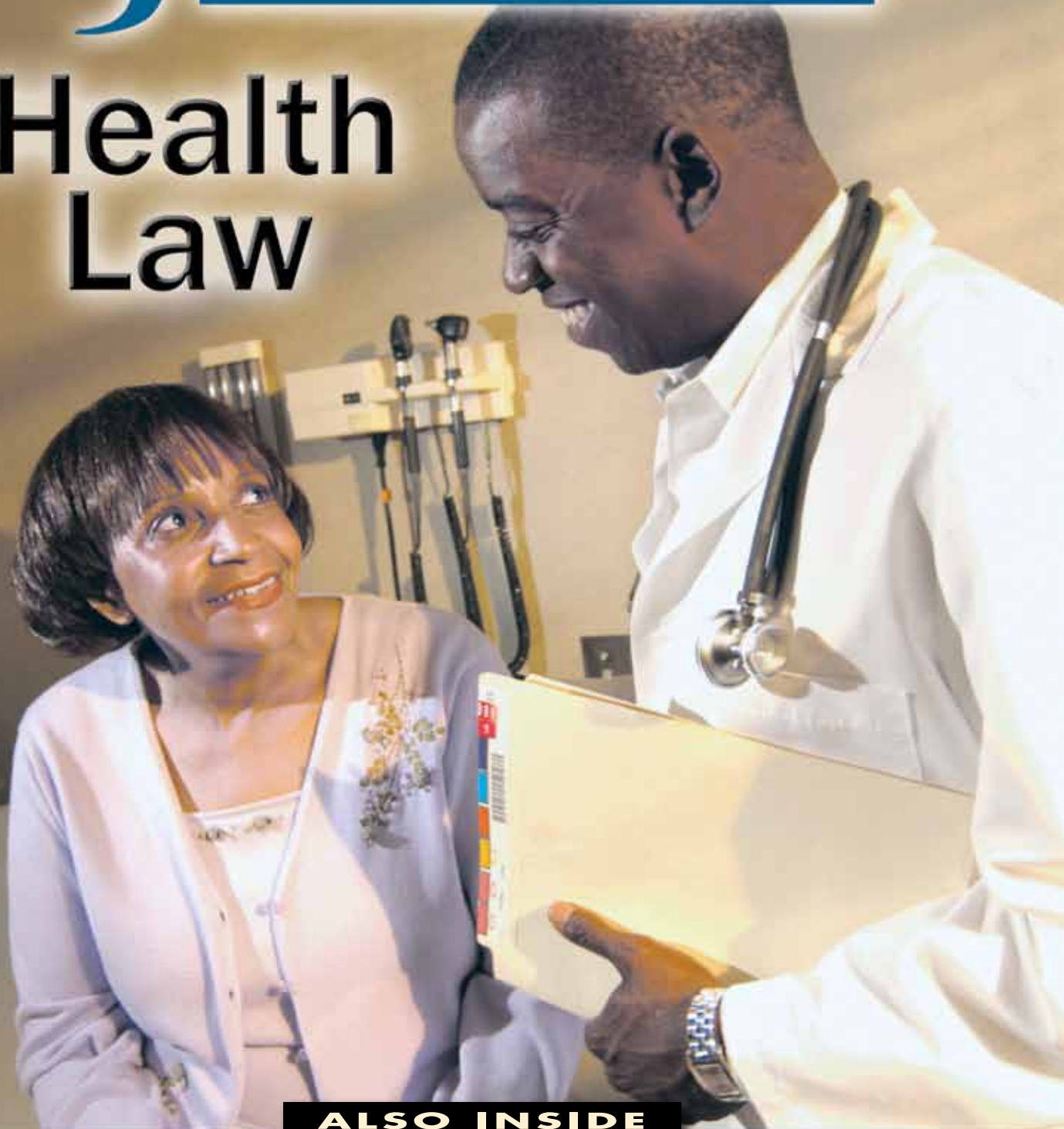


# THE Oklahoma Bar JOURNAL

Volume 85 ♦ No. 26 ♦ Oct. 4, 2014

## Health Law



### ALSO INSIDE

Annual Meeting • Diversity Committee Awards  
Lambird Spotlight Award Winners • New Attorneys Take Oath



**OBA/CLE and the OBA Diversity Committee Present:  
The 2014 OBA Diversity Conference and Awards Luncheon  
Thursday, October 16, 2014**

**Jim Thorpe Association and Oklahoma Sports Hall of Fame Event Center  
4040 North Lincoln Blvd., Oklahoma City, OK**

**Featured Presenter: Paulette Brown**

**Paulette Brown, a labor and employment law partner and chief diversity officer with the Morristown, N.J., office of Edwards Wildman Palmer, was elected as president-elect of the American Bar Association and will serve a one-year term as president-elect before becoming ABA president in August 2015.**

**Ms. Brown will present, "Are You Prepared to be Challenged," and discuss Title VII of the Civil Rights Act of 1964, the diverse legal workforce and what legal employers (i.e. firms, nonprofits, government agencies, etc.) can do to attract and retain diverse attorneys and the benefits for doing so. She will also provide practical suggestions both for diverse attorneys and for employers on recruiting, retaining and the treatment of diverse attorneys and the challenges diverse attorneys face at large firms and in the corporate sector. Ms. Brown will also participate in a panel discussion which will be followed by the luncheon and awards presentations at noon. The conference will adjourn at 1:30 p.m**

**This course has been approved by the Oklahoma Bar Association Mandatory Continuing Legal Education Commission for 3.5 hours of mandatory CLE credit, including 0 hours of ethics. Early pricing for registration is \$100 for CLE only; \$40 for luncheon only; \$120 for CLE and luncheon. For registrations received within four full business days of the program please add \$25.**

**For more information and to receive a \$10 live program discount (full program only) register online at <http://www.okbar.org/members/CLE.aspx>. Registration and continental breakfast begin at 8:30 a.m., and the program will begin at 9:00.**



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# Healthy Funding for Justice

By Renée DeMoss

Courts across the nation are not financially healthy. Due to lack of funds, Massachusetts has lost more than 1,100 court employees. New York court sessions end promptly at 4:30 p.m. to avoid potential overtime costs. In some California courts, lines are so long that people bring lawn chairs to sit in while they wait to see a judge.

What is the cause of this? It's reduced funding for our state courts across the nation — a troubling trend. According to the National Center for State Courts, state judiciaries handle approximately 95 percent of all court cases filed in the United States, yet the average amount of a state's budget allocated to its court system is only about 1-2 percent of the entire budget. Funding for the justice dispensed by courts is simply not a priority, either to many legislators or to the public.

This is a national phenomenon. In fiscal year 2013, 42 states reduced their court funding from prior levels. Oklahoma had not suffered the type of cuts faced by other states until the Oklahoma Legislature recently slashed the fiscal 2014-2015 Oklahoma court budget by \$10 million. The negative impact on the ability of our state courts to function has already begun.

The problem does not have an easy solution. Even though Oklahoma state revenues actually increased last year, there are less funds to go around. One reason is that so much money is appropriated from the state budget off the top end. Funds are earmarked and already allocated

for mandatory expenses before "discretionary" spending on budget items (like the courts) is even considered. Further, a good portion of the money raised by fees charged when cases are filed in our state courts goes to entities outside the judiciary.

The impact of this funding crisis is obvious. If our courts can't afford to open, if adequate staff cannot be paid to work, then our legal system is inaccessible — and access to justice is compromised.

Solutions are being proposed. Two nonprofit corporations have developed a thoughtful plan titled "Funding Justice," with strategies for restoring court funding. Several states are already implementing its two-step approach.

The first step, more short term, calls for collaboration between key court leaders, key legislative leaders and key community leaders to work together on court funding. It requires development of year-round relationships, credible and transparent budgets, clear demonstrations of what

our courts do and innovative, cost cutting management, such as specialized courts, e-filing and video-conferencing.

The second step involves a long-term campaign to build public education and support. While voters have more confidence in the courts than other areas of government, the judiciary has been hurt by rising public cynicism. While courts are still seen as special, their funding requests are viewed with the same skepticism as any other government agency. With a tight economy, Americans are watching their budgets and insisting governments do the same.

There is no doubt that it is a difficult task to convince the public of the need for adequate court funding when there aren't enough dollars to go around. A few town meetings or periodic public outreaches will not generate meaningful support. Instead, strategic planning is required, with a sustained commitment of resources and a willingness to invest in longer term results. Lawyers of the OBA must be prepared to commit to, and invest in, our state court system.

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# EVENTS CALENDAR

## OCTOBER 2014

- 7 **OBA Management Assistance Program presents Opening Your Law Practice**; 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Jim Calloway or Nickie Day 405-416-7000
- OBA Government and Administrative Law Practice Section meeting**; 4 p.m.; Oklahoma Bar Center, Oklahoma City with Teleconference; Contact Scott Boughton 405-717-8957
- 10 **OBA Law-related Education Committee meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Suzanne Heggy 405-556-9612
- OBA Family Law Section meeting**; 3 p.m.; Oklahoma Bar Center, Oklahoma City with OSU Tulsa, Tulsa; Contact M. Shane Henry 918-585-1107
- 13 **Licensed Legal Intern Swearing-In Ceremony**; 12:45 p.m.; Judicial Center, Oklahoma City; Contact Debra Jenkins 405-416-7042
- Ruth Bader Ginsburg Inn of Court**; 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Donald Lynn Babb 405-235-1611
- 14 **OBA Diversity Committee meeting**; 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Ruth Addison 918-574-3051
- OBA Licensed Legal Intern Committee meeting**; 3 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Candace Blalock 405-238-0143
- 15 **OBA Clients' Security Fund meeting**; 2 p.m.; Oklahoma Bar Center, Oklahoma City with OSU Tulsa, Tulsa; Contact Micheal Salem 405-366-1234
- 16 **OBA Taxation Law Section meeting**; 11 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Abby Dillsaver 405-319-8550
- 17 **OBA Access to Justice Committee meeting**; 10 a.m.; Oklahoma Bar Center, Oklahoma City with OSU Tulsa, Tulsa; Contact Laurie Jones 405-208-5354
- OBA Rules of Professional Conduct Committee meeting**; 3 p.m.; Oklahoma Bar Center, Oklahoma City with OSU Tulsa, Tulsa; Contact Paul Middleton 405-235-7600
- OBA Solo and Small Firm Committee meeting**; 3 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Charles Chesnut 918-542-1845
- 18 **OBA Young Lawyers Division meeting**; 10 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Kaleb Hennigh 580-234-4334

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

The Oklahoma Bar Association's official website: [www.okbar.org](http://www.okbar.org)

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## Discovery of Medical Records in Oklahoma State Courts

*By Charles W. Adams*

**N**owadays, medical records are maintained in electronic format, and the availability of electronic medical records presents new challenges and opportunities for discovery. The Oklahoma Discovery Code authorizes discovery of all information that is relevant to the subject matter of a pending action, provided that it is not privileged.

The physician-patient and psychotherapist-patient privileges found in Okla. Stat. tit.12, §2503 protect the privacy of patients by authorizing patients to refuse to disclose and prevent anyone else from disclosing confidential communications made for the purpose of their diagnosis or treatment. While the statutory privilege appears to be very broad, there is an exception in the statute that authorizes an adverse party of a patient to use statutory discovery to obtain information relevant to a patient's medical condition when the patient is relying upon the medical condition as an element of a claim or defense of the patient. The exception nearly swallows the physician-patient and psychotherapist-patient privileges so that the privileges will not bar discovery in most cases.

The procedures for discovery of medical information may also be affected by HIPAA, the federal Health Insurance Portability and Accountability Act. In contrast to the physician-patient and psychotherapist-patient privileges, which cover only confidential communications, HIPAA regulations prohibit disclosure of protected health information. Like the physician-patient and psychotherapist-patient privileges, however, HIPAA regulations provide exceptions for discovery in connection with judicial pro-

ceedings. As a result of the exceptions to both the physician-patient and psychotherapist-patient privileges and HIPAA, patient medical records may be obtained for litigation purposes in most cases, but the appropriate discovery procedures must be followed to obtain them.

Discovery of medical records is also affected in particular cases by the privilege for peer review information under Okla. Stat. tit.63, §1-1709.1. Peer review information refers to the records generated during the process of review of the competence or professional conduct of a health care professional by a health care facility or a county medical society, and it is not subject to discovery except to show that the health care facility was negligent in permitting the health care professional to provide health care services to the patient.

### **DISCOVERY OF ELECTRONIC MEDICAL RECORDS**

Hospitals and most doctors' offices now store all patient data in electronic format on computer servers and the advent of this technology has given rise to a new source of discoverable information in litigation. Electronic medical records (EMR) contain more data than traditional paper records, and often the medical record produced to the patient before the

filing of a case or to their counsel in litigation is less than the entirety of data contained in the EMR. In addition, federal regulations now require the creation of audit logs for electronic health information to record the times when it was created, modified, accessed or deleted, and the identity of the person who performed these actions.<sup>1</sup>

The use of EMR has expanded the amount of information available for discovery of medical records in litigation. For example, if a patient is being monitored with heart monitoring equipment during a hospital admission, the data from the monitor is capturing real-time data from various monitoring lines. The data may be continuously recording and placed in the EMR but the print command may be set to selectively print data recorded once every 15 minutes or once every hour and may not print all data captured from all monitoring lines. As a result, the printed record may lack significant detail about the patient's medical condition.

Under Okla. Stat. tit.76, §19(A)(1), a patient is "entitled, upon request, to obtain access to the information contained in the patient's medical records, including any x-ray or other photograph or image."<sup>2</sup> Since the statute does not differentiate between a paper record and electronically stored information, §19(A)(1) should permit a patient to gain access to all of the patient's "medical records" without limitation, including EMR. Section 19(A)(2) specifies amounts that health care providers may charge for providing EMR to their patients, as well as to attorneys, insurance companies, and in response to subpoenas for them.<sup>3</sup>

## THE PHYSICIAN-PATIENT AND PSYCHOTHERAPIST-PATIENT PRIVILEGES

Okla. Stat. tit. 12, §2503 provides for physician-patient and psychotherapist-patient privileges. These privileges extend to confidential communications between the patient and the patient's physician or psychotherapist, as well as other persons who participate in diagnosis or treatment of the patient under the direction of the physician or psychotherapist, such as members of the patient's family. The confidential communications must be made for the purpose of diagnosis or treatment of the patient's physical, mental or emotional condition, and they must not be intended to be disclosed to third persons, other than those who are participating in the patient's diagnosis or

treatment under the direction of the physician or psychotherapist.

The privileges are limited to confidential communications, as opposed to observations of a patient by medical personnel. For example, the Oklahoma Court of Criminal Appeals held in *Snow v. State*<sup>4</sup> that testimony of paramedics, an emergency room nurse and a physician who treated a patient after a traffic accident, concerning the odor of alcohol on his breath and his behavior at the accident scene and at the hospital did not come within the physician-patient privilege because the behavior occurred in public view and therefore was not confidential. The evidence subcommittee's note to Okla. Stat. tit.12, §2503 suggests that the statute "applies only to communications," as opposed to "information gained through observation or examination." Thus, the physician-patient privilege would appear not to cover tests and observations by medical personnel, unless they involved confidential communications between the patient and a physician.<sup>5</sup> However, confidential communications between the patient's physician and other persons participating in the diagnosis or treatment are covered by §2503, and therefore, the patient's medical chart would appear to be protected by the physician-patient privilege, since it is a means of communicating between persons who are participating in the patient's diagnosis or treatment.

Although there are several exceptions to the physician-patient and psychotherapist-patient privileges in §2503, the most significant exception is in §2503(D)(3) for communications "relevant to the physical, mental or emotional condition of the patient in any proceeding in which the patient relies upon that condition as an element of the patient's claim or defense."<sup>6</sup> The physician-patient and psychotherapist-patient privileges for these communications are "qualified to the extent that an adverse party in the proceeding may obtain relevant information regarding the condition by statutory discovery."<sup>7</sup> While this exception is quite broad, it does not cover cases where the patient's medical condition is relevant to the claim or defense of another party. Examples could include a plaintiff seeking medical records of a defendant doctor's other patients in a medical malpractice case,<sup>8</sup> or where a plaintiff is seeking medical records of an adverse witness for purposes of impeachment. If the patient dies, however, the exception to the physician-patient and psychotherapist-

patient privileges extends to cases where any party relies on the patient's medical condition as an element of that party's claim or defense.<sup>9</sup>

Another limitation on the physician-patient and psychotherapist-patient privileges is found in Okla. Stat. tit.12, §2503(E), which states: "The testimonial privilege created pursuant to this section does not make communications confidential where state and federal privacy law would otherwise permit disclosure." This provision was added in 2009, and its purpose and meaning are unclear. While the psychotherapist-patient privilege is recognized in the federal courts under Fed. R. Evid. 501,<sup>10</sup> the physician-patient privilege is not.<sup>11</sup> If taken literally, the provision might be interpreted to do away with the physician-patient privilege completely, but that interpretation would be in conflict with the rest of §2503.

The physician-patient and psychotherapist-patient privileges may also be waived under the recently adopted Okla. Stat. tit. 12, §19.1.<sup>12</sup> This section requires a plaintiff in a civil action for negligence to provide the defendant within 10 days of the defendant's request with an authorization form "for the release of any and all relevant records related to the plaintiff for a period commencing five years prior to the incident that is at issue in the civil action for negligence."<sup>13</sup> The sanction provided in the statute for failure of a plaintiff to provide the authorization form is dismissal without prejudice to the refiling of the action, unless good cause is shown for the failure.<sup>14</sup> A statement requesting the health care provider to notify the plaintiff's counsel of any meetings scheduled with defense counsel may be added to the authorization form, not only to address concerns regarding *ex parte* communications between the health care provider and defense counsel, but also to provide protection to the health care provider as well as to the patient.

Previously, this provision was in Section 1-1708.1E of Title 63, which applied only to medical liability actions, and a similar provision was in Section 19 of Title 12, which applied only to professional negligence actions. The Oklahoma Supreme Court declared the affidavit of merit requirements<sup>15</sup> in Section 1-1708.1E

and Section 19 to be unconstitutional as a special law regulating the practice in judicial proceedings under Art. 5, §46 of the Oklahoma Constitution, and an unconstitutional burden on access to courts in violation of Art. 2, §6 of the Oklahoma Constitution, in *Zeier v. Zimmer*<sup>16</sup> and *Wall v. Marouk*.<sup>17</sup> Then the Oklahoma Legislature repealed Section 1-1708.1E in 2009, and adopted Section 19 in its place, but during the 2013 extraordinary legislative session, it repealed Section 19 and adopted Section 19.1 in its place. In contrast to the prior affidavit of merit requirements, which were limited to professional negligence and medical liability actions, the new affidavit of merit requirement

applies to any civil action for negligence in which the plaintiff is required to present testimony of an expert witness to establish breach of the relevant standard of care and that the breach resulted in harm to the plaintiff. Because of the similarity of the latest version of the affidavit of merit requirement to the earlier versions, it is uncertain whether the latest version will withstand constitutional scrutiny or will suffer the same fate as its prior versions.

In contrast to the affidavit of merit provision in Section 19.1, the language of the release of medical records provision is not

expressly limited to actions in which expert testimony to establish a breach of the relevant standard of care is required, and therefore, it may apply to any negligence action.<sup>18</sup> On the other hand, the provision does require the plaintiff to provide the defendant with a copy of the written opinion of the qualified expert referred to in the affidavit of merit, as well as the release of medical records;<sup>19</sup> so, this provision might be construed to be limited to actions in which expert testimony to establish a breach of the relevant standard of care is required. However, if the provision was construed to be limited to actions in which expert testimony to establish a breach of the relevant standard of care is required, it would be subject to being challenged on constitutional grounds as a special law.

An additional provision relating to waiver of the physician-patient and psychotherapist-patient privileges is found in Section 19 of Title 76.<sup>20</sup> Section 19(B) provides that a person who

**“The physician-patient and psychotherapist-patient privileges may also be waived under the recently adopted Okla. Stat. tit. 12, §19.1”**

has placed a patient's physical or medical condition in issue in a personal injury or wrongful death action against a health care professional or facility is deemed to have waived any privilege concerning a communication with a health care provider or any knowledge obtained by the health care provider concerning the patient's physical or medical condition. Despite the broad language of the statute, which appears to be a complete waiver of the physician-patient privilege,<sup>21</sup> the Oklahoma Supreme Court held in *Holmes v. Nightingale*<sup>22</sup> that discovery of a party's medical records was restricted "to materials relevant to any issue in the malpractice action or to the injury or death in litigation."<sup>23</sup>

Another issue involving discovery that has arisen over the years is whether a defense attorney should be allowed to consult informally with a patient's physicians, rather than having to pursue formal discovery.<sup>24</sup> The Oklahoma Supreme Court has ruled in a line of cases<sup>25</sup> that judicial authority may not be used to either facilitate or impede *ex parte* communications between defense counsel and a plaintiff's health care providers, even though an exception to the physician-patient or psychotherapist-patient privileges may apply because the plaintiff's medical condition is in issue. Whether a plaintiff's health care provider may voluntarily consult with defense counsel will depend on whether the requirements for disclosure of health care information under HIPAA have been satisfied.<sup>26</sup> These requirements are discussed in the next section of this article.

## HIPAA

HIPAA was adopted nearly 20 years ago in part to expedite electronic submission of medical claims in order to improve the operation of the health care system and reduce administrative costs.<sup>27</sup> Since the implementation of HIPAA would involve maintaining health care information on computer systems, the statute included provisions for the adoption of standards to protect the security and integrity of the information as well as its confidentiality.<sup>28</sup> The regulations issued by the Department of Health and Human Services to comply with

**“Another issue involving discovery that has arisen over the years is whether a defense attorney should be allowed to consult informally with a patient's physicians, rather than having to pursue formal discovery.”**

HIPAA are found at 45 C.F.R. §§164.102-164.534, and the regulations containing the privacy standards are at 45 C.F.R. §§164.500-164.534.

In contrast to the physician-patient and psychotherapist-patient privileges which cover "confidential communications," the HIPAA regulations prohibit the use or disclosure of "protected health information" by health care providers, except as provided in the regulations.<sup>29</sup> The first method for obtaining protected information from a health care provider is pursuant to a written authorization from the patient.<sup>30</sup> The regulations require the patient authorization to include the following in plain language: 1) a description of the information to be disclosed; 2) the person whom the patient authorizes to make the disclosure; 3) the person to whom the information is to be disclosed; 4) a description of the purpose of the disclosure; 5) an expiration date; 6) the patient's signature; and 7) notice to the patient of the right to revoke the authorization.<sup>31</sup>

The patient's attorney may use the written authorization to obtain the patient's medical records. The attorney for the defendant in a civil action for negligence may also request a plaintiff to provide a written authorization for the plaintiff's medical records under Okla. Stat. tit.12, §19.1(C).

In addition, the HIPAA regulations provide for disclosure of protected health information in the course of any judicial or administrative proceeding.<sup>32</sup> Thus, HIPAA does not bar disclosure of protected health information in court proceedings if the appropriate procedures are followed. There are two methods for obtaining protected health information in judicial or administrative proceedings provided by 45 C.F.R. §164.512(e). The first is an order of a court or administrative tribunal.<sup>33</sup> In *Holmes v. Nightingale*<sup>34</sup> the Oklahoma Supreme Court decided that it was permissible under HIPAA for a trial court order to authorize *ex parte* oral communications by a health care provider with defense counsel. However, while the trial court order could allow the health care provider to engage in the *ex parte* communications, it could not require the health care provider to do so.<sup>35</sup>



The second method for obtaining protected health information is a subpoena or discovery request to the health care provider. The subpoena or discovery request must be accompanied by a written statement of satisfactory assurance to the health care provider that the party seeking protected health information has made reasonable efforts either to ensure that the patient has been given notice of the request and an opportunity to object,<sup>36</sup> or to secure a qualified protective order.<sup>37</sup>

The satisfactory assurance to the health care provider of notice to the patient may be in the form of a written statement from the attorney who is seeking the protected health care information that: 1) the attorney has made a good faith attempt to provide notice to the patient that would permit the patient to raise objections to the subpoena or discovery request; and 2) the time for the patient to raise objections has passed, and either the patient did not object, or all objections were resolved by the court or administrative tribunal consistently with the subpoena or discovery request.<sup>38</sup> The satisfactory assurance of reasonable efforts to secure a protective order may be in the form of a written statement from the attorney who is seeking the protected health care information that either the attorney has requested a qualified protective order from the court, or the parties to the action have agreed to a qualified protective order. The qualified protective order must prohibit the parties from using or disclosing the protected health care information for any purpose other than the litigation and require the return or destruction of the protected health care information after the litigation.<sup>39</sup>

A health care provider may be subject to substantial criminal sanctions under HIPAA for wrongful disclosure of individually identifiable health information.<sup>40</sup> Accordingly, it is advisable for a health care provider to decline requests to disclose protected health information if the above procedures have not been followed.<sup>41</sup>

## PEER REVIEW PRIVILEGE

Oklahoma's peer review privilege may bar discovery of medical information that may be critical in medical malpractice cases unless the plaintiff asserts a claim for corporate negligence or negligent credentialing under *Strubhart v. Perry Memorial Hospital Trust Authority*.<sup>42</sup> The peer review privilege is found at Okla. Stat. tit. 63, §1-1709.1, which provides that all records generated during the course of a peer

review process to evaluate the competence or professional conduct of a health care professional are subject to the privilege, except as otherwise provided in the statute. Records and factual statements regarding a patient's health care that were generated outside the peer review process, patient medical records, incident reports, and the identity of individuals having personal knowledge of a patient's health care are not included within the peer review privilege.<sup>43</sup> However, factual statements regarding a patient's health care that were presented during a peer review process are not subject to discovery in a medical malpractice action.<sup>44</sup>

If a patient alleges that a health care facility was independently negligent for permitting a health care professional to provide health care services, the health care professional's application for staff privileges and the results of any peer review process prior to the alleged negligence are subject to discovery.<sup>45</sup> The Oklahoma Supreme Court recognized the doctrine of independent corporate negligence or responsibility in *Strubhart v. Perry Memorial Hospital Trust Authority*,<sup>46</sup> where it imposed a duty upon hospitals to "ensure that 1) only competent physicians are granted staff privileges; and 2) once staff privileges have been granted to a competent physician, the hospital must take reasonable steps to ensure patient safety when it knows or should know that a staff physician has engaged in a pattern of incompetent behavior."<sup>47</sup> Section 1-1709.1(D)(1) provides that "credentialing and recredentialing data, and the recommendations made and actions taken as a result of any peer review process utilized by such health care facility regarding the health care professional prior to the date of the alleged negligence shall be subject to discovery pursuant to the Oklahoma Discovery Code."<sup>48</sup>

While credentialing or recredentialing data are classified as peer review information, which is not discoverable in connection with a claim against a health care professional, credentialing or recredentialing data are discoverable in connection with a claim for independent corporate negligence against a health care facility. Accordingly, a plaintiff in a medical malpractice action against a staff physician who wishes to obtain this information from a health care facility should assert a claim for independent corporate negligence against the health care facility, alleging in good faith either that the staff physician was not competent when granted staff privileg-

es, or that the health care facility knew or should have known that the staff physician had engaged in a pattern of incompetent behavior.

## CONCLUSION

There are a variety of Oklahoma and federal statutes that protect the privacy of patients. The physician-patient and psychotherapist-patient privileges in the Oklahoma statutes authorize patients to refuse to disclose and prevent other persons from disclosing confidential communications made for the purpose of their diagnosis or treatment. The federal HIPAA law and its accompanying regulations prohibit health care providers from disclosing protected health information of patients. Nevertheless, discovery procedures may be used to obtain medical records in most cases if they are relevant to the subject matter of the action because of exceptions to the physician-patient and psychotherapist-patient privileges and the HIPAA regulations. The appropriate procedures must be followed to obtain the medical records, however, and there are some limited circumstances in which discovery will not be allowed. Finally, optimizing production of electronic medical records requires familiarity with how they are stored in the hospital or physician's office and knowledge of the changing legal landscape regarding electronic discovery.

1. See 45 C.F.R. §170.210(b), (e). See generally Jennifer Keel, "Follow the Audit Trail," *Trial* 28 (May 2014) (discussing discovery of audit trails for electronic health information).
2. Okla. Stat. tit.76, §19(A)(1) (Supp. 2013).
3. *Id.* §19(A)(2).
4. 1987 OK CR 228, ¶¶8-11, 744 P.2d 980, 981-82.
5. See *Oxford v. Hamilton*, 297 Ark. 512, 763 S.W. 2d 83 (1989) (results of blood alcohol test ordered by a treating physician were not covered by the physician-patient privilege because the test was not a confidential communication).
6. Okla. Stat. tit.12, §2503(D)(3) (2011).
7. *Id.*
8. Cf. *Isidore Steiner, DPM, PC v. Bonanni*, 292 Mich.App. 265, 267, 807 N.W.2d 902, 07-08 (2011) (nonparty patients did not waive physician-patient privilege by putting their medical condition in issue).
9. Okla. Stat. tit.12, §2503(D)(3) (2011).
10. *Jaffee v. Redmond*, 518 U.S. 1, 15 (1996).
11. See *United States v. Bercier*, 848 F.2d 917 (8th Cir. 1988) ("federal courts do not recognize the physician-patient privilege in federal criminal proceedings").
12. Okla. Stat. tit.12, §19.1(C)(1)(b) (Supp. 2013).
13. *Id.*
14. *Id.* §19.1(C)(2).
15. The affidavit of merit provisions required a plaintiff to attach an affidavit to the petition that the plaintiff has consulted with qualified experts who reviewed the case and provided a written opinion that the claim was meritorious and based on good cause.
16. 2006 OK 98, 152 P.3d 861.
17. 2013 OK 36, 302 P.3d 775.
18. Okla. Stat. tit.12, §19.1(C)(1) (Supp. 2013).
19. *Id.* §19.1(C)(1a).
20. Okla. Stat. tit.76, §19 (2011).
21. See *Johnson v. District Court*, 1987 OK 47, ¶5, 738 P.2d 151, 153 ("Title 76 O.S.Supp. 1985 §19 (B) does provide for a complete waiver of the patient/physician privilege in a medical malpractice action as opposed to the qualification of the evidentiary privilege under 12 O.S.

1981 §2503 (D)(3), in other cases where a physical, mental or emotional condition of a patient is raised as an element of a claim or a defense.").

22. 2007 OK 15, 158 P.3d 1039.
23. *Id.* at ¶25, 158 P.3d at 1046.
24. See Kelley C. Callahan, "Ex Parte Interviews With Treating Doctors in Oklahoma," 63 OBJ 891 (1992) ("[E]x parte contacts with treating doctors [is] one of the most hotly contested issues between the plaintiff and defense bars, and a matter of no small interest to the medical community.")
25. *Holmes v. Nightingale*, 2007 OK 15, ¶18, 158 P.3d 1039, 1045; *Seaberg v. Lockard*, 1990 OK 40, ¶3, 800 P.2d 230, 231-32; *Johnson v. District Court*, 1987 OK 47, ¶5, 738 P.2d 151, 153.
26. For recent discussions of *ex parte* interviews with defense counsel in other jurisdictions, see Whitney Boshers Hayes, "Physician-Patient Confidentiality in Health care Liability Actions, HIPAA's Preemption of *Ex Parte* Interviews With Treating Physicians Through the Obstacle Test," 44 *U. Mem. L. Rev.* 97 (2013); Natalie Theresa Johnston, Note, "Ex Parte Communications: Informal Discovery That HIPAA May Formally Eliminate," 37 *Am. J. Trial Advoc.* 177 (2013).
27. See 42 U.S.C. §1320d-2(a) (Supp. 2012). See generally Teresa Meinders Burkett, "HIPAA Rules All Lawyers Should Know," 78 *OBJ* 1943 (2007).
28. 42 U.S.C. §1320d-2(d) (Supp. 2012).
29. 45 C.F.R. §164.502(a).
30. *Id.* §164.508.
31. *Id.* §164.508(c). For a form for a written authorization that satisfies these requirements, see Charles W. Adams & Daniel Boudreau, *Vernon's Oklahoma Forms 2nd Civil Procedure* §6.151 (Supp. 2013).
32. See 45 C.F.R. §164.512(e).
33. *Id.* §164.512(e)(i). For forms for a motion to authorize disclosure of protected health information and a court order for release of protected health information, see Adams & Boudreau, *supra* note 31, §§6.152, 6.153.
34. 2007 OK 15, 158 P.3d 1039.
35. *Id.* ¶18, 158 P.3d at 1045.
36. See 45 C.F.R. §164.512(e)(1)(ii)(A).
37. See 45 C.F.R. §164.512(e)(1)(ii)(B).
38. *Id.* §164.512(e)(1)(iii). For forms for a subpoena *duces tecum* to produce documents or other things (attendance of witness not required), a written statement of satisfactory assurance of notice to patient, and a notice to patient of intent to discover protected health information, see Adams & Boudreau, *supra* note 31, §§6.154 - 6.156.
39. *Id.* §164.512(e)(1)(iv). For forms for a written statement of satisfactory assurance of reasonable efforts to secure a qualified protective order, a motion for a qualified protective order, and an agreed qualified protective order, see Adams & Boudreau, *supra* note 31, §§6.157 - 6.159.
40. See 42 U.S.C. §1320d-6 (Supp. 2012).
41. For a form for a letter from an attorney for a health care provider regarding a failure to comply with HIPAA, see Adams & Boudreau, *supra* note 31, §6.160.
42. 1995 OK 10, 903 P.2d 263.
43. Okla. Stat. tit.63, §1-1709.1(A)(5) (Supp. 2013).
44. *Id.* §1-1709.1(C).
45. *Id.* §1-1709.1(C).
46. 1995 OK 10, 903 P.2d 263.
47. *Id.* at ¶37, 903 P.2d at 276.
48. Okla. Stat. tit.63, §1-1709.1(D)(1) (Supp. 2013).

## ABOUT THE AUTHOR



Charles W. Adams has been a professor at the TU College of Law since 1979, where he teaches civil procedure and evidence. He has been a member of the OBA Civil Procedure Committee since 1983, serving as chairman from 1987-1989 and 1994-2001. He co-drafted much of the Oklahoma Pleading Code and its Commentary and co-authored *Civil Procedure* of Vernon's Oklahoma Forms, the *Oklahoma Discovery Practice Manual*, *Oklahoma Lien Laws* and *Oklahoma Civil Pretrial Procedure*.



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# THE GENERAL PRACTICE OF LAW

## A SYMPOSIUM FOR THE GENERAL PRACTITIONER

PRESENTED BY OKLAHOMA CITY ABL

APPROVED FOR 6 HOURS CLE AND 1 HOUR ETHICS

**OCTOBER 17, 2014**

**RIVER OAKS GOLF CLUB**

10909 CLUBHOUSE ROAD, EDMOND

8:30 A.M. TO 3:50 P.M.

**\$150**

BUFFET LUNCH INCLUDED

**8:30–9 A.M.**

**REGISTRATION AND CONTINENTAL BREAKFAST**

**9–9:50 A.M.**

**WHAT TO DO AND NOT DO IN THE COURTROOM**

JUDGE RAY C. ELLIOT, PRESIDING JUDGE, DISTRICT COURT OF OKLAHOMA COUNTY

**10–10:50 A.M.**

**THE POWER OF DIVERSITY IN THE EVOLVING PRACTICE OF LAW (1 HOUR ETHICS)**

DEBBIE MADDOX, OFFICE OF THE OBA GENERAL COUNSEL

**11–11:50 A.M.**

**JURISPRUDENCE**

JUSTICE JOHN F. REIF, VICE CHIEF JUSTICE, OKLAHOMA SUPREME COURT

**11:50 A.M. – 1 P.M.**

**BUFFET LUNCH PROVIDED**

**1–1:50 P.M.**

**RECENT CRIMINAL LAW OPINIONS OF THE UNITED STATES SUPREME COURT**

IRVEN BOX, ATTORNEY AT LAW, BOX AND BOX LAW FIRM, OKLAHOMA CITY

**2–2:50 P.M.**

**GOOD FAITH CLAIMS HANDLING**

JOSEPH T. ACQUAVIVA, JR., ATTORNEY AT LAW, WILSON, CAIN AND ACQUAVIVA

**3–3:50 P.M.**

**THE STATUS OF WORKERS' COMPENSATION IN OKLAHOMA**

BOB BURKE, ATTORNEY AT LAW, OKLAHOMA CITY

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PLEASE SEND REGISTRATION AND FEE TO ABL-CLE C/O ROBERT BLACK, 9400 N. BROADWAY EXTENSION, SUITE 500,  
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ATTORNEY NAME: \_\_\_\_\_ OBA # \_\_\_\_\_

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## New Rules for Lawyers as Business Associates Under HIPAA and the New HITECH Act

*By Teresa Meinders Burkett*

**H**IPAA stands for the Health Insurance Portability and Accountability Act, originally enacted in 1996 to facilitate the continued health insurance coverage of individuals who moved between employers that provide health insurance. This original premise of HIPAA likely has faded in importance with passage of the Patient Protection and Affordable Care Act (ACA) that now includes a “guaranteed issue” provision which prohibits insurers from denying coverage to individuals due to pre-existing conditions, whether covered by health insurance in the past or not.

### **MEDICAL PRIVACY UNDER OKLAHOMA LAW**

Long before the ACA came about, HIPAA expanded into an omnibus law that included new health care fraud provisions, added standards for electronic transactions for health care claims and spawned new regulations, principally the now broadly recognized HIPAA privacy rule and security rule. The Department of Health and Human Services expected these rules to provide “all Americans with a basic level of protection” for their personal medical information, allowing the states to set more stringent protections if they preferred.<sup>1</sup>

Since 1988, early in the AIDS crisis, Oklahoma has had laws in place that are more protective of medical information privacy than that offered by HIPAA. Section 1-502.2 of Title 63 of the Oklahoma Statutes provides that “...information and records of any disease which are held or maintained by any state agency, health

care provider or facility, physician, health professional, laboratory, clinic, blood bank, funeral director, third-party payor or any other agency, person, or organization in the state shall be confidential.” This statute goes on to require that “such information shall not be released” except under specific circumstances, including upon a court order, with the written authorization of the person whose health information is to be disclosed or among health care providers for purposes of providing treatment to the person. Similarly, records of mental health treatment may be disclosed only upon the written authorization of the patient or upon a court order. A subpoena by itself is not sufficient to disclose such information.<sup>2</sup>

### **HANDLING MEDICAL INFORMATION**

The HIPAA term for medical information is “protected health information” (PHI) and is generally defined as all individually identifiable health information created, received,

maintained or transmitted by a health care provider or health plan with respect to an individual's past, present or future physical or mental health care. Typically, PHI may be used by health care providers and private or governmental health plans for treatment, payment and medical business purposes called "health care operations" without a patient's specific authorization. There are a few other limited ways PHI may be used without patient authorization, such as reporting child abuse or public health reporting. In most other instances, HIPAA requires individuals to "authorize" the use or disclosure of their PHI. PHI is "used" when it is shared or relied on within the entity that created or maintains it, and it is "disclosed" when it is shared with third parties outside the entity's workforce.<sup>3</sup> A health care provider cannot use or disclose PHI except as permitted by the privacy rule.

Under the "original HIPAA," only "covered entities" were required to comply with the privacy and security rules. Those covered entities include health care providers, health plans and data clearinghouses. The privacy rule requires covered entities to enter into a business associate agreement (BAA) with third parties outside their workforce with whom they enter into arrangements to provide services to the covered entity that requires the use or disclosure of PHI. Common examples of business associates are medical transcription services, accountants, outside staffing agencies and lawyers. The BAA effectively extended, by contract, the regulations found in the privacy and security rules that did not apply directly to those who participate in the health care industry but do not fall within the definition of a covered entity. These agreements, in effect, closed the gap in the law that left some who regularly come in contact with medical information outside the ambit of HIPAA.

### **THE 'NEW' HIPAA UNDER THE HITECH ACT**

The HIPAA privacy rule has now been in effect a full 10 years, and the security rule has existed almost that long. The first major revisions to the law were made in 2009, when the Health Information Technology for Economic and Clinical Health (HITECH) Act was included in the American Recovery and Reimbursement Act. The HITECH Act makes the privacy and security rules explicitly applicable to business associates, including law firms and other professionals who provide services on behalf

of health care providers and health plans and who require access to PHI of these covered entities' patients or customers to do their jobs. The final rules implementing the HITECH Act required compliance as of Sept. 23, 2013. Now, all business associates have a statutory obligation to comply with both HIPAA and HITECH, and are subject to enforcement audits and potential civil and criminal penalties for non-compliance.

#### *The HITECH Act and its Impact on Lawyers*

As a threshold matter, attorneys must determine whether they fall into the category of a business associate. If a lawyer encounters PHI in the course of representing a client that is a covered entity, the lawyer is typically a business associate. If a lawyer encounters PHI when representing a client who is not a covered entity, the lawyer may not fall within the definition of a business associate. For example, a lawyer representing an individual who is suing a health care provider in a malpractice claim is probably not a business associate. The patient's lawyer will have access to the client's PHI, but that access is based on the client signing an authorization for disclosure of PHI form which gives the attorney access to the information. However, in the same lawsuit, the lawyers representing the covered entities (e.g., the physician or hospital) acquire access to the plaintiff's PHI as a result of their relationship to the covered entity, and thus they are business associates. By further example, a lawyer who is on either side of a personal injury dispute such as a motor vehicle accident or premises liability claim will obtain medical records of the individuals who are seeking damages for their injuries, but that access will be based on the individuals' signed authorizations or a court order requiring the medical data to be produced. These lawyers do not fall within the definition of a business associate.

Litigation is, of course, not the only practice area where a law firm may become a covered entity client's business associate. Lawyers who handle employee benefits issues for health plans or employers who sponsor self-insured health plans may encounter PHI of the plan participants and thereby become business associates. Lawyers who represent a health care provider in the sale or purchase of a covered entity or a business associate may encounter PHI in reviewing accounts receivable or patient lists and become a business associate as a result. A business associate relationship aris-



es when a lawyer represents a covered entity or a business associate in a governmental investigation or audit that requires access to PHI. It is important that a law firm consider its possible role as a business associate in any representation that will involve health information, and that a firm ensure that a BAA is in place before receiving any documents or media from the client that include PHI.

Another type of representation that may impose business associate obligations on a lawyer arises when the lawyer represents an entity that is a business associate, and the lawyer requires access to PHI that the client received from the covered entity. The lawyer in this example is an agent or subcontractor of the original business associate. Under the new HITECH rules, the duty to comply with HIPAA flows not only to business associates, but also to “agents or subcontractors” of business associates if the agent or subcontractor will encounter PHI in the course of providing services to the associate. Each subcontractor must sign a contract that includes all of the provisions of a BAA, agreeing to maintain the privacy and security of that PHI.

Another more likely way this subcontractor business associate concept will impact law firms is when a lawyer who is a business associate hires an expert witness, a court reporter or even a copy shop to duplicate documents that include PHI the law firm received from its client. Carrying through one example, when the law firm that is a business associate hires a court reporter to transcribe a deposition that will require the use or disclosure of PHI, the court reporter must be asked to sign a “subcontractor BAA.” If the court reporter service does not make its own copies of the exhibits to a deposition transcript, the court reporter will need to ask the copy shop hired to copy exhibits containing PHI to sign a subcontractor BAA, as well. The entire chain of contractors or agents of any business associate will fall within the requirements of the privacy and security rules as a result of the HITECH provisions, and all of these businesses will need to develop the policies and practices for HIPAA compliance. Thus, the number of new businesses that will

require HIPAA compliance policies has expanded exponentially under HITECH, and lawyers are just one of many kinds of service providers impacted by these new rules.

#### *Business Associate Agreements and Lawyers*

Not all agreements are alike, although there are mandatory provisions common to all of them. Most covered entities would prefer to have all of their vendors sign the same form BAA. However, lawyers have unique duties and should be wary of signing any stock form of an agreement.

Lawyers have ethical obligations to their cli-

**“Lawyers have ethical obligations to their clients that many vendors do not, such as maintaining the attorney-client privilege...”**

ents that many vendors do not, such as maintaining the attorney-client privilege, so law firm agreements should be carefully tailored to protect the privilege to the extent possible. The privacy rule requires that all business associates allow the secretary of the Department of Health and Human Services to have access to their books and records to ensure compliance with HIPAA. This permission is typically included in a standard BAA. The law firm’s agreement should have appropriate carve-outs for privileged data to avoid unintentionally waiving the

attorney-client privilege. In addition, many form agreements include indemnification language that could effectively void an attorney’s professional liability insurance coverage. Finally, attorneys must be sensitive to the ethical conflicts inherent in negotiating a contract with their client who they are required to protect. Some clients that are covered entities may wish to engage separate counsel to advise them with respect to the terms of the law firm’s BAA.

#### *Business Associate Agreement Provisions*

The HIPAA privacy rule contains most of the requirements for a compliant BAA; however, the security rule includes several requirements related to the maintenance of electronic PHI (ePHI). The agreement must restrict the business associate’s use and disclosure of PHI to those set forth in the BAA, in order to carry out the duties related to the parties’ business relationship. While the law firm business associate may use the client’s PHI for its own administrative and legal responsibilities, it otherwise may not use or disclose the PHI in any way

that the covered entity itself could not use the data. The specific ways the covered entity/client may use the PHI will be set forth in its notice of privacy practices, so if there is any doubt as to how the client may be permitted to use or disclose the PHI, the law firm may wish to review the notice to be certain its acts are compliant. In addition, the BAA must state that the business associate will:

- 1) Use appropriate safeguards to prevent inappropriate use or disclosure of PHI
- 2) Report to the covered entity any discovered uses or disclosures of PHI not permitted
- 3) Report any security incidents involving ePHI and breaches of unsecured PHI
- 4) Make PHI available for access to the individual it pertains to and for amendments and accounting of disclosures
- 5) Be sure that subcontractors or agents who will access PHI agree to the same terms as the BAA in writing
- 6) Agree to destroy or return PHI at the end of the underlying service arrangement or, if it is infeasible to do so, maintain it under the same protections
- 7) Make its books and records open to the secretary of the Department of Health and Human Services to confirm compliance with the HIPAA requirements.

The covered entity has the obligation to present a BAA to its service providers, including law firms, before the entity discloses PHI to the vendor. When presented with the document, the lawyer should review the agreement for the required elements and then ask to tailor the agreement so the aspects unique to the attorney-client relationship may be preserved. Whether or not a BAA is signed, the relationship exists, and the legal obligations are present as soon as the lawyer receives PHI from the covered entity/client or the client allows the law firm to create, receive, maintain or transmit ePHI electronically on its behalf. Engaging in these acts in the absence of a signed BAA is a violation of HIPAA that carries possible penalties.

Under the HITECH Act, all business associates, including law firms, are now directly subject to enforcement of the HIPAA requirements and can be fined for impermissible uses

and disclosures of PHI; for failure to notify the covered entity when unsecured PHI is inappropriately accessed or lost; for failure to provide access to ePHI to the covered entity or the individual who is the subject of the PHI; and other failures to comply with the HIPAA privacy rule or security rule. The minimum penalty for “willful neglect” of these HIPAA obligations is \$10,000 per violation, if the violation is corrected within 30 days, and \$50,000 per violation if it is not. Lesser penalties may be imposed for negligent violations, and greater penalties for intentional bad acts. Violations are calculated on a per person, per day, per standard basis. Annual liability under each HIPAA standard is capped at \$1.5 million, but it is likely that a breach or violation will implicate more than one standard. Commentators predict that the next action by the Office of Civil Rights for HIPAA enforcement will include rules for whistleblower actions that will allow whistleblowers to share in a portion of the fines and settlements when they expose wrongdoing.

#### *Law Firm Compliance with the HIPAA Privacy Rule*

Lawyers have always had an obligation to maintain secure files and keep their clients’ data confidential. However, the policies that give effect to this obligation may not be in writing. In order to demonstrate HIPAA compliance under the HITECH Act, a law firm should implement and document policies and procedures to protect the confidentiality, availability and integrity of the PHI and ePHI it receives from its clients. All law firm staff that will have access to the PHI within the firm must be trained on compliance with the policies and procedures put in place. Many firms who serve in the role as business associate for their clients designate a specific individual as the “privacy officer” who will be responsible for ensuring compliance with the new obligations under HIPAA and for responding to questions that members of the firm may have as they strive to maintain compliance. Failure to take these mandated steps risks penalties as a HIPAA violation.

#### *Breach Notification Requirements*

As a business associate, a law firm will have to notify its client, the covered entity, if unsecured PHI is acquired, accessed, used or disclosed in violation of HIPAA. This requirement is found in the new breach notification rule

under HITECH, 45 CFR 164.402. Under this new rule, “unsecured PHI” is either PHI maintained in paper form, or unencrypted ePHI. In the event unsecured PHI is misused or improperly disclosed, such as by the loss of a file or a stolen laptop, the firm will need to determine the likelihood that the data has been “compromised.” HIPAA presumes that the data is compromised unless the business associate can document that it was not. This may occur if a medical record is sent to an unintended individual but the recipient recognizes that it was sent in error and immediately returns it or notifies the sender that it was immediately destroyed. In that case, there is a low probability that the data was compromised. If, however, there is no way to determine whether the data was compromised, the firm will have to notify the covered entity of the breach in a time frame set forth in the parties’ BAA. That agreement will also specify which party has to pay for the notification and possible protections needed to mitigate any risk, such as credit protection for a period of time. The cost to accomplish these tasks will depend on the number of individuals whose data is involved. If more than 500 people are affected, notice of the data breach must be provided to local media and prominently displayed on the firm’s website. This size of loss could easily occur if a laptop with unencrypted data is misplaced.

Possibly the best protection a firm can have for its information system is encryption. Encryption must meet certain standards, set by the National Institute of Standards and Technology, to be sufficient to deem the data protected under HIPAA. Most technology experts tend to recommend that encryption is used to protect data both in motion and at rest. While encryption may involve significant upfront costs, if it protects the firm from a single data breach, or unfavorable audit outcome, it is likely to be a wise investment.

Special care must be taken with mobile devices, because they seem to be the source of a significant number of data breaches reported in industry publications. Many businesses have adopted technology that allows a lost or

stolen mobile device to be remotely “wiped” of all data as soon as a loss is reported. This may help reduce the risk that data will be compromised if all data is removed before it could likely be accessed or copied.

As part of compliance with HIPAA, business associates must adopt a breach notification policy. The requirements of that policy must match what the firm agrees to do in its BAA with respect to handling breaches of PHI. The other specific provisions to include in a breach notification policy are set forth in the HITECH breach notification rule.

## CONCLUSION

While lawyers with health care and health plan clients have learned to adapt to the requirements of acting as a business associate, the HITECH Act imposes new requirements with which those lawyers need to become familiar. With the HITECH Act imposing HIPAA’s obligations directly on business associates, many lawyers are now subject to direct enforcement, and noncompliance can lead to steep fines. New written policies, security assessments, staff training, getting new subcontractor agreements in place are only a few of the challenges ahead for law firms that must comply with HIPAA and the HITECH Act.

1. 65 Fed.Reg. 82,462-4
2. 43A Okla. Stat. §1-109.D. (2013)
3. 45 C.F.R. §164.501

## ABOUT THE AUTHOR



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## The Role of Telemedicine in Meeting the Behavioral Health Needs of Oklahomans and Attendant Legal Issues

*By Mary Holloway Richard and Mary R. Daniel*

For decades, regulators and providers in the health care industry have actively sought to improve the health of the nation and to stretch both governmental and private health care dollars. Efforts to shift from inpatient-based care to an ambulatory model have been largely successful. Cost containment initiatives have gained significant momentum and have included, in addition to budgets cuts at state and federal levels, reimbursement controls by nongovernmental third-party payers and other incentives to ration services and products.<sup>1</sup> There are also focused efforts to solve the troublesome issue of inequitable distribution of health care resources in Oklahoma and elsewhere in the nation by relying on prevention, physician extenders, practice models and increasingly advanced technology.<sup>2</sup>

### TELEMEDICINE THEN AND NOW

One of the important ways in which the industry has responded to all of these concerns is through a marriage of the healing sciences and technology. "Telemedicine" has been defined as "...the use of medical information exchanged from one site to another via electronic communications to improve a patient's clinical health status. Telemedicine includes a growing variety of applications and services using two-way video, email, smart phones, wireless tools and other forms of telecommunications technology."<sup>3</sup> The concept of telemedicine has been in existence for decades, but no commonly accepted definition exists, and efforts to describe or set the boundaries for the modality have created some confusion.<sup>4</sup> The concept continues to spawn progeny such as

teleradiology, telestroke, telehepatology, telerehabilitation, telenursing, teleaudiology, teledentistry, telehomecare, and, importantly for the purposes of this article, telemedicine for behavioral health. In some of these specialized practices in which electronic access is an integral part, the providers (in-state or out-of-state) contract to provide limited services such as study interpretations and monitoring. Behavioral health services include mental health evaluations, consultations between providers and therapeutic treatment.<sup>5</sup> Whether the type of health services delivered remotely are largely interpretative or are direct patient care, providers are regulated by state professional boards. The processes of electronically transmitting behavioral health information from one site to another, and of examining, treating and communicating electronically with behav-



ioral health patients raise numerous legal issues, including state regulation of providers, the nature of the physician-patient relationship, confidentiality, standard of care, provider credentialing, reimbursement, detention and involuntary commitment. This article focuses largely on recent developments in provider regulation and will provide a brief overview of several other legal issues in telemedicine behavioral health.<sup>6</sup>

## TELEMEDICINE BEHAVIORAL HEALTH

All mental health procedures and services that can be delivered face-to-face can be delivered remotely through telemedicine.<sup>7</sup> In fact, behavioral health has relied upon variations of remote servicing for a century through written consultations between psychiatrists about perplexing patients and family letters detailing patients' histories for use in long-term treatment. Live videoconferencing was developed in the NASA-era of the 1960s followed by extensions of that medium in the next two decades, courtesy of federal grant monies. It was in the 1990s, when computer technology exploded and the cost of equipment fell, that email, websites, in-home monitoring technology and electronic records became realistic options for providers.<sup>8</sup> The proliferation of behavioral health providers to include psychiatrists, licensed counselors, social workers and others has created additional opportunities to put such technology to use.

The regulatory governance of telemedicine of all types is spread out over several agencies — The Oklahoma State Board of Medical Licensure and Supervision (OSBMLS), the Oklahoma State Board of Osteopathic Examiners (OSBOE), and the Oklahoma Health Care Authority (OHCA). Oklahoma law does not prohibit the practice of telemedicine. In fact, the OSBMLS and the OSBOE recently have proposed new standards for telemedicine practice for medical doctors and osteopathic doctors, respectively. Oklahoma, unlike some states, has not chosen to offer a limited telemedicine license for doctors or other providers. For attorneys representing behavioral health and other providers engaged in such care outside Oklahoma it is important to consult the laws of the involved state. Most states have an exception for physician-to-physician consults across state lines in the interest of education and quality care.<sup>9</sup> With regard to state oversight of telemedicine providers, we will focus on providers licensed in Oklahoma practicing

remotely within Oklahoma and recent developments in state law.<sup>10</sup>

## CURRENT RULES AND GUIDELINES GOVERNING MEDICAL AND OSTEOPATHIC PHYSICIANS

The OSBMLS rules define a physician-patient relationship as “a relationship established when a physician agrees by direct or **indirect** contact with a patient to diagnose or treat any condition, illness or disability presented by a patient to that physician, whether or not such a presenting complaint is considered a disease by the general medical community.”<sup>11</sup> The use of the word “indirect” has been interpreted to allow a physician to see a patient using the Center for Medicare and Medicaid’s (CMS) interactive telecommunications system but prohibited the continuing use of telemedicine for the entire relationship. The OSBMLS requires “a medically appropriate, timely scheduled, **actual face-to-face encounter** with the patient, subject to any supervisory responsibilities established elsewhere in these rules.”<sup>12</sup> While this requires a face-to-face follow-up, it does not mandate face-to-face interaction for the entire relationship.

The OSBOE has issued policy and guidelines addressing the use of telemedicine by osteopathic doctors. The guidelines are exhaustive, and while they are not actually regulations, they are useful to determine OSBOE’s scope of enforcement and philosophy. The OSBOE defines telemedicine as “the practice of medicine using electronic communications, information technology, or other means between a physician in one location and a patient in another location with or without an intervening health care professional. Current regulations authorize use of telemedicine to create and sustain an appropriate physician-patient relationship.”<sup>13</sup> When treating patients in Oklahoma, the OSBOE requires Oklahoma licensure irrespective of the osteopath’s location, thereby giving the board authority over the osteopathic physician who practices telemedicine.<sup>14</sup> The OSBOE defines “distant site” and “originating site.” The distant site is the “site where the physician providing the patient care is located at the time the service is provided via audio/video telecommunication.”<sup>15</sup> The originating site is the “site where the patient receiving patient care is located at the time the service is being performed by a physician via audio/video telecommunications.”<sup>16</sup> The OSBOE requires that a “licensed or certified health care

professional (a 'presenter') must always be present at the originating site when direct patient care is involved in video conferencing/consultation."<sup>17</sup> It is important to note that this model of telemedicine contemplates the use of telemedicine between health care facilities. Other models of telemedicine are in use, such as where the physician interacts directly with the patient without a presenter.<sup>18</sup> That direct interaction between the distant site physician and the originating site patient is currently being considered in Oklahoma.

### PROPOSED RULES FOR MEDICAL DOCTORS

The OSBMLS, under its statutory authority, promulgated new telemedicine regulations on Jan. 16, 2014,<sup>19</sup> making a discussion of those changes timely. The manner in which regulations are approved has changed significantly in Oklahoma because of amendments to the Oklahoma Administrative Procedures Act.<sup>20</sup> After an agency approves regulations, the agency must send copies of the regulations to the Oklahoma Legislature (House and Senate) and the governor.<sup>21</sup> The legislature may approve or reject any of these regulations.<sup>22</sup> If the legislature approves the regulations promulgated by an agency, the governor must also approve the regulations.<sup>23</sup> The legislature, both the house and the senate, approved the new OSBMLS rules (although the rules were not presented in a joint omnibus resolution), and the Governor approved the rules (along with a plethora of other agency rules) through an official declaration on June 19, 2014.<sup>24</sup> The new rules are effective as of Sept. 12, 2014.<sup>25</sup>

The OSBMLS defines telemedicine as "the practice of health care delivery, diagnosis, consultation, treatment, including but not limited to, the treatment and prevention of conditions appropriate to treatment by telemedicine management, transfer of medical data, or exchange of medical education information by means of audio, video or data communications."<sup>26</sup> Like CMS, the OSBMLS does not consider the use of phones and fax machines as a "consultation," but goes further to exclude "phone or Internet contact or prescribing and other forms of communication, such as web-based video" that do

**“If a physician meets the requirements of this new telemedicine section, the physician does not need to have a face-to-face encounter with the patient...”**

not meet the requirements of a new regulatory section on telemedicine.<sup>27</sup> If a physician meets the requirements of this new telemedicine section, the physician does not need to have a face-to-face encounter with the patient thereby significantly facilitating the practice of telemedicine.<sup>28</sup> The OSBMLS defines the originating site as "the location of the patient at the time the service being furnished via a telecommunications system occurs."<sup>29</sup> The distant site is defined as "the location of medical doctor providing care via telecommunications systems"<sup>30</sup> While the OSBMLS did not change the definition of physician/patient relationship, it essentially expanded that notion

by adding a reference to its new telemedicine regulations.

Oklahoma licensure is a requirement under the new Telemedicine regulations, and the OSBMLS sets forth additional requirements<sup>31</sup> for telemedicine encounters, effectively eliminating the face-to-face requirement:

the distant site physician to perform an exam of a patient at a separate, remote originating site location. In order to accomplish this, and if the distant site physician deems it to be medically necessary, a licensed healthcare provider trained in the use of the equipment may be utilized at the originating site to "present" the patient, manage the cameras, and perform any physical activities to successfully complete the exam. A medical record must be kept and be accessible at both the distant and originating sites, preferably a shared Electronic Medical Record, that is full and complete and meets the standards as a valid medical record. There should be provisions for appropriate follow up care equivalent to that available to face-to-face patients. The information available to the distant site physician for the medical problem to be addressed must be equivalent in scope and quality to what would be obtained with an original or follow-up face-to-face encounter and must meet all applicable standards of care for that medical problem including the documentation of a history, a physical exam, the ordering of any diagnostic tests, making a diagnosis and initiating a treatment plan

with appropriate discussion and informed consent.<sup>32</sup>

The OSBMLS also sets forth some technical requirements in compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.<sup>33</sup> The technology “must be sufficient to provide the same information to the provider as if the exam has been performed face-to-face” and the “audio and video equipment must permit interactive, real-time communications.”<sup>34</sup>

This new section not only contemplates the use of telemedicine between health care facilities, it also authorizes the use of telemedicine directly between a physician and patient. The distant site physician, in his or her medical judgment, can decide whether or not a presenter is required. With this model, the physician can decide whether or not a presenter is required, and, as long as the physician and patient use a HIPAA-compliant technology with interactive and real-time communication, the patient and physician can be located anywhere in Oklahoma. The patient could literally be at home, and the physician could be at his or her office, his or her home, or any number of secure locations. With the involvement of multiple sites, the physician still has to maintain a medical record accessible at both sites. If the patient is at home without a presenter, the physician will need to determine how to make the medical record accessible to the patient. This is distinguishable from facilities using telemedicine as both facilities keep and maintain medical records.

#### **REIMBURSEMENT FOR TELEMEDICINE SERVICES: OKLAHOMA HEALTH CARE AUTHORITY REGULATIONS**

The Oklahoma Health Care Authority (OHCA) has also promulgated telemedicine regulations<sup>35</sup> under which a physician or practitioner may be reimbursed for telemedicine services that fulfil its requirements. The OHCA limits coverage to “consultations, office visits, individual psychotherapy, psychiatric diagnostic interview and examinations and testing, mental health assessments and pharmacologic management between originating sites located in rural areas connecting with distant sites in areas that are not easily accessible by the member at the distant site.”<sup>36</sup> The purpose of the OHCA regulations is “to implement telemedicine policy that improves access to health care services by enabling the provision of medical

specialty care in rural areas to meet the needs of members and providers alike, while complying with all applicable federal and state statutes and regulations.”<sup>37</sup> The OHCA explicitly recognizes the need for specialized health care in rural Oklahoma.

#### **TELEMEDICINE BEHAVIORAL HEALTH: GUIDANCE FOR PROVIDERS**

Almost nowhere are services more needed, are providers more in demand, than in the areas of psychiatry, mental illness, and substance and alcohol abuse.<sup>38</sup> And telemedicine behavioral health services, ranging from patient management, consultations with primary care physicians and subspecialty care, raise a variety of legal issues for the attorney representing distant and originating sites and practitioners practicing remotely including standard of care, informed consent, confidentiality and licensure. The established attributes of the physician-patient relationship apply even where the relationship is established and/or predominantly maintained remotely. For negligence claims arising from that relationship, Oklahoma law adopted the national standard of care<sup>39</sup> and thus avoids issues presented historically by a perceived gap in practice standards between urban and rural areas and those arising from the nature of a relationship crafted, at least in important part, remotely. In a negligence action against a provider applying Oklahoma law, the provider’s practice location or physical location has little or no bearing upon the standard against which the provider’s performance is measured.

Obtaining robust informed consent<sup>40</sup> at a distance places additional responsibilities upon the practitioner and, at a minimum, includes mention of the type of technology being used, the interactive nature of the modality, and the panoply of risks, benefits and options available to the patient for the particular diagnosis in the particular setting. For example, if psychotherapy services were to be delivered remotely, the patient at the originating site may expect to receive at a minimum information about the security of the room at the distant site (e.g., the identity of everyone present or the assurance that no one else is present, that the room is secure so that the conversation will not be overheard by others). The requisite elements of informed consent in this context — information delivered by a provider with an innate understanding of the care to be provided — are unchanged so that the explanation of treat-

ment, alternatives, risks and benefits and the opportunity to ask questions occurs remotely, just as it has always been required in face-to-face encounters.

Privacy issues also present risks to the behavioral health provider interacting or providing services by telemedicine. Federal privacy protection regulations require procedural, administrative and technical safeguards, and so may require that attention be given to both the technical and physical space in establishing a secure environment — camera position and angle, lighting, audio, security of the transmission itself.<sup>41</sup> It is also prudent under the federal regulations to establish a protocol for secure maintenance of the videoconferencing equipment when not in session and for storage of the electronic data.<sup>42</sup>

Attorneys for telemedicine behavioral health providers should be aware of requirements by accrediting bodies, regulators, third-party payers and other contracting entities to require quality and outcome metrics and data. Although in its nascent stages, evaluation of telemedicine behavioral health will likely require identifying activities for monitoring the facility, manpower, technical supports, interaction between patient and provider and impact of services.<sup>43</sup> Provider-institution service agreements increasingly tie payment to outcome and performance standards as payers tie those metrics to reimbursement.<sup>44</sup> CMS has approved reimbursement for telemedicine behavioral health services including a diagnostic interview, individual psychotherapy, pharmacological management, neurobehavioral status examinations and consultations.<sup>45</sup> Some insurers have followed suit and reimburse according to the same Medicare billing codes associated with these services. Reimbursement, as always, is tied to specific documentation requirements.

The telemedicine encounter must also have the same scope and quality as a face-to-face encounter, and all standards of care must be met. What this means for the physician is that the physician can make the determination that, depending on the condition, a face-to-face encounter may be required. While face-to-face encounters may be important in certain specialties or to diagnose certain conditions, behavioral health seems to be an extraordinarily good fit for telemedicine. The OSBMLS provided significant support to telemedicine behavioral health in its “Telemedicine Policy

(Mental Health)” by setting the parameters to include consultations, psychotherapy, psychiatric diagnostic interview examinations and testing, discharge planning and pharmacologic management.<sup>46</sup> If these regulations are approved, psychiatrists who are in short supply could be utilized in all of Oklahoma regardless of their location.

## CONCLUSION

The benefits of telemedicine behavioral health include taking limited resources to rural areas, decreasing hospitalization, decreasing emergency department visits, improving compliance with therapies including psychotropic drugs. Out of the 77 counties in Oklahoma, 69, or nearly 90 percent are designated as a health professional shortage area for mental health by the Health Resource Services Administration. The professional boards and state government are making strides to protect consumers and give guidance to providers in the face of rapidly developing technology and consumer need and expectations.

1. Last accessed 9/12/14. “Mark Stanton prepared this 2002 study titled “Reducing Costs in the Health Care System: Learning From What has Been” for the federal Agency for Healthcare Research and Quality.

2. See <http://247wallst.com/special-report/2012/10/19/states-with-the-fewest-and-most-doctors/2/> (Last accessed 4/21/14). According to the report by the American Association of Medical Colleges in 2011, Oklahoma was 8th out of the 10 states with the fewest doctors. The AAMC reported that the percentage of citizens without health insurance was 7th highest and the life expectancy was the 5th lowest, although the state was 23rd high in medical students per 100,000. The reports continues to describe Oklahoma as having “...one of the least healthy populations in the country. More than two-thirds of the residents are overweight or obese.... Also, the state had the third-largest percentage of residents who smoke. As of 2010, there were just 20.8 doctors in a residency program in the state per 100,000 people, compared to the national rate of 35.8 per 100,000. A *New England Journal of Medicine* article last year identified the state as having the least accessible health care. Tulsa World also notes that state medical universities have not increased their enrollment size yet, which could help increase the number of medical students who might eventually become practicing doctors in the state.”

3. <http://goo.gl/ZQvYEI> (Last accessed 9/16/14); <http://goo.gl/Ry87bh> (Last accessed 9/16/14). See also, <http://goo.gl/U8Eh8m> (Last accessed 9/12/14).

4. While the Centers for Medicare and Medicaid (CMS) characterize telemedicine by the use of interactive audio and video equipment excluding phones, faxes and emails, it has not defined the term. Rather, it defines an alternate term, interactive telecommunications system, as “multimedia communications equipment that includes, at a minimum, audio and video equipment permitting two-way, real-time interactive communication between the patient and distant site physician or practitioner.” <http://goo.gl/3gS15m> (Last accessed 9/12/14).

5. <http://goo.gl/rETQGW> (Last accessed 9/16/14) discussing remote provision of such services as medication management, involuntary commitment proceedings and patient-focused provider training in the future.

6. Although “telepsychiatry” is a well-accepted term, rather than limit this article conceptually to the practice of psychiatry at a time when all types of counselors are in short supply in Oklahoma, the authors have opted to use the term “Telemedicine-Behavioral Health.” “Behavioral Health” is the moniker selected by the American Health Lawyers Association in its pursuit of the legal issues arising from provision of these services.

7. The primary tools of behavioral health therapy and counseling are observation and discourse which are well adapted to this kind of technology in contrast to other medical practices requiring a physical examination of the patient.

8. See "Telepsychiatry: Overcoming Barriers to Implementation" 11 *Current Psychiatry*, No. 121 (Dec. 2012) Saeed, A., Block, R. and Diamond, J. See generally Telepsychiatry and eMental Health ed. Wootton, R., Yellowlees, P. and McLaren, P., Hodder Education Publishers (London) (2007).

9. 59 O.S. §492(D)(8) (excluding out of state consultants from the "practice of medicine.") Most states have an exception for physician to physician consultation in the interest of education and quality care which is the most limited version of telemedicine. See [http://www.fsmb.org/pdf/grpol\\_telemedicine\\_licensure.pdf](http://www.fsmb.org/pdf/grpol_telemedicine_licensure.pdf) (analysis of state laws on this subject by Federation of State Medical Boards).

10. The concept of "remoteness" may not be a matter of a significant number of miles, traveling to another city, state or region, but, rather a matter of making immediate access to services possible.

11. OAC 435:10-1-4 (*emphasis added*). See also 435:10-7-12 (establishing the physician-patient relationship.)

12. *Id.* (*emphasis added*).

13. <http://goo.gl/cXnx0E> (Last accessed 9/16/14).

14. *Id.* The OSBMLS effectively makes the same requirement without an explicit regulation.

15. *Id.*

16. *Id.*

17. *Id.*

18. In addition, physicians are currently engaged remotely in consultation with and providing education to other physicians regarding individual patients and case studies.

19. <http://goo.gl/x9ZwXJ> (Last accessed 9/16/14).

20. 75 O.S. §§250 – 323.

21. 75 O.S. §303.1(A).

22. 75 O.S. §308(B).

23. 75 O.S. §308(E)(2).

24. "Governor approves permanent rules," Oklahoma Hospital Association, [http://www.okoha.com/OHA/Hotline/2014/June\\_2014/Governor\\_approves\\_permanent\\_rules.aspx](http://www.okoha.com/OHA/Hotline/2014/June_2014/Governor_approves_permanent_rules.aspx) (Last accessed 9/22/14).

25. Proposed Rules, Oklahoma Medical Board, [http://www.okmedicalboard.org/download/724/Telemedicine\\_Rules-Final\\_1014.pdf](http://www.okmedicalboard.org/download/724/Telemedicine_Rules-Final_1014.pdf) (Last accessed 9/22/14).

26. Proposed OAC 435:10-1-4, [http://www.okmedicalboard.org/download/724/Telemedicine\\_Rules-Final\\_1014.pdf](http://www.okmedicalboard.org/download/724/Telemedicine_Rules-Final_1014.pdf) (Last accessed 4/21/14).

27. *Id.*

28. *Id.*

29. *Id.*

30. *Id.*

31. Proposed OAC 435:10-7-13(a), <http://goo.gl/x9ZwXJ> (Last accessed 9/16/14).

32. Proposed OAC 435:10-7-13(b)(1), <http://goo.gl/x9ZwXJ> (Last accessed 9/16/14).

33. 42 U.S.C.A. §§17901-17903; 45 C.F.R. §160; 45 C.F.R. §164.

34. Proposed OAC 435:10-7-13(b)(2-3), <http://goo.gl/x9ZwXJ> (Last accessed 9/16/14).

35. Proposed OAC 435:10-7-13(b)(2)-(3), <http://goo.gl/x9ZwXJ> (Last accessed 9/16/14).

36. OAC 317:30-3-27.

37. <http://hokhca.org/providers.aspx?id=10014> (Last accessed 4/21/14).

38. OAC 317:30-3-27(a).

39. 76 O.S. §20.1.

40. See *Scott v. Bradford*, 606 P.2d 554, 556-7 (Okla. 1979).

41. *Supra* n. 31, 42 U.S.C.A. §1320 *et seq.*

42. *Id.*

43. Sources for methodologies and metrics for evaluating telemedicine-behavioral health are abundant and continuing to develop: <http://goo.gl/F0xpA8> (Last accessed 9/12/14); <http://goo.gl/BQdf1l> (Last accessed 9/12/14).

44. See Joint Commission "Telemedicine Requirements-Hospital Accreditation Program Standard LD.04.03.09" <http://goo.gl/B6nLqY> (Last accessed 9/16/14).

45. <http://goo.gl/mbkcWJ> (Last accessed 9/16/14); <http://goo.gl/OrDskT> (Last accessed 9/16/14).

46. <http://goo.gl/JQnjcE> (Last accessed 9/16/14).

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# Health Insurance Policy



## Rights and Obligations of Employees and Employers Under Health Care Reform

By John A. Papahronis and Jim Prince

Comprehensive health care reform, sometimes referred to as “Obamacare,” was initiated in March 2010 with the passage of the Patient Protection and Affordable Care Act<sup>1</sup> (PPACA) and the Health Care and Education Reconciliation Act of 2010.<sup>2</sup> The enactment of the reform legislation has been and continues to be followed by the promulgation of thousands of pages of regulations by the executive agencies charged with the implementation of the statutes.<sup>3</sup>

The statutes and regulations impose specific requirements on issuers of insurance policies and on employers as well as their health plans in the following general areas:

- 1) Market Reforms
- 2) Tax Incentives and Penalties
- 3) Reporting and Administrative Requirements

This article is intended to provide a general summary of the complex rules that have been issued.

### MARKET REFORMS

Sometimes referred to as the public health service mandates, market reforms are new standards that apply to health plans and policies. These mandates do not apply equally to all health plans or policies. For example, they generally do not apply to plans or policies that provide coverage for limited conditions, such as plans that only cover dental or vision care, or plans that apply only to retirees. In addition, plans that were in existence on March 23, 2010,

(the date PPACA was enacted), and which have not been significantly changed (referred to as “grandfathered plans”) are not subject to all of the mandates. Significant market reforms include the following:

#### *Prohibition on Annual and Lifetime Limits*

Prior to health care reform, most health plans and policies imposed annual and lifetime limits on the dollar value of benefits that a person could receive. For example, a common provision limited benefits to \$1 million per person on a lifetime basis. Once the limit was reached, the plan or policy had no further obligation to pay for care. Pursuant to the Public Health Service Act mandates, both grandfathered and nongrandfathered plans and policies are now prohibited from applying lifetime or annual limits.

#### *Prohibition on Pre-existing Condition*

Another common provision in health plans and policies prior to health care reform excluded coverage of conditions which existed prior to the date that the individual became covered.

Under health care reform, both grandfathered and nongrandfathered plans and policies are not permitted to refuse to pay expenses for care of on the basis of a pre-existing condition.

#### *Preventive Care Services*

Nongrandfathered plans and policies are now required pay 100 percent of the cost of preventive care services identified by the government as being effective in preventing illnesses. The list of preventive care services that must be paid for without any co-payment or other cost sharing is lengthy. Among others, it includes numerous immunizations and screening procedures, contraceptives and counseling services.

#### *Nondiscrimination in Health Insurance*

Prior to health care reform, an employer was permitted to provide a better health plan for its highly compensated employees than it provided to other workers so long as the benefits were funded through insurance policies. Under health care reform, an excise tax is imposed on an employer who offers insurance policies to its employees that discriminate in favor of highly compensated employees and owners. This excise tax is not being enforced until the Department of the Treasury issues regulations. This excise tax does not apply to grandfathered plans.

#### *Limitation on Cost Sharing*

For plan/policy years beginning after 2013, health care reform limits the amount of cost sharing that a nongrandfathered health plan or policy can impose on individuals. Cost sharing includes deductibles, co-insurance, co-payments and other required expenditures with respect to the essential health benefits under a plan. The premiums an individual has to pay for the coverage and expenditures for services not covered by a plan or policy are not subject to the cost-sharing restriction. The cost-sharing limits for 2014 are \$6,350 for self-only coverage and \$12,700 for family coverage. These limits will be adjusted in future years.

### **TAX INCENTIVES AND PENALTIES**

In order to encourage coverage and enforce other health care initiatives, there are numerous taxation and reporting provisions. These include new fees and taxes intended to finance the health care reform initiatives as well as the following penalties imposed on individuals and employers.

#### *Individual Mandate*

Beginning in 2014, individual taxpayers will be assessed a “shared responsibility” penalty if they, their spouses or their dependents don’t have health care coverage that is deemed by the government to constitute “minimum essential coverage.” This individual mandate is measured on a monthly basis. The maximum annual penalty is the greater of a flat dollar amount or a percentage of income as follows:

Year	Flat Dollar Amount	Percent of Income
2014	\$95	1 percent
2015	\$325	2 percent
2016 and thereafter	\$695	2.5 percent

#### *Shared Responsibility for Employers (Play or Pay)*

Beginning in 2015, certain applicable large employers may be subject to a penalty for 1) failing to offer minimum essential health care coverage for substantially all full-time employees and their dependents (the “no coverage penalty”); or 2) offering eligible employer-sponsored coverage that is not “affordable” or does not offer “minimum value” (the “inadequate coverage penalty”). These obligations are sometimes referred to as the employer shared responsibility or “play or pay” requirements.

For purposes of these rules, an “applicable large employer” is an employer who employed an average of at least 50 full-time employees (including full-time equivalent employees) during the preceding calendar year.<sup>4</sup> A special transition rule for 2015 exempts certain employers who employ at least 50 but fewer than 100 full-time employees and who meet certain other requirements. The term “employer” includes predecessor employers. Also, all commonly controlled entities under Code Section 414(b), (c), (m) or (o) are treated as a single employer for purposes of the applicable large employer determination. A full-time employee for any month is defined as an employee who works at least 30 hours of service per week, or 130 hours of service for the month.<sup>5</sup> The final regulations issued by the Internal Revenue Service in February 2014 provide detailed rules for determining hours of service. If an employer was not in existence during the entire preceding calendar year, the determination of applicable large employer is based on the reasonable expecta-

tion of the number of full-time employees for the current year.<sup>6</sup>

Once it has been determined that an employer is an applicable large employer and therefore subject to the employer shared responsibility requirements, an employer must identify the full-time employees that must be offered group health coverage. A full-time employee is an employee who is reasonably expected to work a full-time schedule of at least 30 hours per week, and must be offered coverage by the first day of the fourth full month following his date of hire. The final regulations provide a look-back measurement methodology for determining the status of other categories of employees, such as variable hour employees, part-time employees and seasonal employees. In general, the methodology uses a “measurement period” or look-back period over which hours are counted for determining whether such employees averaged at least 30 hours per week. When an employee’s status is determined based on the measurement period, the employee’s status is locked in for the duration of a “stability period,” regardless of the actual number of hours worked by the employee during the stability period.

As mentioned above, an applicable large employer will incur the “no coverage penalty” if the employer fails to offer substantially all full-time employees and their dependents the opportunity to enroll in “minimum essential coverage” under an “eligible employer-sponsored plan” for the month, provided that at least one full-time employee has been certified to the employer as having enrolled in the health care exchange and qualified for a premium subsidy.<sup>7</sup> Code Section 4980H requires that the offer of coverage be made to employees and their dependents. A “dependent” is defined to include natural and adopted children who are under age 26, but excludes foster children and stepchildren. Further, the employee’s spouse is not a dependent for this purpose. If an employer fails to offer coverage and incurs the no coverage penalty, the amount of the excise tax is \$2,000 multiplied by the number of full-time employees, minus 30. The final regulations provide that an employer will be

treated as covering substantially all of its full-time employees if it covers 95 percent of its full-time employees<sup>8</sup> (a special transition rule lowers this percentage to 70 percent for 2015).

Even if an employer avoids the “no coverage penalty,” it may incur the “inadequate coverage penalty” if it does not offer affordable coverage that provides minimum value, and at least one employee receives a premium tax credit for health coverage purchased through the health insurance exchange.<sup>9</sup> The amount of the inadequate coverage penalty tax is equal to \$3,000 multiplied by the number of full-time employees who receive premium tax credits. An employer-sponsored health plan provides minimum value if the plan’s share of the total allowed cost of benefits provided to an employee is at least 60 percent.<sup>10</sup> There are three methods for determining whether a group health plan provides minimum coverage: 1) the Internal Revenue Service and the Department of Health and Human Services have developed a minimum value calculator; 2) certain safe harbor plan designs will be specified in future guidance; and 3) a certification may be obtained from an actuary. Coverage under an eligible employer-sponsored plan is deemed to be affordable if the employee’s required contribution does not exceed 9.5 percent of the employee’s household income.<sup>11</sup> There are three safe harbor methods available to an employer to determine the affordability of its group health plan: 1) a safe harbor based on Form W-2 income; 2) a rate of

**“Even if an employer avoids the ‘no coverage penalty,’ it may incur the ‘inadequate coverage penalty’ if it does not offer affordable coverage...”**

pay safe harbor; and 2) a safe harbor based on the federal poverty line.

## **REPORTING AND ADMINISTRATIVE REQUIREMENTS**

Employers are subject to a number of new reporting requirements under health care reform. With respect to employees, health care reform requires employers to report the cost of employer-sponsored health care coverage. Beginning in 2016, employers will also have to provide employees and the IRS with information concerning health care coverage provided by the employer to its employees. These additional reporting requirements are intended to allow employees to document their coverage



for purposes of the individual mandate and to report the employer's compliance with the play or pay mandate.

## CONCLUSION

As demonstrated above, health care reform is a watershed event for health care plans and the employers that sponsor them. Governmental agencies have issued an enormous amount of detailed regulations and other guidance in an attempt to start the implementation of PPACA. Nevertheless, there is sure to be further guidance that will be issued to further clarify areas that have previously been addressed and to address areas that have not yet been covered. In the meantime, given the complexity of the issues involved and the significant financial consequences, most employers will need third party assistance in evaluating implications on their business. Such assistance can come from insurance brokers and consultants, accountants, and employee benefits attorneys. However, it will also be important for general business attorneys to be familiar with the issues involved so that they can guide their clients as health care reform continues to roll out.

1. Pub. L. No 111-148 (PPACA).

2. Pub. L. No 111-1525 (HCERA).

3. Because of the breadth of the legislation, the Departments of Labor, Treasury and Health and Human Services all have authority (in some cases concurrent) with respect to the implementation and administration of HCR.

4. Code Section 4980H(c)(2)(A).

5. Code Section 4980H(c)(4)(A).

6. Treas. Reg. §54.4980H-2(b)(2).

7. Code Section 4980H(a).

8. Treas. Reg. §54.4980H-4(a).

9. Code Section 4980H(b).

10. 45 C.F.R. §156.145(a).

11. Code Section 36B(c)(2)(C).

## ABOUT THE AUTHORS



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## Coming in the January 2015 *Oklahoma Bar Journal*

Health Law articles focused on Avoiding  
Legal Pitfalls in Healthcare Industry Transactions:

### **Unique Anti-Referral Laws Affect Business Arrangements in the Healthcare Industry**

*By Karen S. Rieger*

### **Healthcare M & A Has Unique Rules**

*By Elise Dunitz Brennan*

### **Physician Compensation Arrangements Under the Stark Law**

*By Elizabeth D. Tyrrell and Patricia A. Rogers*

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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<br>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,<br>Western District of Oklahoma                                                                                                                      |
| 10:50 - 11:30 a.m. | Panel discussion moderated by D. Kent Meyers of Crowe<br>& Dunlevy, panel members include Judge Alley, Judge Barnes,<br>Oklahoma House Rep. Emily Virgin and Frederick K. Slicker<br>of Slicker Law Firm |
| 11:40 - TBA        | Optional private tour of State Capitol                                                                                                                                                                   |

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## Emerging Health Care Litigation Issues: The Times They Are A-Changin’

By Cori H. Loomis

If you are old enough (or cool enough), you will recall a great Bob Dylan song titled “The Times They Are A-Changin’.” The title, and even some of the lyrics,<sup>1</sup> seem especially appropriate for this topic. The implementation of the Patient Protection and Affordable Health Care Act (ACA),<sup>2</sup> a spike in *qui tam* litigation and the proliferation of HIPAA<sup>3</sup> class actions have all given rise to a host of new potential liability risks or potential claims, depending on your perspective. The purpose of this article is to discuss these emerging litigation issues.

### ACA FALLOUT

We are just now beginning to get a glimpse of litigation that may arise under the ACA, other than the constitutional legal challenges and other challenges regarding its content. In early April, a group of plaintiffs in Nevada filed the first class action lawsuit over a state insurance marketplace.<sup>4</sup> The lead plaintiffs assert that they purchased plans and paid premiums through the Nevada Health Link Insurance exchange. They were later informed they had no insurance coverage after incurring significant health care expenses, because the exchange failed to submit their applications and premiums to the insurance companies they selected. One plaintiff claims to owe more than \$400,000 in medical bills. The class consists of all Nevada residents who applied for and paid health insurance premiums through the exchange but were denied coverage.

Even though Oklahoma did not implement a state exchange, similar administrative snafus

could result in the federal exchange or other states. This lawsuit raises several legal questions about the viability of this type of lawsuit. First is whether and to what extent the state or federal exchanges may be held liable for damages. The second is whether class actions can be maintained against the exchanges. Third is whether tort damages can be established.

Another example of litigation that may arise from the ACA is the possibility that employees will file lawsuits against their employers for negative consequences occurring if the employer restructures their workforce as a response to the employer pay or play mandate.<sup>5</sup> According to a 2014 employer survey conducted by Towers Watson and the National Business Group for Health, 95 percent of respondents continue to view benefits packages that include health coverage as something worth retaining. However, 92 percent of the respondents plan to make changes in the near-term to lessen their coverage responsibilities.<sup>6</sup>

Some employers have considered limiting the hours worked by certain employees to less than 30 to reduce the number of employees who are eligible for health plan coverage. Utilizing this strategy may raise issues under Section 510 of the Employee Retirement Income Security Act of 1974 (ERISA).

Section 510 of ERISA provides that, “It shall be unlawful for any person to discharge, fine, suspend, expel, discipline or discriminate against a participant or beneficiary for exercising any right to which he is entitled under the provisions of an employee benefit plan or for the purpose of interfering with the attainment of any right to which such participant may become entitled under the plan.”

Employees who may have been eligible for benefits as a “full-time employee equivalent” may assert any reduction in hours was “interfering with the attainment” of health plan coverage in violation of ERISA. To counter this argument, employers will assert that an employee who does not satisfy the definition of a full-time employee would not be entitled to health coverage in any circumstance. However, this argument may not succeed against “variable” hour employees who sometimes worked more than 30 hours a week and may have been entitled to health coverage pursuant to the formula used to determine full-time employee equivalents.

Since the employer mandate has been delayed until 2015 (and 2016 for employers with 50-99 employees), no claims have been filed on this issue as of yet, but speculation is that they will once the mandate goes into effect.

### **QUI TAM LAWSUITS — THE RISE OF THE WHISTLEBLOWER**

In 2013, the federal government collected over \$345 million from lawsuits filed by *qui tam* relators (whistleblowers). Of the 845 new False Claims Act (FCA)<sup>7</sup> cases filed in 2013, whistleblowers filed 752 of them — a new record. A *qui tam* relator may receive as much as 30 percent of an FCA settlement, so the upward trend of filings will likely continue.

Examples of cases resolved in 2013 that illustrate the financial incentives and consequences at stake include the following:

- 1) Johnson & Johnson agreed to pay \$2.2 billion to settle criminal and civil allegations that it promoted prescription drugs for

off-label uses and paid kickbacks to physicians and pharmacies.

- 2) Tuomey Health care System was hit with a \$273 million judgment for violations of the Stark Law, which resulted in more than 20,000 false claims.
- 3) A Florida dermatologist agreed to a \$26 million settlement to resolve allegations that he accepted kickbacks from a laboratory and billed federal health care programs for medically unnecessary services. The settlement was one of the largest FCA settlements ever reached with an individual.

Oklahoma providers also have been the subject of whistleblower lawsuits. In April 2014, it was announced that The Medical Center of Southeastern Oklahoma (MCSO) and its parent company, Health Management Association Inc. (HMA), settled a lawsuit initiated by a whistleblower that they billed Medicaid for procedures that were either not medically necessary or were performed in violation. MCSO and HMA agreed to pay \$1,065,000 to the federal government and \$435,000 to the Oklahoma Medicaid program to resolve the lawsuit.

The specific allegations against MCSO were that it billed SoonerCare for unnecessary surgical procedures performed by the doctor. The whistleblower asserted that the doctor performed sinus surgeries that were not medically necessary on children who were Medicaid beneficiaries. Although the case was filed in 2012, the claims were for services performed from 2005 through 2010.

Because of the financial incentives involved, whistleblower litigation likely will continue to escalate and both the federal and state governments are getting in on the action. This trend will be facilitated by increased access to data (as discussed in the next section) that may make it easier to file whistleblower cases.

### **SUNSHINE MAKES LITIGATION RAIN**

The payment and financial information that must now be publicly reported pursuant to the Physician Payments Sunshine Act (Sunshine Act) and the Center of Medicare and Medicaid Services' (CMS) new policy of disclosing payments to physicians are expected to drive more *qui tam* litigation.

The Sunshine Act was passed as part of the ACA<sup>8</sup> and requires pharmaceutical, medical



device, biological and medical supply manufacturers to report to the Department of Health and Human Services any “payment or other transfer of value” to physicians and teaching hospitals. Manufacturers were required to submit their first reports to CMS by March 31, 2014, and CMS will release the first publication by Sept. 30, 2014. The report must include information about the amount of the payment, the date on which the payment was made, the form of payment, and the nature of the payment (e.g., gifts, consulting fees, entertainment).

The policy goal of the Sunshine Act was articulated by CMS Deputy Administrator for Program Integrity Peter Budetti, M.D., as: “You should know when your doctor has a financial relationship with the companies that manufacture or supply the medicines or medical devices you may need. Disclosure of these relationships allows patients to have more informed discussions with their doctors.”

On April 9, 2014, CMS released, for the first time, information detailing approximately \$77 billion in Medicare payments to more than 880,000 health care professionals.<sup>9</sup> In an April 2, 2014 letter to the American Medical Association (AMA), CMS said that the release is required under the Freedom of Information Act, and that “the data to be released would assist the public’s understanding of Medicare fraud, waste and abuse, as well as shed light on payments to physicians for services furnished to Medicare beneficiaries, which are governed by statutory requirements that CMS must follow.”

It is anticipated that these new sources of payment data will increase whistleblower lawsuits. On April 14, 2014, Reuters released an article that stated: “Within hours of the U.S. government’s unprecedented release last week of a trove of Medicare billing data, a small fraternity of lawyers who specialize in representing whistleblowers in health care fraud cases began to mobilize.”<sup>10</sup>

The data released pursuant to the Sunshine Act and by CMS may provide facts to support a plaintiff’s whistleblower lawsuit. On the flip side, the FCA “public disclosure bar,” which is

triggered when the fraud allegations were in the public domain before a *qui tam* relator filed suit, may make it more difficult for whistleblowers to successfully prosecute such claims.

## TOO MUCH INFORMATION — PRIVATE LAWSUITS AND CLASS ACTIONS

Even though HIPAA does not have a private right of action, a trend has developed in which a violation of HIPAA serves as a breach of duty by the covered entity in negligence cases, fiduciary duty cases, and violation of privacy cases. For example, in *I.S. v. Washington University*,<sup>11</sup> the judge recognized that there was no individual private right of action under HIPAA. However, the judge also concluded that under Missouri law, HIPAA could be used to establish a standard of care, and that HIPAA could also be used to establish a legal duty of care.

In a more recent West Virginia Supreme Court case,<sup>12</sup> the court concluded that HIPAA did not preempt common law tort claims stemming from allegations of the wrongful disclosure of health information. The plaintiff in the case sued the hospital because several hospital employees improperly accessed his medical records in violation of a number of state laws. Allegedly, the hospital employees informed the man’s estranged wife and her divorce attorney of his psychiatric hospitalization. The hospital argued that HIPAA preempted the patient’s state

law claims. The court disagreed and concluded that common law claims based on wrongful disclosure of medical or personal information are not preempted by HIPAA. It is unclear how Oklahoma courts will address state law claims based on HIPAA, but it is likely they will follow the rulings and trends in other states.

Another new, and potentially more devastating, consequence for violations of HIPAA is the emergence of class actions resulting from data breaches involving large numbers of people. Previously, the requirements for standing in a federal class action have precluded most consumer litigation alleging data breach. Actual or imminent injury was necessary for standing.<sup>13</sup>

“Another new, and potentially more devastating, consequence for violations of HIPAA is the emergence of class actions resulting from data breaches involving large numbers of people.”

However, the class action settlement in *Curry v. AvMed Inc.*,<sup>14</sup> approved Feb. 28, 2014, may indicate that courts are willing to entertain a lower threshold for class action status in data breach cases. The facts of *AvMed* were that laptops that contained unencrypted protected health information of over one million health plan members were lost. Evidence showed that numerous plan members sustained financial injury as the victims of identity theft. This allowed an inference that AvMed's failure to secure the data resulted in identity thefts and that there was a sufficient nexus between the data breach and the identity theft.

Several other class action lawsuits have been filed based on data breaches. These cases demonstrate that covered entities need to reevaluate their information technology practices and determine whether encryption software is a good investment, as opposed to the high costs of litigation, breach notification protocols, potential penalties and damages paid to plaintiffs damaged by breaches.

## TIMES ARE DEFINITELY CHANGIN'

This article only scratches the surface of the potential new causes of action that may be arising from the rapidly changing and evolving health care landscape. In-house and outside counsel, plaintiff and defense attorneys will all have to monitor developments closely to best position their clients in this evolving environment.

1. Lyric from *The Times They Are A-Changin'*: "Come senators, congressmen, please heed the call; Don't stand in the doorway, don't block the hall; For he that gets hurt will be he who is stalled; There's a battle outside, it's raging; It'll soon shake your windows and rattle your walls. For the times they are a changin'."

2. Patient Protection and Affordable Health Care Act, Pub.L. 111-148, 124 Stat. 119, H.R. 3590, enacted March 23, 2010.

3. The Health Insurance Portability and Accountability Act of 1996 (HIPAA; Pub.L. 104-191, 110 Stat. 1936, enacted August 21, 1996) was enacted by the United States Congress and signed by President Bill Clinton in 1996. HIPAA was amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5, 123 Stat. 226 (Feb. 17, 2009), codified at 42 U.S.C. §§300jj et seq.; §§17901 et seq.

4. "First class-action lawsuit filed over Nevada's insurance marketplace," *Las Vegas Review-Journal* by Jennifer Robinson (April 1, 2014) [www.reviewjournal.com/business/first-class-action-lawsuit-filed-over-nevada-s-insurance-marketplace](http://www.reviewjournal.com/business/first-class-action-lawsuit-filed-over-nevada-s-insurance-marketplace).

5. The "employer mandate" generally requires employers with 50 or more full-time (and full-time equivalents or FTEs) to provide "affordable" health insurance to 95 percent of their full-time employees or face paying a penalty.

6. [www.towerswatson.com/en/Insights/IC-Types/Survey-Research-Results/2014/03/towers-watson-nbgh-employer-survey-on-purchasing-value-in-health-care](http://www.towerswatson.com/en/Insights/IC-Types/Survey-Research-Results/2014/03/towers-watson-nbgh-employer-survey-on-purchasing-value-in-health-care).

7. 31 U.S.C. §3729 et seq.

8. Section 6002 of the ACA, 2010.

9. See, "Medicare Released Individual Physician Payment Data," *Medscape Medical News* (Mark Crane, April 9, 2014). [www.medscape.com/viewarticle/823360](http://www.medscape.com/viewarticle/823360).

10. "Lawyers start mining the Medicare data for clues to fraud," by Terry Baynes, April 14, 2014. [www.reuters.com/article/2014/04/14/us-data-idUSBREA3DO582140414](http://www.reuters.com/article/2014/04/14/us-data-idUSBREA3DO582140414).

11. *I.S. v. Washington University*, Dist. Court, ED Missouri 2011, Case Number 4:11CV235SNLJ.

12. *R.K. v. St. Mary's Med. Ctr., Inc.*, No. 11-0924 (W.Va. Nov. 15, 2012)/

13. See, *Clapper v. Amnesty International USA*, 133 S. Ct. 1138 (2013).

14. Civil Action No. 10-cv-24513 (Southern District of Florida).

## ABOUT THE AUTHOR



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## Oklahoma's Remarkable Laws Regulating End of Life

By Jan Slater

It is well-established in common law and ethical codes that individuals have the right to decide what medical care and treatment they should receive, including the right to refuse care, which may expedite their demise.<sup>1</sup> Modern medicine has the ability to extend life and prolong the moment of death long past the point at which a competent person would likely consent, but in most cases the person is no longer able to express his/her wishes.

This article will cover persons' rights to make their own medical decisions as long as they are competent; what constitutes incapacity and under what conditions Oklahoma law permits persons to exercise these rights upon incapacity. A medical case study and four Oklahoma statutes that relate to end-of-life medical care will be reviewed. The focus will be on the Oklahoma Advance Directive Act. However, three other little known laws will also be examined: the Oklahoma Do Not Resuscitate Act, the Hydration and Nutrition for Incompetent Patients Act, and the Non-Discrimination in Treatment Act. These laws greatly impact decisions health care providers can make, and often inhibit their ability to do what they believe the incapacitated patient would have wished or is in the patient's best interest.

### A CASE STUDY

The following scenario describes a common potential case:<sup>2</sup>

WD is a 75-year-old male patient with a two-year diagnosis of bladder cancer with metastasis to the brain. He was admitted to the hospital due to increasing blood in his urine. While receiving a blood transfusion he developed respiratory distress, requiring a call for the code blue team and emergency intuba-

tion. He was sent to the intensive care unit and placed on a ventilator. He was sedated and unable to communicate. It was found that his kidneys were failing due to the cancer growth that now obstructed the ureters; urine could no longer empty into his bladder. His respiratory failure was most likely due to volume overload in his kidneys.

Due to the extent of the cancer, WD was considered terminal. Due to the brain metastasis, it was doubtful that he would regain capacity. He now had kidney failure and subsequent respiratory failure. The family was given this report, and there was discussion by the ICU medical team of removing the ventilator. WD's death would be expected.

In reviewing the case, and prior to meeting his family, WD's physicians considered potential pathways for WD. What if nephrostomy tubes were surgically placed? These tubes would be permanent but would allow urine to bypass the obstructed ureters and potentially reverse the kidney failure. This might facilitate WD being weaned from the ventilator. However he would still have a terminal prognosis from the underlying cancer and now with invasive nephrostomy tubes.

Without this intervention his death would be more imminent.

The dilemma faced by WD's medical team was that WD had no Advance Directive, and he was unable to weigh in to give informed consent. Was their obligation, at this moment, to a patient with terminal cancer, respiratory failure and kidney failure, to allow for his death free from invasive life support? Or should they offer a temporary fix of nephrostomy tubes which WD may or may not survive due to his debilitated condition? If he lived he would face discharge from the hospital with permanent drainage tubes and with a recommendation for hospice care. WD had never discussed his wishes with his family, but discussions with his two adult children indicated that WD had suffered greatly from the bladder and brain cancer. The children were of the belief that WD would not have wanted his life extended artificially.

If WD had executed an Advance Directive, the medical team and family would have had some guidance for this decision and the authority to ensure his wishes were honored.

#### **MENTAL CAPACITY AND LEGAL COMPETENCY**

Before beginning any discussion of the legal ramifications of this case, the first consideration must be to determine whether WD could return to capacity sufficient to express his wishes regarding treatment. Capacity is a medical determination, and competence is a legal determination; however, both determinations are based on the same principle. The condition precedent to a person making an informed decision in medical or legal matters is mental competence. The simplest definition for competence is "the ability to perform the task at hand."

Competent judgments distinguish the class of individuals whose autonomous decisions must be respected from those individuals whose decisions need to be checked and perhaps overridden by a surrogate. Common law and medical practice presume that adults are competent to make decisions.<sup>3</sup>

If a health care professional or legal adviser determines that a person is not competent, the next step is to inquire whether competency can be restored. When incompetence rests on a reversible cause, such as pain or overmedication, the immediate goal is to restore the

**“If WD had executed an Advance Directive, the medical team and family would have had some guidance for this decision and the authority to ensure his wishes were honored.”**

patient's capacity to permit his/her involvement in treatment decisions.

Adults are presumed to have the capacity to make a treatment decision when they can understand the relevant information, reflect on it in accordance with their values, and communicate a decision to advisors or caregivers. Essential elements for a competency determination are:

1. Possession of a set of values, preferences, and goals.
2. Ability to understand information relevant to the decision.
3. Ability to reason and deliberate about one's choices.
4. Ability to communicate one's choices.<sup>4</sup>

Whether a person is competent to make a decision may vary with the task at hand. The criteria for a person's competence to choose what to eat for dinner, to stand trial or to lecture law students are radically different. Competency may wax and wane. Many persons are incompetent to do something at one point in time and competent to perform the same task at another point in time. In some cases competence varies from hour to hour, such as in the case of transient ischemic attacks or transient global amnesia, etc. Competency determinations are often made to decide if a person has the threshold competence to make a particular decision.

Following are four Oklahoma statutes that regulate medical interventions that are permitted to be offered to individuals which are most relevant to end-of-life situations.

#### **OKLAHOMA'S DO NOT RESUSCITATE ACT**

Title 63 O.S. §3131.1, *et seq.*, establishes a presumption that every person has consented to



be resuscitated in the event of cardiac or respiratory arrest:

a. Exceptions to this presumption:

1. A competent person has informed a physician that the person wanted a do not resuscitate (DNR) order;
  2. An incompetent person's representative (health care proxy, attorney-in-fact, or guardian) consents to a DNR order;
  3. The person, when competent, executed an Advance Directive refusing resuscitation or signed a DNR consent document;
  4. The person's attending physician certifies that there is clear and convincing evidence of the person's wishes not to be resuscitated;
  5. If none of the other indicia are present, the attending physician may give a DNR order in the belief that the person's death is imminent.
- b. To signify that a person wishes to have a DNR order given, the person can execute a DNR consent, wear a necklace, bracelet or carry a wallet card indicating the same.
- c. This law is designed for a person at the end of life and not the ordinary client.

#### **OKLAHOMA'S HYDRATION AND NUTRITION FOR INCOMPETENT PATIENTS ACT**

Title 63 O.S. §3080.1, *et seq.*, establishes a presumption that every incompetent patient has directed his health care provider to provide sufficient hydration and nutrition to sustain life.

a. Exceptions to this presumption:

1. An incompetent person's physician knows the person, when competent, consented that artificially administered hydration and nutrition (AAHN) should be withheld or withdrawn;
2. The person, when competent, executed an Advance Directive consenting to withholding of AAHN;
3. Two physicians determine that administration of AAHN would cause severe, intractable pain or was not medically possible; and

4. Two physicians determine the person is irreversibly incompetent, in final stages of terminal illness and death is imminent; provided, AAHN cannot be withheld pursuant to this exception if it would result in the patient dying of starvation or dehydration.

Other than the Do Not Resuscitate Act and the Hydration and Nutrition for Incompetent Patients Act, there is no presumption in Oklahoma law regarding other forms of life-sustaining treatment.

#### **OKLAHOMA'S NON-DISCRIMINATION IN TREATMENT ACT**

Title 63 O.S. §3090.1, *et seq.*, provides that, when requested by an elderly, disabled or terminally ill patient or the patient's legal representative, a health care provider may not refuse life-sustaining treatment that would be provided to any other patient based on:

1. A view that extending this patient's life is of lower value than for a patient who is younger, nondisabled or not terminally ill; or
2. A disagreement with how the patient or legal representative values the trade-off between extending the length of the patient's life and the risk of disability.

A patient or legal representative may seek an injunction against a health care provider who is about to violate, is violating or has violated this statute; however, a violation will not be considered negligence in a civil action for damages.

The legal representative in this statute is defined in the same manner as in the DNR law: a guardian, a health care proxy named in an Advance Directive, or an attorney-in-fact who holds a valid durable power of attorney for health care.

The practical implications of this statute are several:

1. The practical difficulty with this act is that elderly people need to be treated differently than young people. This difference is the foundation of geriatric medicine. Elderly people respond differently to treatments, medications and many interventions. A hip replacement in a 50-year-old is a very different prospect than a hip replacement in a 90-year-old. On the average, 90-year-olds are less likely to survive the surgery.

2. Health care providers experience patients or their families who demand care that is medically non-beneficial or futile in nature. There is a concern in the health care community that this statute will sanction the demand for futile care.
3. From a health care provider's standpoint, this statute is an unfunded mandate: it does not define who will pay for futile care demanded by a patient or family, particularly in light of considerations such as:
  - a. Health insurance that will not cover care that is "unnecessary;"
  - b. Health care providers aggressively collect bills; however, patients/families rarely have the resources to pay for these expenses; and
  - c. Health care providers and organizations usually end up absorbing the cost resulting in higher costs for all patients.

#### OKLAHOMA'S ADVANCE DIRECTIVE ACT

Title 63 O.S. §3101.1, *et seq.*, provides a statutory form that may be used by competent adults to document their wishes regarding medical care and treatment they wish to receive when they are no longer able to express their wishes.

1. The statute permits other forms to be used; however, if a client wishes to refuse AAHN, only forms that state that refusal in a separate paragraph, separately signed or initialed, will comply with the law. An excellent Advance Directive is the "Five Wishes," which can be found on the Internet (see, for example, the website [www.agingwithdignity.org/forms/5wishes.pdf](http://www.agingwithdignity.org/forms/5wishes.pdf)).
2. The statutory form serves as a durable power of attorney for health care without requiring notarization or recording in the public record.
  - a. In the Advance Directive, the declarant may request or refuse life support in the event the declarant becomes incompetent.
  - b. These choices can be made under four circumstances: when the declarant is terminally ill, persistently unconscious, has an end-stage condition or "other" as described by the declarant.<sup>5</sup>

- c. The declarant may appoint a primary and a secondary proxy.
- d. The Advance Directive must be signed by the declarant when he/she is competent, and witnessed by two witnesses who are not legatees, devisees, or heirs of the declarant.
- e. Physicians are required to comply with a person's Advance Directive; if unable or unwilling to comply, a physician is obligated to arrange care for the declarant by another physician or health care provider willing to comply with the Advance Directive.

Dilemmas facing health care providers when honoring the Oklahoma Advance Directive Act, and issues attorneys should consider when advising clients with respect to executing Advance Directives, include the following:

1. The statute contains no provision for a health care provider to refuse to comply with an Advance Directive based on the futility of the care requested and there is little chance an attending physician will find another willing physician to whom to transfer such a patient.
2. Occasionally, a declarant will appoint co-proxies, resulting in the necessity to contact both proxies every time a medical decision must be made. The issue becomes further complicated when the proxies cannot agree. Attorneys should recommend that their clients appoint a primary proxy with primary authority and a secondary proxy to serve only when the primary proxy is unable to serve.
3. The duty of the proxy is to make decisions based on the known wishes of the declarant. A quandary arises when a proxy does not know the declarant's wishes. The proxy should **not** make decisions based on the proxy's own wishes or what the proxy would do if he/she were in the declarant's place. If there is no evidence of the declarant's wishes, the proxy should decide based on what is in the best interest of the declarant. Attorneys should advise their clients to discuss in detail their wishes for end-of-life care with their proxies and their families, in addition to executing an Advance Directive.

4. On occasion a client does not wish to make end-of-life medical treatment decisions but prefers to leave all decisions to a trusted proxy based on the family exigencies at the time the Advance Directive is activated. In this event, the client should leave "Section 1. *Living Will*" blank and complete the remainder of the Advance Directive, appointing the proxies who will make the decisions.
  - a. Title 63 O.S. § 3101.4.C states in pertinent part: "My health care proxy is authorized to make whatever medical decisions I could make if I were able, except that decisions regarding life sustaining treatment and artificially administered nutrition and hydration can be made by my health care proxy... only as I have indicated in the foregoing section."
  - b. It can be argued that in the event Section 1 is left blank, the presumptions in the Do Not Resuscitate Act and the Hydration and Nutrition for Incompetent Patients Act are triggered.
  - c. To prevent the triggering of presumptions in other laws, advise a client to make clear in the *Living Will* section (4) that the client wishes the proxy to make decisions the proxy believes best represent the needs and wishes of the family; however, that the declarant would not want his/her life to be artificially prolonged and therefore the declarant consents to withdrawal of life-sustaining treatment and AAHN.
  - d. Families need permission to refuse care and permit a loved one to die naturally.

Useful tips for attorneys advising clients regarding the Oklahoma Advance Directive Act:

1. Discussion of Advance Directives should be made with all estate planning. Few people actually execute an Advance Directive.
2. There is confusion regarding what constitutes life-sustaining treatment. Life-sustaining treatment is any treatment that is designed to prolong life and delay the moment of death and includes, but is not limited to, cardiac or respiratory resuscitation, AAHN, kidney dialysis, antibiotics, curative procedures, most diagnostic procedures and surgeries except those to relieve pain or symptoms. It is presumed

that every person would want palliative care which relieves symptoms and promotes comfort but is not designed to extend life.<sup>6</sup>

3. Some attorneys advise clients not to refuse AAHN as this would lead to a tortured death from starvation and dehydration. This is an unfortunate misunderstanding since it is natural for a dying person to lose appetite and the desire for liquids. Forcing food on dying patients may greatly increase their suffering.
4. Advise clients to appoint at least one proxy who is younger than the client: someone who is willing to comply with the Advance Directive, which may include withholding or withdrawing life support.
5. The statutory form requires only the declarant's name, city, county and date of birth for identification. It is uncanny how many names and dates of birth are identical in a large city. Advise clients to also add a social security number to ensure they are not confused with other patients when a hospital attempts to retrieve an Advance Directive from their records.
6. After execution, copies of the Advance Directive should be given to the proxy, key family members, the attending physician and the hospital to which the client will likely be admitted.
  - a. Advise the client against putting the only copy of an Advance Directive in a lock box, as it will be unavailable once the client becomes incapacitated.
  - b. Encourage clients to talk to families, to let everyone know the client has an Advance Directive, to let the proxy know what the client's wishes are, and to be sure the proxy understands his or her duties.
  - c. Recommend the client keep track of who holds copies of the Advance Directive. In the event the client later desires to revise or revoke the document, the whereabouts of documents allows outdated documents to be gathered and destroyed.
7. Failure to have an Advance Directive often causes strife among family members who disagree about treatment the incapacitated person should receive. Physicians and judges find it very difficult to face family

demands that conflict with the physician's duty to comply with the patient's known wishes or to do what is in the patient's best interest. In these situations, the families' demands often win over the silence of an incapacitated person who cannot speak for himself and has never executed an Advance Directive expressing his wishes regarding end-of-life care.

8. The most common defects in Advance Directives seen in hospitals include:
  - a. The declarant's signature is not legible. Recommend all clients legibly print their names on the Advance Directive following their signature.
  - b. A witness is related to the declarant.
  - c. Only one witness signature appears on the document.
  - d. The Advance Directive was executed on behalf of the declarant after the declarant lost capacity.
  - e. Written instructions are illegible or unclear.
  - f. The document lacks a date.

### OKLAHOMA LAW REGARDING DECISION MAKERS FOR INCAPACITATED PERSONS

As discussed above, Oklahoma law is clear that the only persons who may make decisions to withdraw or withhold life-sustaining treatment decisions on behalf of an incapacitated person are a health care proxy named in an Advance Directive, an attorney-in-fact named in a Durable Power of Attorney for Health Care, or a guardian. The law is silent about who may make other medical decisions. It would not be a violation of the law to permit the spouse, next of kin, or a friend to make general medical decisions for the incapacitated person as long as the decisions are medically reasonable and do not withhold or withdraw life-sustaining treatment or AAHN.

In the case study of WD presented above, his wife or next of kin could authorize the placement of nephrostomy tubes, but they are not authorized to request removal of life-support even though they believe this would be WD's wish. As WD had no Advance Directive, his adult children have no standing to authorize that life-sustaining treatment be withheld. Life-sustaining treatment could only be withheld when WD's death becomes imminent; AAHN could only be withheld if it resulted in intractable pain or was medically impossible to provide; and once again, the peculiar nature of Oklahoma's laws may have the result of requiring unwanted medical treatment that would only extend WD's suffering against his wishes.

1. Raphael J. Leo, MD, "Competency and the Capacity to Make Treatment Decisions: A Primer for Primary Care Physician" *Prim Care Companion J Clin Psychiatry*, Oct 1999; 1(5): 131-141.

2. This case, with some facts and identifying information redacted to protect confidentiality, is a typical case reviewed by hospital ethics committees.

3. Raphael J. Leo, MD, "Competency and the Capacity to Make Treatment Decisions: A Primer for Primary Care Physicians" *Prim Care Companion J Clin Psychiatry*, October 1999; 1(5): 131-141.

4. *Id.*

5. 63 O.S. §3101.4. The act defines a terminal illness as "an incurable and irreversible condition that even with the administration of life-sustaining treatment will, in the opinion of the attending physician and another physician, result in death within six (6) months." Persistently unconscious is defined as "an irreversible condition, as determined by the attending physician and another physician, in which thought and awareness of self and environment are absent." End-stage condition is defined as "a condition caused by injury, disease, or illness, which results in severe and permanent deterioration indicated by incompetence and complete physical dependency for which treatment of the irreversible condition would be medically ineffective.

6. 63 OS §3101.8 B.

### ABOUT THE AUTHOR



Jan Slater is the executive director of the Oklahoma Center for Healthcare Improvement. She served as corporate legal counsel for the St. John Health System for more than 18 years and subsequently served as CEO of OSU Medical Center. She has also served in the capacity of hospital administrator in acute care hospitals. She received a B.A. in biochemistry from Ottawa University in Kansas and a dual J.D. and MBA degree from the University of Tulsa.

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



## HIGHLIGHTS

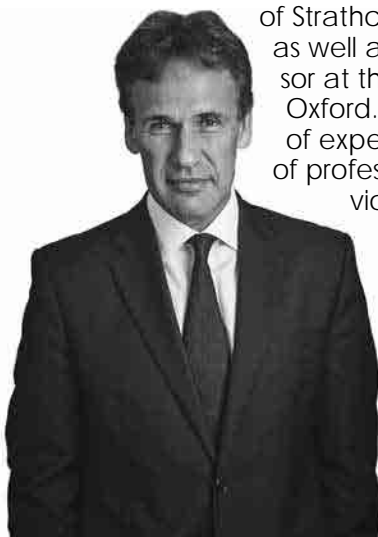
### Awards

The list of OBA Award winners and the award presentation schedule can be found at the Annual Meeting website, [www.amokbar.org](http://www.amokbar.org).

### 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. Mr. Susskind is a law professor based at the University of Strathclyde in Scotland as well as a visiting professor at the University of Oxford. His primary area of expertise is the future of professional legal service, particularly the way technology will change the work of lawyers. He has also authored several books including *The Future of Law* (1996), *Transforming the Law* (2000), *The End of Lawyers?*



Richard Susskind

(2008) and *Tomorrow's Lawyers* (2013). He will be doing a book signing immediately following the luncheon. 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.

### How do I register?

Register for all events using the Annual Meeting registration form found on page 2065 or online at [www.amokbar.org](http://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. For the best price, register by Oct. 21. Questions? Contact Mark Schneidewent at 405-416-7026, 800-522-8065 or [marks@okbar.org](mailto:marks@okbar.org).

### Sponsors

UNIVERSITY OF TULSA COLLEGE OF LAW  
ALL OBA SECTIONS  
Thursday Three-Part Celebration, Part 1  
OBA FAMILY LAW SECTION  
Annual Luncheon  
OBA LITIGATION SECTION  
Trial College



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](mailto:craigc@okbar.org).  
Submit program information to Lori Rasmussen at [lorir@okbar.org](mailto:lorir@okbar.org).*

### WEDNESDAY, NOVEMBER 12

OBA Family Law Section ..... 8 a.m. – 5 p.m.  
\_\_\_\_\_

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

OBA Registration ..... Noon - 7 p.m.  
\_\_\_\_\_

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.  
\_\_\_\_\_

Oklahoma Bar Foundation  
Fellows Reception ..... 5:30 – 7 p.m.  
\_\_\_\_\_

Oklahoma Fellows of the American  
Bar Foundation ..... 6:30 – 9 p.m.

### THURSDAY, NOVEMBER 13

Oklahoma Fellows of the  
American Bar Foundation ..... 7:30 – 9 a.m.  
\_\_\_\_\_

OBA Hospitality ..... 8 a.m. – 5 p.m.  
\_\_\_\_\_

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

Oklahoma Board of  
Bar Examiners ..... 8:30 a.m. – Noon  
\_\_\_\_\_

OBA Credentials Committee ..... 9 – 9:30 a.m.  
\_\_\_\_\_

OBA/CLE Seminar:  
Sean Carter –  
Tee Hee! a Funny CLE ..... 9 a.m. – 4:40 p.m.  
\_\_\_\_\_

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

OBA Rules and Bylaws  
Committee ..... 10 – 10:30 a.m.  
\_\_\_\_\_

OBA Indian Law Section ..... 10 a.m. - Noon  
\_\_\_\_\_

OBA Resolutions  
Committee ..... 10:45 – 11:45 a.m.  
\_\_\_\_\_

OU College of Law Alumni  
Luncheon ..... Noon – 1:30 p.m.  
\_\_\_\_\_

OCU School of Law Alumni  
Luncheon ..... Noon – 1:30 p.m.  
\_\_\_\_\_

TU College of Law Alumni  
Luncheon ..... Noon – 1:30 p.m.  
\_\_\_\_\_

MCLE Commission ..... 2 – 3 p.m.



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

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

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

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

3-Part Celebration:  
The Drinks, The Dinner,  
The Dance ..... 5:30 – 11:30 p.m.  
(Free with meeting registration)  
PART 1 SPONSOR: OBA Sections

## FRIDAY, NOVEMBER 14

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

President's Breakfast ..... 8:30 – 10 a.m.  
(\$25 with meeting registration;  
includes 1 hour MCLE)

OBA General Assembly ..... 10 – 11 a.m.

OBA House of Delegates ..... 11 a.m. – Noon

OBA Annual Luncheon ..... 12:15 – 2 p.m.  
(\$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

Book Signing ..... 2 – 2:30 p.m.

## NOTICE OF MEETINGS

### CREDENTIALS COMMITTEE

The Credentials Committee of the Oklahoma Bar Association will meet Thursday, Nov. 13, 2014, from 9 - 9:30 a.m. in Room 1 of Director's Row on the second floor of the Hyatt Regency Hotel, 100 E. Second Street, Tulsa, Oklahoma in conjunction with the 110th Annual Meeting. The committee members are Chairperson Luke Gaither, Henryetta; Jeff Trevillion, Oklahoma City; Brandi Nowakowski, Shawnee; Linda S. Thomas, Bartlesville.

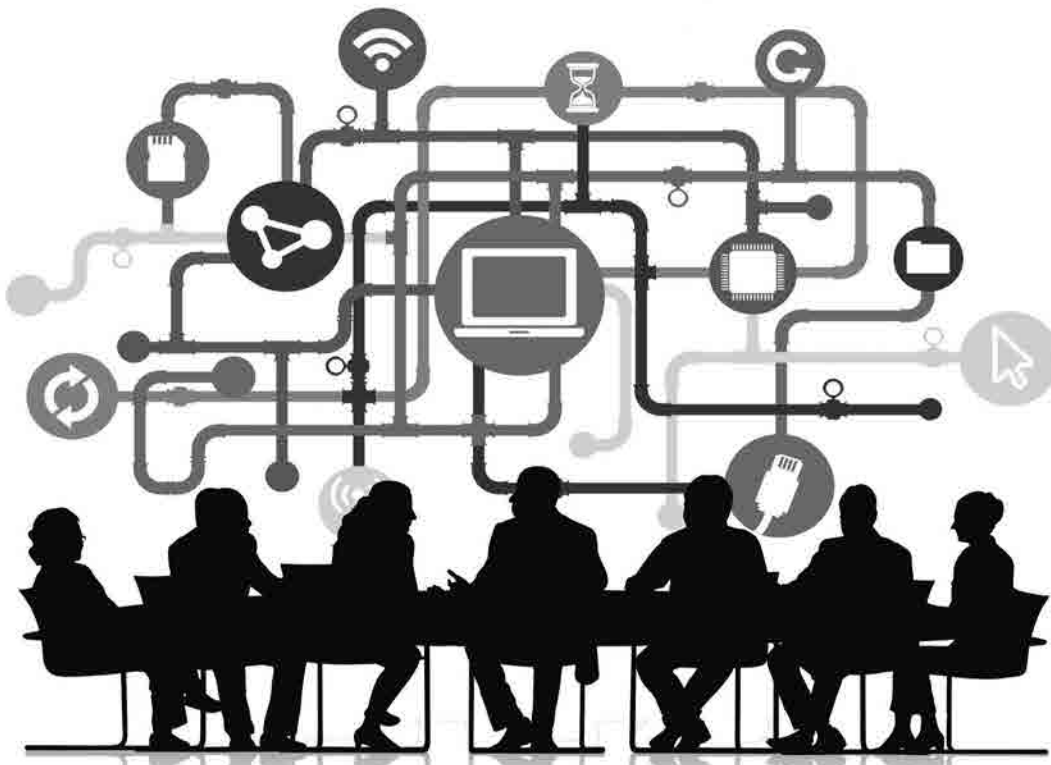
### RULES AND BYLAWS COMMITTEE

The Rules and Bylaws Committee of the Oklahoma Bar Association will meet Thursday, Nov. 13, 2014, from 10 - 10:30 a.m. in Room 1 of Director's Row on the second floor of the Hyatt Regency Hotel, 100 E. Second Street, Tulsa, Oklahoma in conjunction

with the 110th Annual Meeting. The committee members are Chairperson Judge Richard A. Woolery, Sapulpa; Roy D. Tucker, Muskogee; Joe Vorndran, Shawnee; W. Mark Hixson, Yukon; Luke Abel, Oklahoma City.

### RESOLUTIONS COMMITTEE

The Resolutions Committee of the Oklahoma Bar Association will meet Thursday, Nov. 13, 2014, from 10:45 - 11:45 a.m. in Room 1 of Director's Row on the second floor of the Hyatt Regency Hotel, 100 E. Second Street, Tulsa, Oklahoma in conjunction with the 110th Annual Meeting. The committee members are Chairperson Charles W. Chesnut, Miami; Kaleb K. Hennigh, Enid; Molly A. Aspan, Tulsa; D. Faith Orłowski, Tulsa; Laura H. McConnell-Corbyn, Oklahoma City; Dietmar Caudle, Lawton.



## 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.

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



Thursday Evening Progressive Event

# Three-Party Celebration

drinks • dinner • dancing



## OBA Sections Present: The Drinks

**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.



## OBA Presents: The Dance

**8:30 - 11:30 p.m.** The mood picks up and the lights go down as the ballroom transforms a third time into a 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.

# OBA GOVERNANCE

## 2015 Transitions

### 2014 President

*Renée DeMoss, Tulsa*



Renée DeMoss is a shareholder in the Tulsa law firm Gable Gotwals. She graduated *summa cum laude* from Oklahoma City University and received her J.D. from OU College of Law in 1984 with honors. Her area of practice focuses on commercial litigation, ERISA,

insurance law and general business matters. She has actively been involved with and held offices in numerous organizations throughout her career, including serving as president of the Tulsa County Bar Association, the Tulsa County Bar Foundation and the Oklahoma Bar Foundation. She currently serves on the OBA Board of Governors. Ms. DeMoss has served as chair of the TCBA Membership, Law Day and Lawyer Referral Service Committees. She has been actively involved with the Long Range Planning, Nominations and Awards, Legal Aid/Pro Bono and Community Outreach Committees. She has also served on the OBA Budget, Rules and Bylaws, Professionalism and Law School committees. She served on the Board of Directors of the National Conference of Bar Foundation and Oklahoma Attorneys Mutual Insurance Co., and is a member of the American Inns of Court, Council Oak Chapter. She received the OBF President's Award in 2003, the Mona Lambird Spotlight Award in 2007, OBA Alma Wilson Award in 2008 and the OBA Hicks Epton Law Day and ABA Outstanding Law Day Awards in 1999. She will continue to serve on the 2015 Board of Governors as past president.

### 2015 President

*David A. Poarch Jr., Norman*



David Poarch currently practices with the firm of Bailey and Poarch in Norman, where he is engaged in real estate, probate and estate planning, as well as a variety of litigated matters. Mr. Poarch was born in Oklahoma City, grew up in the San Francisco Bay area

and returned to Oklahoma for college and law school. Following his discharge from the U.S. Army in 1969, which included service in Vietnam as a combat medic with the 1st Cavalry Division in 1967, he received his bachelor's degree in 1973 from UCO in Edmond. He then graduated the OU College of Law in 1977. He began his legal career as an assistant U.S. attorney in Oklahoma City, followed by private practice with law firms in Oklahoma City and Norman. He served as in-house general counsel and chief operating officer for a private financial services business acquired by a Fortune 500 company, and then as the assistant dean for external affairs at OU College of Law, where he served from 1997 until his retirement in 2011. He is a member of the Cleveland County and American Bar Associations as well as a past and present member of several other local bar associations. Mr. Poarch has served twice as an OBA Board of Governors member, from 2001-2003 and from 2010-2012. He is the current OBA president-elect and will become president Jan. 1, 2015.

## 2015 NOMINEES

### CONTESTED ELECTION

#### President-Elect

*Mack Martin, Oklahoma City*



Mack K. Martin practices criminal defense in Oklahoma City. He has been practicing law since 1979, following graduation from OCU School of Law. He has represented clients and tried cases throughout Oklahoma. Mr. Martin has likewise represented clients

throughout the United States, including: California, Colorado, Florida, Illinois, Iowa, Kansas, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Mexico, New York, North Carolina, North Dakota, Texas and Washington, D.C., in both state and federal courts. His admissions to practice include: the Oklahoma Bar Association; U.S. Supreme Court; U.S. Courts of Appeals for the 10th Circuit; U.S. Court of Appeals for the 4th Circuit; U.S. District Courts for the Western, Eastern and Northern Districts of Oklahoma; U.S. District Court for the District of Colorado; U.S. District Court for the Eastern District of Michigan; U.S. District Court for the Northern District of Illinois.

Mr. Martin has been actively involved in numerous bar-related organizations, including: Oklahoma Bar Association vice president, 2010; OBA Criminal Law Section former chairman; OBA Bench and Bar Committee; OBA Professionalism Committee. Oklahoma County Bar Association president, 2010-2011; Board of Directors, 1994-1996 and 2003-2005; Criminal Law Committee former chairman; Bench and Bar Committee former chairman; Fee Grievance and Ethics Committee. Federal Bar Association president, Oklahoma City chapter, 1992-1993. Oklahoma Criminal Defense Lawyer's Association president, 1988; Board of Directors, 1983-1988. Fellow of the American Board of Criminal Lawyers vice president, 2010-2012; secretary, 2013-2014. National Association of Criminal Defense Lawyers — lifetime member. William J. Holloway, Jr. American Inns of Court master. Oklahoma Trial Lawyers Association advisory board, 1992-1995. American College of Trial Lawyers fellow; Oklahoma Justice Commission member.

#### *Garvin Isaacs, Jr., Oklahoma City*

Garvin A. Isaacs has been involved in general civil and criminal trial practice since 1978. His practice areas include negligence, wrongful death, nursing home injuries, medical malpractice, products liability against automobile manufacturers, bad faith insurance law, water pollution, oil and gas pipeline fraud, and racial



discrimination. Mr. Isaacs was admitted to the Oklahoma bar in 1974. His admissions to practice include: U.S. Court of Appeals, 10th Circuit, U.S. District Courts of Northern, Eastern, and Western Districts of Oklahoma, District of New Mexico, and Southern and Northern Districts of Texas. He graduated from the OCU School of Law in 1974. He was an Oklahoma County assistant district attorney from 1974-1975 and an assistant public defender from 1976-1978. He has received the American Jurisprudence Award for Criminal Law; Administrative Law; and the Judge Tom Brett Criminal Law Award. He was president of the OCU Law Alumni Association in 1978.

Mr. Isaacs has been involved in numerous continuing legal education presentations for the OBA. In 1993 Isaacs, Wyoming Supreme Court Justices Robert R. Rose and G. Joseph Cardine, along with John Tierney, district attorney in Minneapolis, and Stephen Rench, trial lawyer and law professor at the University of Denver, helped Gerry Spence start the Trial Lawyers College. From 1993 to 2003, Mr. Isaacs was an instructor and board member of TLC, which has trained trial lawyers from across the United States. He has given continuing legal education lectures and demonstrations in 17 states and Canadian Criminal Trial Lawyers. In 2007 he presented a cross-examination demonstration at inns of court in London at the request of the ABA International Law Section. Mr. Isaacs has been an instructor and board member of the University of Wyoming Western Trial Advocacy Institute for 33 years and is a member of Luther Bohanon Inn of Court (president 2008-09).

## UNCONTESTED ELECTIONS

### Vice President

**Glenn A. Devoll, Enid**



Glenn A. Devoll is a shareholder and director of Gungoll, Jackson, Box & Devoll PC in Enid. He practices in the areas of oil and gas, corporate, banking and commercial transaction law. He has practiced in the area of oil and gas law since 1978, handling

everything from surface damage cases to complex oil and gas litigation matters, as well as all types of oil and gas title opinions. Having worked in a bank and served as a bank director, he also enjoys practicing in the commercial and financial areas of law. He graduated from the OCU School of Law in 1977.

He takes pride in the longstanding relationships he develops with his clients. He enjoys outdoor activities including motorhome trips, restoring older cars, woodworking and sharing his hobbies with his grandkids. He has served on numerous committees and boards, including those of his church, the Joint Industrial Foundation of Enid, Kiwanis Club, Oakwood Country Club and served as president of the Garfield County Bar Association in 2002. In 1986-87 he served as chairman of the OBA Mineral Law Section. In 2009, he was the recipient of the Professionalism Award from the Garfield County Bar Association. In addition, he served six years (2003-2009) on the Oklahoma Judicial Nominating Commission, including one year as chairman. Representing Judicial District Number 4, he served on the Oklahoma Bar Association Board of Governors for the years 2010-2012.

## Supreme Court Judicial District One

**John M. Weedn, Miami**



John M. Weedn is a partner in the firm of Stockwell, Connor & Weedn PLLC in Miami practicing primarily in family law and criminal defense. Mr. Weedn received his undergraduate degree from Missouri Southern, Joplin in 1997 and J.D. from the OU College of Law

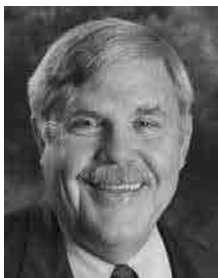
in 2000, receiving the AmJur Award in Jurisprudence. He practiced in Weatherford with his grandfather in the firm of Arney & Weedn PLLC and as a co-Law Day chair of the Custer County Bar Association that won the Hicks Epton Award in 2003. Mr. Weedn served as an assistant district attorney for Stephens and Jefferson counties. He then joined the firm of Stockwell & Connor in 2008 and became partner in 2011. As Ottawa County Bar Association Law Day co-chair, he won a second Hicks Epton Award in 2012. He is a sustaining member of the Oklahoma Criminal Defense Lawyers Association and a certified family and divorce mediator and is a member of the Criminal, Family Law and Indian Law sections, Ottawa County Bar Association and a Bar Foundation Fellow.

In addition to professional associations, He is on the Board of Directors for the Ottawa County Boys and Girls Club, Ottawa County Ducks Unlimited Committee, a gaming commissioner for the Peoria Tribe of Indians of Oklahoma and an active member of the Oklahoma Tribal Gaming Regulators Association. He is a member of the Joplin Area Alumni Chapter of Kappa Alpha Order, Masonic Lodges Siloam #276 and Miami #140, India Shrine and R.O.J. Court 78.



## Supreme Court Judicial District Six

*James R. Gotwals, Tulsa*



James R. Gotwals is the founder of James R. Gotwals and Associates Inc. His principal areas of practice include domestic litigation, civil and commercial litigation, mediation (certified mediator), real estate, business organizations and probate law. Mr. Gotwals

has been in private practice since 1978. He received his J.D. from OU College of Law in 1975. He is licensed to practice in all Oklahoma courts, the United States District Courts for the Northern and Eastern Districts of Oklahoma, and the United States Court of Appeals for the 10th Circuit. He is active in the OBA, having served as past chairman of the Family Law Section. He is also involved in the Tulsa County Bar Association, serving on several committees including Court Operations (n/k/a Bench and Bar), and Law Related Education Committee. Mr. Gotwals also served as past chairman of the TCBA Family Law Section and the Professional Responsibility Committee.

He is a past president of the TCBA and presently serves as chairman of the Tulsa County Bar Foundation. He is a term master of the Council Oaks/Johnson-Sontag Chapter of the American Inns of Court in Tulsa. As a member of the "Families in Transition" group from 1997-1999, Mr. Gotwals assisted in developing the family court procedures for the 14th Judicial District. He was an original member of the Tulsa Family Court's Quality Assurance Panel since its inception in 1999, until his term expired in 2004, and was re-appointed in 2011. He received the Hood-Corbitt award for excellence in family law from the Tulsa County Bar Family Law Section in 2012. He is a frequent lecturer at seminars on family law issues and mediation.

Mr. Gotwals has been a member of Marian Council 1104 Knights of Columbus for 39 years, served on the Board of Directors, Tulsa Central High School Foundation, (2007-present), and legal counsel to Board of Trustees of Riverfield Country Day School, (1988-present). He has also served as a volunteer lawyer for Legal Services of Eastern Oklahoma and for DVIS Conflicts Panel.

## Supreme Court Judicial District Seven

*Roy D. Tucker, Muskogee*



Roy D. Tucker is the current chair of the OBA Section Leaders Council and a Trustee of the OBF. He is a former chair of the YLD, having served in various other capacities on the YLD from 2005 to 2012. In 2012, he received the

Golden Gavel Award from the YLD, and was named Outstanding Young Lawyer by the OBA. He was also selected Outstanding YLD Director in 2006 and 2007, as well as Outstanding YLD Officer in 2009.

Mr. Tucker is a 2003 graduate of the TU College of Law and was admitted into the OBA the same year. He has been admitted to practice before all federal courts in Oklahoma, as well as the 10th Circuit Court of Appeals. He is active in the Muskogee County Bar Association, serving as its president in 2011 and treasurer since 2012. He is the first vice-president of Women In Safe Homes Inc., a safe haven for battered women and children. He previously served on the Muskogee Area Arts Council, and is a current advisory Board member for Health Outreach Prevention and Education Inc. in Tulsa. He is a graduate of Leadership Tulsa Class 31.

He has been employed with the City of Muskogee since 2008. He served as assistant city attorney from 2008 to 2011, and has served as city attorney since 2011. He was appointed by the City Council to serve as interim city manager from July 2013 to January 2014. Mr. Tucker is a frequent presenter and speaker on open records and open meeting issues, including being a featured speaker at the TU Alumni Showcase and the Oklahoma Clerks and Treasurers Institute.

*continued on next page*

## Member At Large

**Sonja R. Porter, Oklahoma City**



Sonja R. Porter has a solo practice in Oklahoma City and handles mostly DUIs and expungements. She began as an assistant district attorney in Oklahoma County and then was an associate for a DUI defense firm for eight years before starting her own

solo practice in October 2011. Although her office is in Oklahoma City, she handles cases across Oklahoma and has appeared in at least 33 counties. She has presented CLE on DUIs, expungements, and ethics, and regularly volunteers her knowledge to attorneys who call. Her service includes: serving as a volun-

teer moot court judge for OCU Law since 2000 and for OU since 2010; as a panel judge for the Oklahoma High School Mock Trial Program since 2006; as a co-administrator for the William J. Holloway Jr. American Inn of Court since 2012; has served on the OBA Women in Law Committee (2010-13); has served as the secretary for the OBA Solo and Small Firm Section (2013-14). Her memberships include: the Oklahoma County Bar Association, for which she currently serves on the CLE Committee; the Canadian County Bar Association, Cleveland County Bar Association, OKC Christian Legal Society; Phi Delta Phi; and the National College of DUI Defense. She has also handled pro bono cases through the Oklahoma Lawyers for America's Heroes Program and the Trinity Legal Clinic of Oklahoma. She received her J.D. from OCU School of Law in 1999.

## OKLAHOMA BAR JOURNAL EDITORIAL CALENDAR

### 2014 Issues

- November  
**Changes to the Legal Profession**  
Editor: Melissa DeLacerda  
melissde@aol.com  
Deadline: Aug. 1, 2014
- December  
**Ethics & Professional Responsibility**  
Editor: Judge Allen Welch  
allen.welch@oscn.net  
Deadline: Aug. 1, 2014

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

### 2015 Issues

- January  
**Meet Your OBA**  
Editor: Carol Manning
- 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

# HOUSE OF DELEGATES

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



## Dear County Bar Presidents:

Thank you to the County Bar Presidents of:

Adair, Beaver, Beckham, Blaine, Bryan, Carter, Cherokee, Cimarron, Cleveland, Coal, Comanche, Cotton, Creek, Custer, Ellis, Garfield, Garvin, Grant, Greer, Harmon, Harper, Hughes, Jackson, Jefferson, Kay, Kingfisher, Kiowa, Latimer, Lincoln, Logan, Love, McClain, McCurtain, McIntosh, Muskogee, Noble, Okfuskee, Oklahoma, Ottawa, \*\*Pawnee, Payne, Pittsburg, Pottawatomie, Pushmataha, Roger Mills, Rogers, Seminole, Stephens, Texas, Tulsa, Wagoner, Washington, Washita and Woods for submitting your Delegate and Alternate selections for the upcoming OBA Annual Meeting.

(\*\*Reported, awaiting election)

Listed below are the counties that have not sent their Delegate and Alternate selections to the offices of the Oklahoma Bar Association as of Sept. 25. Please help us by sending the names of your Delegates and Alternates now. *In order to have your Delegates/Alternates certified, mail or fax Delegate certifications to OBA Executive Director John Morris Williams, P. O. Box 53036, Oklahoma City, OK 73152-3036 or fax: 405-416-7001.*

Alfalfa	Johnston	Sequoyah
Atoka	LeFlore	Tillman
Caddo	Major	Woodward
Canadian	Marshall	
Choctaw	Mayes	
Craig	Murray	
Delaware	Nowata	
Dewey	Okmulgee	
Grady	Osage	
Haskell	Pontotoc	

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

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

## RESOLUTION DEADLINE

Pursuant to OBA Bylaws Ch. 1, App.2, Article VIII, Sec. 6, "Before a proposal to place a measure upon the Legislative Program or to endorse it in principle is submitted to vote, by any method, it shall be published in at least one issue of the Journal of the Oklahoma Bar Association and posted on the OBA website prior to the beginning of the Annual Meeting, together with a notice that it will be submitted to vote, specifying date, time, place and manner." A proposal must be sent in bill format to Executive Director John Morris Williams by Monday, Oct. 13, for publication in the *Oklahoma Bar Journal* Nov. 1, 2014, issue. **For a resolution to receive a recommendation from the Board of Governors, the proposal must have been received by Sept. 17, 2014. In order for a resolution to be published in the official General Assembly and House of Delegates publication, it must be received by Oct. 13, 2014.**

# 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](http://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.*

# OBA NOMINATING PETITIONS

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

## OFFICERS

### BOARD OF GOVERNORS

#### SUPREME COURT JUDICIAL DISTRICT NO. 1

##### JOHN M. WEEDN, MIAMI

Nominating Petitions have been filed nominating John M. Weedn, Miami for election of Supreme Court Judicial District No. 1 of the Oklahoma Bar Association Board of Governors for a three-year term beginning Jan. 1, 2015. Twenty-five of the names thereon are set forth below:

Charles W. Chesnut, Ron Stockwell, J. Ken Gallon, Andrew Meloy, Pamela K. Ireland, Coy D. Morrow, Bryce P. Harp, Clint Ward, Daniel Giraldi, Sean McConnell, Caitlin Towles, Josh D. Lee, M. Bryce Lair, Leonard M. Logan III, John Seidenberger, Tommy R. Dyer Jr., Andrew Doney, Matt Whalen, Terra S. Ernst, Becky R. Baird, Jennifer Ellis, Ben Loring, Martha B. Thompson, J. Wayne Kennon, Jack L. Smith, Glenn Beauchamp, C. Noah Sears and Ryan Olsen

A total of 28 signatures appear on the petitions.

A Nominating Resolution has been received from Ottawa County.

#### SUPREME COURT JUDICIAL DISTRICT NO. 7

##### ROY D. TUCKER, MUSKOGEE

Nominating Petitions have been filed nominating Roy D. Tucker, Muskogee for election of Supreme Court Judicial District No. 7 of the Oklahoma Bar Association Board of Governors for a three-year term beginning Jan. 1, 2015. Twenty-one of the names thereon are set forth below:

R. Forney Sandlin, Robert Locke, Ron Wright, Bret Smith, Matthew C. Beese, Paula Ranallo

Wilburn, Bart Fite, Orvil Loge, Juliet Brennan, Rusty Smith, Corey Johnson, Jim McClure, Alex Wilson, Rick Paynter, Mark Grober, Martha Cherbini, Chad Locke, Justin Stout, Stephen Scherer, Rodney Brook and Nathan Hendrickson.

A total of 26 signatures appear on the petitions.

A Nominating Resolution has been received from Muskogee County.

## MEMBER AT LARGE

##### SONJA R. PORTER, OKLAHOMA CITY

Nominating Petitions have been filed nominating Sonja R. Porter, Oklahoma City for election of Member at Large of the Oklahoma Bar Association Board of Governors for a three-year term beginning Jan. 1, 2015. Fifty of the names thereon are set forth below:

Valerie Couch, Jeffery Trevillion, Marna Franklin, Martin Ozinga, Josh D. Lee, James Mauritsen, Clint Ward, Clayton Niemeyer, Kristina Nikki Kirkpatrick, Kristin Box-Lindsey, Taylor McLawhorn, Adam Kallsnick, Ethan Allen, A. Ainslie Stanford II, Robert McClatchie, Kirk Martin, Mark McCormick, Aaron Glover, Emily Music, John Alberts, Carter Jennings, Justin Kemp, Jodie L. Gage, Ryan Coventon, Scott Anderson, Graham Guhl, Lorenzo Banks, Ryan Stephenson, Chris Box, Beverly Palmer, Matt McCready, Barrett Brown, Daniel Pond, Gary L. Ackley, Stacy Smith, Jeff Eulberg, Karla McAlister, Josh Young, Redmond Kemether, Rob Johnson, Malcolm Savage, Dan Gridley, Jessica Schumacher, Sharon Byers, Thomas W. Hosty, Jay Tayar Silvernail, Nathan L. Simms, Rita Jencks, Charles J. Watts and Ellen Martin Watts.

A total of 91 signatures appear on the petitions.



# Mediation That Won't Crush Your Bottom Line.

Adam Weintraub is an AV-rated attorney who has mediated hundreds of cases representing defendants and plaintiffs. He's a trial lawyer who knows what trial lawyers want: more control over the outcome of their cases.

*Put his experience to work for you. He'll mediate your case and help you settle it quickly—without breaking the bank. Contact Adam at 918-582-0582 or [asw@savagelaw.cc](mailto:asw@savagelaw.cc).*

SAVAGE  
O'DONNELL  
AFFELDT  
WEINTRAUB  
JOHNSON  
50<sup>th</sup> ANNIVERSARY

## 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.





# 1

## RENEW OLD FRIENDSHIPS

"The Annual Meeting provides a unique opportunity to renew old friendships, create new ones, be updated on current legal issues, have fun and be entertained — all at the same time!"

*John Gaberino, Tulsa*

# Why Attend the ANNUAL MEETING?

# 2

## MAKE CONTACTS

"I enjoy visiting with other lawyers outside the courtroom,

plus it's a great way to make contacts that help you develop business."

*Doug Jackson, Enid*

# 3

## FRIENDS

"My best friends are lawyers, and the Annual Meeting is a great time to be with them."

*Sid Dunagan, Oklahoma City*

# 4

## CREATE NETWORKS

"The bar convention provides an opportunity to meet and visit with the most positive, successful lawyers in our state, to learn from them and to create networks of friends throughout Oklahoma."

*Melissa DeLacerda, Stillwater*



# 5

## RECHARGE

"I get my batteries recharged at the annual OBA convention. The lawyers, the programs and the events make me proud of what we do."

*David Petty, Guymon*

# 6

## DIVERSE CROSS SECTION

"I find it to be an excellent way to take a break from the day-to-day practice of law and to spend quality time with a wide and diverse cross section of our bar considering important topics relating to our profession."

*Harry Woods Jr., Oklahoma City*



# 8

## GOOD TIME

"Come to the Annual Meeting to have a good time. You will see old friends, meet new colleagues and learn what the OBA can do for you."

*Bill Grimm, Tulsa*

# 7

## CONNECTIONS

"I haven't missed an Annual Meeting since I first attended in the '70s, and the reason is that I enjoy connecting and reconnecting with so many leading lawyers from around the state."

*Gary Clark, Stillwater*



# 9

**NETWORKING OPPORTUNITY** "I always have a great time at Annual Meeting. Attending also presents an excellent networking opportunity — I've always had at least one case referred to me during the meeting!"

*Stephen Beam, Weatherford*

# 10

## BUILD THE LEGACY

"This is your bar association and your Annual Meeting — help continue to build the legacy of a proud profession."

*Robert Don Gifford, Oklahoma City*



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

# 4 EASY WAYS TO REGISTER



## ONLINE

Register online at [www.amokbar.org](http://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](mailto: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](http://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 (\$150 through Oct. 21; \$175 after Oct. 21)  
6 hours MCLE/1 Ethics \$25 for new members through Oct. 21; \$50 after Oct. 21) ..... \$ \_\_\_\_\_

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

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

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

☐ 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 \_\_\_\_\_

# 2014 Mona Salyer Lambird Spotlight Award Recipients

By Deirdre O. Dexter

Since 1996 the Spotlight Awards have been given annually to five women who have distinguished themselves in the legal profession and who have lighted the way for other women. The award was later renamed to honor 1996 OBA President Mona Salyer Lambird, who died in 1999, and as first woman to serve as OBA president, was one of the award's first recipients. The award is sponsored by the OBA Women in Law Committee. Each year all previous winners nominate and select the current year's recipients. A plaque bearing the names of all recipients hangs at the Oklahoma Bar Center in Oklahoma City. The 2014 recipients are:

## MOLLY A. ASPAN

Molly A. Aspan is a shareholder of Hall Estill, where she has been in private practice since 2003. In 2006, she was named the Tulsa County Bar Association Young Lawyer of the Year, and she was recognized as the OBA's Outstanding Young Lawyer in 2011. In 2013, she received a Tulsa County Bar Association President's Award as well as the OBA Outstanding Service to the Public Award. She has served as chair of the OBA Young Lawyers Division and has served on the OBA Board of Governors and the TCBA Board of Directors. She has chaired the Disaster Response and Relief Committee since 2011, and in 2013 she was instrumental in the OBA's efforts to assist tornado victims. In addition to her involvement with the OBA and



Molly A. Aspan

TCBA, she has served in leadership positions with Legal Aid Services of Oklahoma, American Inns of Court Council Oak/Johnson-Sontag Chapter, Meals on Wheels of Metro Tulsa, Resonance Center for Women and Junior League of Tulsa. She was a recipient of the 2012 Leadership in Law award presented by the *Journal Record*.

## LISA TIPPINGS DAVIS

Judge Lisa Tippings Davis was in private practice from 1984 until 1992, when she joined the Oklahoma Office of Attorney General. She served in the office from 1992 until 2003, working first in the civil litigation division, representing the state of Oklahoma and its agencies and employees in state and federal court, and later being contracted to the Oklahoma State Regents for Higher Education. Following her service in the Attorney General's Office, she served as general counsel to Gov. Brad Henry. On Dec. 7, 2009, she was appointed as a district judge for Oklahoma County. She presided over a criminal felony docket from December 2009 until



Judge Lisa Tippings Davis

August 2011, and she presided over a civil docket from March 2011 until February 2014 when Chief Justice Colbert appointed her as presiding juvenile judge. In her short tenure, she has streamlined many of the court procedures, revamped many of the forms to make them more "user friendly" and she has worked closely with all the agencies involved in the juvenile system to get their cooperation in reassessing the way juvenile matters are handled. Judge Davis is a member of the of the American Inns of Court Holloway Chapter, and she is president for 2014-2015. She is active in the Oklahoma County Bar Association and is currently on its board of directors.

## KAY FLOYD

Kay Floyd, after two years in private practice, became an assistant attorney general for the state of Oklahoma working in both the civil and criminal divisions. In 1987, she became deputy executive director for the Oklahoma Horse Racing Commission during the development of Oklaho-

ma's equine industry. In 1989, was appointed as an administrative law judge for the state of Oklahoma and served in that capacity for 22 years. She also served as a special municipal court judge for the City of Oklahoma City during that time. She has served as an adjunct professor at Oklahoma State University and as an attorney for the senior



**Kay Floyd**

citizens division of Legal Aid of Western Oklahoma. She has worked as a volunteer on the Citizens Action Committee for the Oklahoma City Animal Shelter. She is a founding member and vice president of the board of directors for the Justice Alma Wilson SeeWorth Academy, which was established in 1998 and currently serves 485 at-risk youth in the Oklahoma City community. She is active in the OBA, serving as a member of the Women in Law Committee, Legislative Monitoring Committee, and Government and Administrative Law Practice Section. In 2011, she was elected to the House of Representatives and in June 2014 was elected to the Oklahoma Senate.

### **JAN GRANT-JOHNSON**

Jan Grant-Johnson has been an active member of the OBA, Cleveland County Bar Association and community for many years. For the past 10 years, she has volunteered with Legal Aid, handling numerous pro bono cases. She has also volunteered her time with Oklahoma Lawyers

for America's Heroes and OBA disaster response and relief efforts. She has served on the OBA Professional Responsibility Tribunal and as a member of various committees, including Mentoring, Ethics, Law School, and Bench & Bar, as well as the CCBA Bench & Bar Committee. She is a member of the OBA Family Law Section and is a frequent speaker



**Jan Grant-Johnson**

on family law issues presented to CLE attendees, law students and public school students. She has also volunteered her time in the community for many years, including her work with Ponca City's Opportunity Home for Developmentally Disabled, Women's Resource Center Board of Directors, Indian Nations Presbyterian Personnel Committee, Judicial Family Institute Executive Board, Conference of Chief Justices and the Marland Mansion Commission. She is a certified mediator and serves as a court-appointed and private-selection guardian *ad litem* expert and parenting coordinator.

### **KIMBERLY E. WEST**

Judge Kimberly E. West serves as a United States magistrate judge for the Eastern District of Oklahoma in Muskogee. Judge West obtained her bachelor's degree from OU in 1980 and her juris doctorate degree from the OCU School of Law in 1983. She was admitted to practice in Oklahoma in 1983 and began her legal

career in private practice with the firm of Bennett, Taylor and West in Ada. In 1986 Judge West became associated with the firm of Lambert, Roberts & Jacques in Ada, where she continued in private practice until 1990, when Gov. Henry Bellmon appointed her to the Oklahoma Workers' Compensation Court. She moved to Norman where she resided



**Judge Kimberly E. West**

until 1993 when she moved to Tulsa. She served on the Workers' Compensation Court for six years. Upon leaving the court in 1996, she became a partner with the firm of Rhodes Hieronymus Jones Tucker & Gable in Tulsa. In April 2000, she was appointed as a part-time United States magistrate judge for the District Court for the Eastern District of Oklahoma in Muskogee. In March 2005, Judge West was appointed to serve as a full-time United States magistrate judge for the Eastern District.

### **ABOUT THE AUTHOR**



Deirdre O. Dexter is a lawyer in private practice in Tulsa. She is a member of the OBA Women in

Law Committee as well as member-at-large of the OBA Board of Governors. She is a 1984 graduate of the OU College of Law.

# Diversity Committee to Hold Seminar, Awards Luncheon

By Ruth J. Addison

## OBA Diversity Conference

Thursday, Oct. 16 • 9 a.m. – 1:30 p.m.

Registration opens at 8:30 a.m. Register online at [www.okbar.org/members/cle](http://www.okbar.org/members/cle)

Jim Thorpe Event Center, 4040 N. Lincoln Blvd., Oklahoma City

CLE + luncheon: \$120; Luncheon only: \$40. (Price goes up \$25 beginning Oct. 10.)

The OBA Diversity Committee is set to host its third annual Diversity Awards Luncheon and CLE on Oct. 16 in Oklahoma City. The event will feature ABA President-Elect Paulette Brown, who is a labor and employment law partner and chief diversity officer with the Morristown, N.J., office of Edwards Wildman Palmer. She has held many positions throughout her career, including as in-house counsel to a number of Fortune 500 companies and as a municipal court judge. In private practice, she has focused on all facets of labor and employment and commercial litigation.

Ms. Brown has been recognized by the *New Jersey Law Journal* as one of the prominent women and minority attorneys in the state of New Jersey and by the *National Law Journal* as one of "The 50 Most Influential Minority Lawyers in America." She has received the New Jersey Medal from the New Jersey State Bar Foundation and currently serves on its Board of Trustees.

Ms. Brown will be the keynote presenter at the CLE where she will discuss Title VII of the Civil Rights Act of 1964 as well as the diverse legal workforce and what legal employers (*i.e.* firms, nonprofits, government agencies, etc.) can do to attract and retain diverse attorneys and the benefits for doing so. She will also provide practical suggestions both for diverse attorneys and for employers on recruiting, retaining and treatment of diverse attorneys as well as the challenges diverse attorneys face at large firms and in the corporate sector.

Following her presentation, she will participate in a panel discussion focusing on the Oklahoma perspective on these topics. Also participating will be Judge Jerome Holmes of the 10th Circuit Court of Appeals; Melvin Hall, shareholder with the Riggs Abney



**Paulette Brown**

Law Firm, and Loretta Radford, first assistant for the U.S. Northern District Attorney's Office.

The event, which is sponsored by OBA/CLE, will conclude with the Diversity Awards Luncheon beginning at noon. Six individuals and organizations will be honored with Ada Lois Sipuel Fisher Diversity Awards in recognition of their efforts in promoting diversity in Oklahoma.



The Diversity Committee, with the support of OBA President Renée DeMoss, will recognize the following individuals and organizations that promote diversity efforts and call attention to the need for tolerance and diversity awareness. Register online for the event at [www.okbar.org/members/cle](http://www.okbar.org/members/cle). The conference is approved for 3.5 hours MCLE/0 ethics.

### **ADA LOIS SPUDEL FISHER DIVERSITY AWARD RECIPIENTS**

#### **Member of the Judiciary**



**Judge Jerry D. Bass**

#### **Judge Jerry D. Bass**

Judge Jerry D. Bass is a graduate of OSU and the OCU School of Law. He was admitted to the Oklahoma bar in 1991 and then admitted to the practice of law in the U.S. District Court for the Western District of Oklahoma. He is also admitted to the practice of law in the United State Supreme Court. From 1991 to 1996, he served as an assistant public defender in Oklahoma County. In 1996, he was appointed special judge for the Oklahoma County District Court and in 1998 was elected to the position of district judge. He has been re-elected without opposition three times.

Judge Bass is also a champion for the rights of gay, lesbian, bisexual and transgender (GLBT) youth and adults. Judge Bass chose to submit his own letter for publication to respond to negative commentary. In February 2014, *The Briefcase* published his letter titled "As a Nation..." that focused on rectifying hypocrisy and pointing out that those who seek to de-grade and discriminate are often empowered by the words of politicians and judges who make public statements that degrade others. He is retiring from the bench Dec. 31, 2014.

#### **Attorneys**



**Stanley Evans**

#### **Dean Stanley Evans, OU Law**

Dean Stanley L. Evans joined the OU College of Law as the assistant dean in 2003 and retired in 2011. Dean Evans continues to serve the law school on a part-time basis in an advisory role. He entered law school at the age of 52 after almost 32 years of active U.S. Army service. He rose to the rank of colonel and previously held positions as dean of students and administration for the U.S. Army's Command and General Staff College at Fort Leavenworth, Kansas;

and as garrison commander of Fort Leavenworth.

Dean Evans has commanded at every level of the Army through brigade level, culminating with command of Fort Leavenworth where his command twice won the Malcolm Baldrige \$75,000 cash award as the second best installation in the Army. As former dean of the Command and General Staff College, he was responsible for initiating a \$126 million construction project for the new Lewis and Clark Education Center and for developing an automation system that will service the needs of the attending officers, staff and faculty well into the 21st century.

He is a Vietnam veteran, and has had several tours in the Washington, D.C., area. He returned to Oklahoma in 2000 with his wife Sandra, who is a retired elementary school teacher. He was appointed by the governor as chairman of the Oklahoma Human Rights Commission, and for six years he was on the University of Saint Mary (Kansas) Board of Trustees. He has made a personal commitment to the Oklahoma bar and the OU College of Law to recruit, train and mentor diverse law students.

*continued on next page*



**Gay Hellman**

***Gay Hellman, Former Catholic Charities Counsel, Immigration Assistance Division***

Gay L. Hellman is a retired former staff attorney for the Immigration Assistance Program, Catholic Charities Archdiocese of Oklahoma City. She earned a B.A. at Wheaton College, Mass., an M.A. at the George Washington University and a J.D. at OCU School of Law. She was admitted to the Oklahoma bar in 1980 and began her career at the Oklahoma Court of Criminal Appeals. In 1992 she volunteered at the Immigration Assistance Program before becoming a staff attorney later that year. In 2000 she received the Catholic Charities OKC Employee of the Year award. For almost 20 years, she represented Catholic Charities' clients from all parts of the world, including India, Pakistan, Burma, Bangladesh, Uganda, Cameroon, Liberia, Sierra Leone, Kenya, Ethiopia, Togo, Canada, Mexico, Honduras, Nicaragua, El Salvador, Guatemala, Former Soviet states, Eastern European countries, Syria, Israel, Great Britain, France, Australia and Vietnam.

Her practice included family immigration law matters, citi-

zenship applications, and refugee and asylum claims. Her greatest reward was helping her clients win asylum claims, often following lengthy hearings in front of immigration judges. She knew then they were finally safe from further persecution in their countries of origin.

**Businesses/Organizations**



**Christina Kirk**



***Christina Kirk, Prep U***

Christina Kirk is native of Nashville, Tenn. She was forced to drop out of high school due to illness and later attained a GED. She then earned a Bachelor of Arts in psychology and teacher education from historic Fisk University in 2001. She received her J.D. from the TU College of Law in December 2003 and was admitted to the Oklahoma bar in 2004. She started her own law firm, the Kirk Law Group. She later founded Prep "U" niversity, a program for young women in eighth – 12th grade that empowers them with the tools necessary to not only dream of success but to make such a future reality. She also serves as the dean of the program. Prep U provides mentoring, educational sup-

port and self-confidence workshops. It serves as a platform for middle and high school girls and is designed to provide them with a holistic approach to preparing for a life of good success.

Prep U young women participate in monthly lounge classes that enrich the academic, social, emotional and physical well-being of the girls. It also introduces them to technical career opportunities. Students are required to complete 10 hours of community service per year. Additionally, Ms. Kirk and her teenage daughter co-authored a self-esteem-building workbook for adolescents titled, "Developing DIVAs – Young Ladies Divinely Investigating their Vision in Advance."



**Tiffany Hill-Smith**

***Tiffany Hill-Smith, Young Women's Empowerment Institute***

The Central Area of The Links Inc. and Langston University collaborated to present the pilot for the Young Women's Empowerment Institute (YWEI) program at Langston University. YWEI addresses the Central Area's commitment to address retention and success of young African-American women at 16 histori-

cally black colleges and university (HBCU) campuses. The Central Area of The Links Inc. Young Women's Empowerment Institute is a one-year program that provides young women aged 17-21 who are first time, full-time, entering freshmen at HBCUs with transformational opportunities that improve their self-esteem and equip them with a life plan.

The institute also includes follow up and progress monitoring of participants' life plans continuing through graduation and two years post-graduation. The goal of the institute is to ensure these young women will be successful and productive in life. The YWEI Planning Committee has developed the Empowerment Institute Model with program components including mentoring, professional development, social development, life planning, health and wellness. The institute will engage participants through a series of meetings, social media platforms and workshops.



Oklahoma City University School of Law (OCU Law), located in the heart of Oklahoma City, is a university centered on preparing its students to enter the legal practice through dedicated classes teaching students the art of litigation, pro bono participation and public interest law. It is mindful of the continued under-representation of all minorities in law schools and within the legal profession. Diversity in experience, heritage and viewpoint has proven to enhance the educational experience of all students; thus OCU Law is engaged in several initiatives designed to increase the number of minority law applicants, increase minority enrollment and engage the larger legal community in issues of diversity. OCU Law provides more than

15 scholarships for diverse candidates including scholarships for Asian-American, African-American, Latino-American, Native American and GLBT students. OCU Law emphasizes helping diverse students obtain summer associate positions as well as promotes participation in its legal clinics in areas like American Indian wills (provides wills and estate planning services to American Indians owning trust or restricted property in Oklahoma) and the Oklahoma Innocence Project in which students help identify and resolve wrongful convictions.

#### ABOUT THE AUTHOR



Ruth Addison chairs the OBA Diversity Committee. She is an associate attorney with Crowe and Dunlevy in the firm's Tulsa office.



# New Attorneys Take Oath

**B**oard of Bar Examiners Chairperson Stephanie C. Jones announces that 223 applicants who took the Oklahoma Bar Examination on July 29-30, 2014, were admitted to the Oklahoma Bar Association on Wednesday, Sept. 24, 2014, or by proxy at a later date. Oklahoma Supreme Court Chief Justice Tom Colbert administered the Oath of Attorney to the candidates at a swearing-in ceremony at the State Capitol. A total of 307 applicants took the examination.

Other members of the Oklahoma Board of Bar Examiners are Vice-Chairperson Scott E. Williams, Oklahoma City; Monte Brown, McAlester; Robert D. Long, Ardmore; Bryan Morris, Ada; Loretta F. Radford, Tulsa; Roger Rinehart, El Reno; Donna L. Smith, Miami; and Thomas M. Wright, Muskogee.

## The new admittees are:

Cathy Sue Adams  
 Patrick McMeen Ahern  
 Ephraim Hagop Alajaji  
 John Paul Albert  
 Blayne Jordan Armendariz  
 Alan Neal Barker  
 Colin Richard Barrett  
 Adam Taylor Bates  
 Brooke Nicole Baum  
 Carol Susan Beatty  
 Jonathan Ford Benham  
 Britt Daniel Berg  
 Charles Austin Birnie  
 Brian Daniel Blackstock  
 Nathan Michael Bloomer  
 Bonnie Jean Blumert  
 Brian J. Boenheim  
 Nicole Marie Bononi  
 Adam Joseph Borders  
 Ammon Johnson Brisolara  
 Erin Dawn Brock  
 Tyler Lynn Brooks  
 Cassandra Louise Brotton  
 Elizabeth Anne Burke  
 Patricia Marie Burke  
 Jeffrey Reeves Burton

Benjamin Paul Butler  
 Catherine Alexandra Butts  
 Jason Lee Callaway  
 Adam Thomas Carey  
 Megan Lyn Mefford Carothers  
 Michael Stephen Carter  
 Desiree Daylynn Cast  
 Jodi Heather Childers  
 Brooke Anne Churchman  
 April Beth Coffin  
 Jessica RaeAnn Coghill  
 Kelly Elizabeth Collins  
 Aaron David Compton  
 Melissa Jane Mills Cottle  
 Matthew Branton Covert  
 Patrick James Crowe

Drew Allen Cunningham  
 Rachel Marie Dallis  
 Sara Elizabeth Daly  
 Anderson James Dark  
 Megan Shay Davis  
 Gregory Richard Robles Day  
 Chance Logan Deaton  
 Megan Michele Decker  
 Michael Thomas Diver  
 Kyle Alan Domnick  
 Jennifer Erin Douglas  
 Aubra Ann Drybread  
 Matthew Robert Eisert  
 Emily Susanne Eleftherakis  
 Jarred John Elwell  
 Dylan Dinges Erwin



*New attorneys receive their law school diplomas.*

Rachel Lynne Farrar  
 Clay Glen Ferguson  
 Mary Lucile Ferguson  
 Ashley Brooke Forrester  
 Virginia Hope Fox Laakman  
 Ciera Nicole Freeman  
 Sarah Elizabeth Freudenrich  
 Ethan William Gee  
 Jessica Sylvia Gleiberman  
 Austin Edward Goerke  
 Kerry Dewaine Green  
 Nicolas David Grimwood  
 Robert Ford Gruber  
 Spencer Tracy Habluetzel  
 Jared Blake Haines  
 Melissa Lee Harman  
 Erick W. Harris  
 Lincoln Colby Hatfield  
 Justin David Hedges  
 Chelsea Rebecca Heinz  
 Max David Hellman  
 Andrew E. Henry  
 Nicky Lynn Henson  
 Henry Kyle Heppel  
 Diane Hernandez  
 Shane Michael Hill  
 Tami Jo Hines  
 Justin Gray Hitchcock  
 Tyler Garrett Hopkins  
 Stuart Simcox Hudson  
 Brian Luttrell Hughes  
 Mark Kelly Hunt  
 Jonathan Wayne Huseman  
 Anna Emem Imose  
 Caitlin Elizabeth Irwin  
 Brian Lee Jackson  
 David Ray Jenkins  
 Adrianna Basler Jenson  
 Noah Douglas Johnson  
 Taylor Kathleen Jones  
 Ryan Steven Jordan  
 Lauren Ashley Kabuci  
 Loren Riley Kern  
 Brian Patrick Kershaw



*OCU School of Law students take the oath.*

Grant Ellis Kincannon  
 Stephen Leo Kirschner  
 LaNae Sue Klatt  
 Charles Vance Knutter  
 Harrison Mitchell Kosmider  
 Adam Joseph Krejci  
 Emily Catherine Krukowski  
 Matthew Shane LaFon  
 Veronica Yeon Laizure  
 Michael James Lambert  
 Braden C. Land  
 Katelyn Melissa Langwell  
 Shane Reagan Leach  
 Zachary Robert Lee  
 Brian Thomas Lepak  
 Daniel Abraham Levy  
 Caroline Jean Lewis  
 Amanda Nichole Lilley  
 Anthony C. Liolios  
 Jason Daniel Lollman  
 Justin Andrew Lollman

Kyle Everett Long  
 Bryan Stephen Lower  
 Ivaylo Dimov Lupov  
 Allison Chance Lyons  
 Erica Rose Mackey  
 Sandra Kay Magar  
 Hayes Thomas Martin  
 Jeremiah Alan Mason  
 Taylor Chase McBride  
 Ginny Lea McCormick  
 Lauren Elizabeth McCreery  
 Katherine Elise McDonald  
 Matthew Michael McGrew  
 Caleb Shane McKee  
 Paige Lorraine McLaughlin  
 John McKenzie McMahan  
 Calvert Richard McMahan  
 Malisa Dawn McPherson  
 Troy James McPherson  
 Tonya Lynn Means  
 Brian Keith Melton  
 Joshua Evans Merrill  
 Brett Patrick Merritt  
 Austin Andrew Meyer  
 Steven Paul Minks  
 Addy Jane Moon  
 William Reynolds Moon Jr.  
 Melissa F. Moore  
 Sarah Wittrock Moore  
 Danielle Lynne Mosesman  
 Aushianna Nadri  
 Jonathan Andrew Neal



*New attorneys sign the roll.*



*OU College of Law students take oath.*

Bartholomew William Nebergall  
 Patrick Douglas Nesbitt  
 Alix R. Newman  
 Tara Michelle Niendorf  
 Piper Christine Norvell  
 Katherine Rachal O'Brien  
 Jessie Marie O'Dell  
 Jonathan Ross Ortwein  
 Cody Dean Ott  
 John Scot Overbey  
 Dustin Wayne Parris  
 Emily Brooks Payne  
 Shannon Elizabeth Payne  
 Pearson  
 Jordan Isaiah Peila  
 Kristy Dawn Perry  
 Micah John Petersen  
 Chau B. Phan  
 Carrie Savage Phillips  
 Joshua Daniel Poovey  
 Sara Elizabeth Potts  
 Kip Joel Reiswig  
 Ryan James Riddel  
 Leah Michelle Roper  
 Jeffrey Ray Sabin  
 Ashley Heather Salisbury  
 Johnny Joe Sandmann

Thomas Jeremy Sasser  
 Benjamin Neil Schiller  
 Danielle Lee Schinzing  
 Larry William Schlusler  
 Jeffrey Dillon Scott  
 Andrew Michael Scribner  
 Brian Adam Shelton  
 Margo Elizabeth Shipley  
 William Thomas Silvia  
 Kevin Paul Simpson

Sabrina Noel Stubblefield  
 Ryan Kevin Sullivan  
 Daniel Joseph Thompson  
 Brianna Kathleen Tipton  
 James Bradford Torgerson  
 Tyler Hill Trout  
 Brandon Michael Tyler  
 Jessica Frances Volsey  
 Andrew Russell Wallace  
 Taylor Michael Wallner  
 Xiaoxue Wang  
 Jeffrey Sean Waters  
 Travis Neil Weedn  
 Kimberly Rae Wendell  
 Ashley Carnall Weyland  
 Casey Mark Whetten  
 Bethany Nicole Whitfield  
 James Boies Wilcoxon  
 Afiya Nyasha Wilkins  
 Cana Brianne Wilson  
 Nicole Marie Wilson



*TU College of Law and law school students from out of state take the oath of attorneys.*

Andrea Jo Smith  
 Rachel Grace Smith  
 Travis Sterling Smith  
 Katelyn Cristine Sokolosky  
 Haley Michelle Sperry  
 Leah Elizabeth Stein

Anthony Clayton Winter  
 John Seaton Wolfe  
 Joshua Mark Woodbridge  
 Monica Y. Ybarra-Bennett  
 Clay Rowe Zebst

## ***Photo Gallery***

*Photos taken at this event can be found at [www.okbar.org](http://www.okbar.org). Scroll down to find the Photo Galleries link under Featured Pages.*



# Oklahoma Bar Association 2015 Proposed Budget

Pursuant to Article VI, Section 1 of the Rules Creating and Controlling the Oklahoma Bar Association (OBA), David E. Poarch, President-Elect and Budget Committee Chairperson, has set a Public Hearing on the 2015 Oklahoma Bar Association budget for Friday, Oct. 17, 2014, at 9:30 a.m. at the Oklahoma Bar Center, 1901 N. Lincoln Boulevard, Oklahoma City, Okla.

The purpose of the OBA is to engage in those activities enumerated in the Rules Creating and Controlling the Oklahoma Bar Association (the Rules) and the OBA Bylaws (the Bylaws). The expenditure of funds by the OBA is limited both as set forth in the Rules and Bylaws and in *Keller v. State Bar of California*, 496 U.S. 1 (1990). If any member feels that any actual or proposed expenditure is not within such purposes of, or limitations on the OBA, then such member may object thereto and seek a refund of a pro rata portion of his or her dues expended, plus interest, by filing a written objection with the Executive Director. Each objection must be made in writing on an OBA Dues Claim

Form, addressed to the Executive Director of the OBA, P.O. Box 53036, Oklahoma City, OK. 73152, and postmarked not later than sixty (60) days after the approval of the Annual Budget by the Oklahoma Supreme Court or January 31st of each year, whichever shall first occur. The OBA dues claim form is available at [www.okbar.org/members/Members/Governance.aspx](http://www.okbar.org/members/Members/Governance.aspx).

Upon receipt of a member's written objection, the Executive Director shall promptly review such objection together with the allocation of dues monies spent on the challenged activity and, in consultation with the President, shall have the discretion to resolve the objection, including refunding a pro rata portion of the member's dues, plus interest or schedule a hearing before the Budget Review Panel. Refund of a pro rata share of the member's dues shall be for the convenience of the OBA, and shall not be construed as an admission that the challenged activity was or would not have been within the purposes of or limitations on the OBA.

*The proposed budget begins on the next page.*

# OKLAHOMA BAR ASSOCIATION 2015 PROPOSED BUDGET

REVENUES	2015 PROPOSED BUDGET		2014 BUDGET	
ADMINISTRATIVE:				
Dues and Penalties	\$ 4,212,850		\$ 4,177,600	
Investment Income	15,000		15,000	
Annual Meeting	70,000		70,000	
Commissions and Royalties	42,000		42,000	
Mailing Lists and Labels	7,000		11,000	
Council on Judicial Complaints - Rent and Services	10,000		10,000	
Board of Bar Examiners - Rent and Services	15,000		15,000	
Legal Intern Fees	7,000		7,000	
Other	<u>21,000</u>	\$ 4,399,850	<u>20,500</u>	\$ 4,368,100
OKLAHOMA BAR JOURNAL AND COMMUNICATIONS:				
Oklahoma Bar Journal:				
Advertising Sales	150,000		145,000	
Subscription Sales	22,000		17,000	
Other Miscellaneous	<u>400</u>	172,400	<u>-</u>	162,000
LAW RELATED EDUCATION:				
Grants	<u>96,000</u>	96,000	<u>51,000</u>	51,000
CONTINUING LEGAL EDUCATION:				
Seminars and Materials	<u>883,600</u>	883,600	<u>959,500</u>	959,500
GENERAL COUNSEL:				
Disciplinary Reinstatements	12,000		12,000	
Out of State Attorney Registration	<u>328,000</u>	340,000	<u>328,000</u>	340,000
MANDATORY CONTINUING LEGAL EDUCATION:				
Filing Penalties	86,000		86,500	
Provider fees	<u>84,500</u>	170,500	<u>73,000</u>	159,500
PRACTICE ASSISTANCE				
Consulting Fees and Material Sales	1,000		2,000	
Diversion Program	<u>17,000</u>	18,000	<u>14,000</u>	16,000
COMMITTEES AND SPECIAL PROJECTS:				
Mock Trial Program	49,000		49,000	
Lawyers Helping Lawyers	24,500		22,500	
Insurance Committee	-		50,000	
Women-in -Law Conference	30,000		30,000	
Solo-Small Firm Conference	50,000		50,000	
Diversity Committee Conference	10,000		2,000	
Oklahoma Lawyers for America's Heroes Program	1,000		-	
Young Lawyers Division	<u>-</u>	164,500	<u>-</u>	203,500
TRANSFERS FROM RESERVE FUNDS:				
Attorney General Grant	2,500		-	
Technology Reserve Fund	<u>50,000</u>	52,500	<u>46,586</u>	46,586
TOTAL REVENUES		<u>\$ 6,297,350</u>		<u>\$ 6,306,186</u>

# OKLAHOMA BAR ASSOCIATION 2015 PROPOSED BUDGET

EXPENDITURES	2015 PROPOSED BUDGET		2014 BUDGET	
ADMINISTRATIVE:				
Salaries and Benefits	\$ 1,026,861		\$ 988,567	
Annual Meeting	125,000		125,000	
Board of Governors and Officers	111,000		114,000	
Conferences and Organizational Development	14,000		14,000	
Legislative Monitoring	44,500		8,500	
General and Administrative:				
Utilities	111,760		117,760	
Insurance	56,000		56,000	
Data Processing	134,800		145,278	
Bank and Credit Card Processing Fees	62,000		50,000	
Building and Equipment Maintenance	78,000		75,000	
Postage	40,000		40,000	
Copier	44,000		44,000	
Supplies	26,200		25,700	
Grounds Maintenance	8,500		8,500	
Audit	18,000		16,500	
Miscellaneous	26,300		24,800	
Overhead Allocated to Departments	(515,427)	\$ 1,411,494	(490,684)	\$ 1,362,921
COMMUNICATIONS				
Salaries and Benefits	276,795		268,179	
Oklahoma Bar Journal:				
Weekly Issue Printing	252,000		285,000	
Special Issue Printing	170,000		165,000	
Other	4,000		4,000	
Public Information Projects	5,000		2,000	
Newsclip Service	1,700		1,700	
Pamphlets	5,000		8,000	
Photography	350		350	
Supplies	1,000		1,000	
Miscellaneous	11,450		10,450	
Allocated Overhead	93,442	820,737	86,262	831,941
LAW RELATED EDUCATION:				
Salaries and Benefits	132,081		124,917	
Other Grant Projects	86,000		41,000	
Training, Development and Travel	39,000		39,500	
Newsletter	8,500		8,000	
Miscellaneous	9,700		9,700	
Allocated Overhead	54,654	329,935	51,832	274,949
CONTINUING LEGAL EDUCATION:				
Salaries and Benefits	362,357		353,598	
Meeting Rooms and Food Service	100,000		112,000	
Seminar Materials	6,000		10,500	
Brochures and Bulk Mail	56,000		50,500	
Speakers	80,000		80,000	
Audio/Visual	10,000		12,000	
Online Provider Service Fees	176,112		-	
Credit Card Processing Fees	10,000		14,000	
Department Travel	6,000		6,000	
Supplies	3,500		3,500	
Miscellaneous	16,000		14,050	
Allocated Overhead	133,029	958,998	128,291	784,439

**OKLAHOMA BAR ASSOCIATION  
2015 PROPOSED BUDGET**

<b>EXPENDITURES</b>	<b>2015 PROPOSED BUDGET</b>		<b>2014 BUDGET</b>	
<b>GENERAL COUNSEL:</b>				
Salaries and Benefits	\$ 1,214,661		\$ 1,190,411	
Investigation and Prosecution	61,000		61,000	
PRC Travel and Meetings	7,000		8,000	
PRT Travel and Meetings	8,000		8,000	
Department Travel	9,250		8,250	
Library	8,000		7,000	
Supplies	8,000		8,000	
Miscellaneous	10,900		8,400	
Allocated Overhead	<u>125,793</u>	\$ 1,452,604	<u>121,433</u>	\$ 1,420,494
<b>MANDATORY CONTINUING LEGAL EDUCATION:</b>				
Salaries and Benefits	225,098		214,116	
Printing & Compliance Reporting	2,500		2,500	
Supplies	700		700	
Commission Travel	1,200		1,000	
Miscellaneous	5,250		5,250	
Allocated Overhead	<u>54,255</u>	289,003	<u>51,433</u>	274,999
<b>PRACTICE ASSISTANCE</b>				
Salaries and Benefits	304,273		278,098	
OBA-NET Expense	5,000		5,000	
Dues & Subscriptions	2,650		2,650	
Library	2,750		2,550	
Computer Software	1,750		1,750	
Supplies	1,150		1,150	
Diversion Programs	2,600		2,600	
Travel and Conferences	17,350		17,700	
Miscellaneous	6,100		5,575	
Allocated Overhead	<u>54,255</u>	397,878	<u>51,433</u>	368,506
<b>COMMITTEES AND SPECIAL PROJECTS:</b>				
Law Day	57,000		52,000	
Women-in -Law Conference	30,000		30,000	
Solo-Small Firm Conference	50,000		50,000	
Mock Trial Program	50,000		50,000	
FastCase Legal Research	89,150		88,000	
Leadership Institute	8,000		8,000	
General Committees	38,800		36,000	
Lawyers Helping Lawyers Program	52,000		52,000	
Oklahoma Lawyers for America's Heroes Program	20,000		28,000	
President's Service Program	14,000		50,000	
Young Lawyers Division	<u>68,150</u>	477,100	<u>63,000</u>	507,000
<b>OTHER EXPENDITURES</b>				
Client Security Fund Contribution	100,000		100,000	
Bar Center Renovations	220,000		20,000	
Computer Hardware and Software	<u>319,803</u>	639,803	<u>128,740</u>	248,740
<b>TOTAL EXPENDITURES</b>		<u>\$ 6,777,551</u>		<u>\$ 6,073,989</u>
<b>TOTAL REVENUES OVER (UNDER) EXPENDITURES</b>		<u>\$ (480,201)</u>		<u>\$ 232,197</u>

# And the Winner is...

By John Morris Williams

I got a notice that I had to write an article for this month's *Oklahoma Bar Journal*. As the editor-in-chief, I think I should get to be the one sending notices. However, that is unfortunately not the case. What I get are the calls reporting errors, deciding if an ad may be controversial or in bad taste for publication and on occasion determining an ad

who toil and sweat to produce matters for publication, this is YOUR month. I have no plaque or certificate for you. Sorry. I know the OBA gives out an award to one or two of you. That process may be like the Oscars or the MTV award. Not totally sure of the method of calculations for the winner. I just don't know. I stay out of the awards business.

**“To all those who toil and sweat to produce matters for publication, this is YOUR month.”**

rate. The real lifting is done by the Board of Editors and our Communications Department. The extraordinary lifting is done by our contributing authors. Some of them over the years have given us hundreds of hours in presenting articles for publication.

I know October is “awareness” month for several good causes. Oct. 22 is National Nut Day. Nut Day is for the edible type of nut — not the human condition. To start the month out right, I first want to proclaim (like I have any authority to make proclamations) October as *OBJ* Contributing Authors Month. To all those

Anyway if you don't get an actual award, please know you are an award winner to me. I had a real article published a few years ago. It was on a bit of a controversial topic. My best estimate is that around seven people read it. So, I once have felt the pain of an unrecognized (and unawarded) contributing author. Come to think of it, I don't even think it was read enough to make it to the “reject” status for any award. So to those unsung contributing authors — those who write for the sake of the profession (or your résumé) — at least know I would have voted for you.



Seriously, the 10 monthly theme editions of the *OBJ* would not happen without a dedicated Board of Editors, very good staff and the best volunteers in the whole bar association world. As trends go to more online publications and less paper, I know this creative and dedicated group of people will lead us well. For now, I just want to say a great big THANK YOU.

By the way don't miss the Annual Meeting November 12-14 at the Hyatt Regency Hotel in downtown Tulsa. I swear that real awards will be given out there. Show up and you might just get one.

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

# Client: ‘Can My Parents Pay for My Attorney Fees?’

## Lawyer: ‘Yes, but...’

By Jim Calloway

Some lawyers and I recently were discussing the problems of family law cases in which the parents are paying for a child’s attorney’s fees. It is a very common situation, given the finances of many young married couples. Parents are usually quite willing to pay for attorney’s fees in family law matters to make sure their children and, often, grandchildren are protected. But they also may have other goals. They could be very intent on their child being awarded “full custody.” They could be overly hostile in their attitude toward their child’s spouse since they knew the person was a poor choice from the beginning. But those parents, with their greater life experiences, can also be a calm voice of reason during emotional and turbulent times.

I told the lawyers in our discussion that one way to avoid many of the problems with third-party payment of fees is to have a written agreement signed by the third-party outlining potential problem areas. I ticked off several points that should be covered.

Then I returned to my desk facing a deadline for this Law Practice Tips column for the *Oklahoma Bar Journal*. I thought maybe for my contribution to the legal profession this month,

I should draft such a form. So this column outlines the process, research and considerations in preparing a simple agreement for third-party payment of fees in a family law case. It can be altered and adopted for other types of matters.

But before we move on to the process and result, let’s begin with a disclaimer.

**DISCLAIMER** — The following form is provided as a courtesy to practicing lawyers. Please use it as a guideline with your own research and experience to supply any needed modifications. Neither the Oklahoma Bar Association nor the drafter of this form warrants its use, and any liability for the use of this form is disclaimed. Please note this should not be considered as any type of official OBA form.

My first point of reference was an *Oklahoma Bar Journal* article titled “Payments of Fees by a Third Party” by Gina Hendryx, who serves as the OBA’s general counsel. This article was written in 2009 when she was the OBA ethics counsel. The complete article is online at [www.okbar.org/members/EthicsCounsel/Articles/PayFees.aspx](http://www.okbar.org/members/EthicsCounsel/Articles/PayFees.aspx).

She noted that the Oklahoma Rules of Professional Conduct recognize third-party fee payment and address the potential pitfalls that may arise:

Rule 1.8: Conflicts Of Interest: Current Clients: Specific Rules

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:

- 1) the client gives informed consent;
- 2) there is no interference with the lawyer’s independence of professional judgment or with the client-lawyer relationship; and
- 3) information relating to representation of a client is protected as required by Rule 1.6.

### CONSENT OF THE CLIENT

Informed consent is also defined in the ORPC:

Rule 1.0: Terminology

(e) “Informed Consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the proposed course of conduct.



The most simple way, in my view, to both obtain and document the client's informed consent is to provide a place on the agreement for the client to sign noting that they have read it and consent to it. Ms. Hendryx notes one opinion from another jurisdiction that indicates a lawyer who did not personally meet with the client to explain the fee agreement violated Rule 1.8. This clearly indicates that the best practice is for the lawyer to be personally involved in the execution of this agreement and to discuss it with the client carefully.

This is not just a meaningless exercise. While it is clear that most individuals who need legal services and cannot afford them will jump at the opportunity for a third party to pay, it is important to discuss the risks of these arrangements even when the lawyer has sought to minimize them by using these procedures. One material risk might be the third party refusing to advance additional funds during the representation when there is a disagreement.

## **INDEPENDENCE OF PROFESSIONAL JUDGMENT**

As Ms. Hendryx noted in her article, the Oklahoma Rule of Professional Conduct 1.8(f)(2) and 5.4(c) both mandate that the third-party payer have no control over the client's representation:

Rule 5.4 Professional Independence of a Lawyer

(c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.

This can sometimes be a challenging situation in family law matters, and one case was cited in General Counsel Hendryx's article where a lawyer was found to have violated the above rules by allowing the client's mother who was paying the legal fees to veto appealing a custody order.

This is actually another reason why I think getting everyone together with the attorney for a formal signing agreement related to third-party fee payment makes sense. The lawyer can answer general questions that the payer might have about the range of ultimate cost and the like, while also setting the tone that this may well be the only time that the payer gets to have such a conference with the lawyer and client.

There is always at least a certain amount of control involved in these arrangements. After all, if the parent just wanted to pay the child's attorney's fees, they can transfer money to the child's bank account and let the child make payment directly to the lawyer. It is understandable that the parent would at least want to meet the lawyer and understand at least generally what they are paying for.

Clearly, wise parental advice may be very beneficial, particularly for the younger and inexperienced litigant. But the parent will have many opportunities to consult with their child, and it is good to establish ground rules that meetings in the lawyer's office will be between the lawyer and client only with important decisions being made by the client only, with the advice of the lawyer.

This is why in my form agreement I indicated that once the lawyer has been paid a retainer, any refund will be

made only to the client and not the individual who actually paid the money. Any family lawyer who has dealt with these situations very much appreciates the problems that can occur when the payer disagrees with an action and demands "my money back."

## **PROTECTING CLIENT CONFIDENCES**

The client has to have trust that the lawyer will operate only for the client's benefit and will keep the client's confidences and secrets. Sometimes the lawyer will learn of certain facts that are unknown to the parent-payer. Sometimes the existence of these facts will lead to accommodations or settlements that may make no sense to the parent who is not completely informed. While the client may consent to release of information to the payer, this can become a slippery slope when confidential information is concerned.

Generally speaking, it is probably best for the client to be in charge of passing along any status reports and updates to the payer. Then on the rare occasions when it is necessary for the lawyer to verify something directly to the payer, the lawyer can document this with the client in the form of "you are directing me to communicate the following to X."

There are also complications when the client has moved in to live with the parent. Billing statements can reveal information that was not intended to be communicated — as can correspondence. This should be discussed in detail with the client.

## **CONCLUSION**

Some of these steps may seem to be a bit cumbersome, especially for the veteran fami-

ly lawyer who has dealt with the situation previously many times. But for most practitioners, it is better to get all of this on the table in advance and to make sure everyone understands the lawyer's role clearly. There may be a time when this type of payment arrangement should be refused if it prevents the lawyer from providing competent representation and appropriately serving his or her client.

I recognize that there are other common situations such as the guarantee of future payment of attorney fees on a particular matter that are not covered by this simple agreement. I wanted to keep this one short and sweet, so I just covered the situation where the third-party payer is advancing funds to the client. Obviously some additional language would be required if there is some provision for additional future payments and guarantees. Guarantees must comply with statutory requirements.

Most lawyers will not be surprised that describing the process used to create the agreement is much longer than the simple language itself.

I have not consulted the OBA Family Law Section Practice Manual or any other form resource in the creation of this document. However, if I get valuable feedback from practicing lawyers, there may be a version 2.0 of this document forthcoming.

*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!*

## AGREEMENT FOR A THIRD PARTY TO PAY ATTORNEY FEES

Good Lawyer  
321 Barrister's Way  
Anytown, Oklahoma 73152

Mr. Good Lawyer (hereinafter referred to as Attorney) understands that \_\_\_\_\_ (hereinafter referred to as Payer) wishes to advance funds to Attorney for the benefit and use of \_\_\_\_\_, a client or potential client of Attorney (hereinafter referred to as Client). All of the undersigned understand and agree as follows:

1. Payer wishes to advance funds to Attorney to pay legal fees that have been and/or will be incurred in the Attorney's representation of Client.
2. Payer understands that Attorney will exercise Attorney's independent judgment in the representation of Client. Payment of Attorney's fees and/or court costs gives Payer no right to instruct Attorney in how to proceed or to participate in conferences and conversations between Attorney and Client.
3. Information exchanged between Attorney and Client is protected by attorney-client confidentiality and generally will be not disclosed to third parties, including Payer. Client is free to communicate or to decline to communicate with Payer about matters involved with the representation.
4. Both Attorney and Client appreciate Payer's role in assisting Client in protecting Client's rights and interests. It is respectfully suggested that Payer's most positive role is in supporting Client during this trying time and not in attempting to coach or guide either Attorney or Client in regard to the legal representation.
5. Payor is making either a gift or a loan to Client. Attorney will hold the funds for the use and benefit of Client. In the event there is a refund of any part of funds pre-paid, it will be refunded by a check payable to Client, delivered to Client. Credit/debit card payments will be refunded to the card. This agreement applies not only to funds advanced today, but also to subsequent funds paid to Attorney for the benefit of Client.
6. It is also noted that there is always the possibility that Payer may be subpoenaed to testify in this matter by opposing counsel. Discussing strategy or attorney-client confidences when Payer is present may render those communications outside of the attorney-client privilege and admissible in court.

I understand and consent to this agreement.

\_\_\_\_\_  
Payer

I understand and consent to this payment and agreement.

\_\_\_\_\_  
Client

I acknowledge witnessing Payor and Client execute this agreement.

\_\_\_\_\_  
Attorney

# Lawyer Websites

By Travis Pickens

Lawyer websites are increasingly used by all lawyers, of all ages, as their “public” face. They are used to create a public profile of the lawyer or firm, to provide information to clients and potential clients — and as simple advertising. Any of this information constitutes “a communication about the lawyer or the lawyer’s services” and is subject to the requirements in Rule 7.1 that all communications regarding a lawyer and the lawyer’s services must be true, and not misleading, as well as the prohibitions in Rule 8.4 (c) regarding fraud and dishonesty generally, and the 4.1 (a) requirements regarding statements to third parties when representing clients. Everything in the lawyer’s website will be deemed part of the communication so it must be entirely accurate and clear.

Here is a summary of where the current permitted boundaries appear to be:

## CAN DO

- A trade name as the website domain name (for example, [www.midtownlawgroup.com](http://www.midtownlawgroup.com) as opposed to [www.smithandjones.com](http://www.smithandjones.com))
- Name and office address of lawyers and firm (at least one lawyer or the firm must be listed as responsible for website content, so you may not simply use the trade name throughout the website without referencing a responsible lawyer or firm)
- Contact information
- Pictures/images (of the lawyers, staff, office, for example)
- Lawyer biographies (including educational background, experience, areas of practice, languages, honors, etc.)
- Firm biography (including general history, experience, honors and areas of practice, etc.)
- Mission statements
- Areas of practice and types of services
- Basis of how fees will be determined



- Prices for specific services
- Payment and credit arrangements
- Foreign language ability
- Names of references and representative clients (consent required)
- Results of settlements or jury awards (See Oklahoma Ethics Opinion 320 for restrictions. Briefly, 1) accurate 2) client consent to disclosure of confidential information and 3) disclaimer that results differ based on individual circumstances)
- Use of the trade name of the firm
- A disclaimer that any information provided in the website is not intended to provide legal advice, nor is it

intended to create an attorney-client relationship

### **CANNOT DO**

- False or misleading information
- Inaccurate or misleading images. For example, you cannot misrepresent the location, size or appearance of your office, or mythologize your success in trial with misleading images or video clips
- If a private, for-profit firm, domain name language implying an exclusive affiliation with a bar association or governmental entity, or a public or charitable legal services organization, is prohibited. For this reason, the suffix “.org” should not be used
- Use the name of a lawyer holding public office during

any substantial period in which the lawyer is not regularly and actively practicing with the firm

- Misleading domain names that imply universal success, like fatverdict.com, bestlawyer.com or levels of expertise unrecognized by the Oklahoma Supreme Court (as opposed to patent and admiralty law)
- Listing lawyers when their jurisdictional limitations are not provided (for example, a lawyer licensed only in another state)
- Use language or images disparaging of fellow lawyers or judges
- Use language or images that could be used to discredit the legal profession in general

### **SHOULD NOT DO**

- Information that could be construed as specific legal advice unless it is information that would apply to every case
- An invitation to submit confidential client information unless you are prepared to honor the confidences regardless of whether you take the case
- Anything in bad taste.

*Mr. Pickens is OBA ethics counsel. Have an ethics question? It's a member benefit, and all inquiries are confidential. Contact him at [travis@okbar.org](mailto:travis@okbar.org) or 405-416-7055; 800-522-8065. See tips from the OBA Ethics Counsel at [www.okbar.org/members/EthicsCounsel](http://www.okbar.org/members/EthicsCounsel).*

## **Oklahoma City Real Property Lawyers Association**

Join us for **FREE** October CLE

7:15 a.m., Friday, October 10, 2014

### **Lessons for Lessees in Lesser Prairie Chicken Country**

*An overview of regulations concerning prairie chicken habitat and the effects on field operations for oil and gas companies, leasehold transactions and ownership.*

**Lewis LeNaire**  
*Gable Gotwals*

Community Room on the 3<sup>rd</sup> floor of  
50 Penn Place  
1900 N.W. Expressway, Oklahoma City, OK

OKCRPLA provides ten CLE breakfast programs a year on real property related topics and annually recognizes OU and OCU law students for academic achievement in real property law. OKCRPLA invites OBA members to attend the October 2014 meeting free of charge. Seating is limited, so please make your reservation no later than **Noon on Wednesday, October 8, 2014**, by contacting the OKCRPLA at [okcrpla@gmail.com](mailto:okcrpla@gmail.com).

  
**GREEN**

*Want to save some paper? Go online to [my.okbar.org/](http://my.okbar.org/) Login and sign in. Click on “Roster Info” and switch to electronic to receive court issues.*



# The OBF: ‘Lawyers Transforming Lives’

By Dietmar K. Caudle

As my 2014 term as your OBF president continues to unfold, I have been privileged to lead and observe a group of 26 Board of Trustees lawyers, who have been most instrumental in conveying the OBF’s mission statement of promoting justice, funding of critical legal services and advancing public awareness and better understanding of the law. These elected and appointed Trustees, assisted by our invaluable OBF staff, give the foundation and the legal community their most precious commodity: *their time*.

This same group of lawyer Trustees somehow manages to allocate time out of their busy schedules not only to generously support the OBF with their professional knowledge, but also with their personal financial support. These same lawyers always answer the bell when difficult tasks are assigned to them. Most importantly, their resolve and sacrifice culminates in the result of changing the neediest of Oklahoma lives.

These lawyer Trustees attend day-long grant interview meetings, review reports and go to grantee site locations to ascertain and share in firsthand knowledge of what OBF grant dollars are actually doing. They attend county bar association meetings, CLEs and other public events to spread the OBF mission throughout the state.

These lawyers understand that by helping to generate more OBF donations, they become a helping hand to provide and fund law-related service programs for less fortunate Oklahomans. These lawyers know that their financial support (and other Fellows’ financial support) will create scholarships for those who will

“ **The goal of your 2014 Board of Trustees is to be able to award almost \$500,000 in its regular and court grant-making process.** ”

follow in their professional footsteps or will simply provide a helping hand in assisting the elderly or infirm with their legal issues as well as to educate school children about the rule of law.

By the efforts of these lawyers, and the generations before them, the OBF has supported deserving Oklahomans through its grant-making programs by disbursing more than \$11.5 million since 1946, with \$11 million

of that amount being given over just the last 35 years.

## **IT’S EASY TO GIVE USING THE WEBSITE**

I am most happy to report that the OBF is well equipped to share its history and current events by developing easy access to the OBF website at [www.okbarfoundation.org](http://www.okbarfoundation.org). Among its many features, the OBF website allows you to become an OBF Fellow, a Community Fellow or simply to continue your financial support once your initial Fellow pledge is complete. If you are not already a Fellow, please join today. If your initial Fellows pledge is complete or nearing completion, please consider upgrading your paid Fellow status to Sustaining or Benefactor Fellow.

An annual sustaining gift of at least \$100 will help us to sustain grant programs and an annual Benefactor gift of at least \$300 will help to lead the way for the OBF to increase some grant award levels to better serve vital needs throughout the state. Your tax-deductible gifts will enable the OBF to make an even greater impact in the battle to help Oklahomans in crucial need of law-related services and education.

The OBF website will assist you in considering planned giving to the OBF by including the OBF in your will or living

trust. You may designate the OBF as a beneficiary of your life insurance policy, IRAs or by listing the OBF to share in part or all of the residual balance of your real or personal property. This suggested estate planning becomes a tax effective way to benefit critical law-related programs and provide for charitable good works for years to come. The website enables lawyers, law firms and affiliate groups to enlist as Community Fellows. These pledges assure that charitable works and activities will be accomplished for exclusive public purposes with tax exempt status — good

works that lawyers and law firms care about.

The goal of your 2014 Board of Trustees is to be able to award almost \$500,000 in its regular and court grant-making process. This year grant applicant needs far exceed this number and Trustees continue to work toward development of more and greater support. The OBF has and will continue to “*change Oklahoma lives for the better*” through its good works done on behalf of all Oklahoma lawyers. Generations of lawyers have historically stepped up to pledge their time and financial support to the OBF.

We as lawyers need to continue this time-honored tradition by inviting other lawyers, law firms and affiliates to join the OBF *today*! Please remember that we “cannot receive if we do not ask.”

#### ABOUT THE AUTHOR



Dietmar K. Caudle practices in Lawton and serves as OBF President. He can be reached at [d.caudle@sbcglobal.net](mailto:d.caudle@sbcglobal.net).

## Oklahoma Bar Foundation Fellows Reception

*Held in conjunction with the OBA Annual Meeting*

Wednesday, Nov. 12

5:30 to 7 p.m.

**Suite 1506**

**Hyatt Regency Hotel  
Downtown Tulsa**



### OBF COURT GRANTS IN ACTION

OBF President Dietmar Caudle visited the Caddo County Courthouse during September and posed for a photo with District Judge Richard Van Dyke, Associate District Judge S. Wyatt Hill and Special District Judge David A. Stephens. The Caddo County District Court was able to complete the update to their primary courtroom where large jury trials and complex litigation are conducted with a grant from the Oklahoma Bar Foundation for an audiovisual system. Some of the courtroom technology made possible by the OBF were the computerized projection screen together with the ELMO feature which allows evidence to be placed on the presentation table that projects it instantly to the large screen. Judges and attorneys alike are extremely elated with the new technology and vigorously applaud the OBF.



# OKLAHOMA BAR FOUNDATION

## 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

- |                                                                                                                                                                |                                                                                                                                                       |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------|
| ___ I want to be an OBF Fellow now – Bill me later                                                                                                             | ___ \$100 enclosed and bill annually                                                                                                                  |
| ___ Total amount enclosed \$1,000                                                                                                                              | ___ New lawyer 1st year, \$25 enclosed & bill annually as stated                                                                                      |
| ___ New lawyer within 3 years, \$50 enclosed and bill annually as stated                                                                                       | ___ I want to be recognized at the higher level of Sustaining Fellow and will continue my annual gift of \$100<br>(initial pledge should be complete) |
| ___ I want to be recognized at the highest Leadership level of Benefactor Fellow and annually contribute at least \$300<br>(initial pledge should be complete) | ___ 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!



# YLD Leadership to be Elected: Vote by Nov. 7

By Kaleb Hennigh

The OBA YLD elections are upon us already. Fellow young lawyers I want to thank you for your continued commitment to your practice and communities. We are in a special time of year when leadership within our organization is preparing to change for the next year. This year there is a full slate of candidates, and I congratulate each of the candidates running for the Board of Directors positions. It is exciting to see new faces within our profession eager to get to work and get involved with the Oklahoma Bar Association.

Fellow young lawyers you have the opportunity to elect fellow professionals and peers to help lead our division throughout the next few years. I encourage each of you eligible to vote to exercise that right, make your voice heard and vote for a candidate!

Elections will be conducted electronically, as the OBA will submit via email a ballot directly to you at the email address on file currently with the OBA. If you don't have an email, there will be a ballot posted on the YLD website, [www.okba.org/yld](http://www.okba.org/yld), which can be printed and then emailed. You will be required to provide your OBA number to identify you as a member of the YLD and an eligible voter

within the respective district. The elections are based on the Oklahoma judicial districts and you will only be able to vote for those officers and candidates within your judicial district and respective at-large candidates.

The deadline for submission of your ballots will be 5 p.m., on Friday Nov. 7, 2014. The election results will be announced live at the YLD Annual Meeting held in conjunction with the OBA Annual meeting and then subsequently posted on our website. Again, please take the time to vote and help elect leadership within the YLD to ensure the organization continues to build on its past success!

If you have any questions you may direct them to the Nominating Committee Chairperson, Joe Vorndran at [joe@sdtlaw.com](mailto:joe@sdtlaw.com).

## ABOUT THE AUTHOR



[hennigh@northwestoklaw.com](mailto:hennigh@northwestoklaw.com).

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

## 2015 Leadership

*The following individuals automatically hold the following positions for 2015.*



**LeAnne McGill**  
2015 Chair

Ms. McGill is a partner with the Edmond law firm of McGill & Rodgers, where her practice focuses on all areas of family law. She has been active in the OBA YLD since 2006, currently serving as the treasurer of the division and is in her fourth term as a director for District 3. Ms. McGill is the co-chair of the New Attorney Orientation Committee, which is responsible for preparing and passing out bar exam survival kits to those taking the bar exam each February and July. This committee is also responsible for the refreshments at the swearing-in ceremonies and plan-

ning the “Welcome to the Bar” celebrations each April and September. In addition, she has served as the Publications and Website Committee chair, has participated in Wills for Heroes, Serving our Seniors and Done in a Day Community Service projects and has provided pro bono time to service members through the Military Assistance Program.

Ms. McGill has also served on the Oklahoma County YLD Board of Directors for the last six years. As a director for the OCBA YLD, she has held numerous positions, including serving as the chair for the Harvest Food Drive committee and the Chili Cook-off committee. These two committees work together to donate in excess of \$20,000 to the Regional Food Bank each fall.

Aside from her participation in the YLD, she is active in the OBA Family Law Section and has served on several OBA committees including the Mentoring Task Force, the Law Day Committee and the Women in Law Committee. Ms. McGill is a graduate of the inaugural 2008-2009 OBA Leadership Academy, the 2007 OBA Leadership Conference, is an Oklahoma Bar Foundation Fellow and served as the first chair of the OBA Law Student Division.

Ms. McGill has been active in the American Bar Association, having held several positions within the organization, including two terms as the national secretary treasurer of the ABA Law Student Division and one term as the national pro bono committee co-chair for the Law Student Division. She has served on the ABA YLD Programming Team and as chair of the ABA YLD Access to Justice Committee.

Ms. McGill received her B.A. in English and political science from Oklahoma State University in 2003 and her J.D. from Oklahoma City University School of Law in 2006. In addition to bar activities, she has served on the OCU Law Alumni Association Board of Directors and is an active member of the Ginsburg Inn of Court, EWF International, Edmond Women’s Club and the Edmond Family Counseling Board of Directors. Ms. McGill has been honored as a Top 20 under 40 by the *Edmond Sun* and a Top 40 under 40 by *OKCBiz* magazine. She is also graduate of Class XXVI of Leadership Edmond and volunteers with the American Cancer Society and the Salvation Army.



**Kaleb Hennigh**  
*Immediate Past Chair*

Mr. Hennigh is a founding partner at Ewbank, Hennigh and McVay PLLC in Enid. Mr. Hennigh was born and raised near Laverne, a small community near the panhandle. He received a bachelor’s degree in agricultural communications from Oklahoma State University, a J.D. from the University of Oklahoma College of Law and an LL.M. in agricultural law from the University of Arkansas School of Law.

During his time at the University Of Oklahoma School of Law, Mr. Hennigh was awarded the Kelly Beardslee award for his work with the OU Criminal Law Clinic. While working to obtain his LL.M., he served as a graduate assistant at the National Agricultural Law Center, where he conducted extensive research on multiple issues within agricultural law and drafted his thesis on the new national animal identification system and the application of FOIA laws.

Upon completing his LL.M., Mr. Hennigh remained in northwest Arkansas working as an associate attorney in an intellectual property law firm. There he worked with several agricultural corporations regarding intellectual property protection and helped establish an agricultural bankruptcy practice, which received regional recognition for its efforts in assisting immigrant farmers.

Mr. Hennigh and his family returned to Enid in early 2007 where he served as an associate attorney and later a partner in a regional law firm where he expanded his practice and focus on estate planning, asset protection and bankruptcy liquidation and reorganization. He continues his practice on asset protection, estate planning, real estate transactions, bankruptcy, corporations, wind energy and leases and other issues within the agricultural industry.

Mr. Hennigh, his wife, Jennifer, and their two sons, Karsen and Jase, reside in Enid. Mr. Hennigh has served on the OBA YLD Board of Directors for the past six years in various roles, including secretary (2011), treasurer (2012) and chair elect (2013).

## UNCONTESTED ELECTIONS

*The following persons have been nominated. They are running uncontested and will be declared elected at the Annual Meeting of the OBA YLD.*



**Lane Neal**  
*Secretary*

Lane Neal is an associate with Durbin, Larimore & Bialick PC in Oklahoma City. His practice focuses primarily on civil litigation and insurance defense. He is a member of the Oklahoma County Bar Association and an Oklahoma Bar Foundation fellow. He is admitted to practice in all state and federal courts within Oklahoma. Mr. Neal is an associate in the Luther Bohannon Inn of Court and a 2010 graduate of the OBA Leadership Academy. He is also a member of the OBA Bench and Bar Committee. Mr. Neal has served as a District 3 representative to the OBA YLD Board of Directors since 2010. He received his J.D. from OU College of Law in 2008.

**Maureen M. Johnson**  
*District 6*

Maureen M. Johnson is an associate attorney at Riggs, Abney, Neal, Turpen, Orbison



& Lewis in their Tulsa office. She focuses her practice on domestic and civil litigation, estate planning and probate. In 2004, she graduated from OU *magna cum laude* with a B.A. in Sociology/Criminology and minor in Spanish. In 2007, she graduated from TU College of Law. She currently serves as the historian for the Tulsa Women Lawyers Association. She graduated from the OBA Leadership Academy in 2014.



**Bradley Brown**  
*District 6*

Bradley Brown is an attorney at Jones, Gotcher & Bogan PC in Tulsa. He's a member of the ABA, OBA, Tulsa County Bar Association and the National Association of College and University Attorneys. He serves on the TCBA Mentoring Committee, the OBA Disaster Response and Relief Committee, and he's an Oklahoma Bar

Foundation fellow. Mr. Brown received his J.D. from TU College of Law in 2012.



**Grant Sheperd**  
*District 9*

Grant Sheperd is an attorney with GWC Lawyers PLLC in Lawton. His practice focuses primarily on family law, criminal law and real estate. Mr. Sheperd graduated from OU with a degree in journalism. He received his J.D. from the OU College of Law in 2010. In addition to serving as a director for the Young Lawyers Division, Mr. Sheperd is currently a member of the OBA Work/Life Balance Committee and a member of the Comanche County Teen Court Board.

## CONTESTED ELECTIONS

*The following persons have been nominated and are running contested for the following positions. Results will be announced at the YLD Annual Meeting.*

**Allyson Dow**  
*District 5/At Large/Rural at Large*

Allyson Dow is an associate attorney with Petersen, Henson, Meadows, Pecore & Peot PC, in Norman. Ms. Dow nar-



rows her practice to family law, including divorce, child custody, child support, paternity, and guardianship. Ms. Dow is active in the OBA Family Law Section, currently serving as social chair for the Oklahoma City location and is an editor for the *Practice Manual*. Ms. Dow is a member of the Cleveland County Bar Association, Oklahoma County Bar Association, and is admitted to practice in the Western District of the State of Oklahoma. Ms. Dow is a recent graduate of the OBA Trial Academy. She received her J.D. in 2012 from OU College of Law.



**Robert L. Bailey**  
*District 5/At Large/Rural at Large*

Robert L. Bailey II is an associate attorney at Bailey & Poarch in Norman. He practices in the areas of estate planning and administration, real

estate, elder law and civil trial litigation. He received his J.D. from OU College of Law in 2011.



**April J. Moaning**  
*District 3/At Large*

April J. Moaning is a solo practitioner with experience in family law. She also concentrates her practice on personal injury and criminal law. She received her J.D. from TU College of Law in 2013. While pursuing her law degree, she served as vice president of the Black Law Students Association and was a legal intern at Domestic Violence Intervention Services and the Department of Human Services.



**Sarah Stewart**  
*District 3/At Large*

Sarah Stewart is the executive director of the Senior Law Resource Center. She has been on the YLD board since 2010,

is the current vice chair of the Access to Justice Committee, and has been appointed to serve as special judge to the Oklahoma City Municipal Court. Ms. Stewart received her J.D. from OCU.



**Benjamin Grubb**  
*District 3/At Large*

Benjamin Grubb is an attorney in the litigation group at Bass Law. His practice focuses on civil litigation, insurance law, torts, business transactions and contract disputes. He earned his J.D. in 2013 at OCU School of Law, where he served as executive editor of the *OCU Law Review*. Mr. Grubb is admitted to practice in all Oklahoma trial and appellate courts, the United States District Courts for the Western, Eastern and Northern Districts of Oklahoma, and the 10th Circuit United States Court of Appeals.

*continued on next page*



**Matthew Sheets**  
*At Large/Rural At Large*

Matthew Sheets is an associate at Gotcher and Beaver Law Firm in McAlester. His practice is entirely devoted to litigation with emphasis in criminal defense, domestic and plaintiff's civil litigation. Prior to joining Gotcher and Beaver in 2012, Mr. Sheets was the assistant district attorney for Pushmataha County. He graduated with a B.S. from the Spears School of Business at OSU. He received his J.D. from OU College of Law in 2010. Mr. Sheets is the vice president of the Pittsburg County Bar Association and will serve as one of its delegates to the annual meeting. He currently serves on the OBA Law School Committee.



**Matt Mickle**  
*At Large/Rural At Large*

Matt Mickle is an attorney with Mickle Rainbolt Law Offices in Durant. His practice focuses on estate planning as well as criminal law. He received his J.D. from OCU School of Law in 2006. He has served as an at-large rural director on the OBA YLD Board of Directors.



**J.D. White**  
*At Large/Rural At Large*

J.D. White is a senior attorney at Gungoll, Jackson, Box & Devoll PC and works in the firm's Enid office. He focuses his practice in the areas of civil litigation, family law, personal injury and criminal law. He grew up in Cherokee, and graduated from OSU in 2005 with a degree in agricultural economics with minors in accounting and economics. He earned his J.D. from OCU School of Law in 2008 where he was a merit scholar and a member of Phi Delta Phi Honors Fraternity.



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# October

- 7 OBA Management Assistance Program presents Opening Your Law Practice;** 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Jim Calloway or Nickie Day 405-416-7000
- OBA Government and Administrative Law Practice Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with Teleconference; Contact Scott Boughton 405-717-8957
- 10 OBA Law-related Education Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Suzanne Heggy 405-556-9612
- OBA Family Law Section meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City with OSU Tulsa, Tulsa; Contact M. Shane Henry 918-585-1107
- 13 Licensed Legal Intern Swearing-In Ceremony;** 12:45 p.m.; Judicial Center, Oklahoma City; Contact Debra Jenkins 405-416-7042
- Ruth Bader Ginsburg Inn of Court;** 5 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Donald Lynn Babb 405-235-1611
- 14 OBA Diversity Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Ruth Addison 918-574-3051
- OBA Licensed Legal Intern Committee meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Candace Blalock 405-238-0143
- 15 OBA Clients' Security Fund meeting;** 2 p.m.; Oklahoma Bar Center, Oklahoma City with OSU Tulsa, Tulsa; Contact Micheal Salem 405-366-1234
- 16 OBA Taxation Law Section meeting;** 11 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Abby Dillsaver 405-319-8550
- 17 OBA Access to Justice Committee meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City with OSU Tulsa, Tulsa; Contact Laurie Jones 405-208-5354
- OBA Rules of Professional Conduct Committee meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City with OSU Tulsa, Tulsa; Contact Paul Middleton 405-235-7600
- OBA Solo and Small Firm Committee meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Charles Chesnut 918-542-1845
- 18 OBA Young Lawyers Division meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Kaleb Hennigh 580-234-4334
- 21 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
- 22 Legal Aid Services of Oklahoma Seminar;** 8:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Cindy Goble 405-488-6823
- OBA Work/Life Balance Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Sarah Schumacher 405-752-5565



- 24 OBA Lawyers Helping Lawyers Foundation and Lawyers Helping Lawyers Committee joint meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact John Morris Williams 405-416-7000

**OBA Board of Governors meeting;** Lawton; Contact John Morris Williams 405-416-7000

- 27 OBA Juvenile Law Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Tsinena Thompson 405-232-4453

- 28 OBA Women in Law Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with University of Tulsa College of Law, Tulsa; Contact Allison Thompson 918-295-3604

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

**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

## November

**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

**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

**9 OBA Diversity Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Ruth Addison 918-574-3051

## REMINDER — COLUMBUS DAY NOTICE

**The Supreme Court Clerk's office will be OPEN on Columbus Day, October 13th. If your appeal-time trigger occurred thirty days before this date, your time to bring an appeal will not be extended by failing to file on Columbus Day.**

**The Supreme Court Clerk's office will be CLOSED on Veterans Day, Tuesday, November 11th.**



### 2015 Mock Trial Season Set to Begin

More than 250 students and their teachers attended a recent OBA High School Mock Trial Program workshop conducted jointly in Oklahoma City at the bar center and Tulsa via webcast. Students learned the ins and outs of mock trial competition, including organization of materials, rules of evidence, trial elements such as opening statements, direct and cross examination, and presentation skills.

OBA High School Mock Trial Committee Chair Dan Couch was among the presenters at the clinic, speaking to students about testimony and portraying a witness. Other presenters were committee members Jennifer Bruner, Christine Cave, Kevin Cunningham, Tai Chan Du and Andrea Medley.

Many volunteer opportunities are available in the OBA High School Mock Trial Program. To get involved, contact coordinator Judy Spencer at [mocktrial@okbar.org](mailto:mocktrial@okbar.org).

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### Member Benefit Reminder: Discounted UPS Shipping Services



Through the OBA, you can save on shipping with UPS. Take advantage of discounts of up to 34 percent, plus 50 percent off select services for up to four weeks

after you enroll! Save on a broad portfolio of shipping services, including air, international, ground and freight services. To enroll and start saving, visit [www.savewithups.com/oba](http://www.savewithups.com/oba) or call 1-800-MEMBERS (1-800-636-2377), M-F, 7 a.m. – 5 p.m.



*The powerhouse Clinton High School Mock Trial Team was one of several teams from around the state to attend the mock trial clinic at the bar center.*



*A student participant asks questions during the mock trial clinic.*



*OBA Mock Trial Committee Chair Dan Couch of Edmond speaks to students about program specifics during the recent workshop at the bar center.*

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### 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](mailto: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.

## Kudos

**Richard L. McKnight**, of Counsel with Gungoll, Jackson, Box and Devoll PC received the 2014 Walk of Fame award at Enid's Cherokee Strip Days Sept. 13. Recipients are selected on the basis of having demonstrated a lifetime of service to the community in general, or having made an extraordinary contribution or act of selflessness or statesmanship for Enid.

**Billy Croll**, a partner at Hartzog Conger Cason & Neville, has been elected to the Oklahoma County Bar Association Board of Directors. Mr. Croll's practice areas include litigation, oil and gas, and property law. He received a B.S. in journalism from OSU and his J.D. from the OU College of Law.

## On The Move

Oklahoma City law firm Lytle, Soule & Curlee announces that **Stacey S. Chubbuck** has joined the firm as an associate. Her practice focuses on general and commercial litigation, product liability and insurance defense. Ms. Chubbuck graduated from the OU College of

Law, and was admitted to the Oklahoma bar in 2009.

Oklahoma City law firm Miller Dollarhide announces that **Amy Alden** has been named a shareholder and director of the firm and that **Patrick Lane** and **Dakota Low** have joined the firm as associates. Ms. Alden has been associated with the firm since 2011 where her practice focuses in the areas of business litigation. She received her J.D. in 1996 from the OU College of Law. Mr. Lane's practice focuses on business litigation, personal injury, Section 1983 civil rights, negligence and bad faith insurance. He also works with clients on professional and personal transactions related to real estate and business formation. Mr. Lane received his J.D. from the OCU School of Law in 2011 in addition to his MBA from OCU. He received his Bachelor of Arts in religious studies from the University of Oklahoma with a minor in history. Mr. Low's practice includes general litigation, personal injury and business law. He received his J.D. from the OCU School of Law in 2013. He received a Bachelor of Arts in integrated physiology in December 2007.

Dunlap Coddling announces that **Evan W. Talley** has joined the firm as an associate. Mr. Talley's practice focuses on commercial transactions, business tort and intellectual property law. His work has also included public utility litigation, tort litigation

and insurance subrogation, as well as having included assisting in the drafting and prosecution of patent and trademark applications. He received his J.D. from the OU College of Law in 2009. He received a B.B.A. degree from the University of Oklahoma College of Business, with distinction, as well.

**Susan Carns Curtiss** announces the opening of her private practice in Oklahoma City. She represents individuals and families of individuals injured or killed as a result of auto, trucking, pedestrian or motorcycle collisions. She most recently worked as an attorney with Carr and Carr from 2010 – 2014. Her new office address is 600 NW 23rd St., Oklahoma City.

**Everett & Taylor PLLC** announces the opening of its new office at 102 E. Eufaula, Suite A, Norman. **Amanda Everett's** focus is on criminal defense, family law and personal injury accidents. **Evan Taylor's** focus is on divorce and all other areas of family law, probate and estate planning.

The Tulsa law firm of **Atkinson, Haskins, Nellis, Brittingham, Gladd & Fiasco** announces that **Micah J. Petersen** and **Joshua D. Poovey** have joined the firm as associates. Mr. Petersen focuses on civil litigation with an emphasis in the areas of insurance defense and medical malpractice defense. He graduated with highest hon-

ors from TU College of Law in 2014, and he graduated *summa cum laude* with a Bachelor of Arts in public relations from Missouri Valley College in 2011. Mr. Poovey practices in the areas of appellate advocacy and civil litigation with an emphasis in research. He graduated with highest honors from TU College of Law in 2014. He is a 2011 graduate of Pittsburg State University, where received his B.A. in history with a minor in political science.

Edmond law firm Christin Mugg Adkins & Associates PLLC announces **Shane R. Leach** has joined the firm as an associate. 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. He will be expanding the firm's practice with the opening of a satellite office at 603 Delaware St. in Perry.

**Rebecca Sherwood** 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 received her J.D. from OU College Law in 1984. Offices are located at 1500 S. Utica, Suite 400, in Tulsa.

**Shayna R. Feiler** of Oklahoma City announces the formation of a new practice primarily focusing in the area of general civil practice with an emphasis in family law. She earned her J.D. from the OU College of Law in 2012 and serves on the board of the OBA Family Law Section. Her office is located at 4045 N.W. 64th St., Suite 510, Oklahoma City.

**Mike Voorhees, Sharon Voorhees and Brittany J. Byers** announce the formation of Voorhees Voorhees & Byers. The firm will focus on small business representation, estate planning, real estate, probate, guardianships, divorce, general civil litigation and appeals. The law office is located at 1625 Greenbriar Pl., Ste. 700, Oklahoma City, 73159. The firm can be reached at 405-682-5800.



**Eric L. Johnson** of the Oklahoma City office of Hudson Cook LLP spoke at the Financial Service Centers of Mississippi Annual Convention in Biloxi, Miss. on Aug. 15 and 16. He led three CFPB compliance workshops titled "A Primer on the Dodd-

Frank Act, the Consumer Financial Protection Bureau (CFPB), and Federal Regulation of Financial Service Center Providers;" "Compliance Management Systems: A Critical Component of Compliance" and "CFPB Examinations of Financial Service Providers: Be Ready When the Time Comes."

**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:

Abby Broyles  
Communications Dept.  
Oklahoma Bar Association  
405-416-7084  
barbriefs@okbar.org

*Articles for the Dec. 13 issue must be received by Nov. 10.*



## IN MEMORIAM

**David Edward Byers** of Tulsa died Aug. 13. He was born Aug. 17, 1938, in Green Mountain, Iowa. He earned his J.D. from Iowa State University in 1962 and practiced oil and gas law.

**Charles Leonard Fagin** of Oklahoma City died Sept. 5. He was born on Aug. 7, 1937, in Oklahoma City. He received his J.D. from OU College of Law in 1961. He received his undergraduate and law degrees at the University of Oklahoma. He loved the practice of law, but most of all, he loved his family and friends. Memorial contributions may be made to the Jewish Federation of Oklahoma City or to the Christmas Connection of Oklahoma City.

**Daniel William Keller** of Edmond died Aug. 25. He was born June 21, 1960, and graduated from Casady High School. He earned a bachelor's degree from OSU and received his J.D. from OU College of Law in 1994. He founded Keller & Associates PC, primarily practicing in the area of estate planning. Although he had a passion for the law, he derived his greatest satisfaction from serving his clients and their families while assisting them with often very difficult life decisions.

**Charles Edward "Chuck" Payne** of Oklahoma City died Aug. 14. He was born July 5, 1931, in Ardmore and moved to Oklahoma City, where he attended Putnam City High School. Prior to earning his J.D. from the OU College of Law in 1956, **he served as an officer in the Air Force during the Korean War.** He loved playing tennis, swing dancing, singing and keeping up with the OU Sooners.

**G. Dan Rambo** died Aug. 9. He was born April 23, 1928, in Marietta and moved to Norman in 1945. **He enlisted in the U.S. Marine Corps near the end of WWII.** He earned a bachelor's and master's degree in geology from OU and worked in the oil and gas industry for 10 years. He graduated from OU College of Law in 1965. Mr. Rambo was chief legal counsel to Gov. David Hall in the early 1970s, adviser to Gov. George Nigh, and served as regional energy director in President Jimmy Carter's administration. Memorial contributions may be made to the OU Foundation or a charity of your choice.

**Frank Michael "Mike" Ringer** of Norman died Aug. 15. He was born on Nov. 8, 1943, and was raised in Pauls Valley. He attended college at OU, where he played

football for Coach Bud Wilkinson. After earning his J.D. from OU College of Law in 1970, he was an assistant district attorney in Norman. Later in his career, he was the training director of the National College of District Attorneys and an assistant U.S. attorney in Houston from 1978 until his retirement. He was a member of McFarlin Memorial United Methodist Church in Norman. In his spare time, he enjoyed coaching youth sports, hunting, fishing, OU athletics and watching his son's and grandson's sporting events.

**Vester Songer** of Hugo died Sept. 14. He was born Feb. 23, 1923, in Slim and lived in the area all his life, graduating from Ft. Towson High School in 1942. He attended the University of Oklahoma where he graduated from OU College of Law in 1947. He served as assistant district attorney in Choctaw County for several years and was the Choctaw County Bar Association "president for life." He was very active in politics through the years. Those who knew him best would say practicing law was his passion. A lifelong member of the First Baptist Church, he enjoyed spending time with his family and friends watching Oklahoma Sooners football games.

# Annual Meeting

## Registration



Register by Oct. 21 to receive the early-bird rate

[www.amokbar.org](http://www.amokbar.org)

## Events

Dinner, drinks and dancing, oh my! Enjoy informative and humorous CLEs, numerous receptions, the President's Breakfast and the enlightening Annual Luncheon speaker, legal futurist Richard Susskind.



[www.amokbar.org/program-of-events](http://www.amokbar.org/program-of-events)

## Hotel info



Fees do not include hotel accommodations. Make your reservations by Oct. 21 for a reduced rate of \$115 per night.

Group code: G-OPA4

[www.tulsa.hyatt.com](http://www.tulsa.hyatt.com)

## CLE



Get all your CLE for the year in one place! Register now and plan ahead.

[www.amokbar.org/cle](http://www.amokbar.org/cle)

## Bar Business

It's important to know what's going on in your organization! Read up on resolutions, House of Delegates info and get to know the candidates for next year's officers and Board of Governors.

[www.amokbar.org/bar-business](http://www.amokbar.org/bar-business)



## SERVICES

BRIEF WRITING, APPEALS, RESEARCH AND DISCOVERY SUPPORT. Eighteen years experience in civil litigation. Backed by established firm. Neil D. Van Dalsem, Taylor, Ryan, Schmidt, Van Dalsem & Williams PC, 918-749-5566, nvandalsem@trsvlaw.com.

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INTERESTED IN PURCHASING PRODUCING & NON-PRODUCING Minerals; ORRI; O & G Interests. Please contact: Patrick Cowan, CPL, CSW Corporation, P.O. Box 21655, Oklahoma City, OK 73156-1655; 405-755-7200; Fax 405-755-5555; email: [pcowan@cox.net](mailto:pcowan@cox.net).

### HANDWRITING IDENTIFICATION POLYGRAPH EXAMINATION

Board Certified	Court Qualified
Diplomate — ABFE	Former OSBI Agent
Life Fellow — ACFEI	FBI National Academy

Arthur D. Linville

405-736-1925

## SERVICES

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Expert witness, tree appraisals, reports, damage assessments, herbicide damage, hazard assessments, all of Oklahoma and beyond. Certified arborist, OSU horticulture alumni, 23 years in business. [blongarborist@gmail.com](mailto:blongarborist@gmail.com); 405-996-0411.

WANT TO PURCHASE MINERALS AND OTHER OIL/GAS INTERESTS. Send details to: P.O. Box 13557, Denver, CO 80201.

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25 Years in business with over 20,000 cases. Experienced in automobile, truck, railroad, motorcycle, and construction zone accidents for plaintiffs or defendants. OKC Police Dept. 22 years. Investigator or supervisor of more than 16,000 accidents.

**Jim G. Jackson & Associates Edmond, OK 405-348-7930**

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Litigation support, embezzlement and fraud investigations, expert witness testimony, accounting irregularities, independent determination of loss, due diligence, asset verification. 30+ years investigative and financial analysis experience. Contact Darrel James, CPA, [djames@jmgglobal.com](mailto:djames@jmgglobal.com) or Dale McDaniel, CPA, [rdmcdaniel@jmgglobal.com](mailto:rdmcdaniel@jmgglobal.com), 405-359-0146.

## OFFICE SPACE

EXECUTIVE OFFICE SUITES. Two blocks from District & Federal Courthouses. Receptionist, phones, copier, internet, and cable provided. Six established attorneys available for referrals on a case-by-case basis. Midtown Plaza location. 405-272-0303.

### Office Space - MidTown Law Center

Historic atmosphere in restored 1926 building for solo or small firm lawyers. Rent includes: phone, fax, long distance, internet, parking, library, kitchen privileges, onsite storage, two conference rooms and receptionist. Enjoy collegiality with civil/trial/commercial attorneys.

**405-229-1476 or 405-204-0404**

PREMIUM EDMOND EXECUTIVE OFFICE SUITE; private upstairs suite of 3 offices; \$1750; in building with practicing attorneys; includes parking, internet, conference room use, wi-fi, guest reception area; conveniently located on Boulevard between Memorial and 33rd; Call 405-285-8588 for inquiries.

## OFFICE SPACE

**OFFICE SPACE FOR LEASE** one block north of the federal courthouse. Rent all inclusive with phone, parking, and receptionist. Call 405-239-2726 for more information.

**WATERFORD OFFICE SPACE.** 1,324 Rentable Space in Waterford Bldg. 6301, 4th Floor, North View. Two large executive offices, conference room/foyer, and kitchen/file room. Great build-out with hardwood floors and crown molding. Available September 1. Call 405-202-2111.

## POSITIONS AVAILABLE

**MEDIUM-SIZED, DIVERSE LAW FIRM** in Oklahoma City is looking for an established attorney with his or her own client base to join our firm. Located near the Capitol with easy access to downtown. Interested candidates may send their résumé to "Box E," Oklahoma Bar Association, PO Box 53036, Oklahoma City, OK 73152.

**TITLE EXAMINATION ATTORNEY** position available. Commercial and residential examination experience required. Underwriting experience a plus. Send résumé to Jennifer Moradi at Stewart Abstract & Title of Oklahoma, 701 N. Broadway Ave., Suite 300, Oklahoma City, OK 73102 or [jmoradi@stewart.com](mailto:jmoradi@stewart.com).

**FENTON FENTON SMITH RENEAU & MOON**, an AV rated defense firm is seeking an attorney with one to five years of experience to assist in its civil litigation department. Please submit a résumé, writing sample and transcript to: Recruiting Coordinator, 211 N. Robinson, Ste. 800N, Oklahoma City, OK 73102.

**ATKINSON, HASKINS, NELLIS, BRITTINGHAM, GLADD & FIASCO** is seeking an associate attorney with three to five years of litigation experience. Applicants should have outstanding academic credentials, strong writing skills, and trial experience. Compensation and benefits package will be commensurate with the applicant's experience. Please send a cover letter, CV, and law school transcript to [mcook@ahn-law.com](mailto:mcook@ahn-law.com).

**THE OKLAHOMA BAR ASSOCIATION** Heroes program is looking for several volunteer attorneys. The need for FAMILY LAW ATTORNEYS is critical, but attorneys from all practice areas are needed. All ages, all counties. Gain invaluable experience, or mentor a young attorney, while helping someone in need. For more information or to sign up, contact Gisele Perryman, 405-416-7086 or [heroes@okbar.org](mailto:heroes@okbar.org).

**JONES, GOTCHER & BOGAN, PC**, a downtown Tulsa, full service, AV-rated law firm seeks associate attorney with 3 - 6 years' family law experience. Solid experience is a must. Our firm offers a competitive salary and benefits, with bonus opportunity. Submit résumé and references via email to [shambrick@jonesgotcher.com](mailto:shambrick@jonesgotcher.com). Please note "Family Law Associate" on the subject line.

## POSITIONS AVAILABLE

**KLINGENBERG & ASSOCIATES PC**, a midtown OKC AV-rated firm, seeks associate with minimum 3 years' experience in business litigation, family law, estate planning and taxation. Salary commensurate with experience and qualifications. Applicants should submit résumé, writing sample and references to [gbk@kenkling.com](mailto:gbk@kenkling.com). All applications confidential.

**OKLAHOMA CITY LAW FIRM** concentrating in the statewide representation of mortgage lenders seeks attorney. Title examination helpful, but will train the right candidate. Statewide travel required. Send résumé and salary requirement to "Box Q," Oklahoma Bar Association, PO Box 53036, Oklahoma City, OK 73152.

**LEGAL ASSISTANT - PART-TIME.** Preference to those with experience in family law and personal injury. Northwest Oklahoma City area. Send résumé and salary requirements to: [oklahomallegalassistantwanted@gmail.com](mailto:oklahomallegalassistantwanted@gmail.com).

**THE SAMUEL ROBERTS NOBLE FOUNDATION**, Ardmore, Oklahoma, is seeking a paralegal to provide legal assistance including reviewing, drafting and editing legal instruments, contracts, policies and procedures; assisting with regulatory matters; general contract management and interacting with the Noble Foundation's agriculture, research and administration groups. A minimum of high school diploma or equivalent required; 2 years of related experience required; accredited paralegal certification preferred. Please visit [www.noble.org](http://www.noble.org) for more information and to apply online.

**ASSISTANT ATTORNEY GENERAL** - The Oklahoma Attorney General's Office is seeking an attorney with sound judgment and excellent research and writing skills to serve as General Counsel for the Workers' Compensation Commission. The ideal candidate will be a licensed Oklahoma attorney with 7+ years experience. For further information refer to the Employment Opportunities section at [www.oag.ok.gov](http://www.oag.ok.gov). Send résumé and a writing sample to [resumes@oag.ok.gov](mailto:resumes@oag.ok.gov) on or before October 13, 2014. Excellent benefits. Salary is commensurate with experience. EOE.

**THE OKLAHOMA TAX COMMISSION, LEGAL DIVISION** seeks an attorney for an opening in its OKC office, Protests/Litigation Section, and an attorney for an opening in its Tulsa office, Collections Section. Applicants must be licensed to practice law in Oklahoma and have a current OK driver's license. 0-5 years' experience preferred. Submit cover letter indicating which position you are applying for, résumé, and a short writing sample to [applicants@oktax.state.ok.us](mailto:applicants@oktax.state.ok.us). The OTC is an equal opportunity employer.



## POSITIONS AVAILABLE

### OKLAHOMA STATE BUREAU OF INVESTIGATION VACANCY ANNOUNCEMENT POSTING # 2014-04-U

**POSITION TITLE:** ASSISTANT GENERAL  
COUNSEL

**SALARY:** \$50,000-\$70,000 with state  
employment benefits  
Final salary commensurate  
with experience and  
qualifications

**LOCATION:** OSBI HEADQUARTERS,  
Oklahoma City, OK

The position primarily involves representation of the Oklahoma State Bureau of Investigation in responding to Petition for the expungement of criminal history background information. In addition, the successful candidate will provide legal advice and counsel regarding Open Records Act requests, assist in the drafting and maintenance of administrative rules and representing the OSBI in litigation surrounding the Oklahoma Self Defense Act.

Applicants should have between zero to five years experience in the practice of law and exhibit an interest and aptitude for criminal justice law. Applicants must be admitted to the Oklahoma Bar Association. This position is established in the unclassified service. The selection process may consist of one or more of the following: oral interviews; performance examinations; written examinations; evaluations of training and/or education.

Applicants meeting this criteria may apply by submitting a cover letter, resume, salary requirements, and writing sample to **Oklahoma State Bureau of Investigation, Human Resources Section, 6600 N. Harvey, Oklahoma City, OK 73116-7912, Telephone: (405) 848-6724; TDD: (405) 843-7303.**

Any qualified applicant with a disability may request reasonable accommodation to complete the application/interview process. The specific nature of the accommodation requested and the reason for the request should be provided at the time of initial application.

Successful applicants who are not current employees of the OSBI must be willing to submit to a drug screen, polygraph examination, psychological evaluation (commissioned positions only), and a thorough background investigation. Certain events automatically disqualify an applicant, such as, felony conviction; admission of an undetected crime that, if known, would have been a felony charge; failure to pay federal or state income tax; positive confirmed drug urine test; illegal use of a controlled substance within certain time frames.

**EQUAL OPPORTUNITY EMPLOYER**

## POSITIONS AVAILABLE

OFFICE OF PUBLIC GUARDIAN,  
a division of the Oklahoma  
Department of Human Services  
Announcement 14-M118U

### PUBLIC GUARDIAN

THE OFFICE OF PUBLIC GUARDIAN is seeking a full-time Public Guardian. The office is located at 2400 N. Lincoln Blvd., Oklahoma City, OK 73125.

This position is assigned the primary responsibility as Public Guardian for the Office of Public Guardian pursuant to the Oklahoma Public Guardianship Act and 22 O.S. § 1175.1 et. seq. This position will coordinate guardianship procedures and direct the administration of all aspects of the Public Guardianship program. This position serves a public guardian for persons being served through the Public Guardianship Program, making program, services, supports and placement decisions on behalf of consumers. This position will be expected to have management skills; become highly knowledgeable of the subject matter; deal directly with other governmental, public and private agencies, institutions and organizations; function with very limited supervision; and work independently in the management and direction of matters in the office's area of responsibility. This position will develop, recommend, and implement policies, rules and regulations as well as interpret federal and state laws and regulations relating to the administration of the Public Guardianship Program. The position will further prepare reports to the court and attend court hearings, reporting on the status of persons being served through the Public Guardianship Program as well as maintain records on all cases in which the public guardian provides guardianship services.

The beginning minimum salary is \$65,418.96 annually with a benefits package including health and dental insurance, paid leave & retirement. Preference and skill-based pay may be given to candidates with an active membership in the Oklahoma Bar Association and three years of experience in the practice of law with two years of experience in trial or administrative law. Interested individuals must send a cover letter noting announcement number 14-M118U, a DHS Application (Form 11PE012E), resume, three reference letters, and a copy of current OBA card to: Department of Human Services, Human Resource Management, Box 25352, Oklahoma City, OK 73125 or email the same to [jobs@okdhs.org](mailto:jobs@okdhs.org). OKDHS Application (Form 11PE012E) may be found at <http://www.okdhs.org/library/forms/hrmd/>. Applications must be received no earlier than 8:00 am on **October 3, 2014**, and no later than 5:00 pm on **October 31, 2014**. For additional information about this job opportunity, please email [Debby.Guthrie@okdhs.org](mailto:Debby.Guthrie@okdhs.org).

**THE STATE OF OKLAHOMA IS AN  
EQUAL OPPORTUNITY EMPLOYER**

## POSITIONS AVAILABLE

**ATTORNEY GENERAL** - The Kaw Nation is seeking candidates for a part-time Attorney General. Qualifications for this position include: Juris Doctorate from an accredited law school, together with an additional three years related experience is required. Qualified candidates will have the ability to appraise, interpret and apply legal principles and precedents to difficult legal problems and must be able to concisely and accurately communicate, both orally and in writing. The successful candidate will be required to learn tribal laws and customs unique to the Kaw Nation and must be able to establish and maintain an effective working relationship with others. Candidates must be a member in good standing of the bar of the Supreme Court of the United States, or of any United States Court of Appeals, or of any District Court of the United States, or a member in good standing of the bar of the highest court of any state of the United States and need not be a citizen of the Kaw Nation. Background checks and drug tests will be administered. Candidates must have a valid driver's license, malpractice insurance and the eligibility to be insured under by the Kaw Nation's insurance policies is required. Applications can be found at [http://kawnation.com/?page\\_id=151](http://kawnation.com/?page_id=151) or contact Human Resources at the Kaw Nation, (580) 269-2552 for a list of documents required for consideration. All required applications, résumés, and license information must be postmarked no later than Friday, October 24th, 2014.

## CLASSIFIED INFORMATION

**REGULAR CLASSIFIED ADS:** \$1 per word with \$35 minimum per insertion. Additional \$15 for blind box. Blind box word count must include "Box \_\_," Oklahoma Bar Association, PO Box 53036, Oklahoma City, OK 73152."

**DISPLAY CLASSIFIED ADS:** Bold headline, centered, border are \$50 per inch of depth.

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**Emily Buchanan, Oklahoma Bar Association, PO Box 53036,**  
**Oklahoma City, OK 73152.**

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# Just a Danged Ol' Lawsuit

By Chris Davis

A new crop of lawyers took the Oath of Attorney Sept. 24, 2014. As I enter my 20th year of practice, I am nostalgic — reflecting back upon mentors and experiences that have shaped my practice. I have been influenced by many wonderful elder lawyers over the years, but one experience I had stands out.

I was a young lawyer and had just been assigned to defend a small, regional trucking company in a lawsuit filed in the Eastern District of Oklahoma. The plaintiffs were a husband and wife who had been traveling on a local highway and had been hit by a driver for my client. The driver was simply not paying attention. The plaintiffs were nice people. I had no real defenses. I was nervous; I felt the stakes were high. I was searching for a meaningful defense but was coming up short. Worse for me yet was the lawyer on the other side was a past president of the Oklahoma Bar Association who just happened to be from the same neck of the woods as the plaintiffs, Doug Sanders.

"You can call me Dougal," he said as he invited me to his office in Poteau. We discussed the case. We talked about depositions, discovery, medical records and all the things you talk about in a case in federal court. I immediately liked Dougal. He was firm, but fair. He had already put together a good case before he had filed the law-

suit. But somewhere in my effort to be clever, I had made a couple of missteps in the defense strategy of the case. Probably like a lot of younger lawyers, I pushed the envelope a bit. I was brash and a bit too aggressive at times. Even-



tually, I had my client admit liability, and we wound up in a settlement conference where the parties were able to reach an agreement.

In the days that followed, my conscience was bothering me. I was worried about how I had conducted myself in the eyes of a person so accomplished as the bar association past president. It mattered to me what Dougal thought. I wanted a good reputation of being fair and playing by the rules. I got really worked up and was stressed out about it. So I called him. He listened, quietly

and respectfully. I must have rambled and stammered in the call. Finally Dougal said, "Chris, it's just a danged ol' lawsuit." He then took time to explain that as important as these cases are, they are not our lives. They are not our spouses, our children, our health or our friends.

These cases and these matters are our profession, and we should strive to perform with excellence, but always tempered with integrity and civility. Keep things in context.

I have never forgotten his words of wisdom. That was at least 10 years ago. When I am struggling in a case and wonder if I should be washing cars somewhere instead of being a lawyer, I remember "it's just a danged ol' lawsuit." When I am up and may have accomplished an important result in a matter, rather than take it too seriously and get all puffed up, I think "it's just a danged ol' lawsuit." Whether

up or down in a case (as it important as it is), your life is your life and work is only work — and the case you are stressed out about will forever be "just a danged 'ol lawsuit."

Next time you are in southeast Oklahoma, think of Doug Sanders — and all the elder lawyers who deposited something in your life. And when you are feeling stressed about a particular matter, recall the teachings of the sage of Poteau, "It's just a danged ol' lawsuit."

*Mr. Davis practices in Tulsa.*

# What Attorneys Should Know About Unclaimed Property, Trusts & Estate Tax Planning

Presented by OBA/CLE and the Oklahoma Society of CPA's

Program Planner/Moderator: Christopher C. Papin, Attorney and CPA, Oklahoma City

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**Pamela Wentz and Jared Gustafson with Keane's Consulting & Advisory Services, NYC, will present the morning session. This will be an educational presentation on current unclaimed property laws, the regulatory environment, the role of external counsel and emerging issues and best practices to limit your clients' exposure.**

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## Topics for the day include:

- Unclaimed Property 101
- Audits and VDAs/Self-Review
- Update on Recent Case Law & Legislation
- Overview of Trusts; Types of Trusts - Christopher C. Papin, Byron Will, PLLC, OKC and Micah Steelman, CPA, OKC
- Estate & Tax Planning - Christopher C. Papin, Byron Will and Micah Steelman

**Seminar starts at 9 a.m. and adjourns at 2:50 p.m.**  
**Continental breakfast and networking lunch are included.**

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

The program will be webcast. Note: Tuition for webcast varies from live program tuition.

**Approved** for 6 hours MCLE/ 1 Ethics. This course has also been accredited by the Oklahoma Society of CPA's. **\$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. Texas credit for live webcast only.

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