

THE OKLAHOMA BAR JOURNAL

Volume 85 ♦ No. 29 ♦ Nov. 1, 2014

Navigating the Changing Legal Profession



ALSO INSIDE

Federalization of the Oklahoma Law License • Annual Meeting • Kick It Forward Program

November 21
Oklahoma City, OK
Oklahoma Bar Center
1901 N. Lincoln Blvd.

ADVANCED CROSS EXAMINATION

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- The Only Three Rules of Cross-Examination
- The Chapter Method of Cross-Examination
- Cross Examination without Discovery
- Ethics
- Page Preparation of Cross-Examination
- Sequences of Cross-Examination
- Loops, Double Loops, and Spontaneous Loops
- Controlling the Runaway Witness

BONUS MATERIAL
ON 'CROSS
EXAMINATION AT
DEPOSITIONS'

Seminar starts at 9 a.m. and adjourns at 2:50 p.m. Approved for 6 hours MCLE/ 1 Ethics. **\$250** for early-bird registrations with payment received at least four full business days prior to the seminar date; **\$275** for registrations with payment received within four full business days of the seminar date. Texas credit for live webcast only. Tuition for webcast varies from live program tuition.



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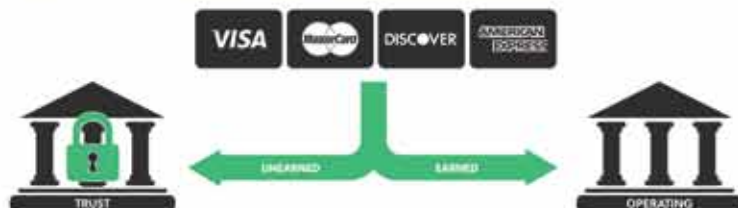
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OBA/CLE and OBA Professionalism Committee Present: OBA Professionalism Symposium



Friday, Dec. 12 • 8 - 11:45 a.m.

Supreme Court Ceremonial Courtroom

2nd Floor

Hot breakfast included

Registration \$75

Includes 3 hours MCLE ethics

Agenda

- | | |
|--------------------|--|
| 8 - 8:30 a.m. | Registration and hot breakfast |
| 8:30 - 8:45 a.m. | Opening by OBA President Renée DeMoss
Welcome by Chief Justice Tom Colbert |
| 8:45 - 9 a.m. | Dean Joseph Harroz, Jr., OU College of Law |
| 9 - 9:15 a.m. | Dean Valerie K. Couch, OCU School of Law |
| 9:15 - 9:30 a.m. | Dean Janet K. Levit, TU College of Law |
| 9:30 - 9:50 a.m. | William R. Grimm, Barrow & Grimm |
| 9:50 - 10:10 a.m. | Chief Judge Deborah Barnes, Oklahoma Court of Civil Appeals |
| 10:10 - 10:30 a.m. | Break |
| 10:30 - 10:50 a.m. | Senior United States District Judge Wayne E. Alley,
Western District of Oklahoma |
| 10:50 - 11:30 a.m. | Panel discussion moderated by D. Kent Meyers of Crowe
& Dunlevy, panel members include Judge Alley, Judge Barnes,
Oklahoma House Rep. Emily Virgin and Frederick K. Slicker
of Slicker Law Firm |
| 11:40 - TBA | Optional private tour of State Capitol |

Register

www.okbar.org/members/CLE



The OBA Standards of
Professionalism can be found at
<http://goo.gl/aNjIjc>

THEME:
NAVIGATING THE CHANGING
LEGAL PROFESSION

EDITOR: MELISSA DeLACERDA

contents

Nov. 1, 2014 • Vol. 85 • No. 29



FEATURES

- 2247 ADAPTING TO CHANGE IN
LEGAL EDUCATION
*By Valerie K. Couch, Joseph Harroz Jr. and
Janet K. Levit*
- 2257 UPDATING THE RULES TO REFLECT
CHANGES IN TECHNOLOGY
By Gina L. Hendryx
- 2261 THE LEGAL PROFESSION OF THE
21ST CENTURY: CAN OKLAHOMA LAWYERS
MEET THE CHALLENGES?
By Deirdre O. Dexter
- 2269 PRACTICING LAW AT THE SPEED OF LIGHT
By Jim Calloway
- 2275 CYBERSECURITY: IT'S A MOVING TARGET
By Sharon D. Nelson and John W. Simek
- 2281 ALTERNATIVE FEES AND TECHNOLOGY
By Mark A. Robertson
- 2289 THE IMPACT OF SOCIAL MEDIA ON THE
PRACTICE OF LAW
By Alison A. Cave and Renée DeMoss

pg. 2325
KICK IT FORWARD



DEPARTMENTS

- 2244 FROM THE PRESIDENT
2293 EDITORIAL CALENDAR
2328 FROM THE EXECUTIVE DIRECTOR
2329 LAW PRACTICE TIPS
2332 OBA BOARD OF GOVERNORS ACTIONS
2335 OKLAHOMA BAR FOUNDATION NEWS
2338 YOUNG LAWYERS DIVISION
2340 CALENDAR
2341 FOR YOUR INFORMATION
2343 BENCH AND BAR BRIEFS
2345 IN MEMORIAM
2348 WHAT'S ONLINE
2352 THE BACK PAGE



pg. 2319
LICENSING OF
LAWYERS

PLUS

- 2294 ANNUAL MEETING
2319 THE FEDERALIZATION OF THE OKLAHOMA
LAW LICENSE
By Kimber J. Palmer
2323 SPOTLIGHT AWARDS EMPHASIZE
WORK OF WOMEN LAWYERS
2325 YLD KICK IT FORWARD PROGRAM
2327 COMMITTEE SIGN UP FORM

Practicing and Transitioning – OBA Lawyers in the 21st Century

By Renée DeMoss

There is no denying the rapid pace of change in the practice of law. There is also no denying that many of the new technological tools of the trade present unique challenges to those lawyers who have been practicing for many years.

No fear, however, for the almost 6,000 Oklahoma lawyers who are currently over the age of 60 and the 4,000 more baby boomer lawyers, age 50-59, who are also knocking on that door. The Oklahoma Bar Association has plenty of resources to help our lawyers keep up with the times.

One key new resource is the Master Lawyers Section. With the section bylaws finalized, the requisite signatures gathered and the Board of Governors approval, the new section will make its debut at the 2014 Annual Meeting in Tulsa, where the first section meeting will be held and officers elected. Any Oklahoma lawyer who is in good standing, and is either age 60 or above or has practiced law for at least 30 years, is eligible to join.

The Master Lawyers Section will concentrate on lawyers in their “second season of service,” as they transition from full-time practice to pursue pro bono and other service opportunities, through programs that utilize the knowledge and experience of these lawyers. Such sections in jurisdictions like Florida, New York and New Mexico provide programs in technology, retirement financial planning, closing or selling practices and matching senior lawyers with new lawyers to provide advice on matters such as client development.

Further, the Master Lawyers Section will work with the new Transition Task Force. Led by OBA Vice President Susan Shields and OBA Ethics Counsel Travis Pickens, this task force has been working on a *Transitioning Guidebook*, a succession planning manual that will be available on the OBA website by the time of our November Annual Meeting.

This book will provide clear and concise guidelines and forms in compliance with Oklahoma law, to help OBA lawyers map out their retirements and to ensure that all lawyers, particularly those in solo and small firms, have plans in place to protect their clients in the event of disability or death. This includes designation of a “Successor Lawyer” who would be willing to take over or help close a practice, and the consideration of new Oklahoma rules or procedures as necessary.

Finally, the task force is undertaking the very important job of researching and putting in place programs to identify and respond to the needs of lawyers with age-related impairments. Currently, most states have only informal identification methods, with lawyers sporadically reporting impaired lawyers to regulatory authorities or to lawyer assistance programs.

The task force will explore methods to more systematically evaluate lawyers with age-related problems. For example, North Carolina has developed a program to recruit and train volunteers to recognize and intervene when a lawyer appears to have such issues. The OBA’s Lawyers Helping Lawyers program, with its confidential, non-threatening environment and access to medical and other experts, can potentially play a major role. Other methods employed by state bar associations include confidential online assessment forms, 24-hour hotlines and increasing the ability of lawyers to recognize potentially impaired colleagues through online training videos and CLEs.

The OBA Transitions Task Force has a very important charge in creating and implementing programs for the early detection of lawyers demonstrating age-related issues. Not only will such programs developed by the task force help OBA lawyers avoid potential ethics violations, they will provide invaluable assistance to impaired lawyers, their staff and families, and assure that OBA senior lawyers can continue to use and share their valuable wisdom and legal experience.

The new Master Lawyers Section will concentrate on lawyers in their “second season of service.”



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EVENTS CALENDAR

NOVEMBER 2014

- 4 **OBA Government and Administrative Law Practice Section meeting**; 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Scott Boughton 405-717-8957
- 6 **OBA Lawyers Helping Lawyers discussion group meeting**; 6 p.m.; Office of Tom Cummings, 701 NW 13th St., Oklahoma City; RSVP to Kim Reber kimreber@cabainc.com
- OBA Lawyers Helping Lawyers discussion group meeting**; 6 p.m.; University of Tulsa College of Law, John Rogers Hall, 3120 E. 4th Pl., Rm. 206, Tulsa; RSVP to Kim Reber kimreber@cabainc.com
- 7 **OBA Alternative Dispute Resolution Section meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City with OSU Tulsa, Tulsa; Contact Jeffrey Love 405-286-9191
- 11 **OBA Closed** – Veteran's Day observed
- 12-14 **OBA Annual Meeting**; Hyatt Regency, Tulsa; Contact Mark Schneidewent 800-522-8065
- 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 Mock Trial Committee meeting**; 5:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Judy Spencer 405-755-1066
- 19 **OBA Clients' Security Fund meeting**; 2 p.m.; Oklahoma Bar Center, Oklahoma City with OSU Tulsa, Tulsa; Contact Micheal Salem 405-366-1234
- Ruth Bader Ginsburg Inn of Court**; 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Donald Lynn Babb 405-235-1611
- 27-28 **OBA Closed** – Thanksgiving observed

DECEMBER 2014

- 2 **OBA Government and Administrative Law Practice Section meeting**; 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Scott Boughton 405-717-8957
- 4 **OBA Lawyers Helping Lawyers discussion group meeting**; 6 p.m.; Office of Tom Cummings, 701 NW 13th St., Oklahoma City; RSVP to Kim Reber kimreber@cabainc.com
- OBA Lawyers Helping Lawyers discussion group meeting**; 6 p.m.; University of Tulsa College of Law, John Rogers Hall, 3120 E. 4th Pl., Rm. 206, Tulsa; RSVP to Kim Reber kimreber@cabainc.com

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

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

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Adapting to Change in Legal Education

By Valerie K. Couch, Joseph Harroz Jr. and Janet K. Levit

This is an exciting time to be a law school dean. The push and pull of tradition and innovation makes every day a challenge as we try to meet our responsibilities to our students and our profession. We are working in a world undergoing exponential change every few years due to technology and globalization. And, in this rapidly changing context, we are striving to answer an important practical question: What is the best way to prepare our students for their future employment as a lawyer?

At the same time, we continue to address the compelling existential question of all times for all law schools: How can we best help our students become lawyers in the great traditions of our profession, committed to access to justice for all, courageous guardians of the Rule of Law, knowledgeable about the needs of the world, and endowed with the skills of sophisticated problem-solvers?

We are finding the answers to these questions by building strong partnerships with the communities we serve. It's a creative work in progress — and well worth the effort.

Next time a law school dean asks you to be a “partner” in the education of our future lawyers, now you will know what the dean is talking about. We need you as a partner — to provide our future lawyers with practical experience, to identify the competencies they need for the jobs of the future, to help us measure the effectiveness of our legal education program, and to usher our students as brothers and sisters into our great profession, dedicated to the values of service and leadership in our communities. When a law school dean asks

you to be a partner in this great and necessary enterprise, please say yes!

LESSONS FROM THE LAW SCHOOL CRISIS: FOUR WAYS WE CAN DO BETTER

The recent, record decline in law school applicants nationwide has created an unprecedented opportunity for law schools to better prepare students. This article provides a quick look into four ways law schools can improve.

Over the last few years, the legal profession and legal education have experienced dramatic change. After a period of substantial and successive growth, the number of law school applicants nationwide has fallen by nearly 40 percent in the past 48 months. From 2010 to 2014, the number of applicants has declined from 87,500 to 54,527.¹

What caused this violent market reaction? While the most recent data reveals those with a law degree still out-earn those possessing exclusively an undergraduate degree by two-thirds and those with a master's degree by one-third, skyrocketing tuition at many institutions and a decrease in the highest paying entry-

level positions have led some to label law schools as a bad investment. Over the past several years, commentators, academics and journalists have fueled the flames of criticism of the state of legal education with works like Richard Susskind's *The End of Lawyers?* and Brian Tamanaha's *Failing Law Schools* as lead examples.²

The drop in applicants nationwide has been so sweeping that all law schools have had to assess the impact and take action. Even in the typically insulated academic realm, market forces will have their way and choosing to do nothing differently amid this rapid change is not a viable option.

The good news is that this crisis has created fertile ground for innovation and positive change. Many law schools are waking up, taking a hard look at what they have been doing and why, and embracing the alterations that must be made. The breadth of the change is vast, including even those aspects of legal education that have been in a relatively static state for almost 100 years — from the structure of the overall curriculum (fixed first year with an almost unguided second and third year) to the limited types of classes traditionally offered (lecture using the casebook method and few clinical offerings).

Here are four ways that law schools can change for the better.

TECHNOLOGY EDUCATION AND INTEGRATION

Our students are arriving prepared as “digital natives,” and they will graduate into a world that will assume they learned how to leverage those skills as lawyers. We must integrate technology into all aspects of their education. Law schools must train students to research, organize, create and present information online from the inception of their education. This is so because for the purposes of legal research, paper is soon to be a dead medium — publishers are pricing print out of existence and the search capacity of digital offerings is unmatched. The efficiencies and opportunity provided through online applications is quickly moving from a competitive advantage to a professional necessity.

We must use technology to reach students of all different learning styles. Digitalization has made course enhancement easy and affordable. While we may be assigning cases from

decades ago, students should be reading them on a digital tablet and discussing them in “flipped” classrooms where students review the lecture material online before class and spend their in-class time working to deepen their understanding of the material. These mechanisms more directly engage the student in the learning experience. We should also use technology to bring other perspectives into the classroom in a dynamic way. Skype and other digital vehicles facilitate expert commentary and explanation with an efficiency never before possible. As an example, the OU College of Law has a semester-long course where our students work with students in law schools in three other countries in a live virtual classroom that helps all participants better understand the legal rights of the native peoples of their countries.

It is inescapable that technology is now central to the practice of law, impacting communications with clients, attorneys and the courts. It has changed every aspect of the practice of law including research, litigation techniques, dispute resolution, document creation and document management. Law schools should be teaching our students to operate in a digital environment from the first day of classes.

PORTFOLIO OF OFFERINGS — SPECIALIZED WORLD

Law schools should provide more focused and specialized curricular offerings to meet the demands of a more specialized and competitive world. Traditionally, law schools set in stone the first year curriculum and then required only a few courses in the second and third years. This has led to students selecting their second and third year courses without much structure or guidance. Today, law schools should provide greater direction and focus to our students in the development of their education and career. Our goal must be to create a purposeful second and third year of law school for our students to enhance their education and to provide them with a competitive edge in the marketplace.

Schools are beginning to offer J.D.-enhancing certificates that provide a focused framework to students in the selection of courses, a better perspective on a concentration of law and a more compelling personal story to tell prospective employers. Certificates enhance a student's law school experience through a unique blend of substantive legal knowledge, practical

application and exposure to the field in a dynamic interdisciplinary learning environment. Law schools are also offering more joint degree programs, like the J.D./M.B.A. and J.D./M.P.H., which better prepare students to work in specialized settings in the business and health care industries. Law students can be the direct beneficiaries of leveraging the expertise a comprehensive university affords.

Many law schools have responded to the travails of the current economic environment by expanding their degree offerings beyond the traditional J.D. This approach has hazards that must be carefully navigated. If managed poorly, law schools can lose focus and dilute their J.D. degree. If properly managed, law schools can expand access to legal education, increasing their expertise and enhancing strategic areas that make their J.D. experience more valuable. Ultimately, pursuit of short-term economic advantage must be balanced against, and give way to, the impact to the J.D. program.

NEW BREED OF COURSES

We should meet the market demand by offering new types of courses. For the past 100 years, the delivery of legal education has remained essentially the same. The Socratic Method using casebooks in a lecture format followed by a comprehensive final exam has dominated the curriculum. There have been limited opportunities for clinic based, live-client courses. Fueled partly by a growing reluctance on the part of law firms to provide practical, on-the-job training to new hires and partly by the desire to help law students build a portfolio of practice-ready skills, law schools are beginning to find innovative ways to give our students greater access to a broader range of experiences.

While certain “skills” courses, like trial techniques, client counseling, legal research and legal writing, have been an important part of most law school curricula for some time, law schools are beginning to explore how doctrinal courses can be paired with practical elements to create a wider range of “skills” or “how to” courses. Simulations, or “practica” as they are

“Many law schools have responded to the travails of the current economic environment by expanding their degree offerings beyond the traditional J.D.”

more broadly known in academia, provide a modern and efficient vehicle for such courses. For example, one course at the OU College of Law takes students through the process of acquiring a publicly traded company. Students receive hands on training in transaction skills such as due diligence investigation, client memo drafting, negotiation of agreements, and the preparation of SEC disclosure documents while also learning about corporate law, securities law, contract law, natural resource law and employment law in a real

world context. These courses give students insights into the full range of activities related to a business merger and expose students to the key legal skills they must develop in the practice area.

EXPERIENTIAL LEARNING

Law schools should, and now must, more broadly embrace student opportunities for experiential learning. In fact, this summer, the ABA passed a new standard requiring law schools to provide more “experiential” education opportunities to their students. Schools must now provide six credit hours of experiential education to each student in one of the following settings: live-client clinics, field placements (like externships or internships), or simulation courses (like client counseling or negotiations).³ These experiential courses must integrate doctrine and theory with multiple opportunities for performance of a skill and opportunities for self-evaluation. This new ABA requirement is a positive step for legal education, but law schools should not simply settle for the mandatory minimum. A commoditized, one-size-fits all plan is not best for individual students. Schools should provide a broader set of such offerings and integrate them in a student’s specific academic career plan in a way (and in a quantity) that best serves the individual student.

The dramatic decline in applicants to law schools will soon find a leveling point and we are already seeing signs today that the most talented students are beginning to apply in greater numbers. But it would be a grave mistake for law schools to ride out the crisis until they can go back to business as usual. The

decline was a reaction to law school business as usual. The market was sending a clear message that changes were needed, and in that message providing insight into how law schools could change for the better. Law schools that seize the opportunity will ensure our graduates of tomorrow, and the profession as whole, emerges better for it.

*You teach yourselves the law, but I train your minds. You come in here with a skull full of mush; you leave thinking like a lawyer.*⁴

In a recent seminar at the TU College of Law, bright-eyed, overly-eager 1Ls were shown some clips from *The Paper Chase*. In reality, while today's contracts classes bear some resemblance to Kingsfield's, law schools and law professors must now teach students a much broader range of skills. If every class mimicked Kingsfield's, then many of today's students would graduate unprepared to successfully navigate the legal market that they must face.

This moment is both a challenging and exciting time for legal education. The challenges are well-documented, impacting law schools throughout the country: a shrinking national pool of law school applicants, tighter university budgets, tepid legal job market, mounting student-debt loads, stagnant or declining salaries, and technological innovation.⁵ These factors indicate that the current downturn may have a structural as well as cyclical component. Challenges breed opportunity and positive change, and TU Law, OU Law and OCU Law have embraced this moment to reformulate and refocus curricula for the market our students face rather than the now fictional market that Kingsfield's students faced.

For Oklahoma's law schools, the urgency to prepare "practice ready" graduates is real. Graduate employment data for Oklahoma law schools reveals: 1) the majority of graduates enter private practice following graduation; and 2) of those graduates who enter private practice, the largest percentage work in firms with 2-10 lawyers with an increasing number of graduates entering practice as a solo practitioner.⁶ We know that new graduates who enter private practice will likely have client interaction and court appearances very soon after being licensed, and many may need to bring in their own clients and run their own law office.

We have every reason to believe that these trends will continue for our graduates. Only 2 percent of law firms are located in rural areas, but one-fifth of the national population lives in rural communities.⁷ The demand for small-town attorneys is so strong that the Oklahoma Bar Association launched a small-town-practice mentoring program earlier this year.⁸ Graduates who engage in rural practice will undoubtedly work in solo or small law firms.

Smaller law offices can offer excellent training and fertile ground for mentorship. Yet, these young lawyers inevitably will need to hit the ground running on day one — they will not have the "benefit" of second- and third-chairing trials — they will not necessarily receive work and assignments from partners but will be expected to bring in their own work — and they will not get paid unless they send clients bills or hire someone to send the bills (and perhaps collect on the bills). If graduates are to be successful in this environment, law schools not only must train students to "think like a lawyer" but also must help students compile a comprehensive toolkit of skills, some quite familiar to legal educators and some more foreign.

In 2008, two University of California–Berkeley professors, Marjorie M. Shultz and Sheldon Zedeck, released an empirical study, funded by the Law School Admissions Council, identifying those traits or skills that might best predict success in law school and law practice independent of performance on the LSAT.⁹ The results of this study identified "26 Lawyering Effectiveness Factors" which they in turn divided into eight umbrella categories.

- 1) Intellectual and cognitive (analysis and reasoning, creativity/innovation, problem solving, practical judgment);
- 2) Research and information gathering (researching the law, fact finding, questioning and interviewing);
- 3) Communications (influencing and advocating, writing, speaking, listening);
- 4) Planning and organizing (strategic planning, organizing and managing one's own work, organizing and managing others (staff/colleagues));
- 5) Conflict resolution (negotiation skills, able to see the world through the eyes of others);

- 6) Client and business relations — entrepreneurship (networking and business development, providing advice & counsel and building relationships with clients);
- 7) Working with others (developing relationships within the legal profession, evaluation, development and mentoring); and
- 8) Character (passion and engagement, diligence, integrity/honesty, stress management, community involvement and service, self-development).¹⁰

These categories are a solid starting point for the design of law school curricula and young lawyer professional training.

In TU Law's "Dean's Seminar on the Legal Profession," these lawyer effectiveness factors are shared with first-year students who are told if they develop at least competency in all of these 26 traits they will succeed in law school and as lawyers, and, if they constantly reinforce and strengthen these skills, they will advance further than they ever imagined. Students are asked how they can take advantage of their time in law school — with a tremendous array of classes, specialized programs, extra-curricular opportunities and services — to develop these skills.

Interestingly, part of the discussion centers on taking classes that we associate more with business schools than law schools — basic management, marketing, project management, risk management, accounting and finance. More and more, law schools are either offering these classes — accounting for lawyers, finance for lawyers, law firm management — or partnering with their business schools to facilitate cross-listing of courses and joint degree programs.

The remainder of class discussion focuses on the various ways to "practice" the skill. Traditional law classes and law exam writing, legal writing classes, moot court and law journal, all provide training in one or more of the "lawyer-ing effectiveness factors." However, offering students the opportunity to serve and/or represent clients directly rises as the premier opportunity to develop, hone and integrate the menu of skills that enhance lawyer effectiveness. Indeed all law students, beginning in the fall of 2016, will be *required* to successfully complete six hours of experiential learning courses,

which "must be a simulation course, a law clinic, or a field placement."¹¹

Thus all law schools, including Oklahoma law schools, are grappling with ways to accommodate practical skills training in live-client environments, supervised by competent attorneys interested in a student's success. Undeniably, legal clinics, directed by resident faculty, are *the* gold standard for learning to practice law. However, law clinics are costly to develop and staff as small group instruction is considered the best instructional practice; most U.S. law school clinics only accommodate 8-10 students per professor.¹² With the fiscal pressures on law schools and universities, it is improbable that legal clinics will be the sole, or even the primary, vehicle to provide students with the type of practical training that effective lawyering, and now the ABA, demands.

Increasingly, law schools are developing an alternative to the clinic experience through externships. Externships allow students to receive academic credit for working in a supervised capacity under a licensed attorney. Through an externship, the supervising attorney develops an academic plan for the student-extern and trains the student through a variety of hands-on experiences. Obviously, this is no small service on the part of supervising attorneys, as we all know the value of time in the legal profession. However, this model of training young attorneys is not a new concept to American legal history. It was customary for decades in the United States, and centuries before in England, for lawyers to earn their accreditation by apprenticeship under a seasoned attorney.

So it seems we have come somewhat full circle in our profession. The valuable skills our law students need are best learned in live-practice settings, requiring the supervision of a dedicated and patient supervising attorney. While I see this as a relatively new challenge as a law school administrator, as a bar member this is an incredibly exciting opportunity. Attorneys are truly in a position to control the future of their profession by ensuring that the next generation of lawyers is as prepared and practice-ready as possible upon graduation.

I encourage each of you who read this article to contact your closest law school, or your alma mater, and offer to supervise a law student in an externship. Although it will require commit-

ment of time and energy on your part, you are truly “paying it forward” to your profession.

Law schools are changing. Dramatically. And in classic chicken-and-egg fashion, new ABA accrediting standards for law schools reflect a shift toward an era of experimentation and innovation as law schools respond to the rapidly changing realities of the legal market.

RECENT CHANGES IN ACCREDITING STANDARDS

For decades, accredited law schools followed a stable model for traditional legal education: one year of required doctrinal courses (torts, contracts, property, criminal law, civil and criminal procedure, constitutional law) followed by two years of mostly advanced doctrinal courses (tax, securities, corporations, energy law, family law, wills and trusts, UCC, employment law, etc.), with only limited opportunities for practical skills development, real client contact, pro bono service or experiential learning built within the curriculum itself.

This summer, the ABA House of Delegates endorsed a package of reforms that reflects a significant shift in expectations. Outlined here are some of the significant changes. And the word to hold in mind as you consider the changes is “partnership” — because the dynamic and positive effect of these changes will be to place legal education in strong interdisciplinary partnership with the community — the legal community, the business community, the non-profit service community and other university communities.

This shift has already begun to shape the future of legal education. The recent changes to the ABA accrediting standards simply underscore the permanence of that shift and reflect changes that are well underway at law schools across the nation.¹³

EXPERIENTIAL LEARNING REQUIREMENT

Law students in accredited law schools will now be required to take one or more experiential courses totaling at least six credit hours.¹⁴ An experiential course can be a simulation course, a law clinic or a field placement such as a supervised externship in a legal environment. To qualify for this requirement, the work in the course must integrate doctrine,

theory, skills and legal ethics, and it must engage students in the performance of professional skills. A qualifying experiential course must also provide multiple opportunities for student performance and multiple opportunities for self-evaluation.

Most law schools, in varying degrees, have already incorporated experiential learning into their curricula, at least in elective components. The new standard now *requires* that all law students obtain at least a minimum level of practical real-world experience before they graduate.

COMPETENCY-BASED LEARNING

A related change requires an accredited law school to establish “learning outcomes” that must, at a minimum, include competency in knowledge and understanding of substantive and procedural law; legal analysis and reasoning; legal research, problem-solving, and written and oral communication in the legal context; exercise of proper professional and ethical responsibilities to clients and the legal system; and “other professional skills needed for competent and ethical participation as a member of the legal profession.”¹⁵

The professional skills contemplated by this requirement include competencies such as interviewing, counseling, negotiation, fact-development and analysis, trial practice, document drafting, conflict resolution, organization and management of legal work, collaboration, cultural competency and self-evaluation.¹⁶

The new standard does not direct that a school adopt a particular set of professional skills or competencies to be achieved through its program, but instead leaves that task to each school in accordance with its mission. It would be difficult for a school to accomplish this task alone. Bar associations, alumni, practitioners, adjunct professors, industry leaders and other community resources will be crucial to the important task of identifying competencies needed to prepare students for particular aspects of legal practice. Simulation courses that track real-world transactions, negotiations, or other client-centered activities will create powerful interdisciplinary learning environments. Externships will require the engagement of knowledgeable supervisory partners in agencies, courts, governmental units and non-profits. Clinics will require the input of the community regarding the needs of under-served populations and other resources complimentary to the legal services provided.

Skilled clinical professors will supervise students in alliance with other non-profit or governmental providers, and sometimes the clinics will be embedded in the community itself. The community will be an important player in the day-to-day lives of law students.

More and more, law schools will become vitally engaged with community partners to identify the knowledge and specific professional skills and competencies needed for the legal jobs of the future.

OUTCOMES MEASUREMENT

Law schools will also be required to use assessment methods to “measure” learning outcomes. Under a new standard, schools have an obligation to use assessment measures to provide feedback to students to improve student learning.¹⁷ A law school is required to use both formative assessments (measured at points during a particular course, for instance) and summative assessments (measured at the culmination of a course, such as final examinations).

This new requirement to “measure learning outcomes” will require a shift of resources and emphasis in law school programs. There will be less reliance on the “inputs” of LSAT scores and undergraduate GPAs to measure the quality of a school’s program and more reliance on multiple assessments of student outcomes or “outputs.” Tools of assessment may include student performance in capstone courses, student performance in courses that assess a variety of skills and knowledge, surveys of attorneys, judges and alumni as well as continuing to use bar passage and employment placement rates to measure the quality and effectiveness of the legal education provided.¹⁸

Some law schools may have a steep learning curve in developing assessment methods suitable for their programs, and the ABA contemplates a transition period as schools decide how to meet this requirement. Law faculty and deans will be required by the ABA standards to conduct ongoing evaluations of the law school program, student learning outcomes and assessment methods, and then use that information to make appropriate changes to improve the program. In other words, law schools will be required to spell out specifically what they expect students to learn — including the professional skills that can be developed in experiential settings — and then establish

effective ways to measure how well the students learn.

DISTANCE LEARNING FLEXIBILITY

Under the new standards, law schools will have greater flexibility to offer distance learning opportunities. A distance education course is defined as “one in which students are separated from the faculty member or each other for more than one-third of the instruction and the instruction involves the use of technology to support regular and substantive interaction among students and between the students and the faculty member, either synchronously or asynchronously.”¹⁹ Law schools may now permit students to take up to 15 credit hours of distance courses, an increase from the current 12 credit hours. Further, the rule prohibiting a law student from enrolling in more than four credits of distance learning at a time has been eliminated.²⁰

This change reflects the growing and persistent pressure on law schools to find ways to make law school more affordable. Also, the change permits schools to engage in more experimentation to determine the value of distance learning for their particular programs and faculty resources. Technological advances and more sophisticated distance teaching methods make these options more attractive as schools move toward incorporating some distance learning into their curriculum. This relaxation of the prior rules will support and encourage law schools to enter into partnerships and consortiums with each other — to share their faculty resources and avoid duplication of course offerings in highly specialized fields.

EMPHASIS ON PRO BONO SERVICE

The new standards require accredited law schools to provide “substantial opportunities” for students to participate in pro bono legal services and law-related public service activities.²¹ Of course, most law schools already provide such opportunities and keep statistics of the hours of pro bono service provided by their students. It’s impressive how much law students at all three of Oklahoma’s law schools contribute to pro bono and public interest activities.

The ABA accreditation standards encourage law students to perform 50 hours of pro bono service while they are completing their legal education. This standard, in addition to emphasizing the legal profession’s traditional value of

pro bono service, also reflects the shift toward the value of real-world experience in becoming a lawyer. The new standard will push law schools to institutionalize their commitment to both experiential learning and pro bono and public interest service. This aspect of a high quality legal education further contributes to the fertile ground for law school-community partnerships.

1. Law School Admissions Council, "End of Year Summary: ABA Applicants, Applications, Admissions, Enrollment, LSATs, CAS" (2014), www.lsac.org/members/data/lac-volume-summary; Law School Admissions Council, "Three-Year Applicant Volume Graphs" (2014), www.lsac.org/lacresources/data/three-year-volume.

2. Richard E. Susskind, *The End of Lawyers? Rethinking the Nature of Legal Services* (Oxford University Press, 2010); Brian Z. Tamanaha, *Failing Law Schools* (2012).

3. American Bar Association, "2014-2015 Standards and Rules of Procedure for Approval of Law Schools" (2014), available at www.americanbar.org/groups/legal_education/resources/standards.html.

4. *The Paper Chase* (20th Century Fox 1973).

5. Susskind, *Id.*; Lincoln Caplan, "An Existential Crisis for Law Schools," *New York Times*, July 14, 2012.

6. ABA Standard 509 Required Disclosures: <http://goo.gl/Ui9lwE>; www.law.ou.edu/content/aba-required-disclosures; www.utulsa.edu/law/abarequireddisclosures.

7. Ethan Bronner, "No Lawyer for Miles, So One Rural State Offers Pay," *New York Times* (April 8, 2013).

8. Julie A. Evans, OBA Law Schools Committee (2014).

9. Marjorie Maguire Shultz and Sheldon Zedeck, *Final Report - Identification, Development, and Validation of Predictors for Successful Lawyering*, SSRN-id1353554 (2008).

10. *Id.* at 26-27.

11. Standard 303, ABA Section of Legal Education and Admissions to the Bar, Revised Standards for Approval of Law Schools (August 2014).

12. David A. Santacrose and Robert R. Kuehn, "Report on the 2007-2008 Survey," page 14, Center for the Study of Applied Legal Education (2008).

13. The ABA Section of Legal Education and Admissions to the Bar is tasked by the U.S. Department of Education with the accreditation of law schools in the United States. The section began a comprehensive review of the law school accreditation standards in 2008. The Council of the Section of Legal Education established final revisions to the proposed standards, subject to approval by the ABA House of Delegates. On Aug. 11, 2014, the ABA House of Delegates approved the set of reforms. The revised standards may be found at the ABA website, www.americanbar.org, in the Section of Legal Education and Admissions to the Bar under News and Announcements.

14. See Standard 303(a)(3).

15. See Standard 302(d).

16. See Standard 302, Interpretation 302-1.

17. See Standard 314.

18. See Standard 315 and Interpretation 315-1.

19. Standard 306(a).

20. See Standard 306(e).

21. See Standard 303(b)(2).

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– Regina S.,
Holland Hall Sixth Grader



Updating the Rules to Reflect Changes in Technology

By Gina L. Hendryx

Lawyers have an obligation to provide competent and diligent representation to their clients. This means the lawyer must apply the “legal knowledge, skill, thoroughness, and preparation reasonable necessary for the representation.”¹ Furthermore, “a lawyer shall act with reasonable diligence and promptness in representing a client.”²

Lawyers have historically learned that when faced with a novel area of law or a representation involving unfamiliar legal issues, we can satisfy the competency requirement through necessary study or by associating with competent counsel. To diligently represent a client, the lawyer should fulfill obligations to a client within a reasonable time and not neglect the matter or the client. A lawyer’s failure to meet deadlines is a classic example of a violation of Rule 1.3.

“Competent” representation has long been associated with familiarity of substantive law and procedural rules. With the legal field implementing more technology resources and outsourcing more projects, the “competent” lawyer’s responsibilities will expand beyond principles of law and rules of the court. The American Bar Association has adopted several amendments to the Model Rules of Professional Conduct (Model Rules) which reflect the wide range of technologies used or likely to be used in the near future by lawyers. The OBA’s Rules of Professional Conduct Committee has studied these changes and made recommenda-

tions to be presented to the OBA Board of Governors regarding adoption of same. Ultimately, any changes to the Oklahoma Rules of Professional Conduct (Oklahoma Rules) will be determined by the Oklahoma Supreme Court and codified at 12 O.S. Ch.1, App. 3-A.

The ABA amendments begin with Rule 1.0, Terminology. Section (n) defines the word “writing” as it is used in the Model Rules. Writing has been defined to include email. It was determined that the definition of “writing” should be updated in light of changes in technology. The ABA commission charged with studying these rules determined that the current definition was not sufficiently expansive given the wide range of methods that lawyers use when memorializing an agreement. Therefore, “email” was replaced with the words “electronic communications” to be included in the definition of a “writing.” The Oklahoma committee has recommended adoption of this change to Rule 1.0(n).

Lawyers are charged with the responsibility to keep abreast of changes in the law and its practice. The ABA amendments now include

staying current on the “benefits and risk associated with relevant technology.” The Oklahoma committee has recommended adoption of this language to Comment [6] of Rule 1.1. To maintain competence in the practice, lawyers are encouraged to engage in continued study and education. Maintaining competence may very well require knowledge of e-discovery, online filing, electronic document retention policies, etc. If you intend to practice in areas where there are potential technology issues, you must understand some. Failure to do so may be a violation of your duty to competently represent your client.

Communicating with your clients has drastically changed since the days of rotary dial telephones and carbon paper copied letters. Rule 1.4 of both the Model Rules and the Oklahoma Rules states that lawyer shall keep the client reasonably informed about the status of the matter and promptly comply with reasonable requests for information. Comment [4] to this rule states that “[c]lient telephone calls should be promptly returned or acknowledged.” The ABA commission replaced that admonition with the following language, “A lawyer should promptly respond to or acknowledge client communications.” The new language more accurately describes a lawyer’s obligations in light of the increasing number of ways in which clients use technology to communicate with lawyers. The Oklahoma committee has recommended adoption of this language to Comment [4] of Oklahoma Rule 1.4.

Technology has increased the risk that confidential information may be inadvertently disclosed. Model Rule and Oklahoma Rule 4.4 (b) provide that should a lawyer receive documents that they know or reasonably should know were sent inadvertently, they must notify the sender. The ABA commission determined that the word “documents” was insufficient to

“Technology has increased the risk that confidential information may be inadvertently disclosed.”

cover the various kinds of information that may be inadvertently divulged. Confidential information is stored in emails, on flash drives and embedded in electronic documents. The amendment to Rule 4.4 (b) makes it clear that the rule extends to all documents or electronically stored information. The Oklahoma committee has recommended adoption of the amendments to Rule 4.4.

Recommended changes will be vetted by the OBA’s Board of Governors and, if accepted by that board, referred to the Oklahoma Supreme Court for consideration. If and when any amendments are approved by the court, OBA members will be given notice via traditional means of delivery, *i.e.* the *Oklahoma Bar Journal* and through electronic technology. The OBA recognizes its responsibility to provide current, up-to-date information to its members and embraces technology as one of the many means of keeping our members current on changes to rules of practice.

1. Oklahoma Rule of Professional Conduct 1.1.
2. Oklahoma Rule of Professional Conduct 1.3.

Ms. Hendryx is OBA general counsel.

ABOUT THE AUTHOR



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

OBA Criminal Law Section Luncheon and Annual Meeting

Mayo Hotel, 115 West 5th Street, Tulsa, Oklahoma
November 12, 2014 • Noon – 1:30 p.m.

\$20 for CLS members • \$35 for non CLS members
Including cost of 2015 yearly dues and luncheon



CAROL HEPBURN

Main speaker: Seattle attorney Carol Hepburn

Currently, Ms. Hepburn is one of only a few lawyers who are leading a national effort in the U.S. to recover substantial damages for victims of child pornography. Her client is the subject of one of the most widely distributed series identified to date. Carol was recently featured discussing this case on KING 5 Seattle news: Victim in Child Porn Videos Now Seeking Justice and in the ABA Journal article, "Pricing Amy: Should Those Who Download Child Pornography Pay the Victims?"

Also speaking: Danny Oliver State Adjutant of the Disabled American Veterans

He will speak about the Battle Buddies program, a national model for providing mentoring assistance to incarcerated veterans who are released from prison.

We will be honoring Suzanne McClain Atwood, Executive Coordinator of the DAC and Bob Ravitz, Oklahoma County Chief Public Defender for their efforts in founding and sustaining the Criminal Law Section. Luncheon also honors those receiving the Section's Professional Advocacy Awards.

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Registration form due Nov. 7

*Registration open to all OBA members and guests, whether or not members of the section.
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The Legal Profession of the 21st Century: Can Oklahoma Lawyers Meet the Challenges?

By Deirdre O. Dexter

In the world of law, it certainly can't be disputed that "the times they are a-changin'."¹ Dramatic changes are occurring rapidly in the way legal services are provided. Even prior to the economic downturn in 2008, lawyers and law firms were beginning to experience change as corporate clients demanded detailed budgets and information regarding legal services performed and results achieved. The full impact of the downturn is now behind us, but the "more services for less cost" demand remains, and is now an expectation of all clients — whether that client is an individual seeking a divorce, or is a corporation seeking to enforce a multi-million dollar contract.

At the same time, many believe our justice system has failed to provide legal services to those in need, and the demand for better access to services for that underserved population is receiving increased attention.

This client demand of more for less, and the well-founded demand for a better way to provide legal services to low- and middle-income individuals, has had a profound impact on the cost and delivery of legal services and has led to the public's increased reliance on "self help" solutions to solve legal issues. It has, in fact, opened the door to new entities like LegalZoom, Rocket Lawyer and other online businesses who profit by claiming to provide more affordable services to potential legal clients. This, in turn, creates major pressure for lawyers to change how we do business — both to

provide access to justice to those in need and to survive in today's business climate.²

THE ACCESS TO JUSTICE EFFECT

Earlier this year, the Oklahoma Supreme Court adopted rules creating the Oklahoma Access to Justice Commission, which will be codified at Part XI of the Oklahoma Supreme Court Rules.³ In the rules, the court directs the commission to "develop and implement policy initiatives designed to expand access to and enhance the quality of justice in civil legal matters for low-income" Oklahomans.⁴ Although the court focuses on providing increased civil legal services to low income individuals, it cannot be denied that the access to justice issue goes well beyond those who fall within this classification.

A recent study funded by the American Bar Foundation (ABF study) found not only that 80 percent of those classified as “low income”⁵ encountered at least one civil justice situation⁶ during 2013, but also that more than 60 percent of those considered “middle income”⁷ and “high income”⁸ encountered a civil justice situation in 2013.⁹ The study thus debunks the assumption that individuals who fall within the middle- and high-income categories recognize their legal issues, and have the resources to hire an attorney to represent them. Not surprisingly, the ABF study found that the cost of legal services was a predominant reason why more people do not turn to lawyers for help with their legal issues.¹⁰ Further, the study revealed that across all income levels, nearly 50 percent of those responding did not seek legal assistance, and even those who did seek assistance rarely went to attorneys.¹¹ Instead, they turned to “self help” methods.¹²

THE LEGALZOOM EFFECT

New online services claim to bridge the gap between those who need help preparing certain legal documents, and the high cost of legal services to provide them. Since 2001, LegalZoom and others have capitalized on the fact that many people are a) willing to engage in “self help,” b) do not see document preparation as a “legal” issue and/or c) believe they cannot afford legal services.

As Internet use has grown, the use of such alternative providers has also grown exponentially. For example, a simple Internet search for “will” pulls up a number of sites which will provide customized documents, based on information input by the individual. This service is typically much cheaper than hiring a lawyer to prepare a will and, depending on the service, may be free.¹³

Assistance provided by these companies ranges from the incorporation of a business to the creation of a last will and testament. LegalZoom charges a flat rate, based on the services selected, and Rocket Lawyer has a seven-day free trial of its subscription services, during which time the documents are free. They cover preparation of documents and may include consultation with an attorney.

THE UNAUTHORIZED PRACTICE OF LAW?

An important issue is whether what these companies do and what they will do in the

future crosses the line into the unauthorized practice of law. LegalZoom, in fact, has faced several lawsuits alleging that it has engaged in the unauthorized practice of law since it began providing services in 2001.

The unauthorized practice of law as it relates to LegalZoom is based on how the process works. Generally, a customer who wishes to use a LegalZoom document selects the type of document desired, and then answers online questions posed by the program. Those answers are put into a “template” used by LegalZoom to create the final document. According to LegalZoom, other than inserting the customer’s information into the template, the language of the template is static, and does not change based on the information provided by the customer.¹⁴ Likewise, according to LegalZoom, while an individual does proofread the template to check for any errors, it is not providing legal advice or services.

While LegalZoom and others characterize their services as filling in a “template” and analogize them to pre-printed legal forms, questions exist regarding the extent to which LegalZoom and other online providers bump up against unauthorized practice. For example, more than one online user has submitted a form and received a follow-up call from someone at LegalZoom regarding what action the users should take on the matter going forward.¹⁵

A recent situation in Oklahoma involved a customer who attempted to use LegalZoom to create a limited liability company. After checking the Oklahoma Secretary of State website to verify that the name chosen for the new entity was not in use, the individual used LegalZoom to set up the LLC. A few days later he received a call from a customer service representative at LegalZoom advising that one of the words used in the new entity’s name was already in use by two other companies registered in Oklahoma, and suggested that the name could be rejected by the Oklahoma Secretary of State’s office. This may be legal advice, or it may be part of the “proofreading” admittedly done by LegalZoom. While that is a question reserved for the courts, it does raise questions regarding the manner in which LegalZoom, as well as other online document providers, deal with their customers.

In fact, LegalZoom has settled a number of the lawsuits filed against it.¹⁶ It recently, however, received a favorable ruling from the

South Carolina Supreme Court, to the effect that the manner in which it does business with its customers does not constitute the unauthorized practice of law.¹⁷ While the South Carolina ruling gave LegalZoom cause to celebrate, a Superior Court judge in North Carolina, less than two weeks after the South Carolina ruling, refused to rule on whether Legal Zoom's activities amounted to the unauthorized practice of law, and required the parties to provide it with a more extensive factual record.¹⁸

THE EFFECT ON OKLAHOMA LAWYERS

For now, at least, there has been no final determination that LegalZoom and similar entities have engaged in the unauthorized practice of law, which means they can and will continue to prepare and provide legal documents to Oklahoma citizens. So what does that mean for lawyers in Oklahoma?

First, it may dramatically impact lawyers who make a living by preparing wills and trusts, assisting clients to form limited liability companies and prepare other corporate documents, and providing other document-intensive legal services that can be achieved by utilizing the document preparation software provided by LegalZoom.

Indeed, competing in this "new" legal market has become increasingly difficult for lawyers practicing law in the traditional way. Clients are rejecting the concept of hourly billing and demanding greater cost savings and efficiency, including the use of technology and alternative service providers. This "decomposing and alternative sourcing," as it is termed by Richard Susskind,¹⁹ will require lawyers to determine which tasks in a particular project truly require the knowledge and expertise of a lawyer, and which tasks can be outsourced to save time and expense. Lawyers must create sustainable cost advantages through their own use of technology and new processes.

There are several ways to do this. Lawyers, for example, can encourage consumers using online document services like LegalZoom to utilize the lawyer's services to review the documents that are created, at a reduced or even free cost, in order to ensure that the client's interests and intent are, in fact, protected and

reflected in the document. In the event errors are found which must be corrected, this can also be done for a regular or reduced fee.

A lawyer could also include an intake form on his or her website that the client could fill out for a template, much like LegalZoom, but with the benefit of having a lawyer review the document. The lawyer could then determine what additional information is needed in order to protect the client's interests.

Finally, it is important for lawyers to recognize that changes in how clients are purchasing legal services and engaging legal professionals are not limited to the preparation of legal documents by LegalZoom-type entities.

Consider the comprehensive list of "New Law" tools and sites one legal blogger, Jordan Furlong, has recently published.²⁰ Mr. Furlong uses the term "New Law" to describe "any model, process, or tool that represents a significantly different approach to the creation or provision of legal services than what the legal profession traditionally has employed." Within two overall categories, first, "Applying Technology to the Performance of Legal Tasks," and second, "Aligning Human Talent with Legal Tasks," Mr. Furlong lists an extensive number of sources, just a few of which are listed in the side bar.

To remain competitive, Oklahoma lawyers must look for new ways to reach legal service consumers, and emphasize the value and professionalism that lawyers bring to this ever more crowded legal market. Consumers need to know that there are many situations where an online service is not the right tool, and that a lawyer's ethics, expertise, professionalism, integrity and reliability are necessities.

PROTECTING THE PUBLIC

Finding ways to compete is not the only issue facing lawyers with respect to new legal service entities. Issues related to lawyer independence, competence and ethics, all of which are designed to protect the public in dealing with legal issues, must be considered. It is imperative that the public be protected.

Currently, protection comes through lawyer self-governance, something that is unavailable

“To remain competitive, Oklahoma lawyers must look for new ways to reach legal service consumers...”

APPLYING TECHNOLOGY TO THE PERFORMANCE OF LEGAL TASKS

Tools to Help Lawyers Do Legal Work Differently

- **CaseText** – “Judicial opinions and statutes are annotated with analysis by prominent law professors and attorneys at leading firms, giving you unique insight. And everything is 100 percent free.” www.casetext.com

- **ClearAccessIP** – “Serving the patent marketplace by lowering transactions and streamlining data management at the prosecution level.” www.clearaccessip.com

Tools to Help Clients Resolve Disputes Directly

- **Fair Outcomes** – “Provides parties involved in disputes or difficult negotiations with access to newly developed proprietary systems that allow fair and equitable outcomes to be achieved with remarkable efficiency.” <http://livepage.apple.com>

- **Fixed** – “The easiest way to fix a parking ticket.” www.getfixed.me

- **WeVorce** – “Divorce is more than a legal problem. ... You’ll come out with the necessary legal documents as well as a lifetime of tools, knowledge and agreements as you begin again.” www.wevorce.com

Tools to Help Clients Conduct Their Own Legal Matters

- **A2J Author** – “A software tool that delivers greater access to justice for self-represented litigants by enabling non-technical authors from the courts, clerk’s offices, legal services programs, and web-site editors to rapidly build and implement customer friendly web-based interfaces for document assembly.” www.kentlaw.iit.edu/institutes-centers/center-for-access-to-justice-and-technology/a2j-author

- **Fair Document** – “You get all your necessary estate planning documents completed quickly, and our streamlined process of working with an attorney affords peace of mind.” www.fairdocument.com/home

to those utilizing alternative service providers.²¹ In fact, the legal profession has often been criticized when challenging entities such as LegalZoom, because it is perceived that the protection efforts are for the benefit of attorneys rather than clients.²² Lost in such criticism, however, is the fact that the practice of law is regulated in order to protect the public.

With the traditional delivery of legal services, a lawyer will ultimately be held accountable for the work product that is performed by a non-lawyer within a law firm, or for work that is outsourced:

“[a] lawyer is duty-bound to supervise the work done by law personnel and stands ultimately responsible for work done by the entire non-lawyer staff. The work of unlicensed personnel for a lawyer is done by them as agents of the lawyer who employs them. It is the lawyer who must exercise complete, though indirect, professional control over the actions of the employees.”²³

Similarly, if a non-lawyer acting on behalf of a lawyer violates ethical rules governing lawyers, it is the lawyer who is held accountable.

LegalZoom-type providers, however, have no such regulation. In fact, these entities typically include a disclaimer stating that they are not providing legal services, and attempt to limit their liability to the amount received for documents provided. It is easy, however, to imagine a situation where a consumer has prepared, for example, a trust instrument using an online legal document provider, only to learn that significant tax ramifications or other adverse, unintended consequences have defeated the very purpose for creating the trust. Without the potential malpractice liability which protects clients when dealing with lawyers, the consumer’s recovery will be limited.

Another issue is client confidentiality. While lawyers are subject to strict rules regarding client confidentiality,²⁴ alternative service providers are not. The potentially sensitive business information that a consumer may need to share in order to obtain the desired services may be at risk from the use of online services. The hacking and hijacking of information from online computer systems seem to be a daily occurrence.

Potentially more significant is the fact that information provided through an online sys-

tem is available to people who are unknown to the consumer. While the odds of one or more persons using sensitive information in an unauthorized or improper way may be small, the effects of just one violation could be devastating to the consumer, depending on the nature of the information.

Another concern related to online legal service providers involves conflicts of interest. As is the case with confidentiality, lawyers are subject to strict rules governing conflicts of interest,²⁵ with the corollary duty to exercise independent professional judgment.²⁶ These issues would not appear to apply to online document providers. If such providers do perform legal services for consumers,²⁷ however, the question arises whether they should also be bound to follow conflicts of interest rules.

Similarly, when attorneys are working for companies that are not subject to the ethical rules governing lawyers, there is always a risk that non-lawyers may seek to direct or regulate the attorneys' professional judgment in violation of Rule 5.4 of the Rules of Professional Conduct.²⁸

Finally, in addition to regulations regarding conflicts of interest and confidentiality, required training of online providers should be considered to ensure a certain level of competence.

ALTERNATIVE BUSINESS STRUCTURES — THE LIBERALIZATION AND GLOBALIZATION EFFECT

A final change concerns the alternative business structures law (ABS) which has been adopted in England and Wales.²⁹ The specific intent of the ABS law is to permit non-lawyers to hold joint ownership and management of entities that may engage solely in legal services, or engage in legal services in combination with other, non-legal services.

The development and use of alternative business structures represents the liberalization and globalization of the legal profession.³⁰ It allows firms to explore new ways to organize their businesses to allow for external investment and to be more cost-effective by, for example, permitting different kinds of lawyers and non-lawyers to work together.³¹ Although the structure created for England and Wales falls under very a detailed law, and is still in its infancy, interest in ABS as an alternative to traditional law firms is on the rise.

- **Lexspot** – “Our online platform ... makes the convoluted and expensive immigration process easy and affordable.” www.bridge.us

ALIGNING HUMAN TALENT WITH LEGAL TASKS

New-Model Law Firms

- **Justice Café** – “We are striving to bridge the justice gap by dishing up affordable legal help in our communities.” <http://goo.gl/8DF26l>
- **VLP Law Group** – “We provide sophisticated legal advice in a wide range of practice areas, but our overhead is low, our staffing lean, our fees flexible and value-driven.” www.virtuallawpartners.com

Project/Flex/Dispersed Legal Talent Providers

- **Daily General Counsel** – “We come to your place of business for a full day and help you to solve your most pressing legal-related business problems.” <http://goo.gl/xkzYYW>
- **Paragon** – “We provide embedded attorneys on a project basis to assist with overflow work, hiring gaps, interim backfills and special projects.” www.paragonlegal.com

Managed Legal Support Services

- **Elevate Legal Services** – “A global legal service provider helping law firms and corporate legal departments operate more effectively.” www.elevateservices.com
- **LeClair Ryan Legal Solutions** – “We provide a wide range of support services and incorporate best-in-class technology and quality control processes which will be uniquely integrated into the law firm's litigation and transactional practice areas.” <http://goo.gl/YbglBg>
- **United Lex** – “The global leader in legal services outsourcing, provides litigation, contracts and IP services to corporations and law firms.” www.unitedlex.com

The potential for globalization of legal services through use of ABS, and the flexibility it provides financially and in the ways legal services are delivered, could create great economic challenges for lawyers and great risk for the public. Ontario, the first jurisdiction in North America to regulate non-lawyer providers of legal services by use of independent paralegals, is currently studying such issues, including a study of limited non-licensee ownership of law firms, and the current rules governing legal business structures, such as the ban on fee sharing.³²

Although ABS will not make entry into the states so long as the bans on fee sharing and forming legal partnerships with non-lawyers remain in place, some states are taking steps to liberalize rules, including those prohibiting the unauthorized practice of law. For example, the Washington (state) Supreme Court recently adopted a court rule authorizing and regulating non-lawyers who deliver legal services in a limited fashion.³³ The court rule followed a study commissioned by the court in 2003, which found that access to justice was being denied to a significant portion of the population. Under the new Limited License Legal Technician Rule, certain individuals are authorized to deliver legal services in a limited scope in specific Supreme Court-approved practice areas.³⁴

Irrespective of the forms that changes in the law may take in the months and years ahead, making certain that those who seek to provide legal assistance to the public are competent, and can be held accountable to their clients, is crucial. As recognized by the Washington Supreme Court, it is important to set standards for those who are authorized to represent clients in legal matters, even when the representation is limited. It is imperative that lawyers and non-lawyers alike be accountable to the consumer, whose life, well-being and/or finances may be harmed by the action or inaction of the provider. In dealing with online service providers, this could potentially be accomplished through mandatory insurance coverage, invalidation of limitation of liability clauses or a combination of the two.

CONCLUSION

Change is coming, much faster than we may realize. Now is the time to embrace that change and move from the “traditional” practice of law into the 21st Century. However, as we do so, it is important that we never lose sight of

the need to provide access to justice for all and to protect and safeguard the public. Lawyers must be more efficient and make greater use of technology in order to compete in the legal profession today — for the times they are a-changin’.

1. Bob Dylan, *The Times They Are A-Changin’*.

2. Author Richard Susskind has warned that significant change is coming to the legal profession and that one of the drivers of that change is what he calls the “more for less” challenge.” Richard Susskind, “Tomorrow’s Lawyers,” 39 *ABA Law Practice Magazine* 4 (2013).

3. See *In re: Establishment of the Oklahoma Access to Justice Commission*, 2014 OK 16.

4. *Id.*

5. “Low income” households, for purposes of the study, are those eligible for federal funded civil legal services or households at 125 percent of the poverty level or below. “Accessing Justice in the Contemporary USA: Finding From The Community Needs And Services Study,” Figure 3, Notes, at p. 9, authored by Rebecca L. Sandefur and released by the American Bar Foundation on Aug. 8, 2014.

6. For purposes of the study, civil justice situations were matters involving one of the following: money, debt, rented and owned housing, insurance, employment, government benefits, children’s education, clinical negligence, personal injury and relationship breakdown and its aftermath. *Id.* at p. 7.

7. “Middle income” households, for purposes of the study, are those between 126 percent of the poverty level and the 80th percentile of the national household income distribution. *Id.*, Figure 3, Notes, at p. 9.

8. “High income” households, for purposes of the study, are those whose incomes are in the top 20 percent nationally. *Id.*

9. See “Accessing Justice in the Contemporary USA: Finding From The Community Needs And Services Study” *supra*, Figure 3 at p. 9.

10. See “Accessing Justice in the Contemporary USA: Finding From The Community Needs And Services Study” *supra*, at p. 16.

11. *Id.* While a small number of the situations encountered involved some kind of court involvement, even then only 42 percent of those responding sought advice or assistance from attorneys. Where the situation did not involve the court system, only 5 percent of those responding sought assistance from an attorney.

12. *Id.* at pp. 11-12.

13. Interestingly, LegalZoom sued its main competitor, Rocket Lawyer, alleging that Rocket Lawyer statements that it provides “free” documents are false.

14. *LegalZoom, Inc., v. The North Carolina State Bar*, Case No. 11 CV 15111, Superior Court Division, North Carolina, Order March 24, 2014.

15. See, e.g., Gene Quinn, “LegalZoom Sued in Class for Unauthorized Law Practice,” *IPWatchdog, Inc.* (Feb. 9, 2010).

16. For example, lawsuits filed in Washington, California and Missouri have been settled and another lawsuit, filed in Arkansas, has been ordered to arbitration.

17. *Medlock v. LegalZoom, Inc.*, Case No. 2012-208067, Supreme Court, State of South Carolina, Order March 11, 2014.

18. *LegalZoom, Inc., v. The North Carolina State Bar*, Case No. 11 CV 15111, Superior Court Division, North Carolina, Order March 24, 2014.

19. See “Tomorrow’s Lawyers,” note 12, *supra*.

20. “An Incomplete Inventory of NewLaw,” by Jordan Furlong, <http://goo.gl/4Qyoly> May 13, 2014.

21. See, e.g., *Latson v. Eaton*, 1959 OK 124, ¶6, 341 P.2d 247 (the practice of law is regulated to protect the public, which might be injured if unskilled and untrained persons are permitted to practice the duties of the legal profession); accord 2006 OK AG 27, ¶26-27.

22. *Id.*

23. *Oklahoma Bar Association v. Martin*, 2010 OK 66, ¶12, 240 P.3d 690.

24. See Rule 1.6 of the Oklahoma Rules of Professional Conduct.

25. See, generally, Rules 1.7 through 1.13 of the Oklahoma Rules of Professional Conduct

26. See Rule 5.4 of the Oklahoma Rules of Professional Conduct.

27. Rocket Lawyer includes legal services as part of its subscription plans. LegalZoom has also expanded into the prepaid legal services market, currently providing prepaid legal services plans in 41 states.

28. This is not, of course, a situation unique to an online service provider. As is recognized by Rules 1.13 and 1.16 of the Rules of Professional Conduct, there is an inherent risk that a non-lawyer may attempt to direct or control the professional judgment of a lawyer,

particularly where the lawyer is representing a corporate or governmental entity or is being paid by someone other than the client.

29. See Legal Services Act 2007.

30. See, e.g., "Tomorrow's Lawyers," note 12, *supra*.

31. See Legal Services Act 2007.

32. Jordan Furlong, "ABS in Canada? Closer Than You Might Think," *The Lawyers Weekly* (Oct. 25 and Nov. 1, 2013).

33. Steve Crossland, "Restore Access to Justice Through Limited License Legal Technicians," 31 *GP Solo Magazine* 3 (2014).

34. Among the stringent requirements adopted by the court, in order to be authorized to practice with as a limited license legal technician, an individual must pass an examination; engage in continuing education; follow the rules of professional conduct; and show proof of financial responsibility. *Id.*

ABOUT THE AUTHOR



Deirdre Dexter practices in the Tulsa metro focusing in arbitration, mediation and employment law. She is a member-at-large on the OBA Board of Governors and serves on the OBA Awards, Law Day and Women in Law committees. She is a past president of the Tulsa County Bar Association, Tulsa County Bar Foundation and is a member of the Creek County Bar Association. She graduated from the OU College of Law with highest honors in 1984.



Weather Policy

The Oklahoma Bar Association rarely closes. Typically, we follow closings for the State of Oklahoma Non-essential employees. Seminars may be cancelled if extreme weather conditions or emergency situations arise. In the event a seminar cancels, information will be posted in the following places online:

- The front page of the website
- The CLE page of the website
- OBA/CLE's Facebook page

An email will be sent to those pre-registered and the faculty for the seminar.

If you are concerned about the cancellation of a specific event, please contact Susan Krug at 405.416.7028.



Practicing Law at the Speed of Light

By Jim Calloway

Pre-Internet: A lawyer would proofread a letter, sign it, have it stamped and placed in an envelope and mailed. Unless something urgent required a phone call, the lawyer could expect a reply letter in four to seven days.

Today: A lawyer gets to the office a little early, checks his or her email and can have three or four testy email exchanges with other early-bird lawyers before the rest of the staff even shows up and the office officially opens.

That lawyer also had to delete dozens of spam email messages, deal with a few emails from friends and relatives and read (and preserve) several other important emails from clients, co-counsel and opposing counsel. All of those accumulated since the lawyer left the office at 6 p.m. the day before.

But at least that lawyer did not check the office email from home that night and was spared from the stress caused by reading one of those emails from opposing counsel then.

Communication moves quickly today. Maybe only data on fiber optic cables technically approaches moving at the speed of light, but many days and many tasks feel like they move too fast. Expectations of clients and opposing counsel have changed too. Because you can read and respond to email in five minutes, why didn't you? In the days of research in books and manual typewriters, no lawyer would have waited to begin a brief until the morning of the day it was due. That temptation is only there because of the availability of today's technology tools.

The changes in the way business operates today are a particular challenge for lawyers. We must use information technology tools because legal work is largely information management. But legal analysis also involves reflection and thoughtful contemplation. It seems more and more challenging to find sufficient quiet time for quiet contemplation. Using today's information technology tools means that you can process and finalize a lot more work each day. But it also means that others can generate a lot more work for you to process and respond to each day.

The speed of light is a constant. It does not change. Likewise it appears very unlikely that client expectations and the speed of business operations will slow down in the future. We must deal with today's challenges. Our society is certainly not going return to using only "snail mail" for communication or give up our cell phones.

But this environment generates a lot of stress. Most of us feel this, some more acutely than others. The statistics on lawyers having higher suicide rates and more stress than the general population are well-known. Stress impacts our health. Trying to process too much information and complete too many tasks too quickly invariably leads to mistakes. And, as we all know, the legal profession is very unforgiving

of errors. We do important work, and it needs to be done correctly.

Technology allows us to process a lot more work more quickly than we could have in the past. It is the classic double-edged sword. You can get more work done more quickly, and therefore you feel the pressure to get even more work done even more quickly. It is easy to sometimes feel that things are a little out of control and, for a few unfortunate lawyers, things do spiral out of control.

Let's discuss a few techniques for practicing law at the speed of light.

Rely on your memory as little as possible. The human brain is great for creatively solving problems. But that ability can be impaired when you try to keep track of too many facts and details.

There are two general aspects to this. One area involves the random facts that we all deal with every day. A judge orders you to do three things before the end of next week. You need to pick up your cleaning before the cleaners close. You can deal with this with technology tools that capture information so you will not lose it, putting deadlines on your calendar and writing down on a legal pad or digital device the three assignments from the judge. Moleskine produces a line of small notebooks that can be kept in a pocket or purse to retain information. Some find that Evernote is a great place to capture information that does not easily fit into your system. Your smartphone, whether it is iOS or Android, now has very good speech-to-text dictation tools for short dictation and some have purchased apps like Dictate + Connect (formerly known as Dictamus) that essentially give smartphones all of the features of a traditional handheld recorder for dictation.

The other aspect of not relying on your memory involves sequential tasks that are frequently done within the law office. As I've written about in the *Oklahoma Bar Journal* many times previously, good management of these involves preparing internal checklists and office procedures manuals. Attorney process management and workflow are areas that can be improved in most law offices.

Schedule uninterrupted periods of time to work. If a lawyer is not careful, the need for meetings with clients and potential clients, attendance at deposition and court hearings, conference calls and other types of meetings will completely fill their weekly calendar. Be sure that you allow a few hours each day for a block of uninterrupted time to work on matters that require your attention and thought. If you allow an assistant to schedule matters for you, make sure they are cognizant of that need as well.



It is also important to schedule blocks of time at least monthly to work on internal law firm needs like long-term planning and technology training. We have learned that a daylong technology training class can be stupefying and unpleasant. The attendees will receive so much information in a day that is impossible to retain it all. Short training sessions are better. Sometimes technology training in the law office may be as simple as setting aside an hour to do a few searches online to determine how to do certain tasks. Generally if you ask Google "how do I do this?" you

will receive links to several websites with step-by-step instructions.

Fight distractions and interruptions. Anytime you are interrupted it takes several minutes to get back to the same place you were in your work. Working in an office with other people necessitates some interruptions, but the successful lawyer will work hard to minimize these.

Turning off any notification sounds when there are incoming emails is a critical step considering all of the emails that we receive on a daily basis now. Having an "open door" policy where staff can approach you at any time with their problems sounds like a positive and benevolent concept. But realistically that policy must be limited. You cannot have a policy that says "interrupt me anytime you feel like it." So your open-door policy must be tailored. You can set, for example, Wednesday afternoons as the time you will be available to staff to deal with their issues.

You can also reduce the need to be interrupted during normal business days by periodically checking in with your staff when you finish a project and are about to start a new one. But be aware that your staff will be more effective in completing their assignments if they are not frequently interrupted by you.

Watch the arbitrary deadlines that you give yourself and your staff. We all want to give good prompt client service. This is greatly appreciated by our clients and leads to client referrals and clients returning with new legal work. But, if you're not careful, you can find yourself stressed by trying to complete a client project by Wednesday when the client would have been just as happy to receive the work on Friday. Before you tell a client an anticipated completion date, ask the client about their needs and their schedule.

It generates unnecessary stress to work under pressure or late one night to complete an assignment by the time you told the client you would only to find out that the client is out of town for a couple of days anyway.

Your marketing plan should not only be about getting the legal work you need to survive, but also the legal work you enjoy. You will not love every client, and a lot of legal work is necessary drudgery. In today's economic environment, law firm marketing is necessary for success. But if you really enjoy a particular aspect of your work, by all means focus your marketing plan on obtaining more of that enjoyable work. Both you and your clients will benefit.

Know thyself. The ancient Greek aphorism "know thyself" is wise counsel to lawyers today even though Plato may not have meant it exactly this way.

If you know you are not a morning person or that you have a brief afternoon lull after lunch, try to schedule your day where the most challenging work is done during your peak periods. Personally I found that the time right after lunch was a good time for meeting with new potential clients. Maybe setting a specific time each day to return as many phone calls as possible is the right plan for you. You know what

works for you, so try to have your schedule in daily work reflect that.

Most lawyers have a powerful internal motivation to accomplish things and succeed. But do not beat yourself up over the fact that you are human.

Take breaks. Even a five-minute walk outside can revitalize you for the afternoon's tasks. The point of this article is that human beings are not wired to constantly operate at the speed of light. Recognizing that is a key to your long-term success.

Complete projects before moving on. It is sometimes easy to get a project mostly done and then to move on, leaving a small part left over to do later. This was not as big a problem, perhaps, when the pace of law office operations was not so demanding. But, whether it is

failing to fill out the billing information or failing to finalize a document, leaving small parts of projects undone is a recipe to create a greater problem that will take you more time to resolve and could have even more dire consequences.

Every lawyer who bills by the hour is aware of the result when at the end of a very busy day you realize you haven't filled out your timesheets. It is very challenging to accurately re-create your time at the end of the day and simply impossible to re-create and accurately document how you spent your week at the end of the week.

You don't need left over bits of projects clouding your focus on accomplishing your tasks each day.

Embrace technology. It is true that our technology tools and the speed at which they operate can create challenges for human beings coping sometimes. But technology can also be your friend and the bottom line is that because of the nature of our work lawyers will be using technology for their entire careers whether it is word processing or electronic data discovery.

Take the time to explore what technology tools will work for you. For me personally, it was recognizing that I was simply never going to achieve the output by manually typing that I would by using speech-recognition tools. Most of this article was dictated using Dragon

“**Your marketing plan should not only be about getting the legal work you need to survive, but also the legal work you enjoy.**”

NaturallySpeaking. It took a while before I could use speech recognition for writing original content just like it took a while before I could compose at the keyboard rather than using a pen and legal pad. But today speech recognition is an essential part of my workflow.

Many who said “I only want a cell phone to make phone calls” now use their phones for texting, Internet research, finding directions and a variety of other applications.

Take time to figure out what technology works for you and makes your professional life better.

Take time to “unplug.” This advice has been given so many times that almost feels like a cliché. But most clichés come into being because they are generally true.

Time off from work is essential. Time away from technology is even more essential. Smartphones are incredibly useful and powerful devices. But checking the office email periodically when you’re supposed to be off work can be a negative. I’m still “old school” enough that it makes me sad when I see a group of teenagers sitting together all buried in their

mobile devices. I used to learn a lot and build relationships spending a few relaxing moments at courthouse coffee shops. Now it seems most everyone has a smartphone in their hand or pressed against their head every spare moment.

To use another cliché- no lawyer on his or her deathbed ever regretted that they had not filled out more timesheets and billed more hours. Too many lawyers spend too much time away from their family serving their clients. A lawyer serving his or her clients is the highest calling, but that is not all there is to life.

ABOUT THE AUTHOR



Jim Calloway is the director of the OBA Management Assistance Program and manages the OBA Solo & Small Firm Conference. He served as the chair of the 2005 ABA TECHSHOW board. His Law Practice Tips blog and Digital Edge podcast cover technology and management issues. He speaks frequently on law office management, legal technology, ethics and business operations.

NOTICE OF PROPOSED REVISIONS TO LOCAL RULES

UNITED STATES BANKRUPTCY COURT WESTERN DISTRICT OF OKLAHOMA

Pursuant to the authority of the United States District Court for the Western District of Oklahoma, as provided in Rule 9029 of the Federal Rules of Bankruptcy Procedure, public notice is given of the proposed revisions to the Local Rules of the United States Bankruptcy Court for the Western District of Oklahoma.

A redlined version of the Local Rules reflecting the proposed revisions to the Local Rules may be accessed on the Bankruptcy Court’s website at <http://www.okwb.uscourts.gov>.

Comments to the proposed revisions to the Local Rules may be submitted in writing no later than December 1, 2014, and mailed to the Bankruptcy Court at the following address:

U.S. Bankruptcy Court
Attn: Cheryl Shook
Chambers of The Honorable Sarah A. Hall
215 Dean A. McGee Avenue - Sixth Floor
Oklahoma City, Oklahoma 73102

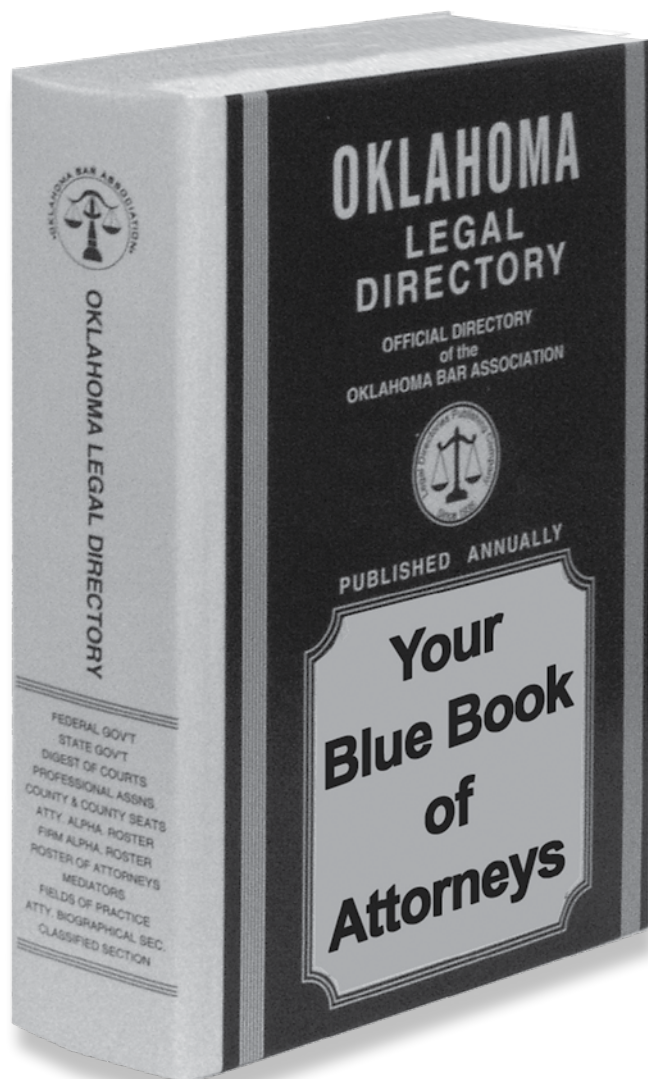
or emailed to: cheryl_shook@okwb.uscourts.gov. Comments to the proposed revisions to the Local Rules may be set forth in the body of a letter or email or may be included in a separate attached document.

Dated: October 16, 2014

The Honorable Sarah Hall
Chief Bankruptcy Judge

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Cybersecurity: It's a Moving Target

By Sharon D. Nelson and John W. Simek

If you feel like it's impossible to keep up with cybersecurity, fear not. You belong to a very large club. This field changes, not year by year, not month by month, but day by day. The best advice you can get is to attend at least one information security CLE each year and to keep reading articles like this one! Because this area moves so quickly, we thought we'd highlight recent developments.

THE ABA CYBERSECURITY RESOLUTION

The ABA has weighed in on cybersecurity concerns, always a sign that the states may follow. On Aug. 12, 2014, the ABA House of Delegates passed, without opposition, a new cybersecurity resolution, Resolution 109, which reads as follows:

RESOLVED, That the American Bar Association encourages private and public sector organizations to develop, implement, and maintain an appropriate cybersecurity program that complies with applicable ethical and legal obligations, and is tailored to the nature and scope of the organization, and the data and systems to be protected.

You might be forgiven for thinking as you read the resolution, "Wow, that really says a whole bunch of nothing." And you'd be right — it is really a cautionary resolution intended to raise awareness.

There is a back story to the resolution, which was, in its original format much longer. The original resolution appeared to command all law firms, large and small, to come up with a

cybersecurity program that met national and international standards.

This met with fierce opposition from a number of ABA entities, including the Law Practice Division. The resolution was submitted by the ABA Cybersecurity Legal Task Force and the Science & Technology Law Section.

In answer to the controversy, the language of the resolution (which stands on its own and is not governed by the accompanying report) was watered down to the tepid version above. At the behest of other entities, language in the report was also changed to make it clear that the resolution was not attempting to make a change in lawyers' ethical duties and to add language recognizing that smaller firms could not be expected to adopt a program that made no sense considering their size and budget constraints.

Clearly, for small firms, the international and national standards cited in the report appeared fearsome. There are standards for smaller firms. The report states: "Small organizations, including small law firms and solo practitioners, can prioritize key cybersecurity activities and tailor them to address the specific needs

SECURITY CHECKLIST TIME

Everyone loves a checklist, right? We know the OBA's own Jim Calloway does. We hope this checklist will get you thinking about things you need to do to prepare. Here are some key security steps to take:

- Have a vulnerability assessment performed, at least annually
- Remediate any vulnerabilities discovered
- Use enterprise-class anti-malware suites, not single function products like an antivirus program (we like Kaspersky and Trend Micro.)
- Have security policies and plans in place:
 - Remote access policy
 - Incident response plan
 - Disaster recovery plan
 - Acceptable Internet and electronic communications policy
 - Social media policy — More than two-thirds of small businesses do not have such a policy, and yet 18 percent of users have been hit by social media malware according to a 2011 report by the Ponemon Institute.
 - Employee termination checklist
 - Password policy
 - Mobile device (includes smartphones) policy (critical if you allow the use of personal devices)
 - Background checks for employees
 - Employee monitoring policy — It is helpful to have a logon screen that specifically says that there is no right of privacy — that makes it hard for any employee to argue that they didn't know the policy.
 - Guest access policy — Guests are frequently allowed on law firm networks, but they should not be able to reach client data, firm financial information, etc. — and they should be given a password which expires quickly.
 - Vendor access policy
- Make sure critical security patches are promptly applied.

that have been identified.” For help with this, you might check out “NIST Interagency Report 7621: Small Business Information Security: The Fundamentals.”¹ Written in 2009, it's a bit dated, but many fundamentals remain the same.

Remember that the resolution governs — not the report. So if you hear a vendor quoting from the report to get you to buy something, don't think the report operates to set standards you must meet.

THE NIST CYBERSECURITY FRAMEWORK

In February 2014, we had begun moving forward toward securing our data and the physical infrastructure protecting it when the National Institute of Standards and Technology released Cybersecurity Framework Version 1.0.

The framework provides a structure that organizations, regulators and customers can use to create, guide, assess or improve comprehensive cybersecurity programs. This came as a result of Executive Order 12636, issued in February 2013, which called for “the development of a voluntary, risk-based Cybersecurity Framework — a set of existing standards, guidelines and practices to help organizations manage cyber risks. The resulting framework, created through public-private collaboration, provides a common language to address and manage cyber risk in a cost-effective way based on business needs, without placing additional regulatory requirements on businesses.”

The framework allows organizations — regardless of size, degree of cyber risk or cybersecurity sophistication — to apply the principles and best practices of risk management to improve the security and resilience of critical infrastructure.

The document is called “Version 1.0” because, much like our Constitution, it is supposed to be a “living” document which will be updated to reflect new technology and new threats — and to incorporate “lessons learned.”

Here is where you find the magic words of the document, “identify, protect, detect, respond and recover” that should shape any law firm's cybersecurity program.

“Identify and protect” was where we started in the early days of cybersecurity — and while those words are still important, “detect and respond” have surged forward as a new focus — along with, of course, recovering from secu-

rity breaches — no easy task. It is especially tough if you don't know you've been breached — and the average victim has been breached for seven months or more before the breach is discovered!

THE WAY WE WERE: A LOOK BACKWARD

In a more innocent time, we really thought we could keep the barbarians outside the walls that guard our data. Alas, those days are gone.

For years, the emphasis was on preventing villains — cybercriminals, state-sponsored agents, business espionage spies and hackers — out. We went from fairly simple anti-virus software to sophisticated anti-virus software and, finally, to enterprise anti-malware software security suites.

The products got better and better and better.

“...we realized that if the bad guys are smart enough and target a particular entity, they are going to successfully scale the walls we built to keep them out.”

Sadly, what we learned is that all the would-be intruders were not only matching the good guys step for step, they were outpacing them.

It took a surprisingly long time for everyone to “get it” — but in the end, we realized that if the bad guys are smart enough and target a particular entity, they are going to successfully scale the walls we built to keep them out. And with that realization, “detect and respond” became the new watchwords in cybersecurity.

Mind you, we are still trying to keep the bad guys out — that is our first line of defense. But now that we know that our first line of defense is a Maginot Line² for sophisticated attackers, we have moved forward in our thinking.

DETECT AND RESPOND FOR LAW FIRMS

“Detect and Respond” means rethinking how you approach the security of your data. Now that you know that you can't keep a

- Map your network (you can use a free tool such as Nmap) to identify devices and applications running on the network. Regular scanning will show you what and who should and shouldn't be on the network. Anything that looks suspicious can be investigated.
- Depending on the size of your firm, you may want to consider an intrusion detection system (IDS). Larger firms may want to use a network behavior analysis tool, which monitors network traffic and detects anomalies, but this is probably beyond the budget of small firms.
- Consider using content filtering, which keeps employees from visiting sites (notably pornographic sites) where the evildoers are apt to plant drive-by malware.
- Examine the security policies of business partners.
- Verify that your firewall is properly configured.
- Encrypt sensitive data in transit and in storage. This is especially important for mobile devices which are so frequently lost or stolen. Make sure they can be remotely wiped and that they will wipe themselves after a certain number of incorrect passwords are typed in.
- Change all default passwords — these are plastered all over the Internet.
- If you have bent to the pleas of employees to connect their personal devices to your network, make sure you have a mobile device manager, which can help manage security. The new trend is to have two instances (think sandbox) on the phone, one for business and one for personal stuff, with the employer tightly managing the business instance of the phone. Since most small law firms are not using mobile device managers, allowing personal devices on the network is a Faustian bargain with a severe security risk. It is very important that data be encrypted, that passwords be required and that the devices can be remotely wiped.
- Verify that your wireless network is properly secured.

continued on next page

- Log remote access and limit access to sensitive data.
- Make sure you know where all your data is actually located!
- Make sure you know what experts you would call in the event of a breach.
- Make sure your devices are physically secured
- If you are accepting credit cards, make sure you are following the PCI Data Security Standards (DSS) which may be found at www.pcisecuritystandards.org.
- Get IT and partners to work together. Firm culture is a big problem — it is often true that a partner can refuse an IT security recommendation by simply saying “I don’t want to work that way.”
- Have a plan for damage control to the firm’s reputation.

determined intruder out, you know you need to detect them once they’ve penetrated your network. So you need technology and software that will help you detect that you’ve had what is called, in polite circles, “a cybersecurity event” — translate that to “a breach.”

As you can imagine, you want to know of these “events” as soon as possible so you can take action. Today, there are technology solutions that identify “anomalies” in your network (things that are outside the norm) or that look for executables that are unknown but are behaving like malware or some other form of cyberattack. While such solutions may be beyond the need or the budget of solos and very small firms, you don’t have to be very large to start considering heading down this road — the risks of not doing so are simply too great.

Some of these solutions include data loss prevention (DLP) software and appliances, electronic content management systems (ECMs) and security event management systems (SEMS). When you meet with someone who can explain the various solutions to you, brew a pot of espresso — you’re going to need to be highly focused to understand how one solution differs from another — this is really cutting edge technology that changes from month to month (if not day to day).

As for your response to your incident, that may vary. After the initial panic, you will want your in-house or outside technology consultants (and you are likely to need digital forensics technologists, who are more familiar with data breach investigations) to take a look at the situation and see what they can determine. They can also, once they understand what has happened, figure out how to “plug the hole” and otherwise mitigate the breach. Remediation of whatever caused the breach is key.

Hopefully, you already have an incident response policy and plan in place, no matter how big or small you are. For all but the smallest firms, there should also be an incident response team in place to implement the plan.

In all probability, you will want to call a lawyer familiar with data breach laws who can advise you on complying with any of the 46 state data breach notification laws.

And if there is data protected by federal law (such as HIPAA data), you’ll need advice on that front too.

Finally, one of the first pieces of advice you are likely to be given is to call the FBI. While that is anathema to most law firms, it is the appropriate course of action. Remember that the FBI makes no public statements about these investigations and doesn’t show up in flak jackets or otherwise make a public display of your “cybersecurity event.”

ENCRYPTION

Remember what we said about “the way we were?” It **still** makes good sense to do your level best to keep the bad guys out and the best way to do that is by using encryption. Let us first and foremost dispel a myth — encryption is not hard. It is child’s play to put a password on a Word or PDF document that you want to attach to an email.

All of your laptops should have full disk encryption — laptops are stolen at an alarming rate. Your smartphones **must** have a PIN.

Encrypt the phone! This is easier to do than you think. Enabling a lock code on the iPhone or iPad automatically encrypts the device. To encrypt a BlackBerry device, all you have to do is enable the “Content Protection.” The last several versions of the Android operating system have built-in encryption. Just make the selection to encrypt the device within the security settings. You may need a third-party appli-

cation if you are running an older version of the Android OS.

To the best of anyone's knowledge, even the NSA cannot (yet) break strong encryption. As security expert Bruce Schneier says, "Encryption drives the NSA batty." That makes encryption a lawyer's friend!

As we wrote this, we learned of another law firm that just suffered a data breach because an (apparently) unencrypted backup disk was stolen from the locked trunk of an employee's car. If it had been encrypted, there would have been no danger. But now the firm has suffered reputational damage, is paying for credit monitoring and the notification of clients who are impacted — not to mention dealing with digital forensics experts and law enforcement. Good risk management really demands encryption.

FINAL WORDS

You are never safe. Give that idea up — but sleep soundly if you have done all that you could reasonably do in light of the nature of the data you hold, the size of your firm and the available budget. Don't let perfection be the enemy of good!

1. <http://goo.gl/5Q9Io0> (last accessed Oct. 15, 2014)

2. A line of defensive fortifications built before World War II to protect the eastern border of France but easily outflanked by German invaders. Here it refers to a defensive barrier or strategy that inspires a false sense of security. (Source: Merriam Webster Dictionary)

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Alternative Fees and Technology

By Mark A. Robertson

No one can ignore the fact that law office technology has greatly changed the practice of law within the last two decades. Computers on lawyers' desks, automated document drafting procedures, computerized legal research, tablets, smartphones, easy access to the Internet and dozens of other changes have impacted both the way lawyers work and the actual nature of what is considered legal work within substantive areas of the practice of law.

Lawyers have long used checklists, forms, brief banks and other methods of reusing work product and enhancing and developing improved documents. It is probably fair to say at this point that no law office can reasonably function without at least using computers for word processing functions and reuse of prior work product. By developing smart systems to expedite document production and retrieval of prior work product and forms, lawyers reduce costs of production. This can yield benefits for the law firm or the client or both.

Technology also can be the proverbial two-edged sword for the hourly-rate lawyer. Technology can relieve the lawyer from much mundane and repetitive work, shorten the time to complete tasks involving word processing and provide for a much more error-free final result. However, for the lawyer who bills by the hour, the use of technology often reduces the time expended on a project which often equates to reduced fees.

In a traditional law firm structure, where the experienced partner might be able to do a certain task in far less time than the new associate,

the difference was noted by the partner having a higher hourly billing rate. But as technological sophistication increases in legal business operations, one has to believe that one cannot raise the billing rate high enough to cover future contingencies. The 10th time a similar type of transaction is done undoubtedly produces a better set of documents than the first. Can the lawyer raise her rate from \$350 per hour to \$700 an hour for this transaction if it takes half the time?

One can easily foresee a future where the law firm invests a huge amount of time and money into certain processes with the end result that the actual tasks only take minutes. It is no longer science fiction to envision a future where the lawyer first says to his computer, "Start with corporate form six, insert Mr. Toffler's and his business partner's data into it, incorporate special tax treatments A and D and show it being executed and filed here today instead of in his home state" and then reaches for the completed corporate documents as they instantly appear.

There is a very positive side to implementing law office technology improvements. These tools can free lawyers and their staff from many mundane repetitive tasks. Efficiency can be increased. Given the complexity of the law today and the length of many legal documents, having technology to assist with document preparation and other tasks is an absolute necessity.

Another positive aspect of technology is the potential superior service that can be rendered to the client. Not only can digital legal research be done more quickly than the traditional reviewing books in a library, but it can also be done more extensively. A couple of hours of traditional book research might have resulted in reading a dozen recent opinions and a few more often-cited landmark opinions. A skilled digital researcher can easily examine many more cases and on-line publishing increases the likelihood that more obscure sources of law may now be accessible. A good document assembly system can reduce drafting errors and result in quicker and better final documents.

TECHNOLOGY AND CLIENT VALUE

Sophisticated clients expect their law firms to have modern office technology. One cannot imagine these clients giving their business to a law firm today without email capability, Internet access and the ability to deliver, receive and handle digital documents. Staying up with the latest in law office technology costs money. Training staff to use the latest technology costs money. Compensating well-trained staff so that they stay with the firm costs money. Adding and training new staff costs money. Computers, tablets, smartphones, Internet access, web pages, virtual private networks and legal-specific software all cost money. Paying for necessary technology can be challenging if the lawyer only bills by the hour.

Unfortunately, the prevalence of technology within society also impacts the attitudes of our clients. Ideas and attitudes about technology are pervasive in society. One would have truly had to live as a hermit over the last several years to miss all of the media coverage of the rise of the Internet, the boom and bust of the dot-com businesses, Microsoft and its legal battles, Google and all of the many ways technology has impacted our lives.

Let's discuss how this applies to drafting fairly routine legal documents, by way of example. In an earlier age, one of the bundle of

values that the lawyer provided to the client was the mechanical ability to produce documents. Not everyone owned or could use a typewriter. This value was often overshadowed in the minds of both the lawyer and the client by the knowledge, education and experience that was provided by the lawyer in producing legal documents. But for many clients, particularly consumer clients, they lacked both the knowledge and the ability to prepare documents.

Now computers and printers are pervasive. Many consumers own them, and those who do not usually have access, either at a school computer lab, Internet café or library. Physically preparing and printing a document presents few challenges. There is no mystery. Many have gone to get a bank loan for example and watched the bank employee quickly prepare and print the loan documents. Everyone understands that legal documents are rarely written "from scratch," but instead are compiled from forms and prior work product. Many consumers ask "Why pay a lawyer when I can find a form online and fill it out myself?" Many consumers are now answering that question with online cloud products like LegalZoom!

In fact, people do not appreciate how much time attorneys do spend in actually drafting language for unique situations. Lawyers are trained to identify many potential pitfalls that must be avoided. We appreciate the evolving nature of the law and how court decisions and legislative enactments alter our legal strategies and the language contained in the documents we prepare. We understand how adding a single unique aspect to a transaction may create the need for different provisions in several of the documents drafted. Those who do not regularly prepare such documents do not understand. Business clients in particular may use many forms generated on a computer for their office paperwork. While these may be generated quickly they usually are essentially the same transaction being repeated with only the name, address, quantity and price being changed — they see the paperwork only as a means to an end and, absent trouble, they attach no value to the document itself.

As noted previously, sophisticated clients expect their law firms to have modern office technology. They often have reaped huge benefits themselves from technology upgrades, often directly related to their paperwork production and reduction. Consequently, lawyers are confronted more and more with clients and

potential clients who believe that their legal matter is very routine and involves “just filling out a form” by the lawyer. Sometimes they seek to save money by completing it themselves or going online to a commercial website. In other situations, they discount the value that the lawyer brings to a transaction and, mentally, the legal fees that should be charged for “just filling in a form.”

In other words, the ease with which documents can be physically prepared has caused many to devalue the expertise, ability and time that goes into drafting legal documents.

These two aspects of technological revolution present a dilemma for lawyers. As we develop more effective methods of harnessing technology for speedy document preparation and document assembly, charging an hourly rate for the final steps that generate the document unfairly overlooks the investment the firm has made in designing its systems and effectively using its tools. But a switch to charging a fixed fee per document can generate a reaction if the client believes that this is merely an increase in the fees that the lawyer is charging just to fill out a form.

This stresses the need for good communication between the lawyer and the client about the varied complexities of a legal matter and the value of the lawyer’s advice. If the client believes that all he or she has received is a document prepared by using a computer to fill in the blanks, the lawyer’s service will be seen as negligible and minimal.

TECHNOLOGY IN FEE SETTING AND BUDGETS

Technology in the form of an electronically based billing system is useful for establishing budgets for projects based on similarity to prior work. It is through the use of technology already present within most billing systems that you can go through a task-based analysis and examine closed files (and accounting and billing records) to create mini-systems and to estimate or predict fees.

Nearly all computer-based billing systems on the market today have category and coding options that allow a lawyer to track not only similar types of cases and transactions in a larger macro context but also specific components or tasks within the case or project in a micro context. If each case or matter is coded with a category — “Merger/Acquisition,”

“Incorporation” or “Divorce” — and possibly subcategory — “Merger/Acquisition: Asset Sale,” “Incorporation: Oklahoma” or “Divorce: Uncontested w/o Children” — then sorting prior activities and collections to determine what the last five or 10 or 100 of those projects took in time and other resources is relatively quick and painless. If the lawyer time for an Oklahoma business incorporation averaged 3.8 hours with an average billing of \$1,140 in fees, then perhaps establishing a fixed fee for such work at \$1250 might make some sense — particularly if the use of technology in developing an incorporation system with a document-assembly program could mean that the lawyer could reduce his or her average time down to two hours and increase their realization rate from \$300 per hour to \$625 per hour!

Many billing systems allow the lawyer to break the billing slips down into specific tasks and even integrate the information into task-based billing and transaction planning. Being able to quickly identify the cost and time for certain tasks that fall within a transaction or project will prepare the lawyer to better estimate and budget the costs of large projects. What did the last 15 corporate organizations cost, or what was the average time it took to prepare the last 10 shareholder agreements for clients? Being able to segregate this information in prior matters is crucial to proper budgeting for future business and establishing alternative fee arrangements that the clients will accept.

SUBSTANTIVE SYSTEMS AND DOCUMENT ASSEMBLY

Perhaps the greatest current use of technology in alternative fee arrangements for business lawyers is in the use of document assembly programs and systems to generate documents in a fraction of the time it used to take lawyers to produce them. By developing a substantive system and using document assembly tools — either with stand-alone systems such as Hot-Docs, TheFormTool and practice-specific programs, internal systems within word processing programs such as WordPerfect or Word or with tools built into practice management systems such as TimeMatters, Amicus or ProLaw — lawyers can cut the time it takes to develop initial drafts of documents and thus build a platform for charging clients for expertise and the documents provided rather than the time it took to prepare them.

If a client needs a business incorporated or a will, he or she likely does not care how long it takes you to prepare the documents, they want to know what the cost will be for the corporation or the plan documents. By developing a substantive system using document assembly as a tool, lawyers can use technology to provide better and faster services to the client and make more money than if they billed the work by the hour.

By developing a substantive system using document assembly as a tool, lawyers can use technology to provide better and faster services to the client and make more money than if they billed the work by the hour.

An organizational system applied to a substantive area of practice can be an effective tool in addition to enhancing the delivery of quality legal services. A substantive legal system is a documented system for handling transactions, procedures or work flow which has the effect of reducing waste, optimizing productivity and contributing to greater efficiency in the delivery of legal services. A substantive system could still be a manual forms system, but in today's world, a computerized document assembly or expert system makes the most sense. A substantive system enables you to provide top-quality legal services promptly, thoroughly and consistently. In short, the law firm using substantive systems with document assembly in their practice can deliver quality legal services for a fair value to the client and lawyer while reducing the lawyer time involved in a transaction and giving the lawyer more time to do something else (work, develop clients or relax).

Substantive systems are not only useful for freeing up lawyer time, but the systems can also be used for marketing legal services. There are many areas of substantive law practice which lend themselves to substantive systems being used as an effective marketing tool. One example is our firm's corporate practice. We represent many small and medium-sized businesses. These services include advice on structuring businesses, incorporation or organizational doc-

umentation, contract work, mergers, acquisitions, dissolutions and other general corporate work. The firm utilizes a number of substantive systems for doing this legal work.

We have a fixed-fee corporate representation service where we prepare annual minutes, act as a service agent, do a corporate compliance check and prepare special meeting minutes for clients for \$200 per year. This is done with a substantive system using document assembly to generate the correspondence, reminders, minutes and questionnaires that in most instances requires only 10 to 15 minutes of a lawyer's time per company per year. Some companies may require several hours of lawyer time, but the average, spread out over several hundred companies, still makes the work

quite profitable — and yet a bargain for the clients. For an additional \$300 per year, the business client has unlimited phone and email consultations with our lawyers. The firm is able to use this pricing strategy to attract new clients in addition to generating significant additional work as a result of the audit questionnaires and phone consultations, which often uncover additional legal needs of the client. Being the service agent for the company also generates potential additional litigation matters since the law firm has received the service of process as service agent. By using this substantive system to do corporate work, the firm is able to organize its corporate work better while marketing additional services.

Lawyers can (and should) identify areas of their individual practices and develop substantive systems using document assembly to leverage their delivery of legal services with technology.

KNOWLEDGE MANAGEMENT TOOLS

If document assembly programs and systems are the current technology for alternative fee arrangements, then knowledge management will be the tool of the future. The most valuable asset in a law firm is its intellectual capital — not only the knowledge and wisdom of the lawyers, but the work product of those lawyers

“By developing a substantive system using document assembly as a tool, lawyers can use technology to provide better and faster services to the client and make more money than if they billed the work by the hour.”

and the ability to reuse and share that work product within the firm and with clients. Knowledge management is about sharing and reusing knowledge.

Automated substantive systems are a part of knowledge management — the ability to develop and share a system with templates and forms used to develop a final document. Practice and case management systems networked in a law office can form a part of knowledge management. This ranges from something as simple as a new address inputted once and instantly available to the entire office to something as complicated as shared transaction documents on an extranet with client access to secure electronic conference rooms. Knowledge management is about technology — but also a lot more. Knowledge management is as much about the culture of the law firm that shares its knowledge with one another as it is the method and tools it uses to accomplish the task.

The actual time personally contributed to a task by a lawyer can be almost meaningless in regard to the value of the services. A very narrow and specialized medical malpractice case might require dozens of hours of research, consultation with experts and careful drafting just to prepare interrogatories. When the lawyer has tried four or five of these types of cases, preparation of the interrogatories can be based on prior work product customized with specific facts of each case and might take less than an hour or two. Would anyone doubt that, considering the experience of the lawyer, the interrogatories in the fifth case were superior to those propounded in the first case even though they took less time to draft?

Experience improves the lawyer's work product and abilities. As experience allows lawyers to perform tasks more efficiently and quickly, the traditional response over the last four decades has been to raise the hourly billing rates. Therefore associates charge one rate, while junior and senior partners charge higher rates. Yet, as many lawyers have come to realize, experience may not always be rewarded with higher rates. If the medical malpractice lawyer mentioned above charged \$3,500 for the first interrogatories prepared (10 hours at \$350 per hour), can he or she raise the hourly rate to \$1,750 per hour for the two hours it took to do the interrogatories in the fifth case? Is it ethical to "pad" the time to reflect 10 hours' work when it only took two?

The ideas of knowledge management and reuse of prior work product have been utilized in law offices before computers existed. Paper brief banks and internal form books not only increased efficiency, but also helped provide a superior work product. Technological advances escalate these ideas. Thousands of briefs in research banks can be effortlessly searched using Google-type search technology. Similar transactions can be replicated to start a new project for a client. Knowledge management provides the tools to the lawyer to look beyond the billable hour in determining what a fair fee shall be for the services performed. If the culture of the firm is to share research, knowledge, ideas, data and even anecdotal information with one another, then technology can capture that knowledge and help the lawyer extract it when required for the next project, case or client need.

TRANSACTION FEES — SHARING THE COSTS (AND BENEFITS) OF TECHNOLOGY

As legal technology tools have increased, so has the lawyer's ability to share the costs of those tools with the clients — particularly if the tools help reduce the fees that would otherwise have been charged for the services provided. More frequently, lawyers are building the cost of specialized programs into the fees charged the client for projects that the programs significantly reduce the costs and time it takes to deliver the service. Depending on the nature of the transaction, the program costs are sometimes a part of a fixed-fee arrangement or may be a separate charge in addition to an hourly rate or other time charge.

One common tool in which there is normally a transaction charge would be for one of the electronic research systems (WestLaw, NEXIS/LEXIS, etc.) wherein a lawyer may incur a charge for specific research or have a flat monthly cost arrangement and then bills the charges as a flat rate or includes the charge into an electronic research hourly rate that might be different from the standard rate as has been determined by the agreement with the client. Another common tool used in securities practices is a licensed document assembly system that generates blue sky forms and certain Securities and Exchange Commission filings in which the law firm might charge a fixed fee per filing that covers both the technology licence as well as paralegal and lawyer time in completing the documents.

Some lawyers may be concerned that exposing too much of the law office technology to the client in this way may affect the client's perception of the lawyer's value. Modern-day clients will, however, expect that their lawyers will incorporate technological tools into their practices in the same way that many of these clients have been forced to rethink their business processes in light of new technological capabilities.

COLLABORATIVE TECHNOLOGIES

Sharing information with one another and with clients can be a critical tool for moving beyond hourly billing as the only measure of value provided by lawyers to their clients. Technology can now be used to share information over the Internet through extranets accessible to the clients, lawyers and other members of a project team. Extranets can provide a cost effective and secure Internet-based storage center which allows documents, email, discussion group threads, calendars and other information to be stored in a secure area that can be accessed by those needing to participate. Different areas of the extranet can have different levels of security and access. Law firms are already building extranets for their clients as a part of the normal delivery of legal services. These firms are not only generating revenues from the use of such technology collaborations but also cementing the relationship with the client. The immediate access to all relevant information that these clients enjoy makes other law firms without such tools less attractive.

Law firms and individual practitioners are also using the Internet and document assembly technology combined with expert systems to work with clients in developing standard documents for routine transactions in which fixed fees rather than hourly billings are frequently the norm. An Iowa firm has a website within which individuals can enter the information online for their own simple wills. Another firm has established a loan document system in which the lender and borrower provide the information electronically and the documents are generated, reviewed, finalized and emailed for closing without a paper draft copy being printed — all for a fixed fee. An international financial printer has developed secure web-

sites where multiple law firms, issuers and underwriters have access and can create, post and edit documents for the workgroup to use before electronically filing them with the SEC.

CONCLUSION

This article is intended to provide the reader with some examples and ideas demonstrating how lawyers can utilize technology to increase efficiency with their own resources and can think beyond the billable hour. Use of technology can be the great equalizer between large firms and solo and small firms — not only in the practice environment but also in providing creative ways to provide value to their clients and bill appropriately for that value.

More information on alternative fee arrangement can be found in two books published in 2014 by the American Bar Association: *Alternative Fees for Business Lawyers and Their Clients* by Mark A. Robertson and *Alternative Fees for Litigators and Their Clients* by Patrick Lamb.

Note: This article is adapted from a chapter from Alternative Fees for Business Lawyers and Their Clients by Mark A. Robertson, a 2014 publication of the ABA Law Practice Division, 2014® by the American Bar Association. Re-printed with permission. All rights reserved. This information or any or portion thereof may not be copied or disseminated in any form or by any means or stored in an electronic database or retrieval system without the express written consent of the American Bar Association. Mr. Robertson's book is available for purchase at www.shopaba.org.

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Thursday, Nov. 6

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The Impact of Social Media on the Practice of Law

By Alison A. Cave and Renée DeMoss

Social media continues to take the world by storm as millions of people communicate and network on Facebook, Twitter, Instagram, LinkedIn, YouTube and individual blogs every day. Its ubiquitous reach now extends to the practice of law, and has led to an explosion of state and federal court opinions involving some aspect of social media.¹

Oklahoma lawyers cannot afford to ignore the impact of social media on their practices. Older lawyers who prefer not to engage stand to lose clients through online marketing and face sanctions or even malpractice claims by failing to keep up. Younger lawyers well-versed in the ways of online communications may be so cocky that they run afoul of ethical issues that can likewise lead to sanctions.

While this article seeks to bring to the practitioner's attention the wave of new legal issues created by social media, it is only possible to scratch the surface. Oklahoma attorneys must educate themselves on the very real benefits, dangers and obligations social media has introduced to the practice of law.

SOCIAL MEDIA AND LITIGATION

The flood of social media platforms has had a particularly strong impact on litigation practice, from jurisdiction to service of process to jury selection to trial preparation to evidentiary issues.² A very recent Oklahoma Supreme Court case illustrates this impact.

Notice through Social Media

In a case decided on Oct. 14, 2014, the Oklahoma Supreme Court considered whether a

posting on Facebook constituted notice sufficient to advise a biological father that proceedings had been filed to terminate his parental rights.³ Presuming that the opinion survives further challenge or revision, if any, the court has held that under the circumstances of the case, such notice was insufficient.

Although not in a dating relationship, the parties had engaged in sexual intercourse several times over a period of approximately three months. They saw each other only once after their last sexual encounter, about six weeks later. There was no discussion at that time of whether the woman was pregnant or could be pregnant.

At some point before the birth, the mother did send the father a Facebook message informing him of the pregnancy and that the baby would be given up for adoption. She did not take any other steps to notify him, although it appeared she could have done so.

The father testified at a hearing to terminate his rights that he did not know how old the Facebook message she sent was when he actually saw it and read it. He further testified that he did not know of the child until about a week

following the birth, and that he subsequently visited the child and provided financial support.

The court held that notice through Facebook alone did not meet constitutional due process requirements, as it did not give the biological father adequate notice, reasonably calculated under the circumstances, to provide him the opportunity to advocate his position. Deeming Facebook to be “an unreliable method of communication,” the majority noted that the fact an individual has a Facebook account does not mean that he or she checks the account regularly, or that the account is configured to provide notification of unread messages.

The court found that under the circumstances of this case, Facebook notification was a “mere gesture,” not reasonably certain to inform as required by the due process clauses of the U.S. and Oklahoma Constitutions.

Social Media and the Jury

In the litigation world, social media can be a boon for lawyers seeking information about the jurors who will decide their clients’ fates. Even a cursory examination of a prospective juror’s public Facebook page or public Twitter feed can expose helpful material which previously was tough to elicit through voir dire questioning. Attitudes and opinions advocated in social media can help attorneys make decisions about whom to strike during jury selection, and help them mold and outline arguments to make to jurors during trial.

In fact, the proliferation of social media has made its use a virtual requirement for jury and trial preparation. In a recent Missouri medical malpractice case, a prospective juror was asked whether she had ever been a party in a lawsuit.⁴ She did not respond and was seated as a juror. After the jury of which she was a member entered a verdict for defendant, plaintiff’s counsel searched the Missouri online court system and discovered she had been a defendant in three previous lawsuits. Plaintiff’s request for a new trial was granted, and the Missouri Supreme Court affirmed on interlocutory appeal. The court noted that attorneys have an obligation to perform juror research before a jury is seated. It reprimanded the plaintiff’s counsel for not doing so, but upheld the request for a new trial because no authority existed at the time of trial requiring an attorney to perform online research about prospective jurors. Shortly after issuing its opinion, however, the court incorporated an obligation into

Missouri Supreme Court Rule 69.025, which now requires attorneys to review the Missouri online system regarding prospective jurors before a jury is empaneled.

Practice Note: Attorneys need to monitor jurors’ social media postings after a jury is empaneled to ensure that they do not breach their oaths or instructions by providing details of the cases they are deciding. Additionally, attorneys should ask trial judges to give a detailed jury instruction regarding social media use, and request the instruction be given periodically throughout the trial. The Federal Judicial Committee on Court Administration and Case Management has a model instruction on jury social media use that can be used as a guide.⁵

Social Media in Discovery and Evidence

Social media sites can provide a wealth of information about an individual’s conduct, events, whereabouts and other private data. It is exceptionally valuable for locating witnesses or parties who are dodging service of process.

The use of material gathered from social media has also become a common practice in discovery and witness examination, including in Oklahoma courts.⁶ Witnesses or parties can be impeached through their social media postings, or on a social media site disclose facts that completely destroy their testimony, stance or case claims, even if they thought the posted material was private, so the posting, use and even deletion of social media material must be carefully considered.⁷

In a Kansas case decided earlier this year, the defendant was convicted of aggravated battery and criminal threat.⁸ His ex-wife testified he broke into her house and assaulted her, leaving multiple injuries including a broken jaw, broken eye socket and broken nose. The state presented at trial, over the defendant’s objection, evidence of entries made on his Facebook page describing what he was going to do his ex-wife, which included causing injuries consistent with those she actually suffered. The defendant admitted the Facebook page was his, but contended that he did not make the entries. He appealed his conviction on the grounds that the trial court improperly admitted the printout of his Facebook page without proper authentication. The court found that the admission on the Facebook page was sufficient to authenticate the page, and the evidence on the page used to convict him was admissible.⁹

Practice Note: According to Rule 8.4 of the Oklahoma Rules of Professional Conduct, it is professional misconduct for an attorney to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Even though courts are beginning to require attorneys or their agents to review social media sites, an attorney can potentially violate Rule 8.4 if he goes online and tries to access a person's information by asking to be that person's "friend."

SOCIAL MEDIA MARKETING

Attorney advertising and marketing has also gone viral. As with every other product and service, consumers seeking lawyers use online resources at some point in the process. In fact, the number of consumers using online resources as their means of finding legal counsel is skyrocketing.¹⁰ Oklahoma attorneys need to be familiar with the new technology tools that are the yellow pages of the future, and how to use them.

Websites

People now surf the web to choose all types of professionals, and websites for law firms and attorneys have become a necessity. Further, with more people relying solely on smart phones to surf the web, attorneys must now optimize their websites to provide for mobile searches. Websites are also a great resource to post educational information to reach the public.

Yelp, Facebook and Twitter

Yelp is another website which is frequently viewed by people looking for recommendations with regard to professionals. Founded in 2004, Yelp has approximately 138 million visitors monthly, according to its website. Yelp allows businesses to set up free accounts to post photos and messages, and consumers can post reviews about various businesses. Facebook and Twitter are other social media sites where attorneys can set up accounts, post news or education articles and establish a presence online.

LinkedIn

This is a website for professionals, and through it attorneys can connect with other profession-

als. Attorneys can join "groups" such as law school alumni groups to participate in discussions on specific legal issues or for referral sources. LinkedIn is also a good site to create and post relevant information to contacts, promote blog posts and provide links to blogs on the LinkedIn status update.

YouTube and Blogs

YouTube is a website for posting videos. Attorneys can create videos which attract and educate clients, and showcase areas of practice. Blogs are essentially legal articles which can also be shown on a website to communicate information about the areas of practice. Blogs should be updated frequently.

Practice Note: Attorneys should be aware that any material they post online is ripe for review by not only potential clients, but others surfing the web. The case of Kansas City lawyer Stephen Bough, who is currently being considered by the Senate Judiciary Committee for a federal judgeship in the Western District of Missouri, provides a valuable lesson. Mr. Bough created a blog and filled it with posts that were political in nature. He once responded to a comment on his blog by stating, "You and the 3 other folks who read this blog will agree I shouldn't be a judge." Although his last posts were in 2009, including his ill-advised post that perhaps he shouldn't be a judge, those posts remained online long after, and will likely be discussion material in Mr. Boyle's upcoming 2014 confirmation hearing.¹¹

The moral of the story is that before posting on any site, be sure the information or opinion you are putting online is something you don't mind the world seeing.

ONLINE MANAGEMENT OF ATTORNEY REPUTATION

Through social media, complaints about attorneys and the quality of their services can spread rapidly, and attorneys need to be prepared to react to adverse comments posted by upset clients. If something negative surfaces, it must be handled quickly and effectively to avoid escalation. Online reputation manage-

“Attorneys should be aware that any material they post online is ripe for review by not only potential clients, but others surfing the web.”

ment includes checking all posts concerning an attorney and law firm.

How does an attorney or law firm check for bad reviews? Simple searches on Google, Bing and Yahoo should reveal comments being posted. Free alerts can be set up on Google and Yahoo for notifications when new comments are posted, and Twitter is searchable as well.

How should a law firm respond to adverse comments? Again, resist the urge to respond immediately, and never post information which could reveal client confidentiality. Remember also that it is never a good approach to bad mouth a client. Consider a recent Florida bar disciplinary matter.¹² An attorney who represented a client in an immigration matter criticized the client in court e-filings and other online sites. Four days before a hearing for the client, the attorney filed a motion to withdraw. She stated in the motion filed online that her client's check to pay for legal services had been returned for insufficient funds, he had been properly convicted of grand theft, and he had robbed people in the Romanian community. The Florida Supreme Court found that the attorney's filings violated bar rules on client confidentiality, and that she had engaged in conduct prejudicial to the administration of justice. The disparaging remarks were needless, harmful and could cause the public to lose faith in the legal profession. The attorney was suspended from practice for a year.

ETHICAL CONCERNS ON SOCIAL MEDIA USE

Posting information on the Internet, either through Facebook, Twitter or any other social media, has a number of ethical considerations. Just a few potential violations include breach of the attorney-client relationship, unauthorized practice of law, improper advertising and obtaining information through friending someone in a manner which would involve deceit. In addition to the aforementioned Rule 8.4, the following Oklahoma Rules of Professional Conduct should be considered.

Rule 1.6 provides an attorney shall not reveal information relating to the representation of a client. An attorney should therefore be mindful that simply by posting what he or she is doing for an identified client at any particular point in the day, such as attending a hearing, could easily violate this rule. In addition to potentially breaching attorney-client confidentiality, the posting attorney may also be damaging the

client's case, if opposing counsel is reading the posts as well.

Rule 5.5 provides that an attorney shall not practice law in a jurisdiction in which the attorney is not licensed. Also, be aware when responding to posts in various social media outlets that an attorney's communications can inadvertently create an attorney-client relationship. If an attorney gives advice or provides information online which could be construed as legal services, and/or as practicing law in a state in which he is not licensed, he opens himself up to claims of unauthorized practice of law.

Rule 7.1 and Rule 7.2 provide specific requirements that can pose problems. Lawyers may not make false or misleading statements about themselves or their services in advertising, and lawyers must provide identifying information, including name and address, in posts regarding their services. A lawyer who posts on social media sites about winning a million-dollar verdict, for example, may violate these rules in a number of ways, such as failing to provide all the necessary identifying information, or implying the lawyer was the major player in the lawsuit when he only had a small role. Finally, lawyers should beware of posting personal testimonials and endorsements which could violate rules against improperly holding themselves out as specialists in a particular area of law, if they are not specialists in that area.

CONCLUSION

New legal and ethical issues involving social media are arising every day. Oklahoma attorneys must be diligent in reviewing these issues and adapting their practices so they can utilize social media tools appropriately and ethically.

1. From 2012 to 2013, the number of court opinions involving social media increased by over 100 percent, including references to Facebook, Twitter, LinkedIn, Google+ and other sites. See John Patzakakis & Barry Murphy, "Social Media Caselaw Update: The Acceleration Continues," Next Generation eDiscovery Law & Tech Blog (Oct. 4, 2013 8:42 AM), <http://blog.x1discovery.com>.

2. See, e.g., *FTC v. Pecon Software Ltd.*, 2013 WL 5288897, *3 (S.D.N.Y. Sept. 18, 2013) (court permitted service of process of complaint and summons by email and Facebook); *Rios v. Ferguson*, 978 A.2d 592, 601 (Conn. Super. Ct. 2008) (holding that defendant's "posting of the video [on YouTube] constitutes sufficient 'minimum contacts' to justify personal jurisdiction over him" even with no allegation that defendant ever stepped foot in the state).

3. *In Re Adoption of K.P.M.A.*, 2014 OK 85, ___P3d___ (opinion issued on Oct. 14, 2014). At the time that this issue of the *Oklahoma Bar Journal* went to press, the time to seek rehearing in the case had not expired and the opinion remained subject to further revision or withdrawal by the Oklahoma Supreme Court.

4. *Johnson v. McCullough*, 306 S.W.3d 551 (Mo. 2010).

5. See "Revised Jury Instructions Hope to deter Juror Use of Social Media During Trial," United States Courts (Aug. 21, 2012), <http://news.uscourts.gov/revised-jury-instructions-hope-deter-juror-use-social-media-during-trial>.

6. *Bosh v. Cherokee County Governmental Building Authority*, 2013 WL 6150799, *4 (E.D. Okla., Nov. 22, 2013) (court found information shared or transmitted through Facebook social media account regarding case allegations to be encompassed within discovery requests and discoverable); *Pre-Paid Legal Services, Inc. v. Cahill*, 924 F. Supp. 2d 1281, 1291-92 (E.D. Okla. 2012) (considering Facebook posts as evidence); *U.S. v. Langford*, 2013 WL 6055490, *4 (N.D. Okla. Nov. 15, 2013) (considering Facebook posts as evidence).

7. See, e.g., *Tompkins v. Detroit Metro. Airport*, 278 F.R.D. 387, 388 (E.D. Mich. 2012) (“[M]aterial posted on a ‘private’ Facebook page, that is accessible to a selected group of recipients but not available for viewing by the general public, is generally not privileged, nor is it protected by common law or civil law notions of privacy.”); *EEOC v. Storage Mgmt., LLC*, 270 F.R.D. 430, 434 (S.D. Ind. 2010) (“[A] person’s expectation and intent that her communications be maintained as private is not a legitimate basis for shielding those [relevant] communications from discovery.”); *Hosch v. BAE Systems Information Solutions, Inc.*, 2014 WL 1681694, *1-*2 (E.D. Va. 2014) (dismissing plaintiff’s claims with prejudice in part because plaintiff deleted social media information from his electronic device); *Hawkins v. College of Charleston*, 2013 WL 6050324 (D.S.C. Nov. 15, 2013) (imposing spoliation sanctions on a party who deleted Facebook postings).

8. *State v. Jones*, 318 P.3d 1020 (Kan. 2014)(unpublished).

9. Citing *Griffin v. State*, 19 A.3d 415 (Md. 2011), the Kansas court recognized three non-exclusive methods attorneys can use for social media authentication: 1) Presentation of testimony of a witness with knowledge; 2) Results of an examination of the Internet history or hard drive of the individual who is claimed to have created the social media material; 3) Presentation of information from an appropriate corporate employee of the social networking website that would link the profile to the individual. *Id.* at 427-28.

10. According to a 2014 survey conducted by FindLaw.com, the Internet was the leading source for identifying counsel (38 percent, up from 7 percent in 2005). Asking a friend (29 percent) and consulting a local bar association (10 percent) were the next most popular approaches. *Litigation News*, ABA, Summer 2014, Vol. 39, No. 4.

11. Debra Weiss, “Lawyer’s Blog Posts Could be an Issue in Judicial Confirmation Bid,” *ABA Journal*, July 28, 2014.

12. *The Florida Bar v. Knowles*, 99 So. 3d 918 (Fla. 2012).

ABOUT THE AUTHORS



Alison A. Cave of Edmond serves as claims counsel for Oklahoma Attorneys Mutual Insurance Company. Previously, she was a lawyer in private practice with the firm of Driskill & Jones and has also served as law clerk and attorney for the Oklahoma Court of Civil Appeals. She currently co-chairs the OBA Women in Law Committee. She is a 1985 graduate of the OU College of Law.



OBA President Renée DeMoss practices in Tulsa. With the firm of GableGotwals, she focuses in the areas of insurance law as well as state and federal litigation. She is a past president of the Oklahoma Bar Foundation and has chaired the OBA Litigation Section. She has served in leadership positions in numerous OBA committees and Tulsa civic organizations. She is a 1984 graduate of the OU College of Law.

OKLAHOMA BAR JOURNAL EDITORIAL CALENDAR

2014 Issues

- December
Ethics & Professional Responsibility
Editor: Judge Allen Welch
allen.welch@oscn.net
Deadline: Aug. 1, 2014

2015 Issues

- January
Meet Your OBA
Editor: Carol Manning

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

- February
Legal Research Writing
Editor: Erin L. Means
erin.l.means@gmail.com
Deadline: Oct. 1, 2014

- March
Municipal Law
Editor: Mark Ramsey
mramsey@soonerlaw.com
Deadline: Oct. 1, 2014

- April
Law Day
Editor: Carol Manning

- May
Education Law
Editor: Judge Megan Simpson
megan.simpson@oscn.net
Deadline: Jan. 1, 2015

- August
Opening a Law Office
Editor: Dietmar Caudle
d.caudle@sbcglobal.net
Deadline: May 1, 2015

- September
Bar Convention
Editor: Carol Manning

- October
Family Law
Editor: Leslie Taylor
leslietaylorjd@gmail.com
Deadline: May 1, 2015

- November
President’s Topic
Editor: Melissa DeLacerda
melissde@aol.com
Deadline: Aug. 1, 2015

- December
Ethics & Professional Responsibility
Editor: Shannon L. Prescott
shanlpres@yahoo.com
Deadline: Aug. 1, 2015



2014 OBA Annual Meeting
NAVIGATING THE FUTURE:
THE CHANGING LEGAL PROFESSION
Nov. 12 - 14 • Hyatt Regency • Tulsa

HIGHLIGHTS

PRESIDENT'S BREAKFAST

Friday morning will kick off with an Annual Meeting tradition, the President's Breakfast. This year, a one-hour CLE is included with the cost of breakfast. The programming will feature a panel discussion focusing on changes in the legal profession. Panelists are Annual Meeting Luncheon speaker Richard Susskind, Prof. Connie Smothermon from OU College of Law and Jody Nathan of Stauffer & Nathan in Tulsa, who has 25 years litigation experience. Jim Calloway of the OBA Management Assistance Program will serve as moderator. Cost is \$25. Participants must be registered for the meeting to take advantage of the free CLE.



Richard Susskind



Connie Smothermon



Jody Nathan

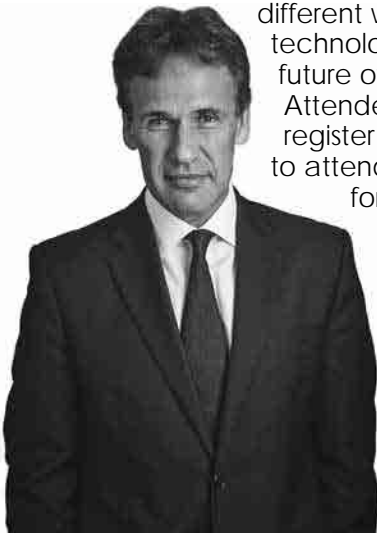
ANNUAL LUNCHEON SPEAKER

RICHARD SUSSKIND

Legal futurist and internationally recognized speaker Professor Richard Susskind will deliver the keynote address during the Annual Luncheon set for Friday, Nov. 14. Mr. Susskind's topic, "Tomorrow's Lawyers," will focus on the

different ways the Internet and technology are changing the future of the legal profession.

Attendees do not have to register for Annual Meeting to attend this program. Cost for the luncheon is \$35 with Annual Meeting registration, \$50 for those who do not wish to register for the full two-day event. Seating is limited, so be sure to register early for this event. Sponsor: OBA Family Law section.



How do I register?

Register for all events using the Annual Meeting registration form found on page 2316 or online at www.amokbar.org. Send paper forms with payment by mail to OBA Annual Meeting, PO Box 53036, Oklahoma City, OK 73152 or fax with credit card information to 405-416-7092. Questions? Contact Mark Schneidewent at 405-416-7026, 800-522-8065 or marks@okbar.org.

AMICUS IUSTITIAE – FRIEND OF JUSTICE AWARD

OBA President Renée DeMoss will honor the following members of the Oklahoma House of Representatives with a special commemorative medallion during the House of Delegates at the Annual Meeting. The legislators are being honored for their support of a fair and impartial court system, free from bias, prejudice and partisan politics.

Rep. Don Armes, Faxon
Rep. John R. Bennett, Sallisaw
Rep. Scott Biggs, Chickasha
Rep. Gus Blackwell, Laverne
Rep. Mike Brown, Tahlequah
Rep. Edward Cannaday, Porum
Rep. Bobby Cleveland, Slaughter
Rep. Donald Condit, McAlester
Rep. Ann Coody, Lawton
Rep. David Dank, Oklahoma City
Rep. Lee Denney, Cushing
Rep. David Derby, Owasso
Rep. Joe Dorman, Rush Springs
Rep. Jon Echols, Oklahoma City
Rep. Dan Fisher, El Reno
Rep. Kay Floyd, Oklahoma City
Rep. William Fourkiller, Stilwell
Rep. Larry Glenn, Miami
Rep. Randy Grau, Edmond
Rep. Rebecca Hamilton, Oklahoma City
Rep. Tommy Hardin, Madill
Rep. Katie Henke, Tulsa
Rep. Chuck Hoskin, Vinita
Rep. Scott Inman, Oklahoma City
Rep. Fred Jordan, Jenks
Rep. Charles Joyner, Midwest City
Rep. Dan Kirby, Tulsa
Rep. Steve Kouplen, Beggs
Rep. James Lockhart, Heavener
Rep. Scott Martin, Norman
Rep. Steve Martin, Bartlesville
Rep. Kevin Matthews, Tulsa
Rep. Charles McCall, Atoka
Rep. Curtis McDaniel, Smithville
Rep. Jeannie McDaniel, Tulsa
Rep. Randy McDaniel, Edmond
Rep. Skye McNiel, Bristow
Rep. Jerry McPeak, Warner
Rep. Lewis Moore, Arcadia

Rep. Richard Morrisette, Oklahoma City
Rep. Glen Mulready, Tulsa
Rep. Jadine Nollan, Sand Springs
Rep. Terry O'Donnell, Catoosa
Rep. Charles Ortega, Altus
Rep. Pat Ownbey, Ardmore
Rep. David Peryman, Chickasha
Rep. Anastasia Pittman, Oklahoma City
Rep. Eric Proctor, Tulsa
Rep. R.C. Pruett, Antlers
Rep. Marty Quinn, Claremore
Rep. Brian Renegar, McAlester
Rep. Mike Reynolds,

Oklahoma City
Rep. Dustin Roberts, Durant
Rep. Wade Rousselot, Wagoner
Rep. Seneca Scott, Tulsa
Rep. Earl Sears, Bartlesville
Rep. Mike Shelton, Oklahoma City
Rep. Ben Sherrer, Chouteau
Rep. Jerry Shoemaker, Morris
Rep. Todd Thomsen, Ada
Rep. Mike Turner, Edmond
Rep. Emily Virgin, Norman
Rep. Ken Walker, Tulsa
Rep. Weldon Watson, Tulsa
Rep. Cory T. Williams, Stillwater
Rep. Harold Wright, Weatherford

CLE OPPORTUNITIES



If you haven't obtained all (or any) of your CLE credits yet, you've come to the right place. As always, you can get all the CLE you need for an entire year at Annual Meeting.

Wednesday

Pre-Annual Meeting CLE: Tools for Tomorrow's Lawyers
(6 hours MCLE/1 Ethics)

Thursday

Tee Hee! A Funny CLE

Morning Session:

The Elys Awards

Lawyer Jokes are No Laughing Matter

Afternoon Session:

Fantasy Supreme Court League: 2014 Edition

Lies, Damn Lies and Legal Marketing: The Ethics of Legal Marketing

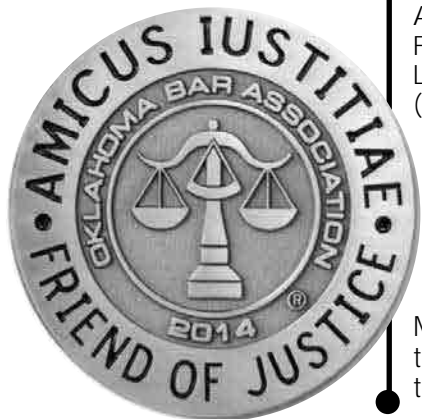
(All day – 6 hours MCLE/3 Ethics; Morning only – 3 hours MCLE/2 Ethics; Afternoon only – 3 hours MCLE/1 Ethics)

OBA Trial College (6 hours MCLE/1 Ethics)

Friday

President's Breakfast: Tomorrow's Lawyers panel discussion (1 hour)

Many OBA sections will also be offering CLE in conjunction with the Annual Meeting. See the program on page 2296 for CLE times. Register now at www.amokbar.org/cle/.





2014 OBA Annual Meeting
NAVIGATING THE FUTURE:
THE CHANGING LEGAL PROFESSION
 Nov. 12 - 14 • Hyatt Regency • Tulsa

PROGRAM OF EVENTS

*All events will be held at the Hyatt Regency Hotel unless otherwise specified.
 Submit meeting room and hospitality suite requests to Craig Combs at craigc@okbar.org.*

WEDNESDAY, NOVEMBER 12

OBA Family Law Section 8 a.m. – 5 p.m.
Oklahoma Jazz Hall of Fame
 111 East First St.

Annual Insurance, Tort &
 Workers Compensation
 Update 8:30 a.m. - 4 p.m.
Promenade A

*(Program offered by the
 Oklahoma Association for Justice)*

OBA/CLE Seminar: Tools for
 Tomorrow's Lawyers 9 a.m. - 2:50 p.m.
Promenade C

OBA Registration Noon - 7 p.m.
Promenade Foyer

OBA Criminal Law Section
 Luncheon and Annual
 Meeting Noon – 1:30 p.m.
Mayo Hotel

OBA Board of Governors
 Meeting 4 - 5:30 p.m.
Executive Room

OBA Law Office Management
 and Technology Section 4:30 – 6 p.m.
Promenade B

OBA Energy and Natural
 Resources Law Section 5 – 5:45 p.m.
Promenade D

Oklahoma Bar Foundation
 Fellows Reception 5:30 – 7 p.m.
Suite 1506

Oklahoma Fellows of the American
 Bar Foundation 6:30 – 9 p.m.
Summit Club
 15 West Sixth St., 30th Floor

THURSDAY, NOVEMBER 13

Oklahoma Fellows of the
 American Bar Foundation 7:30 – 9 a.m.
Diplomat Room

Lawyers Helping Lawyers
 Committee 8 – 9 a.m.
Directors Row 5

Oklahoma Fellows of the
 American Trial Lawyers
 Association 8 – 9 a.m.
Executive Room

OBA Hospitality 8 a.m. – 5 p.m.
Lobby Lounge

OBA Registration 8 a.m. – 6 p.m.
Promenade Foyer

Oklahoma Board of
 Bar Examiners 8:30 a.m. – Noon
Directors Row 4

OBA Credentials Committee 9 – 9:30 a.m.
Directors Row 1

OBA/CLE Seminar:
Sean Carter –
Tee Heel! a Funny CLE 9 a.m. – 4:40 p.m.
Promenade C

OBA/CLE Seminar:
Trial College 9 a.m. – 4:40 p.m.
SPONSOR: *OBA Litigation Section*
Promenade D

OBA Juvenile Law Section 9:30 – 11:30 a.m.
Promenade A

OBA Rules and Bylaws
Committee 10 – 10:30 a.m.
Directors Row 1

OBA Section Leadership
Council..... 10 – 11:30 a.m.
Directors Row 3

OBA Litigation Section..... 10 - 11:45 a.m.
Diplomat Room

OBA Indian Law Section 10 a.m. - Noon
Promenade B

OBA Appellate Practice
Law Section 10 a.m. – Noon
Directors Row 2

OBA Labor and Employment
Law Section 10 a.m. – Noon
Tulsa Ballroom Central

OBA Resolutions
Committee 10:45 – 11:45 a.m.
Directors Row 1

OU College of Law Alumni
Luncheon..... Noon – 1:30 p.m.
Tulsa Ballroom South

Speaker:



Joseph Harroz Jr.
Dean of the
College of Law
University of Oklahoma
College of Law

Outstanding Senior Law Student Award

Elizabeth T. Isaacs

OCU School of Law Alumni
Luncheon..... Noon – 1:30 p.m.
Oklahoma Room

Speaker:



Valerie K. Couch
Dean of the
Oklahoma City
University
School of Law

Outstanding Senior Law Student Award

Riane Fern

TU College of Law Alumni
Luncheon..... Noon – 1:30 p.m.
Tulsa Ballroom North

Speaker:



Janet K. Levit
Dean and
Dean John Rogers
Endowed Chair
University of Tulsa
College of Law

TOPIC: *The Future of Legal Education*

Outstanding Senior Law Student Award

Barrett Powers

MCLE Commission..... 2 – 3 p.m.
Directors Row 4

OBA Law Schools Committee 2 – 3 p.m.
Directors Row 3

OBA Board of Editors 2 – 3:30 p.m.
Directors Row 1

Oklahoma Bar Foundation
Executive Committee Meeting ... 2 – 3:30 p.m.
Executive Room

OBA Bankruptcy and
Reorganization Law Section..... 2 – 4 p.m.
Tulsa Ballroom Central

Oklahoma Criminal Defense
Lawyers Association 2 – 4:30 p.m.
Promenade A

Speaker:



Ziva Branstetter
Reporter
Tulsa World

OBA Juvenile Law Section
Child Advocacy Training 2 – 4:30 p.m.
Directors Row 2

Judicial Education 2 – 4:30 p.m.
Directors Row 5

Speakers:



**Justice
James Winchester**
Oklahoma
Supreme Court

TOPIC: *Judicial Decision Making*



**Judge
Steven Kessinger**
Ada

TOPIC: *Non-consensual Blood Draws*

OBA Health Law Section..... 2 – 5 p.m.
Diplomat Room

OBA Estate Planning, Probate
and Trust Section/OBA Taxation
Law Section Joint Meeting 2 – 6 p.m.
Promenade B

OBA Master Lawyers Section..... 3 – 4:30 p.m.
Oklahoma Ballroom North

OBA Real Property Law Section 3 – 5 p.m.
Tulsa Ballroom South

Speaker:



**Vice Chief Justice
John F. Reif**
Oklahoma
Supreme Court

Oklahoma Bar Foundation
Trustee Meeting 3:30 – 5:30 p.m.
Executive Room

County Bar Association
Presidents Meeting 4 – 4:30 p.m.
Directors Row 4

OBA Business and Corporate
Law Section 4 – 5:30 p.m.
Directors Row 3

Speaker:



Michael Peck
Attorney
Flatonia, Texas

TOPIC: *Cyberspace and Protecting Client Data*

OBA Young Lawyers Division
Annual Meeting 4 – 5:30 p.m.
Oklahoma Room South

3-Part Celebration:
The Drinks, The Dinner,
The Dance.....5:30 – 11:30 p.m.
Tulsa Ballroom

(Free with meeting registration)
PART 1 SPONSOR: OBA Sections

Featuring:



Tom Nix
Pianist

Past Presidents Dinner..... 7 – 8:30 p.m.
Summit Club
15 W. 6th St., 30th Floor

FRIDAY, NOVEMBER 14

OBA Hospitality.....8 a.m. – Noon
Lobby Lounge

OBA Registration 8 a.m. – 12:15 p.m.
Promenade Foyer

President's Breakfast8:30 – 9:50 a.m.
Promenade A

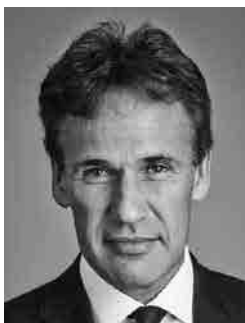
*(\$25 with Annual Meeting registration;
includes 1 hour MCLE)*

Panel Discussion

TOPIC: *Changes in the Legal Profession*

Moderator: **Jim Calloway**, Director,
OBA Management Assistance Program

Panelists:



Richard Susskind
Legal Futurist
University of Strathclyde
Law School
Glasgow, Scotland



Connie Smothermon
Professor of Law
OU College of Law



Jody Nathan
Stauffer & Nathan
Tulsa

OBA General Assembly10 – 11 a.m.
Promenade D

Outstanding County Bar Association Award
Noble County Bar Association

Hicks Epton Law Day Award
Pittsburg County Bar Association

Earl Sneed Award
Michael Ashworth, Tulsa
David McKenzie, Oklahoma City

Golden Gavel Award
OBA Family Law Section,
M. Shane Henry, Tulsa, Chairperson

Outstanding Young Lawyer Award
Joe Vorndran, Shawnee

Outstanding Service to the Public Award
The Goldman Law Office, Oklahoma City

Award for Outstanding Pro Bono Service
James Bender, Tulsa
Malcolm Savage, Oklahoma City

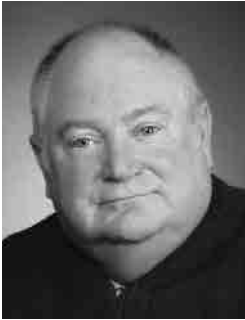
Trailblazer Award

Melvin Combs, Jr., Oklahoma City

Golden Quill Award

Elliott Crawford, Oklahoma City
David McKenzie, Oklahoma City
Donelle Ratheal, Oklahoma City

General Assembly Speakers:



**Vice Chief Justice
John F. Reif**
Oklahoma
Supreme Court

**Vice Presiding Judge
C. Clancy Smith**
Oklahoma Court
of Criminal Appeals



Renée DeMoss
President
Oklahoma
Bar Association



OBA House of Delegates 11 a.m. – Noon *Promenade D*

Election of Officers and Members of the
Board of Governors
Approval of Title Examinations Standards
Report of the Resolutions Committee

Presiding:



David A. Poarch
President-Elect
Oklahoma
Bar Association

Tellers Committee.....11:30 – Noon
Directors Row 1

OBA Annual Luncheon 12:15 – 2 p.m. *Promenade A & B*

(\$35 with meeting registration;
\$50 without registration)

Featuring:



Richard Susskind
Professor
University of Strathclyde
Law School
Glasgow, Scotland

TOPIC: *Tomorrow's Lawyers*

SPONSOR: *OBA Family Law Section*

Award of Judicial Excellence

Judge Thomas S. Landrith, Ada

Joe Stamper Distinguished Service Award

Gary C. Clark, Stillwater

Alma Wilson Award

Don Smitherman, Oklahoma City

Neil E. Bogan Professionalism Award

Perry Hudson, Oklahoma City

John E. Shipp Award for Ethics

Dietmar Caudle, Lawton

Fern Holland Courageous Lawyer Award

Don G. Holladay, Oklahoma City
James E. Warner III, Oklahoma City

President's Awards

To be announced

Richard Susskind Book Signing..... 2 – 2:30 p.m.
Executive Room



2014 OBA Annual Meeting
**NAVIGATING THE FUTURE:
THE CHANGING LEGAL PROFESSION**
Nov. 12 - 14 • Hyatt Regency • Tulsa

2014 OBA AWARDS

OBA Awards:

Individuals for Whom Awards are Named

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

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

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

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

(cont'd on page 2308)

Law School Luncheons

Wednesday, Nov. 13

These awards will be presented at the luncheons.

OUTSTANDING SENIOR LAW SCHOOL STUDENT AWARD

*Riane Fern, Oklahoma City University
School of Law*

Riane Fern is a member of the *Oklahoma City University Law Review* and received the law review's 2013-2014 Award for Excellence in Technical Editing. During law school, she has acted as a criminal law academic fellow and research assistant for Professor Arthur G. LeFrancis. She also served as a student ambassador in the law school's Certificate in American Law program for visiting Chinese students.



She has received 12 CALI Excellence for the Future Awards for the highest grade in various courses. She is a member of Phi Delta Phi and the William J. Holloway American Inn of Court. She is a member of the Choctaw Nation of Oklahoma and is a scholarship recipient pursuant to the tribe's higher education program. After graduation, she will begin her legal career at McAfee & Taft PC, where she was a summer associate for the summers of 2013 and 2014.

Born and raised in Oklahoma City, she graduated *summa cum laude* from the University of Oklahoma, receiving a Bachelor of Arts degree in

letters and minors in history and Spanish. As a result of a lifelong passion for dance, including many years of training in ballet, jazz and tap, she was a professional cheerleader for the Oklahoma City Thunder for four years while pursuing her undergraduate degree and was selected by the organization to travel internationally to England, Taiwan and China for NBA-partnered promotional tours.

OUTSTANDING SENIOR LAW SCHOOL STUDENT AWARD

Elisabeth T. Isaacs, University of Oklahoma College of Law



Elisabeth Tu Isaacs is a third-year student at the University of Oklahoma College of Law. As a note and comment editor for the *Oklahoma Law Review*, she mentors second-year students with the hope they will benefit from the relationship as much as she did in her second year. Her comment, "Exposure Without Re-

dress: A Proposed Remedial Tool for the Data Breach Victims Who Were Set Aside," is slated for publication in the Winter 2014 edition of the *Oklahoma Law Review*.

She served as 2014 auction chair for OU's Organization for the Advancement of Women in Law (OAWL). This is a student-organized fundraiser to benefit the Norman Women's Resource Center. She has also volunteered to assist petitioners seeking victim protective orders and served on the Dean's Council mentoring incoming law students. She is currently a student member of the Ruth Bader Ginsburg Inn of Court.

Together with her moot court partner, Elise Puma, she placed second in the 2013 National Health Law Moot Court Competition. This year, the two women are proud to represent OU Law in two more appellate-advocacy competitions.

She was born and raised in Wichita Falls, Texas. Her parents, Hu and My Tu, provided her a childhood full of music, good food and a love of learning. She attended the Texas Academy of Mathematics and Science at the University of North Texas at the age of 15, where she learned firsthand that scientific research is exciting and rewarding (but handling live specimens can be significantly less so). She graduated from the University of Oklahoma in 2006 with a bachelor in

mathematics and received a National Merit Scholarship.

Before entering law school, she worked for six years in insurance claim adjustment and commercial underwriting. She now lives in Bethany with her husband, William Isaacs. In her free time, she enjoys playing piano and violin, and brewing beer. After she graduates, she will serve as a judicial clerk to Judge Joe Heaton of the U.S. District Court for the Western District of Oklahoma.

OUTSTANDING SENIOR LAW SCHOOL STUDENT AWARD

Barrett Powers, University of Tulsa College of Law



Barrett L. Powers serves as an articles and research editor for the *Tulsa Law Review* and as a senior director on the Board of Advocates, the organization responsible for TU's moot court and trial teams. His participation in moot court includes winning both the 1L and Family Law Negotiation competitions, as well as competing on the American Association for Justice trial team. He has earned CALI Excellence for the Future Awards for the highest grades in contracts, constitutional law I and professional responsibility for which he also received the Phillips Allen Porta Memorial Legal Ethics Award.

During law school, he worked as a summer clerk at Atkinson, Haskins, Nellis, Brittingham, Gladd & Fiasco in Tulsa and interned in the Tulsa County District Attorney's Office, where he was assigned to the felony division. He also worked as a judicial intern for U.S. District Judge Claire V. Eagan and U.S. Magistrate Judge Paul J. Cleary, Northern District of Oklahoma. Currently, he is externing for Chief Judge Gregory K. Frizzell, U.S. District Court for the Northern District of Oklahoma.

He was raised in Tulsa and graduated from Jenks High School. Prior to law school, he earned his bachelor's degree in history and political science from the University of Oklahoma in 2011 and then went to work at the Oklahoma Legislature. He is a member of the Hudson Hall Wheaton American Inn of Court and Phi Delta Phi Legal Honors Fraternity.

General Assembly

Friday, Nov. 14

These awards will be presented at this event.

OUTSTANDING COUNTY BAR ASSOCIATION AWARD

Noble County Bar Association

The Noble County Bar Association is the recipient of the Outstanding County Bar Association Award for its dedication to providing service to those in the local communities. The NCBA annually awards a scholarship to a high school senior from one of the local schools based on grades, scholastic and community involvement, and need. This year, it awarded two scholarships totaling \$1,500. During Law Day, county bar members provided pro bono estate planning services for first responders, police and military veterans with their Wills for Heroes program. Also as a part of Law Day activities, members continued the NCBA's Ask A Lawyer program and held a Law Day luncheon and award ceremony. Throughout the year, attorneys from the DA's office went to area high schools to talk to students and parents about criminal issues relevant to teens.

HICKS EPTON LAW DAY AWARD

Pittsburg County Bar Association

The Pittsburg County Bar Association is the recipient of the Hicks Epton Law Day Award for its dedication to community service in celebration of Law Day. The year's activities began with the annual Ask A Lawyer event in May 2014 when a large group of attorneys gathered to answer several calls from the public. The PCBA hosted five Oklahoma Supreme Court justices and several other distinguished guests at a banquet held at Pete's Place in Krebs. Justice Douglas L. Combs delivered a speech on the importance of teaching civics in our schools and the current role of the judiciary. Law Day activities concluded with Pins for Awareness, a bowl-a-thon fundraiser for autism and childhood apraxia of speech.

EARL SNEED CONTINUING LEGAL EDUCATION AWARD

Michael S. Ashworth, Tulsa



Michael Ashworth is a recipient of the Earl Sneed Award for his continuous efforts teaching CLE classes and involvement with the Tulsa County Bar Association. Under his leadership, the TU Practicum was created in 2013, which includes six CLE classes throughout the year at TU College of Law. The topics are designed

to teach new lawyers how to practice law in several different areas such as criminal, domestic, probate, guardianship and personal injury. He has facilitated Tulsa County judges conducting full civil and criminal dockets in the Moot Courtroom at the TU College of Law. He received his J.D. from OU College of Law in 1983. He practices with the Cheek Law Firm in Tulsa.

EARL SNEED AWARD CONTINUING EDUCATION AWARD

David T. McKenzie, Oklahoma City



David McKenzie is a recipient of the Earl Sneed Award for his extensive volunteer work to the OBA Continuing Legal Education Department. He has been teaching and creating seminars since 1995. He is the 1997 recipient of the Clarence Darrow Award from the Oklahoma Criminal Defense Lawyers Association, 2010 recipient of the OBA Criminal Law Section Professional Advocate, Defender of the Year Award and the 2011 Barry Albert Award from the Oklahoma County Criminal Defense Lawyers' Association. He holds a B.A. degree from SWOSU and both M.A. and M.S. degrees from NSU. He received his juris doctorate from the University of Oklahoma College of Law in 1988. He practices criminal and constitutional litigation in Oklahoma City and is the legal analyst for KFOR-TV. Mr. McKenzie is a veteran of more than 200 jury trials.

GOLDEN GAVEL AWARD

OBA Family Law Section

The OBA Family Law Section, led by Chairperson M. Shane Henry of Tulsa, is the OBA's largest section with more than 1,100 members. The section created the Family Law Practice Manual, which is authored by several sitting judges and more than 40 Oklahoma attorneys who practice family law. It contains over 2,700 pages of black letter law footnoted with relevant case and statutory authority. This team meets throughout the year to update the practice manual with the latest cases and forms. The funds raised through the sale of the manual were used to create the Oklahoma Family Law Section Trial Advocacy Institute, the first of which was held at the Oklahoma Bar Center in July 2014. Attendees gained the experience and training to more effectively represent a client at trial. Leadership mentoring is also a longstanding tradition with the section, holding leadership retreats twice a year. The section sponsors conferences every year in addition to various OBA projects. It will soon select a charity to highlight during the FLS annual meeting as it has since 2011.

OUTSTANDING YOUNG LAWYER AWARD

Joe Vorndran, Shawnee

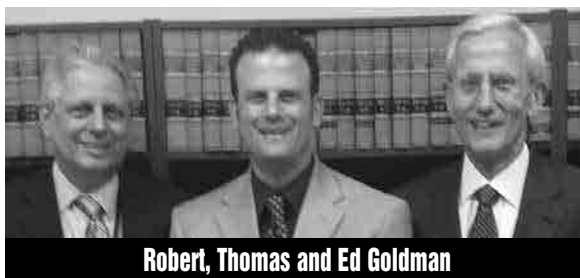


Joe Vorndran is the recipient for the Outstanding Young Lawyer Award for his service as a leader of the OBA Young Lawyers Division. He served as the District 8 Representative for the OBA YLD Board of Directors from 2006-2012. He was also chair of its Community Service Committee and Children and the Law Committee. He

was the 2011 YLD treasurer, 2012 chairperson-elect and 2013 chairperson. Under his leadership, the OBA YLD received the Public Service Award at the 2014 ABA annual meeting in Boston. He is a partner with the Shawnee law firm of Stuart & Clover PLLC. His practice is focused on general civil and commercial litigation, corporate law, alternative dispute resolution and municipal law. He received his J.D. from the OU College of Law in 2006.

OUTSTANDING SERVICE TO THE PUBLIC AWARD

The Goldman Law Office, Oklahoma City



The Goldman Law Office is the recipient of the Outstanding Service to the Public Award in recognition of its preserving the long-standing Red Andrews Christmas Dinner in Oklahoma City. Red Andrews was a longtime Oklahoma City resident who served in the state House of Representatives. He started the annual Red Andrews Christmas Dinner in 1945 for families in need. The dinner repeated itself for decades, and his family continued the tradition after his death. In 2012, the family announced that due to health issues, the dinner would be discontinued. Robert, Ed and Tommy Goldman, having been involved with the dinner for over 25 years, rallied with other members of the community to assure the further success of the dinner. The Goldmans formed the Red Andrews Christmas Dinner Foundation, which is a 501(c)(3) nonprofit organization. The holiday meal feeds nearly 7,000 people every year.

AWARD FOR OUTSTANDING PRO BONO SERVICE

James J. Bender, Tulsa

Jim Bender is a recipient of the Award for Outstanding Pro Bono Service for his long-standing commitment to pro bono work. Before his recent retirement, he served as general counsel at The Williams Companies and, more recently, at its spinoff company, WPX Energy. In 2006, he became familiar with legal aid when his



department visited the Legal Aid Services offices in Tulsa as a part of Williams' United Way campaign. He saw the need for more volunteer lawyers and committed his department of in-house lawyers to handle wills, trusts, estate planning and powers of attorney for senior citizens. Mr.

Bender also helped recruit lawyers from the Hall Estill law firm to become involved. In all, more than 40 lawyers began serving clients. In addition, he played an important role in creating two programs to support the Tulsa County District Court — the Court-Assistance Project (CAP) and the Guardian Ad Litem Program, and he personally participated in CAP by representing clients in unlawful detainer actions in Tulsa County. Finally, he secured annual donations for Legal Aid Services from his companies and donates personally. He received his J.D. from the University of Minnesota Law School in 1981.

AWARD FOR OUTSTANDING PRO BONO SERVICE

Malcolm M. Savage, Oklahoma City



Malcolm Savage is a recipient of the Award for Outstanding Pro Bono Service for his dedication to assisting those needing help in criminal proceedings. One third of his practice is pro bono, serving many indigent clients or those who cannot afford an attorney. His services undoubtedly help lessen the high volume

caseload of the Oklahoma County Public Defender's Office. In 2005, Gov. Brad Henry appointed him to district judge in the 7th Judicial District to fill a position left vacant by the death of Judge Susan Bragg. Mr. Savage has returned to private practice focusing on criminal defense. He was an associate with Lytle Soule and Curlee from 2002-2003 and was an attorney with the Oklahoma County Public Defender's Office from 1998-2002. He earned his J.D. from OCU School of Law in 1998.

TRAILBLAZER AWARD

Melvin Combs Jr., Oklahoma City

Melvin Combs Jr. is the recipient of the Trailblazer Award for making a profound impact on the legal profession by paving the way for more African American law students to pass the bar exam. He did not pass the bar exam on his first attempt in the early 1970s, and he was determined to



make sure that other African American law students were prepared to take and pass the bar. Mr. Combs, Herbert Graves and William Sullivan formed the first integrated law firm in Oklahoma in 1974. He began using the firm's law library at night and on the weekends to tutor African American law students. Since then, he has helped more than 100 students prepare for and pass the Oklahoma bar exam without seeking compensation or recognition. He received his J.D. from OCU School of Law in 1972.

GOLDEN QUILL AWARD

Elliott C. Crawford and David T. McKenzie, Oklahoma City



Elliott C. Crawford

Elliott Crawford and David McKenzie are recipients of the Golden Quill Award for the article they coauthored, "Lights, Camera, Bar Action: Ethical Implications of Extra-judicial Statements and Pre-Trial Publicity in Criminal Proceedings." The article will be published in the Dec. 13, 2014, *Oklahoma Bar Journal* with feature articles devoted to ethics and professional responsibility.

Mr. Crawford is president and founder of the Law Office of Elliott C. Crawford P.C. in Oklahoma City, which is devoted to representing the accused and focuses on federal criminal defense. He graduated from Texas A&M University in 2001, earning a B.A. with honors in political science. In 2006, he obtained his J.D. from Oklahoma City University School of Law, where he received the CALI Award for Academic Excellence in the study of federal jurisdiction. Mr. Crawford is admitted to practice in all state and federal courts in Oklahoma and Texas, the 5th and 10th Circuits, and the U.S. Supreme Court. He is also a member of the Criminal Justice Act Panel for the Western District of Oklahoma, a select group of trial attorneys who represent indigent defendants in federal court.

Mr. McKenzie is the 1997 recipient of the Clarence Darrow Award from the Oklahoma Criminal Defense Lawyers Association, 2010



David T. McKenzie

recipient of the OBA Criminal Law Section Professional Advocate, Defender of the Year Award and the 2011 Barry Albert Award from the Oklahoma County Criminal Defense Lawyers' Association. He holds a B.A. degree from SWOSU and both M.A. and M.S. degrees from NSU. He received his juris doctorate from the University of Oklahoma College of Law in 1988. While he was in graduate school in Tahlequah, Mr. McKenzie was a reporter for the *Tahlequah Daily Press*. Following his admission to the Oklahoma bar in October 1988, he practiced extensively in the area of First Amendment law and was a long-time member of the First Amendment Lawyers Association. He is also a professional actor represented locally by the Magna Talent Agency.

GOLDEN QUILL AWARD

Donelle H. Ratheal, Oklahoma City

Donelle Ratheal is the recipient of the Golden Quill Award for her article, "Children and Their De Facto Parents: Past, Present and Future Third-Party Custody and Guardianship Law in Oklahoma," published in the Aug. 9, 2014, *Oklahoma Bar Journal*. She is the managing partner of Ratheal, Maggard & Fortune PLLC. Her practice includes complex family law litigation and appellate practice. She is a seminar speaker and author on substantive and law practice issues. She was the OBA Family Law Section chair in 2007 and 2013 and an author and former editor of the section's *Practice Manual*. She received the OBA FLS Outstanding Guardian *Ad Litem* Award in 2006. She is a member of the ABA Family Law Section and Solo-Small Firm Section.



Annual Luncheon **Friday, Nov. 14**

These awards will be presented at this event.

AWARD OF JUDICIAL EXCELLENCE

Judge Thomas S. Landrith, Ada

Judge Thomas S. Landrith is the recipient of the Award of Judicial Excellence for his leadership in the renovation project of the Pontotoc County



Courthouse and Justice Center. Judge Landrith spoke to civic groups and organizations to rally support of a proposal to build a new jail and to remodel the courthouse. In 2006, county residents passed a 20-year, 11/16ths-of-a-penny sales tax to pay for the \$18 million project. The new jail, the Pontotoc County Justice Center, opened in 2009. He worked with the contractor handling the courthouse renovation to make sure that the building retained its character. The new main district courtroom was dedicated in March 2011. He received his J.D. from OU College of Law in 1976 and was elected district judge in 1994.

JOE STAMPER DISTINGUISHED SERVICE AWARD

Gary C. Clark, Stillwater

Gary Clark is the recipient of the Joe Stamper Distinguished Service Award for his long-term service to the bar association and contributions to the legal profession. He served 10 years on the Oklahoma Council on Judicial Complaints, six of them as chair. He served as OBA president in 2002. His list of OBA awards includes the 2003 and 2009 President's Awards, Award for Ethics in 1999 and two Golden Quill Awards. He chaired the OBA Tech Task Force, which was awarded the Golden Gavel Award in 2000. He has also chaired the Estate Planning Section, Awards Committee and the Bar Technology Committee. He was a co-author of the Standards on Professionalism adopted by the Board of Governors in 2002. Mr. Clark is a fellow of the American College of Trust and Estate Counsel and a member of the American Law Institute. He served eight years on the Board of Regents for Oklahoma State University/A&M Colleges. After practicing law for nearly 30 years in Tulsa, he became the vice president and general counsel of the OSU Foundation in 2004. In 2008, he became a vice president at OSU and is now senior vice president and general counsel. He received his J.D. from the University of Texas School of Law (with honors).



ALMA WILSON AWARD

Don Smitherman, Oklahoma City



Don Smitherman is the recipient of the Alma Wilson Award for his significant contribution to improving the lives of young people in Oklahoma. From 2005-2012, he was an adjunct teacher at Douglass High School in Oklahoma City. Located in one of the most impoverished areas of the metro,

the legal studies program is designed to give at-risk youth a positive experience with the judicial system and to inspire them to pursue a career in law. Under Mr. Smitherman's leadership, many students underwent personal transformations as a result of their participation in the legal studies program. He is a member of the Oklahoma Black Lawyers Association and the America Inns of Court. He is of counsel with Moricoli & Schovanec PC in Oklahoma City and received his J.D. from the OU College of Law in 1992.

NEIL E. BOGAN PROFESSIONALISM AWARD

Perry W. Hudson, Oklahoma City

Perry Hudson is the recipient of the Neil E. Bogan Professionalism Award for his professional and ethical morals. He began his practice as an employee of the Oklahoma Indigent Defense System, where he served as a capital defense attorney at both the trial and appellate levels. As a private practitioner, Mr. Hudson continues to



represent those accused of capital crimes and has been involved in the release of three death row inmates. His practice is not limited to capital cases, and he is proud of the work he does on behalf of his clients in all areas of criminal defense including his successful suppression of the evidence in the largest non-border heroine bust in U.S. history. Mr. Hudson's peers describe him as an honorable adversary who zealously advocates for his clients in an affable, honest manner. He has offices in Oklahoma City and Pawnee, but practices throughout the state

focusing on criminal defense and DHS deprived cases.

JOHN E. SHIPP AWARD FOR ETHICS

Dietmar K. Caudle, Lawton

Dietmar Caudle is the recipient of the John Shipp Award for Ethics for his service as a role model for ethics in the legal profession. He has been a sole practitioner for more than 35 years in Lawton and has held many different leadership positions. He currently serves as president of the Oklahoma Bar Foundation and is a member of the OBA Board of Editors and Clients' Security Fund Committee. From 2009-2013, Mr. Caudle served as a lawyer member of the Professional Responsibility Tribunal. He is an ABA Fellow and member of the Oklahoma Fellows to the American Bar Foundation. He served on the OBA Board of Governors in 2013 as vice president and as a district representative from 2005-2007. He served as Comanche County Bar Association president and has been honored by the county bar for his pro bono work and as a recipient of its Professionalism Award in 2011. He has demonstrated his commitment to the community with his continued participation in the Ask A Lawyer program and assisting the Comanche County Bar Association for the past 20 years. He has practiced law as a sole practitioner in Lawton since 1980 and received his J.D. from the OCU School of Law in 1976.



FERN HOLLAND COURAGEOUS LAWYER AWARD

Don G. Holladay and James E. Warner III, Oklahoma City



Don Holladay and James Warner are recipients of the Fern Holland Courageous Lawyer for their work as counsel in *Bishop, et al. v. Smith*, challenging Oklahoma's ban on same-sex marriage. They took on the case on a pro bono basis in 2009, litigating the case on behalf of their four individual clients against six defendants, including the State of Okla-

homa and the United States. A judge entered his summary judgment order in favor of the plaintiffs in 2014, declaring Oklahoma's same-sex marriage ban unconstitutional. The 10th Circuit U.S. Court of Appeals confirmed the ruling, and the U.S. Supreme Court recently declined to hear appeals, allowing same-sex marriages to take place in Oklahoma.

Mr. Holladay is a co-founder of the Holladay & Chilton Law Firm in Oklahoma City. His past professional activities include service on the Admissions and Grievance Committee for the Western District of Oklahoma federal court, two three-year terms on the Local Rules Committee, U.S. District Court, Western District of Oklahoma and the Oklahoma County Bar Association Board of Directors. Between 2008 and 2014, he was a member of the Oklahoma delegation to the national Uniform Laws Commission. Since 1988 he has been an adjunct professor at the OU College of Law, teaching pretrial and trial courses. He received his J.D. from the OU College of Law in 1969.

Mr. Warner is a member of the law firm of Holladay & Chilton. He received his juris doctorate in 2002 from the University of Oklahoma College of Law, where he served as executive editor of the *American Indian Law Review*. After graduation, he served as law clerk to Judge Robin J. Cauthron, then Chief Judge of the U.S. District Court for the Western District of Oklahoma. During law school, he was an intern for U.S. Magistrate Shon T. Erwin and Judge Charles A. Johnson of the Oklahoma Court of Criminal Appeals. He also interned in the Oklahoma State Senate, where he assisted senate staff attorneys in drafting legislation and advised senate staff and committees on the constitutionality of pending legislation and stability of current laws. He currently serves on the Board of Directors for the Oklahoma City branch of the Federal Bar Association.



James E. Warner III

OBA Awards:

Individuals for Whom Awards are Named

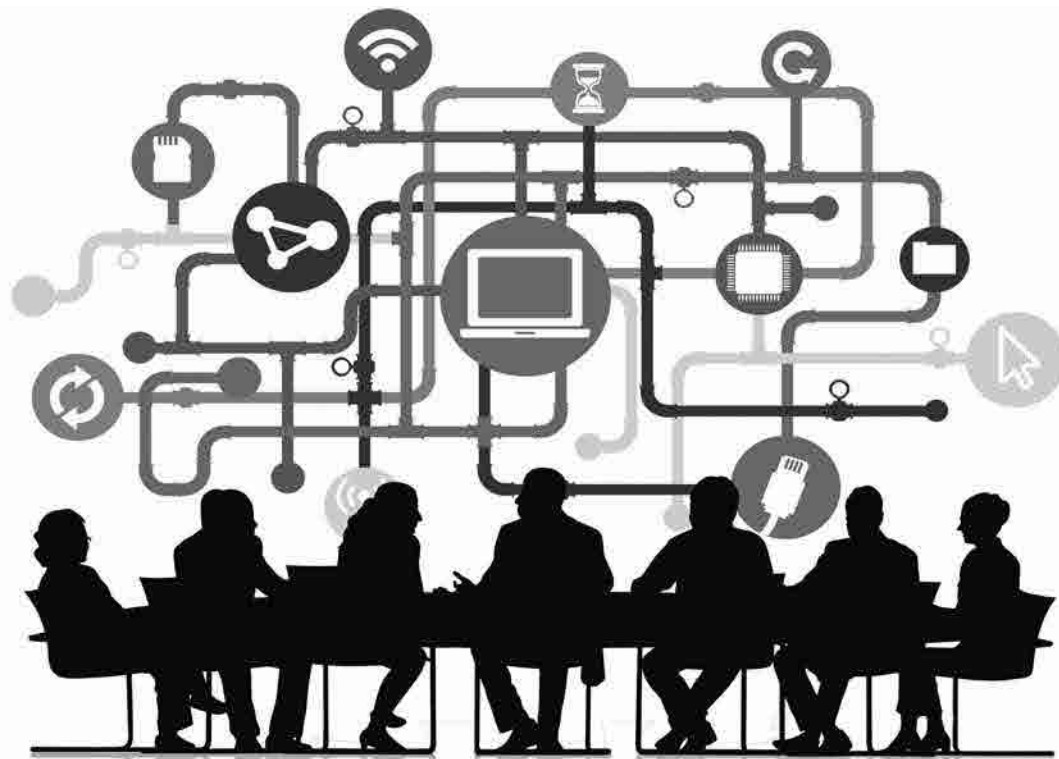
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JOHN E. SHIPP — John E. Shipp, an attorney from Idabel, served as 1985 OBA president and became the executive director of the association in 1998. Unfortunately his tenure was cut short when his life was tragically taken that year in a plane crash. Mr. Shipp was known for his integrity, professionalism and high ethical standards. He had served two terms on the OBA Professional Responsibility Commission, serving as chairman for one year, and served two years on the Professional Responsibility Tribunal, serving as chief-master. The OBA's Award for Ethics bears his name.

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

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

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



OBA CLE: Tools for Tomorrow's Lawyers

Program Planner: Jim Calloway, Director
OBA Management Assistance Program

Topics Covered:

- Lawyers and Change: How to Survive in the Future You Didn't Expect • *Jim Calloway*
- The Paperless Office Is a Reality (and a Necessity) Today • *Donna Brown*
- Project & Process Management for Lawyers • *Jim Calloway*
- Top Tools: Practice Management Solutions and Document Assembly Tools • *Donna Brown*
- Technology — Creative Uses, Ethical Practices • *Douglas J. Sorocco and Travis Pickens*
- Strategies for Change: An Interactive Discussion • *Jim Calloway, Travis Pickens and Douglas J. Sorocco*

Speakers: Donna Brown is a legal industry consultant with emphasis on software development, customization, training and technical writing. Douglas J. Sorocco practices in the areas of intellectual property, technology, licensing, life sciences and patent law. Travis Pickens is OBA Ethics Counsel.

Seminar starts at 9 a.m. and adjourns at 2:50 p.m.

***This seminar will also be webcast;
tuition varies from live program tuition.***

To register online, log on to: www.okbar.org/members/cle.aspx
Or call Renee at 405-416-7029/800-522-8065
or email ReneeM@okbar.org

Annual Meeting registration is not needed to attend this seminar.

Nov. 12
Hyatt Regency
Hotel
100 E. Second St.
Tulsa

Approved for 6 hours MCLE/1 Ethics. **\$150** for early-bird registrations with payment received at least four full business days prior to the seminar date. **\$175** for registrations with payment received within four full business days of the seminar date.

Save
\$10

Register Online

Here is what our members had to say about his last presentation in 2012:

- "This was one of the best CLEs I have attended (in more than 30 years of CLEs). It was interesting and relevant. Well done!!"
- "It was nice to go to a CLE that was not pure torture. Information was well presented."
- "Great seminar. Thank you! Sean made an otherwise dull subject very interesting and enjoyable."
- "Sean Carter's course taught far more than ethics and a little Supreme Court precedent. His message of love and compassion comes from an open heart. It was a pleasure to laugh and think with him. Best CLE I've ever been to, bring him back every year."
- "It was a very enjoyable seminar. I will attend again next year if given the opportunity."

OBA CLE PRESENTS HUMORIST AT LAW SEAN CARTER'S *TEE HEE! A FUNNY CLE*

MORNING SESSION

THE ETHYS AWARDS: 2014 EDITION
(2 hours — 1 hour of ethics)

Each year, Hollywood celebrates the best performances in motion pictures at the Oscars. Well, this year, we will celebrate the worst ethics violations in the legal profession at the Ethys. The festivities will be hosted by Mr. Carter, who will announce this year's winners of the coveted Ethy for Best Original Excuse, Least Competent in a Legal Representation, Most Over-Animated Courtroom Outburst, a special Lifetime Achievement Award and so much more.

LAWYER JOKES ARE NO LAUGHING MATTER
(1 hour — ethics)

There are thousands of lawyer jokes told each day. Lawyer bashing is quickly becoming America's favorite pastime. But why?

AFTERNOON SESSION

FANTASY SUPREME COURT LEAGUE: 2014 EDITION (2 hours — general ed.)

In this unique presentation, Mr. Carter will humorously recap the most significant cases of the current term. After receiving the facts of each case, you will compete with your fellow lawyers by attempting to remember (or guess) the outcome and "vote spread" of each case:

- Campaign Finance
- Affirmative Action
- Public Prayer
- Search and Seizure
- Executive Power
- Global Warming
- Religious Freedom

LIES, DAMN LIES AND LEGAL MARKETING: The Ethics of Legal Marketing
(1 hour — ethics)

What is effective advertising in other fields is rarely acceptable in the field of law. In this entertaining ethics course, Sean Carter examines in detail the ethical rules concerning marketing and their practical implications.

**To register online, log on to: www.okbar.org/members/cle.aspx
Or call Mark at 405-416-7026/800-522-8065
or email marks@okbar.org**

You can register for either the morning session (3 hours with 2 hours ethics) or afternoon session (3 hours including 1 hour ethics).





Thursday Evening Progressive Event

Three-Party Celebration

drinks • dinner • dancing

This event is free with Annual Meeting registration.

OBA Sections Present: The Drinks

part
1

5:30 - 7 p.m. Inside the ballroom: Pianist Tom Nix will entertain the crowd in an intimate piano bar setting. Drinks will flow until last call at 6:45 p.m. Snag a signature beverage (made especially for this event!) while light snacks and your favorite fall-flavored coffees are served.

Out in the foyer: Enjoy fine arts shopping, including jewelry, pottery, artwork and other merchandise made by local artists. A caricature artist will be available to create a masterpiece for you to take home. Grab your friends and head over to the photobooth to commemorate the event.



OBA President DeMoss Presents: The Dinner



7 - 8:30 p.m. Inside the ballroom: Tom Nix will continue to charm the audience as the small bar opens up, transforming into an upscale come-and-go reception. Two drink tickets will be given to each party-goer to be used on soda or adult beverages at the cash bar. Heavy hors d'oeuvres including popular flavors of fall will be served.

Out in the foyer: Continue your holiday shopping, get a caricature portrait drawn, and take a few more visits to the photo booth before they close for the evening.

part
2

OBA Presents: The Dance

part
3

8:30 - 11:30 p.m. The mood picks up and the lights go down as the ballroom transforms a third time into rock-and-roll bash, complete with dance floor. Oklahoma City-based group, The Stars Band, will take the stage, covering all your favorites from the 1960s to today. Cash bar will stay open as you dance late into the evening.





2014 OBA Annual Meeting
NAVIGATING THE FUTURE:
THE CHANGING LEGAL PROFESSION
Nov. 12 - 14 • Hyatt Regency • Tulsa

2015 House of Delegates

Delegate certification should be sent to OBA Executive Director John Morris Williams in order for names to appear in print in the bar journal and to be included in the House of Delegates agenda book.

COUNTY	DELEGATE	ALTERNATE
Adair Co.	Jeff Jones.....	Ralph Keen
Alfalfa Co.		
Atoka Co.		
Beaver Co.	Todd Trippet.....	Jerry Venable
Beckham Co.	Chip Eeds.....	D.J. DeLeon
Blaine Co.	Daniel G. Webber.....	F. Douglas Shirley
Bryan Co.	D. Michael Haggerty II.....	Pat Phelps
Caddo Co.	Jason Glidewell.....	Kyle Eastwood
Canadian Co.	Nathan Richter.....	Linda Pizzini
	Ashton Handley	Charles Gass
	Michael Denton.....	Sandy Steffen
	Jack Dawson.....	Fletcher D. Handley Jr.
Carter Co.	Mike Mordy.....	Bradley Wilson
	Lee Card.....	Craig Ladd
Cherokee Co.	Jerry Moore	B.J. Baker
Choctaw Co.	J. Frank Wolf III.....	Thomas J. Hadley
Cimarron Co.	Stanley Ed Manske	Judge Ronald L. Kincannon
Cleveland Co.	Tyson Stanek.....	Mike Johnson
	Dave Batton.....	Jeanne Snider
	Richard Vreeland.....	Amy Pepper
	Peggy Stockwell	David Swank
	Judge Stephen Bonner.....	Don Pope
	Richard Stevens	Rick Knighton
	Alissa Hutter	John Sparks
	Micheal Salem	Taos Smith
	David Poarch	Rebekah Taylor
	Dave Stockwell	Drew Nichols
	Gary Rife	(Ret.) Judge Charles A. Johnson
	Judge Lori Walkley.....	Kristina Bell
	Jan Grant Johnson.....	Sharon Sitzman
	(Ret.) Judge Rod Ring.....	Beth Stanley
	Blake Virgin.....	Josh Turner
	Emily Virgin.....	Debbie Loeffelholz
	Ben Odom	Cindee Pichot
	Rick Sitzman.....	Jim Loftis
	Holly Iker	
	Jan Meadows	

Coal Co.	Trae Gray	Richard Branam
Comanche Co.	Robin Rochelle.....	Kathryn McClure
	Grant Sheperd	
	Aimee Vardeman	
Cotton Co.	Kathleen Flanagan.....	Judge Michael C. Flanagan
Craig Co.	Kent Ryals	Leonard M. Logan IV
Creek Co.	Judge Richard A. Woolery	Carla Stinnett
	Michael S. Loeffler	Sheri Eastham
Custer Co.	Dennis A. Smith	Andrew Carruth
Delaware Co.		
Dewey Co.	Judge Rick Bozarth	
Ellis Co.	Laurie E. Hays	Judge Joe L. Jackson
Garfield Co.	David Ezzell.....	Judge Paul Woodward
	Karig Culver	Glenn Devoll
	Amber Gill.....	Kaleb Hennigh
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Grady Co.		
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	Jamie Fenner	Justin Stout
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Nowata Co.	Judge Carl Gibson	Linda Gambill-Branstetter
Okfuskee Co.	Jeremy T. Pittman	Maxey Reilly
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	Judge Barbara Swinton	Phillip G. Whaley
	Angela Ailles Bahm	Daniel G. Webber Jr.
	Mack Martin	Tracey Martinez
	Judge Glenn Jones	Judge Robert Bell

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	John Heatly	James Jennings
	David Cheek	J. Chris Condren
	Judge Don Andrews	Lance Leffel
	Ben Butts	Sarah Schumacher
	Gary Chilton	Denise Cramer
	Derek Burch	Michelle Harrington
	Judge Patricia Parrish	Glenn White
	Judge Thomas E. Prince	John Handy Edwards
	Judge Lisa Tipping Davis	Matthew Kane
	John W. Coyle	Teresa Rendon
	Judge Lisa Hammond	M. Courtney Briggs
	Robert C. Margo	Leslie Lynch
	Lauren E. Barghols Hanna	Robert Sheets
	John Oldfield	LeAnne Burnett
	W. Todd Blasdel	Gary Derrick
	Judge Lynne McGuire	Doneen Jones
	Judge Howard R. Haralson	Billy Croll
	Jeff Curran	Tom E. Mullen
	Andrew Mildren	John Miley
	Daniel Couch	Raymond Zschesche
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	Brandon Long	Coree Stevenson
	Nancy Parrott	Sheila D. Stinson
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Payne Co.	Jimmy Oliver	Robyn Baker
	Lynn Hermanson	Brandee Hancock
	Brenda Nipp	John Price
Pittsburg Co.	Matt Sheets	Paul Northcutt
	Blake Lynch	Matt Patterson
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Pottawatomie Co.	Brandi Nowakowski	Drew O'Gwynn
	Joe Vorndran	
Pushmataha Co.	Gerald Dennis	Charlie Rowland
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	Catina Drywater	Jennifer K. Kern
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Stephens Co.	Carl Buckholts	Jamie Phipps
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Tulsa Co.	Judge Millie Otey	Michael S. Ashworth
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	James R. "Jim" Gotwals	Justin B. Munn

	D. Faith Orlowski.....	Amber Peckio Garrett
	Robert B. Sartin.....	J. Chris Davis
	D. Ken Williams Jr.	Cara Collinson Wells
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	Ronald Main.....	James L. Colvin III
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	Trisha Linn Archer	Tony W. Haynie
	Julie A. Evans.....	Marvin G. Lizama
	Kimberly K. Moore-Waite	Georgenia Van Tuyl
	Judge Jane P. Wiseman	Sabah Khalaf
	Bill LaSorsa.....	Ruth J. Addison
	Paul Brunton	Richard Dale White Jr.
	Judge Charles R. Hogshead	David M. Thornton Jr.
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	Kenneth L. Brune.....	Jermiah Phelilx
	Molly Aspan	
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	Drew Ihrig.....	Kyle Persaud
Washita Co.	Judge Christopher S. Kelly	Skye Shephard-Wood
Woods Co.	Jesse Kline.....	Jeremy Bays
Woodward Co.	Bryce Hodgden	Jay Mitchel

Oklahoma Judicial Conference

DELEGATE

Dist. Judge Mary Fitzgerald

Assoc. Dist. Judge Mickey J. Hadwiger ...

ALTERNATE

Dist. Judge George Butner

Assoc. Dist. Judge Mark Moore

Delegates at Large (Past Presidents)

Burck Bailey

William J. Baker

Stephen D. Beam

Judge Thomas R. Brett

Michael Burrage

Gary Carl Clark

Cathy M. Christensen

Andrew M. Coats

M. Joe Crosthwait Jr.

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4 EASY WAYS TO REGISTER



ONLINE

Register online at www.amokbar.org



MAIL FORM

OBA Annual Meeting, PO Box 53036, Okla. City, OK 73152



FAX FORM

405-416-7092



PHONE/EMAIL

Call Mark at 405-416-7026 or 800-522-8065
or email marks@okbar.org

YES! Register me for the 2014 Annual Meeting, November 12-14 in Tulsa.

Registration fee includes: OBA hospitality Wednesday afternoon, all day Thursday & Friday morning, Thursday evening Three-Part Celebration social event, Annual Luncheon discount, a convention gift and Vendors Expo.

CANCELLATION POLICY

Full refunds will be given through Nov. 5, 2014. No refunds will be issued after that date.

HOTEL ACCOMMODATIONS

Fees do not include hotel accommodations. For reservations call the Hyatt Regency at 918-582-9000 or 888-591-1234. Call by Oct. 21 and ask for the special Oklahoma Bar Association rate of \$115 per night.

*For online reservations, go to www.tulsa.hyatt.com
Group code: G-OBA4*

LOCATION

Most activities will take place at the Hyatt Regency Hotel, 100 East Second Street in Tulsa.

SPECIAL NEEDS

Please notify the OBA at least one week in advance if you have a special need and require accommodation.

MATERIALS

You will receive a link to download CLE materials in advance of the seminar.

REGISTRATION

Please complete a separate form for each registrant.

Name _____

Email _____

Badge Name (if different from roster) _____ Bar No. _____

Address _____

City _____ State _____ Zip _____ Phone _____

Name of Non-Attorney Guest _____

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

Check all that apply: ☐ Judiciary ☐ Delegate ☐ Alternate

☐ MEMBER: \$60 through Oct. 21; \$85 after Oct. 21 \$ _____

☐ NEW MEMBER (Admitted after Jan. 1, 2014): Free through Oct. 21; \$25 after Oct. 21 \$ _____

I will attend the following ticketed events in addition to my registration fee:

☐ Thursday: Trial College 6 hours MCLE/1 Ethics (\$150 through Oct. 21; \$175 after Oct. 21) \$25 for new members through Oct. 21; \$50 after Oct. 21) \$ _____

☐ Thursday: Sean Carter 6 hours MCLE/3 Ethics All Day (\$200 through Oct. 21; \$225 after Oct. 21) \$50 for new members through Oct. 21; \$75 after Oct. 21) \$ _____

☐ Thursday: Sean Carter 3 hours MCLE/2 Ethics Morning Only (\$125 through Oct. 21; \$150 after Oct. 21) \$25 for new members through Oct. 21; \$50 after Oct. 21) \$ _____

☐ Thursday: Sean Carter 3 hours MCLE/1 Ethics Afternoon Only (\$125 through Oct. 21; \$150 after Oct. 21) \$25 for new members through Oct. 21; \$50 after Oct. 21) \$ _____

☐ Friday: President's Breakfast (____ number of tickets @ \$25 each) \$ _____

☐ Friday: Annual Luncheon (____ number of tickets @ \$35 each) \$ _____

Price includes meeting registration discount

I will attend the following ticketed events that do NOT require Annual Meeting registration:

☐ Thursday: Law School Luncheon ☐ OCU ☐ OU ☐ TU (____ number of tickets @ \$35 each) \$ _____

☐ Friday: Annual Luncheon (____ number of tickets @ \$50 each) \$ _____

PAYMENT OPTIONS:

TOTAL COST \$ _____

☐ Check enclosed: Payable to Oklahoma Bar Association

Credit card: ☐ VISA ☐ Mastercard ☐ American Express

Card # _____ Exp. Date _____

Authorized Signature _____

2015 OBA BOARD OF GOVERNORS VACANCIES

Nominating Petition deadline was 5 p.m. Friday, Sept. 12, 2014

OFFICERS

President-Elect

Current: David A. Poarch Jr., Norman
Mr. Poarch automatically becomes
OBA president Jan. 1, 2015
(One-year term: 2015)

Nominees:

Mack K. Martin, Oklahoma City
Garvin Isaacs Jr., Oklahoma City

Vice President

Current: Susan S. Shields, Oklahoma City
(One-year term: 2015)
Nominee: **Glenn A. Devoll, Enid**

BOARD OF GOVERNORS

Supreme Court Judicial District One

Current: Linda S. Thomas, Bartlesville
Craig, Grant, Kay, Nowata, Osage, Ottawa,
Pawnee, Rogers and Washington counties
(Three-year term: 2015-2017)
Nominee: **John M. Weedn, Miami**

Supreme Court Judicial District Six

Current: Kimberly Hays, Tulsa
Tulsa County
(Three-year term: 2015-2017)
Nominees:

Spencer Pittman, Tulsa - withdrawn
James R. Gotwals, Tulsa

Supreme Court Judicial District Seven

Current: Bret A. Smith, Muskogee
Adair, Cherokee, Creek, Delaware, Mayes,
Muskogee, Okmulgee and Wagoner counties
(Three-year term: 2015-2017)
Nominee: **Roy D. Tucker, Muskogee**

Member At Large

Current: Nancy S. Parrott, Oklahoma City
(Three-year term: 2015-2017)
Nominee: **Sonja R. Porter, Oklahoma City**

Summary of Nominations Rules

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

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

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

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

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

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

Elections for contested positions will be held at the House of Delegates meeting Nov. 14, during the Nov. 12-14 OBA Annual Meeting. Terms of the present OBA officers and governors will terminate Dec. 31, 2014.

Nomination and resolution forms can be found at www.okbar.org/members/bog/bogvacancies

NOTICE

OBA Bylaws, Art. 3, Section 3. Uncontested Election

At the close of the period, for nominations in accordance with Section 1, if only one candidate has been nominated for any office, the candidate is elected and the Executive Director shall announce his or her election.

The Federalization of the Oklahoma Law License

By Kimber J. Palmer

Who decides who gets to be a lawyer? The short answer is other lawyers. Since the early days of the profession of the practice of law in America, prospective lawyers gained their education and admittance to the bar by associating, studying with and being accepted by older, experienced lawyers.¹

Today, the legal profession strives to maintain its independence through self-regulation. The American Bar Association's Model Rules of Professional Conduct espouses this long-held premise² by noting that the legal profession is unique among professions, exemplified by its close relationship with government and law enforcement. The ABA maintains self-regulation, and independence from the other branches of government is important to the preservation of democracy, and it provides agility to better guard against the abuse of legal authority.³ However, with the advent of some international free trade agreements, the legal profession in the United States is now facing the real possibility of going from a self-regulated profession to something more akin to a federally regulated business form. While the U.S. is a signatory on at least 15 international trade agreements⁴ involving the delivery of legal services, the present concern came sharply into focus following the signing of the General Agreement on Trade and Services (GATS).

Signed by the U.S. in 1995, GATS was touted by the World Trade Organization (WTO) as a "landmark achievement."⁵ GATS membership requires its signatory countries to allow market access to its member-country service providers, including lawyers, and they must be given "national treatment." National treatment means that the member-countries must treat a foreign service provider as "favourably as domestic firms"⁶ unless an exemption is claimed. No

exemption is claimed by the U.S. for legal services. National treatment also includes the setting of qualifications and standards for those providing such services, which would include license granting.⁷

The theory behind all free trade agreements is that when barriers to trade between countries are reduced, market forces are able to influence the market, particularly in the allocation of resources and there will be more buying and selling for all.⁸ While not all nations did so, and though not required to do so, the U.S. included legal services among the list of professional services incorporated in its general obligation "commitments" under the treaty.⁹ Delivery of legal services under GATS includes four possible modes: a) non-resident member-country suppliers of legal services supplying services across a country's border; b) easier ability of member-countries to buy legal services located in another WTO country; c) the ability of foreign suppliers of legal services to establish branch or representative offices in a WTO country; and d) the ability of foreign individuals to enter and stay in a WTO country in order to supply such services.¹⁰ In short, under GATS, the U.S. is required to allow international suppliers of legal services to compete on a level playing field with domestic suppliers of legal services here in the U.S.

Interestingly, there has been very little discussion of this major development and its impact on the legal profession by members of

the American bar.¹¹ Other professional services, such as banking and accounting, are included in GATS. Some authors believe the inclusion of professional services in the trade liberalization scheme will be detrimental to a profession. In a 2005 article¹² written primarily about the field of accountancy, the author took the position that the treaty would result in a loss of local autonomy and overall the ability of “democratic societies to govern their economies.” The article opines the treaty will lead to a dismantling of domestic regulations of certain professions on the premise that such regulations act as barriers to trade, and eventually the ability of non-national regulators (state and local) to govern a profession will be limited. In this regard, there is little difference in regulation of the accounting profession and regulation of the legal profession.

The GATS does not create a private right of action by a party to enforce its provisions.¹³ It does allow, however, a country to use the dispute resolution provisions of the WTO if a country believes another is not following GATS. Shortly after the signing of the GATS, the European Union formally requested¹⁴ through the WTO, that the United States facilitate removing the requirement, held by many states, that a prerequisite to obtaining a license to practice law is U.S. citizenship. This American citizenship requirement is also maintained in Oklahoma.

Some foreign lawyers have sought to gain access to the practice of law in the U.S. through taking a state’s bar exam. In recent years, several states have revised their qualification rules and included provisions for bar exam applicants who received their law degree outside the United States. The National Conference of Bar Examiners and the ABA Section of Legal Education and Admission to the Bar maintain comprehensive statistics of the bar admission requirements of the 50 states and U.S. territories. The 2014 guide provides information as to which states, and under what circumstances, foreign-law-degreed applicants are allowed to take their bar exam.¹⁵ In 28 states and two territories, foreign law school graduates are eligible for admission into the practice of law in that state. Some of those states have special provisions for these foreign educated applicants, such as requiring their education be based in the English common law, requiring additional education at an ABA-approved law school, requiring previous admission in another

U.S. jurisdiction, or that the applicant already have an established law practice in a foreign jurisdiction. A few states allow foreign educated law graduates admission into practice in their state without examination, based upon certain special provisions.

Oklahoma makes no allowance for a foreign-educated applicant to take the bar exam, or to be admitted to the Oklahoma bar. 5 O.S. Supp. (2004) §1.1, last amended in 2009, provides: “No person shall practice as an attorney and counselor at law in any court of this state who is not a citizen of the United States...” Our neighboring state of Texas, on the other hand, allows foreign-law-degreed applicants to take the Texas bar exam if the applicant receives an LL.M. from an ABA-approved law school, maintains a practice in a foreign jurisdiction, or upon a determination that their foreign legal education is equivalent to that of an ABA-approved law school. Statistics on the other states and U.S. territories and their requirements are available at the National Conference of Bar Examiners or the American Bar Association website.¹⁶

With the large amount of international business conducted in the border state of Texas, it may not be surprising that the Texas Supreme Court addressed this issue early in the new millennium. Rule II General Eligibility Requirements for Admission to the Texas Bar refers to certain exemptions contained within Rule XIII, Attorneys from Other Jurisdictions, amended in 2005. Rule XIII outlines the conditions under which foreign-educated bar applicants can be admitted to the Texas bar, with or without examination. These rules apply only to those who already hold a law license in another state or nation and who have “actively and substantially engaged in the practice of law” for at least five of the last seven years immediately preceding the filing of their application.¹⁷ In short, they treat all out of state lawyers the same, whether foreign or domestically educated.

There is no question that there has been a momentous increase in foreign law school graduates seeking licensure in the United States.¹⁸ In 2013, 5,928 persons whose legal education was obtained outside the United States took a bar licensure exam of one of the 50 states or five U.S. territories.¹⁹ Some authors argue that the time has come for the formation of an international network of lawyer regulators and that such organization could better deal with questions facing all lawyer regulators: who is

competent, how standards of the practice are best regulated, and how the “bad apples” can be weeded out.²⁰

There are few appellate cases regarding foreign educated bar candidates. The issue of foreign nationality and admission to a state’s bar was at issue in the case *Karen LeClerc, et.al. v. Daniel E. Webb, et.al.* 419 F.3d. 405 (5th Circuit, La. 2005). This case, consolidated with another similar case, was brought by “non-immigrant aliens,” defined by the court as persons who had temporary worker visa status (H-1b), who desired to sit for the Louisiana State Bar Exam. Each had graduated from a foreign law school, and had applied to take the exam. Louisiana bar rules allowed them to take their bar exam if they could demonstrate their foreign legal education to be equivalent to an education at an ABA-approved law school. They were unable to provide this equivalency. They brought suit, seeking injunctive relief and a determination that the denial of their taking the Louisiana bar was a violation of the Equal Protection Clause of the 14th Amendment. Finding that rational basis review, rather than strict scrutiny, was proper, and declining to grant the requested relief, the 5th Circuit Court of Appeals ruled that Louisiana’s rules passed constitutional muster, having been “designed to address local problems arising from [the] transitory status of nonimmigrant aliens.” The U.S. Supreme Court declined to grant *certiorari*.²¹ WTO, GATS, or other trade agreements were not mentioned in the opinion.

In January 2014, California courts ruled that an undocumented alien, Sergio Garcia, who was a graduate of a California law school and had taken and passed the California bar exam could not be precluded from being admitted to practice, by virtue of his undocumented alien status. The California Bar Association had sought to exclude him, urging that his illegal immigration status was a violation of law and was adverse to its requirement that only persons with moral fitness of character are admitted to the practice of law. Garcia had been born in Mexico, but he was raised and received his entire education (including law school) in the United States. After his situation was made public in 2013, the California Legislature passed a

“In January 2014, California courts ruled that an undocumented alien... could not be precluded from being admitted to practice, by virtue of his undocumented alien status.”

law which made legal residency status of a bar candidate immaterial in determining the candidate’s eligibility to admittance to the bar. The California Supreme Court then ruled that Garcia could be granted a law license. It appears, however, that his immigration status precludes him from earning money as a lawyer since he does not have a valid work permit or “green card.”²²

As a direct result of GATS, and in order to address the issue of foreign lawyers practicing in the United States, the

ABA adopted a resolution in August 2006.²³ The resolution supported the efforts of the Office of the U.S. Trade Representative to develop transparency provisions regarding the domestic regulation of legal service providers, and to develop conditions pursuant to GATS that “do not unreasonably impinge” on the authority of a state to regulate the legal profession in their state. In 2009, the ABA adopted a model rule in an effort to assist various states dealing with foreign applicants seeking admission to a state’s bar. The model rule, essentially, recommends states require foreign educated applicants to obtain an LL.M. at an ABA-approved program that would include courses in American constitutional law, and further require that the foreign candidate be required to pass the state’s bar exam.

In 2012, the ABA Task Force on International Trade in Legal Services issued a white paper²⁴ lauding the Georgia Bar for its having adopted new rules in dealing with the issues that have arisen due to GATS. The white paper noted that Georgia’s recognition of the international trade agreements, including GATS, was a step in the right direction, and that possible federal intervention in the regulation of law licensing was in the offing, stating:

... GATS has obligated all World Trade Organization WTO member states, including the United States, to avoid regulation of professional service providers “more burdensome than necessary to ensure the quality of the service.” However, because no national regulatory regime of lawyer regulation now exists in the United States, this obligation is implemented at the state level. ... *Although the federal government could conceivably assert its treaty*

power to require state conformity to GATS rules,²⁵ there is no political will to attempt such pre-emption at this time. (emphasis added)

The white paper goes on to discuss the various ways in which a foreign lawyer might wish to practice in the U.S. Foreign lawyers may wish to come here on a temporary, one-time basis, or as foreign-licensed in-house counsel for a company having overseas offices, as well as offices within the U.S. The foreign lawyer may want to come as consultant on foreign legal matters, or come seeking *pro hac vice* admission. They might also wish to become a fully licensed U.S. lawyer with their entire practice in the United States. In this ABA report, Georgia was commended for taking the initiative to form a committee on International Trade in Legal Services, for studying the applicable trends, rules and regulations, and making recommendations to the state bar addressing these issues.

It is surprising that 20 years out, there is very little discussion among lawyers about this pending phenomenon. What will be the ultimate effect of GATS on the legal profession? Will there be increased competition from outside the United States? Will there be increased opportunities to work abroad without hurdles by another country's regulation? Will we experience a loss of state regulation of the legal profession? Will the federal government step in and begin regulation of the licensing of attorneys? There is no answer at this time. What is clear, however, is this issue is not going to go away. Short of the United States modifying GATS by withdrawing legal services, Oklahoma and all other states, remain vulnerable to being preempted by the federal government regarding its regulation of its legal profession.

1. Charles R. McKirdy, "Before the Storm: the Working Lawyer in Pre-Revolutionary Massachusetts," 11 *Suffolk University Law Review* 46 (1976).

2. From the American Bar Association website: <http://goo.gl/nHu0kf>, last accessed Oct. 15, 2014.

3. *Supra*, note 2.

4. Laurel S. Terry, "From GATS to APEC: The Impact of Trade Agreements on Legal Services," 43 *Akron Law Review* 675 (2010). This author has numerous articles on this subject and has been involved in research over many years. Her articles also appear on her university website: www.personal.psu.edu/faculty/1/s/1st3/.

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6. Paton, *infra* note 11.

7. Lee, *infra* note 9.

8. Amar Gupta, et. al., "Evolving Relationship between Law, Offshoring of Professional Services, Intellectual Property, and International Organizations," 21.2 *Information Resources Management Journal* 103 (Apr-Jun 2008).

9. Margaret Mikyung Lee, *Legal Services in the World Trade Organization (WTO) and U.S. Effect*, Congressional Research Service-The Library of Congress, Order Code RS22949. Sept. 12, 2008.

10. Lee, *supra*, note 9.

11. Paul D. Paton, "Legal Services and the GATS: Norms as Barriers to Trade," 9 *New England Journal of International and Comparative Law* 361 (2003) (note: this article focuses mainly on GATS and Canada's legal profession.)

12. Patricia J. Arnold, "Disciplining domestic regulation: the World Trade Organization and the market for professional services," *Accounting, Organizations and Society* 30 (2005) 299-330 (available online at www.sciencedirect.com).

13. *infra*, note 17.

14. EU Initial Request to the United States, available at <http://goo.gl/8peVCL>.

15. National Conference of Bar Examiners 2013 statistics, last accessed Oct. 15, 2014. <http://goo.gl/b6ySp2>.

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17. Texas Board of Law Examiners Rule VIII, www.ble.state.tx.us/Rules/NewRules/rulexiii.htm.

18. Laurel Terry, "Creating an International Network of Lawyer Regulators: The 2012 International Conference of Legal Regulators," *The Bar Examiner*, Vol 82, No. 2 pp. 18-27 June, 2013.

19. National Conference of Bar Examiners 2013 statistics, *supra*.

20. *Supra*, note 19.

21. *Leclerc v. Webb*, 127 S.Ct. 344 (U.S. 2006).

22. <http://goo.gl/cXqfq5>.

23. ABA resolution: <http://goo.gl/DARWAI>.

24. International Trade in Legal Services and Professional Regulation: A Framework for State Bars Based on the Georgia Experience

25. *Missouri v. Holland*, 252 U.S. 416 (1920).

ABOUT THE AUTHOR



Kimber J. Palmer joined the faculty of Texas A&M International University in Laredo, Texas, in 2000. In addition to being an instructor of legal studies courses in the A.R. Sanchez Jr. School of Business, she serves as the university's pre-law advisor. Previously, she practiced law in Oklahoma, primarily Oklahoma City. She is a graduate of OSU and the OU College of Law. She may be reached at kpalm@tamiu.edu.

Spotlight Awards Emphasize Work of Women Lawyers

Five women attorneys were honored during a recent conference sponsored by the OBA Women in Law Committee, joining a group of nearly 100 honorees who have been recognized as Spotlight Award winners since 1996. Over the course of those 18 years, the Spotlight Awards have annually celebrated pioneering women lawyers who have distinguished themselves in the legal profession and paved the way for women lawyers of the future.

Why does this matter? In remarks made at this event, OBA President Renée DeMoss, said women in the legal profession are not yet where they need to be.

"Women lawyers today owe a big debt of gratitude to those who came before us," President DeMoss said. "The earliest were in law school with only one or two other women, and they were sometimes scolded for taking up spaces in law school, and trying to take jobs away from the men who really 'deserved' them. It is all too easy for us to forget their journey, and to forget that things haven't always been as they are today for women lawyers."

Ms. DeMoss cites a recent ABA study relating to women in the legal world. Nationwide, men make up 66 percent



Spotlight winners past and present attend the recent awards reception in Tulsa. Photographed are: (Front row from left) Linda Thomas, Peggy Stockwell, Judge Patricia Parrish, Judge Kimberly West. Middle row: OBA President Renée DeMoss, Kimberly Hays, Judge Deborah Barnes, Judge Lisa Tipping Davis, Kay Floyd, Justice Noma Gurich. Top row: Deirdre O'Neil Dexter, Jan Grant-Johnson. Photo credit: Ralph Schaefer, Tulsa Business News.

Pioneers Inspire Women Lawyers Today

By OBA President Renée DeMoss

In *Leading the Way: A Look at Oklahoma's Pioneering Women Lawyers* (Oklahoma Bar Association, 2003), retired 10th Circuit Justice Stephanie Seymour quotes Susan B. Anthony on the issue of remembering. In 1894, Susan B. Anthony was working tirelessly to help women obtain the right to vote.

She knew that once she was successful — once women did obtain the right to vote — that people would soon forget that there was ever a time when women didn't have that right. This is what Ms. Anthony said in 1894:

We women shall someday be heeded. And when we shall be heeded, and have our amendment, everybody will soon think it was always so, just exactly as many young people believe that all the privileges, all the freedoms, all the enjoyments which women now possess always were theirs. They have no idea of how every

continued on next page

of the legal profession and women 34 percent. In Oklahoma, men make up 68 percent of the profession and women 32 percent. In Fortune 500 companies, men have 79 percent of the general counsel positions and women 21 percent. Among our federal court judiciary, 76 percent of the judges are men, and 24 percent are women. In our state courts, 73 percent of the judges are men, and 27 percent are women.

In 2013, a woman lawyer's average weekly salary was only 78.9 percent of a man's; women lawyers in the U.S. today are making 21 percent less than men lawyers.

"We are not at the end of our journey, we are only in the middle" said Ms. DeMoss. "Our current generation of women lawyers should honor those who came before us while continuing to push forward for those who will come after us. This is why the Spotlight Awards are important and why we continue them today."

single inch of ground that they stand upon today has been gained by the hard work of some little handful of women in the past.

It is these "little handful of women" who still inspire us today, and we honor and remember them when we consider the Spotlight Awards. In particular, I want to briefly share what three of those Oklahoma women of the past had to say about their legal careers.

Freddie Andrews (born in 1895, admitted to the Oklahoma bar in 1934) – Ms. Andrews began her practice in Ada. She said that for many years, the only way she could get potential clients in the door was to use the name "Fred" Andrews, not "Freddie." She said this did get them in the door, but once they were there, they often insisted on seeing a "real" lawyer – meaning a man.

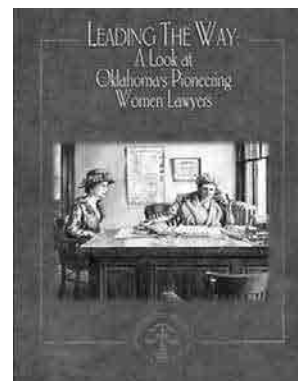
Grace Elmore Gibson (born in 1886, admitted to the bar in 1929) – Ms. Gibson's husband was a judge, and she said she started studying law so she could "be a good listener when her husband talked." One time, after she asked her husband a question about one of his cases, he said, "I forgot for a moment that you don't understand law." Shortly after that, she began pursuing a legal career.

In her practice, she often tried jury cases, even though at that time women couldn't serve on juries, and couldn't in Oklahoma until 1952. So when she had a jury trial, she was addressing only men jurors. About this, she said that she found herself "being a woman first, and then a lawyer, not because she wanted it that way, but because her colleagues were so acutely conscious that a woman was in the courtroom lawyering."

Florence Adelia Revelle (born in 1903, admitted to the Oklahoma Bar in 1933) – She opened her first law office in Ardmore "upstairs from Brenda's Flowers on Main Street." While she stated that she never felt discriminated against in her career, she still had to stop practicing law because her husband's employer thought that a woman's place was in the home.

She had great stories to tell about her career. In one, she talked about a time when she was in an office in Ardmore and saw a couple staring at her. She heard the man say, "I think that is that lady lawyer." The woman replied to him — in what Florence described as a good and loud voice, "She may be a lawyer, but she ain't no lady."

Leading the Way: A Look at Oklahoma's Pioneering Women Lawyers is available for purchase from the Oklahoma Bar Association. Contact the OBA Communications Dept. for more information.



Kick It Forward

New YLD Program to Help Financially Struggling Bar Members Pay Their Association Dues

By Jennifer Heald Castillo

In keeping with the Young Lawyer Division's history of providing service, the OBA YLD is pleased to announce a new service project for 2015. The Kick It Forward program was designed to provide lawyers in need with financial assistance in paying their OBA dues.

As explained by OBA YLD Chair-Elect LeAnne McGill, "The OBA YLD received an email earlier this year from a fellow young lawyer asking for assistance in paying his yearly bar dues. This young lawyer was struggling to make it on his own since he was unable to find a job at a law firm. Many of us know at least one lawyer who is either unemployed or underemployed after graduating from law school. With hefty law school loan payments and little or no income, these new lawyers are faced with paying their OBA dues to maintain their license to practice law in Oklahoma or paying for more basic needs such as rent, groceries and utilities. The Kick It Forward project was born out of a desire to help fellow law-

yers with financial difficulties."

The Kick It Forward program will be funded through donations made specifically to the program through an election on your next OBA dues statement. By checking the "Kick It Forward" line item on your dues statement, lawyers agree to pay \$20 to the Kick It Forward program (or the amount of your choice) on top of annual dues. Additional funds for the Kick It Forward program will be raised through a Kick It Forward Kickball Tournament held in Oklahoma City in early April or late May of 2015.

Check upcoming editions of the *Oklahoma Bar Journal* for additional details. One-hundred percent of the funds raised through the Kick It Forward election on OBA dues statements and the Kickball Tournament will be used to pay the



bar dues for our fellow lawyers in need.

WHO IS ELIGIBLE TO APPLY?

Eligible recipients of the Kick It Forward program will be attorneys who: 1) are currently licensed and in good standing with the OBA; 2) reside primarily in Oklahoma; 3) are actively engaged in the practice of law or searching for legal employment; 4) are earning less than \$1,500 gross each month; and 5) are willing to "Kick It Forward" and pay at least the amount paid on the attorney's behalf back into the program at some

Look for the Kick It Forward line item on your OBA dues statement to help fund this program.

future date. They do not need to be YLD members.

Upon approval of an application, the Kick It Forward program will pay all or a portion of an attorney's bar dues for the calendar year in which that attorney submitted an application for assistance. If the number of applicants and eligible recipients exceeds the funds available in the program, each approved recipient will receive an equal share of the available funds. The funds available in

the Kick It Forward program are available on a one-time basis only. In addition, each recipient agrees to a moral obligation to repay the funds paid for his or her benefit back into the program at some future date. Applications for the Kick It Forward program will be made available on the OBA website in 2015.

For additional information, contact LeAnne McGill at leanne@mcgillrodgers.com

ABOUT THE AUTHOR



Jennifer Heald Castillo is the Kick It Forward program co-chair and practices at Hall Estill in Oklahoma City. She is a past YLD chair.

OKLAHOMA INDIGENT DEFENSE SYSTEM

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The Oklahoma Indigent Defense System (OIDS) has an attorney position open in our General Appeals Division, Norman office.

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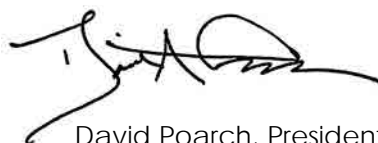
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Enhance Your Networking, Join a 2015 OBA Committee

Much of the work to make our association and profession better is done by committees. What they do is vital, and in so many different areas that there's something of interest to everyone. Meeting other lawyers and judges to expand your networking contacts is an extra bonus to committee work. Technology makes geography a non-issue. If you can't attend meetings in person, teleconferencing from your desk and videoconferencing in Tulsa make participation easy.

Ready to sign up? Option #1 - online at www.okbar.org, scroll down to the bottom of the page. Look for "Members" and click on "Join a Committee." Option #2 & #3 - Fill out this form and mail or fax as set forth below. I'm making appointments soon, so please sign up by Dec. 8, 2014. I look forward to working with you next year.



David Poarch, President-Elect

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

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Telephone _____ OBA # _____

Address _____

City _____ State/Zip _____

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Committee Name

1st Choice _____

2nd Choice _____

3rd Choice _____

Have you ever served on this committee? If so, when? How long?

1st Choice ☐ Yes ☐ No _____

2nd Choice ☐ Yes ☐ No _____

3rd Choice ☐ Yes ☐ No _____

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

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

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

Fax: (405) 416-7001

Standing Committees

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- Bar Association Technology
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- Civil Procedure and Evidence Code
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- Law Day
- Law-related Education
- Law Schools
- Lawyers Helping Lawyers Assistance Program
- Legal Intern
- Legislative Monitoring
- Member Services
- Military Assistance
- Paralegal
- Professionalism
- Rules of Professional Conduct
- Solo and Small Firm Conference Planning
- Strategic Planning
- Uniform Laws
- Women in Law
- Work/Life Balance

What Hasn't Changed in the Practice of Law?

By John Morris Williams

We all perceive we are young and immortal until we begin to find out most of the heroes of our youth are long gone — and our peers qualify for a senior citizen discount. It is with yet another AARP membership application in my mailbox that I presume the right to look back a bit.

Cell phones, fax machines, personal computers, virtual law offices, iPads and email were all things in the future when I began practicing law. All of them are common and essential now. Technology has so advanced and intertwined itself into the practice of law that the ABA in Ethics 20/20 places an ethical obligation on being tech savvy. I will leave the testing of that knowledge to someone else.

Sure, lots of things have changed. But the essentials of being a good lawyer have not. First and foremost is the utmost in integrity in dealing with clients, courts and peers. No matter how many gadgets you own, none of them can replace or repair your reputation. Your integrity is found not only in your words, but also in your deeds. We continue to see increasing claims on the Clients' Security Fund. Unfortunately, a very small percentage of our peers give ready ammunition to those who wish to condemn our entire profession. What hasn't

changed is that your word should be your bond, and your trust account should balance every day.

Another thing that has not changed is that good lawyers are professional and civil. They work hard for their clients, show up when they are supposed to and bend over backwards to ensure the client's case, not the lawyers' disagreements, is the exclusive matter to be resolved.

Above all else, the one certain thing that has not changed is that people need our help. As legal costs continue to increase, we find more people unable to afford legal services. Since the beginning of our profession, lawyers have had an obligation to ensure that the rule of law is upheld for both the popular and the unpopular. So too have we had an obligation to ensure that both the wealthy and the pauper have their day in court. That means that some days we have to lay down our billing tool and pick up the cause of those who cannot pay. The justice system that sustains us is only sustainable if truly there is "justice for all." The call of the Constitution for all people to stand equally before the bar of justice has not changed.

Another thing that unfortunately has not changed is that lawyers are not universally loved and appreciated for our

efforts in sustaining our democracy. It is still our place and our job to advance justice and call to account those who violate the law and the Constitution. I see every day great lawyers who against great odds and personal sacrifice ensure that justice prevails. I am so glad that has not changed.

Lastly, the other thing that has not changed is that the system is not perfect. Comparing the world over, there exists no better legal system. However, the system does not always work. The good news is that one enduring principle of the practice of law has not changed one bit — lawyers work for solutions to perfect the system. One shining example is the Innocence Project. It is lawyers on both sides of the bar who toil to ensure that when the system fails, justice still be sought. From the day I took my oath until this day that has not changed one bit.

Ethically, professionally and unselfishly taking care of people's problems and upholding the rule of law has not changed one bit.



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

Thinking About Tomorrow

By Jim Calloway

“Navigating the Changing Legal Profession” is the theme for this month’s edition of the *Oklahoma Bar Journal* and the OBA Annual Meeting. That’s a topic in which I have much interest. Every lawyer not actively engaged in finalizing their retirement plans should also pay attention to future trends.

But it’s not that easy.

First of all, lawyers are busy — really busy. When your plate is completely full, it is hard to invest a lot of time considering things that may or may not happen years in the future. Second, lawyers operate in a world based on adherence to precedent and minimization of risk. “We’ve always done it that way” is often persuasive in many business settings and certainly sets the tone for much of the legal profession. So the fact that many of those discussing the future of the legal profession predict significant change ahead does not make for a welcomed message. We all cope with change, but few of us really enjoy it.

Oklahoma lawyers have several opportunities to become more educated about the future and potential changes for the legal profession this month.

Here’s my quick list for you:

1) Buy a copy of Professor Richard Susskind’s *Tomorrow’s*

Lawyers today and see how much of it you can read before the OBA Annual Meeting. (Amazon has the Kindle version for \$10.49 and the physical book for \$18.86 as this is written.)

2) Register for and attend the OBA/CLE program “Tools for Tomorrow’s Lawyers” Nov. 12 in Tulsa. Register at <http://goo.gl/J2kJhn>. I served as program planner for this, and I will start the day with a presentation titled “Lawyers and Change: How to Survive in the Future You Didn’t Expect” followed by a lineup of great programs by a number of great presenters.

3) Register for and attend the OBA Annual Meeting where on Nov. 14 you will have the opportunity to hear Professor Richard Susskind speak twice, first at the President’s Breakfast panel discussion (MCLE credit for registered attendees) and then at the Annual Luncheon. Register at www.amokbar.org. Annual Luncheon tickets must be purchased separately.

4) Schedule an uninterrupted hour (just one hour!) the week or weekend after OBA Annual Meeting for you to think about the presentations above and determine what is most important for your practice. Make some notes and plans about what you plan to do for your response.

I’m not objective about critiquing my own advice, but my prediction is you will determine that one priority is to do a better job of documenting your processes and building your checklists and unique office procedures manual. You may even order a copy of the *Checklist Manifesto* by Atul Gawande, if you have not read it previously.

Why do I say that? Because that is the low-hanging fruit — the part that is understandable and unobjectionable. You may be skeptical of some of the darker, more challenging predictions of the future of lawyers, about whether artificial intelligence will really be applied to legal advice someday, the meaning of venture capital money flooding into legal service startups or whether consumers will increasingly turn to do-it-yourself legal websites for their needs. But it is hard to argue that it’s a bad thing to document office processes so that everyone is following best practices and using checklists to deliver a consistent work product more quickly and efficiently. This will result in almost immediate benefits whatever the future holds.

But even that simple (and some may say obvious) first step to reorganizing your law office comes at a cost. For the busy solo practitioner, it is another significant investment

of time that is not billable to clients, even though it might lead to greater profitability in the future. For the lawyer in a firm, whether small or large, there may be resistance and institutional challenges.

Here's just one example: A law firm should harness the creativity and talents of the lawyers involved to produce the very best result for every single client. That means that law office staff should no longer open new client files one way for one lawyer's file and a different way for another lawyer. Internal standardization is important for your future success and that applies to file setup as well as uniform language in routine documents. If all of the lawyers in a firm cannot agree on whether "COMES NOW the plaintiff" language in a petition should be maintained or retired as superfluous, then that is not a positive sign regarding other decisions that will need to be made for the firm in changing times.

WHAT DO I REALLY THINK ABOUT THE FUTURE OF LAW PRACTICE?

The answer to that question, as Professor Susskind demonstrates, merits more of a book-length response than one the length of a bar journal article.

But I think it is safe to predict that there is a lot of truth in the title of Professor William D. Henderson's law review article, "Three Generations of U.S. Lawyers: Generalists, Specialists, Project Managers."⁷¹ Even though legal ethics rules prevented most lawyers from using the term "specialist," we all know that few lawyers have been comfortable doing "everything" for quite some time now and even most remaining general practitioners have a net-

work for referrals and associating with other lawyers on some types of legal work.

Certainly a major trial or large transaction closing is already an exercise in project management skills and legal skills. With the combination of increasingly powerful technology tools and more people with deep expertise and skills in limited areas, tomorrow's lawyers may find themselves acting like the conductor of the orchestra, managing both technology tools and people to accomplish good legal work.

“A law firm should harness the creativity and talents of the lawyers involved to produce the very best result for every single client.”

I would also direct your attention to Professor Henderson's blog post on The Legal Whiteboard² "A Counterpoint to 'The most robust legal market that ever existed in this country,'" where he makes the observation that "the artisan lawyer cannot keep up."

This is not to say that the future for the legal profession is overwhelmingly negative.

Ken Grady is the chief executive officer of SeyfarthLean Consulting, a company that works with organizations around the world to provide solutions for in-house legal departments and other strategic

business units. On the company blog, he writes "Lawyers, the End is Not Nigh for You – Bring Wisdom."⁷³ I would encourage you to read his entire post, but he gave me permission to share this great example of a lawyer's wisdom with you.

Lawyers Are Processors With Wisdom

While I agree we will continue to see routine legal processing moved from lawyer to computer, I disagree with Mr. McClead's basic premise that law firms and lawyers are nothing more than legal processors. Processing is part of what we do, and an important part, but not all of what we do. The part missing from the legal processor description can best be summarized as wisdom.

A client asks for advice on firing an employee. The employee's performance has been rated average for most of her almost 30-year career. In the past three years, however, her performance has slipped. She is 59 years old and has failed to keep up with technology. She can do work on a computer, but others in her department are faster and more facile with software. Her department manager, an up-and-coming manager in his late 30s, is under pressure to increase productivity. He wants to terminate the employee and bring in a replacement (who he already has identified) who is in her early 40s. The question to you is whether the risk of the company getting sued is relatively low if the manager fires the employee.

This seems like a straightforward question for Mr.

McClead's digital legal processor. Identify the risk factors, consider the law in the relevant jurisdiction, and compute a probabilistic risk range for a lawsuit.

A good lawyer will go further. When did the employee's performance start declining? Is she well-liked amongst her peers? Is the company aware of any changes affecting her at the time her performance dropped off? Apart from performance, what is her history with the company? Since the employer is a family-owned business in a smaller community, does she have other connections to the company?

As the lawyer flushes out the story, we learn that the employee lost her mother to cancer and her son, a Marine, to enemy fire, within three months of each other. It was a few months later that her performance level started to decline. She joined the company 30 years ago when the founder hired her as the company's first customer service representative. She knows everyone in the company and is very well liked. Because she has been around so long, she is the unofficial company historian and

employees frequently consult her about products or services. Her co-workers don't complain about her performance level. Rather, they have gone out of their way to help her keep going. She has planned for years to retire at age 62 when her husband retires and they can move into their lakeside cottage. Her sister and brother-in-law both worked at the company.

Based on all of the information, the lawyer advises the department manager that he could fire the employee and, while there is some risk of a lawsuit, the likelihood of a successful one is manageable. But, the lawyer encourages the department manager to think more broadly about how to handle the situation. The company is financially strong, notes the lawyer. She suggests the department manager work with the human relations department to find a different role for the employee for the remaining two-plus years until her planned retirement. The new role would allow the employee to keep working, recognize that she probably feels the pressure of not being technologically adept, and would allow her to retire with dignity while reinforcing

to the other employees that they are valuable to the company."

Reprinted with permission.

Be wise. Work hard. Take good care of your clients. None of those tools for success are likely to change in the future.

Your incorporation of project management skills and the smart use of technology should be and will be increasing in the future. Mr. Grady also notes in a subsequent blog post that the role of lawyers will change as technology takes over a substantial portion of what we do today. That is not happening with the sunrise tomorrow. But it is evolving for our tomorrows. Today's office procedures manual may become tomorrow's automated law firm process, which might be the very best reason to start documenting and developing your procedure manuals today.

1. *Maryland Law Review*, Vol. 70, No. 1, 2011
Online: <http://goo.gl/PfId3H>
2. <http://goo.gl/csPKvL>
3. <http://goo.gl/563IFW>

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!

Meeting Summary

The Oklahoma Bar Association Board of Governors met at the Hyatt Regency Hotel in Tulsa on Friday, Aug. 22, 2014.

REPORT OF THE PRESIDENT

President DeMoss reported she conducted the annual evaluation of the executive director, presented 50- and 60-year membership pins to practitioners at a ceremony in Ardmore and wrote an *Oklahoma Bar Journal* article. She was honored for her contributions to the legal profession by the TU College of Law at a back-to-school welcome reception, attended by students, faculty, alumni and members of the Oklahoma legal community. She participated in Professionalism Committee Symposium planning, planning sessions for the OBA Annual Meeting, OBA/OBF joint meeting, lawyer succession/transition planning, Trial College planning and planning sessions for the Law Schools Committee visit at OU. In Boston she attended ABA meetings as an Oklahoma delegate and the meetings of the Southern Conference of Bar Presidents and National Conference of Bar Presidents.

REPORT OF THE VICE PRESIDENT

Vice President Shields reported she attended the July Board of Governors meeting, Diversity Committee meeting, meetings and conversations with OBA Ethics Counsel Travis Pickens and President

DeMoss regarding lawyer succession materials and the TU College of Law reception for President DeMoss. She also worked on planning for the joint board event for OBA/OBF in September.

REPORT OF THE PRESIDENT-ELECT

President-Elect Poarch reported he attended the July board telephone conference meeting, Solo & Small Firm Conference Planning Committee meeting and initial 2015 OBA budget meeting with Executive Director Williams and Administration Director Combs. He attended the ABA Annual Meeting, Southern Conference of Bar Presidents meeting and National Conference of Bar Presidents meeting, all in Boston.

REPORT OF THE PAST PRESIDENT

Past President Stuart reported he attended the July Board of Governors meeting, executive director review, National Conference of Bar Presidents and Southern Conference of Bar Presidents meetings and served as an ABA House of Delegates delegate in Boston.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he participated in numerous conversations with staff members and vendors regarding the new management software. He attended a 50- and 60-year membership pin event in Ardmore with

President DeMoss, NABE and NCBP meetings, staff budget meetings, a budget meeting with President-Elect Poarch, Tulsa County Bar Association annual luncheon and TU College of Law reception.

BOARD MEMBER REPORTS

Governor Dexter reported she attended the July Board of Governors meeting held by conference call, Creek County 100th anniversary celebration at the Creek County Courthouse, Tulsa County Bar Association annual luncheon and reception honoring President DeMoss, held at the University of Tulsa College of Law. She also solicited and received nominations from past recipients for the 2014 Mona Salyer Lambird Spotlight Awards and solicited award nominations for OBA awards by email and telephone. **Governor Hays** reported she attended the July Board of Governors meeting, TU College of Law reception for President DeMoss, OBA Family Law Section monthly meeting, OBA FLS Trial Advocacy Institute as a mentor, OBA FLS Annual Meeting Planning Committee meeting and Creek County Courthouse 100 year celebration. She also communicated with the Professionalism Committee regarding CLE planning. **Governor Jackson** reported he attended the Board of Governors Audit Committee meeting, several Bankruptcy Judge Selection Committee meetings for the U.S. Bankruptcy Court for the Western

District of Oklahoma and the July Board of Governors meeting. **Governor Knighton**, unable to attend the meeting, reported via email he attended the July Board of Governors meeting. **Governor Marshall** reported he attended the July board meeting by telephone, Licensed Legal Intern Committee meeting in Oklahoma City and TU reception honoring President DeMoss.

Governor Parrott reported she attended the July Board of Governors meeting, Audit Committee meeting and the reception honoring President DeMoss. As an Awards Committee member, she solicited OBA award nominations by email and telephone. **Governor Sain** reported he participated in the July Board of Governors meeting and McCurtain County Bar Association meeting. He raised more than \$35,000 at a charity auction he organized for a young boy diagnosed with cancer in his community.

Governor Smith reported he attended the July Board of Governors meeting and the Muskogee County Bar Association meeting. **Governor Stevens** reported he attended the July Board of Governors meeting, August Cleveland County Bar Association meeting, retirement reception for Judge Charles Johnson and Rules of Professional Conduct Committee meeting. **Governor Thomas** reported she participated in the nominations process for the 2014 Mona Salyer Lambird Spotlight Awards. She attended the Washington County Bar Association monthly meeting and reception honoring President DeMoss, held at the TU College of Law.

YOUNG LAWYERS DIVISION REPORT

Governor Hennigh reported he chaired a YLD board meeting at which board members assembled bar exam survival kits, and the division will hold social events next month for new members. Next year 10 YLD board seats will be vacant, and they are looking forward to new faces. He was proud to announce that the YLD recently received a first place Award of Achievement from the ABA for the division's community service during 2013.

BOARD LIAISON REPORTS

Governor Hays reported the Solo & Small Firm Conference Planning Committee held its first meeting to begin planning next year's conference. Based on good reports received from this year's attendees, the conference will be held again at the Hard Rock Casino Resort in Tulsa. Vice President Shields reported the Diversity Committee held a meeting via conference call. President DeMoss said the committee's guest speaker, Paulette Brown, has asked to come to Oklahoma the day before the Diversity Committee conference to meet with students. Governor Stevens reported the Rules of Professional Conduct Committee discussed proposed changes to Rule 3.3 and will not revisit the issue of duty to report fraud to the court.

2014 AUDIT REPORT

Auditor Stacey Vascellaro with Smith Carney said this is the accounting firm's fifth year to conduct the audit of the OBA. She reviewed the firm's findings in which the association's assets have increased and expenses were reduced

4 percent compared to last year. She reported auditors followed several financial transactions and found no problems. There were no issues with the audit to discuss. The board voted to accept the audit report.

KICK IT FORWARD PROGRAM

The board approved the Young Lawyers Division request to include on the 2015 dues statement the opportunity to donate to the Kick It Forward Program. It was noted the other donation options on the dues statement are the Oklahoma Bar Foundation and Lawyers Helping Lawyers Foundation.

INFORMATION TECHNOLOGY STRATEGIC PLAN REPORT

Executive Director Williams reported a draft of the 2015 budget worksheet for the Information Technology Department has been prepared and implementation of the new member database is underway. The OBA will need to continue to build on the system, such as adding the ability to track members' MCLE credit from about 800 CLE providers in Oklahoma and many states. The many variables make adding the MCLE component to the association management software system a challenge. He said an outside source will be hired to build the system. Executive Director Williams reported videoconferencing is another project under consideration with a lot of options. Tulsa-area board members expressed their opinions that videoconferencing is an important member benefit. Improvements will also need to be made to the OBA website to

make it more mobile device friendly. The OBA-NET online message board and file sharing member benefit is old technology with minimal tech support. Another software to replace OBA-NET is being considered. He said technology is a major investment with many projects identified, and funding will need to be ongoing.

PROFESSIONAL RESPONSIBILITY COMMISSION

The board approved President DeMoss' recommendation to appoint F. Douglas

Shirley, Watonga, to complete the unexpired term of Jon Parsley, who was appointed to the bench. The term will expire Dec. 31, 2015.

EXECUTIVE SESSION

The board went into executive session to discuss the executive director's evaluation.

RECENT EXPERIENCES OF STATE BAR ASSOCIATIONS

Executive Director Williams shared with board members the background of recent legislative challenges to unified/

mandatory bar associations in Wisconsin, Utah and Nebraska. He noted this seems to be a trend across the country.

NEXT MEETING

The Board of Governors met Sept. 26 in Oklahoma City and Oct. 24 in Lawton. A summary of those actions will be published after the minutes are approved. The next board meeting will be Wednesday, Nov. 12, 2014, at 4 p.m. at the Hyatt Regency Hotel in Tulsa in conjunction with the OBA Annual Meeting.

www.okbar.org
Your source for OBA news.



At Home



At Work



And on the Go

2014 Grant Awards

The OBF is Achieving its Mission

By Dietmar K. Caudle

The Oklahoma Bar Foundation Board of Trustees is pleased to announce 2014 Grant Awards approved at the Sept. 25 Trustee meeting in Oklahoma City. The year-to-date total for the regular OBF Grant Awards, Court Grant Awards and law student scholarships is \$460,681. By year's end, this total is expected to increase to \$500,000 with the help of our generous contributors. The list of the 18 regular grant award recipients is as follows:

Center for Children & Families Inc.

Funding for general support of the free Divorce Visitation Arbitration program that provides services to work with the court in the provision of parent education and monitoring of court ordered supervised visitation and exchange services for children in Cleveland County. \$10,000

Community Crisis Center Inc.

Funding of the part-time domestic violence/sexual assault victim's OBF court advocate position for Ottawa County. \$5,000

Domestic Violence Intervention Services/Call RAPE Inc.

Funding to support the domestic violence/sexual assault victim's Tulsa County court advocate position for delivery of civil legal services to low-income survivors. \$12,000

Family & Children's Services Inc.

Funding of Tulsa Family Court program to support children's

required participation in the "Helping Children Cope with Divorce" program in Tulsa County area. \$7,000

Family Shelter of Southern Oklahoma, Victims of Domestic Violence Program

Funding toward support of the domestic violence/sexual assault victim's Court Advocate position for Carter and Murray Counties. \$5,000

Legal Aid Services of Oklahoma, Inc.

Funding for unrestricted operational expenses to provide access to civil legal services for low-income and elderly Oklahomans, statewide service area. *\$106,200

Low-Income Taxpayer Legal Clinic at OILS

Provision of legal services statewide for all low-income Oklahomans providing legal tax help and education through tax court representation. \$10,000

Marie Detty Youth & Family Services Center

Funding toward support of the domestic violence/sexual assault victim's Court Advocate position in a six-county area with emphasis in Comanche County and Fort Sill. \$12,000

OBA-YLD Oklahoma High School Mock Trial Program

Overall program support in total for presentation of the high school mock trial program through national competition, statewide coverage. \$46,600

OCU School of Law, American Indian Wills Clinic

Funding for clinic staffing plus travel costs to provide legal services and to further educate the legal community on complex Indian land issues in Oklahoma, statewide services with an emphasis in western portions of the state while providing law students with education and professional development opportunities. \$18,000

Oklahoma Lawyers for Children Inc.

Funding to maintain legal assistance and advocacy to children and financial assistance with new attorney GAL program for representation of traumatized innocent children in juvenile court and emergency showcase hearings in state's largest county, Oklahoma County. \$40,000

Senior Law Resource Center, Elder Law Educational/Outreach Program

Funding to support the law student elder law intern program to provide assistance with research, provision of free legal services and educational outreach programs to promote informed thoughtful diminished capacity, incapacity planning and elder financial exploitation while providing law students with education and professional development opportunities \$12,000

Teen Court Inc.

Operational costs of the first offender program and education of students for positive resolution of

misdeemeanor offenses in Comanche County area. \$17,500

Tulsa Lawyers for Children Inc.

Funding to maintain staff to provide legal assistance and advocacy to children and continued program expansion for representation of traumatized innocent children in juvenile court and emergency showcase hearings in state's second largest county, Tulsa County. \$25,000

TU Boesche Legal Clinic, Immigrants Rights Project

Funding for the clinical legal education program to provide legal services to vulnerable non-citizen residents of Oklahoma while providing law students with education and professional development opportunities to include court travel costs outside of the state, interpreters and expert witness fees not provided by other means; services in Tulsa County and the eastern portion of the state. \$6,766

Wlm. W. Barnes Children's Advocacy Center, Child Abuse Training Program

Funding to support a professional multidisciplinary team training approach for training and support to recognize, respond and report child abuse for educational, law enforcement, childcare and welfare personnel in an effort to reduce further trauma to child abuse victims in Rogers, Mayes and Craig Counties \$3,000

Youth Services of Tulsa, Broken Arrow Youth Court

Provision of funding for first offender youth court for the legal services portion of the program in Broken Arrow area. \$5,000

YMCA, Statewide Youth In Government Program

Funding of the Youth Model Legislative Day at the Capitol, 7th and 8th grade students, and student

scholarships for Judicial Program Competition at the ABA in Chicago \$4,000

Total Regular OBF Grant Awards: \$345,066

**amount to be revisited at the close of the year*

Following the day-long applicant interview meeting on Aug. 22, the OBF Grants and Awards Committee submitted grant recommendations to the board with the assistance of OBF Trustee Jeffrey Trevillion Jr.'s



OBF President Dietmar Caudle and OBA President Renée DeMoss celebrate grant awards with their boards at a recent joint dinner.

nonprofit financial analysis for 2013-2014, detailing grantee revenue, salaries, salary revenue ratio, number of clients served and cost per client served. Mr. Trevillion's commentary included an assessment of the grantee organization's qualified or unqualified independent auditor reports. Some \$590,000 in needs was reviewed with \$345,066 available for awards. These 18 statewide grant programs served more than 56,000 Oklahomans and their families through their ability to advance education, citizenship and justice.

These grant awards would not have been possible without our revenue sources from our Fellows, Community Fellows, Cy Pres Awards, IOLTA trust account income and donations from Oklahoma citizens who

entrust their charitable gifts to the OBF Board of Trustees. The OBF truly remains the charitable heart of the Oklahoma Bar Association.

As an illustration of teamwork, the Oklahoma Bar Association Board of Governors and the Oklahoma Bar Foundation Trustees met for their annual joint dinner in Bricktown on Sept. 25 to collaborate and celebrate the grant awards. The group of bar leaders and staff enjoyed viewing a segment of

the new OBF Video Story depicting grantee success stories. The OBF theme of "Lawyers Transforming Oklahoma Citizens Lives" and its clearly defined mission of the promotion of justice, the funding of critical legal services and the advancement of knowledge of the law for all Oklahomans was boldly evident in the video that will be available to share during the November Annual Meeting and on the OBF website, www.okbarfoundation.org.

To be able to continue on this successful path of grant-giving so that more deserving Oklahomans can be served, the OBF reaches out to you as fellow lawyers to enlist a lawyer, law firm or affiliate group to join the OBF umbrella of giving today. Please remember that, "We cannot receive if we do not ask."



2014 OBF Fellow and Community Fellow Enrollment Form

Name, Group name, Firm or other affiliation _____

Mailing and Delivery address _____

City/State/Zip _____

Phone _____ Email _____

FELLOW ENROLLMENT ONLY

☐ Attorney ☐ Non-attorney

- | | |
|---|--|
| <input type="checkbox"/> I want to be an OBF Fellow now – Bill me later | <input type="checkbox"/> \$100 enclosed and bill annually |
| <input type="checkbox"/> Total amount enclosed \$1,000 | <input type="checkbox"/> New lawyer 1st year, \$25 enclosed & bill annually as stated |
| <input type="checkbox"/> New lawyer within 3 years, \$50 enclosed and bill annually as stated | <input type="checkbox"/> 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) |
| <input type="checkbox"/> I want to be recognized at the highest Leadership level of Benefactor Fellow and annually contribute at least \$300
(initial pledge should be complete) | <input type="checkbox"/> My charitable contribution to help offset the Grant Program Crisis |

COMMUNITY FELLOW ENROLLMENT ONLY

☐ OBA Section or Committee ☐ Law firm/office ☐ County Bar Association ☐ IOLTA Bank
☐ Corporation/Business ☐ Other Group

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

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

Signature and Date _____ OBA Bar # _____

Print Name and Title _____

OBF Sponsor (If applicable) _____

Kindly make checks payable to: Oklahoma Bar Foundation PO Box 53036 Oklahoma City, OK 73152-3036

405-416-7070 • foundation@okbar.org • www.okbarfoundation.org

THANK YOU FOR YOUR GENEROSITY AND SUPPORT!

Lawyers Urged to Embrace Future Legal Changes

By Kaleb Hennigh

In late September I attended the swearing-in ceremony and had the opportunity to address and welcome over 280 new young lawyers into our profession. Standing before them on the floor of the House Chamber at the Oklahoma State Capitol, I witnessed each new young lawyer recite an oath committing themselves to defending our laws and upholding its virtues. While addressing the new admittees during the ceremony, Chief Justice Tom Colbert stated something that continues to resonate with me today.

He instructed these new young lawyers that as they entered this profession, they are committing themselves to defending and protecting not only the laws that have been made, interpreted and enforced for many years, but also to laws that have yet to be made and more importantly to areas of this industry that have yet to be developed. That's right, the legal profession is one of constant change, whether due to science, technology or legal interpretation.

The profession we have chosen is exciting and will forever be evolving. We, as young practitioners, need to always remain progressive in our practice management and client services. This means not

only staying abreast of all the evolving case law and being vigilant in keeping our MCLEs current, but also looking for ways to keep our daily practice progressive, efficient and forward looking. We cannot rely on the procedures implemented by our predecessors or even those philosophies of current partners and practitioners who have been practicing for 30 or 40 years.

“The profession we have chosen is exciting and will forever be evolving.”

Our clientele and the industry itself is changing at a rapid pace, and in order to meet the challenges facing us, we must continue to be forward looking or we will be left behind. Fellow young attorneys, we must stay tuned in as to what is going on in current events both within our communities and on a national and global level.

You must be prepared to identify market trends and be vigilant in locating and learning about new industries to

effectively place yourself in a position of knowledge and to serve as an expert when phone calls or emails regarding legal repercussions of an action or the ramifications of a new development within an industry develops.

During my welcome on the House chamber floor, I encouraged all new admittees to harness the skills, talents and knowledge that they possessed prior to attaining admission to the bar and implement and incorporate them into their legal practice. Recently during the ABA YLD annual meeting in Portland, Ore., I met a young lawyer who has taken her skills and ambitions and brought them to her practice. This young woman has successfully managed to position herself at the center of one of the most popular entertaining sports industries today. She was conducting a CLE on the changing and evolving legal profession and was speaking about her own niche practice within the MMA, that being the mixed martial arts industry.

Tracey S. Lesetar is the general counsel for Bellator MMA, a mixed martial arts promotion organization owned by Viacom Media Networks. Following her presentation, I had an opportunity to visit with her one on one at a network-

ing breakfast, and she shared her story with me about how her own passion and practice of MMA lead her to be the sole attorney for one of the largest MMA promotional companies in the world. She has a fascinating story, is very easy to talk to and willing to share her story — hoping that so many other young attorneys will take their own passions and incorporate them into their profession.

For a more detailed look into Tracey's niche practice, you can find it at <http://goo.gl/fXjqu3>.

fXjqu3. Tracey wrote an article for *The Young Lawyer*, a publication within the ABA in which she goes into specifics about her practice and the way she made her way into the industry.

I challenge each of you to remain vigilant in your day-to-day practice. Commit yourselves to maintaining a progressive practice and incorporate your passion into your profession. I hope to see you all at the OBA Annual Meeting this month, where you can certainly find resources and net-

working opportunities to ensure you remain forward looking. Be great!!

ABOUT THE AUTHOR



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



YLD MEMBERS: Have you voted?

All Young Lawyer Division members (admitted to the practice of law within the past 10 years) should have received an email from the OBA with a link to YLD Board of Directors elections. Votes must be cast by 5 p.m. Friday, Nov. 7, 2014.

Election results will be announced at the YLD Annual Meeting held in conjunction with the OBA Annual Meeting and posted on the YLD website.

BEING A MEMBER HAS ITS PERKS

- ☐ **www.okbar.org** — main site or front door for the OBA with links to all other OBA Web presences and much information for members as well as a great deal of information for the public.
- ☐ **Online CLE** — quality OBA/CLE online programming, plus online seminar programs from other state bar associations. It's a convenient way to get up to six hours MCLE credit.
- ☐ **Practice management/ technology hotline service** — free telephone calls to the Management Assistance Program (MAP) staff and the OBA Director of Information Systems for brief answers about practical management and technology issues, such as law office software, understanding computer jargon, staff and personnel problems, software training opportunities, time management and trust account management. Call (405) 416-7008.



November

4 OBA Government and Administrative Law Practice Section meeting; 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Scott Boughton 405-717-8957

6 OBA Lawyers Helping Lawyers discussion group meeting; 6 p.m.; Office of Tom Cummings, 701 NW 13th St., Oklahoma City; RSVP to Kim Reber kimreber@cabainc.com

OBA Lawyers Helping Lawyers discussion group meeting; 6 p.m.; University of Tulsa College of Law, John Rogers Hall, 3120 E. 4th Pl., Rm. 206, Tulsa; RSVP to Kim Reber kimreber@cabainc.com

7 OBA Alternative Dispute Resolution Section meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City with OSU Tulsa, Tulsa; Contact Jeffrey Love 405-286-9191

11 OBA Closed – Veteran's Day observed

12-14 OBA Annual Meeting; Hyatt Regency, Tulsa; Contact Mark Schneidewent 800-522-8065

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 Mock Trial Committee meeting; 5:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Judy Spencer 405-755-1066

19 OBA Clients' Security Fund meeting; 2 p.m.; Oklahoma Bar Center, Oklahoma City with OSU Tulsa, Tulsa; Contact Micheal Salem 405-366-1234

Ruth Bader Ginsburg Inn of Court; 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Donald Lynn Babb 405-235-1611

27-28 OBA Closed – Thanksgiving observed

December

2 OBA Government and Administrative Law Practice Section meeting; 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Scott Boughton 405-717-8957



4 OBA Lawyers Helping Lawyers discussion group meeting; 6 p.m.; Office of Tom Cummings, 701 NW 13th St., Oklahoma City; RSVP to Kim Reber kimreber@cabainc.com

OBA Lawyers Helping Lawyers discussion group meeting; 6 p.m.; University of Tulsa College of Law, John Rogers Hall, 3120 E. 4th Pl., Rm. 206, Tulsa; RSVP to Kim Reber kimreber@cabainc.com

5 OBA Alternative Dispute Resolution Section meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City with OSU Tulsa, Tulsa; Contact Jeffrey Love 405-286-9191

OBA Family Law Section meeting; 3 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact M. Shane Henry 918-585-1107

6 OBA Young Lawyers Division meeting; 10 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Kaleb Hennigh 580-234-4334

Justice Sotomayor Visits State

U.S. Supreme Court Justice Sonia Sotomayor recently paid a visit to each of Oklahoma's three law schools and toured the Oklahoma Judicial Center. During her visit she talked to law students, faculty, alumni and others about issues such as diversity on the high court, tribal law issues, and challenges and opportunities facing the legal profession. While speaking at OCU School of Law on the 13th anniversary of the 9/11 terrorist attacks, she reflected on her experiences working in a courthouse near the World Trade Center in New York City.



U.S. Supreme Court Justice Sonia Sotomayor (center) is presented with a Kiowa Tribe ceremonial blanket during her visit to the Oklahoma Judicial Center. Making the presentation on behalf of the tribal chairperson were 2011 OBA President Cathy Christensen (left) and OBA President Renée DeMoss.



Justice Noma Gurich, keynote speaker ABA President-Elect Paulette Brown, Judge Vicki Miles-LaGrange and OBA President Renée DeMoss attend the OBA Diversity Conference in Oklahoma City.



Middle school students Cody and Ahmad, both members of the Oklahoma City Boys and Girls Clubs who have expressed interest in becoming lawyers, attended the conference as special guests of ABA President-Elect Paulette Brown (center). OBA Diversity Committee Co-Chair Ruth Addison and Vice Chair Diana Vermeire (far right) presented awards.

OBA Celebrates Diversity During Conference, Luncheon

Six individuals and organizations were recently recognized by the OBA Diversity Committee for their efforts promoting diversity in Oklahoma. The awards were presented during the annual OBA Diversity Conference held in October in Oklahoma City. American Bar Association President-Elect Paulette Brown served as keynote speaker during the conference, sharing her own experiences as the first woman of color elected to the top ABA leadership position. Also taking place was a panel discussion focusing on the topic of diversity in the legal profession. Serving as panelists were Judge Jerome Holmes of the 10th Circuit Court of Appeals; Melvin Hall, shareholder with the Riggs Abney Law Firm, and Loretta Radford, first assistant for the U.S. Northern District Attorney's Office.

Photo highlights from the event are available on the OBA website at www.okbar.org/members/photogallery.



Loretta Radford, Melvin Hall and Judge Jerome Holmes serve as panelists during the OBA Diversity Conference.

Heroes Update

Nearly four years ago, on Veterans Day 2010, the OBA launched Oklahoma Lawyers for America's Heroes to provide free legal advice and assistance to qualifying active duty servicemen and women and veterans. **The program recently reached a milestone – more than \$2.5 million in legal services have been donated by Oklahoma lawyers through the Heroes program.** More than 600 lawyer volunteers have participated and more than 3,100 heroes have received services under the program.

A great need still exists for Oklahoma lawyers to volunteer for the program, especially in the area of family law. The mission is to offer one-on-one legal counsel to those members of the guard or reserve who are currently or have honorably served this nation who otherwise cannot afford or do not have access to the services they need. Please visit www.okbar.org/heroes to learn more about program and sign up to volunteer!



LHL Discussion Groups Host Upcoming Meetings

The Lawyers Helping Lawyers monthly discussion groups next meet Nov. 6 when the topic will be "The Challenges of Coping with the Loss of a Loved One." Each meeting, always the first Thursday of each month, is facilitated by committee members and a licensed mental health professional. 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.

- Tulsa meeting time: 6 – 7:30 p.m. at the TU College of Law, John Rogers Hall, 3120 E. 4th Place, Room 206.

- Oklahoma City meeting time: 6 – 7:30 p.m. at the office of Tom Cummings, 701 N.W. 13th Street.



**LAWYERS HELPING LAWYERS
ASSISTANCE PROGRAM**

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.



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!



Kudos

Dwight L. Smith of Tulsa has been appointed to a new American Bar Association Commission on the Future of Legal Services for a one-year term commencing at the conclusion of the recent ABA Annual Meeting in Boston. He is a 1981 graduate of the TU College of Law.

Oliver S. Howard, an attorney with Gable-Gotwals in Tulsa, has been inducted as a fellow of the American College of Trial Lawyers. There are currently almost 5,800 fellows across the U.S. and Canada; membership can never be more than 1 percent of the total lawyer population of any state or province.

Monica Amis Wittrock of Oklahoma City has been appointed by Gov. Mary Fallin as the public member to the Oklahoma State Board of Licensure for Professional Engineers and Land Surveyors. She is senior vice president of First American Title Insurance Company and executive regional manager of Oklahoma, Kansas, Nebraska, Missouri, Wisconsin and Minnesota. She graduated from OU College of Law in 1982.

Charis L. Ward has been selected as a member of the board of directors of the Oklahoma City Neighborhood Services Organization. Ms.

Ward is agency counsel for First American Title Insurance Company. She graduated from Texas Tech University School of Law in 2006.

Associate District Judge Megan L. Simpson of Harper County was named the recipient of the first Northwest Oklahoma Pioneering Woman of Industry Award at a recent ceremony in Woodward. This inaugural award, sponsored by the *Woodward News* and various businesses in northwest Oklahoma, recognizes women from myriad industries, professions and life callings who are nominated by community members based on their contribution to moving women forward in traditionally male industries.

On The Move

Retired Court of Criminal Appeals Judge Charles A. Johnson will join Johnson Law Firm of Norman in an of counsel capacity. He will be available for consultation in appellate criminal practice and related matters. He may be contacted at 623 N. Porter, Suite 300, Norman, 73071; 405-579-9692; email: jgjlaw@sbcglobal.net.

First American Title & Trust Company in Oklahoma City announces that **Ryan W. Schaller** has joined the com-

pany as residential counsel. He graduated from the OU College of Law in 2011 and was previously in private practice in Enid.

Rebecca Sherwood of Tulsa has joined FirstTitle Commercial Services LLC as president. She has more than 30 years experience in commercial real estate and business transactions. Prior to becoming employed in the title insurance industry, she engaged in private practice in Oklahoma City and Tulsa. She is a graduate of OSU and the OU College of Law. Her office is located at 1500 S. Utica, Suite 400, Tulsa, 74104.

Sherwood, McCormick & Robert announces that **A.J. Martinez** of Tulsa has joined the firm as an associate. His practice will focus on business transactions, intellectual property including patents, trademarks and copyrights, and civil litigation in the areas of business torts, medical negligence, nursing home neglect/abuse, and personal injury. Mr. Martinez received his J.D. from TU College of Law in 2013.

Tulsa law firm Richards & Connor announces the addition of **Sidney D. Smith Jr., Stephen G. Layman** and **Matthew S. Saint** as associates. Mr. Smith's practice focuses on medical malpractice defense and general litigation. He received his J.D. from the Southern Methodist University Dedman School of Law in 2004. Mr. Layman's practice focuses on general

civil litigation and criminal defense. He received his J.D. from the TU College of Law in 2008. Mr. Saint's practice is in coverage litigation, general insurance defense litigation and bad faith litigation. He received his J.D. from the TU College of Law in 2013.

Stephanie L. Khoury has joined the Givens Law Firm in Oklahoma City. She practices in the areas of insurance defense with an emphasis in bad faith, personal injury, products liability, premises liability and construction defects. She received her J.D. from OU College of Law in 2009.

Durbin, Larimore & Bialick PC announces the addition of **Steve Sherman** to the firm as of counsel. His practice area is concentrated on real estate and business transactions, including asset acquisitions and dispositions, lease and land use work, and dispute resolution. He has served as the associate municipal judge for the City of Nichols Hills for more than 15 years, and he is currently the chairman of the Oklahoma Real Estate Commission. He received his J.D. from Santa Clara University School of Law in 1979.

Christin Mugg Adkins & Associates PLLC announces **Shane R. Leach** of Oklahoma City has joined the firm as an associate attorney. Mr. Leach earned his J.D. from OCU School of Law in 2014 and will focus on contested estate matters, probate, and oil and gas law, as well as expanding the firm's practice with the opening of a sat-

ellite office located at 603 Delaware Street, Perry, 73077.

Oklahoma City firm Denker and Butler PLLC announces that **Ammon Brisolara** has joined the firm as an associate attorney. He earned his J.D. from the OU College of Law in 2014. He will assist clients in litigation, probate, and criminal and family law matters, and he is fluent in both English and Spanish.

Alix R. Newman has joined the Tulsa law firm of Norman Wohlgemuth Chandler & Jeter as an associate. Ms. Newman earned her J.D. with distinction from the OU College of Law in 2014. During law school, she served as a representative for the Organization for the Advancement of Women in Law.

Amelia B. Recla of Amelia B. Recla Attorney at Law PLLC announces the practice has recently moved its offices to 3750 W. Main Street, Norman, 73072. Ms. Recla's focus is primarily on family law, as well as civil litigation and civil appeals. She can be reached at 405-310-2029.

Collins, Zorn & Wagner PC of Oklahoma City announces **Ethan W. Gee** has joined the firm as an associate. He graduated *cum laude* from OCU School of Law in 2014. He is the recipient of the Judge Dwain Box Memorial Award for his performance in appellate advocacy and is a member of the Order of Barristers. His focus is on civil rights and municipal liability litigation.

Joshua Merrill and **Michael Lambert** join GableGotwals as new associates. Mr. Merrill's primary focus will be on transactional law in the Tulsa office. He is a 2014 OU College of Law graduate, and he served as a summer associate at GableGotwals. Mr. Lambert will focus his practice on litigation in both state and federal courts in the Oklahoma City Office. He is a 2014 graduate of the OCU School of Law. He worked for the Oklahoma Supreme Court as a judicial extern and served as a summer associate at GableGotwals.

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

Submit news items via email to:

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

Articles for the Dec. 13 issue must be received by Nov. 10.

David Randal Barnes of Edmond died Oct. 9. He was born March 13, 1959, in Altus and grew up in the Deer Creek area, graduating from Deer Creek High School. He received his bachelor's degree from Central State University (now UCO) and his law degree from OCU School of Law in 1991. He practiced law as a sole practitioner for 15 years. In 2008, he felt called to become an educator and became a seventh-grade social studies teacher. He taught more than five years at Belle Isle Enterprise Middle School until illness forced him to retire this year. He is remembered for his passion for teaching and challenging his students to work hard, often saying it was a job he would do for no pay.

Retired Judge Ben P. Choate Jr. of Muskogee died Sept. 20. He was born on July 17, 1928, in Stillwater and graduated from Indianola High School. **He served in the U.S. Navy for two years during World War II, graduating from the Basic and Advanced Engineering School.** Following his discharge, he enrolled at Eastern Oklahoma A&M College and continued his education at OU. During his studies, he received his commission as a second lieutenant while participating in U.S. Army ROTC. **He was studying for his law degree when he was called to active duty during the Korean Conflict.** After his tour of duty, he received his J.D. from the OU College of Law in 1955. He served as county attorney of Latimer County and assistant county attorney of Pittsburg County. After a time spent in

private practice in McAlester, he began his career as an attorney for the U.S. Veterans Administration, where he spent 27 years, retiring in 1988 as assistant district counsel for the state of Oklahoma. Later that year he was appointed to the bench by Gov. Henry Bellmon, and served as a Workers' Compensation Court judge for six years in Tulsa and Oklahoma City. He was then appointed as a special district judge for a five county district in north-eastern Oklahoma, retiring from that position in 1996. **He had a lengthy military career spanning 35 years of service in the U.S. Navy, the U.S. Army, and the Army Reserve Corps, retiring with the rank of colonel.** He was an avid reader and had a keen interest in government, politics and history. Memorial gifts may be made to the Indianola Alumni Association or the Choate Prairie Baptist Church.

Herbert Maxwell "Max" Darks died Oct. 2. He was born Sept. 25, 1925, in Wetumka. **He enlisted in the U.S. Army Air Corps in 1942 at the age of 17 as an aviation cadet and graduated from flight training as a B-25 pilot. He was discharged from the Air Corps as a second lieutenant in late 1945 at the end of World War II.** He earned his J.D. from the OU College of Law in 1950. After completing his education, he returned to Hughes County to engage in the general practice of law. He served as Hughes County attorney from 1954 to 1958. He went on to practice law in Oklahoma City from 1961 to 1971, when he was then appointed assistant district

attorney in Oklahoma County. In 1972, he was appointed as a federal administrative law judge and served in that capacity until he retired in 2006.

Larry D. Hartzog of Oklahoma City died Sept. 22. He was born May 4, 1934. Larry cofounded the firm of Hartzog Conger & Cason (later Hartzog Conger Cason & Neville) in 1979. He was regarded by his colleagues as an extraordinary lawyer, skillful dealmaker, consummate legal strategist, mentor and friend. In the 1970s, he was featured in *Fortune Magazine* for his work on Wall Street in connection with the reorganization of the Hayden Stone investment banking firm, the creation of Shearson Lehman/American Express, and the reformation of the New York Stock Exchange. He later pioneered the first major "going private" transaction for a New York Stock Exchange-traded company, which became a blueprint for subsequent going private transactions across the country. He took great pride and satisfaction in the success of the firm and the success of each of its lawyers.

John B. Jenkins of Oklahoma City died Sept. 21. He was born Feb. 5, 1975, and was a 2006 graduate of the OU College of Law. He was an associate attorney with Commercial Law Group PC, practicing in the areas of business and corporate law, and commercial transactions.

Kay Karen Kennedy of Wynnewood died Oct. 1. She was born Oct. 22, 1947, in

Oklahoma City and grew up outside of Moore, graduating from Moore high school in 1965. She attended OU, where she received a degree in political science. She received her J.D. from the OCU School of Law in 1972. During her legal career, she was appointed an assistant attorney general in the early 1970s. She went on to be appointed as a Worker's Compensation Court judge and ultimately found a passion as managing attorney for Legal Aid of Western Oklahoma. At the time of her death, she was managing attorney for the Ardmore, Ada and Hugo offices. Along the way, she received a calling to become a United Methodist church pastor. Among her proudest accomplishments is helping to build a new home for the Paoli United Methodist Church.

Holcomb Bibb Latting Jr. of Riverside, Calif., died Aug. 1. He was born in Plant City, Fla., on Feb. 21, 1921, and grew up in Tulsa. After his graduation from Central High School, he attended OSU. He attended the Spartan School of Aeronautics where he earned a degree in aeronautical engineering. **He then served as a captain and pilot in the U.S. Air Force during World War II.** He started his long career with Douglas Aircraft Co. working at their plant in Tulsa, finishing his interrupted law degree at the TU College of Law in night school, earning his J.D. in 1950. Later he was transferred to the company's operations in California where he became president of Douglas Real Estate Company. He retired from the McDonnell Douglas Co. in 1986.

Donald James Leeman of Oklahoma City died Oct. 14. He was born July 15, 1928, and graduated from Ardmore High School. He received a B.S. in business from OU in 1950, program management degree from Harvard University in 1967 and a J.D. from the OCU School of Law in 1971. **He was commissioned an ensign in the U.S. Navy in June 1950 and attended the Naval Intelligence School, Washington D.C., completing three years of active duty during the Korean Conflict.** He returned to OU and helped develop and introduce the landman curriculum, working as a landman for Gulf Oil Co. before joining Beard Oil Company. He later formed Beard & Leeman, ultimately working independently. He was a member of Westminster Presbyterian Church, serving as a deacon and president of the men's association. He became a Stephen Minister in 2004. Memorial contributions may be made to Westminster Presbyterian Church Foundation or for Alzheimer's research through Oklahoma Medical Research Foundation.

Donald James Quigg of Falls Church, Va., died Sept. 21. He was born April 28, 1916, in Kansas City, Mo., and raised in Dewey. He graduated from OU with a B.S. in business administration, then attended the University of Missouri-Kansas City School of Law, graduating with a J.D. in 1940. Just after beginning in private practice, **he was inducted into the U. S. Army during World War II. He became an officer in the Field Artillery and was assigned to the 27th Division, stationed in the Pacific Theatre. He received**

a Silver Star for gallantry in action at Saipan, Mariana Islands, on June 27, 1944.

After the war, he moved to Bartlesville, where he began a 35-year employment with Phillips Petroleum Company, ultimately becoming general patent counsel. Upon retirement, he entered government service, and was appointed by President Ronald Reagan as deputy commissioner of the U.S. Patent and Trademark Office. Four years later, he was appointed as assistant secretary and commissioner of patents and trademarks. After leaving government service, he entered private practice and was senior partner at Novak Druce Connolly Bove and Quigg at the time of his death. He was inducted into the OBA Intellectual Property Section Hall of Fame and was presented numerous citations and lifetime achievement awards for his contributions in the areas of intellectual property, and patent and trademark law. Both the state of Oklahoma and the city of Bartlesville proclaimed Nov. 17, 1989, as "Donald J. Quigg Day." Memorial donations may be made to the Donald J. Quigg Memorial Fund at the Fairlington Presbyterian Church of Alexandria, Va.

Jack Marwood Short of Tulsa died Oct. 5. He was born Oct. 28, 1924, and was a native of Mangum. He graduated from Tulane University and the OU College of Law. **He was a veteran of the U.S. Navy.** During his legal career he was an assistant U.S. attorney for the Northern District of Oklahoma, administrative law judge for the U.S. Dept. of the Interior and a lawyer in private practice for 25 years.

As a Republican representing Oklahoma County, he served one term in the state Senate, 1966 to 1970, and was appointed minority whip in 1969. He was highly respected by members of both parties, voted in 1968 a "Top Ten Legislator" by Senate colleagues. He was active in the Tulsa community and was a member of Friends of the Library

and docent for Philbrook Museum.

Frank L. Thompson of Bradenton, Fla., died Oct. 11. He was born Dec. 9, 1944, in Enid. He graduated from Edison High School in Tulsa in 1962 and attended OSU, graduating with a B.S. in accounting in 1968. He graduated from the OU College of Law

in 1971. He maintained his private law practice in Tulsa from 1972-2005, practicing mostly criminal, divorce and personal injury law. He relocated to Tulsa in 2005. He was an avid gun collector who loved motorcycles and fast cars, especially unusual, futuristic ones. He also loved pool, poker and travel.

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Losing My Balance

By R. Steven Haught

We have all heard of “work/life balance” by now. It is a common CLE topic. The OBA even has a committee devoted to the subject. When I first heard the phrase “work/life balance,” it conjured up something foreign and subversive — something invented by lawyers in San Francisco sipping chardonnay with their wok-stir-fried tofu. However, as I have become older and wiser, my view has changed.

Recently while attending a funeral, I started thinking about who should be my pallbearers. Regrettably I could not think of enough men who would be suitable for the task, men who wouldn’t say: “Me? Why me? I haven’t seen him in years!” I began with a list of the groomsmen at my wedding but soon realized that I had lost touch with them.

One was a man named Ken. I first met Ken in high school, and we became fast friends. We lost touch for a few years as we attended different colleges but were reunited in law school. Following law school, we bought houses near each other and saw each other frequently on weekends and met for lunch or drinks at least once per week. Our families traveled to Hawaii, to OU/Texas weekends and bowl games together. He and his wife had two boys. He gave the oldest one my middle name and the youngest one my first name.

When my law firm unexpectedly broke up in the mid-’90s, I called Ken to share my bad news. He listened patiently as I

expressed my unhappiness with the situation, and then he said he had bad news as well. His wife had been diagnosed with breast cancer. It made my bad news seem trivial by comparison. After many years of treatment, and temporary recovery, she died. We did practice law together for five years and enjoyed each other’s company.



Then I moved on and practiced a different type of law, a demanding practice with an international clientele that called at all times of the day requiring immediate attention. The days of going out for lunch were over. Ken called me for lunch. Usually I would beg off and say that I wanted to go but could not go that day. He was disappointed. Sometimes I did go with him, and I always enjoyed our time together, but I

was always looking at my watch or checking emails on my phone.

Many times I would need to leave abruptly to go back to the office, and we always ate lunch no more than two or three blocks away. It got to the point that I dreaded hearing my receptionist say that he was calling because I did not want to hear the disappointment in his voice when I declined his lunch invitation. The last time he called to ask me to meet him for lunch, I said that I really could not do it that day but would call him the following week.

He said that he had something to tell me and wanted to tell me in person. I resisted and told him that I had no time that day. He took a deep breath and then reluctantly told me his news on the phone — he had been diagnosed with pancreatic cancer and did not have much longer to live. I put down the phone and drove to his office and put my arms around him.

We spent some time together before he died, but he was too sick to do much. I was with him in the hospital as he spent his final days and helped feed him his final meals. But I knew it was all too little too late. As I and other close friends carried his casket to the grave site and watched as they lowered him into the ground, I said goodbye to my friend for 40 years. I knew I would miss those calls asking me to go to lunch.

Mr. Haught practices in Oklahoma City.

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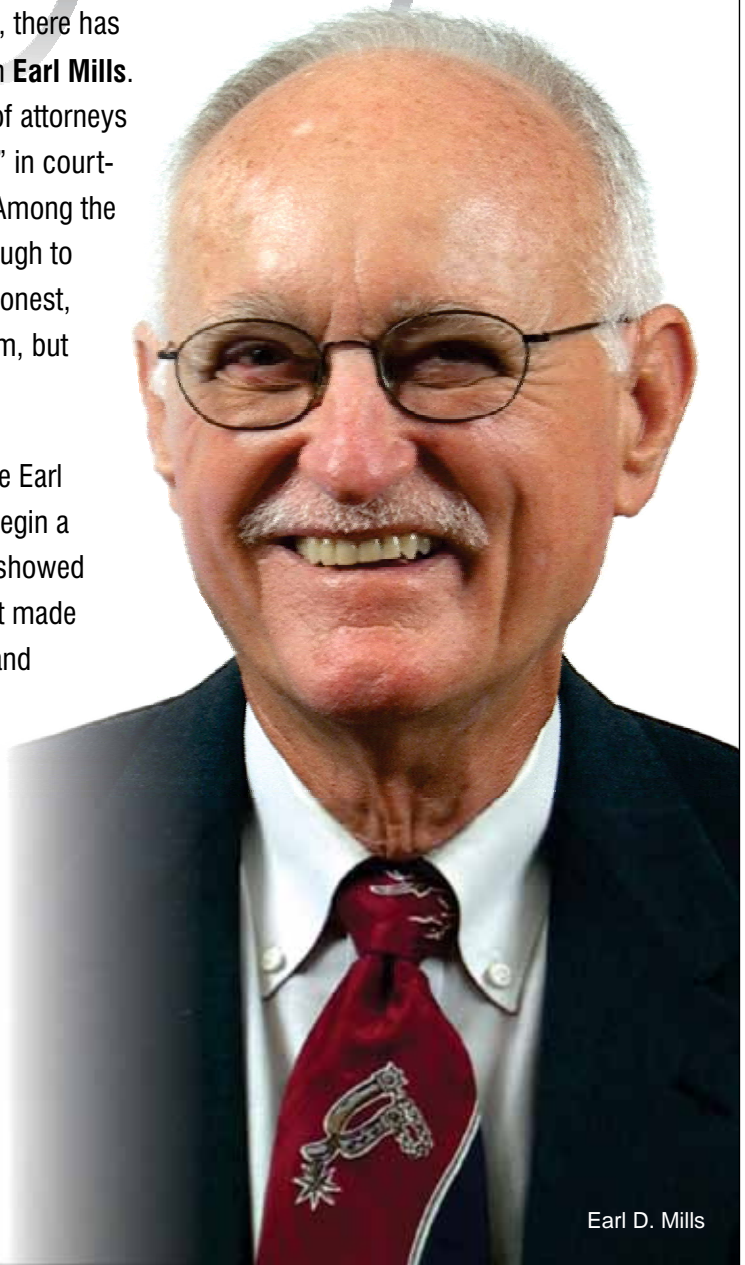
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Earl D. Mills