handled the case by sending a letter to the parent or guardian of the juvenile offender. The goal of the juvenile offender program was to create consequences for the less serious crime and create individual accountability for the juvenile.

The goal of VOM to create offender accountability fit well into the goal of Norman's juvenile offender program to reduce juvenile crime. As Mr. Knighton, explained, if a violation by a juvenile is filed and proven in municipal court, the juvenile offender (or more likely the parent) will have to pay the city a fine. The problem behavior of the juvenile will not likely improve as a result of the court process and the complaining witness (victim) will receive no reparation for the damage caused by the violation. It is possible the court process will also further damage the relationship between the juvenile and the victim. Further complaints may be filed if the two parties are likely to have future contact to resolve further issues.

VOM can be used to resolve the underlying issues between the juvenile and victim, but also can empower the parties to resolve future disputes through collaboration. The mediation process empowers the victim to tell the juvenile about the impact of the crime and creates an opportunity for the two parties to collaborate on creating a resolution for the impact. In addition to creating a consequence for the crime, the mediation process also gives the juvenile offender an opportunity to be heard. In an interview Jayme Rowe, Director of Early Settlement's Norman program, explained sometimes the child's voice gets lost at home or at school and the mediation is the only place where people listen. Even if there is no agreement reached, the impact of the mediation process can be satisfying for both the victim and the offender.

Norman's juvenile offender program generally begins with a citation or complaint alleging a violation of city ordinance submitted to the court for consideration by the city attorney's office, a citizen, law enforcement or school administrator. The case is screened by the assistant city attorney handling the complaint to determine whether the issue involved is appropriate for VOM. If a referral is made to the Early Settlement program by the assistant city attorney or other entity, the case is screened a second time by the program director. The mediation process is completely voluntary. All involved parties must be contacted, interviewed and counseled about the rules of confidentiality before scheduling the case for VOM. The goal of the screening process is to ensure the safety of all parties involved in the mediation and ensure every case is appropriate for VOM. In order to protect the volunteer mediators, the point of contact for every scheduled VOM is the program director.

Procedurally, by sending complaints to Early Settlement rather than through the formal court process, the City of Norman is not a party to the mediation. However, the city attorney will exercise the option to not file the criminal charge in municipal court in consideration of any agreement or resolution reached between the complaining witness (victim) and juvenile offender during mediation. Although, if the juvenile does not follow the agreement then it is possible that the charge could be filed as a consequence.

By statute, the mediation process is completely voluntary and confidential.⁷⁶ If the offender declines to participate in mediation or the mediation is unsuccessful, the cooperation (or lack of cooperation) cannot be used against the offender. The city attorney cannot use the outcome of the mediation against the juvenile when filing a criminal charge.

If VOM is refused or unsuccessful, then the assistant city attorney handling the case will meet with the juvenile at a pre-arraignment conference with their parent or guardian to determine the appropriate course of action to address the situation. The Norman juvenile offender program utilizes restorative justice principals by requiring the juvenile to write a

“The success of the juvenile offender program and use of Early Settlement is directly related to the involvement by the community...”

letter of apology, perform community service or attend one of the programs developed or funded by the city attorney's office.⁷⁷ In fact, the goal of community restoration is facilitated by a community services coordinator who attends the pre-arraignment conference.

The success of the juvenile offender program and use of Early Settlement is directly related to the involvement by the community, including the police, school administration and the court system. To achieve community support, training programs are included at different city agencies and programs. Police training includes a presentation on the Early Settlement's VOM program. The police carry Early Settlement brochures to allow citizens to submit cases directly to the program. The court clerks are trained on Early Settlement and often recommend citizens to refer cases to the program. The public schools are also aware of the juvenile offender program and may send referrals to the Office of the City Attorney.

Another important element of the success of the Norman Early Settlement program is the volunteer mediators. Jayme Rowe, the director of Early Settlement-Norman, recruits volunteer mediators from the community with specialized education in law, education, counseling or experience with juveniles. The volunteer mediators are rigorously trained and certified through the Oklahoma Supreme Court. However, the effective certified volunteer mediator does not need to be an expert on the juvenile justice system in order to be successful. For example, Jeri Stroup has been a certified volunteer mediator of the Norman program for over six years. Jeri works at the Department of Human Services, as an administrative field analyst in the adult and family services division.

OVERCOMING BARRIERS TO INTEGRATION OF VOM IN YOUR COMMUNITY

As stated before, integration of the Early Settlement's VOM program has been nominal due to a combination of community apathy and community resistance. Barriers to integration included lack of education and a perception that the mediation program is staffed by

inexperienced do-gooders. Training programs targeted at community leaders can combat some of the barriers. However, the effectiveness of the program will be directly related to the community involvement in the program. Each Early Settlement program will require the support and direct involvement of the community to recruit appropriately experienced volunteers, create a referral process, interview the juveniles, victims and families in order to screen referrals for appropriate VOM cases, schedule the VOM and send the agreements back to the appropriate agency.

To create community support and combat barriers to implementation Dr. Mark Umbreit, director of the Center for Restorative Justice and Peacemaking, suggests various strategies. One strategy is to create an advisory committee from the community stakeholders to assist in the integration of the program by giving feedback and guidance. In an interview, Jane McConnell at the OBA stated that the advisory committee should include leadership from the county bar associations and local judges.⁷⁸ Local attorneys and judges are at a unique position in the community to be used to assess, coordinate and evaluate the reform efforts.

Another strategy Dr. Umbreit suggests for overcoming barriers is to make educational presentations on the program to community stakeholders. Presentations should be made to the DA, defense attorneys, judges, probation officers, school administrators, law enforcement and other agencies to explain the program and the potential impact on the juvenile offender and the community. The best presentations would be brief and include testimony from a juvenile offender, parent or victim of a juvenile offender who has participated in the VOM process.

Volunteers are the backbone of Early Settlement programs. The recruitment and participation of the right volunteers will affect the success of the integration and results of Early Settlement programs. The community stakeholders will need to identify the right volunteer with the experience, the attitude and professionalism necessary. After recruitment, Early Settlement will provide the training necessary to become certified as a volunteer mediator.

Guymon has a unique opportunity to begin reform. A local certified volunteer mediator, Steve Macias, has spent two decades working with youth in trouble and their families. Mr.

Macias was educated in Guymon and moved to Texas in 1989. He worked in the Texas Youth Commission and as a caseworker, he created a victim impact panel at the Crockett State School in Crockett, Texas in 1994. Steve Macias was trained and certified in East Texas as a conflict resolution mediator, including training on VOM. In 2007, he returned to Guymon and has been trained by Early Settlement to conduct mediations for small claims court and family and divorce court. Early Settlement Northwest plans on taking advantage of his experience and expertise as a VOM volunteer mediator.

In an interview with Mr. Macias, he explained that one of the obstacles to reducing juvenile delinquency is that the delinquent attitude has become generational and is ingrained in the family beliefs. If a family believes that "the system" is corrupt, lazy, careless or prejudiced, then the child grows up hearing, "the system is against us so it is OK to go against it." Steve Macias has found that when the family experiences effective mediations, there is an opening during that dialogue to change their views of "the system." During a successful mediation, not only will the offender be affected positively by individual accountability, the parents are more likely to adjust their worldview and give positive messages to their children at home. Steve cautions, "If our focus is specifically on the individual, when we think of reducing recidivism, we are overlooking one of the strongest influences, family!"

CONCLUSION

Creating safe communities and decreasing recidivism in juveniles requires early intervention for very young offenders and prevention programs. Research shows community-based programs with effective, accountability based, rehabilitative programs and services can positively impact young offenders (juveniles between ages seven and 12), who are most at risk to become serious, violent and chronic offenders.⁷⁹ These programs would be useful for all the cases where a juvenile is not taken into custody, such as when a petition is not filed or when probation is ordered after adjudication.

In every county in Oklahoma community-based Early Settlement programs are already currently available to attorneys, judges, educators and community leaders. The programs just need to be utilized. One program with roots in the restorative justice movement, VOM may have the most impact on the very young

offenders. VOM aims to hold juveniles accountable for their delinquent acts, and rehabilitate the juvenile offender by focusing on repairing the harm to the victim, providing consequences for the crime and reintegrating the offender into the community. Integration of intervention or diversionary programs using referrals to Early Settlement VOM should be strategized by community stakeholders, including, but not limited to, local OJA representatives, assistant district attorneys, defense attorneys, judges, probation officers, school administrators, law enforcement and other government and private agencies involved in juvenile justice in the community.⁸⁰

Oklahoma's legislative and administrative branches have initiated steps toward reform of the juvenile justice system. Changes to the juvenile justice code, process and system are likely to follow after the report from the Juvenile Justice Reform Committee is submitted, sometime in early 2014. Local communities may be impacted by changes in the code and possible streamlining of government programs. The participation of local community stakeholders in this reform movement could influence the impending reform to meet the best interest of the children in their community which find themselves in trouble with the law. Restorative justice programs are often low-cost, community-based, and research across the nation shows the programs decrease recidivism. Integration of restorative justice puts justice in the hands of the community, while achieving the goals of cost-savings and increased public safety.

1. Letter from Mary Fallin, Oklahoma Governor, to the Honorable Speaker of the House and Members of the House of Representatives, (April 29, 2013). Available at <http://votesmart.org/static/vetotext/44021.pdf>. House Joint Resolution 1023 was vetoed on April 29, 2013 because it was not consistent with Governor's commitment to reducing the size and cost of state government. Mary Fallin, veto letter <http://votesmart.org/static/vetotext/44021.pdf>

2. 30 Okla.Reg.1492 (June 18, 2013). Executive order 2013-18, establishes the Juvenile Justice Reform Committee.

3. *Id.* Report is due to the Governor, President Pro Tempore of the Senate and the Speaker of the House and committee shall sunset upon issuance of the final report

4. *Id.* (emphasis added)

5. Oklahoma. Stat. tit. 12 §1801-6 (1997) ADR system which was authorized (1983) and funded (1985) by the state legislature through the Oklahoma Dispute Resolution Act, 12 O.S. Supp. 1997, §1801 et seq. There are 12 community-based mediation centers, referred to as Early Settlement, administered and supervised by the Administrative Director of the Courts (ADC) through the ADR System Director, with ongoing input of the Dispute Resolution Advisory Board. "The Legislature is aware of the fact that many disputes arise between citizens of this state which are of small social or economic magnitude and can be both costly and time consuming if resolved through a formal judicial proceeding. Many times such disputes can be resolved in a fair and equitable manner through less formal proceedings. Such proceedings can also help alleviate the backlog of cases which burden the judicial system in this state. It is therefore the purpose of this act to provide to

all citizens of this state convenient access to dispute resolution proceedings which are fair, effective, inexpensive, and expeditious."

6. Jacqueline Cuncannan, "Only When They're Bad: The Rights and Responsibilities of Our Children," 51 *Wash. U. J. Urb. & Contemp. L.* 273, 301(1997). See also, *Id.* at 300 "Given the available information on child's cognitive development, this trend is also morally unsound. Furthermore, the presumptions that society is willing to make regarding a delinquent child's legal capacity are not consistent with the presumptions made regarding non-delinquent children." See also, Cynthia Conward, "The Juvenile Justice System: Not Necessarily in the Best Interests of Children," 33 *New Eng. L. Rev.* 39, 49 (1998) "Florida was one of the first states to inaugurate automatic transfer policies. Researchers, however, have found that by every scientific measure that they used, re-offending was greater among juveniles who were transferred to adult court as opposed to those charged with similar crimes in juvenile justice system....lead them to conclude that that automatic transfer in FL has had little deterrent value nor has it enhanced public safety."

7. "The Problem and the Solution," The National Juvenile Justice Network, (2001), Available at www.njjn.org/our-work/the-problem-and-the-solution

8. Cynthia Conward, "The Juvenile Justice System: Not Necessarily in the Best Interests of Children," 33 *New Eng. L. Rev.* 39, 41-42 (1998) ("Progressive reformers created the first Juvenile Court in Chicago in 1899. It was the creation of progressive reformers who viewed the wayward youth as a product of their bad environment and the failure of the family. Reforms were initiated in order to give young lawbreakers a combination of punishment, treatment and counseling with the aim of helping youths reconstruct their lives"): *Id.* at 49 ("Youth crime is not exclusively the offender's fault. Offenses by the young also represent a failure of family, school and society, each of which shares in the responsibilities for the development of America's youth."); *Id.* at 51 ("The current movement of juvenile law asserts a return to policies which place juveniles in the criminal justice system and adult prisons, with punishment taking priority over prevention, treatment and rehabilitation. Traditional notions of individualized dispositions based on the best interests of the juvenile are being diminished by interests in punishing the criminal behavior").

9. *Id.*

10. Ester Mosak, "Sentencing Alternatives for Youth Courts: The Restorative Justice Approach," *Technical Assistance Bulletin* No. 28. American Bar Association, Division for Public Education.

11. Lawrence Sherman, "Defiance, Deterrence, and Irrelevance: A Theory of the Criminal Sanction," 30 *J. Res. in Crime & Delinquency* 445,473 (1993).

12. Nancy Lucas, "Rehabilitation, Prevention and Transformation: Victim-Offender Mediation for First Time Non Violent Youthful Offenders," 29 *Hofstra L. Rev.* 1365, 1366 (2001) ("Juveniles who are discharged or placed on probation are at greater risk for future incarceration because they are rarely provided the access to services that will help to prevent them from re-offending").

13. *Id.* See also Edmund F. McGarrell, "Restorative Justice Conferences as an Early Response to Young Offenders," Office of Juvenile Justice and Delinquency Prevention, *Juvenile Justice Bulletin* (August 2001).

14. *Id.* ("The risk of becoming a serious offender is two to three times higher for child delinquents ages 7 to 12 than for youth whose onset of delinquency is later. Because very young offenders are more likely to reoffend and to process to serious delinquency, effective early intervention is crucial. This bulletin features a promising form of such early intervention: restorative justice conferencing").

15. Howard N. Snyder, Rachele C. Espiritu, David Huizinga, Rolf Loeber & David Petechuk, "Prevalence and Development of Child Delinquency," *Child Delinquency Bulletin Series* (March 2003) ("Figure 2, analysis of court careers and offense patterns of nearly 70,000 youth in Phoenix AZ and State of UT" and "Figure 3: Very Young Offenders Have a Greater Percentage of Serious, Violent and Chronic Careers Than Older Onset Delinquents."), <http://www.ncjrs.gov/pdffiles1/ojdp/193411.pdf>; see also, Howard Snyder, "Court Careers of Juvenile Offenders," iii (National Center for Juvenile Justice, 1988) ("Early intervention in a young offender's juvenile court career may not only halt that career but also help reduce the drain on limited court resources each time a juvenile is referred to the court.") Available at http://www.ncjservehttp.org/NCJJwebsite/pdf/Howardpubs/Snyder_Court_Careers_1988.pdf.

16. Rolf Loeber, David P. Farrington, & David Petechuk, "Child Delinquency: Early Intervention and Prevention," *Child Delinquency Bulletin Series* (May 2003) at 4.

17. *Id.* at 12. "Failure to intervene in a meaningful way early in the youth's offense history fails to express community outrage and sends mixed messages about the behavior to the offending youth." *Id.*

18. *Id.*
19. Richard A. Medel, "No Place for Kids, The Case for Reducing Juvenile Incarceration," Annie E. Casey Foundation (2011), Available at www.Aecf.org/noplaceforkids.
20. *Id.*
21. Jacqueline Cuncannan, "Only When They're Bad: The Rights and Responsibilities of Our Children," 51 *Wash. U. J. Urb. & Contemp. L.* 273, 300, (1997) "Given the available information on child's cognitive development, this trend is also morally unsound. Furthermore, the presumptions that society is willing to make regarding a delinquent child's legal capacity are not consistent with the presumptions made regarding non-delinquent children." See also, Cynthia Conward, "The Juvenile Justice System: Not Necessarily in the Best Interests of Children," 33 *New Eng. L. Rev.* 39, 49 (1998) "Florida was one of the first states to inaugurate automatic transfer policies. Researchers, however, have found that by every scientific measure that they used, re-offending was greater among juveniles who were transferred to adult court as opposed to those charged with similar crimes in juvenile justice system....lead them to conclude that that automatic transfer in FL has had little deterrent value nor has it enhanced public safety." *Id.*
22. Lucas, *supra* note xii, at 1366 ("Youthful offenders who are incarcerated routinely emerge less prepared for adult life and are likely to recidivate")
23. "The Problem and the Solution," The National Juvenile Justice Network, (2001), Available at www.njjn.org/our-work/the-problem-and-the-solution
24. Lucas, *supra* note xii at 1371. Mary Ellen Reimund, "The Law and Restorative Justice: Friend or Foe? A Systemic Look at the Legal Issues in Restorative Justice," 53 *Drake L. Rev.* 667, 670 (2005) ("Restorative justice looks at crime as violation of people and of interpersonal relationships. With the violation there is an obligation to right the wrong and repair the relationship. Restorative justice addresses victim's harms and needs, holds the offender accountable to right those harms and involves the victim, offenders and communities in the process").
25. *Id.* at 668 ("Restorative justice takes a victim-centered approach to crime").
26. Daniel van Ness, "Introducing Restorative Justice," *Restorative Justice for Juveniles* (Allison Morris & Gabrielle Maxwell ed., Hart Publishing 2003).
27. Tina S. Ikpa, "Balancing Restorative Justice Principles and Due Process Rights in Order to Reform the Criminal Justice System," 24 *Wash. U. J.L. & Pol'y* 301, 302 (2007).
28. *Id.*
29. *Id.*
30. *Id.* at n. 12; see also Edmund F. McGarrell, Kathleen Olivares, Kay Crawford, & Natalie Kroovand. *Returning Justice to the Community: The Indianapolis Juvenile Restorative Justice Experiment*, 8 (Crime Control Policy Center, Hudson Institute, 2000) ("Reintegrative shaming involves a conscious effort to shame the action of the offender and not the offender as a person. Disapproval is expressed with regard to the act, not the person. A level of respect is maintained toward the offender. The key to effective shaming is to hate the sin but not the sinner. According to reintegrative shaming theorists, this combination of accountability and respect is key to keeping the offender within the community"); see also, Lode Walgrove, "On Restoration and Punishment," *Restorative Justice for Juveniles*, 20-21 (Allison Morris & Gabrielle Maxwell ed., Hart Publishing 2003). ("punishment by the state can become disintegrative shaming or stigmatization which further excludes the offender").
31. V. Bender, M. King, & P. Torbet, "Advancing Accountability: Moving Toward Victim Restoration," *Pennsylvania White Papers, National Center for Juvenile Justice* (2006) at n. 36("Victim restoration is deeply rooted in restorative justice philosophy, which views crime as a violation of people and relationships. It creates an obligation to make things right. Justice involves the crime victim, the juvenile offender, and the community in search for solutions which promotes reparation, reconciliation and reassurance").
32. McGarrell *supra* note xxxii, at 10 ("Victims often remain the hidden participants in the criminal and juvenile courts...the quick and confusing juvenile hearing may leave victims confused, powerless and frustrated when the offender seems to have gotten away with it").
33. Daniel Van Ness. "Legislating for Restorative Justice," 10 *Regent U. L. Rev.* (Spring 1998) ("restorative programs value the active participation of victims...often through direct encounters).
34. Lucas, *supra* note xii, at 1372.
35. Cuncannan, *supra* note xxi, at 303 and Lucas, *supra* note 5 at 1368 "victims feel less victimized"
36. McGarrell *supra* note xxxii, at 9. Debra Baker. Comment "Juvenile Mediation: Innovative Dispute Resolution or Bad Faith Bargaining?" 27 *U. Tol. L. Rev.* 897, 918 (1996) ("helps family members to communicate with each other and will keep a juvenile from having a record with the court").
37. See Matthew Kogan, Note "The Problems and Benefits of Adopting Family Group Conferencing for PINS (CHINS) Children," 39 *Fam. Ct. Rev.* 207(2001).
38. Sacha M. Coupet, "What to Do with the Sheep in Wolf's Clothing: The Role of Rhetoric and Reality About Youth Offenders in the Constructive Dismantling of the Juvenile Justice System," 148 *U. Pa. L. Rev.* 1343, 1346 (2000)
39. *Id.*
40. Patrick Griffith, "Establishing Balanced and Restorative Justice in Your Juvenile Court: The Judges Role," *Pennsylvania Progress* (National Center for Juvenile Justice, Fall 1999).
41. *Id.* at 2.
42. See *id.* ("prevention, early intervention and structured supervision of juvenile offenders — through intensive community-based probation, school mediation programs, neighborhood dispute resolution boards...competency development...work skills, learning skills, empathy, and anger management techniques, intergenerational connections"); *Supra* note xxxviii, at 1343 ("use of social networks including family, community, school and work to play a role in diminishing and preventing delinquency...invites a wide network to participate in integrating the offending youth back into the community").
43. *Id.*
44. Nancy Rodriguez. "Restorative Justice at Work: Examining the Impact of Restorative Justice Resolutions on Juvenile Recidivism," *Crime & Delinquency* Volume 53 Number 3 July 2007, 357.
45. Ind. Code Ann. §31-10-2-1 (*West* 2008).
46. Ind. Code Ann. §33-14-10-5 (*West* 2008) ("(a) The prosecuting attorney or the victim assistance program shall do the following: ... (7) in a county having a victim-offender reconciliation program VORP, provide an opportunity for a victim, if the accused person or the offender agrees, to:
 - (A) Meet with the accused person or the offender in a safe, controlled environment
 - (B) Give to the accused persons or the offender, either orally or in writing a summary of the financial, emotional, physical effects of the offense on the victim and victim's family, and
 - (C) Negotiate a restitution agreement to be submitted to the sentencing court for damages incurred by the victim as a result of the offense...If the victim participates in a VORP and (a)(7) the victim shall execute a waiver releasing...
 - (D) (1) the prosecuting attorney responsible for the victim assistance program and (2) the victim assistance program, from civil and criminal liability for actions taken by the victim, and accused person, or an offender as a result of participation by the victim, the accused person, or the offender in a VORP
- (b) A victim is not required to participate in a VORP under subsection a(7)").
47. McGarrell *supra* note xxxii.
48. *Id.* at 17-18.
49. *Id.* at 25.
50. *Id.* ("Conferences have included teachers, athletic coaches, and other important figures in the youth's life").
51. *Id.* at 25-26.
52. *Id.* at 52.
53. *Id.*
54. Patrick Griffin, "Ten Years of Balanced and Restorative Justice in Pennsylvania," *Pennsylvania Progress* (National Center for Juvenile Justice, June 2006).
55. Bender *supra* note xxxi, at n. 33
56. Griffin *supra* note liv.
57. Reimund *supra* xxiv, at 5.
58. *Id.* "Balanced and Restorative Justice Implementation Grant and the Juvenile Justice Enhancement Training Initiative sponsors regional trainings"
59. Bender *supra* xxxi, at n. 36.
60. *Id.*, see also, Pennsylvania Juvenile Court Judges Commission: Pennsylvania Juvenile Delinquency Benchbook. (2008), http://www.jcjc.state.pa.us/portal/server.pt/community/publications_and_forms/5037/juvenile_delinquency_benchbook/484187.
61. *Id.*
62. *Id.*
63. *Id.*
64. Paul McCold & Benjamin Wachtel, "Restorative Policing Experiment: Bethlehem Pennsylvania Police Family Group Conferencing Project," Community Service Foundation (May 1998), <http://www.iirp.org/pdf/BPD.pdf>.

65. Patrick Griffin & Doug Thomas, "The Good News: Measuring Juvenile Court Outcomes at Case Closing," *Pennsylvania Progress*, (January 2004), <http://www.ncjservehttp.org/NCJJWebsite/pdf/december2003.pdf>.

66. *Id.*

67. Mark S. Umbreit, "How to Increase Referrals to Victim-Offender Mediation Programs," Waterloo, Canada: Fund for Dispute Resolution (1993). A report on strategies for increasing the number of case referrals received from criminal justice agencies and for enhancing support and involvement of criminal justice officials. Available at <http://www.rjp.umn.edu/img/assets/13522/How%20to%20Increase%20Referrals%20to%20VOM%20Programs.PDF>

68. Peaceful Resolutions for Oklahoma Students (PROS), Oklahoma Bar Association, <http://www.okbar.org/public/LRE/PROS.aspx>. See also PROS, Alternative Dispute Resolution, Early Settlement, <http://www.oscn.net/static/adr/pros.aspx>

69. Oklahoma. Stat. tit. 10A §2-7-301.D.1.e (Office of Juvenile Affairs - Responsibilities, offices, programs - Transfer of employees, powers, duties, etc... Beginning July 1, 1995, the Office of Juvenile Affairs, in its role as coordinator for delinquency prevention services, shall, after full consideration of any recommendation of the Oklahoma Association of Youth Services...1. Establish guidelines for juvenile delinquency prevention and diversion programs for use in community-based programs, including but not limited to: ...e. mediation programs..."). See also, Mark S. Umbreit, Elizabeth Lightfoot, and Johnathan Fier, "Legislative Statutes on Victim Offender Mediation: A National Review," *Victim Offender Mediation Association Connections*, No. 15 (Fall 2003).

70. *Id.* at 21.

71. *Id.* at 21.

72. Jayme Rowe, Annual Report FY 13, Early Settlement Norman (presented to ADR Advisory Board Aug. 16, 2013)

73. Dispute Mediation Program Early Settlement Norman, available at <http://www.ci.norman.ok.us/legal/dispute-mediation-program-early-settlement-norman>.

74. Interview with Ricky J. Knighton, II, Assistant City Attorney, in Norman, Okla. (Oct. 14, 2013).

75. Interview with Jayme Rowe, Early Settlement Norman Program Director, in Norman, Okla. (Sept. 25, 2013).

76. Oklahoma. Stat. tit. 12 §1801-6 (1997), See also, Mark S. Umbreit, Elizabeth Lightfoot, and Johnathan Fier, "Legislative Statutes on Victim Offender Mediation: A National Review," *Victim Offender Mediation Association Connections*, No. 15 (Fall 2003).

77. *Id.* and See also, *Supra* lviii

78. Interview with Jane McConnell, Law-Related Education Coordinator, Oklahoma Bar Association, in Oklahoma City, Okla. (Sept. 25, 2013).

79. *Supra* note xvi.

80. *Supra*.note xxix at 5.

ABOUT THE AUTHOR



Danielle Fields is director of the Northwest program of Early Settlement. She started her career in the field of alternative dispute resolution in Virginia, where she was trained by the Virginia Conflict Resolution Center and certified by the Virginia Supreme Court. She attended Regent University School of Law in Virginia.

Notice of Clerk of Court Vacancy

United States District Court Western District of Oklahoma

Applications are now being accepted for the position of Clerk of Court for the Western District of Oklahoma. This is a high-level management position responsible for managing the administrative activities of the court and overseeing the performance of the statutory duties of the office. The Clerk of Court is appointed by and serves the judges of the court under the direction of the Chief Judge. Applications will be accepted through February 28, 2014. See full notice and application instructions at: www.okwd.uscourts.gov.

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‘Good Faith Participation’ in Mediation – Where is the Yardstick?

By Joseph H. Paulk

One of the most slippery phrases in all of law is “good faith.” Are there two words in the English language more subject to individual expectations? Yet, courts in Oklahoma and throughout the United States are ordering parties to participate “in good faith” in mediation, without any objective standard or measurement of exactly what those two words mean.

It’s fairly easy to define what “good faith” *doesn’t* mean in a mediation setting: 1) “Good faith” doesn’t mean everyone must agree within the first hour; 2) “Good faith” doesn’t mean both sides have to use the same negotiating techniques or movements; and 3) “Good faith” doesn’t mean everyone has to resolve all their differences in one day, and with a smile. Those are obviously not the intent of “good faith participation.” To date there are no clear, written standards for defining “good or bad faith” participation in mediation. Yet, for many years, “good faith participation” has been a requirement for the entire litigation process, whether in federal district court proceedings¹ or in Oklahoma district courts.

There are many other areas of the law, however, where we often see the phrase “good/bad faith” as a crucial linchpin in the prosecution/defense of a case. Some of these areas are: collective bargaining, contract law, insurance disputes and discovery disputes. The parties involved in these aspects of litigation **expect** an exhaustive review and examination of their conduct and actions, and there is ample case law to govern these situations.

The crucial difference between those areas of law and mediation is the true hallmark of the mediation process — **confidentiality**. No one participating in a mediation wants or expects their conversations or negotiating style to be subject to the scrutiny or examination of outside parties. They expect and deserve complete confidentiality. The Oklahoma Legislature has adopted the Dispute Resolution Act,² District Court Mediation Act³ and the Choice in Mediation Act⁴ — all of which spell out a clear and undeniable intent concerning the importance of confidentiality. There is immunity from discovery from any source during the mediation process (unless a party to the mediation brings an action against a mediator, and then only the party that brings the action waives the confidentiality privilege).⁵ Information disclosed during mediation also has an additional layer of protection and is more than likely covered by the work product privilege. There is complete agreement that the mediation process increases judicial efficiency and docket control by promoting productive bargaining in an informal, *confidential* setting.

The problem comes when attorneys and their clients want their mediation to be confidential, but then want to sanction their opponents if they feel they are being unreasonable in their negotiations based upon *their own* analysis of the case. Simply requesting the court to sanction parties to mediations based upon perceived bad behavior does not provide the participants guidelines as to what is appropriate, competitive, negotiation conduct. The problem inherent in branding a negotiating approach as bad faith is that it will frustrate the positive purposes of the court ordered/encouraged mediation. How can there be a court review of actions alleged to be inconsistent with “good faith participation” without an opportunity to explain the rationale for the negotiation conduct? How do you explain mediation conduct in context, if the explanation involves disclosure of strategy and work product which are specifically prohibited from discovery? “Bad faith” cannot be established simply from the unsubstantiated allegations of an unhappy adverse party. We are relying on an individual trial judge to examine a party’s negotiation style, case evaluation and conduct in a confidential setting, and then associate the conduct to these terms without any stringent guidelines.

The courts and Legislature are clear that participants must engage in the mediation process “in good faith” but also under a cloak of confidentiality. So where does that leave us both as attorneys and judges? The participants and counsel to mediations need and deserve guidelines from the courts as to what is expected of their participation in a court ordered process. The court’s guidelines should provide a clear and objective standard under which participants can still hold onto their expectation of confidentiality.

There can certainly be objective criteria established by the courts as to what amounts to “bad faith.” First and foremost, the courts that order parties to participate in the mediation process must establish an order that outlines the court’s expectations as to the conduct of the process and the parties. This order might include: 1) Personal attendance by ALL parties and their respective insurers who are fully

“The participants and counsel to mediations need and deserve guidelines from the courts as to what is expected of their participation in a court ordered process.”

authorized to settle the dispute (does that include telephone participation by the decision maker?); 2) Participation in meaningful discussions between the mediator, the parties and their counsel; 3) All parties and counsel remaining at the mediation until excused by the mediator; 4) Making no knowing misrepresentations or misleading statements to the other parties or mediator; 5) Not using the mediation process to pursue an illegal enterprise such as extortion, threats of violence against parties or attorneys or any other third party; 6) Restraint from filing any new motions until the conclusion of the mediation; and 7) Not using the mediation to serve a participant with process. This certainly isn’t an exhaustive list of expectations, but it could be a start.

It should be incumbent upon the courts to objectively define the parameters of “good faith participation” or “bad faith conduct/participation” and who would specifically be subject to sanctions, so there will be no surprises as to what is allowable and what crosses the line. We all deserve better than a court stating: “I’ll know it when I see it.”⁶

1. FRCP 16 and 28 U.S.C §1927

2. 12 O.S. §1801, *et seq.*

3. 12 O.S. §1821, *et seq.*

4. 12 O.S. §1831, *et seq.*

5. See Rules and Procedures for Dispute Resolution Act, Appendix C – Confidentiality of Proceedings

6. *Jacobellis v. Ohio* 378 US 184, Justice Stewart Potter concurring opinion

ABOUT THE AUTHOR



Joseph H. Paulk is the president and founder of Dispute Resolution Consultants Inc. His legal career has encompassed more than 100 jury trials as lead counsel, and more than 3,000 mediations in 12 states. He received mediation training through Harvard University, Pepperdine University and the American Law Institute. He is a founding member of the OBA Dispute Resolution Section. He is a national speaker and author of numerous published articles on negotiation and mediation.

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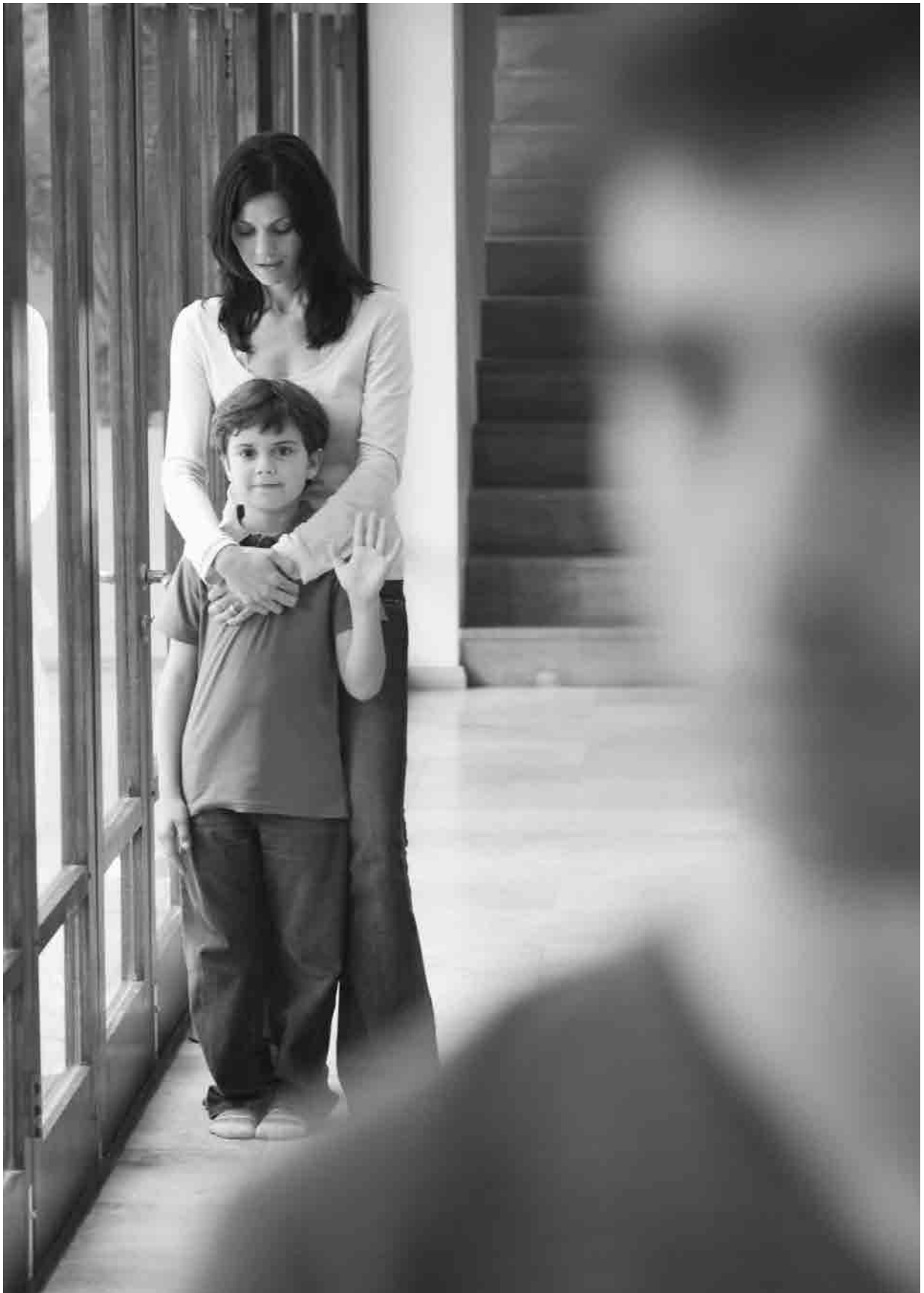
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Hugh Robert
Mediator



Pilot Program Applying Mediation to Domestic Litigation

By Judge Barbara Hatfield

Currently there are 658¹ open domestic cases pending in Canadian County. I am one of three judges assigned to these types of cases. Our dockets are not just limited to domestic cases, but also include assignments to matters relating to probate, guardianship, criminal, civil, traffic, protective orders and small claims.

Our dockets are overcrowded and create frustration for people wanting to have their cases heard within a month to 45 days instead of three to six months, or in some cases even longer. When cases are set for trial, they normally require a full day of the judge's time, with some domestic trials lasting much longer than one or even two days. It is important to the judiciary that people receive enough time and our full attention when hearing their case. We need to pay close attention to the issues which will have an effect on their collective future as a family.

The parties to a case have been on an emotional rollercoaster for months and there is a need to move forward with their lives. To complicate matters, most attorneys request a court reporter for matters that are highly litigated, which often applies to domestic matters, especially those in which custody and visitation are issues. In Canadian County, there are two court reporters who are shared by the three judges. Prior to July 2012, the three judges shared one court reporter. Therefore, it is not possible for each judge to have a court reporter every day, and scheduling dates with the attorneys and the court reporter can be challenging.

Going to court can be very stressful for parties who are not familiar with the court process. They are scared of the unknown factors – who will have custody of their children, their financial situations and whether or not they will say the right things in court. Everything is up in the air and the outcome is unknown. It is equally challenging for judges. A decision is made affecting the life of a family who is unknown to the judge. In addition, it is costly for litigants to come to court. Those of us presiding over these types of cases knew there had to be a better way for people to resolve controversies sooner.

At a judicial training in August 2011, I talked with Phil Johnson, assistant director of the Early Settlement mediation program (Early Settlement),² which is a component of the court system. Early Settlement was a program I had heard of but didn't know many details. He explained that Early Settlement has an intensive training program for volunteers who wish to become mediators to complete to help parties resolve issues. Volunteers come from all walks of life and can be attorneys or people merely interested in assisting others in resolving differences in the most functional manner

possible. At that time, Cleveland and Oklahoma counties both used the program, and I learned that the best thing about Early Settlement was that it provided participants with opportunities to communicate their feelings and thoughts about how they would like to resolve their situations in an environment where their input was valued. By allowing for an open dialogue among the parties, they could clear the air and move forward in a quicker fashion.

I was interested and decided to investigate Early Settlement, especially after I learned that there was no cost to either party for ongoing cases. I remember thinking that when something seems too good to be true, it probably is. But I was willing to stay open-minded, as the benefits to this program seemed to be so promising for our overcrowded dockets. Since Cleveland County was an active participant in the program, I contacted Judge Lori Walkley about her experiences with Early Settlement. She had very positive things to say and informed me that she advised all of her cases go to mediation after filing. Her description of Early Settlement mirrored and detailed the information previously shared and gave insight into how the program worked from a practical standpoint. She added that in most cases mediation usually resolved some, if not all, the contested issues.

My next step was a discussion with the other judges in Canadian County, Judge Gary Miller, Judge Bob Hughey, Judge Gary McCurdy and Judge Jack McCurdy. They were open to trying the process in our county, so we contacted the Canadian County Bar Association to see whether they were receptive to this idea. We were pleased to hear attorneys were engaging in mediation and were very comfortable with it. They liked the results, and their clients were given an opportunity to discuss how they wished to resolve the issues surrounding their marriage and to listen to the other party's concerns. The bar association members felt that mediation provided a forum where parties could clear the air and figure out a way to communicate with each other. They have the opportunity to craft their own marriage dissolution and tailor parenting time to fit their family lifestyle, division of assets and liabilities and can make agreements that a judge could not order that fit specific needs of their family. They liked the non-adversarial process for parties to meet and

talk through their concerns in order to help them move forward to the next chapter of their life.

From a professional standpoint, the attorneys liked the fact that Early Settlement was low cost. The attorneys were satisfied with the mediators who were engaged through Early Settlement in terms of each one's training and attitude. Although not every trained mediator is someone from the legal system like a retired judge or a lawyer, each person is well-versed in the strategies and goals of mediation. Participating attorneys thought it was beneficial that parties did not have to waste time and money discussing matters on which they could agree in an adversarial setting. They could settle the case in full or narrow down the issues to resolve through litigation. The attorneys, in short, supported this venture.

We decided a partnership with Early Settlement would be beneficial to Canadian County. Early Settlement requested that we recruit potential mediators as our part of the partnership, and we were able to recruit 13 people to go through mediation training as required by the program. Early Settlement has two tiers of mediators. Basic mediators, who assist in resolving conflicts such as small claims actions, go through a three-day course. Family mediators must complete the basic training and an additional 40-hour intensive training to become approved to handle the high emotion that is part of domestic cases.

The basic program provides training in understanding conflict, communication, active listening, preventing impasse and includes practice scenarios. The Family Mediation Training is an intense 40-hour program involving a wide variety of family law issues.

Early Settlement provided a part-time coordinator to set cases for mediation in our courthouse, and Early Settlement is now part of our ordinary course of business.

This method of resolving issues between the parties instead of by a judge who does not know the dynamics of the family has been very successful. Parents are able to resolve their issues in a non-adversarial manner and move forward to the next chapter of their lives much more quickly and with more satisfaction. The court dockets are still full, but parties who want to resolve their issues amongst themselves have a forum to do so.

Early Settlement has an office in the Canadian County Courthouse, and mediators appear at every small claims docket, held each Monday afternoon. Although parties are not required to take advantage of their presence, the judges encourage each case to at least attempt to resolve issues through mediation first before proceeding to a full-blown hearing. Parties in mediation do not have to follow the rules of evidence; therefore, they can freely speak what is on their mind rather than being held to the limitations of the traditional courtroom testimony elicited through questions and answers. Resolutions can be creative and fit the needs of the parties. Since the project began in late 2011, 135 cases have been resolved through this partnership. Even though this number seems relatively small in comparison to the cases heard in Canadian County, when you factor in the amount of time spent to resolve them in the adversarial process, the time and money savings are significant for everyone involved.

This project has been invaluable because parties can resolve the issues to their satisfaction and have ownership over their own destiny. In domestic cases, although the parties are no longer together, they can compromise and create a schedule which is best for their children, which brings the focus of the case back where it should be — on the children. They can be as creative as they wish, and they can negotiate items that would never be considered by the court.

Parties can also be ordered to mediation when providing a pre-trial and trial date. This gives them an opportunity to attempt to resolve their issues and not lose their court dates if the mediation is not successful in resolving all or some of the issues.

The parties have an additional financial benefit, as mediation is low cost and their attorney fees will be reduced if they can resolve their case through an alternative method rather than a lengthy trial. The benefit to the attorneys is quick settlement, fewer client complaints and a greater likelihood for payment of the attorney's bill in full — both because the costs are less and the client has become invested in the outcome of the case and therefore is more satisfied with the results.

Canadian County judges now have fewer cases going to trial and have parties to litiga-

tion who leave satisfied or, at the very least, can live with the agreement they helped to create. Based upon the cases that have settled through mediation, each judge has 10 or more days to hear other family matters that are not appropriately referred to Early Settlement, such as those involving domestic abuse or in which the disparity of knowledge between the parties is so great that mediation would not create a fair resolution to the contested issues. The judicial system appears friendlier instead of adversarial, not only because cases are processed more timely, but also because the system is seen as being interested in the parties as people, not just as faceless litigants. More cases will settle as the program becomes a part of the ordinary course of business, which is a huge benefit as Canadian County is the fastest growing county in Oklahoma and the fourth largest county in the state. Oklahoma is at the forefront of U.S. court case administration because of their initiation of Early Settlement and other programs that focus on restorative justice as well as their collaborative efforts prior to traditional adversarial litigation places. Canadian County is proud and excited to be a part of that effort.

Editor's Note: This article was prepared by Judge Hatfield to reflect her experiences at the conclusion of the Early Settlement pilot program in Canadian County.

1. As of June 2013.

2. In 1986 the Supreme Court of Oklahoma adopted rules and procedures for the Dispute Resolution Act, O.S. 12 §1801 et seq., providing guidelines for the establishment of dispute resolution centers. The purpose of the Dispute Resolution Act is "to provide all citizens of this state convenient access to dispute resolution proceedings which are fair, effective, inexpensive, and expeditious." Early Settlement Centers operate under the authority of the Oklahoma Dispute Resolution Act.

ABOUT THE AUTHOR



Barbara Hatfield received her undergraduate degree with honors from Belmont Abbey College in 1980 and J.D. from OCU School of Law in 1984. The majority of her legal career has been spent in the public sector. She was appointed a special judge for the District Court of Canadian County in February 2011.



OU College of Law and the Early Settlement Program

By Cheryl B. Wattley

Almost six years ago, the University of Oklahoma College of Law (OU Law) launched its collaboration with the Early Settlement program to offer mediation training to our students. OU Law's emphasis on Native American peoples made this partnership particularly poignant. The traditional indigenous practices of peacemaking circles and the creation of a safe, non-judgmental environment for addressing conflict are reflected in a mediation approach. Our mediation program is the perfect blend of today's call for more skill training for law students with an exposure to cross-cultural practices of dispute resolution.

Through this program, we not only introduce our students to the mediation process, but we also train them to be integral actors in assisting litigants to achieve resolution. We take the law student out of the traditional setting and remove them from the classroom and the adversarial approach to addressing disputes. We strip them of the confrontational mindset that underlies much of the traditional legal education reflected in case studies and one party "winning."

Alongside community participants, working with the Early Settlement director, Sue Tate, and the Central Program director, Phil Johnson, our students receive the ESP 20-hour basic training. Conducted at OU Law, this training occurs prior to the commencement of the semester courses. This schedule demands that students be committed to participating in the program. It is not simply another course. Engaging in simulation exercises, our stu-

dents begin the transition from being advocates — people who are trained to persuasively advance one position — to becoming the impartial facilitators working on behalf of all of the participants.

During our five years, almost 100 students have attended this training and then proceeded to mediate civil cases in Cleveland County. The students mediate between three and four cases a week during the 14-week academic semester. Almost 60 percent of the cases handled by OU Law students reach an agreement. Almost half of our student mediators have continued their training and completed the family mediation program. Those students co-mediate or mediate family cases. The students' proficiency has been recognized by their receipt of the Oklahoma Supreme Court certification under the Early Settlement Mediation program operated by the Administrative Office of the Courts.

We are certainly proud that our students are now certified volunteer mediators, and that through the mediations that they conduct, civil and family court dockets are being positively impacted. But it is the change in the students themselves that attests to the success and value of this program.

One of the early participants wrote in her required weekly journal that law school had felt uncomfortable for her because she was uneasy with the antagonistic and aggressive argumentative styles that seemed to be so inherent in traditional adversarial proceedings. Mediation had shown her that she had a place, a role in helping people that could perhaps be even more effective and powerful. Another student wrote that she found herself listening to roommate disputes and arguments, engaging them in conversations that brought reconciliation rather than irritation. Many students describe this experience as "life-changing." They have developed a new lens with which to look at conflict and

“Mediation had shown her that she had a place, a role in helping people that could perhaps be even more effective and powerful.”

active listening skills with which to hear others.

Uniformly, the students experience a sense that they have helped people, that they made a difference. Both are reminders of their motivation to become lawyers in the first place. It is that affirmation that has made this collaboration so worthwhile for these students and the communities that they will serve in the future as lawyers.

ABOUT THE AUTHOR



Cheryl Wattley is director of Experiential Education at the UNT Dallas College of Law, formerly the director of clinical education at OU Law, where she served on the faculty from 2007 to 2013. She graduated *cum laude* from Smith College and received her J.D. from Boston University College of Law.

OKLAHOMA BAR JOURNAL EDITORIAL CALENDAR

2014

■ March

Business Litigation

Editor: Mark Ramsey
mramsey@soonerlaw.com
Deadline: Oct. 1, 2013

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

■ 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: Judge Megan Simpson
megan.simpson@oscn.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



Alternative Dispute Resolution Section

Officers:

Jeffrey Love, Chairperson ♦ Ken Morgan Stoner, Vice Chairperson
David Tracy, Secretary-Treasurer ♦ Larry Yadon, ADR Connections Editor

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Alternative

DISPUTE RESOLUTION

Peer Mediation a ‘Win-Win’ for Oklahoma Students

By Phil Johnson and Jane McConnell

It's a typical day in an Oklahoma public school. In the hallway during the rush to get to class, two students exchange harsh words and a fistfight breaks out — putting other students in physical danger. The two students could be suspended, pushing them behind in their school work and setting up further confrontation in the future, but there might be a better alternative. Enter PROS — Peaceful Resolutions for Oklahoma Students — a peer-based mediation program that equips these students with the skills they need to resolve their conflicts peacefully and effectively, while learning respect for each other in the process.

PROS is a collaborative project of the OBA and the Administrative Office of the Courts. The program provides peer mediation training to students in fourth grade and up. Students in turn serve as mediators when conflicts arise, and disputes are not only resolved but prevented. Schools across Oklahoma have utilized this conflict resolution program that inspires their students to communicate more effectively and to bring peace to their school campuses.

“It has been a very effective program in our school,” said Shawnee Middle School counselor Angela Lindsay. “Students who go through the training program gain skills in active listening and role playing. When students have a conflict resolved by a peer, we rarely see them twice for the same issue.”

Many Oklahoma schools, both large and small, have very diverse student bodies representing different ethnic backgrounds, social statuses and extracurricular interests. There are



Western Heights Alternative School students participate in a recent peer mediation training session.

many positives to diversity, especially the opportunity to interact and learn from one another. Diversity can also present challenges, especially among students who have not yet mastered the skill of respecting those who are different.

"The training really opens doors for understanding how to walk in someone else's shoes," Ms. Lindsay said. "The program emphasizes understanding and acceptance, and it shows up even in their day-to-day interactions with each other. The students who serve as conflict mediators become positive role models and leaders in the school."

The stages of peer mediation include the opportunity for each student to tell his or her own side of the story, the opportunity to empathize with the other student's point of view, discussion of how to solve the existing problem and a written agreement. These mediation programs have been shown to decrease violence, fighting, bullying and suspensions while increasing self and mutual respect along with a positive learning climate. As arguments decrease, learning goes up.

Administrators, counselors, teachers and students are trained at no cost in regional trainings held each fall in Oklahoma City and Tulsa. Additional training events are held throughout the year in several inner-city schools. Students who receive the training discover that PROS instills invaluable communication skills benefitting them not only in school but in life beyond.

WANT PROS IN YOUR SCHOOL?

More information about PROS is available on the bar association's website at www.okbar.org/public/lre/pros. To find out how to set up a PROS training session in a school in your community, contact the OBA Law-related Education Department at 405-416-7005.

Benefits of a School Conflict Mediation Program

- Conflict mediators gain confidence in their ability to help themselves
- Conflict mediators learn to get along better at home and at school
- Conflict mediators' grades often improve
- Other students learn how to get along with each other better from conflict mediators
- Conflict mediators often become peer leaders in their school and community
- Arguments decrease, so students spend more time learning
- Students and teachers are able to work together in a friendlier and relaxed way

ABOUT THE AUTHORS



Phil Johnson is the peer mediation specialist for the Administrative Office of the Courts. He may be contacted at phil.johnson@oscn.net.



Jane McConnell is Law-related Education coordinator for the Oklahoma Bar Association. She may be contacted at janem@okbar.org.

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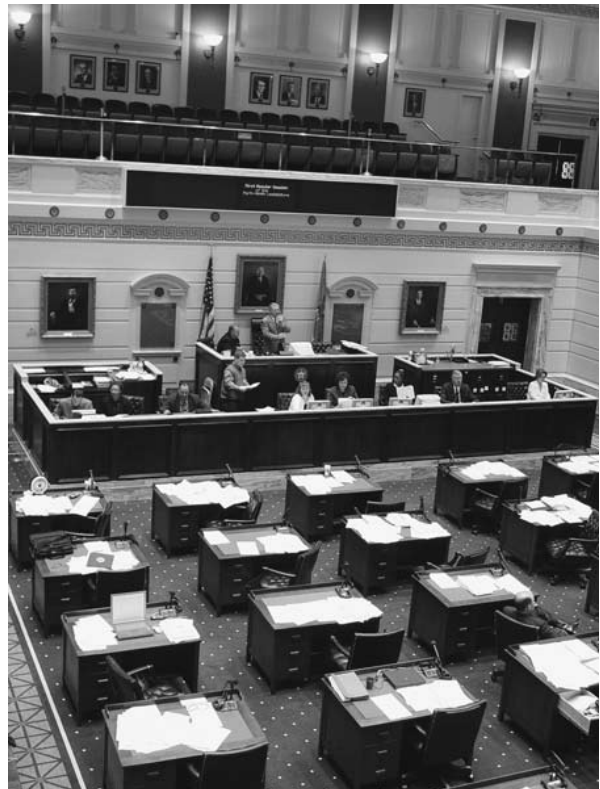
Committee Strives to Make Legislative Review Easier for Bar Members

By *Duchess Bartmess*

This year, as in the past, there are many bills and joint resolutions worthy of review and analysis. Knowledge and understanding by bar members of proposed new laws and proposed changes in existing law grows more important every year. With 2,500 measures carried over from 2013 and the more than 2,000 new measures introduced in 2014, it simply is not practical to try to review, understand and report on every introduced bill and joint resolution.

Therefore, this year the Legislative Monitoring Committee decided that members of the bar will be better served by a condensed report regarding a limited number of significant legislative measures in each bar journal published during the legislative session. The Saturday review group concentrated on determining which legislative measures would be of the greatest interest to the practicing attorney. Each publication of the *Oklahoma Bar Journal* will contain a list of 10 legislative measures with more detail as to content and the current status of each.

This should make it much easier for the busy practitioner to look up the legislative measures of interest and to contact members of the legislature to discuss those measures. To read the bill or joint resolution in its entirety and find out what legislative committee it has been assigned to, a member can access that information at www.oklegislature.gov.



BILLS WORTH YOUR ATTENTION

HB 2686 An Act relating to civil procedure; providing procedure for certain claims or challenges to state statute; requiring ruling by a panel of judges, with exception; requiring written opinion; providing for assumption of original jurisdiction by the Supreme Court; providing for codification; and providing an effective date.

HB 2903 An Act relating to statutes and reports; authorizing statement in legislative measures related to Section 57 of Article V of the

Oklahoma Constitution; providing for presumption based upon approval of statement; prescribing required vote for approval; providing for codification; and declaring an emergency. (Emergency Measure)

HB 2999 An Act relating to the Administrative Procedures Act; amending 75 O.S. 2011, Section 309, which relates to individual proceedings; prohibiting presence of certain persons in executive session; limiting assistance of counsel to proposed conclusions of law; modifying contents of the records; providing additional notice and opportunity to present evidence; prohibiting consideration of the case unless all parties are present; requiring access to certain information; proscribing communication after evidentiary record is concluded; requiring disclosure if additional information is received; providing for evidentiary hearing to be reopened; requiring withdrawal and disqualification for failing to disclose information; prescribing information be maintained and provided in compliance with the Oklahoma Open Records Act; and providing an effective date.

HB 3003 An Act relating to affirmative defenses; amending 12 O.S. 2011, Section 2008, as last amended by Section 3, Chapter 9, 1st Extraordinary Session, O.S.L. 2013 (12 O.S.L. 2013, Section 2008), which relates to general rules of pleading; adding affirmative defense of common sense; and providing an effective date.

HB 3365 An Act relating to product liability; providing certain rebuttable presumptions in production liability actions; providing grounds for rebutting presumptions; providing circumstances for which a product liability action may be asserted; providing for liability under certain circumstances; providing for codification; and providing an effective date.

SB 1475 An Act relating to durable powers of attorney; amending 58 O.S. 2011, Sections 1074 and 1075, which relate to relationship of court-appointed fiduciary and attorney-in-fact and incapacity of principal; modifying authority of certain fiduciary; modifying certain termination procedures; requiring filing of certain notice; allowing reliance on certain authority prior to filing of certain notice; and providing an effective date.

SB 1503 An Act relating to the Governmental Tort Claims Act; amending 51 O.S. 2011, Sections 152 and 155, as last amended by Section 34, Chapter 15, O.S.L. 2013 (51 O.S. Supp. 2013,

Section 155), which relate to definitions and exemptions from liability; modifying definition; modifying certain exemptions; and providing an effective date.

SB 1686 An Act relating to discovery master; authorizing appointment of discovery master; requiring certain orders to contain specified findings; establishing procedures for certain disqualification; requiring certain notice; specifying contents of certain orders; authorizing amendment of certain orders; requiring certain oath; establishing authority of discovery master; providing for certain sanctions; requiring filing of certain report; establishing procedures for adoption or modification of certain report; requiring certain review; establishing guidelines for certain compensation; construing provision; providing for codification; and providing an effective date.

SB 1893 An Act relating to discovery; amending 12 O.S.2011, Section 3226, as last amended by Section 2, Chapter 278, 2012 (12 O. S. Supp. 2013, Section 3226), which relates to general provisions governing discovery, modifying requirement related to discovery methods; requiring certain release or authorization under specified circumstances; and providing effective date.

SB 2078 An Act relating to authorized disclosure of confidential information; amending 40 O.S. 2011, Section 4-508, as last amended by Section 132, Chapter 304, O.S. L. 2012 (40 O.S. Supp. 2013, Section 4-508), which relates to disclosure of certain information; modifying entities to whom certain information may be disclosed; and providing an effective date.

MORE INFORMATION ON PENDING BILLS

The committee compiled a master list of 489 bills of interest and also a streamlined list of 30 bills that every lawyer should know about. The master list will be updated weekly. Plus, there are the top 10 bills (more or less) in five practice areas: 1) business, labor and industry, 2) civil procedure and courts, 3) criminal law, 4) family law and 5) tax, energy and transportation.

All the lists can be found at www.okbar.org/members/Legislative. On that same webpage, you'll also find links to the Legislature's website and how to contact your legislators.

OBA DAY AT THE CAPITOL

All members are encouraged to come to Oklahoma City to participate in OBA Day at the Capitol, March 25. This is a great opportunity to speak to your legislators in person about issues important to you. The OBA is providing a free lunch that day, but an RSVP is required.

ABOUT THE AUTHOR



Ms. Bartmess practices in Oklahoma City and chairs the Legislative Monitoring Committee. She can be reached at duchessb@swbell.net.

OBA DAY AT THE CAPITOL

Tuesday, March 25, 2014
Oklahoma Bar Center

- | | |
|------------|---|
| 10 a.m. | Registration |
| 10:30 a.m. | Welcome and Town Hall Meeting Update
Renée DeMoss
OBA President |
| 10:45 a.m. | Bills of Interest to Trial Courts
Judge James Croy
Oklahoma Judicial Conference |
| 11 a.m. | Civil Procedure & Evidence Bills
Jim Milton
OBA Civil Procedure and Evidence Committee |
| 11:15 a.m. | Criminal Law & Procedure Bills
Trent Baggett
District Attorneys Council |
| 11:30 a.m. | Family Law Bills
M. Shane Henry
OBA Family Law Section |
| 11:45 a.m. | Bills of Interest to the Judiciary
Mike Evans
Administrative Office of the Courts |
| Noon | Lunch |
| 12:45 p.m. | Talking to Legislators and Instructions for the Day
John Morris Williams
OBA Executive Director |
| 1 p.m. | Adjourn and Meet with Legislators at the State Capitol |

Please RSVP if attending lunch to:
debbieb@okbar.org or
call 405-416-7014; 800-522-8065

FROM THE PRESIDENT

cont'd from page 324

Oklahoma Constitution to make the JNC the law of Oklahoma. The obvious goal was to take party politics and potential corruption out of the judicial selection process as much as possible. Through the JNC, this goal was accomplished.

Legislation proposed this session, however, would put party politics right back into the judiciary and destroy a proven selection system that puts qualified judges on the Oklahoma bench without corruption. Placing selection and control of Oklahoma judges within the power of elected party officials is an extremely bad idea, if not unconstitutional. It would result in the beginning of the end to justice in Oklahoma.

ACTION YOU CAN TAKE

OBA members must be vigilant in preserving Oklahoma's democracy and protecting the judiciary. There are many steps each of us can take. Call or write to your representatives in the House and Senate. You can find their names, phone numbers and addresses at www.oklegislature.gov — click on the "Find My Legislator" feature. Circle Tuesday, March 25, on your calendars and participate in OBA Day at the Capitol, when OBA members will talk to our representatives, face-to-face, about these issues.

Join the OBA Speakers Bureau and make presentations to our clubs and civic groups about the unique role and importance of our judiciary. Attend an OBA Judicial Town Hall. Tell your friends and neighbors that we must keep our proven JNC system that provides Oklahomans with fair and qualified judges. Refer them to www.courtfacts.org, where they can read about Oklahoma's judicial system, review biographies of the appellate judiciary on the 2014 retention ballot, link to read appellate court opinions and find a directory of all Oklahoma judges.

Please help the OBA preserve justice for the citizens of our state. We cannot permit judicial regression to occur in Oklahoma. *We must be prepared to protect our courts and protect our rights.*

1. See OK HB 3381; HB 3380; HB 3379; HB 3378; SJR 24; HJR 1094.

2. 1996, *Justice for Sale*, Oklahoma Supreme Court Justice William Berry.



PROTECT YOUR COURTS
PROTECT YOUR RIGHTS

Oklahoma Judicial Nominating Commission — Facts and Myths

FACTS

1 The JNC nominates candidates for appointment by the governor to fill judicial vacancies on the Oklahoma Supreme Court, Court of Criminal Appeals, Court of Civil Appeals and the District Courts.

2 The JNC thoroughly investigates, interviews and evaluates all candidates for judicial office. It then presents a final list of three candidates to the governor, who must select a new judge from this list.

3 The JNC has 15 members. All serve without compensation.

4 Only a minority of the JNC, six members, are lawyers. They are elected by Oklahoma Bar Association members who live in each of the six congressional districts as they existed in 1967. These six lawyers are elected for six-year terms.

5 The other nine JNC members, the majority, are not lawyers. Six are appointed by the governor. No more than three of these six can belong to any one political party. Also, none of them can have a lawyer from any state in their immediate families.

6 The other three JNC members who are not lawyers are “members at large,” who serve two-year terms. One member is appointed by the Senate president pro tempore, one is appointed by the speaker of the House, and one is selected by the other JNC members. No more than two of these three at-large members can be from the same political party.

7 After they are appointed, justices and appellate judges run for re-election in retention elections. Oklahoma citizens vote on whether to “retain” justices or appellate judges for additional six-year terms in non-partisan, non-contested elections.

MYTHS

1 The JNC is controlled by the lawyer members.
NOT TRUE

Lawyers are a minority of the members on the JNC. Only six members are lawyers. The other nine members cannot be lawyers. The lawyers on the JNC practice in various areas of the law and cannot be characterized as “trial lawyers.”

2 The JNC is controlled by the bar association.
NOT TRUE

The Oklahoma governor and the Oklahoma Legislature pick the majority of JNC members. The governor has strong input into who is on the JNC and selects six JNC

8 Only justices and appellate judges who receive approval from a majority of Oklahoma voters remain in office.

9 No justice, appellate judge or district judge can be listed on the ballot by his or her political party.

10 The JNC system is centered on merit — whether a person has the right qualities to be a good judge. It takes politics out of the

judicial selection process by measures including: a) limiting the number of lay members who may belong to any one political party, b) prohibiting current JNC members from holding any other public office by election or appointment or holding any official position in a political party and c) preventing a JNC member from accepting a judicial nomination while a JNC member and for five years thereafter.



members. The Legislature has input — they pick two JNC members. The six lawyers who are on the JNC are chosen not by the entire OBA membership but only by the OBA members who live in the particular district where there is a vacancy on the JNC. Most importantly, the governor selects the judge from three qualified candidates thoroughly vetted and investigated by the JNC and the OSBI.

3 Judges are not accountable in the JNC system. **NOT TRUE**

When an Oklahoma judge makes a decision that is legally wrong, the decision can be appealed. Further, if a judge acts unethically, he or she is subject to discipline. Judges must comply with the Code of Judicial Conduct and with the Oklahoma Rules of Professional Conduct, or they will be subject to professional discipline by the Court on the Judiciary for failure to do so.

4 Oklahoma voters have no say in the process. **NOT TRUE**

Oklahoma citizens vote in all retention elections. Every six years, Oklahoma voters control whether a justice or appellate judge selected through the JNC process stays in office for another six-year term.

5 The Oklahoma JNC is the very same selection process as what is known as the "Missouri Plan." **NOT TRUE**

Oklahoma's JNC was specifically developed after an Oklahoma judicial election scandal in the 1960s. It is based on the same concepts as the "Missouri Plan," but contains provisions unique to Oklahoma and is designed to keep Oklahoma party politics out of the Oklahoma judicial selection process as much as possible.



**Annual Report of the
Professional Responsibility Commission
as Compiled by the
Office of the General Counsel of the
Oklahoma Bar Association**

January 1, 2013 through December 31, 2013

SCBD No. 6099

(Filed with Oklahoma Supreme Court, February 6, 2014)

Pursuant to the provisions of Rule 14.1, Rules Governing Disciplinary Proceedings (RGDP), 5 O.S. 2011 ch. 1, app. 1-A, the following is the Annual Report of grievances and complaints received and processed for 2013 by the Professional Responsibility Commission and the Office of the General Counsel of the Oklahoma Bar Association.

THE PROFESSIONAL RESPONSIBILITY COMMISSION

The Commission is composed of seven persons — five lawyer and two non-lawyer members. The attorney members are nominated for rotating three-year terms by the President of the Association subject to the approval of the Board of Governors. The two non-lawyer members are appointed by the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the Oklahoma Senate, respectively. No member can serve more than two consecutive terms. Terms expire on December 31st at the conclusion of the three-year term.

Lawyer members serving on the Professional Responsibility Commission during 2013 were Melissa Griner DeLacerda, Stillwater; Angela Ailles Bahm, Oklahoma City; William R. Grimm, Tulsa; Jon K. Parsley, Guymon; and

Stephen D. Beam, Weatherford. Non-Lawyer member was Tony R. Blasier, Oklahoma City.¹ William R. Grimm served as Chairperson and Tony R. Blasier served as Vice-Chairperson. Commission members serve without compensation but are reimbursed for actual travel expenses.

RESPONSIBILITIES

The Professional Responsibility Commission considers and investigates any alleged ground for discipline, or alleged incapacity, of any lawyer called to its attention, or upon its own motion, and takes such action as deemed appropriate, including holding hearings, receiving testimony, and issuing and serving subpoenas.

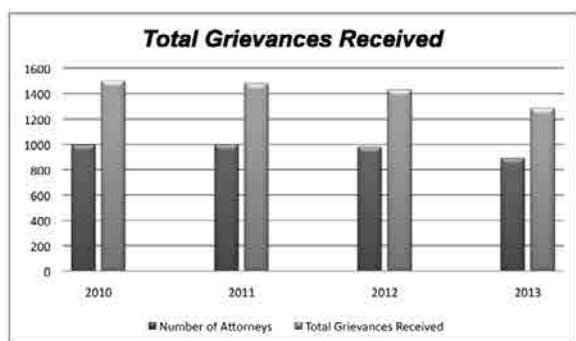
Under the supervision of the Professional Responsibility Commission, the Office of the General Counsel investigates all matters involving alleged misconduct or incapacity of any lawyer called to the attention of the General Counsel by grievance or otherwise, and reports to the Professional Responsibility Commission the results of investigations made by or at the direction of the General Counsel. The Professional Responsibility Commission then determines the disposition of grievances or directs the instituting of a formal complaint for alleged

misconduct or personal incapacity of an attorney. The attorneys in the Office of the General Counsel prosecute all proceedings under the Rules Governing Disciplinary Proceedings, supervise the investigative process, and represent the Oklahoma Bar Association at all reinstatement proceedings.

VOLUME OF GRIEVANCES

During 2013, the Office of the General Counsel received 230 formal grievances involving 163 attorneys and 1,055 informal grievances involving 797 attorneys. In total, 1,285 grievances were received against 890 attorneys. The total number of attorneys differs because some attorneys received both formal and informal grievances. In addition, the Office handled 407 items of general correspondence, which is mail not considered to be a grievance against an attorney.²

On January 1, 2013, 257 formal grievances were carried over from the previous year. During 2013, 230 new formal grievances were opened for investigation. The carryover accounted for a total caseload of 487 formal investigations pending throughout 2013. Of those grievances, 281 investigations were completed by the Office of the General Counsel and presented for review to the Professional Responsibility Commission. Therefore, 206 investigations were pending on December 31, 2013.



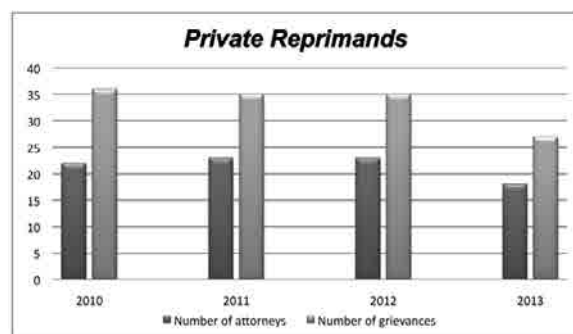
The time required for investigating and concluding each grievance varies depending on the seriousness and complexity of the allegations and the availability of witnesses and documents. The Professional Responsibility Commission requires the Office of the General Counsel to report monthly on all informal and formal grievances received and all investigations completed and ready for disposition by the Commission. In addition, the

Commission receives a monthly statistical report on the pending caseload. The Board of Governors is advised statistically each month of the actions taken by the Professional Responsibility Commission.

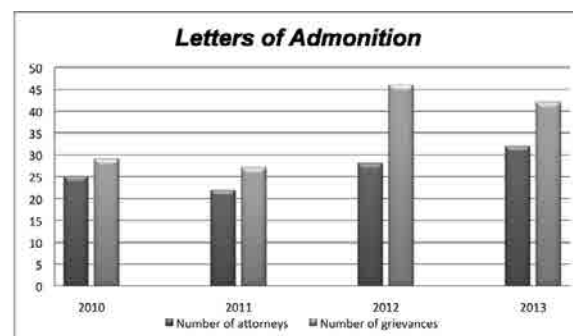
DISCIPLINE IMPOSED BY THE PROFESSIONAL RESPONSIBILITY COMMISSION

1. Formal Charges. During 2013, the Commission voted the filing of formal disciplinary charges against 11 lawyers involving 21 grievances. In addition, the Commission also oversaw the investigation of six Rule 7 matters filed with the Chief Justice of the Oklahoma Supreme Court.

2. Private Reprimands. Pursuant to Rule 5.3(c), RGDP, the Professional Responsibility Commission has the authority to impose private reprimands, with the consent of the attorney, in matters of less serious misconduct or if mitigating factors reduce the sanction to be imposed. During 2013, the Commission issued private reprimands to 18 attorneys involving 27 grievances.



3. Letters of Admonition. During 2013, the Commission issued letters of admonition to 32 attorneys involving 42 grievances cautioning that the conduct of the attorney was dangerously close to a violation of a disciplinary rule wherein the Commission believed warranted a warning rather than discipline.



4. **Dismissals.** The Commission dismissed 145 grievances where the investigation could not substantiate the allegations by clear and convincing evidence. The Commission dismissed 29 grievances due to the resignation of the attorney pending disciplinary proceedings, a continuing lengthy suspension or disbarment of the respondent attorney, or due to the attorney being stricken from membership for non-compliance with MCLE requirements or non-payment of membership dues. Furthermore, the Commission dismissed three grievances due to death of an attorney and two grievances upon successful completion of a diversion program.

5. **Diversion Program.** The Commission may also refer respondent attorneys to the Discipline Diversion Program where remedial measures are taken to ensure that any deficiency in the representation of a client does not occur in the future. During 2013, the Commission referred 26 attorneys to be admitted into the Diversion Program for conduct involving 35 grievances.

The Discipline Diversion Program is tailored to the individual circumstances of the participating attorney and the misconduct alleged. Oversight of the program is by the OBA Ethics Counsel with the OBA Management Assistance Program Director involved in programming. Program options include: Trust Account School, Professional Responsibility/Ethics School, Law Office Management Training, Communication and Client Relationship Skills, and Professionalism in the Practice of Law class. Instructional courses are taught by OBA Ethics Counsel Travis Pickens and OBA Management Assistance Program Director Jim Calloway.

As a result of the Trust Account Overdraft Reporting Notifications, the Office of the General Counsel is now able to monitor when attorneys encounter difficulty with management of their IOLTA accounts. Upon recommendation of the Office of the General Counsel, the Professional Responsibility Commis-

2013 Attorney Participation in Diversion Program Curriculum	
Law Office Management Training:	21 Attorneys
Communication and Client Relationship Skills:	14 Attorneys
Professionalism in the Practice of Law:	7 Attorneys
Professional Responsibility / Ethics School:	12 Attorneys
Client Trust Account School:	10 Attorneys

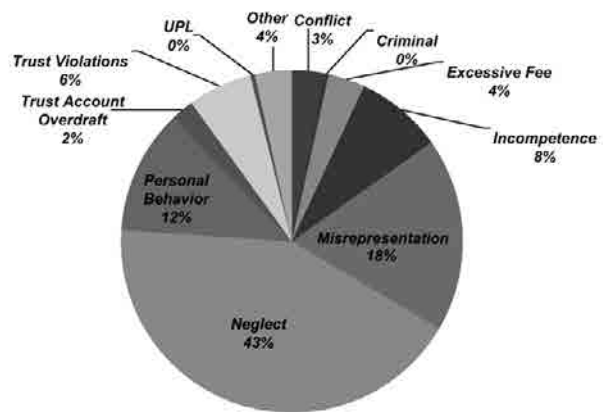
sion may place those individuals in a tailored program designed to address basic trust accounting procedures.

SURVEY OF GRIEVANCES

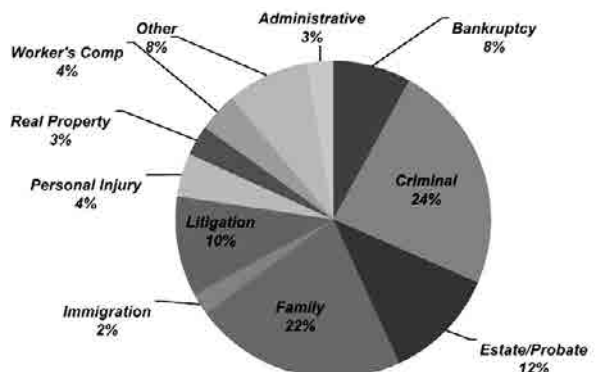
In order to better inform the Supreme Court, the bar and the public of the nature of the grievances received, the numbers of attorneys complained against, and the areas of attorney misconduct involved, the following information is presented.

Total membership of the Oklahoma Bar Association as of December 31, 2013, was 17,628 attorneys. The total number of members include 12,004 males and 5,624 females. Formal and informal grievances were submitted against 890 attorneys. Therefore, approximately five percent of the attorneys licensed to practice law by the Oklahoma Supreme Court received a grievance in 2013.

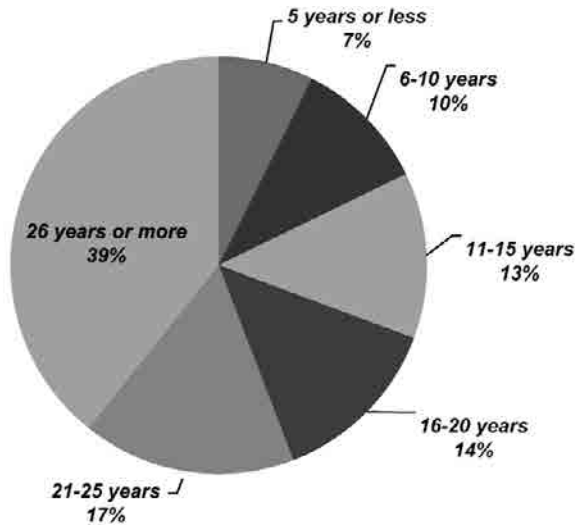
A breakdown of the type of attorney misconduct alleged in the 230 formal grievances received by the Office of the General Counsel in 2013 is as follows:



Of the 230 formal grievances, the area of practice is as follows:



The number of years in practice of the 163 attorneys receiving formal grievances is as follows:



The largest number of grievances received were against attorneys who have been in practice for 26 years or more. Considering the total number of practicing attorneys, the largest number have been in practice 26 years or more.

Of the 230 formal grievances filed against 163 attorneys in 2013, 80 are attorneys who practice in urban areas and 76 are attorneys who practice in rural areas.³ Seven of the grievances were filed against attorneys licensed in Oklahoma but practicing out of state.

DISCIPLINE IMPOSED BY THE OKLAHOMA SUPREME COURT

In 2013, 28 disciplinary cases were acted upon by the Oklahoma Supreme Court. The Court consolidated one of those cases and the public sanctions are as follows:

Disbarment:

Respondent	Effective Date
Lewis B. Moon	01/22/13
Joan Godlove	06/11/13
Gale Eugene McArthur II	09/24/13
Mark Anthony Clayborne	10/28/13

Resignations Pending Disciplinary Proceedings Approved by Court: (Tantamount to Disbarment)

Respondent	Effective Date
Amy Lynn McTeer	01/14/13

Michael Wayne Jackson	02/25/13
Gray M. Strickland	04/02/13
Craig Steven Key	05/06/13
Roy Marion Lewis Calvert	10/28/13
Darick Chaka Morton	11/04/13

Disciplinary Suspensions:

Respondent	Length	Effective Date
Lagailda F. Barnes	2 years	04/02/13
Alexander Louis Bednar	1 year	04/02/13
Robert Bradley Miller	180 days	06/25/13
Christopher M. Cooley	Until 2/16/18	06/25/13
James David Ogle	2 years + 1 day (Rules 6 and 7 Consolidated)	08/22/12
Nathaniel Keith Soderstrom	2 years + 1 day	11/26/13
Stephen Eric McCormick	18 months	12/17/13

Public Censure:

Respondent	Effective Date
Philip M. Kleinsmith	03/12/13
Jon Edward Brown	06/18/13

Dismissals:

Respondent	Effective Date
Sandra L. Tolliver	05/20/13

In addition to the public discipline imposed in 2013, the Court also issued the following non-public sanctions:

Disciplinary Suspensions:

Respondent	Length	Effective Date
Rule 10 Confidential	Indefinite	05/13/13
Rule 10 Confidential	Indefinite	11/04/13

Rule 10		
Confidential	Indefinite	11/12/13
Rule 10		
Confidential	Indefinite	11/18/13
Rule 10		
Confidential	Indefinite	12/16/13

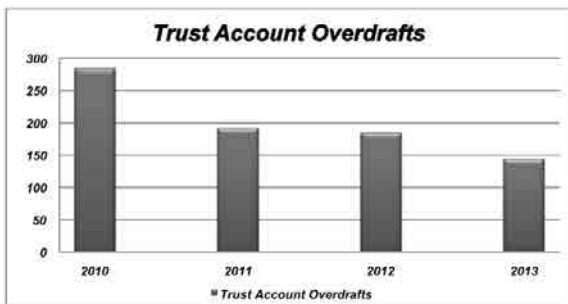
There were 19 attorney discipline cases pending with the Supreme Court of Oklahoma as of January 1, 2013. During 2013, 11 new formal complaints, six Rule 7 Notices, and three Resignations Pending Disciplinary Proceedings were filed for a total of 39 cases filed and/or pending during the year. On December 31, 2013, 12 cases remained pending before the Oklahoma Supreme Court.

REINSTATEMENTS

There were four reinstatement cases filed with the Oklahoma Supreme Court and pending before the Professional Responsibility Tribunal as of January 1, 2013. There were 10 new petitions for reinstatement filed in 2013. In 2013, the Oklahoma Supreme Court approved five reinstatements, denied one reinstatement, and two applications for reinstatement were withdrawn. On December 31, 2013, there were six petitions for reinstatement pending before the Professional Responsibility Tribunal.

TRUST ACCOUNT OVERDRAFT REPORTING

The Office of the General Counsel, under the supervision of the Professional Responsibility Commission has implemented the Trust Account Overdraft Reporting requirements of Rule 1.15(j), Oklahoma Rules of Professional Conduct, 5 O.S. 2011, ch. 1, app. 3-A. Trust Account Overdraft Reporting Agreements are submitted by depository institutions. In 2013, 144 notices of overdraft of a client trust account were received by the Office of the General Counsel. Notification triggers a general inquiry to the attorney requesting an explanation for the deficient account. Based upon the response,



an investigation may be commenced. Repeated overdrafts due to negligent accounting practices have resulted in referral to the Discipline Diversion Program for instruction in proper trust accounting procedures.

UNAUTHORIZED PRACTICE OF LAW

Rule 5.1(b), RGDP, authorizes the Office of the General Counsel to investigate allegations of the unauthorized practice of law (UPL) by non-lawyers.

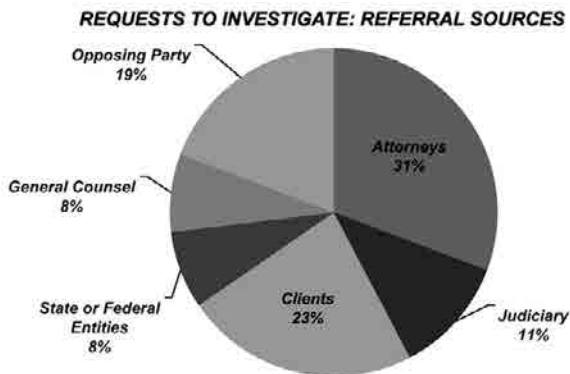
1. Requests for Investigation. In 2013, the Office of the General Counsel received 26 complaints for investigation of the unauthorized practice of law. The Office of the General Counsel fielded many additional inquiries regarding the unauthorized practice of law that are not reflected in this summary.

2. Practice Areas. Allegations of the unauthorized practice of law encompass various areas of law. Individuals assisting pro se litigants in divorce actions remains the largest area of practice. However, in 2013, the complaints received reflect an increase in specialized areas of practice by non-lawyers. Examples of such areas of practice investigated in 2013 include oil & gas, debt resolution and mechanic lien services. General practice denotes non-lawyers that offer legal services in more than one practice area.

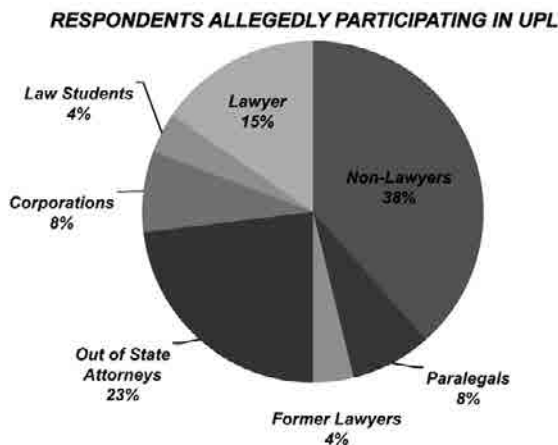


3. Referral Sources. Requests for investigations of the unauthorized practice of law stem from multiple sources. Oklahoma attorneys and attorneys from other jurisdictions are the most frequent source for requests for investigation. In 2013, the Office of the General Counsel received a substantial number of complaints from the opposing party to the action in which

the non-lawyer was participating. Judicial referrals, requests from State and Federal agencies, harmed members of the public, and the Professional Responsibility Commission also report alleged instances of individuals engaging in the unauthorized practice of law.



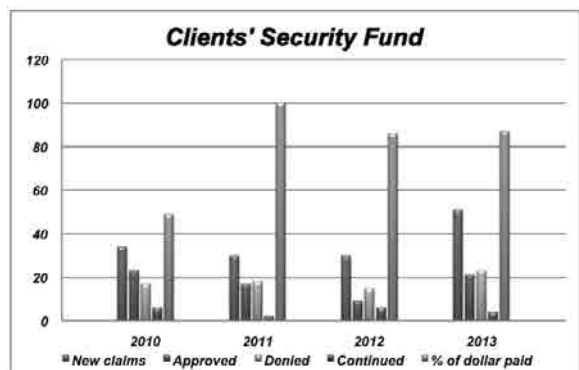
4. Respondents. Most requests for investigation into allegations of the unauthorized practice of law concern non-lawyers. For purposes of this summary, the category “non-lawyer” refers to an individual who does not advertise as a paralegal, but performs various legal tasks for their customers. Recently, most “non-lawyers” claim to have expertise in very specialized areas of practices as discussed above. The “Former Lawyers” category includes lawyers who have been disbarred, stricken, resigned their law license pending disciplinary proceedings, or otherwise voluntarily surrendered their license to practice law in the State of Oklahoma. Also this year, the Office of the General Counsel took action against an attorney licensed in Oklahoma that was assisting a non-lawyer in the unauthorized practice of law.



5. Enforcement. In 2013, of the 26 cases opened, the Office of the General Counsel took formal action in 19 matters. Formal action includes issuing cease and desist letters, initiating formal investigations through the attorney discipline process, and referring a case to an appropriate state and/or federal enforcement agency. The remainder of the cases were closed for no finding of UPL or are still pending.

CLIENTS' SECURITY FUND

The Clients' Security Fund was established in 1965 by Court Rules of the Oklahoma Supreme Court. The Fund is administered by the Clients' Security Fund Committee which is comprised of 15 members, 12 lawyer members and 3 non-lawyers, who are appointed in staggered three-year terms by the OBA President with approval from the Board of Governors. In 2013, the Committee was chaired by lawyer member Micheal Salem, Norman. Chairman Salem has served as Chair for the Clients' Security Fund Committee since 2006. The Fund furnishes a means of reimbursement to clients for financial losses occasioned by dishonest acts of lawyers. It is also intended to protect the reputation of lawyers in general from the consequences of dishonest acts of a very few. The Board of Governors budgets and appropriates \$100,000.00 each year to the Clients' Security Fund for payment of approved claims. In years when the approved amount exceeds the amount available, the amount approved for each claimant will be reduced in proportion on a prorata basis until the total amount paid for all claims in that year is \$100,000.00. The Office of the General Counsel provides staff services for the Committee. In 2013, the Office of the General Counsel investigated and presented to the Committee 42 new claims and six continued claims. The Committee approved 21 claims, denied 23 claims and continued 4 claims into the following year for further investigation.



CIVIL ACTIONS (NON-DISCIPLINE) INVOLVING THE OBA

The Office of the General Counsel has represented the Oklahoma Bar Association in the following civil (non-discipline) matters during 2013:

1. *State of Oklahoma ex rel. Oklahoma Bar Association v. Mothershed*, Oklahoma Supreme Court, SCBD 4687.
 - *Mothershed v. Justices of the Supreme Court of Oklahoma, et al.* United States Supreme Court, Case No. 12-8347, docketed January 10, 2013. Mothershed filed Petition for Writ of Certiorari with the United States Supreme Court regarding Ninth Circuit Court of Appeals Case Number 12-16671, Arizona District Court Case No. CIV-12-0549-PHX-FM. OBA filed waiver of right to respond on January 28, 2013. Case was distributed for conference of February 22, 2013. Certiorari was denied February 25, 2013. Petition for rehearing filed March 20, 2013, Distributed for Conference April 19, 2013. Petition for rehearing denied April 22, 2013.
 - *Mothershed v. Justices of the Supreme Court of Oklahoma, et al.* U.S. District Court for the Western District of Oklahoma, Case No. CIV-13-435. Mothershed filed a Complaint and Motion on April 29, 2013. OBA filed Motion to Dismiss May 24, 2013. Dismissed with Prejudice and Order of Sanctions (Pre-filing restrictions) on December 20, 2013. Mothershed filed Motion to Reconsider on December 22, 2013. *Pending*.
2. *Gather v. OKARNG, et al.*, United States District Court for the Western District of Oklahoma, Case No. CIV-12-166.
 - *Gather v. OKARNG, et al.*, United States District Court for the Western District of Oklahoma, Case No. CIV-12-166, filed February 14, 2012. *Dismissed* February 16, 2012. Transmitted notice of appeal.
 - *Gather v. OKARNG, et al.*, Tenth Circuit Court of Appeals, Case No. 12-6048, filed February 24, 2012 (appealing dismissal of CIV-12-166). *Dismissal affirmed* May 7, 2012.
 - *Gather v. OKARNG, et al.*, United States Supreme Court. Case No. 12-6118, filed May 22, 2012. OBA filed Waiver of Reply to initial petition. Certiorari denied November 13, 2012. Gather has filed two petitions for rehearing. Rehearing denied January 14, 2013.
3. *Kerchee et al., v. Smith et al.*, Western District of Oklahoma Case No. CV-11-459-C.
 - *Kerchee et al., v. Smith et al.*, Western District of Oklahoma, Case No. CV-11-459-C, filed April 26, 2011. The Kerchees filed suit against approximately 40 defendants, including the OBA, Loraine Farabow, John M. Williams and others. *Dismissed* and Judgment entered on February 1, 2012.
 - *Kerchee et al. v. Smith et al.*, Tenth Circuit Court of Appeals, Case No. 12-6080, filed March 28, 2012. OBA defendants filed Motion to Dismiss for lack of appellate jurisdiction. OBA Defendants filed Answer Brief. *Dismissal affirmed* on June 4, 2013.
 - *Kerchee et al. v. Smithe et al.*, United States Supreme Court, Case No. 13A464, filed October 2, 2013. Appellant filed Application to extend the time to file Petition for Writ of Certiorari. *Denied* November 6, 2013.
4. *Gerald R. Smith v. Gary Newberry et al.*, Comanche County Case No. CJ-2006-507, filed June 12, 2006. Motion for Summary Judgment granted on August 11, 2006 in favor of OBA Defendants. Plaintiff filed Motion to Reinstate Dismissed Defendants on April 25, 2013. Response on behalf of OBA and Mike Speegle filed May 8, 2013. *Motion Pending*.
5. *Pemberton v. Melisa DeLacerda*, Oklahoma County Case No. CV-2012-158, filed January 1, 2012. *Dismissed* February 6, 2012.
 - *Pemberton v. DeLacerda*, Oklahoma Supreme Court Case No. MA-110441, filed March 2, 2012. Application to Assume Original Jurisdiction denied. OBA filed response to Petition in Error. Consolidated with Case Nos. 110,169 and 110,968 and assigned to the Court of Appeals when at issue on August 22, 2012. *Dismissal Affirmed* on November 21, 2013. Petition for Rehearing filed December 5, 2013, and *Denied* December 18, 2013.
6. *State of Oklahoma v. William Anton and Fred Schraeder*, Tulsa County Case CF-2009-5279. James Jedrey submitted a claim to the Cli-

ents' Security Fund and received \$44,704.80 as a result of the misconduct by Anton and Schraeder. Subsequently, Jedrey executed a subrogation agreement wherein he assigned any and all claims he had against these two former attorneys to the OBA. The OBA discovered Jedrey was receiving regular restitution payments from the above criminal matter and requested Jedrey to comply with the subrogation agreement. Jedrey refused. With the assistance of the Attorney General's Office and the District Attorney's Office, the OBA obtained an Order modifying the restitution schedule in the criminal matter. This Order effectively substitutes the OBA in place of Jedrey in the distribution of restitution collected. The Motion was filed March 19, 2013 and the Order was entered April 3, 2013.

7. *Bower v. Oklahoma Bar Association*, United States District Court for the Western District of Oklahoma, Case No. CIV-12-1253, filed November 13, 2012. OBA NOT SERVED. Bower did not cure IFP deficiency by deadline. Order adopting Report and Recommendation (denying IFP and advising Plaintiff that action will be dismissed unless filing fees are paid w/n 20 days) entered April 18, 2013. Case Dismissed May 9, 2013.
8. *Demetrius Rogers v. Oklahoma Bar Association and Gina Hendryx*, United States District Court for the Western District of Oklahoma, Case No. CIV-13-121, filed February 1, 2013. On February 12, 2013, Plaintiff was ordered to cure deficiencies in *In Forma Pauperis* Motion by March 5, 2013. As of February 19, 2013, no summons issued. Report and Recommendation issued recommending suit be dismissed against Hendryx and OBA for lack of standing and finding suit was frivolous. Order adopting Report and Recommendation and Judgment filed May 14, 2013.
9. *Bashant v. Oklahoma Bar Ass'n and Gina Hendryx*, Oklahoma Supreme Court Case No. MA 111790, filed May 22, 2013. Application to Assume Original Jurisdiction Denied June 24, 2013.
10. *West v. Denman, Hendryx and Grimm*, Oklahoma Supreme Court Case No. O-111918 filed June 26, 2013. Application to Assume Original Jurisdiction Denied September 16, 2013.

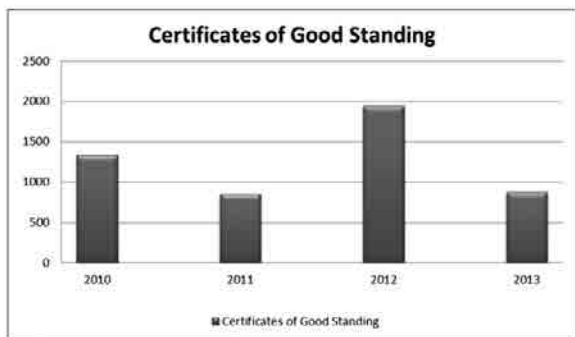
11. *Gore v. Sanfellipo, Dutcher, et al.*, Oklahoma Supreme Court Case No. DF-111012. The OBA is not a named party. On July 3, 2013, Gore filed pleading entitled, "Appellant's Suggestion Concerning [sic] the Oklahoma Bar Association," in response to the OBA not investigating a grievance filed by Gore. Pleading stricken by July 29, 2013 Order.

ATTORNEY SUPPORT SERVICES

1. Out of State Attorney Registration. In 2013, the Office of the General Counsel processed 571 new applications, 469 renewal applications, and \$3,500.00 in renewal late fees submitted by out-of-state attorneys registering to participate in a proceeding before an Oklahoma Court or Tribunal. Out-of-State attorneys appearing pro bono to represent criminal indigent defendants, or on behalf of persons who otherwise would qualify for representation under the guidelines of the Legal Services Corporation due to their incomes, may request a waiver of the application fee from the Oklahoma Bar Association. In 2013, the Office of the General Counsel also processed two waiver requests of the application fee. Certificates of Compliance are issued after confirmation of the application information, the applicant's good standing in his/her licensing jurisdiction and payment of applicable fees. All obtained and verified information is submitted to the Oklahoma Court or Tribunal as an exhibit to a "Motion to Admit Pro Hac Vice."



2. Certificates of Good Standing. In 2013, the Office of the General Counsel prepared 848 Certificates of Good Standing/Disciplinary History at the request of Oklahoma Bar Association members. There is no fee to the attorney for preparation of same.



ETHICS AND EDUCATION

During 2013, the General Counsel, Assistant General Counsels, and the Professional Responsibility Commission members presented more than 50 hours of continuing legal education programs to county bar association meetings, attorney practice groups, OBA programs, law school classes and various legal organizations. In these sessions, disciplinary and investigative procedures, case law, and ethical standards within the profession were discussed. These included presentations at all three state law schools, a discussion regarding attorney regulation with a delegation from a Russian law school, participation in movie night, as well as speaking to non-lawyer groups. This effort directs lawyers to a better understanding of their ethical requirements and the disciplinary process, and informs the public of the efforts of the Oklahoma Bar Association to regulate the conduct of its members. In addition, the Gen-

eral Counsel was a regular contributor to *The Oklahoma Bar Journal*.

The attorneys, investigators, and support staff for the General Counsel's office also attended continuing education programs in an effort to increase their own skills and training in attorney discipline. These included trainings by the National Organization of Bar Counsel (NOBC), Organization of Bar Investigators (OBI), National Institute of Trial Advocacy (NITA), and the American Bar Association (ABA.)

RESPECTFULLY SUBMITTED this 6th day of February, 2014, on behalf of the Professional Responsibility Commission and the Office of the General Counsel of the Oklahoma Bar Association.

Gina Hendryx,
General Counsel
Oklahoma Bar Association

1. One non-lawyer term remained unfilled during 2013.
2. The initial submission of a trust account overdraft notification is classified as general correspondence. The classification may change to a formal grievance after investigation.
3. Statistics based upon official roster address of attorney.

I WANT YOU

To get your free listing on the OBA's lawyer listing service!

Just go to www.okbar.org and log into your myokbar account.

Then click on the "Find a Lawyer" Link.

PROBATE BASICS CLE
Tuesday, February 18, 2014
9:00 a.m. – 12:30 p.m.
Rose State College Tom Sneed Center

- Nuts and Bolts of Probate
- Ethics
- Real Property Transfers
- Estate Planning for Indian Land

REGISTER TODAY!
 Call 405-528-0858
 or visit www.senior-law.org/events

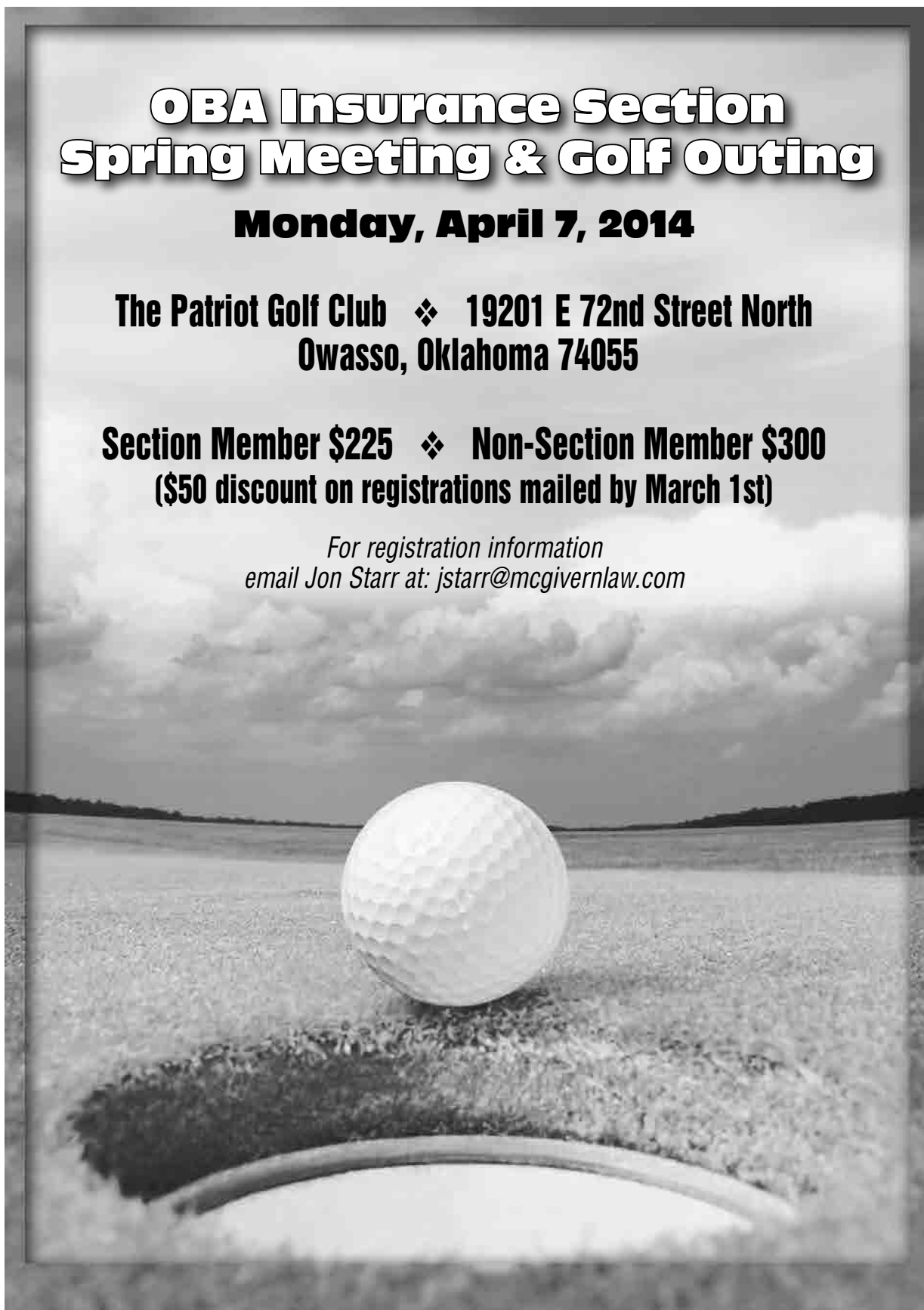
OBA Insurance Section Spring Meeting & Golf Outing

Monday, April 7, 2014

**The Patriot Golf Club ❖ 19201 E 72nd Street North
Owasso, Oklahoma 74055**

**Section Member \$225 ❖ Non-Section Member \$300
(\$50 discount on registrations mailed by March 1st)**

*For registration information
email Jon Starr at: jstarr@mcgovernlaw.com*





Professional Responsibility Tribunal Annual Report

January 1, 2013 — December 31, 2013

SCBD No. 6100

INTRODUCTION

The Professional Responsibility Tribunal (PRT) was established by order of the Supreme Court of Oklahoma in 1981, under the Rules Governing Disciplinary Proceedings, 5O.S. 2011, ch. 1, app. 1-A (RGDP). The primary function of the PRT is to conduct hearings on complaints filed against lawyers in formal disciplinary and personal incapacity proceedings, and on petitioners for reinstatement to the practice of law. A formal disciplinary proceeding is initiated by written complaint which a specific is pleading filed with the Chief Justice of the Supreme Court. Petitioners for reinstatement are filed with the Clerk of the Supreme Court.

COMPOSITION AND APPOINTMENT

The PRT is a 21-member panel of Masters, 14 of whom are lawyers and 7 whom are non-lawyers. The lawyers on the PRT are active members in good standing of the OBA. Lawyer members are appointed by the OBA President, with the approval of the Board of Governors. Non-lawyer members are appointed by the Governor of the State of Oklahoma. Each member is appointed to serve a three-year term, and limited to two terms. Terms end on June 30th of the last year of a member's service.

Pursuant to Rule 4.2, RGDP, members are required to meet annually to address organizational and other matters touching upon the PRT's purpose and objective. They also elect a Chief Master and Vice-Chief Master, both of

whom serve for a one-year term. PRT members receive no compensation for their services, but they are entitled to be reimbursed for travel and other reasonable expenses incidental to the performance of their duties.

The lawyer members of the PRT who served during all or part of 2013 were: Jeremy J. Beaver, McAlester; Joe Crosthwait, Midwest City; Deirdre Dexter, Sand Springs; Tom Gruber, Oklahoma City; William G. LaSorsa, Tulsa; Susan B. Loving, Edmond; Kelli M. Masters, Oklahoma City; Mary Quinn-Cooper, Tulsa; Louis Don Smitherman, Oklahoma City; Neal E. Stauffer, Tulsa; Charles Laster, Shawnee; Michael E. Smith, Oklahoma City; John B. Heatly, Oklahoma City; and Noel K. Tucker, Edmond.

The non-lawyer members who served during all or part of 2013 were: Steven W. Beebe, Duncan; Christian C. Crawford, Stillwater; James Richard Daniel, Oklahoma City; Kirk V. Pittman, Seiling; James W. Chappel, Norman; Linda C. Haneborg, Oklahoma City; and Mary Lee Townsend, Tulsa.

The annual meeting was held on June 25, 2013, at the Oklahoma Bar Association offices. Invited guest John F. Reif, Vice Chief Justice of the Oklahoma Supreme Court, attended the meeting and, on behalf of the Oklahoma Supreme Court, thanked the members of the tribunal for their service. Agenda items included a presentation by Gina Hendryx, General Counsel¹ of the Oklahoma Bar Association, rec-

ognition of new members and members whose terms had ended, and discussions concerning the work of the PRT. William G. LaSorsa was elected Chief Master and M. Joe Crosthwait was elected Vice-Chief Master, each to serve a one-year term.

GOVERNANCE

All proceedings that come before the PRT are governed by the RGDP. However, proceedings and the reception of evidence are, by reference, governed generally by the rules in civil proceedings, except as otherwise provided by the RGDP.

The PRT is authorized to adopt appropriate procedural rules which govern the conduct of the proceedings before it. Such rules include, but are not limited to, provisions for requests for disqualification of members of the PRT assigned to hear a particular proceeding.

ACTION TAKEN AFTER NOTICE RECEIVED

After notice of the filing of a disciplinary complaint or reinstatement petition is received, the Chief Master (or Vice-Chief Master if the Chief Master is unavailable) selects three (3) PRT members (two lawyers and one non-lawyer) to serve as a Trial Panel. The Chief Master designates one of the two lawyer-members to serve as Presiding Master. Two of the three Masters constitute a quorum for purposes of conducting hearings, ruling on and receiving evidence, and rendering findings of fact and conclusions of law.

In disciplinary proceedings, after the respondent's time to answer expires, the complaint and the answer, if any, are then lodged with the Clerk of the Supreme Court. The complaint and all further filings and proceedings with respect to the case then become a matter of public record.

The Chief Master notifies the respondent or petitioner, as the case may be, and General Counsel of the appointment and membership of a Trial Panel and the time and place for hearing. In disciplinary proceedings, a hearing is to be held not less than 30 days nor more than 60 days from date of appointment of the Trial Panel. Hearings on reinstatement petitioners are to be held not less than 60 days nor more than 90 days after the petition has been filed. Extensions of these periods, however, may be granted by the Presiding Master for good cause shown.

After a proceeding is placed in the hands of a Trial Panel, it exercises general supervisory control over all pre-hearing and hearing issues. Members of a Trial Panel function in the same manner as a court by maintaining their independence and impartiality in all proceedings. Except in purely ministerial, scheduling, or procedural matters, Trial Panel members do not engage in *ex parte* communications with the parties. Depending on the complexity of the proceeding, the Presiding Master may hold status conferences and issue scheduling orders as a means of narrowing the issues and streamlining the case for trial. Parties may conduct discovery in the same manner as in civil cases.

Hearings are open to the public and all proceedings before a Trial Panel are stenographically recorded and transcribed. Oaths or affirmations may be administered, and subpoenas may be issued, by the Presiding Master, or by any officer authorized by law to administer an oath or issue subpoenas. Hearings, which resemble bench trials, are directed by the Presiding Master.

TRIAL PANEL REPORTS

After the conclusion of a hearing, the Trial Panel prepares a written report to the Oklahoma Supreme Court. The report includes findings of facts on all pertinent issues, conclusions of law, and a recommendation as to the appropriate measure of discipline to be imposed or, in the case of a reinstatement petitioner, whether it should be granted. In all proceedings, any recommendation is based on a finding that the complainant or petitioner, as the case may be, has or has not satisfied the "clear and convincing" standard of proof. The Trial Panel report further includes a recommendation as to whether costs of investigation, the record, and proceedings should be imposed on the respondent or petitioner. Also filed in the case are all pleadings, transcript of proceeding, and exhibits offered at the hearing.

Trial Panel reports and recommendations are advisory. The Oklahoma Supreme Court has exclusive jurisdiction over all disciplinary and reinstatement matters. It has the constitutional and non-delegable power to regulate both the practice of law and legal practitioners. Accordingly, the Oklahoma Supreme Court is bound by neither the findings nor the recommendation of action, as its review of each proceeding is *de novo*.

ANNUAL REPORTS

Rule 14.1, RGDP, requires the PRT to report annually on its activities for the preceding year. As a function of its organization, the PRT operates from July 1 through June 30. However, annual reports are based on the calendar year. Therefore, this Annual Report covers the activities of the PRT for the preceding year, 2013.

ACTIVITY IN 2013

At the beginning of the calendar year, 11 disciplinary and 1 reinstatement proceedings were pending before the PRT as carry-over matters from a previous year. Generally, a matter is considered “pending” from the time the PRT receives notice of its filing until the Trial Panel report is filed. Certain events reduce or extend the pending status of a proceeding, such as the resignation of a respondent or the remand of a matter for additional hearing. In matters involving alleged personal incapacity, orders by the Supreme Court of interim suspension, or suspension until reinstated, operate to either postpone a hearing on discipline or remove the matter from the PRT docket.

In regard to new matters, the PRT received notice of the filing of 17 disciplinary complaints and 10 reinstatement petitions. Trial Panels conducted a total of 20 hearings; 18 in disciplinary proceedings and 2 in reinstatement proceedings.

On December 31, 2013, a total of 9 matters, 3 disciplinary and 6 reinstatement proceedings, were pending before the PRT.

CONCLUSION

Members of the PRT demonstrated continued service to the Bar and the public of this State, as shown by the substantial time dedicated to each assigned proceeding. The members’ commitment to the purpose and responsibilities of the PRT is deserving of the appreciation of the Bar and all its members, and certainly is appreciated by this writer.

Dated this 6th day of February, 2014.

PROFESSIONAL RESPONSIBILITY TRIBUNAL



William G. LaSorsa, Chief Master

1. The General Counsel of the Oklahoma Bar Association customarily makes an appearance at the annual meeting for the purpose of welcoming members and to answer any questions of PRT members. Given the independent nature of the PRT, all other business is conducted in the absence of the General Counsel.

Proceeding Type	Pending Jan. 1, 2013	New Matters In 2013	Hearings Held 2013	Trial Panel Reports	Pending Dec. 31, 2013
Disciplinary	11	17	18	16	3
Reinstatement	1	10	2	3	6

2014 Law Day Celebrations to Promote Civics Education

Thursday, May 1, is set for 'Ask A Lawyer' Day

Increasing public understanding of courts and the judiciary is a major goal for 2014 OBA President Renée DeMoss. The annual celebration of Law Day is the perfect opportunity for Oklahoma lawyers to support this leadership initiative by continuing our state's tradition of educational outreach as we spotlight the freedoms, rights and responsibilities we enjoy under our three independent branches of government.

The celebration is now underway! The annual Ask A Lawyer TV show is in production, the art contests have been judged, and county bar associations should begin planning events now. In addition to the opportunity to promote civics education, Law Day gives Oklahoma lawyers the chance to participate in a large-scale community service event designed to enhance the image of the legal profession while providing assistance to those who need help with legal questions.

We can't accomplish these important tasks without the participation of our local county bar associations. Mark your calendars now! Thursday, May 1 is the day Law Day will be observed in Oklahoma this year. The TV show will air on OETA stations across the state from 7–8 p.m. Counties hosting Ask A Lawyer call-in events are asked to be available to take calls during this hour for maximum publicity of this community service event.

Thanks to those counties that have already submitted the name of their Law Day chairperson:

Beaver: Todd Trippet

Bryan: Julie Cuesta-Naifeh

Choctaw: John Frank Wolf III

Comanche: Aimee Vaderman

Craig: Ryan Olsen

Dewey: Judge Rick Bozarth

Garvin: Laura Schafer

LeFlore: Jolyn Belk and Amanda Grant

McCurtain: Kevin Sain

McIntosh: Brendon Bridges

Oklahoma: Curtis Thomas

Ottawa: Matt Whalen

Payne: Jimmy Oliver

Pontotoc: Jenna Owens

Seminole: Judge Tim Olsen, Gordon Melson and Jack Cadenhead

Stephens: Jamie Linzman-Phipps

Tulsa: Rachel Mathis

Oklahoma Bar Association
Law Day 2014



Is your county missing from this list? Please submit the name of your Law Day chairperson as soon as possible to Lori Rasmussen, OBA Law Day coordinator, lorir@okbar.org, 405-416-7017.

54th Legislature 2nd Session and the Business of Lawyers

By John Morris Williams

On Feb. 3, 2014, the 2nd session of the 54th Oklahoma Legislature began. Prior to the beginning of the session, the OBA Legislative Monitoring Committee met and identified 489 bills to put on our master list of bills that OBA members might be interested in tracking. The list includes diverse subjects ranging from health care to the judiciary. The master list is on the OBA website at www.okbar.org/members/Legislative and will be updated weekly for members wishing to track bills on the list.

Also, the committee developed some “top 10” lists and a list called “bills every lawyer should know about.” The lists are not advocating any position. They are there to inform OBA members about pending legislation that might affect them and their clients.

This year we have set March 25 as our Day at the Capitol. Every day the Capitol is filled with citizens and lobbyists advocating positions on bills of interest to them. As lawyers almost every bill in the Legislature that becomes law in some way affects members of the legal profession. Needless to say, as lawyers the law is pretty important to us. It is our profession; it is the substance of our work.

Please put this date on your calendar and plan on being with OBA President Renée DeMoss and your peers as they visit with legislators in person about pending legislation.

“ I want to encourage you to participate in our grand democracy and let your voice be heard. ”

I realize that practicing lawyers are busy folks and watching 3,000 pieces of legislation is pretty much a full-time job. In fact, many businesses, organizations and a myriad of other groups hire lobbyists who do nothing else every day but come to the capitol to influence the outcome of pending legislation. However, as public citizens educated in the law, I believe every lawyer who has knowledge to lend to pending legislation has a duty to do so. In this day of electronic communications and ease of bill tracking, it is relatively easy to let your voice be heard.

The Oklahoma Legislature website contains a free bill search and tracking feature. It also has contact information for all legislators. To access it simply type in “Oklahoma Legislature” in your search engine, and it will appear. The home page features are fairly self explanatory and will allow any member of the public to search for bills and to create a tracking list that updates bills as they move through the session. Of course, the OBA will be updating its list and will add any bill to the list requested by an OBA member. Whatever method you choose, it is easier than ever to be informed about pending legislation.

As the session progresses, many bills will die and many will be amended, but in the end bills will be passed that affect the lives and livelihood of people. I want to encourage you to participate in our grand democracy and let your voice be heard. After all, the law is the business of lawyers.



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

OBA DAY AT THE CAPITOL • MARCH 25

What Tech Tool Should I Use to Do That?

By Jim Calloway

How do I do that? It is one of the challenges we all live with in today's times. We need to do something with our technology, and we are aware that there are technology tools to do it. We just aren't sure which of the many available tools is appropriate and how much training, installation and setup will be required to make it happen. After all, the point is to do it more quickly and efficiently, not to spend hours researching software or apps and customizing them. So this month let's cover a few ways to do some common technology tasks quickly. Hopefully, many readers will be aware of several of these methods already.

HOW DO I FIND THE ANSWER TO ALMOST ANY FACTUAL QUESTION?

We all know the answer to this one, right? You can quickly find an amazing number of facts by using Internet search engines, with Google being the most popular. But what you may not know is that Google has been changing the algorithm it uses to provide answers to our queries. Now Google does a much better job of returning an initial search result that attempts to provide the answer to the question that you are really asking.

To see this in action, just type in one of my favorite search terms — Oklahoma City Thunder. No longer is the team's official website the very first result, although you can easily scroll down to find



that result. Instead, you find the score of the most recent game or the time of the upcoming game along with some facts about the team from Wikipedia, the team roster, graphics associated with the team and recent news items associated with the team. This is a very good example of how Google search works differently today.

If Google doesn't return the search results you want, remember that the Internet is so massive today you may need to use many words in your Google search query to find what you want. So do a short search first, and if that

doesn't return what you're seeking, try using a lot of words for your Google search.

HOW CAN I FIND INFORMATION ABOUT A PERSON INEXPENSIVELY?

Lawyers often find themselves in a situation where they would like to be able to do a quick and easy background check on an individual or try to do a "skip trace" on someone who has vanished, whether they are opposing party, witness or lost heir. A good first starting point is TLOxp® for Legal Professionals, online at www.tlo.com/legal-professionals. The service has a 15-day free trial and offers searches for \$1 and more comprehensive reports for \$5. You can see the various types of searches available at www.tlo.com/general_pricing.html.

I NEED TO SCHEDULE A CONFERENCE CALL OR OTHER EVENT WITH OTHERS IN DIFFERENT TIME ZONES. HOW CAN I DO THAT EASILY?

TimeandDate.com has been online for a long time. This nice website provides a time zone map, a free meeting planner, the current time to the second, a printable PDF calendar, a future date calculator and about any other

resource you can imagine related to times and dates.

Scheduling a meeting with one other person is fine to do by email, but if there are three or more people involved, you always want to use a free meeting scheduling app like Doodle (<http://doodle.com>), Meeting Wizard (www.meetingwizard.com/) or WhenIsGood (<http://whenisgood.net/>).

I HAVE A DOCUMENT IN MY HAND THAT I NEED TO EMAIL TO SOMEONE, BUT I DON'T HAVE A SCANNER. WHAT DO I DO?

At this point every law office should have a scanner. But there will still be many times that you will find yourself away from the office in a situation where you do not have access to a scanner. This is one of the best reasons to have a smart phone. Today's smart phones have very high resolution cameras that can take a picture of an entire 8 1/2" by 11" document. Sometimes just sending a picture will accomplish your purpose. But there are a number of apps that will convert a picture on your phone to a PDF file before emailing it. For iOS, check out Scanner Pro for iPhone from Readdle (\$6.99) or JotNot Scanner Pro (\$1.99). For the Android platform there are a number of applications available in the Google Play store. The free Cam Scanner app receives a lot of great reviews (All lawyers with Android phones should certainly check out Jeffrey Taylor's blog post "2013's Best Android Apps for Lawyers," [\[android-apps-for-lawyers.com/\]\(http://android-apps-for-lawyers.com/\) for many more great apps.\).](http://thedroidlawyer.com/2013/12/2013s-best-</p></div><div data-bbox=)

I KNOW I'M NOT SUPPOSED TO USE THE SAME PASSWORD FOR ALL OF MY WEB SERVICES, BUT THERE IS NO WAY TO REMEMBER SO MANY DIFFERENT PASSWORDS. WHAT SHOULD I DO?

Not only should you not use the same password for multiple different logins, but passwords should not be words that can be found in the dictionary. They should be long, at least 10 or 12 characters, and include letters or symbols. But you only need to memorize a few passwords. You need to memorize the password to login to your computer. You need to memorize the passwords to log into your online banking accounts. And you need to memorize the password for your password manager that remembers all the other passwords for you. Today it is simply impossible to manage all of your passwords without using a password manager. Some popular ones include LastPass, 1Password, Dashlane, Roboform and KeePass.

WHILE DOING LEGAL RESEARCH, I'M ENCOUNTERING PROBLEMS. HOW CAN I GET TECH SUPPORT OR IMPROVE MY ONLINE LEGAL RESEARCH SKILLS?

If you are using your free Fastcase legal research service supplied by the OBA and encounter problems, great free tech support is available. Telephone customer support is available Monday through Friday 7 a.m. to 7 p.m. central time at 866-773-2782. You can

also email support@fastcase.com for support during those hours or use the live chat feature on the website. Video tutorials and other resources to improve your skills in using Fastcase can be found at www.fastcase.com/support.

And, if you are not using your free Fastcase account, why not?

WHERE CAN I LEARN MORE TECHNOLOGY TIPS LIKE THESE?

Let me immodestly remind you of my blog, Jim Calloway's Law Practice Tips. While the original address (<http://jimcalloway.typepad.com/>) still works, this year we are adding an easier-to-remember domain name — www.lawpracticetipsblog.com. But we all seem to be too busy to remember to go visit websites. If you are not yet set up with an RSS newsreader to get the feed from the blog, then visit it today and enter your email address in the subscription box. You will receive each of the blog posts, in its entirety, via email the day after the post hits the Internet. This makes certain you will be notified of my podcasts and my column in the ABA's *Law Practice* magazine as well. We hope to expand content on the blog this year and encourage those of you who haven't yet subscribed to receive it by email to do so.

Mr. Calloway is OBA Management Assistance Program director. 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!

It's Confidential!

By Travis Pickens

Confidentiality under the *Oklahoma Rules of Professional Conduct* is often misunderstood as being the same as attorney-client privilege. It is not — and is much broader in scope. Confidentiality as defined in Rule 1.6 (a) is “information relating to the representation of a client.” That is not simply the communications between attorney and client; it is instead everything pertaining to the representation. It includes not only the attorney-client communications and strategies, it includes the identity of the client, the subject matter or case the lawyer is working on and any details of the representation. Comment [3] to the rule states “[t]he confidentiality rule... applies not only to matters communicated in confidence by the client but also to *all information* relating to the representation, *whatever its source*” (emphasis added).

The reason for this rule is the overwhelming importance of the client trusting you to learn what may be embarrassing, explosive or legally damaging information. Full and frank disclosure and discussion within a trusted confidential relationship is the hallmark of the attorney-client bond and without which legal representation is reduced to high-priced chit chat. And, “[t]his prohibition [not to disclose] also applies to disclosures by a lawyer that do not in themselves reveal pro-

“The reason for this rule is the overwhelming importance of the client trusting you...”



tected information but could reasonably lead to the discovery of such information by a third person.”¹

EXCEPTIONS

Paragraph (a) goes on to trim the scope a bit of what must be kept confidential by adding exceptions such as when the client gives informed consent to the disclosure, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted

by paragraph (b) [paragraph (b) generally deals with situations where the lawyer is made aware of a potential crime or harm to another person, the instances when a lawyer is defending a claim against her or his own representation, the disclosure is authorized by other law, or importantly, when the lawyer is securing legal advice regarding his or her own compliance with the *Rules of Professional Conduct*. It justifies an article all of its own and will not be addressed here].

Therefore if a client has consented to your disclosure of information, it is not a violation. The tricky aspect to this seemingly innocuous exception, however, is that the rule requires the consent to be “informed.” Again, this is something that is not always fully appreciated. “Informed consent” is a defined term in Rule 1.0 “Terminology” as paragraph (e). It denotes that the attorney has “communicated *adequate information* and explanation about the *material risks of* and reasonably *available alternatives* to the proposed course of conduct” (emphasis added). That is much more than simply asking permission in general terms.

Another exception, and the one that allows attorneys to avoid the annoying hell of constantly seeking client permission, is that of “is impliedly

authorized in order to carry out the representation.” In general, what is “impliedly authorized” will depend upon the particular circumstances of the representation. *See, e.g.,* ABA Formal Ethics Op. 01-421 (2001) (a lawyer hired by an insurance company to defend an insured normally has an implied authorization to share with the insurer information that will advance insured’s interests); Kan. Eth. Op. 01-01 (2001) (a lawyer whose client inherited property from a former client is impliedly authorized to disclose information from the deceased client’s file to effectuate inheritance.); *but see cf.* ABA Formal Ethics Op. 93-370 (1993) (unless the client consents, a lawyer should not reveal to a judge — and a judge should not require a lawyer to disclose — the client’s instructions on settlement authority limits or the lawyer’s advice about settlement).

LIMITED DISCLOSURES

Limited disclosures to a lawyer outside a firm have been found to be impliedly authorized “when the consulting lawyer reasonably believes the disclosure will further the representation by obtaining the consulted lawyer’s experience or expertise for the benefit of the consulting lawyer’s client.” But information protected by the attorney-client privilege should not be disclosed, nor should information that is prejudicial to the client.² This is the exception that allows us to speak with another attorney and brainstorm about particular scenarios, issues or potential expert witnesses. This sort of consultation should be done discreetly, without using the client’s name or information that could lead someone to conclude the identity of the client

or the particular matter. Furthermore, only the information reasonably necessary for the consultation should be disclosed. A frequent sin here is providing much more information than necessary or privileged information, either because we are not being careful or perhaps because the information we have is amusing or tantalizing.

An attorney is free to disclose information to her or his own office staff and other firm members, unless a client has requested otherwise (regarding information beyond that necessary to evaluate potential conflicts).³ Such a request to limit disclosure within the firm is uncommon but would be understandable in certain instances, such as for example, a client contemplating a potential divorce, criminal charge or sale of a well-known business.

An attorney can also make limited disclosures to a non-lawyer independent contractor when necessary. This covers situations like IT specialists, accountants and expert witnesses. *See, e.g.,* Vt. Ethics Op. 2003-03 (n.d.) (it was permissible to use an outside computer consultant to recover a lost database file, which contained confidential client information). However here, a lawyer must explain the scope and duty of confidentiality to the non-lawyer, ask the non-lawyer to commit to uphold such duty and satisfy him/herself that the non-lawyer will follow adequate safeguards to preserve and protect confidential information. This follows a supervising lawyer’s duty under Rule 5.3 to put measures in place to ensure the non-lawyer’s conduct is compatible with the professional obligations of the lawyer.

The ethical duty of confidentiality of information and the evidentiary privilege of the attorney-client relationship coexist, although Rule 1.6 necessarily yields to the law of privilege in the context of a judicial proceeding where the lawyer may be called as a witness or otherwise be required to produce evidence concerning a client⁴.

BEST WAY TO AVOID MISUNDERSTANDING

One of the best ways to avoid a misunderstanding with a client and a potential disciplinary violation is to provide a written explanation, in everyday conversational language, of many of the matters pertaining to your work for the client that are beyond the scope of the fee agreement, topics that you typically cover in a lengthy initial meeting with the client or through several later telephone conversations or emails. Among the topics should be the meaning, scope and exceptions for confidentiality of information, attorney-client privilege and the potential waiver of privilege. These may be submitted to the client on paper, in an email, on a video, DVD or digital video file, along with the other topics you typically discuss with a client when you begin representation.

Moreover, and importantly, we attorneys have a duty to make sure our staffs are educated and fully understand key aspects of the *Rules of Professional Conduct* — confidentiality being principal among those. We must do more than create a general culture of ethical compliance. We must put specific *measures* in place to ensure compliance with the rules. Rule 5.3 (a). Supervising lawyers should educate their staffs through written materials, ori-

entations for new employees and periodic updates regarding ethical duties as they evolve through rule changes and case law.

Finally, Rule 1.6 deals with the disclosure by an attorney of information relating to the representation of a client during the attorney's representation of the client. Other rules deal with

the lawyer's duties of confidentiality regarding a prospective client, Rule 1.18, a former client, Rule 1.9 (c) (2), and, the duties relating to the use of such information to the disadvantage of clients and former clients, which are Rules 1.8 (b) and 1.9 (c)(1).


1. Rule 1.6 Comment [4]

2. ABA Formal Ethics Op. 98-411; Rule 1.6 Comment [4].

3. Rule 1.6 Comment [5]; *Boren v. Kirk*, 878 P.2d 1059, 1994 OK 94.

4. Comment [3] to Rule 1.6.

Mr. Pickens is OBA ethics counsel. Have an ethics question? It's a member benefit and all inquiries are confidential. Contact him at travisp@okbar.org or 405-416-7055; 800-522-8065. See Tips from the OBA Ethics Counsel at www.okbar.org/members/EthicsCounsel.




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Top Five Reasons You Should Become an OBF Fellow

By Dietmar K. Caudle

REASON #1: IT'S EASY

You are *already a member* of the Oklahoma Bar Foundation when you become licensed by the Oklahoma Bar Association. You are not a Fellow of the Oklahoma Bar Foundation until you subscribe to be a Fellow, a Sustaining member, a Benefactor member or one of the new Community Fellows.

You can easily become an OBF Fellow by submitting simple enrollment information online at www.okbarfoundation.org or by completing the form located in this bar journal. Or please call the OBF at 405-416-7070 or any of our Board of Trustees to enroll. We will be happy to assist you!

REASON #2: BE A PART OF HISTORY

The OBF is the official charitable arm of the Oklahoma Bar Association. The OBF was founded in 1946 by Oklahoma lawyers for all Oklahoma lawyers. The OBF is the third oldest state bar foundation in the nation, which is something all can be proud of.

The OBF has an IRS Code 501(c)(3) tax-exempt status. By being an OBF Fellow, you become an integral part of a mission which transforms lives for the better. Some 100,000 Oklahomans benefited from OBF grant funding during 2013.

REASON #3: GOOD DEEDS

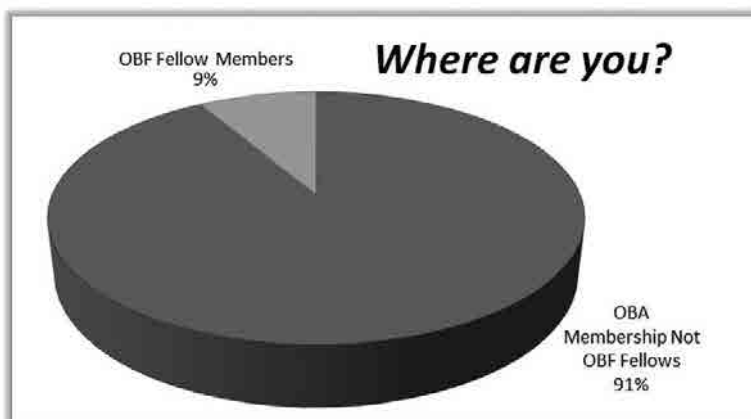
Annual OBF grant awards are divided into two distinct categories: 1) statewide OBF court grants and 2) statewide OBF grants for law-related nonprofit charities.

This means that your geographic area of the state benefited from OBF court grants and other statewide OBF grants.

More than \$11 million has been awarded!

Your OBF board consists of 26 attorney members who serve three-year staggered terms with a maximum of two terms, including the OBF past president, ex-officio OBA president, OBA president-elect, OBA executive director and an OBA Young Lawyers Division representative.

When you give to the OBF, you are funding an umbrella of diverse law-related services. When you give to the OBF, your donation is tax deductible.



REASON #4: IT'S A GREAT BARGAIN

The OBF is your best place for one-stop charitable giving. The OBF is the primary grant-making organization in Oklahoma funding law-related services and education. Your OBF Board of Trustees represents all corners of the state and oversees funded programs.

The OBF gives to causes that lawyers and law firms care about.

OBF one-stop giving helped 17 law-related programs and 13 court projects and law student scholarships at all three law colleges last year.

REASON #5: IT FEELS GOOD

I have appointed a special committee to develop a video depicting the story of the OBF and how lawyers came to be helping Oklahomans in need. Plans are underway to show the OBF video story statewide at CLE presentations, OBA Solo and Small Firm Conference, OBA Annual Meeting and other bar related events.

Plans are to convey the OBF story to the public whenever and wherever possible. The purpose of the OBF story is to educate not only our membership but also the public about the OBF and the good work being accomplished through the OBF.

The OBF recently launched the Community Fellows pro-

gram in which community-minded businesses, law firms and other affiliate groups can unite with the OBF so that more Oklahomans in need can be served.

Bank of Oklahoma has recently become a Community Fellow offering premium services and IOLTA rates to attorneys across Oklahoma. Others honored as Community Fellows are The Garrett Law Center of Tulsa, Bass Law of Oklahoma City and El Reno, and the OBA Family Law Section.

YOUR INVITATION

I understand that you are probably not going to become a Fellow unless you have been asked. Please consider this to

be my invitation to you to become a Fellow today!

Join the OBF.



ABOUT THE AUTHOR



Dietmar K. Caudle practices in Lawton and serves as OBF President. He can be reached at d.caudle@sbcglobal.net.

Tributes and Memorials



A simple and meaningful way to honor those who have played an important role in your life or whose accomplishments you would like to recognize. The OBF will notify your tribute or memorial recipient that you made a special remembrance gift in their honor or in memory of a loved one.

Help the OBF meet its ongoing mission - lawyers transforming lives through the advancement of education, citizenship and justice for all.

Make your tribute or memorial gift today at:
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Or if you prefer, please make checks payable to:

Oklahoma Bar Foundation P. O. Box 53036 Oklahoma City OK 73152-3036
Email: foundation@okbar.org • Phone: 405-416-7070



2014 OBF Fellow and Community Fellow Enrollment Form

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Contact _____

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Phone _____ Email _____

INDIVIDUALS: FELLOW ENROLLMENT

☐ Attorney ☐ Non-attorney

___ I want to be an OBF Fellow now – Bill me later ___ \$100 enclosed and bill annually

___ Total amount enclosed \$1,000 ___ New lawyer 1st year, \$25 enclosed & bill annually as stated

___ New lawyer within 3 years, \$50 enclosed and bill annually as stated

___ I want to be recognized at the highest Leadership level of Benefactor Fellow and annually contribute at least \$300
(initial pledge should be complete)

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

___ My charitable contribution to help offset the Grant Program Crisis

GROUPS: COMMUNITY FELLOW ENROLLMENT

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☐ Corporation/Business ☐ Other Group

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

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THANK YOU FOR YOUR GENEROSITY AND SUPPORT!

Young Lawyers Inspired After National Meeting

By Kaleb Hennigh

I recently returned from the American Bar Association's Young Lawyers Division mid-year meeting in Chicago, and I am happy to report that I believe the state of the Oklahoma Young Lawyers Division is sound. This meeting and those that I will continue to attend throughout my year as chair are an opportunity to voice the concerns and opinions of Oklahoma young lawyers to a national audience. It further provides a venue to share ideas, projects, programs and network with young lawyers from across the nation.

Programs such as Wills for Heroes and Serving Our Seniors are a great example of how these national conferences can assist us as Oklahoma young lawyers continue our mission of community betterment through service programs. The OBA YLD has successfully implemented both programs throughout the state over the past four years resulting in the YLD providing basic estate planning documents to numerous first responders and seniors.

NEW PROJECT

The ABA has identified its public service project this year entitled BullyProof, Young Lawyers Educating and Empowering to End Bullying.



This program is focused on ending the bullying epidemic and is a comprehensive initiative that provides education and resources to help empower our students, educators and parents to make bullying a

thing of the past. The goal is to make presentations within schools and youth programs in the United States. Details are online at <http://goo.gl/7hOOnu>.

The OBA YLD Board of Directors has identified this as an initiative and has already presented this program within Oklahoma County, and we have received wonderful reviews. If you are interested in assisting with this public service project, please contact myself or another member of the OBA YLD board, and we will get you started.



Bar examination survival kits

In addition to public service and community improvement, the OBA YLD is also committed to its current and future membership. This month, in addition to our regular business, the OBA YLD board will be working to assist those law students and soon-to-be young practitioners by preparing bar examination kits to help ease the stress and tension during the bar exam.

Further, to assist our current membership, I want to make certain you are utilizing all

that the Oklahoma Bar Association has to offer you by frequently visiting the website at www.okbar.org. Specifically, follow the link to the YLD page wherein you will find information relating to our projects, our committees and our public service initiatives. All of the upcoming events are identified under our Schedule of Events, and I encourage all young lawyers to make a choice, get involved with the division and identify a community service project that

will allow you to better the community in which you practice. Thank you!

ABOUT THE AUTHOR



Kaleb Hennigh practices in Enid and serves as the YLD chairperson. He can be contacted at hennigh@northwestoklaw.com.

MEMBER BENEFIT

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For more member perks, visit www.okbar.org/members/members/benefits

Town Hall Discussion to Increase Public Understanding of Courts

**First meeting: Thursday, Feb. 27 • Canadian County Courthouse, El Reno
5 p.m. • Public invited**

Try this experiment: Ask your friends or neighbors to name all three Kardashian sisters. Now ask them to name three Supreme Court justices. If they are like many Americans, they'll easily rattle off "Kim, Khloe and Kourtney," but be utterly baffled about those men and women who protect their constitutional rights and our American way of life by making fair and impartial decisions in any number of court cases.



That's why the OBA is launching a major public education initiative aimed at directly engaging Oklahomans to promote understanding of the third branch of government. Also to be addressed is the topic of how we choose judges in Oklahoma, and how judicial selection affects every citizen of our state. The first of several OBA- and county bar-sponsored town hall meetings will take place Thursday, Feb. 27 at the Canadian County Courthouse in El Reno. The event begins at 3 p.m. with up to two hours of CLE focused on practice management as well as judicial selection issues. At 5 p.m. lawyers are invited to stay as the informal public discussion and reception begin. The event will be attended by bar and civic leaders as well as members of the judiciary. Guests are encouraged. Non-lawyers are encouraged to RSVP to info@courtfacts.org.



OBA Day at the Capitol March 25



Oklahoma lawyers, let your voices be heard! OBA will host its annual Day at the Capitol on March 25. Registration begins at 10 a.m. at the Oklahoma Bar Center, 1901 N. Lincoln Blvd., and the agenda will feature speakers commenting on legislation affecting various practice areas. Attendees will hear remarks from bar leaders, and lunch will be provided before the group heads over to the Capitol for the afternoon. Check www.okbar.org for further updates.

Free Discussion Groups Available to OBA Members

"Stress Management" will be the topic of the March 6 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 Street. The Tulsa meeting time is 7 – 8:30 p.m. at the TU College of Law, John Rogers Hall, 3120 E. 4th Place, Room 206. There is no cost to attend and snacks will be provided. RSVPs to Kim Reber, kimreber@cabainc.com, are encouraged to ensure there is food for all.





Connect With the OBA Through Social Media

Have you checked out the OBA Facebook page? It's a great way to get updates and information about upcoming events and the Oklahoma legal community. Like our page at www.facebook.com/OklahomaBarAssociation. And be sure to follow @OklahomaBar on Twitter!



ABA TECHSHOW 2014 — Register Now!

ABA TECHSHOW 2014® is set for March 27-29 at the Chicago Hilton. The OBA is an event promoter for ABA TECHSHOW 2014®, which means our members can save by using the OBA EP code EP1403. Check out the full line-up of the 50 CLE sessions focused on the latest technology trends. Register online at www.techshow.com using the event promoter registration form. The faculty members this year include OBA members Jim Calloway and Jeffrey B. Taylor.

Notice RE: Interest on Judgments

The *postjudgment* interest rate to be charged on judgments in accordance with 12 O.S. 2013 Supp. §727.1 (I) for calendar year 2014 shall be 5.25 percent. Also, the *prejudgment* interest rate applicable to actions filed on or after Jan. 1, 2010, shall be 0.05 percent. These interest rates will be in effect from Jan. 1, 2014, until the first regular business day of January 2015. The interest rates by year are available at www.oscn.net.

OBA Member Resignations

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

Emily Kay Bales
OBA No. 478
5807 E. 52nd Street
Tulsa, OK 74135-7504

Albert Ernest Durrell
OBA No. 21435
5211 Jericho Court
Houston, TX 77091

Ellen Gean Pierce
OBA No. 15238
8195 S. 865 E.
Sandy, UT 84094-0621

Brett Alan Claar
OBA No. 22852
1306 S.W. Isham St.
Grants Pass, OR 97526

Jack Leon Fetzer
OBA No. 2886
299 Jasmine St.
Denver, CO 80220-5982

Kim L. Underwood
OBA No. 17357
810 Forest Run Drive
Eureka, MO 63025

Steven Andrew Curlee
OBA No. 2110
600 Grimes Bridge Landing
Roswell, GA 30075-4652

Sean Michael Hanlon
OBA No. 21513
2676 Tamarac Street
Denver, CO 80238

Robert Duane Wilson
OBA No. 11574
P.O. Box 896
Arkansas City, KS 67005

Tony M. Davis
OBA No. 10268
903 San Jacinto Blvd.,
Ste. 332
San Antonio, TX 78701

Mark Pennington
OBA No. 10926
8319 McNeil Street
Vienna, VA 22180

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.



Kudos

Michael L. Brooks, of Hartzog Conger Cason & Neville in Oklahoma City, has been selected to the 10th Circuit Appellate Criminal Justice Act (CJA) Panel. The panel consists of private attorneys who are eligible to be appointed to represent indigent criminal defendants in 10th Circuit appeals.

Courtney Warmington, a labor and employment attorney at Crowe & Dunlevy, was recently named general counsel for the Oklahoma Human Resource Society, a nonprofit state affiliate of the Society for Human Resource Management that provides services such as training, certification, education and networking opportunities to HR professionals. Additionally, **Tanya S. Bryant** has been named Oklahoma City Human Resource Society general counsel. Ms. Bryant is a director in Crowe & Dunlevy's labor and employment practice group. She received her J.D. from OCU in 2004 and is a member of the OBA Labor and Employment Section.

On The Move

Patrick G. Colvin has joined Jones, Gotcher & Bogan as an associate. His practice includes civil litigation, general business representation and labor law. Mr. Colvin received a B.A. in biology *summa cum laude* from the University of St. Thomas before earning a J.D. with highest honors from OU where he was Order of the Coif.

Chesapeake Energy Corp. announces **Miles Tolbert** will join the company as associate general counsel – environmental health and safety effective Feb. 17. Mr. Tolbert is former Oklahoma Secretary of the Environment.

The Oklahoma City office of Doerner, Saunders, Daniel & Anderson has been relocated to the historic High-tower Building at 105 N. Hudson Ave.

The Tulsa law firm Atkinson, Haskins, Nellis, Brittingham, Gladd & Fiasco announces **Andrew G. Wakeman** has become a partner in the firm. Mr. Wakeman began working at the firm in 2006 upon graduating from the TU College of Law with highest honors. His practice focuses primarily on litigation, including cases involving medical malpractice, automobile negligence, insurance bad

faith and commercial disputes.

The shareholders of McAfee & Taft have elected **Stephen M. Hetrick** as the newest member of its board of directors. He joins **Michael Blake**, **Jennifer Callahan**, **Robert L. Garbrecht**, **Michael Joseph** and **Michael Lauderdale** — all of whom were re-elected for another one-year term — as well as managing director **Richard Nix** on the seven-member board. Mr. Hetrick is a Tulsa-based corporate attorney whose practice encompasses a broad range of complex business transactions including mergers and acquisitions and real estate transactions.

First American Title Insurance Company announces that **Charis L. Ward** has joined the company as Oklahoma agency counsel. Ms. Ward was previously with Lamun Mock Cunnynham & Davis and is admitted to practice law in Oklahoma and Texas.

Blaine Peterson joined Parman & Easterday, an Oklahoma City estate planning, elder law and business planning firm. Mr. Peterson focuses his practice on estate planning and tax law, is a certified public accountant and a certified valuation analyst. He received his J.D. from OU in 1999 and holds a bachelor's degree in accounting also from OU.

Sobel & Erwin PLLC in Tulsa announces that **M. Catherine Coulter** has joined

the firm. Ms. Coulter graduated from the TU College of Law, where she was an articles and research editor of the *Tulsa Law Review* and magistrate of Phi Delta Phi. Ms. Coulter graduated with a B.A. with honors from Missouri State University. She will primarily practice in the area of immigration law at the administrative and appellate level.

Phillips Murrah announces that **Joshua L. Edwards** and **Jim A. Roth** have been elected as new directors by the firm's shareholders. Mr. Edwards is a corporate attorney who represents clients in a broad range of commercial transactions. Mr. Roth is a former Oklahoma Corporation Commissioner and chair of the firm's clean energy practice group. He represents a number of clients in their natural gas ventures as well as assisting them in the development of Oklahoma-based wind farms and other new clean energy initiatives.

Brad Miller, J. Logan Johnson, Jami Rhoades Antonisse and Weston H. White announce their new partnership in the law firm of Miller & Johnson PLLC, a civil litigation and trial practice. Mr. Miller entered the practice of law in 1985. He has represented both plaintiffs and defendants in over 200 jury trials, many of which included multi-million dollar claims. Mr. Johnson was admitted to the practice of law in 1988 and currently works as a trial lawyer handling a variety of civil matters including personal injury, insurance disputes, medical malpractice, nursing home injury and construction

defect. In addition, Mr. Johnson serves as a mediator in civil, commercial and employment cases. Mrs. Antonisse was admitted to the practice of law in 2005. She served a one-year term as law clerk to Judge James H. Payne in the U.S. District Court for the Eastern District of Oklahoma prior to entering private practice. Mr. White entered the practice of law in 2007 and has focused on nursing home litigation, construction litigation and general insurance defense. Miller & Johnson PLLC is located at 1221 N. Francis, Suite B, in Oklahoma City. For more information, call the firm at 405-896-4388.

Drummond Law PLLC announces that **Garry M. Gaskins II** has been named managing attorney. Mr. Gaskins joined the firm as an associate in 2008. He received his B.A. from OU in 2001 and his J.D. with highest honors from the TU College of Law in 2004, where he served as editor of the *Tulsa Law Review*, was awarded Order of the Curule Chair and was a Phi Delta Phi member. His practice focuses on banking, employment, oil and gas, construction and complex civil litigation.

Kutak Rock LLP announces that **Christopher S. Heroux** has been named a partner in the firm. Mr. Heroux has a wide-ranging transactional law practice focused in the areas of oil and gas, energy and mining law, representing local, national and international companies in connection with mergers and acquisitions, joint ventures, participation and development projects. Mr. Heroux's

experience includes working as outside counsel for oil and gas exploration and production and mining companies handling all aspects of the companies' legal service needs, as well as assisting clients with resolving disputes relating to all facets of the oil and gas industry. Mr. Heroux is resident in the firm's office in Denver, Colo.

McAfee & Taft announces the addition of **Benjamin L. Munda** and **J.D. Brown** as associates in its Oklahoma City office. Mr. Munda joins the firm's intellectual property group. His practice encompasses the areas of patent, trademark, copyright, licensing and trade secret law as well as litigation involving disputes over intellectual property assets. He is a 2013 honors graduate from the OU College of Law where he served as note editor of the *American Indian Law Review*, was named to the Order of the Coif and earned five American Jurisprudence Awards. He holds a bachelor's degree in chemical engineering, with a focus on biotechnology and a minor in chemistry from OU. Mr. Brown joins the firm's aviation group. He represents clients in transactional matters involving the buying, selling, leasing, financing and registration of aircraft. He also works with aircraft owners, lenders, lessors and lessees to protect their interests internationally. Mr. Brown earned a J.D. from OU, where he was a member of the *American Indian Law Review*.

GableGotwals announces its 2014 officers and directors: **David Keglovits**, chair and CEO; **Sid Swinson**,

president; **Dale Cottingham**, treasurer; **Amy Stipe**, secretary; and **John Dale, Terry Ragsdale, Rob Roberston** and **Scott Rowland** are directors.

Eller & Detrich announces that **Andrew A. Shank** has become a shareholder of the firm, where his practice focuses on real estate development, zoning and land use planning, commercial signage and civil and construction litigation. Mr. Shank earned a B.S. in business administration and a M.B.A. from TU. He earned his law degree from the TU College of Law in 2008.

Tina L. Izadi has joined the firm Employers Legal Resource Center. Ms. Izadi's practice consists mainly of civil litigation focused in the areas of labor and employment law, general business and corporate law and government compliance. She also counsels clients on best practices, workplace investigations, wage and hour issues, policy review and management training. Ms. Izadi is licensed to practice law in both Oklahoma and Texas. She received the Maurice Merrill Golden Quill award from the OBA in 2005 and the Golden Gavel award as the 2009 Law Day Committee chair. She graduated from the OU College of Law and she received her undergraduate degree from OSU. Ms. Izadi may be reached at tizadi@okemployerlaw.com or at 405-702-9797.

The Bethany Law Center, LLP announces that **Robert R. Redwine** has joined the firm. Mr. Redwine's practice focuses primarily on civil liti-

gation, construction law and business transactions.

The Fellers Snider law firm announced that four associates of the firm — **Klint Cowan, Kyle Evans, Heather Lehman Fagan** and **Eric Shephard** — have become shareholders. Mr. Cowan is a litigator who focuses his practice on tribal law matters including gaming law, election law and financing. He is a member of the Muscogee Creek Nation bar. Mr. Evans is a civil litigator whose practice encompasses business related litigation with a focus on defending insurers against allegations of insurance bad faith. Ms. Fagan is part of the firm's workers compensation practice. In addition to practicing before the workers compensation court, she works with employers of all sizes and their insurers on issues impacting employees. She earned a master's degree in human relations in addition to her J.D. Mr. Shephard is a litigator who concentrates on oil and gas litigation, business litigation, medical malpractice defense, insurance bad faith defense and complex litigation (including class action defense). The four new shareholders are currently based out of the firm's Oklahoma City office.

McAfee & Taft announces the addition of real estate and business attorney **Joe C. Lewallen Jr.** and energy and oil and gas litigator **J. Todd Woolery**. Mr. Lewallen's practice encompasses a broad range of complex business transactions with an emphasis on commercial real estate development, including land acquisition, financing with debt and equity compo-

nents and development and construction of retail shopping centers, office buildings, hotels and mixed-use projects. Mr. Lewallen can be contacted at joe.lewallen@mcafeetaft.com. Mr. Woolery's litigation practice encompasses a broad range of matters affecting the energy industry, with specific emphasis on disputes involving oilfield and industrial pollution, bodily injury, property damage, surface damages and class actions. His clients include oil and gas exploration and production companies, pipeline companies, oilfield service providers and companies engaged in renewable energy projects. Mr. Woolery can be contacted at todd.woolery@mcafeetaft.com.

Jim Drummond has accepted a capital trial attorney position as a regional public defender for Texas Region 3, officing in Burnet, Texas, and is closing his private practice in Norman. His email and cell phone contacts will remain the same: jim@jimdrummondlaw.com and 405-818-3851.

Gungoll Jackson announces **Brian Boerner, Brian Bowers** and **Michael Shanbour** have joined the firm as associates. Mr. Boerner previously worked at Chesapeake Energy Corp. where he specialized in oil and gas title examination. He holds a J.D. and an undergraduate degree from OU. Mr. Bowers graduated fourth in his class from OCU School of Law. He will practice in the firm's Enid office. Mr. Shanbour holds undergraduate and law degrees from OU. He has experience in private practice and most recently worked for Chesapeake Energy Corp. His

practice will focus on gas and real estate title law and he is licensed to practice in both North Dakota and Oklahoma.

At The Podium

Trae Gray, founder of Landownerfirm.com and a natural resources attorney, was the featured speaker at the "2014 Early Spring Roundup," on Jan. 27 in Ardmore. Mr. Gray spoke to landowners about what to look for when negotiating any type of agreement with an energy company.

Tim Rhodes, Oklahoma County Court Clerk, spoke to Leadership Oklahoma City Signature Class 32 during the Class' Government and Media Day on Jan. 9 in Oklahoma City. The topic of the visit was "County Government 101."

Donna Jackson, of Donna Jackson Law, **Shannon Taylor** of Shannon Taylor Law and **Casey Ross-Petherick**, clinical professor for the

Jodi Marquette American Indian Wills Clinic at the OCU School of Law and of counsel at Hall Estill, will present a CLE on Feb. 18, 2014, on Oklahoma probate law. The CLE will be held at Rose State College and proceeds will benefit the Senior Law Resource Center of Oklahoma City. For more information, contact the Senior Law Resource Center at 405-528-0858 or info@senior-law.org.

Administrative Law Judge **Robert M. Murphy** recently presented "Child Witness Testimony in Child Abuse and Neglect Hearings" to the Washington state Office of Administrative Hearings in Olympia, Wash. Judge Murphy also presented "Evaluating Compelling Reasons to Allow a Child to Testify by Alternative Methods." Additionally, he participated in a panel on determining the competency of child witnesses and methods to protect the physical and emotional well-being of the child witness.

UCO Professor **Marty Ludlum** recently spoke at the International Business and Economy Conference in Tianjin, China. His presentation was titled "Intercultural Busi-

ness Management: An Investigative Study of Future Russian Business Leaders."

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
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Articles for the March 15 issue must be received by Feb. 24.

Benjamin Russell Chapin of Amelia Island, Fla., died May 23, 2012. He was born Nov. 8, 1920. He earned a bachelor's degree from Southwestern College in Winfield, Kan. **He served in the U.S. Army Air Forces during World War II and was honorably discharged in 1946.** He earned his J.D. from OU in 1948. He began practicing in Perry, Okla., before moving to Washington, D.C., to work on U.S. Rep. George Howard Wilson's staff. He then began his 25 years of work with the U.S. Department of Justice, beginning as a trial lawyer in the civil division. He authored the *Federal Tort Claims Practice Manual* and portions of the *U.S. Attorneys' Manual*. In 1976, Chapin left the DOJ when the secretary of Housing and Urban Development offered him the position of director of regulations and issuances. He then served as director of legislative analyses for the American Enterprise Institute of Public Policy Research before retiring in 1985. He was a member of the Fourth Presbyterian Church of Washington, D.C., and the Amelia Plantation Chapel.

George B. Higgins of Plano, Texas died Sept. 5, 2013. He was born March 5, 1920 in Cleveland, Okla. He attended OU and earned a B.S. in business in 1943. **He served as an officer in the Navy in World War II.** After the war he returned to OU to study law,

graduating in 1949. He spent his legal career in the oil industry and retired from Sun Oil Co. in 1983. In retirement he traveled the world and spent many days volunteering at Christ United Methodist Church in Plano.

Joseph Henry Humphrey of Tahlequah died Oct. 10, 2013. He was born Sep. 14, 1933, in Cromwell. **He served in the U.S. Navy from 1950 to 1954.** After his military service, he earned a bachelor's degree from OU in 1959. After working for a few years he returned to OU to study law and earned his J.D. in 1964. He worked as a lawyer for Halliburton then served as a county and district attorney in Stephens County for over a decade. He also served as executive director of the Oklahoma District Attorneys Association for five years. He then moved into private practice until retirement.

Samuel "Sam" Aaron Skitterman Jr. of Las Vegas died May 9, 2013. He was born June 9, 1955, and earned a bachelor's degree from UNLV and his J.D. from TU. He joined the bar in 1983. **He served with the U.S. Navy J.A.G.** before returning to Las Vegas to continue practicing law. He was a member of the Church of Jesus Christ of Latter-day Saints, completing his mission in Munich, Germany. He served as high priest counselor in the Stone Gate Ward. He was a passionate cyclist and participated in the

Tour de Cure to increase awareness fundraise for diabetes research.

Donald Dean Laudick of Edmond died Jan. 20, 2013. He was born Nov. 16, 1948, in Hardtner, Kan. He graduated from Woodward High School in 1967, from Northwestern State College in 1971 and earned his J.D. from OU in 1974. He began his career in Oklahoma City with Ames, Daugherty, Black, Ashabranner, Rogers and Fowler where he focused his practice on oil and gas and real estate law. Later, he worked at First America Title & Trust Co. He enjoyed debates and renovating and selling houses.

James "Jim" R. Lieber of Tulsa died Jan. 14, 2014. He was born Oct. 19, 1958, in Dallas. He earned a degree in marketing and management from OSU and earned his J.D. from TU in 1982. He spent much of his free time working on his prized Nissan 280 Z. He was also a member of the Knights of Columbus. Memorial contributions may be made to the Myotonic Dystrophy Foundation.

J.C. Mallett of Geary died April 23, 2012. He was born July 14, 1921, in Springfield, Ark. He earned his J.D. from OCU. He was a lifelong member of the Greystone Presbyterian Church.

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Bills of Interest

The second session of the 54th Oklahoma Legislature began Monday, Feb. 3. We will keep you updated on the status of nearly 500 bills of interest to Oklahoma lawyers as the legislative session progresses.

www.okbar.org/members/Legislative

Or track individual bills

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Leadership, Management and Herding Cats

Leadership and management are often used interchangeably in discussing law firm administration, but there are differences that require different sets of skills. Check out Jim Calloway's article, "Leadership, Management and Herding Cats."



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Disorder in the Court

By Bob D. Buchanan

In my rural county, members of the county bar accept court appointments for cases not covered by the Oklahoma Indigent Defense System. I accept appointments for mental health cases, representing the respondents. These appointments normally come without warning and often require that I be ready for a court hearing the following day.

In one of my first cases, I was explaining my client's rights to her, including the right to a hearing before a jury and that, since she was indigent, there would be no cost. I realized then that the information was received as though I was describing how to get free ice cream.

Putting my client's wishes before my own, I announced to the court that my client desired a hearing before a jury. I knew the outcome would likely be the same whether the case was tried to a jury or to the judge; and so the fun began.

Sheriff's deputies were sent out to gather 16 or 18 prospective jurors from those persons working in town or visiting town that day. As the prospective jurors entered the courtroom, I realized that they were mainly pulled from the same building where I officed and from the two local banks. I knew most of these people and often laughed and joked with them. Things were continuing on a downward spiral.

The judge started *voir dire* by asking how many of the prospective jurors knew the prosecutor. Ten people raised their hands. Then the judge asked how many knew me. After the judge counted 11 hands, the judge commented to the assistant district attorney (ADA), "Well, Mr. [ADA], Mr.

Buchanan appears more popular than you."

Normally, laughing jurors would be inappropriate, but in this case, it fit.

About five to 10 minutes into *voir dire*, my client leaned over to me and whispered, "I need to pee." I told her to wait just a bit and she loudly responded, "No! I need to pee and I need to pee now!" The judge called a recess as my client left the courtroom with her deputy escort.



As we progressed through *voir dire*, the same interruption from my client became quite common, being only minutes apart. By now I was reasonably certain that the jurors had reached a conclusion about my client's general mental state and bladder size.

We completed *voir dire* and jury selection with prospective jurors being dismissed until we reached the proper number. The jurors were seated and the ADA started his opening statement. In about two minutes, guess what: My client needed another bathroom break. By then she just stood and

left before the judge could call a recess.

The judge, the ADA, the court reporter and I were the only ones in the courtroom during this recess. The deputy in charge of my client's custody entered the courtroom and delivered bad news. Apparently, my client, upon leaving the bathroom, immediately crossed to the jurors, lay down on a bench and proceeded to tell the jurors all about this case before the deputy could get her shut down. We were suddenly facing a mistrial.

I exited the courtroom to talk to my client and in front of all jurors she let me know that she didn't like this anymore. She didn't care what I did, she just wanted me to get this over with. "Yes Ma'am, we can do this. You just saved us all," I thought.

We stipulated to the petition in chambers, and my client was whisked away. The jurors were brought into the courtroom one last time, thanked for their effort and released.

This case happened over 20 years ago, but still comes up once in a while. Just recently, one of the prospective jurors told me that she never understood why the ADA dismissed her. I politely informed her that the ADA didn't dismiss her; I did. Every time I looked at her, I could barely keep from laughing about how ridiculous the proceedings had become. I felt that if one person ever laughed or chuckled, hysteria could envelop the courtroom.

Mr. Buchanan is chief justice for Pawnee Nation Supreme Court, municipal judge for the City of Pawnee, and has a general practice in Pawnee.



Interrupting Implicit Bias in the Legal Profession: Practical Tools

Featured Speaker: Cristina D. Hernandez, Senior Consultant, Verna Myers Consulting Group, LLC, Baltimore

Law firms and corporate legal departments have made great progress in encouraging greater diversity and inclusion in the legal profession. Our profession, however, still struggles with finding effective ways to overcome implicit bias, which negatively impacts attorneys of all backgrounds and seniority levels. This program explores the challenge of implicit bias in the legal profession - what it is, how it surfaces, and its impact on the day-to-day practice of law.

Christina D. Hernandez, Senior Consultant with Verna Myers Consulting Group, LLC, will present the latest legal thinking on implicit bias in the legal profession and will facilitate an interactive discussion of compelling real-live scenarios encountered by attorneys and other legal professionals. Participants will learn how to identify and counter implicit biases within and outside of their organizations and how to develop best practices to move diversity and inclusion forward.

The seminar starts at 1:30 p.m.
and adjourns at 3:20 p.m.
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