



Oklahoma Bar JOURNAL

Volume 86 ♦ No. 21 ♦ Aug. 15, 2015

Opening A Law Office

ATTORNEY
AT LAW

ALSO INSIDE

- Lawyers in Leadership CLE • my.OKBar.org Improvements
- New Disability Law Section
- Leadership Academy Participants Announced



From the Schoolhouse to the Whitehouse:

Lawyers in Leadership and Representing Public Clients

SEPTEMBER 24, 2015

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

Program Planners/Moderators:

David A. Poarch, OBA President, Norman
John Morris Williams, Executive Director, OBA

Registration required at least four full business days prior to the seminar date.

FREE CLE PLUS LUNCH INCLUDED FOR ALL THOSE WHO ARE PREREGISTERED!

CLE CREDIT: This course has been approved by the Oklahoma Bar Association Mandatory Continuing Legal Education Commission for 4.5 hours of mandatory CLE credit, including 1 hour of ethics.

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AGENDA

9:00 a.m.

Registration and Continental Breakfast

9:30 a.m.

*Practicing Before the Ethics Commission:
Understanding Oklahoma Ethics Laws*
Lee Slater, Oklahoma Ethics Commission

10:20 a.m.

Break

10:30 a.m.

*Running for Office as a Lawyer:
Overcoming Challenges and Obstacles*

Moderator: Dick Pryor, Candor PR

Panel Members:

Lance Cargill, Midwest City

Pat Hall, Oklahoma City

Fred Jordan, Tulsa

11:20 a.m.

*The Who, What, When and How of Filing for
Public Office*

Clay Taylor, OBA Legislative Liaison

11:50 a.m.

Networking lunch (included in registration)

12:30 p.m.

*In the Trenches – Practicing Law and
Holding Public Office*

Moderators:

Representative Randy Grau, Edmond

Senator Brian Crain, Tulsa

Representative Jon Echols, Oklahoma City

Ben Sherrer, Chouteau

1:20 p.m.

*Ethical Considerations of Lawyers Running
for Office (Ethics)*

Debbie Maddox, Asst. General Counsel, OBA

This course has been approved by the Oklahoma Bar Association Mandatory Continuing Legal Education Commission for 4.5 hours of mandatory CLE credit, including 1 hour of ethics.

Printed materials not ordered in advance will not be available the day of the seminar; however, you can order a copy for \$25 to be mailed to you at a later date.

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**SEPTEMBER
16, 23, & 30, 2015**

Noon – 2 p.m.

**LOCATION: Your choice:
Any place with a computer!**

LLC Tax for Non-Tax Lawyers: A Plain English Explanation

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John M. Cunningham is of counsel to the northern New England law firm of McLane, Graf, Raulerson & Middleton, P.A. His practice is focused on LLC formations and on business entity restructuring. He is the author of *Drafting Limited Liability Company Operating Agreements*, the leading U.S. LLC formbook and practice manual, published by Wolters Kluwer Law & Business. He has taught numerous OBA LLC seminars, all of which have received high attendee evaluations.

This course will provide non-tax lawyers with clear, non-technical explanations of:

Tax choice of entity - i.e., the process of choosing the best federal income tax regimen for single-member and multi-member LLCs;

The tremendous economic advantages potentially available to LLCs under Internal Revenue Code Subchapters K (partnership taxation) and S (S corporation taxation)

How to draft basic federal tax provisions in LLC operating agreements.

Seminar materials will include LLC model operating agreements implementing the above explanations.

Programs begin at noon and adjourn at 2:00 p.m.

SEPT. 16

Introduction to the LLC law and Quick Review of Federal Income Taxation
and Tax Tasks in Forming LLCs
Check-the-Box Regulations - The Foundation of LLC Tax

SEPT. 23

How to Choose the Best Federal Income Tax Regimen for an LLC for Federal Income
Tax Purposes
How to Choose the Best Federal Income Tax Regimen for an LLC for Social Security Tax
Purposes
Important Tax Provisions in Operating Agreements

SEPT. 30

Tax Provisions in Operating Agreements (cont'd)
Statutory Conversions of Corporations to LLCs - Overview of Oklahoma Business
Organization and Federal and State Tax Law
Ethical Issues in Handling Tax Issues in LLC Formations

This course has been approved by the Oklahoma Bar Association Mandatory Continuing Legal Education Commission for 2 hour of mandatory CLE Credit, including .50 hours of ethics for the September 30th webcast. Registration for all 3 events is recommended but not required. Questions? Call (405) 416-7029.

TUITION: \$250 for all three dates or \$100 each. No discounts. Register online at: www.okbar.org/members/cle

REGISTER ONLINE AT WWW.OKBAR.ORG/MEMBERS/CLE

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Tension Among Branches of Government Escalating

By David Poarch

Fueled by politics, a remarkable level of hostility is continually directed at our judiciary today. Partisan fury fuels the rancor at both the state and federal level. Examples are widespread at all levels and on both sides of the aisle. Railing against the decision in *Bush v. Gore*, one Democratic U.S. senator accused the nation's highest court of "installing" George W. Bush in the White House, labeling it "the most activist Supreme Court in history."

In our own state, when the Oklahoma Supreme Court recently ruled that the express language of the Oklahoma Constitution precluded the placement of a privately donated Ten Commandments monument on the grounds of the state Capitol, several members of the legislature called publicly for the impeachment of the justices who joined in the majority opinion. These are but two examples in a sea of comparable unending rants in response to decisions handed down by our highest courts, particularly where provisions of the state or federal constitutions are applied to the actions of the other branches in a manner perceived to place limits on their actions, routinely described for public consumption as "the will of the people."

Undeniably, tension between the three independent branches of government has existed since our country was formed. Enlightened by their own common experience, the founders deliberately anticipated with more than a mere modicum of forethought, the need for restraint on authority, mindful of the dangers posed by allowing absolute power to reside in the hands of any one person or group.

When John Adams' vice president, Thomas Jefferson, a Republican, was elected president in 1800, not a single Republican held a federal judgeship. President Adams and his party, the Federalists, had stacked the bench with members of their own party. That tension ultimately led to the decision in *Marbury v. Madison* three years later — fixing the power of the courts to declare actions of the executive and legislative branches unconstitutional — and thereby holding them accountable.

But to all appearances, this historical tension appears to be escalating at an unprecedented pace to a disrespectful level of outright hostility and malevolence, fueled by politics. Not without consequence for everyone. The increasing

political attacks on the judiciary diminish the independence of the judiciary, and at least equally, if not more importantly, the public's confidence in our system of justice. The distinction between fair criticism of judicial opinions and intimidation and threats directed at judges is an important one.

Fair criticism plays a critical role in improving the quality of the courts, no doubt. Every appeal, every petition for rehearing, every dissent is a criticism of a judicial decision. We have every right and should ask if a decision is correct. But we should also ask what the Constitution requires and whether it should be amended. And if the case involves statutory interpretation, whether the Legislature should respond with new legislation.

And while it is equally clear that every one of us has the First Amendment right to be a demagogue and to make irresponsible criticism, threats to remove judges from office or otherwise attempt to intimidate them in an effort to influence their decisions is incompatible with the rule of law and our sworn oath as lawyers, as well as that of public officials, to support and defend the Constitution of the United States and the Constitution of the state of Oklahoma. Judges have a duty to enforce those very constitutional provisions to protect the rights of minorities, whether political, racial, ethnic, religious or otherwise, and while legislators and executive officers may base their decisions on focus groups and opinion polls, judges may not.

I encourage each of you to remain vigilant to ensure that we continue to promote the rule of law in our courts in Oklahoma — free of political threats and intimidation.

The increasing political attacks on the judiciary diminish the independence of the judiciary, and at least equally, if not more importantly, the public's confidence in our system of justice.



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The What, Why and How of Search Engine Optimization (SEO)

By Jared K. Nelson

You decided to open a new law office. You may have left a firm and taken an established client base with you. You may have left a firm in order to develop your own book of business. You may have left a public office or in-house position with an organizational client and now need to capture private clients in the marketplace. You may have been admitted to the bar and now wish to launch your career from ground zero on your own terms. Or you may be entering or returning to private practice from a previous occupation.

Whatever the facts and circumstances of your new law office, you need clients (*i.e.*, paying customers) walking through your door, calling your office, emailing your inbox or otherwise soliciting your services and assistance.

In order to do so, former, current and prospective clients alike need to be able to find you. Whether they have old contact information from previous dealings with you or current contact information from colleagues, business cards, social media or marketing activities, your clients in all likelihood want to “look you up” before reaching out to you. And the first place they are likely going to look is Google, Bing or Yahoo.¹

The question that remains is: How do you make sure you show up in clients’ search results?

WHAT IS SEARCH ENGINE OPTIMIZATION (SEO)?

Searching Oklahoma law reviews and journals, including the *Oklahoma Bar Journal*, for references to “search engine optimization” revealed that only one article has mentioned the topic, so it would not be surprising if the term were entirely unfamiliar, or only vaguely familiar, to you.² Even the American Bar Association, with its national reach, has only published one article providing guidance to legal practitioners on this modern marketing concept.³

In simple terms, search engine optimization (SEO) is “the process of maximizing the number of visitors to a particular website by ensuring that the site appears high on the list of results returned by a search engine.”⁴ More specifically, SEO seeks to enhance a website’s ranking in a “search engine’s unpaid results — often referred to as ‘natural,’ ‘organic’ or ‘earned’ results.”⁵

All of us regularly use search engines and rely on the results they provide to us. Search engines are the tools that connect us with — and help us navigate — the one billion websites that are now on the Internet.⁶ Your lunch plans may depend on the results of your search for a new deli or for the menu and phone number of your favorite takeout grill, and your expectation is that your search engine of choice will quickly retrieve the information that is most relevant to you.

The success and popularity of a particular search engine depends on its ability to produce the most relevant results for its users, so each search engine has developed a set of ranking algorithms that seek to cull the useful from the useless.⁷

Ultimately, a search engine's goal is to provide users with a positive customer experience. In this case, a good experience would refer to high quality helpful content that links as closely as possible with what the user was looking for when she initiated the search.⁸

SEO is businesses' response to search engine algorithms. In order to rank at or near the top of the "organic" (*i.e.*, nonpaid) search results, a business must tailor its website to meet as many ranking criteria as possible.⁹ SEO is the process by which a business conforms its website content to the standards and recommendations of search engines in order to generate increased internet traffic and enhanced visibility for the business.

WHY IS SEO IMPORTANT?

When you enter your name in the search bar of your internet browser, where do you show up in the results list? What about when you search for your law office? Or what about when you search for your practice area?

Depending on the search provider and the level of paid advertising relating to your search, you may observe three general categories of results in your internet browser. First, there may be paid, sponsored or premium results, which generally appear at the top of the list and include some indicator or enhancement that makes them stand out from the other results. Second, there may be graphic ads that resemble what you see in newspaper columns and other print media. Third, the search engine will list actual, unpaid, "organic" results, which the search engine generated solely based on rankings derived from proprietary algorithms.

This final bucket is where SEO provides its value and return on investment.

A recent study using data collected in July 2014 demonstrated that the top spot in the unpaid results portion of results lists generated by Google received 31.24 percent of click-through traffic. Results in the second spot received 14.04 percent of click-through traffic. By the fifth spot, the percentage of click-through traffic dropped to 5.50 percent, and spots six thru 10 combined for only 3.73 percent. Websites that Google relegated to the second page of results lists generated click-through traffic for only 3.99 percent of user searches.¹⁰

If you are going to have an online presence and you want clients to find and use your website, then you need to ensure that you consistently land within the first five spots of relevant search results. This will give you a 67.6 percent chance of being selected by the search user. Otherwise, you will not be noticed, much less sought out, by clients.

A Forbes.com contributor and SEO provider put it this way:

Every small business should have a basic knowledge of search engine optimization. In fact, you should almost be exhausted by the term "SEO" at this point In our web-facing world, the (already) dominant search engines are becoming the cornerstone of the Internet. Standard procedure for individuals looking for information is to search first.¹¹

SEO and the web traffic it captures is important, regardless of your practice area, business model, marketing strategy or even the maturity of your client base. No matter who you are, clients will try — and expect — to find you using a search engine. SEO enables you to make sure they find you.

HOW DO YOU IMPLEMENT SEO?

One of the conundrums presented by SEO is all too familiar to those opening a new law office: Do you do it yourself, thereby saving money, or do you outsource it to an expert, thereby saving time? The answer depends on the extent to which you want to harness SEO to improve your rankings and drive traffic to your website.

You can likely implement some SEO basics on your own, provided you are willing to

invest some personal time and effort to the cause.

Quality Content

For example, the most impactful SEO strategy is to publish quality content that clients find useful. The Search Engine Optimization Starter Guide published by Google (SEO Starter Guide) instructs webmasters that “[c]reating compelling and useful content will likely influence your website more than any of the other factors” discussed in the SEO Starter Guide.¹²

Evolving search engine algorithms are placing increasingly greater emphasis on quality, authoritative content.¹³ Your content strategy may (and should) incorporate a variety of online media formats, including web pages, blog posts, guest posts, social media updates, articles, e-books, whitepapers, reports, presentations, videos, pictures, infographics and animations.¹⁴

Regardless of format, you should always develop your content to address identifiable client preferences and business objectives.¹⁵ Brett Relander, a contributor for Entrepreneur.com, provides these guidelines for ensuring that your content is timely, relevant and useful (*i.e.*, authoritative):

- 1) Be knowledgeable and passionate about your topic. Take the time to conduct thorough research.
- 2) Be original. Whether it is producing original research or taking a different perspective, make a point of bringing something new to the table.
- 3) Focus on well-written content. Take the time to produce carefully crafted content.
- 4) Share your content with targeted communities. Remember, social signals are often a vital source for determining authority.¹⁶

Google provides the following tips in the SEO Starter Guide:

- 1) Include well-written text that is easy to read and understand.
- 2) Organize your content topically, breaking up information into logical chunks or divisions that help users find the content they want.
- 3) Create fresh, unique content that keeps existing visitors coming back and attracts

new visitors; avoid reusing or duplicating content that adds little value for users.

- 4) Create content that addresses the needs of visitors, rather than focusing on driving search engine traffic; a website that is useful to visitors and accessible to search engines will naturally achieve higher rankings.¹⁷

Link Building

Another aspect of SEO available to do-it-yourselfers is the process of developing a network of links to your website that lend credibility and authority to your content.

Search engines analyze, in effect, how your website is regarded on the Internet. If high ranking websites link to and direct traffic to your website, search engines will recognize this and increase your ranking in their algorithms. These inbound links also serve to introduce external readers, who otherwise might not find you, to your online content.¹⁸

You can cultivate these links in countless ways; however, the best links are those that arise organically. If you create newsworthy content, other sites will naturally link to and promote your content.¹⁹

But you have to start somewhere, and a logical place to jumpstart the link-building process is by placing a link to your website on your LinkedIn, Facebook and other social media profiles.²⁰ These links seed your professional network by, first, making it easy for others to click on and follow your link and, second, providing an opportunity for others to link to your website. Also, as you create new content (remember, your content should be timely, original and informative) you can post updates to your social media profiles to generate recurring traffic to your website and potentially earn additional inbound links to your website.

Legal directories are another prime opportunity to start getting your name and website introduced to the World Wide Web. There are an abundance of directories, most of which provide free listings for your basic information (with paid options for premium listings and services). The top five online legal directories in the U.S. are: 1) FindLaw.com; 2) Martindale.com; 3) Nolo.com; 4) Justia.com; and 5) Avvo.com.²¹ Search engines consider these directories to have the most “authority,” so you can

always expect their links to dominate the top of search engine results pages.

Finally, pursue opportunities to lend your expertise to others by providing content for their websites, blogs and other online media outlets. By appearing in other online forums, you can promote your services and business in front of a new audience while earning a backlink to information residing on your website.

ADVANCED CONCEPTS

If you are like most lawyers, including myself, the SEO strategies above are well within, or at least in the vicinity of, your technological comfort zone. The concepts and tasks above largely relate to two things we deal with daily: words and people.

However, there are far more possibilities in the realm of SEO than what resides within our skills and capabilities as lawyers. For the following SEO strategies, odds are that you will need to find and engage the services of an expert in the field.

First, all content on your website and elsewhere on the Internet should revolve around a set of “keywords” that are highly relevant to your practice, and, perhaps more difficult, to your clients’ perception and understanding of your practice. Clients are expecting the search engine to produce results that are relevant to them based on the words used by them, not the words that would have been carefully selected and used by their lawyers.

A central piece of the SEO puzzle involves identifying, researching, selecting and using the right “keywords” throughout your online portfolio. This process is referred to as keyword optimization, and it is an enduring tenet of SEO. “The basic premise of keyword optimization is simple: Discover the search words that potential customers are using to find products or services like yours, and then build your Web content around those words.”²² This sounds simple enough, but the devil is in the details.

You want to focus on keywords that are “popular” but not necessarily “competitive.” Otherwise, the bar for top placement in search results may exceed your SEO budget.²³ It would

be a fool’s errand, for example, for you to try to compete for top billing in a search for “Supreme Court.” You would have to compete with the likes of the Supreme Court of the United States, Wikipedia (the most authoritative website on the internet), *The New York Times*, *The Washington Post* and *SCOTUSblog*.²⁴

Identifying the right keywords for you and your practice requires understanding how search engines work, harnessing various tools that provide metrics on the popularity, competitiveness and relatedness of keywords, and applying strategies to leverage local and niche search behaviors. This complexity alone necessitates employing the skills and experience of an SEO consultant.

But the complexity does not end there. After identifying and strategically selecting a slate of keywords for your SEO campaign, the keywords must be strategically placed and used throughout your on- and off-site content. This requires incorporating keywords into heading tags, title tags, alt tags, meta tags, URL structures, etc.²⁵ If this list is Greek to you, then you have no business trying to rollout a full SEO package on your own.

Even if you understand the technical aspects of keyword placement, you must still consider the evolving art of satisfying search engine crawlers. Concepts like keyword stuffing, density, proximity distribution, siloing and contextual search all must be considered. Be honest with yourself: Do you have the expertise, time or energy to fully develop and implement an effective keyword optimization strategy?

Returning to what users see when they interact with your website, a comprehensive SEO initiative will consider the aesthetics of your website. How does your website look? Is it user-friendly? Is the layout well organized and pleasing or cluttered and distracting? With the advent of Google’s so-called “Mobilegeddon” algorithm update, which went live April 21, 2015, it is now imperative that your website be mobile device and mobile user friendly.²⁶ A website design professional, working with

“A central piece of the SEO puzzle involves identifying, researching, selecting and using the right “keywords” throughout your online portfolio.”

your SEO consultant, will be in the best position to address these concerns.

CONCLUSION

Whether you keep your SEO program in-house or outsource it to a consultant, your SEO strategy needs to include content development, link building and social engagement. "Content strategy, inbound links and social media strategy are the three key elements to building a strong, successful SEO campaign, regardless of the industry."²⁷

The legal industry is known for being resistant to change, and information technology is constantly changing. This is one scenario in which change can literally wipe you off the map if you do not keep pace. No matter how skilled, talented, respected or established you are, clients will have a difficult time finding you if search engines cannot find you.

1. As reported by comScore, the share of search queries handled by leading U.S. search engine providers as of January 2015 was: Google, 64.4 percent; Microsoft, 19.7 percent; Yahoo, 13 percent; and others, less than 2 percent each. See www.statista.com/statistics/267161/market-share-of-search-engines-in-the-united-states/ (last visited May 20, 2015). Google is a registered trademark of Google Inc. Bing is a registered trademark of Microsoft Corporation. Yahoo! is a registered trademark of Yahoo! Inc.

2. Don G. Pope, "Changing the Face of Law Office Marketing," *Oklahoma Bar Journal*, Vol. 84, No. 8 (Mar. 16, 2013).

3. John M. Kruger, "Get Found! Search Engine Optimization Demystified," *GP Solo*, Vol. 29, No. 3 (May/June 2012).

4. Search engine optimization, Oxford Dictionaries, www.oxforddictionaries.com/us/definition/american_english/search-engine-optimization (last visited May 18, 2015).

5. Search engine optimization, Wikipedia, The Free Encyclopedia, <https://goo.gl/PVYqFX> (last visited May 18, 2015).

6. Total number of websites, Internet Live Stats, www.internetlivestats.com/total-number-of-websites/ (last visited May 18, 2015).

7. Search engine optimization, Wikipedia, The Free Encyclopedia, <https://goo.gl/PVYqFX> (last visited May 18, 2015).

8. John Rampton and Jayson DeMers, "The Changing SEO Landscape," *Search Engine Journal*, www.searchenginejournal.com/seo-guide/changing-seo-landscape/ (last visited May 18, 2015).

9. Inc. Staff, "How to Optimize your Site for Search," *Inc.*, www.inc.com/magazine/20100701/how-to-optimize-your-site-for-search.html (last visited May 18, 2015).

10. Caphyon, "Google Organic CTR Study," *Advanced Web Ranking*, www.advancedwebranking.com/google-ctr-study-2014.html (last visited May 20, 2015).

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Ethical Considerations When Opening A Law Practice

By Joseph P. Balkenbush

There are a number of ethical issues which must be considered when opening your law practice. The most practical way to begin is to reread the Rules of Professional Conduct (RPC). There are a total of 57 rules. As is often the case when reading statutes, some language can be difficult to comprehend. Each rule has a comment section which provides explanatory notes with headings. Each rule is important and as a practicing attorney, you should be familiar with all of them. This article will deal with the more “high profile” rules. The rules are codified in Title 5, Oklahoma Statutes, Appendix 3-A. They can be found at <http://goo.gl/EKG0GB>.

PREAMBLE

The first statutory section of Appendix 3-A is titled “Preamble: A Lawyer’s Responsibilities.” Since you’re going to be reading the RPC, you might as well start with the preamble! You will be reminded of the “lofty aspirations” for which we all strive as members of this honorable profession. Following are some sections which stood out when I recently reread the preamble:

Provision 1. A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

Provision 2. As a representative of clients, a lawyer performs various functions. We advise our clients and advocate and negotiate on their behalf.

Provision 5. A lawyer’s conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer’s business and personal affairs. A lawyer should use the law’s procedures only for legitimate purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers and public officials.

Provision 9. These principles include the lawyer’s obligation to protect and pursue a client’s legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

I encourage you to take a few minutes to read the preamble, perhaps for the first time since

you prepared to take the bar exam, and remind yourself of why you became a lawyer.

CLIENT-LAWYER RELATIONSHIP

There are 18 subsections to the RPC Rule 1. Your detailed knowledge of each is important, but the subsections which follow are some of which you should be most aware:

1.1 Competence. You do not have to, and should not, take every case that comes into your office. Be sure you have the requisite knowledge of the law relevant to the case and the necessary level of skill to represent the client. If you do not yet possess the necessary knowledge and skills to competently represent the client, either refer the client to another attorney or decline to take the case.

1.3 Diligence. It is essential that you act with reasonable diligence and promptness in representing your client. That means you should pursue the matter on behalf of your client and take the necessary lawful and ethical measures to resolve the case. Diligent prosecution/defense of a client's case will ensure compliance with these rules.

1.4 Communication. Promptly return phone calls from clients. Maintain a double or triple redundant docketing system regarding relevant dates. There are few worse feelings than getting a call from a judge's office asking why you aren't there. Promptly return calls from opposing counsel and/or respond to all correspondence (whether by letter, text or email). Again, promptness in all communication with a client, opposing counsel and third parties will ensure your compliance with this rule.

1.5 Fees. While the RPC do not require a written fee agreement with your client, having one will set the tone for the representation. A well drafted fee agreement will concisely set out the scope of representation and how you will be paid. The necessity of a written fee agreement cannot be overemphasized. A written contract obviates the need for any explanation of the agreement between attorney and client should a dispute arise. Pro forma fee agreements are available on the OBA website and are easily accessible on the Internet.

1.6 Confidentiality of Information. This is one of the most, if not the most, important RPC. Client confidentiality must be protected at all times. There are rare exceptions to disclosure of information obtained from your client. They are:

- to prevent reasonably certain death or substantial bodily harm,
- to prevent a client from committing a crime or a fraud that is reasonably certain to result in substantial injury to financial interests or property of another,
- to prevent, mitigate or rectify substantial injury to the financial interest or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud Provided that the lawyer has made reasonable efforts to have the client rectify such criminal or fraudulent acts,
- to secure legal advice about the lawyer's compliance with these rules,
- to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client and
- as permitted or required to comply with these rules, other laws or court order. Per this exception, you may disclose otherwise confidential information when ordered to do so by the court.

1.7, 1.8 and 1.9 These sections deal with the subject of a potential conflicts of interest between current clients and your duty to former clients. In general, the majority of conflicts of interest between current clients or former clients can be waived if the current or former client gives informed consent, confirmed in writing. If a current or former client will not waive the conflict, then representation must be declined or terminated.

1.15 Safekeeping Property. This is the section that deals with the necessity of a lawyer maintaining a trust account. Detailed familiarity with this rule is essential to your practice.

The following are important excerpts from a previously published article regarding trust accounts.¹

- **What does IOLTA stand for?**
"Interest on Lawyers Trust Accounts."
- **Which banks offer IOLTA trust accounts?**
Ask your own bank first. If they do not offer these accounts, call the Oklahoma Bar Foundation (OBF) at 405-416-7070 and ask them to recommend one in your area. If your office is in a town that does not have a participating bank or the bank routinely charges more in fees than any interest generated,

“Generally, a flat fee should be treated as a retainer. It should be deposited into the trust account until the work is performed. It may be withdrawn in increments, but work must be done to justify the withdrawal of that portion.”

or it is otherwise not feasible, you may be excused from the duty to have a trust account. You should consult with the OBF in making this determination.

- **What money goes into the trust account?**
Unearned legal fees, unincurred expenses and third-party monies in connection with the representation. This typically means, for example, retainers (until the monies are earned), flat fees (until the monies are earned), filing fees, deposition and expert witness expenses. Settlement proceeds on a check to you and your client(s) or others may also go into the trust account for distribution.
- **Must every lawyer have an IOLTA trust account?**
No. Only lawyers who hold client or third-party funds regarding a representation must have trust accounts.
- **May a lawyer assign certain tasks for trust accounting to nonlawyers?**
Yes, but the lawyer must educate the others, supervise the work and monitor the account. Ultimate responsibility for the trust account is a nondelegable duty.
- **What is the best short summary of a lawyer's principal duties regarding the trust account?**
At any time, you should be able to show what amounts are in the account for each client.
- **What should I do if I hold money in my trust account and the client and/or third party (with a legitimate interest in the money) disagree as to how it should be paid out?**

You should give notice to every party that has an interest in the money and pay out any undisputed amounts. Then, hold the disputed amount until one of two things happens, 1) you reach an agreement among all interested parties, or 2) a court or arbitrator directs you how to distribute the money. You should act promptly to resolve the dispute and may use a mediator, arbitrator or file a motion or action with the court to make the determination. Be sure to provide a full accounting of the monies to the client and/or a third party for whom you held funds.

- **May a lawyer take “advances” on money from the trust account?**
No, because the money has not been earned. A lawyer may not take money unless it has been earned. Otherwise, it is arguably simple conversion at best and misappropriation (theft) at worst.
- **How should a “flat” fee be treated?**
Generally, a flat fee should be treated as a retainer. It should be deposited into the trust account until the work is performed. It may be withdrawn in increments, but work must be done to justify the withdrawal of that portion. Cover the payment schedule in your fee agreement. It does not need to be tied to hours worked, but it must be reasonable. This procedure is often misunderstood. It all goes back to the fact that fees must be *earned* to be taken. If no work has been done, then the fees have not been earned. Only money that has been earned should be deposited into your operating account.
- **When a lawyer mistakenly withdraws money from the trust account prior to the fees being earned, what should s/he do?**
Replace the money immediately and make accounting entries on both ends of the transaction that document what occurred in the event you are later asked to explain.
- **What should a lawyer do in the event a client disappears or there is an amount in the trust account of uncertain ownership?**
First, determine whether the Oklahoma Unclaimed Property Fund is entitled to the money. The Unclaimed Property Division may be contacted at 405-521-4273 or unclaimed@treasurer.ok.gov. If not, the money may be paid to the Oklahoma Bar Foundation. Include a cover letter that

explains which client the money is attributable to, a last known address and your efforts to contact them. The OBF will hold the money. If that client ever reappears, the OBF will refund the principal amount originally deposited and you may return it to the client.

- **Is any particular accounting program required?**

No. Anything from a loose-leaf notebook to a fancy computer program can be acceptable so long as the funds are properly accounted for. However, there are a number of software programs that will ensure you are in compliance with these rules.

- **How long must a lawyer hold records related to account funds (and other property of the client)?**

At least five years after termination of representation. Generally, all financial records should be kept, including, but not necessarily limited to: the fee agreement, bank statements, billing records (*e.g.* time sheets), billing statements, payment records, deposit and withdrawal records, trust account “ledgers” and reconciliations, settlement statements and accountings and related correspondence. You should be able to reconstruct, account and justify for all amounts that flow through your account(s).

ADVOCATE

RPC Rule 3 provides the boundaries regarding advocacy on behalf of a client.

3.1 Meritorious Claims and Contentions. “A lawyer shall not bring or defend a proceeding or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous” This rule means exactly what it says. An attorney may not prosecute a case just because a client wants him/her to do so.

3.3 Candor Toward the Tribunal. The characteristics of honor and integrity are very important for a lawyer to possess. Misleading a judge or opposing counsel by making untrue statements, or even “coloring” the evidence can ruin your reputation. Don’t do it. You will be practicing law for a long time. Judges have a long memory. So does opposing counsel.

LAW FIRMS AND ASSOCIATIONS

RPC Rule 5 contains seven subsections dealing with law firms, associations of lawyers, responsibility for nonlawyer assistants and the unauthorized practice of law. In short, senior lawyers are responsible for the lawyers working for/with them. A lawyer is also responsible for their legal assistant, secretary and receptionist. It is the attorney’s responsibility to ensure that each of their employees is aware of the restrictions and limitations upon what they can and should say or do.

PUBLIC SERVICE

Rule 6 and its five subsections encourage you to give back to the legal profession. The legal system is, and will become, what you make it. The “lofty aspirations” set out in the preamble to the Rules of Professional Conduct are statutes and it is our responsibility to comply with them. You will not be disciplined for not complying with Rule 6, but you will be a better dad, mom, brother, sister, etc. and subsequently lawyer, if you do!

INFORMATION ABOUT LEGAL SERVICES

Rule 7 and its subsections deal with communicating with the public regarding your services, advertising and prohibit direct contact with prospective clients. Bottom line of these rules is to be honest and do not mislead anyone regarding your qualifications and experience.

MAINTAINING THE INTEGRITY OF THE PROFESSION

Rule 8 and its subsections allow the legal profession to continue to be self-governing. Our compliance with these rules will allow us to continue to operate independently without government regulation.

8.3 Reporting Professional Misconduct. Per this rule, we are obligated to report another lawyer who has committed a violation of the RPC that raises a substantial question as to the lawyer’s honesty, trustworthiness or fitness as a lawyer. The comments to this rule and case law regarding it require reporting if you are sure (certain) a lawyer or a judge has violated this rule. It does not mean they might have or could have violated the rule. I am reminded of the quote from the movie starring Robert De Niro. In the movie, his character stated “if there is doubt, then there is no doubt.” It is your obligation to report someone who should be reported.

8.4 Misconduct. This subsection of Rule 8 provides the definition of this “misconduct.” When you are considering the need/obligation to report someone, refer to this subsection to ensure that there has indeed been misconduct.

In conclusion, your familiarity and compliance with the Rules of Professional Conduct will help ensure that you are not the subject of a complaint or grievance from a client, third-party or other attorney. Your focus should be on being the best that you can be in all aspects of your life, including but not limited to your legal career!

1. *Oklahoma Bar Journal*, Oct. 6, 2012, Volume 83, No. 26. “Trust Accounting 101” by OBA Ethics Counsel Travis Pickens.

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Insurance for Lawyers and Law Practices

By Jennifer Beale

There's a lot of ground to cover when opening and running a law firm, and insurance and the costs related thereto are often an afterthought or even overlooked altogether. This article will cover a number of insurance policies available to businesses and individuals to transfer risk for a variety of exposures. Everyone has their own risk tolerance, so some of the insurance policies mentioned may be of little interest or concern to the very tolerant or to the very wealthy who can self-insure. In addition to the list, I've included tips to help you do a self-evaluation or discussion with your agent to help determine whether updates or additional policies might be appropriate.

PART 1: PERSONAL

Disability Insurance

Most people buy life insurance to replace their income when they die, before they buy disability to replace their income while they're alive. In fact, most people insure items they own (home, car, jewelry, business, etc) without insuring the paychecks that pay for those items. An individual disability policy is an affordable way to ensure that, should you be unable to work due to an illness or accident, you could still pay your bills and keep your home, car, insurance, etc. People who have advanced degrees, skills or certifications especially need to protect against a disability that could keep them out of work for months or even years. Attorneys often think that only death could keep them away from work, but that is simply not true. There are many illnesses or accidents that result in a lengthy

recovery and rehabilitation period, as well as irrecoverable cognitive impairments.

Tips

- Make sure you've elected options available to you, such as future purchase (allows you to increase your monthly benefit at future dates without providing evidence of insurability) and residual or partial disability (pays a portion of the monthly benefit if you are only able to work part-time and suffering a loss of income) and cost of living adjustments (benefit amount increases according to inflation index).
- Make sure you know and understand your policy's definition of disability (some plans recognize your specialty, and others simply refer to any gainful employment). The best definition of disability for professionals is an unqualified inability to perform

the substantial and material duties of your occupation (at time of disability).

- Maintain an individual policy even if your employer provides coverage — in case you go out on your own or your employer cancels the group plan, and also because many individual policies won't reduce benefits if you are also eligible for or receiving Social Security or Workers' Compensation disability benefits and the benefits are taxable if the premium is employer paid.
- Pay your disability premiums with personal, after-tax dollars — that way your monthly benefit won't be taxable.
- Obtain a policy when you are young and healthy, because it is one of the most stringently underwritten insurance plans due to the likelihood of illness-related disability.

Life Insurance

Life insurance is probably the most versatile type of insurance, as it is useful for many reasons in one's personal and business affairs, and it is available in many forms. Not only can you provide burial expenses and security for your loved ones, but you can also use life insurance policies to secure part of a business loan, pay estate taxes, supplement your retirement income, contribute to a charity or finance the succession of your business.

Term life, while extremely affordable, is designed to meet short-term or temporary needs, such as when you have young children at home or lots of debt. It is an affordable way to secure a large death benefit to leave your family financially secure in the event of your untimely death. Term insurance typically is renewable for a set term, such as 10, 15 or 20 years, or to a specified age, such as 65, 70 or 75. Some plans also include return of premium feature if you don't die.

Permanent insurance is available as whole life, variable life, universal life or combinations thereof and is renewable for your entire life. Permanent policies usually include savings or investment features in addition to a death benefit, as well as flexibility with premium payment. The cash value of a permanent life policy accumulates on a tax-deferred basis and you can borrow it as needed at relatively low rates. Borrowing against the cash value could result in a reduced death benefit should you die before paying it back. In many cases, you can

also add riders to policies, such as long-term care benefits, to cover other areas of concern.

Tips

- Make sure your policies are up-to-date with an appropriate beneficiary, and that your family, business partner and/or estate/financial planner knows what policies you have, where you keep them, etc.
- Evaluate the amounts and types of life insurance you have in place now, and take appropriate action.
- Life insurance is medically underwritten, so the younger and healthier you are when you obtain it, the better rate you are likely to receive. If you've quit smoking, lost weight or have otherwise become healthier since you last purchased coverage, you may want to see if you can qualify for a better rate now.

Health Insurance

Effective Jan. 1, 2014, the Affordable Care Act (ACA) included an individual mandate requiring everyone to maintain minimum essential coverage (MEC). If you don't have MEC, you must claim a coverage exemption or pay a fee. For 2015, exemptions include but aren't limited to these: if the lowest-priced plan available to you costs more than 8.05 percent of your household income, you don't file a tax return because your income is below the level requiring you file, you were uninsured for no more than two consecutive months of the year, you would have qualified for Medicaid if your state had expanded its program, you're a member of a federally recognized tribe or you qualify for a hardship exemption. In 2015 the penalty is the higher of the flat fee penalty (\$325 per adult and \$162.50 per child under age 18, subject to a maximum of \$975) or the percentage penalty (2 percent of household income, subject to a maximum equal to the national average premium for a bronze plan). The fee increases in 2016 to \$695 per person and \$347.50 per child or 2.5 percent of household income.

Individual coverage is now guaranteed-issue and can only be purchased or changed during the annual open enrollment period (Nov. 1, 2015 to Jan. 31, 2016), unless you qualify for a special enrollment period (SEP). Events that may qualify you for a SEP include getting married, having a baby or adopting, losing other coverage, moving to a new coverage area, gaining citizenship or having a change in

income or household status that affects eligibility for premium tax credits.

While premiums can be expensive and the penalty fee not terribly painful, self-insuring is a dangerous option, since a long-term illness such as heart disease or cancer, or a serious accident can require years of expensive treatments, specialist visits, surgeries and medications. Even if you have significant savings built up, do you want to spend it on medical bills? If you spend it on medical bills, will you still have enough for its intended use? There's simply no way to predict, plan for or avoid some emergencies or complications, such as breaking a bone (\$10,402) or developing appendicitis (\$15,850).

Tips

- Be sure to stay in-network (don't assume your physician is doing this for you and don't assume the facility is in-network because the physician is or vice versa) — going outside your plan's network can result in much higher out of pocket costs to you, even if you have met your deductible.
- Consider a qualified high deductible health plan so you'll be eligible to open a health savings account (HSA). An HSA is a tax-advantaged account into which individuals can annually contribute up to \$3,350, or \$6,650 for families. Persons age 55 and older can make an additional \$1,000 catch-up contribution. Contributions are 100 percent tax deductible from gross income and can be used for qualified medical, dental and vision expenses, as well as qualified long-term care insurance, COBRA and medicare premiums.
- Know your plan — many health plans offer discounts for services you already use such as vision, dental, weight loss, nutrition, alternative care, etc.
- Consider purchasing a separate travel medical policy if you plan to travel outside of the country — this will provide assistance with locating a provider, translation services, medical evacuation, etc.
- *For groups:* Employer group plans are guaranteed issue and might be an option even if you only have one employee. Typically, a minimum of 75 percent participation is required, and the employer is expected to contribute 50 percent or more to the employee portion of the premium.

Medicare

When you reach age 65, you become eligible for Medicare, a health benefits program for seniors with many pieces, labeled confusingly enough by letters of the alphabet. Part A is hospital coverage and is provided at no cost to a beneficiary. Part B includes outpatient coverage and doctors visits and there is a premium charged by Medicare. Part C is known as the Medicare Advantage Plan, where you contract with a private insurer who is paid directly by the government. Part D is the Medicare drug coverage and you are required to purchase private insurance or face premium penalties. You also have the opportunity to stay on your group health plan where you work, until such time as you retire.

Keep in mind that Medicare pays 80 percent of the Medicare determined charges. You will need to purchase a supplement to pay the additional 20 percent plus Medicare deductibles on Parts A and B. Make sure you pick a good stable company, as you will not be able to change plans without providing evidence of insurability.

Tips and Talking Points: Special caution needs to be taken to if you are on a group plan that provides a health savings account (HSA). HSA rules state that if you have any other health plan, including Medicare Part A, you will not be eligible to make any further contributions to your HSA. In addition high-earning members will face the government surcharges for Parts B and D in the form of an income-related Medicare adjustment (IRMA).

When looking at a Medicare Advantage Plan, you need to be aware that these plans may have limited physician and hospital networks and many have gatekeepers that require a referral to a network specialist.

Long-Term Care

Long-term care is increasingly a sign of our times. Thanks to modern medicine, we are living longer lives, and many of us can expect to break the century mark. With that also comes the fact that a high percentage of those living longer will do so with a chronic illness which will become debilitating in some form, as the aging process continues. Long-term care insurance (LTCI) is designed to provide home care to help you manage illness at home and provides nursing home coverage, as necessary. Statistics prove that women are the caretakers,

“You can have a healthy body and live many years with Alzheimer’s, yet require around-the-clock services.”

and many hours are lost for working women who must quit their jobs or alter their schedules to take care of a sick parent or spouse. If you have parents who are in their 50s, have this conversation with them now!

Everyone’s biggest fear is suffering from some form of dementia or cognitive impairment. You can have a healthy body and live many years with Alzheimer’s, yet require around-the-clock services. None of us wants to be a burden to our children or grandchildren and LTCI relieves that concern.

Tip

- Most professionals put off the purchase of LTCI until their 60s and 70s when they discover they may not have enough resources to cover this type of risk. By then it may be too late due to high premiums and/or health issues that increase the cost or prevent the purchase of coverage. The best way to buy LTCI is to purchase it during your working years (45-55) and accelerate the premiums to fully pay the policy prior to retirement. Peace of mind is a great thing when you are in your 70s and 80s and makes it easier to manage your retirement resources. You also avoid probable premium increases later in life.

Home/Auto and Personal Umbrella

Review your homeowners policy if you haven’t in a while and make sure you’ve remembered to advise your agent/carrier of significant home improvements, such as a room addition, new pool, new structure or new purchases of firearms, furs, jewelry, antiques, fine art, etc you’ve made. Make sure your toys are covered (boats, motorcycles, four-wheelers, etc).

Tips

- Highly regarded and compensated professionals, such as attorneys, are especially at risk for large claims. That risk is multiplied if you have teenage drivers, a pool or pond, a boat, trampoline or a pet. Purchase an umbrella policy if you haven’t already, and make sure it’s one like the OBA-sponsored umbrella that includes excess uninsured/underinsured motorists’ coverage (most carriers do not offer this in Oklahoma). With 24 percent of Oklahoma drivers uninsured, the risk is substantial.
- Coverage for earthquake and flood damage is not automatically included in homeowners policies, so it must be added by endorsement or purchased separately.

PART 2: BUSINESS

Business Overhead Expense

Business overhead expense (BOE) is a disability contract that pays office overhead expense, such as rent, utilities, employee (non-professional) salaries, health insurance, supplies, professional dues, malpractice insurance and others. It is designed to keep your doors open while you are recovering from an illness or injury which prevents you from performing the duties of your occupation. Generally, these policies have shorter waiting periods (30 days) before benefits begin to accrue and shorter benefit periods, up to two years. This coverage is extremely valuable to a solo practitioner, partnership or office sharing arrangement. Keep in mind, that unlike a disability income policy that pays you directly to protect your income, the BOE policy is a reimbursement policy only for overhead expenses and does not cover the policyholder’s earnings.

Business Owners Policy

A business owners policy (BOP) is a policy that combines commercial property and commercial general liability insurance, along with many other property and liability coverages either bundled into the package or offered as options. If you own your office building, you would insure your building at its replacement cost in addition to your contents, or business personal property (BPP).

Especially in a state like Oklahoma, where one’s business could be shut down for a period of time due to various weather issues, loss of business income and extra expense are key

coverage provisions in this type of policy. The extras you may see bundled into the package or offered as options include coverage for sewer back-up and water damage, signs, accounts receivables, computers/media, valuable papers, property in-transit, fine arts, employee dishonesty and ERISA, employment practices liability, employee benefits liability, identity theft, business income and extra expense and hired and nonowned auto liability.

Tips

- Be sure to review your policy with your agent if you haven't in a while, especially if you've had changes in staff, revenues, equipment, amount of space leased, remodeled offices, etc. Know how replacement cost and coinsurance works with your policy and make sure you are always insured at adequate limits.

- Consider increasing the limits or purchasing separate policies for some of the "extras" mentioned above.
- Coverage for earthquakes and flood are typically not included but can be added or issued as a separate policy.
- Know what items you are responsible for maintaining, repairing and replacing according to your lease and make sure you have adequate coverage for those items.

Workers' Compensation

If only I had a nickel for every time an attorney or law firm administrator has said, "I can't believe we're required to carry workers' compensation insurance... how could someone possibly get hurt..." The fact is that workplace injuries do occur, and to protect both the employer and employee, Title 85 requires that all companies with employees carry WC insurance unless they have qualified for self-insured status or opted out using an approved benefit plan. In Oklahoma, partners, sole proprietors and LLC members or stockholders owning 10 percent or more of the company's stock are automatically excluded from coverage, but can elect to be included. Workers' Comp insurance provides coverage for medical expenses as well as compensation expenses for employees who are injured while working.

Tip

- Don't take this exposure lightly. Make sure your employees have ergonomic workstations and are properly trained to move boxes, carry heavy files, and that hallway

and office floors are clear of obstacles such as files, boxes, rugs or cords that may cause tripping. Have snowy or icy walkways and parking lots cleared and/or salted for traction, place mats inside doors so people can wipe moisture from the bottoms of their shoes to lessen risk of slipping on floors that can become slick when wet.

Directors and Officers

Private companies, including (maybe even especially?) family-owned businesses, have directors and officers (D&O) exposure. Where do D&O suits come from? Shareholders could sue you for making poor business decisions or not being profitable enough; your competitors could sue you for making disparaging comments about their services or copyright infringement; your customers, employees, lenders, suppliers and regulatory agencies could also sue your company's officers & directors.

Employment Practices Liability

Employment practices liability (EPLI) policies protect employers from suits alleging discrimination, sexual harassment, failure to make partner, wrongful termination and other employment-related claims. Think these types of claims don't occur here? In 2013, the EEOC received 1,360 charges from Oklahomans and 1,294 charges in 2014. If you're still skeptical about insuring against an EPLI claim, keep in mind that EPLI policies tend to provide non-insurance benefits that could be very useful to companies of all sizes, such as employee handbook audits, sample handbooks and employment-related forms, hotlines providing free access to employment lawyers, other human resource training tools and risk management courses. The tools alone could cost hundreds to thousands of dollars, making the cost of the policy well worth it.

Crime

Employee theft is a fast-growing crime in America and could result in corporate bankruptcy. Whether a rogue employee or partner is stealing from you or from your clients, you need to be aware of what coverage you do or do not have for this event. Unfortunately, there are many different what-if scenarios that one should run through to explore whether adequate coverage is included in your business owners or ERISA liability policies.

*Network Liability aka Data Breach Liability aka
Cyber Liability*

Cyber liability policies are fairly new and coverage can differ quite a bit. You may be able to add some form of cyber liability coverage to your business owners or malpractice policy, but a standalone policy may be the best way to ensure you have adequate limits and broad coverage that could include privacy breach (loss or inadvertent disclosure of confidential information of your clients or employees), privacy breach notification expenses (including credit monitoring), public relations expenses, computer viruses or other types of damage to your network such as from hacking (first party covers your clients and third party extends to your clients' clients), or theft of private information. If you have clients in multiple states, coverage for privacy breach notification expenses could prove extremely valuable, because the requirements differ from state to state — do you know what you're required to do in the event of a breach in each state?

Believe it or not, this list is not all-inclusive! Needless to say, there's a lot to think about and keep up with. Take the time to be proactive about personal and business insurance decisions you make or need to make and work with reputable agents and companies who have your best interests in mind.

ABOUT THE AUTHOR



Jennifer Beale, CIC is president of Beale Professional Services and a managing member of 3000 Insurance Group LLC. She is a graduate of the University of Central Oklahoma, is a licensed insurance agent and holds a Certified Insurance Counselor designation. She is a graduate of Leadership Oklahoma City Class XXVIII and serves on the boards of the American Institute of Professional Association Group Insurance Administrators, Impact Oklahoma, Consumer Credit Counseling Service of Central Oklahoma and Oklahoma Society of Association Executives. She is a member of the Business Women's Golf Association, Professional Insurance Marketing Association and Executive Women's Forum.


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On behalf of Oklahoma Lawyers for Children, we are delighted to invite you to Chips for Children 2015: *Venetian Ball*.

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This year's Venetian masquerade-themed event will take place at the beautiful Oklahoma City Golf and Country Club in Nichols Hills. The gala will feature cocktails, dinner, dancing, a live and silent auction, and a costume contest—so be sure to arrive in Venetian masquerade attire!

If you have any questions, please do not hesitate to contact our office or visit olfc.org/events. We look forward to your presence at this year's *Venetian Ball*.

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OLFC President & CEO

Valerie Couch
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Gary Homsey
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Opening a Modern Law Office: Coping with Today's Rapidly Changing Law Firm Business Model

By Jim Calloway

Comparing the opening of a law office several decades ago with today's requirements can make one feel nostalgic about "the good old days." Then, you would rent or purchase some office space close to the courthouse or downtown business activity, hire a competent legal secretary, get a typewriter (Does anyone else remember the ubiquity of the IBM Selectric?), round up some office furniture, stop by the office supply store for a few supplies and you were ready to go. Now, you need to do much of that, but also figure out Internet access (and security), purchase computers, figure out what law office software is required, update your mobile phone plan, create the law firm's website, buy a scanner, develop written procedures for workflow of digital client files and a host of other items.

On the other hand, today the cash-strapped young lawyer can set up a law practice with a laptop, a smart phone, Internet access and a mailing address and be open for business.

I want to focus here on the numerous differences that lawyers are facing when setting up a law practice today as compared to a few years or decades ago.

The law office should operate much differently in 2015 than it did years ago. Advice from experienced lawyers is perhaps the most valuable thing a new lawyer can receive when starting a law practice. An experienced lawyer leaving a firm to start a solo or small firm practice may have different needs.

For the beginning lawyer, it is important to rely on local experienced lawyers and mentors for advice about:

- how the courthouse and judges operate,
- questions about substantive law,
- developing sound legal strategies,
- how to handle a matter where you have limited experience,
- your first jury trial and
- opposing counsel's inexplicable behavior.

But, with all due respect to the experienced lawyers around the state, I also suggest to

beginning lawyers that they should pay more attention to the modern experts on topics like:

- the need for a digital practice management system,
- legal project management,
- paperless office procedures,
- automated document assembly,
- online marketing of your practice and
- future trends.

WORKING IN THE LAW PRACTICE

In the good old days, the business of law meant working as a lawyer — doing legal work on client files. There were, of course, bills to be paid and a bank account to be managed, but you could always pay someone to do that for you.

Today, the business of law operates much more like any other business; the CEO has to spend time with strategic planning, budgeting, regularly reviewing financial statements and improving business operations. The challenge is that you also have to do most of the legal work.

The entrepreneur-lawyer, particularly the small firm lawyer, has to deal with the stark reality that you either do something yourself or you pay someone to do it for you. Most lawyers will benefit by having a full- or part-time assistant to free them up to do more legal work and fewer administrative tasks. But that's not true for all lawyers and often not an economic possibility for some. Today it often makes sense to outsource some of the tasks that were previously done by law firm employees. High on my suggested list of things to be outsourced is payroll preparation and tax deposits. Virtual reception services, like the OBA-endorsed Ruby Receptionists, are also becoming more popular. These services can be used full-time or for just a few hours each week to cover lunch time closures or to give the assistant (or lawyer) some uninterrupted time to complete projects.

EFFICIENCY

For years many lawyers would have said, "Well, of course we don't want to be inefficient. We work hard and work long hours. But it is more important for legal work to be done right than fast. And the clients will pay for the time it takes to do it right." That good old days attitude has been a long-standing tradition in the legal profession. There can be no compromise on doing legal work correctly.

But today's clients want it done right and want done it quickly. Complex negotiations, fact finding research projects or formal discovery procedures in litigation understandably take time. But as American Bar Association President William C. Hubbard observed at the ABA's 2015 Bar Leadership Institute, consumers who now order prescription refills by touching buttons on their phone, who bank online and who schedule dentist and physician appointments online do not want to call to schedule an appointment to meet with a lawyer two weeks later just to find out if the lawyer can assist and what it will cost.

Lawyers have always looked for ways they can improve their legal work, including client service and efficiency. Lawyers have always been creative about innovative new legal arguments or creative statutory interpretation. But the management of law practice used to be much the same as it was the year before. Today only a few lawyers have the luxury of being concerned only about the delivery of legal services without also paying close attention to business operations. Business today is about change management.

YOUR BUSINESS PLAN AND BUSINESS MODEL

For many, the business model was "We are lawyers. That is our business model, just like all of the other lawyers." Certainly lawyers gravitated toward work and practice areas they found interesting or that seem to be the most financially rewarding. But mainly the focus was on getting the legal work done in front of you right now. Many lawyers today have deep expertise in a particular area of the law that often started with one or two matters in that area where the lawyer obtained good results. This brought repeat business and new business in that substantive area.

Today you need a focused business plan *in writing* for your legal services business model. It is true that the plan may change many times or that your business may take a far different direction than you anticipated. Modifying the plan as circumstances dictate is a good thing.

There are now storefront law practices, virtual law practices that deliver services online, home-based law practices, traditional law firms and virtual law firms where lawyers do traditional legal work but from different physical locations, just to name a few. A consumer-based practice will likely involve more

automation and downward price pressures. A business or corporate law practice will be challenged by more of the routine work being brought in-house to be done by in-house counsel, leaving the more challenging and difficult work for outside counsel.

Your plan should include the types of clients you intend to serve, in what substantive areas, what you will do to attract those clients, how you will manage work flow, staffing requirements and a host of other areas. This is why your plan must be in writing so you can organize so many different activities.

PAPERLESS

In the good old days, being paperless meant that it was time to send somebody out for supplies!

Today it is critically important to set up the new law firm to handle client information and client files digitally, even if you elect to keep duplicate paper client files in the office.

For years I've noted that the use of practice management software or online cloud-based practice management services was an absolute necessity for the solo or small firm lawyer and likely a necessity for almost every lawyer. Many lawyers still resist this practice and if the established paper-based systems are not creating any problems for the firm or the firm's clients, it is difficult to convince those lawyers to institute major change.

The arguments in favor of this approach seem almost routine now. There is no hunting for lost files because the files primarily live in the file cabinet and people actually work with the computer files. Data backup procedures only allow you to protect all of your client's information (and your business survival) if all of the pertinent information is located within a digital file. If your office is destroyed and your data backup contains only those documents you created in your office and not those from opposing counsel, you will have a challenging several months ahead of you trying to recreate the lost files. You will be able to quickly answer many ques-

tions with a few clicks of your mouse that are sometimes challenging now like when a client asks for the exact balance of their bill as of today. You will always be able to see notes from conversations between clients and the other lawyers and staff in your office.

Established lawyers can continue their successful practices using the tools they are most comfortable using. But there is no question that a new law office needs to be set up with desktop scanners handy, and the lawyers should rely on practice management software or services.

MARKETING AND CLIENT DEVELOPMENT

In the good old days, the lawyers would open the office, introduce themselves to all of the local lawyers and court staff, perhaps send out a few announcements and then sit back passively waiting for clients and money to start rolling in.

Now, there is a bit of oversimplification in this observation. Obviously previous generations of lawyers worked hard to develop new clients. They participated in civic organizations, joined the right clubs, became closely acquainted with frequent referrers of legal business and engaged in a host of other activities designed to ultimately generate good clients.

Today, legal professionals operate in a highly competitive market, with more competitors (including nonlawyers) emerging every day. One needs to clearly understand the ethical

prohibition against direct solicitation of clients. But technology opens many more opportunities for a new law practice (or any new business) to publicize the services offered to the public. It is simply foolish for a lawyer starting a new private practice not to have a website and, frankly, that is also not wise for most lawyers in established private practices. Today's new lawyers are certainly not going to just sit around passively in their offices hoping someone decides to enter. LinkedIn and other social media sites will be set up by most new lawyers with links back to the firm's primary website.

“Your plan should include the types of clients you intend to serve, in what substantive areas, what you will do to attract those clients, how you will manage work flow, staffing requirements and a host of other areas.”

Online videos promoting the law practice will be commonplace.

We have seen around \$1 billion in venture capital money go into legal service startups over the last several years. I wouldn't want to bet my future on believing most all of those new startups will fail. But, whatever these new businesses do or attempt to do, they will be promoted online and you might as well secure a healthy online presence for your law firm ahead of them.

TECHNOLOGY BUYING GUIDE

The 2015 *Solo and Small Firm Legal Technology Guide* is a great resource, and I would say that even if the authors were not good friends who asked me to write the introduction. Sharon Nelson, John Simek and Michael Maschke do a great job each year dissecting the various technology purchasing decisions that a solo or small firm lawyer must make. It may be purchased from the American Bar Association online bookstore or is available in the OBA MAP lending library.

WORK/LIFE BALANCE

There's a lot of discussion about increased flexibility allowed by today's technology and quality of life. But, the professional life of a lawyer and, for that matter, any entrepreneur with a startup business, is almost always more than a "full-time" job. Being your own boss does mean you can arrange your schedule to be a youth sports coach or take off a bit early on Friday afternoon when you have no deadlines and have just had your fill of work that week. But, it also means you had better have a reliable assistant coach for when that temporary emergency injunction hearing is set during practice time and you may pay for your coaching time by working some late nights after the kids are in bed.

Don't get me wrong, we have a huge problem in our profession with lawyers working too many hours and suffering from so much stress. Work/life balance will likely be an issue you struggle with for most of your career. But, when you are trying to launch a successful new business in what has now become a much more competitive field, you will want to devote

a lot of time to building a great law practice that will last for your career. That means, particularly if you have a storefront location, being in the office and available during business hours, including first thing in the morning. And if you represent individuals, many of them will need to schedule evening or weekend appointments.

A new lawyer in solo and small firm practice absolutely has to be able to work from home or on the road when needed, which normally means having a laptop computer and either remote VPN access to the client files on the office network or a practice management solution in the cloud. But working at home every night is not the best plan.

One thing that has never changed from the good old days is that you are the most important part of your law practice and taking care of the most important business asset is good business.

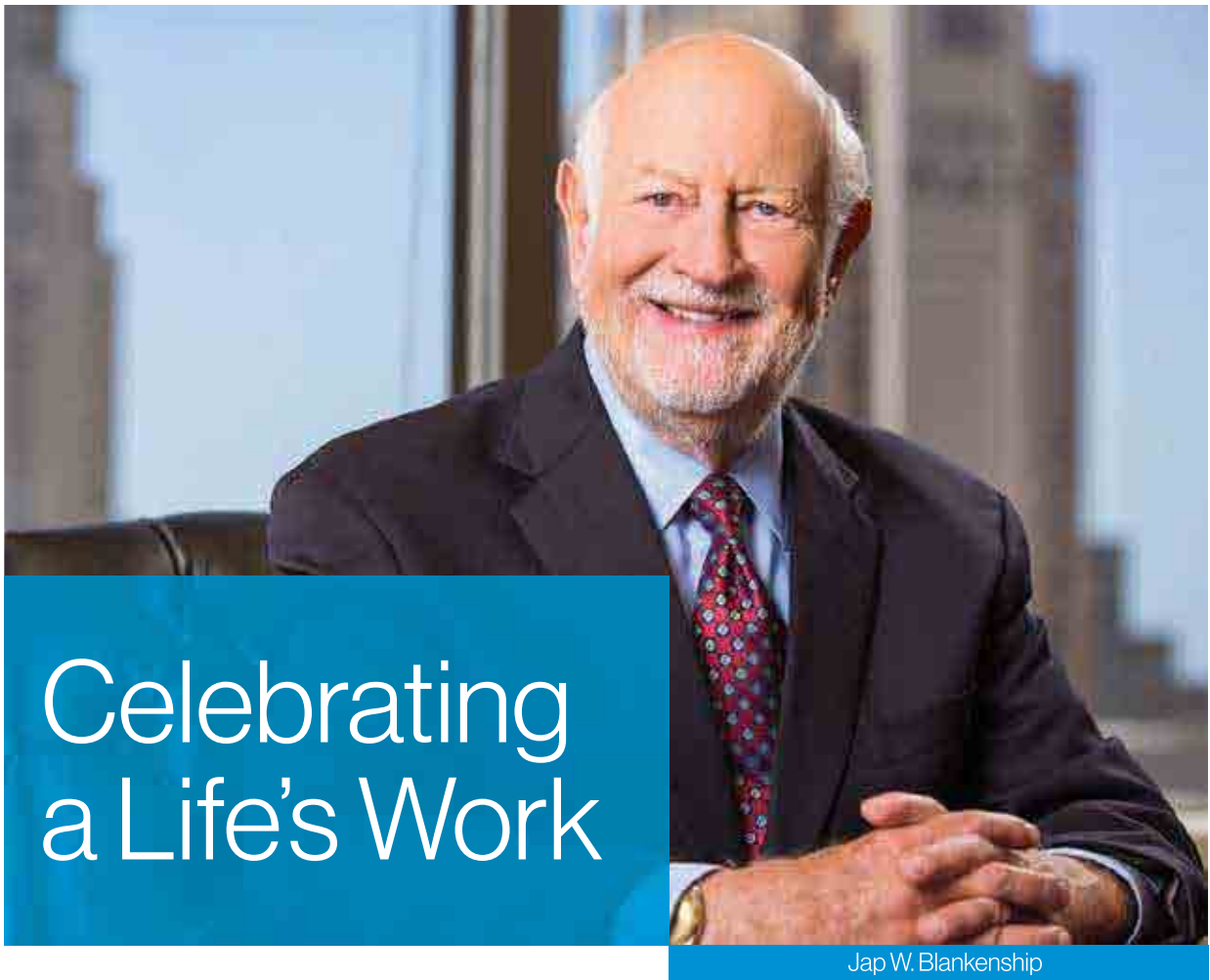
There will be challenges, and in many ways opening a law practice today is much more challenging than in the good old days. But, one can certainly have a successful career as a lawyer today and being successful with your own law firm doing it your way will be rewarding in more ways than just earning a living.

Author's Note: For those seeking more information on equipment purchases for the law office, in the October 2012 *Opening Your Law Practice Oklahoma Bar Journal*, I wrote an article titled "Equipping Your Law Office 2012." This article is online for your reference at www.okbar.org/members/MAP/MAPArticles/HardwareSoftware/Equipping2012, as are all of the other articles in that issue.

ABOUT THE AUTHOR



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!



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Because It Is Not Your Money!

By D. Scott Pappas

You've passed the bar, you've hung out your shingle, you've accepted your first client and you've received your first retainer. Now what? If you haven't already, you need to open your trust account where you will deposit any unearned retainer monies from any client going forward throughout your career as an attorney.

Rule 1.15 of the Oklahoma Rules of Professional Conduct governs an attorney's conduct regarding his or her trust account. Simply put, you have a fiduciary duty when it comes to the monies received from your clients that you have not yet earned.

Funds received from clients must be kept separate from your own operating funds. They must be safeguarded and complete records must be preserved for a period of five years after termination of the representation of that client.¹

Your trust account must be established as an interest-bearing demand account in a financial institution approved by the OBA's Office of the General Counsel, which we call an IOLTA trust account.² Often, these accounts will be a "NOW" account with an "exempt" status so that you will not be restricted by the number of checks you can write and you will not pay a service charge, which was waived as a courtesy.³

However, your trust account will be subject to the rest of the financial institution's rules associated with making deposits and writing checks. For example, if your client gives you a "bad check," then you will be responsible for the fees associated with that bounced check.

It is important to remember that the form in which a client pays you monies controls how soon that money is actually available for use.

Cash is available immediately, if it is not counterfeit.

For checks deposited into your trust account, the bank makes a separate decision on each check deposited as to when the monies will be deemed fully collected and, therefore, available for your use. The decision whether or not to put a hold on a particular check is usually based on a three-factor test: 1) the risk involved with the particular check; 2) your account history with the bank, including the age of your trust account and the previous activity in it; 3) the total amount of money currently in your trust account. The bank considers its duty to protect itself and you and, by protecting itself, it then protects you.

When checks are drawn on the same bank as the bank that has your trust account or on a local, neighboring bank, then you can usually expect the funds will be available the next day. If the check is drawn on another bank in Oklahoma, you can expect there could be a two- to-three-day hold before the monies can be used. There is a complex chart that applies in other cases that can result in a seven-or-more-day hold.

Money orders are treated like checks by a financial institution. In addition, there is a limit on how much money can be put on a money order. A bank would find it unusual for a per-

son to use a lot of money orders to pay one of your legal bills and, therefore, would likely issue some kind of hold on those money orders.

Be sure to ask your trust account bank what, if any, hold will be placed on a particular check if you have a time-sensitive situation as to when the funds will be needed. If you use the funds before they are available, then you risk, among other things, using funds in your trust account that belong to another client or overdrawing your trust account; both of which are violations of your fiduciary duty.

In addition, be sure to balance your trust account monthly bank statement promptly. You will notice on the back of that bank statement the bank gives you a certain amount of time from the date of the statement to protest any inaccuracies on it. Fictitious checks are more of a concern as people become more clever and sophisticated in their fraudulent schemes. The banks are seeing more tampering with checks that can take the following forms:

- Creating a check that may have your correct attorney logo, but has the wrong bank for your account or the wrong routing number; or,
- Washing a check that you gave them and then altering the amount of the check. For example, changing \$100 to \$1000 or more.

You can help catch these issues when you balance your statement.

If you decide to accept credit cards as payment, you need to establish a merchant account. To avoid problems, it should be a separate account from your trust account, as the credit card transaction fees will automatically be deducted from the merchant account either at the time you take your client's credit card or on a once-a-month basis for all the fees collected in that time period. Since you do not have operating funds in your trust account — only monies owned by your clients — these credit card transaction fees are not available to be withdrawn from your trust account. With a separate account, you simply transfer the credit card payment to your IOLTA trust account once the funds are available to avoid violating your fiduciary duty to the funds in your trust account.

PRACTICAL TIPS:

- Keep a ledger for each client indicating in detail the monies deposited into the trust account and withdrawn from the trust account for that client.
- Keep your trust account at a separate bank from your office account.
- Balance your trust account for each client on a regular basis.
- Order your trust account checks in a different color from your office account checks.
- Have different color checkbook covers for your trust account and your office account.
- Whoever opens the mail should not also balance the trust account (or office account, for that matter).
- Keep a separate merchant account for accepting credit card payments.
- When a client overpays you in one check, deposit all the money into your trust account and transfer only that portion of the money that you have actually earned into your office account.

The trust account bank's rules govern when the deposited monies are available for your use; you decide when to spend it. You may withdraw monies from your trust account once you have earned it or need to pay an expense on behalf of a particular client.⁴ For example, so long as you have sufficient funds in that client's trust account, 1) after you have billed a client for your legal services, then you have "earned" the right to pay yourself that billed amount from that client's trust account or 2) when you are ready to file a pleading at the court clerk's office, then you can write a trust account check for that filing fee. Both of these transactions should be recorded on the trust account ledger that you keep for that individual client and noted on the client's bill from you. Both you and the client should be able to ascertain the balance of his or her trust account at all times as transparency is essential to maintaining trust with your client and staying in compliance with the OBA.

The approved financial institutions have filed a Trust Account Overdraft Reporting Agreement with the Office of the General Counsel and have a duty to report to said office

any time your trust account has insufficient funds.⁵

Furthermore, any interest earned on the monies in your trust account does not belong to you. Rather, the financial institution that has your trust account must remit the earned interest to the Oklahoma Bar Foundation on at least a quarterly basis.⁶

Commingling your earned monies from which you operate your office with the un-earned monies in your trust account is forbidden except for two, limited purposes: when necessary “to comply with the depository institution’s minimum balance requirements for the maintenance of [your trust account] or funds needed to pay applicable fees and service charges.”⁷

Remember that if a client gives you monies to be used for a certain purpose, such as to pay for an upcoming deposition or for the cost of transcribing a judge’s ruling, those funds cannot be used for any other purpose until “otherwise authorized by the client . . . or prohibited by law.”⁸

Take your fiduciary duty seriously to avoid any unsavory consequences for your unintentional negligence or, worse yet, intentional

“...if a client gives you monies to be used for a certain purpose, such as to pay for an upcoming deposition or for the cost of transcribing a judge’s ruling, those funds cannot be used for any other purpose...”

disregard of it. The OBA may overlook what can be deemed to be a legitimate mistake. However, you could find yourself in an OBA-sponsored diversion course or with charges formally against you seeking your disbarment for certain infractions.

When in doubt, contact our OBA ethics counsel and, in the meantime, act as you would if it were someone else’s money . . . because it is!

1. See Rule 1.15(a).

2. See Rule 1.15 (h), (j)-(o).

3. May 16, 2015, telephone interview with Katrina Jarvis, vice president and branch manager, at bankSNB in Stillwater, Oklahoma.

4. See Rule 1.15 (c).

5. See Rule 1.15 (j)-(o).

6. See Rule 1.15(h)(3).

7. See Rule 1.15 (b), (h)(4).

8. See Rule 1.15 (f).

ABOUT THE AUTHOR



D. Scott Pappas practices in Stillwater and focuses primarily in the areas of family law, juvenile law and building a collaborative law practice and awareness in Oklahoma. She served on the OBA Board of Governors and on numerous OBA committees and task forces. She graduated from Fordham University Law School in 1991 and practiced in New York before returning to her hometown.

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Professional Liability

A Lawyer & Law Firm's Major Exposure

By Phillip D. Fraim

At first glance that title may seem harsh, but every occupation, every industry, every profession has something that can be identified as *the* major exposure from a risk management perspective. For the lawyer, as well as the law firm, it is undoubtedly professional liability. Major exposures faced by law firms include professional liability, data breach/cyber issues, employment practices liability, property and workers' comp. This article focuses primarily on professional liability, but the growing exposure of cyber liability and also employment practices liability are so closely intertwined that we will touch on those as well.

Someone once asked me if it was kind of sad to handle a product no one was excited about after they made the purchase. That was an interesting realization and one that was quickly followed by thoughts of all insurance purchases I've made, both personal and commercial. My conclusion was that I can't think of a product I've been any more thankful to have when I've needed it, whether it was health insurance, auto insurance, homeowners insurance, etc. Of course, only my family will be excited about my life insurance.

It is true purchasing professional liability insurance doesn't necessarily cause anyone to tingle with excitement; but like all insurance, it is a risk transfer, and that transfer makes absolute sense for lawyers, especially in today's litigious world. My experience is that most practicing lawyers understand this fact, and we don't have to spend much time with reasons why you should have professional liability insurance when you open a law office.

Those who don't, usually do not give us a chance to discuss the reasons, some of which are more obvious than others.

Like all third-party liability insurance, professional liability protects assets — both personal and firm assets. Litigation expenses continue to increase, and insurance provides defense cost coverage, above the deductible. Cost of defense and access to several leading defense counsel makes coverage more than worthwhile. Most any professional liability issue will be the most time-consuming and expensive file in your office, so the assistance provided in defending the matter helps mitigate this tremendously. In addition, we are seeing most institutional clients and all lawyer referral services requiring proof of coverage. Many of these specify minimum limits, many of which are much more than "minimum." A lawyer's most valuable asset is his/her reputation, and coverage through a company that cares and takes these concerns seriously is

critically important. Finally, a reason somewhat less obvious, but every bit as important, is the fact that coverage makes your client whole in the event of an act or omission on your part.

CLAIMS-MADE POLICY AND PROFESSIONAL LIABILITY INSURANCE

An understanding of the claims-made form is vital to understanding a professional liability policy. One of the easiest ways to gain an understanding is to compare and contrast claims-made with the occurrence form found in auto insurance, homeowners insurance and general liability insurance. An occurrence form applies to accidents/events that occur during the policy period, regardless of when they are reported. Under the claims-made form, coverage is triggered when the claim is first reported, and it attaches to the policy in force at that time.

The date of the alleged act or omission is important as coverage is restricted by a second trigger, the prior acts or retroactive date. The prior acts date bars coverage for acts or omissions alleged to have occurred before the specified date. Typically, the prior acts date is known as retro-date inception (date when coverage first becomes effective). Several things can impact and alter the prior acts date, so the insured must be aware. First, continuity of coverage is critical. A lapse or gap in coverage for several months can cause the prior acts date to change to the next effective date, losing all prior acts coverage. Also, leaving one firm for another can create a situation where the new firm only provides coverage from the date the attorney joined the firm, thereby changing the prior acts date. The lawyer must then consider an Extended Reporting Endorsement (ERE), which is discussed below. In summary, a policy must be in effect at the time a claim is reported and the act or omission must have occurred within the retro/prior acts date.

Assuring coverage after a policy terminates and no new policy is purchased due to retirement, leaving private practice or even a situation where a new policy will not match the last

prior acts date, requires consideration to exercise the option under the policy for an ERE. The ERE (sometimes called tail coverage) requires an additional premium and extends the opportunity to make or report a claim after coverage terminates. Typically, the ERE option exists for only 30 days after coverage expires.

An important feature of a lawyer's professional liability policy within the claims-made form, is the "Step Rating Methodology" used in the rating process. The first time coverage is put in place, or the first time after a lengthy gap, the lawyer enters in at step-rate one, no prior acts coverage. Because coverage only applies to acts or omissions from the effective date forward, the premium is reduced considerably from the actuarial determined rate. Each year, the lawyer moves up to the next step, where the premium increases slightly until they reach the maximum, known as the maturely underwritten rate, at which point the premium levels off.

THE POLICY

The guiding phrase of coverage is "legal services provided to others as a lawyer." This extends to include many fiduciary duties, such as serving in court appointed fiduciary positions. Coverage can also be extended to include title agent errors and omissions (E&O) for a very small flat charge premium. It is important to note there are many ancillary services that can be provided from the law office. Not all of these meet the definition of legal services and therefore, do not fall within the coverage of the policy.

Any insurance policy contains exclusions. The lawyer's professional liability (LPL) policy does as well. You should familiarize yourself with these. *Some* of these include:

- coverage for punitive damages, sanctions and penalties
- claims for the return, restitution or disgorgement of fees
- discrimination or sexual harassment
- acts as a public official

“An important feature of a lawyer's professional liability policy within the claims-made form, is the 'Step Rating Methodology' used in the rating process.”

- dishonest, criminal, intentional acts
- claims made by a business enterprise owned, managed or controlled, directly or indirectly, in which a conflict is alleged or in fact present

The application is critical and attention should be given to the way it is completed for a few reasons:

- It attaches to and becomes a part of the policy.
- Suppressing or falsifying information may cause cancellation or even voiding the policy ab initio.
- The form should be used as a self-audit/assessment of firm procedures.
- You should be as complete as possible putting your best foot forward so the underwriter better understands your operations.

Probably the most often-asked question by insureds is “what limit should they carry.” This is an important consideration and one that should be reviewed periodically. Unfortunately, no magical formula exists to accurately determine appropriate or optimal limits. I have often facetiously remarked that it is easy if you can predict the amount for which you may be sued. Absent this clairvoyance, we should look at areas of practice, which helps determine likelihood based upon frequency and case values. It is never wrong to buy what you can comfortably cash flow. The tragic circumstance is paying for coverage and not having adequate limits to satisfy the claim. Premiums do not increase at the same rate that the limits increase. In other words, doubling limits does not double the premium. Remember, the appropriate limit for the firm in 1995 is not necessarily the appropriate or adequate limit in 2015.

Defense costs can sometimes average 50 percent of indemnity costs on an annual aggregate basis. Therefore, it is not unusual on a specific claim for defense costs to exceed any indemnity amount. Be aware of how defense costs impact the per claim policy limit. Many LPL policies have limits that are reduced by every dollar spent in defense. The Oklahoma Attorneys Mutual Insurance Company (OAMIC) policy contains a “claim expense allowance.” This is an amount in addition to the limit which can be spent for defense, without impacting the limit. If the claim expense allowance is

exhausted, each dollar spent above this amount reduces the available limit.

Most LPL policies contain what is known as a split limit. The first limit referenced is the per claim limit, and the second is the policy aggregate. As an example, a \$200,000/\$600,000 limit indicates the total of all claims in a policy year cannot exceed \$600,000 and no one claim can exceed \$200,000.

Cyber Insurance/Data Breach Liability

Exposures change as the world changes. When the only tech device in the law office was a fax machine, not much changed except the risk of losing information because the ink on the thermal roll paper faded away.

Today, we have all heard the horror stories of lost personal private information and confidential data. Hacking of Home Depot, Target and Anthem Insurance certainly make the news and get our attention, but how does that relate to law firms? A couple of years ago, PWC Forensic Services Group said, “Law firms are more at risk than financial institutions to be breached.” How and why? Because hackers do not typically discriminate, they simply attempt to breach the easiest target.

The OAMIC policy currently endorses data breach/cyber liability onto the LPL at a base limit. Higher limits can be purchased. The need for this coverage is here to stay and has become critical for businesses, especially law firms because they are held to a higher fiduciary standard. The endorsement provides not only a sub-limit (\$100,000) for third-party liability (the OAMIC LPL coverage does not exclude this third-party negligence coverage), but also some important first-party coverages such as forensics, PR services and crisis management like credit monitoring. We have engaged a reinsurance partner who is an expert in working through these matters and will be able to assist us and our insureds. Cyber-related issues are important to be aware of and we need to develop risk management efforts and tailor coverage as exposures evolve.

Employment Practices Liability (EPL)

EPL can be added to the OAMIC policy by endorsement for a fairly minimal premium per lawyer, at a \$100,000 base limit. Higher limits are available. Coverage applies to wrongful employment practices such as discrimination, harassment and wrongful termination. Recent reports project that over 30 percent of busi-

nesses will face an employment practices related claim over the next two years. This coverage should be considered in order to round out the firm's insurance program.

Professional liability coverages are often taken for granted by law firms. We prefer you have a working understanding of the coverages available and how they protect both you and your clients. It is always better to think and talk through issues before a real matter confronts you. Please do not hesitate to contact us if we can assist in any way.

ABOUT THE AUTHOR



Phillip Fraim has served as OAMIC president since 1993. He joined the company in 1989 as vice president and treasurer. He is the National Association of Bar Related Insurance Companies past president and current secretary. He serves as Bar Plan Surety & Fidelity Company secretary, has served on the National Association of Mutual Insurance Companies board, is a Professional Liability Underwriting Society member, UCO Foundation board of trustee and an Edmond Economic Development Authority trustee.

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- October
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Deadline: May 1, 2015
- November
Lawyers in Leadership
Editor: Melissa DeLacerda
melissde@aol.com
Deadline: Aug. 1, 2015
- December
Ethics & Professional Responsibility
Editor: Shannon L. Prescott
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Deadline: Aug. 1, 2015

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The Importance of Your Fellow Lawyers

By Tracey Garrison

Before I opened my law practice, I had the benefit of 17 years experience as a paralegal and two years experience working for solo attorneys. Therefore, I was able to observe how to run a law practice from other lawyers.

As a sole practitioner, you will want to find a few dependable, trustworthy lawyers you can count on for a variety of reasons. One reason is to help keep you out of trouble with the OBA Office of General Counsel and/or the Oklahoma Supreme Court. As a solo attorney, no one is looking over your shoulder to make sure your action, or inaction, is appropriate. It is helpful to have a fellow lawyer with whom to discuss situations. In fact, it may be helpful without even discussing it with another lawyer. You can ask yourself, if I told attorney X about this, would he/she approve or disapprove? That likely will give you your answer and maybe steer you down another path.

One way an attorney can run into ethical problems is conflict of interest. While conflict of interest is something all lawyers need to be aware of, as a solo you do not have anyone with whom to hash out scenarios. A possible conflict of interest is not always easy to detect before you take on a client. Discussing a situation with a fellow attorney beforehand can be very helpful (being careful not to disclose names or other information which would violate attorney-client privilege). Another attorney may have a different view point or think of something you did not. When I face a potential conflict of interest situation, I think of a line from an old Woody Allen movie, wherein Woody Allen's character tells his married

friend, who is having an affair, that he "can't ride two horses with one behind." When I ask myself if I would be riding two horses, the answer usually becomes obvious.

When faced with a novel legal situation, it is beneficial to have a fellow attorney to discuss whether he/she has faced the same situation, and even if not, if he/she has a different point of view from you as to how to handle it (again, being careful not to disclose facts which would violate attorney-client privilege). Discussing a legal scenario out loud with another attorney can often clarify the situation.

Another reason it would be helpful for a solo attorney to connect with others is to have an attorney you trust who can back you up in an emergency. I know sole practitioners who would be willing to cover a hearing or other proceeding for me, if needed, and I would do the same for them. It is also important to have backup so you can have peace of mind going on vacation and knowing if an emergency arose, you could call on a fellow attorney for help.

Office space is an area where fellow attorneys are helpful. Many attorneys either own their own buildings or are renting and have extra office space. This can be economical for starting your practice. Sometimes lawyers with extra office space also have furnishings which you can use, so you do not have to buy furni-

ture. They may also have copy and fax machines you can use.

Referrals are another reason fellow attorneys are important to a solo. Most of my clients come from referrals, both from lawyers and clients. Not only do I refer potential clients to other lawyers in areas in which I do not practice, but also in areas wherein I do practice on occasion. When I get cases that I can handle, but they are not in my preferred areas, I often refer them and in turn the attorneys will think of me if they get cases in my preferred areas.

Although you may not want to think about the end of your law practice while you are dealing with the beginning, it is very important. I have had to step in several times for an attorney who was sick and/or died. After these incidents, I created a list divided by practice area of law. Under each area I listed at least one trustworthy attorney who can be called upon if something happens to me, and made sure several people knew about this list, as well as where to locate other office records.

To find lawyers who can be a source of help and support, consider starting with the alumni from your law school. I have kept in close contact with lawyers I met in law school, but others I met either through these lawyers or through lawyer organizations. Joining lawyer associations is an enjoyable way to meet other attorneys and remain current in your practice areas. I belong to the OBA Bankruptcy Section and various sections of the Tulsa County Bar Association, including, at one time or another, bankruptcy, probate and guardianship, family, solo and small firm. I also belong to the Tulsa Title and Probate Lawyers.

I also attend alumni events hosted by the law school where I obtained my degree. In fact, a couple of days before the deadline for this article, I attended an alumni event and met an alumna who said she thinks lawyers get into trouble because they keep their problems to

“Although you may not want to think about the end of your law practice while you are dealing with the beginning, it is very important.”

themselves and do not want to seek help from fellow lawyers, but it would benefit them if they would seek such help.

I also met a graduate from 1965 and his lawyer wife. He asked me who I worked for, and when I told him I was a sole practitioner, he was very pleased and said that is the best way to practice law. He and his wife opened a practice together right out of law school and he said after marrying his wife, it was

the best decision he ever made. I told him I was writing this article and asked if he had any advice. He said do not be a jerk, do not take a bribe (he knew someone who had), and just keep working away at your legal career. He also said there are three rules of law: 1) get the money; 2) get the money; 3) get the money.

Before starting my own law practice, I attended the OBA seminar, “Hitting the Ground Running.” It was very helpful, as it discussed various aspects of operating a law practice, and I would recommend it to anyone thinking of opening his/her own practice.

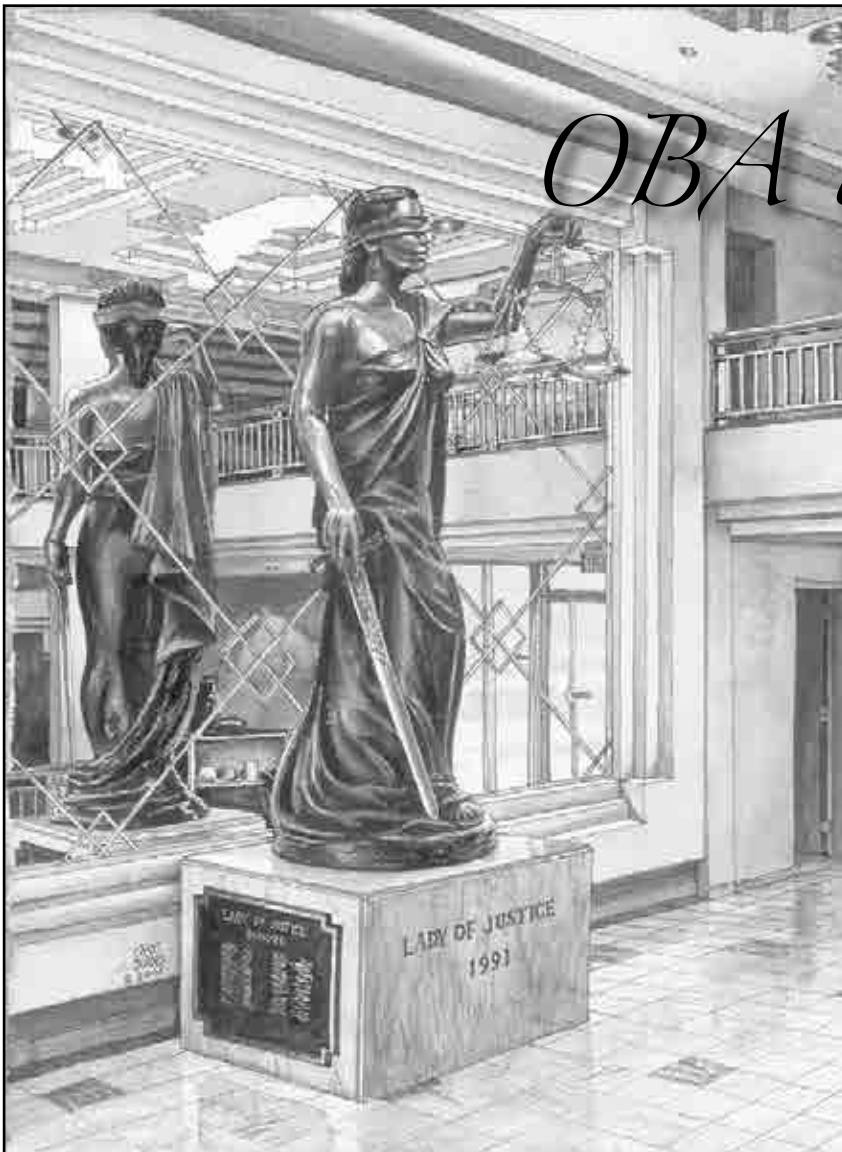
I am glad that I decided to form my own law office. The control I have over how I spend my time and which clients I will represent more than compensates for the financial uncertainties and responsibilities of being the sole decision-maker. If anyone reading this article decides to be a sole practitioner, I wish you much success.

ABOUT THE AUTHOR



family-member adoptions.

Tulsa lawyer Tracey Garrison is a sole practitioner at Garrison Law Office PLLC. She graduated with honors from the University of Tulsa College of Law. Her practice areas include bankruptcy, probate, guardianships, wills and trusts, name changes and



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The Non-Tech Side of Starting Your Own Practice

By Michelle C. Harrington

Building relationships remains one of the most important aspects of starting and maintaining your own law practice. For a new practitioner or someone going out on their own from the umbrella of a firm, it will be necessary to gain experience, develop credibility, obtain clients and keep clients and referrals coming. If you are an established attorney starting a new practice in an area that you are already experienced in, skip to “Gaining Credibility.” If you are a new practitioner or an established practitioner starting off in a new area of law, read on.

GAINING EXPERTISE

We generally don’t learn how to practice law in law school. We learn *about* the law, researching the law and analyzing the law — all good stuff to know. But that’s not the same as *how* to practice law. We only gain that knowledge from seeing it done and doing it. As you start up your practice — before the phone starts ringing off the hook — take advantage of the open spots on your calendar and take yourself to the courthouse. Watch motions and trials in the areas you will be practicing. Make notes about what is effective for the litigators and what irks the judges. Follow up with the attorneys afterward if you have a question about the proceedings or a sincere compliment about something you benefited from seeing.

As important as meeting good practitioners and judges — if not more so — is meeting the judges’ clerks and bailiffs. These are the gatekeepers and the people in-the-know. Stop by and introduce yourself to them. Let them know

you are a new practitioner or new to that area of law and you want to observe. Ask them if they have any suggestions on upcoming proceedings for you to view. With a few flips of their docket book pages they can recommend cases that will be instructive, interesting or downright entertaining because of the issues, an attorney or the combination of attorneys. They know where the drama lies! These staffers can often field questions about how their judges like things done procedurally and how they run their dockets.

Another way to get valuable insight into your area is to contact an experienced attorney who has a good reputation in the community. Let him know that you are not looking for a job, but that you want to practice in that area and you would like to buy him lunch in exchange for an hour of his time chatting with you about his practice. A well-established attorney will not feel threatened by such an offer — you are not his competition. When I

got ready to start my own practice, I contacted five such practitioners. Each one was willing to spend that time with me and give me helpful input. I developed rapport that allowed me to call and ask the occasional question later on. Four out of five actually sent referrals — I was charging less than they were and was able to be more flexible with clients by accepting payment plans and other options that the more established (read: less hungry) attorneys would not do.

Of course, watching and listening will only get you so far — you have to actually do it to figure out how it's done. A great way to get some hands-on experience while you are waiting for the paying clients to come through the door is volunteering for one of the many great organizations out there who need help. Legal Aid can always use some extra lawyer hands to enable them to assist economically challenged litigants regarding a plethora of areas of law. There is an abundance of other programs needing similar assistance that may be found through your county bar or the Oklahoma Bar Association. One of the nice things about the volunteer service is that there are resources — human and otherwise — that are available to assist that you won't have on your own. The results of helping someone who needs it while gaining valuable experience is its own reward. The relationships built with others in the organization, getting your name out there and developing the heart to continue serving even after you are more tenured are bonuses.

GAINING CREDIBILITY

Credibility and reputations are the result of a process and time. There are numerous things you can do to enhance both. Following are some options:

- **Teach a class in the area you are interested in.** While a law school may be the optimal venue for your skills and goals, there are only three in Oklahoma so the opportunities are limited. However, there are many other options available such as community colleges, universities with undergraduate law classes, business schools and online courses. Don't limit yourself to positions that are advertised. Find out who the decision maker is with regard to hiring at the institutions you are interested in and make contact. If you know someone who is an adjunct, ask them what path they took — sometimes having a referral from

another instructor at the same place is helpful. There are several added benefits to teaching. One is that you will probably be surprised at how much more you learn about your own area as you prepare to teach it to others. Other benefits are discussed later.

- **Affiliate yourself with groups and organizations that enhance your knowledge and allow you to network with other practitioners in your field.** The OBA has sections in most areas of law. Many county bar associations have sections in some areas. Attending section meetings helps you stay current in your area, meet others already practicing in that area, and often exposes you to topical speakers and materials that might not otherwise be available to you.
- **Offer to speak.** (If you just winced, you need to get past that discomfort. Take a course or join a local chapter of Toastmasters¹ to practice.) Let teachers, civic groups, church groups, law committee chairpersons and Continuing Legal Education (CLE) programmers know you are available. Be creative with topics and gear them to your audience. For instance, a criminal lawyer may speak at a criminal law bar section meeting about a new statute; at a civic organization about illegal internet scams people need to be aware of; and at a community college about uses of social media which may get users in trouble.
- **Write about your area of law.** Explain the application of a new statute, debate a controversy, talk about what's trending in other states — potential topics are limited only by your imagination. For traditional publishing, check the *Oklahoma Bar Journal* publication calendar² to see if there is an issue coming up that is relevant, submit your article to a local newspaper or Google "where to submit law articles" for numerous options ranging from law journals to niche publications. Another outlet for your writings is on a Facebook page you set up for your business and/or a blog. Don't be intimidated by the thought of blogging — a blog is simply a website (which you, of course, will have already set up for your business anyway) that has new content added on a regular basis. Unless you're writing for a law journal, skip the legalese — just talk to your reader in your own

voice about things that will educate, entertain or both in your chosen area.

PROFESSIONAL NETWORKING

It is important to network with practitioners both in and out of your area of law. As previously mentioned, joining professional organizations and bar sections gives you the opportunity to meet and interact with attorneys and judges working in your own area. These connections are great when you need somebody to bounce ideas off, field questions and share strategies and materials. This group enables you to avoid recreating the wheel.

Some may say that “shy attorney” is an oxymoron. Yet in public groups we often hang out with the people we already know. When you attend meetings and CLEs, get outside your comfort zone and sit next to someone you don’t know. Introduce yourself to new members. Challenge yourself to meet at least one new person at events.

Mixing with attorneys and judges who work in different areas of law is also helpful. First, many types of law are interrelated and it can be educational learning more about the overlap. Second, the expertise of others can be a rich resource. For instance, family law attorneys deal with issues regarding their client’s property, taxes, potential bankruptcy, criminal activities, social security, employment benefits, workers’ compensation issues — you get the idea. Interview your new acquaintance for a blog post or invite them to guest post on your blog. You get the multiple benefits of getting to know them better, learning something, new blog content and — if you did it well — increased readership when they share their own interview/post on *their* social media!

One of the best entities to join to enjoy the diversity of our profession is an Oklahoma chapter of the American Inns of Court. The mission of that organization is to promote civility and ethics amongst attorneys. The inns are structured to encourage interaction with attorneys from different legal backgrounds and different levels of experience from pupils (law students) to masters (being an attorney for more than 20 years) and everything in between. There are six inns in Oklahoma.³

Another way to meet and mix with diverse groups is to attend CLEs outside your area. It’s also a good idea to attend the OBA Annual Meeting, Solo and Small Firm Conference and

other bar functions. Check out the committee options for the OBA⁴ or your local bar. Find one that is interesting to you, volunteer and participate in a meaningful way.

FINDING CLIENTS

Traditional advertising in phone books, print ads and online directories is always an option. But potential clients using those methods are generally looking for *an* attorney as opposed to looking for *you*. Let’s focus on some interpersonal ways to get your name out there.

Teaching a class in your area was mentioned above as a great way to develop credibility. Teaching in general is also a way to reach potential clients. I am not advocating taking on a teaching position so that you can solicit clients. I am telling you that when you teach a class on a topic that you have interest in — whether it is law-related or hobby-based — you are interacting with people who know you are a lawyer — often the only lawyer they know. If you are doing your job well, you are a lawyer that they have a positive impression of. When they, their friends or family members have a legal need, your name will come to mind. (Caveat: don’t represent a current student if you are teaching a class that gets graded. After grades are in and they are no longer your student, there would not be a conflict.)

In addition to the teaching institutions mentioned previously, vo-tech schools often offer myriad opportunities for instructors teaching everything from computer classes to jewelry making. Some schools welcome new class proposals. I know one attorney who pitched the idea of a class to teach students how to play poker — he was hired to do it!

You get the same two-for-one benefit from some of your speaking engagements. No matter what group you are addressing or what your topic is, let the audience know at some point that you are an attorney in your specific field and always pass out your business cards with your contact information in case anybody has follow up questions. Better yet — prepare a handout with points of interest that your audience will want to keep for a reference and make sure your relevant information is on *that*.

Join nonlegal groups that you have a sincere interest in. Civic organizations like Lions Club, Rotary and National Exchange Club⁵ allow you to participate in projects that enhance your community as well as enjoying a social compo-

nent with individuals who may need, or know somebody who needs, your services in the future. Join groups that focus on a cause you believe in or a hobby you enjoy. I have gotten many referrals from my book club buddies over the years — in *addition* to reading some fascinating books I never would have chosen myself.

If you're maintaining your social media presence right, you're creating a valuable opportunity for potential clients to get to know and trust you. Nobody wants to be blasted by ads and sales pitches. Post regularly on your Facebook page with helpful articles (from your blog *and* other sources), tasteful cartoons or jokes, updates on the law, human interest videos or pictures, holiday greetings, etc. Interact with your readers — "like" and respond to their comments. Don't be afraid to share from other professional pages — it will build up goodwill with other professionals *and* benefit your (potential clients!) readers. The same goes for your blog — read and respond to comments in a personable (not giving personal legal advice) way. The point is to be an *accessible* expert — the one they already trust and aren't intimidated to call when they have a legal need.

And the best way to get new clients? Treat your existing clients like gold. In this day of instant gratification where a two-minute wait results in much wailing and gnashing of teeth, businesses that treat their clients special and offer personalized services stand out.

Give clients your total attention during appointments — no assistants bustling in for you to sign documents or give you messages about other cases, no sneak peek at the cell phone that just dinged with the arrival of a new text. Consider giving them a folder or flashdrive to store forms you want them to fill out as well as information that will be helpful to them. Communicate with them. Explain up front how long on average it takes to return calls so that they have realistic expectations and don't feel ignored if you can't get back to them the same day they left a message. Keep them in the loop — copy them on all ingoing and outgoing documents regarding their case. If there is a long lag-time between activity on their case, shoot them an email to touch base and reiterate what the next step is. Make note of their birthday on your intake and acknowledge it if it comes up during your representa-

tion. Don't make lame excuses for a screw up or time delays — own it, apologize and do better. At the close of their case, send a personalized letter thanking them for using your services and wishing them the best. A client who feels he has been heard, that his attorney did the best she could in his case and that he mattered as a person, is a client who is likely to refer other clients.

CONCLUSION

This article includes ideas to interact with others in a way that will result in gained experience, enhanced credibility, networking opportunities and new clients. It is not intended to be comprehensive — there are entire books dedicated to this topic. The intent is to remind you that while technology is necessary, helpful and a great resource, it's just not enough. Without people, you have no practice. You need them to learn from, to network with and to be the clients who will seek your services. Being intentional and authentic as you develop relationships will result in you building and maintaining the kind of practice that makes a parent proud!

1. Toastmasters is an international nonprofit organization. Its purpose is to teach its members to learn or enhance their public speaking skills. There are 84 chapters in Oklahoma. To find one close to you go to www.oktoastmasters.org and select the "club directories" option.

2. www.okbar.org/members/BarJournal/Submissions

3. There are two inns in Tulsa (Council Oak/Johnson-Sontag American Inn of Court and The Hudson-Hall-Wheaton American Inn of Court) and four inns in Oklahoma City (The Luther L. Bohanon American Inn of Court, The Robert J. Turner American Inn of Court, the Ruth Bader Ginsburg American Inn of Court and The William J. Holloway Jr. American Inn of Court. Each Inn sets its own criteria for membership.

4. To find a list of committees, membership list and mission statements, go to www.okbar.org/members/committees.

5. The National Exchange Club is a nonprofit organization which focuses on community, patriotism and service with a formal mission to prevent child abuse. There are seven chapters in Oklahoma: Exchange Club of Edmond, Noon Exchange Club of Edmond, Exchange Club of Muskogee, Exchange Club of Norman, Exchange Club of Oklahoma City, Downtown Exchange Club of Oklahoma City and Exchange Club of Stillwater.

ABOUT THE AUTHOR



Michelle C. Harrington is a solo practitioner whose practice is restricted to family law. She received her J.D. from OU in 1992. Ms. Harrington has been an adjunct professor at OCU School of Law since 1999 teaching family law and related courses. She is the author of *Oklahoma Family Law Direct and Cross Examination* and blogs with humor about how to stay married at www.shelharrington.com.

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11 Things to Know When Starting a Small Town Practice

By Stephen Beam

1 MENTORING

I realize this is a new generation of lawyers who do not necessarily want to take the time for one-on-one mentoring. While there is still a great deal of merit in traditional mentoring, especially in a small town, there are other resources readily available. Listservs can be a great source of information. One of the very best is the Oklahoma Criminal Defense Lawyers Listserv. You can ask questions and obtain forms readily from other members. I personally use that listserv. The American Bar Association offers a listserv called Solosez, which is also very good.

2 THE OKLAHOMA BAR ASSOCIATION

Get to know Jim Calloway, the director of the Oklahoma Bar Association Management Assistance Program. This is a free service. Mr. Calloway has a wealth of knowledge and is very willing to share it with anyone who asks. Books and other resources are readily available. If you have a technology question, or any other question about starting a solo or small firm practice, ask Mr. Calloway.

You should make plans to attend the Oklahoma Bar Association Solo & Small Firm Conference held each June. It is a family-oriented event and a lot of fun. You will get all the CLE you need for an entire year. The CLE is practical and you will learn things you can put to immediate use. In addition, you will meet other Solo & Small Firm practitioners who might refer you a case. You can share ideas and exchange information.

Make plans to attend the OBA Annual Meeting in November. You will see lawyers from across the state, and it is a great source for referrals.

Fastcase is a free research service provided by the Oklahoma Bar Association. Many people are not aware this is available and is free.

The Oklahoma Bar Association has an ethics counsel. If you have an ethics question, use this service. It is free, and most of your questions will be answered over the telephone. The new ethics counsel is Joe Balkenbush.

3 ADVERTISING

I have never spent any money on advertising. I ask potential clients who come in my office who referred them to us. Almost every response is word of mouth or through the Internet. I would not spend one cent on yellow page advertising. That is not how people find lawyers today. Get a website as soon as you can. Almost all of my referrals other than word of mouth come through Martindale Hubbell, Super Lawyers, our website or some other way potential clients can search for you on the Internet.

4 OUTWORK YOUR OPPONENT

You will find many older lawyers who think they know the law but they really don't. The law they know may not be anywhere near current. You may not be as experienced as your opponent, but you can always outwork your opponent. Always start with the statutes and go from there.

5

BILLING IS IMPORTANT

Get your bills out on time. Make sure your bills have sufficient detail. No one wants to pay a bill that says simply “legal work” or just gives the number of hours you spend on a particular project. Make sure your client knows exactly what you did and in detail. Send a copy of everything you produce and receive in a case to your client. Make sure you send your bills by the first of the month and bill regularly.

6

ASSOCIATE WITH OTHER LAWYERS

Do not be afraid to call another lawyer to ask for help on a case. Some of the most fun and success I have had practicing law is trying a case with another lawyer. Most of the time two heads are really better than one.

7

SPEND YOUR MONEY ON COMPUTER EQUIPMENT

If you have to cut corners, do it on furniture and office furnishings. Do not cut corners on computers and software. It is vitally important you are able to produce good quality work quickly.

8

EMPLOYEES

Hire at least a part-time employee as soon as you can. Hiring employees is a big deal. You may think it is a headache and not worth the trouble at least initially. I cannot stress how important it is to have a real live person answer your telephone to talk to clients, other lawyers or judges. Hire employees with a good personality and who are loyal. You can teach them what you want them to do.

9

BUY ADEQUATE MALPRACTICE INSURANCE

Most of the time when you make a mistake, and you will make a mistake, it can be fixed relatively easily. For those things that cannot be fixed, adequate malpractice insurance is a must. It is not as expensive as you think it will be.

10

IF YOU HAVE A CLIENT WHO DOES NOT PAY OR DOES NOT FOLLOW YOUR ADVICE – GET OUT FAST

No one likes to withdraw from a case or have a conflict with a client. Sometimes it cannot be avoided. If you have a client who does not pay, or does not pay timely, attempt to withdraw immediately. If you have a client who will not follow your advice, attempt to withdraw immediately. Do not wait. If you wait, you may not be allowed to withdraw by the court.

11

YOUR WORD REALLY IS YOUR BOND

This is the most important one. Every person can name an attorney or two you cannot trust. It becomes universally known among the bar. You can get a horrible reputation and the practice of law can be miserable, if you cannot be trusted. If it is not true, do not say it.

ABOUT THE AUTHOR

Steven D. Beam is a sole practitioner in Weatherford. He served as OBA president in 2006 and as chair of the Professional Responsibility Commission, Solo and Small Firm Committee and General Practice Solo and Small Firm Section. He currently chairs the Judicial Nominating Commission and is an OBF Trustee. He holds leadership positions in the ABA GP Solo Section focusing primarily in the solo and small firm practice area.

Dear Editor:

Re: *Oklahoma Bar Journal*, Education Law Vol. 86, No. 14 (May 16, 2015)

I am writing with regard to the article in the above referenced volume, specifically "Bible Distribution in Oklahoma's Public Schools." I take issue with the statement on page 1060 "[r]egardless of the materials, they should not be provided to elementary school students under any circumstance." The issue is not that bright lined. However, the article is correct that school districts should contact a well-qualified attorney regarding this issue.

I thank you, your staff and all contributors to the journal for your time and efforts to keep us informed on many issues.

Warm Regards,

Jan Preece Gaddis
Attorney at Law
Duncan, Oklahoma

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Taxation Law Section

2015 Oklahoma Tax Legislation

By Sheppard F. Miers Jr.

The following is a summary of some of the changes in Oklahoma tax law enacted by the Oklahoma Legislature in 2015.

INCOME TAX

Aggregate Business Filing for Income Tax and Franchise Tax

The tax return and payment provisions for the Oklahoma Income Tax Code, Franchise Tax Code and for secretary of state registered agent fees were amended to provide for an "aggregate business filing and remittance" for taxable years beginning on or after Jan. 1, 2016. The aggregate business filing may be used as a single filing in lieu of filing separate returns, applications or other annual filings. The computation of income tax and franchise tax liability will not change. The aggregate filing will be allowed for a person or entity doing business in Oklahoma based on specified criteria as to domicile, property, payroll and sales in the state or to other nexus with the state.¹

Investment/Jobs Credit Not Allowed for New Wind Farms in 2017

The Oklahoma income tax investment and jobs credit was amended to no longer be allowed for new investment or job creation in electric power generation by means of wind beginning Jan. 1, 2017. The change will not apply to tax credits allowed for qualifying wind farm investment and job creation occurring prior to Jan. 1, 2017.²

Investment/Jobs Credit Modified

The Oklahoma income tax investment and jobs credit was modified with respect to investments in qualified depreciable property and net increase in full-time-equivalent employees in a manufacturing operation, a qualified air-

craft maintenance or manufacturing facility or a qualified web search portal.³

Equal Opportunity Education Scholarship Act

The Equal Opportunity Education Scholarship Act was amended with respect to allowing an increased credit for commitments to make contributions for two years, and to amend the definitions of "eligible special needs student," "educational scholarships," "qualified school," "qualified school for eligible special needs students" and "early childhood educational program," with changes for contributions to cover educational costs of a qualified school which does not charge tuition and enrolls special populations of students, and schools which provide educational programs for three-year-olds or pre-kindergarten educational programs for four-year-olds.⁴

Income Tax Refund Intercept

The intercept of individual income tax refunds by a state agency, municipal court, district court and public housing authority for collection of debt, unpaid fines and cost or final judgment of at least \$50, was amended. The procedure was amended to apply to any debt of an individual owed to a state agency for health care or medical services.⁵

Refund Contribution to College Savings Plan

A change in law was made to provide that a state income tax return shall contain a provision to allow a tax refund to be contributed to a specified Oklahoma college savings plan account.⁶

Income Tax Return Checkoff Donations to Charity

The requirement that individual and corporate state income tax returns contain a provision to allow checkoff donations of refunds by

taxpayers to the YMCA Youth and Government program was renewed, subject to expiration after four years.⁷

Income Tax Credits

An amendment with respect to income tax credits, recapture or restoration of credits under the Internal Revenue Code and related matters was enacted to delete a conflict created by prior repeal of other provisions.⁸

SALES AND USE TAX

Charity Fundraising Event Exemption

An Oklahoma sales tax exemption was enacted allowing exemption for sales by an organization or entity exempt from taxation under section 501(c)(3) of the Internal Revenue Code which are related to a fundraising event sponsored by the organization or entity that does not exceed five consecutive days and the sales are not in the organization's or entity's regular course of business. The exemption applies to tickets sold for admittance and items donated for sale at the event.⁹

County Sales Tax Approval

The statutes authorizing a county sales tax were amended to provide that every county sales tax submitted to voters for approval will be required to embrace one subject. A ballot must apply to only one sales tax levy for a specified purpose but may include multiple projects for that purpose.¹⁰

AD VALOREM TAX

Five-Year Manufacturing Facility Exemption Not Allowed for New Wind Farms in 2017

The five-year ad valorem tax exemption for new manufacturing facilities was amended to provide that effective Jan. 1, 2017, an entity engaged in electric power generation by means of wind shall not be defined as a qualifying manufacturing concern for purposes of the exemption as authorized pursuant to Article 10, Section 6B of the Oklahoma Constitution or qualify as a "manufacturing facility," as defined in 68 O. S. §2902; and no initial application for exemption shall be filed by or accepted from an entity engaged in electric power generation by

means of wind on or after Jan. 1, 2018. Pursuant to Article 10, Section 6B(D) of the Oklahoma Constitution an entity engaged in electric power generation by means of wind that has applied and qualified for the five-year manufacturing facility exemption under 68 O.S. §2902 prior to Jan. 1, 2017, will be "grandfathered" to be allowed the exemption for the five-year exemption period under terms and provisions of the statute applicable at the time of initial qualification, without regard to the subsequent changes in the definition of the term "manufacturing facility" under SB 498, that take effect on Jan. 1, 2017.¹¹

Personal Property Definition and Freeport Exemption

The definition of "personal property" was amended to include wares and merchandise, including oil, gas and petroleum products severed from realty, and gas in storage. This is applicable for purposes of the "freeport" exemption from ad valorem tax allowed under Article 10, §6A of the Oklahoma Constitution for property located in the state temporarily while in interstate commerce.¹²

Five-Year Manufacturing Facility Exemption; Increased Payroll Requirement

The five-year ad valorem tax exemption for new manufacturing facilities was also amended with respect to the requirement that a qualifying facility provide a net increase in payroll. New definitions for "base payroll" and "initial payroll" were added pertaining to initial applications for exemption filed on or after Jan. 1, 2016. A manufacturing facility will have the option of excluding from its payroll any nonrecurring bonuses, exercise of stock option or stock rights or other nonrecurring, extraordinary items included in total payroll numbers reported to the Oklahoma Employment Security Commission. An amendment was made providing special rules for payroll of a facility that applied for exemption after 2012 and before 2016 for facilities engaged in the manufacturing NACIS industry number 324110 for petroleum refineries.¹³

“New definitions for ‘base payroll’ and ‘initial payroll’ were added pertaining to initial applications for exemption filed on or after Jan. 1, 2016.”

County Assessor Notice Requirement for Decrease of Assessment Ratio

The provisions of law for determining the assessment ratio to compute taxable value of real or personal property were amended to provide that the county assessor may not decrease the assessment ratio without first providing notice to county officials, publishing notice and holding and attending three public meetings to answer questions about the proposed decrease.¹⁴

Confidentiality of Information

The treatment of lists of property and other documents produced by a taxpayer to the assessor or county board of equalization as confidential was amended to apply to documents produced during discovery in any ad valorem tax appeal in the Court of Tax Review or district court.¹⁵

Cap on Tax Rolls Value and Tax in Appeals

The requirement for preparation of tax rolls by the county assessor was amended to provide that once total amount of taxes due is placed on the tax rolls the amount of taxes due or value of property cannot be increased by a final judgment in any tax appeal. Also, if an appeal to district court is filed by a taxpayer the amount of taxes payable by a taxpayer shall not exceed the amount based upon value originally submitted by the assessor to the county board of equalization, and if an appeal is filed by the county assessor the amount of taxes payable shall not exceed the amount based on value assessed by the county assessor and submitted to the board of equalization.¹⁶

Taxpayer and Assessor (not Board of Equalization) are Parties in District Court Appeal

The authority for an appeal in district court by a taxpayer or county assessor from an order of the county board of equalization was amended to provide that the county assessor is the proper party defendant in any appeal brought by the taxpayer, the taxpayer is the proper party defendant in any appeal brought by the county assessor, and the county board of equalization shall not be considered a party in any litigation from an appeal.¹⁷

Centrally Assessed Pipeline Company Information to be Provided to County Assessors

The statutory provisions applicable to pipeline company property tax reporting and filing of schedules with the Oklahoma Tax Commis-

sion of right-of-way and lines, pumping stations, depots, shops and buildings locations, capital stock and personal property were amended. The Oklahoma Tax Commission will be required to provide to county assessors schedules with detailed descriptions and values by taxing jurisdiction as to all pipeline company property to ensure property is reported for, and resulting tax revenues are attributed to, the correct city, school district and county where taxable property is located.¹⁸

Oklahoma Tax Commission Ad Valorem Tax Division

The statutory provisions creating the Ad Valorem Division of the Oklahoma Tax Commission and stating its authority were amended to delete certain citizenship, age and experience requirements for appointment of a director of the division, and to amend provisions governing administrative rules of the Oklahoma Tax Commission with respect to ad valorem tax.¹⁹

FRANCHISE TAX

Aggregate Business Filing

The tax return and payment provisions for the Oklahoma Income Tax Code, Franchise Tax Code and for secretary of state registered agent fees were amended to provide for an aggregate business filing and remittance, as described above with respect to income tax.²⁰

BUSINESS ACTIVITY TAX

Repeal of Business Activity Tax

The Business Activity Tax (BAT) Code was repealed.²¹

CIGARETTE STAMP TAX

Cigarette Stamp Tax Credit

The cigarette stamp tax requirements were amended to delete provisions for exchange of new stamps for damaged or otherwise returned or transferred cigarettes in certain instances. A credit will be given to a wholesaler for cigarettes returned to a manufacturer, or not sold and destroyed before an employee of the tax commission, upon application with an affidavit or other proof required by the tax commission.²²

BINGO TAX

Charitable Organization Exemption

The state charity games tax relating to bingo was amended to exempt a charitable healthcare

organization that is exempt from taxation under Internal Revenue Code section 501(c)(3).²³

TAX ADMINISTRATION, POLICY AND PROCEDURE

Voluntary Compliance Initiative (Tax Amnesty)

A voluntary compliance initiative (tax amnesty) program will be administered beginning Sept. 14, 2015, and ending Nov. 13, 2015. The program applies to taxes due and payable for any tax period or periods ending before Jan. 1, 2015. It does not apply to franchise tax. A taxpayer making payment of delinquent unpaid tax will be entitled to a waiver of penalty and interest and collection fees and costs if the taxpayer files delinquent returns and pays taxes due during the compliance initiative period. The statute provides that the tax commission may enter into a payment program by written agreement with a taxpayer. The tax commission is authorized and directed to promulgate administrative rules detailing the terms and other conditions of the program.²⁴

Technology Systems/Taxpayer Information Disclosure

The tax commission will be authorized to release taxpayer information to technology system contractors used to authenticate income tax returns and identify fraudulent refund claims.²⁵

Tax Commission Disclosure of Information

The tax commission will be authorized to disclose otherwise confidential taxpayer information to the Oklahoma Health Care Authority for purposes of determining eligibility for current or potential recipients of assistance from the Oklahoma Medicaid program, and disclose confidential taxpayer information to the state treasurer as necessary to implement the donations of income tax refunds to an Oklahoma college savings plan account.²⁶

Tax Incentives Oversight and Evaluation

An Incentive Evaluation Commission is to be established to evaluate tax incentives intended to encourage businesses to locate, expand, invest or remain in Oklahoma, or to hire employees in Oklahoma. Each tax incentive must be evaluated at least once every four (4) years, unless determined exempt for having minimal fiscal impact.²⁷

1. SB 463, adding 68 O. S. §283, effective Nov. 1, 2015.
2. SB 502, amending 68 O. S. 2011, §2357.4, effective Jan. 1, 2017.
3. SB 502, amending 68 O. S. 2011, §2357.4, effective Jan. 1, 2017.
4. HB 1693, amending 68 O. S. Supp. 2014, §2357.206; effective Jan. 1, 2016.
5. HB 1825, amending 68 O. S. Supp. 2014, §205.2; effective May 8, 2015.
6. SB 474, adding 68 O. S. §2368.27; effective Nov. 1, 2015.
7. SB 575, amending 68 O. S. Supp. 2014, §2368.17; effective Nov. 1, 2015.
8. SB 247, amending 68 O. S. Supp. 2014, §2357; effective Nov. 1, 2015.
9. SB 336, amending 68 O. S. Supp. 2014, §1356; effective Nov. 1, 2015.
10. HB 1400, adding 68 O. S. §1354.36; effective Nov. 1, 2015.
11. SB 498 and SB 85, amending 68 O. S. §2902; effective Jan. 1, 2017.
12. HB 1962, amending 68 O. S. 2011, §2807; effective May 6, 2015.
13. SB 387, amending 68 O. S. Supp. 2014, §2902; effective Jan. 1, 2016.
14. HB 1407, adding 68 O. S., §2819.1; effective Nov. 1, 2015.
15. HB 1963, amending 68 O. S. 2011, §2835; effective May 6, 2015.
16. HB 1963, amending 68 O. S. 2011, §§2868, 2884; effective May 6, 2015.
17. HB 1743, amending 68 O. S. 2011, §2880.1; effective Nov. 1, 2015.
18. SB 335, amending 68 O. S. 2011, §2851, effective Nov. 1, 2015.
19. SB 214, amending 68 O. S. 2011, §2875; effective Nov. 1, 2015.
20. SB 463, adding 68 O. S. §283, effective Nov. 1, 2015.
21. HB 2131; Repealing 68 O. S. §§1215 -1228; effective Nov. 1, 2015.
22. SB 248, amending 68 O. S. 2011, §305, 308; effective Nov. 1, 2015.
23. SB 574, amending 3A O. S. 2011, §421, 68 O. S. 2011, §1355; effective Nov. 1, 2015.
24. HB 2236, Amending 68 O. S. 2011, §216.3; effective May 20, 2015.
25. HB 2235; Amending 68 O. S. 2011, §264; effective on or about Aug. 9, 2015.
26. SB 338 and SB 474, amending 68 O.S. Supp. 2014, §205, effective Nov. 1, 2015.
27. HB 2182, adding 62 O. S. §§7001-7005, effective Nov. 1, 2015.

ABOUT THE AUTHOR

Sheppard F. Miers Jr. is a shareholder in the Tulsa office of Gable & Gotwals and practices in the areas of federal and state taxation. The author acknowledges information and assistance he received on the subject of this article from Joanie Raff, legislative analyst of the Oklahoma Senate Staff.

Master Lawyers Section: Are You a Cobbler or a Lawyer?

By *Renée DeMoss*

Remember the old saying that the cobbler's children have no shoes? Lawyers seem to suffer from the "cobbler's syndrome" when it comes to planning for their retirement or succession. While lawyers are well aware of the need to plan for unexpected events and for retirement and, in fact, even help their clients with such plans, they often fail to plan for themselves.

What happens if a crisis strikes you? Who would protect your clients, cases, files, funds, your practice or your family if you suddenly become disabled or die? Would you be ready? No one is immune from life events, and thoughtful succession planning benefits all lawyers, including confident young lawyers who really don't believe they need a plan, busy solo lawyers who may have no other lawyers in mind who could review their cases and close their practices, musing older lawyers who see retirement in the near future and lawyers in larger firms who may have other lawyers available to take over cases, but who don't know their practice and financial details.

The Master Lawyers Section wants every Oklahoma lawyer to know about the OBA Attorney Transitions Planning Handbook. This comprehensive guide provides everything Oklahoma lawyers need to plan for any future possibility. It is prepared specifically in compliance with Oklahoma law and puts in one place, right at your fingertips, everything you need to plan — closing checklists, sample forms, articles, rules and resources. You can download this 73-page handbook right now for free from the OBA website at my.OKBar.org, or the OBA will send you a copy for \$10, which includes postage.



Transition and succession issues also arise when lawyers have health or age problems that negatively affect their capacity to practice law. The lawyer who is impaired may not recognize the need for help. All OBA lawyers and judges should be committed to identifying impaired lawyers and helping them get the resources they need, to protect both the public we serve and our fellow attorneys.

The general responsibility to deal with any kind of transition — whether it arises from an emergency such as a lawyer's sudden death or disappearance or from a health, age or substance abuse issue — falls on the OBA Office of the General Counsel and the Lawyers Helping Lawyers Committee. These groups, however, have other ongoing responsibilities and can use qualified assistance.

In 2014 an OBA Transitions Task Force was set up to address issues surrounding transitioning lawyers. The Master Lawyers Section intends to explore ways to serve as "volunteer successors," lawyers who are thoroughly trained to step in when a fellow lawyer dies,

disappears or needs to step away from the practice, either on an emergency basis or as part of a transition plan. Lawyers who have the experience, expertise, time and understanding necessary to aid their fellow lawyers are well equipped to fill this role. If you have ideas about this, consider joining the Master Lawyers Section to help in this project. And remember, when it comes to your own planning, be a lawyer — not a cobbler.

ABOUT THE AUTHORS



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

OBA Attorney Transitions Planning Handbook

How to Get a Copy

- ☐ Download for free from my.OKBar.org
- ☐ Send a \$10 check (payable to the OBA) to OBA, P.O. Box 53036, Oklahoma City, OK 73152. Include a note requesting the planning handbook.

How to Join the Section

- ☐ Mail a \$20 check (payable to the OBA) for 2015 section dues to the OBA, P.O. Box 53036, Oklahoma City, OK 73152. Include the section name on the check's memo line.

NOTICE OF JUDICIAL VACANCY

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

**District Judge
Seventh Judicial District, Office 9
Oklahoma County, Oklahoma**

This vacancy is due to the resignation of the Honorable Bernard M. Jones effective July 30, 2015.

To be appointed to the office of District Judge, Office 9, Seventh Judicial District, one must be a registered voter of Oklahoma County Electoral Division One at the time (s) he takes the oath of office and assumes the duties of office. Additionally, prior to appointment, such appointee shall have had a minimum of four years experience as a licensed practicing attorney, or as a judge of a court of record, or both, within the State of Oklahoma.

Application forms can be obtained on line at www.oscn.net under Programs and the link to Judicial Nominating Commission, or by contacting Tammy Reaves at (405) 556-9862, and must be submitted to the Chairman of the Commission at the same address **no later than 5 p.m., Friday, Sept. 11, 2015. If applications are mailed, they must be postmarked by midnight, Sept. 11, 2015.**

Stephen Beam, Chairman
Oklahoma Judicial Nominating Commission

Join the New Disability Law Section to Fight to Give the Disabled Their Voice Back

By Mackenzie McDaniel

As Edmond lawyer Miles Mitzner pulled into the parking lot, he could not believe what he saw. The lot was full including the four handicap spots near the front of the building. However, none of handicap spots were being used for their intended purpose. Instead, they were being occupied by utility and service trucks causing those who were handicapped to have to park farther away and make a long and difficult trek into the building.

"It was at this moment I realized people who are disabled have a very low voice in our community," said Mr. Mitzner, creator and chair of the new OBA Disability Law Section. "I knew something had to be done and that is why I decided to create the Disability Law Section."

The new Disability Law Section is open to OBA members and to any person who has an interest in serving the disabled and protecting their rights. The section was designed to encourage and maximize participation of disability lawyers in the operation and betterment of the OBA, promote the interests of the disabled and mentor and provide resources to those representing the disabled.

HOW TO GET INVOLVED

The first meeting of the Disability Law Section was held Aug. 14 in Oklahoma City at the



bar center and through conference call, but it is not too late to get involved.

If you would like to become a member, their next meeting will be Oct. 16 following a two-day CLE on the topic of "Social Security and Disability Boot Camp" at the Oklahoma Bar Center. Section members will receive a \$25 discount for the CLE. To sign-up, visit www.okbar.org/members/CLE. The meeting focus will be to introduce the officers elected during the first meeting, to establish a meeting schedule and to discuss the future of the section.

Once you have joined the section, members also have the opportunity to join one of its

How to Join the Disability Law Section

Mail a \$25 check (payable to the OBA) for 2015 and 2016 section dues to the OBA, P.O. Box 53036, Oklahoma City, OK 73152. Include the section name on the check's memo line. Please note, the \$25 covers your 2015 and 2016 dues.

standing and special committees. These committees are nominating, service to disability lawyers, mentoring, transitions, community contribution and membership.

Those wishing to join may mail a \$25 check (payable to the OBA) for 2015 and 2016 sections dues to the OBA, P.O. Box 53036, Oklahoma City, OK 73152. Please include the section name on the check's memo line and note that the \$25 will cover your 2015 and 2016 dues.

"We have become desensitized to the needs of the disabled, and they have become largely forgotten," Mr. Mitzner said. "Please help us by joining the section and hopefully with our hard work and commitment to serving the disabled we will be able to help them gain their voice back."

Ms. McDaniel is an OBA communications specialist.

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Phone • Fax 405-522-6397 • Email s.marsee@occemail.com.

Send additional inquiries to Judge Andrew Dunn at a.dunn@occemail.com. Applications for continuing education accreditation will be filed with the Oklahoma Bar Association's Mandatory Continuing Legal Education Commission and the American Association of Petroleum Landmanagers (AAPL).

Event Sponsored by Oklahoma Corporation Commission • Oklahoma Bar Association • Oil and Gas Conservation Division
Energy & Natural Resources Law Section • Office of Administrative Proceedings • Office of General Counsel

Oklahoma Attorneys Selected for Leadership Academy

The Oklahoma Bar Association announces the 22 participants of its fifth annual OBA Leadership Academy class selected from applicants throughout the state.

"Being a lawyer is a calling that carries with it obligations that transcend the mere delivery of services," said OBA President David Poarch of Norman. "The Oklahoma Bar Association's Leadership Academy prepares those who want to serve our profession, our bar and our state by providing them with tools to help them better communicate, motivate and succeed."

The OBA Leadership Academy will offer four sessions set to begin in September 2015. The academy will conclude in April 2016.

ABOUT THE LEADERSHIP ACADEMY

Originating from the OBA's Leadership Conference in 2007, the academy is aimed at developing the future leaders of the OBA by giving Oklahoma attorneys training in the core principles of effective leadership and how to communicate, motivate and succeed in their legal careers and also as community leaders.

The academy class will participate in sessions led by experienced leaders from various backgrounds including military officers, former OBA presidents, leadership experts and high profile public officials.

OBA LEADERSHIP ACADEMY PARTICIPANTS

Del City

Susan Rogers of the Oklahoma State Board of Dentistry

Edmond

Rachel Morris of Evans & Davis PLLC

El Reno

Ashton Handley of The Handley Law Center

Fairfax

Terry Mason Moore of Moore Law Office

Norman

Claire Bailey of Bailey & Poarch; Rachel Pappy of the Law Offices of Rod Polston; Jeanne Snider of the City Attorney's Office, Norman; Rebekah Taylor of Nichols Law Firm

Oklahoma City

Amber Brock of Hornbeek Vitali & Braun; Cody Cooper

OKLAHOMA BAR ASSOCIATION 2015-16 LEADERSHIP ACADEMY



of Phillips Murrah P.C.; Clayton Cotton of Fenton, Fenton, Smith, Reneau & Moon; Stephen Geries of Collins, Zorn & Wagner PC; John Graves of the Law Office of John H. Graves PLLC; Tessa Hager of the Office of the Oklahoma Attorney General; Jacob Jean of Christensen Law Group PLLC; Patrick Lane of Miller Dollarhide PC; Karolina Roberts of Elias, Books, Brown & Nelson; Ryan Schaller of First American Title & Trust Co.; Russell Woody of Hartzog Conger Cason & Neville

Tulsa

Luke Barteaux of Fry & Elder; Emily Crain of The Allison Firm PLLC; Elizabeth Kathleen Pence of Pence, Reddy & Feldhake PC;

More information about the Leadership Academy is available on the OBA website at www.okbar.org/members/leadership.aspx.

Promote Your Practice with the New MyOKBar.org

By Lori Rasmussen

Do you use MyOKBar to pay dues, enroll in CLE or check your MCLE credits? You can soon expect big changes when you login to this members-only section of the OBA website! When you login to the new, improved site, what you see will look very different at first. The new system was designed to create a more reliable and easier experience for bar members. Additionally, the new system will increase the ability to promote yourself and your practice to your fellow bar members.

The switch to the new system has been in the works for more than three years. When fully implemented, it is expected to offer more dependable connectivity for both members and staff as they assist and serve members.

"Our old database management system was created exclusively for us nearly two decades ago, and it was written without anticipation of the mobile-friendly technology our members now require," said OBA Executive Director John Morris Williams. "It has served us well, but it was time for the bar association to modernize and find a system that better serves our members' needs."



- More reliable connectivity
- Easier to use
- Mobile device friendly (smartphone and tablet users rejoice!)
- Allows users to share information about themselves and their practice – could increase client referrals from other lawyers!
- Helps members learn and demonstrate tech competency – a proposed Supreme Court rule for lawyers!

The result is a web-based approach to information management that will not only be more efficient, but will allow members to publicize detailed and specific information about their skills and primary practice areas.

"It's well known that a huge amount of a lawyer's business comes from referrals," said Mr. Williams. "This new system lets our members tell us and other members about themselves. They can upload a photo and provide links to their social media accounts and website. This information will be

searchable by other members. It will be a great way for our members to build their practices and make themselves known to other lawyers."

Mr. Williams said bar associations in many states have switched to similar, customizable information management systems with the goal of better serving members. The result is a more dynamic product with a longer shelf life even in the reality of constantly changing technology.

"Our members are doing business on the web with

multinational companies; they expect efficiency, speed and reliability. We need to offer our members a similar experience,” Mr. Williams said.

Because there is always a learning curve when new technology is implemented, OBA staff is mobilizing to ensure that members easily make the transition to the new improved MyOKBar. Staff in all departments are receiving training so they may better assist members who call with an issue.

Videos to Aid Transition

OBA Management Assistance Program Director Jim Calloway is planning a series of informational, how-to videos that will be easily accessible via the Web.




The videos will feature step-by-step tutorials on the new system, from how to log in to uploading photos to searching the database.

“An additional bonus for our members is that using this new system will help them practice and master newer web-based technologies,” Mr. Williams said. “That will also help lawyers satisfy proposed Supreme Court rules that lawyers demonstrate competency in tech. It’s time for everyone to embrace the modern age of computing systems.”

The new site will be up and running for members by the end of August. When fully implemented, it will be integrated with all OBA information applications, such as email and other member communication tools.

Ms. Rasmussen is OBA assistant communications director.



Oklahoma Bar Association
Serving the legal profession and the public since 1904

Welcome to the OBA MyOkbar Web Site

A Few Things You Can Do at MyOKBar

MyOKBar is the password-protected portion of the OBA website. When you've logged in with your bar number and PIN, it's easy to:

- Change your official address
- Enroll in OBA/CLE
- Check your MCLE credits
- Pay your annual dues
- Tell us about yourself and your practice area so others can find you
- Add your email address to receive electronic communications from the bar
- Print a temporary bar card
- Print receipts from previous dues and CLE payments
- Find contact information for other bar members

Grow your network.



Grow your law practice.

Connect with the OBA through social media.



Like us on Facebook

www.facebook.com/oklahomabarassociation
www.facebook.com/obacle
www.facebook.com/obalre
www.facebook.com/obayld



Follow us on Twitter

www.twitter.com/oklahomabar
www.twitter.com/obacle

BOILING SPRINGS LEGAL INSTITUTE {CLE}'15

SPONSORED BY THE WOODWARD COUNTY BAR ASSOCIATION
BOILING SPRINGS STATE PARK – WOODWARD, OK

Tuesday, September 15, 2015

CLE: 6.0/Including 1 Ethics. Registration fee: \$175.00 (received by Sept. 10); \$200.00 (walk-in).
Lunch, dinner, & materials included in Registration Fee. Pre-registration is required for lunch and dinner.

8:00 a.m. Registration, Coffee & Doughnuts
9:00 a.m. **Ethics Update: Joe Balkenbush,**
OBA Ethics Counsel

10:00 a.m. **Trial By Jury: Garvin Isaacs**

11:00 a.m. **Review of Drilling & Spacing Units & Secondary**
Recovery Units: John Mackechnie

12:00 p.m. Barbeque Lunch

1:00 p.m. **Debtor/Creditor Law: Regan Strickland**
Beatty

2:00 p.m. **Insurance Law Update: Rex Travis**

3:00 p.m. **Update on OK Real Property Title Authority:**
Kraettli Epperson

4:00 p.m. Social Hour

5:00 p.m. Steak Dinner & Recognition of
Honored Guests

2015 BOILING SPRINGS LEGAL INSTITUTE REGISTRATION FORM: Detach & Mail

Full Name: _____ Firm Name: _____
Address: _____
Telephone: _____ Facsimile: _____ OBA Member? _____
OBA Number (for CLE credit): _____
I will be unable to attend the seminar. **Please Send Materials Only** (\$50.00): _____
Will you be joining us for the evening Social Hour and Steak Dinner? _____ Yes _____ No

For further inquiry, please contact Kyle Domnick at: 580.256.5517 or kyle@hodgdenlaw.com.
Please make check payable to the Woodward County Bar Association and mail with this registration form to: Careylyn Talley, Post Office Box 1331, Woodward, OK 73802.

NOTICE OF HEARING ON THE PETITION FOR REINSTATEMENT OF KIM KAKISH, SCBD #6276 TO MEMBERSHIP IN THE OKLAHOMA BAR ASSOCIATION

Notice is hereby given pursuant to Rule 11.3(b), Rules Governing Disciplinary Proceedings, 5 O.S., Ch. 1, App. 1-A, that a hearing will be held to determine if Kim Kakish should be reinstated to active membership in the Oklahoma Bar Association.

Any person desiring to be heard in opposition to or in support of the petition may appear before the Professional Responsibility Tribunal at the Oklahoma Bar Center at 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma, at 9:30 a.m. on **Tuesday, Aug. 25, 2015**. Any person wishing to appear should contact Gina Hendryx, General Counsel, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, Oklahoma 73152, telephone (405) 416-7007.

PROFESSIONAL RESPONSIBILITY TRIBUNAL

LAWYERS HELPING LAWYERS ASSISTANCE PROGRAM

You Are Not Alone.

Free 24-hour confidential assistance

- depression/anxiety • substance abuse
- stress • relationship challenges

800.364.7886

www.okbar.org/members/LawyersHelpingLawyers

Counseling and peer support are available.

Some services free as a member benefit.



Changes Proposed to the Rules Governing Disciplinary Proceedings

Member Comments Requested

The following are proposed changes to the Rules Governing Disciplinary Proceedings as proposed by the Professional Responsibility Commission. These changes are currently under consideration by the OBA Board of Governors. The proposed changes would give the Commission more discretion in the action it might take.

*Members of the OBA are encouraged to review the proposed changes and **submit any comments by Oct. 23, 2015,** 1) via email to RGDPRule3.3comments@okbar.org or 2) mail hard copy comments to RGDP Rule 3.3 Comments, OBA, P.O. Box 53036, Oklahoma City, OK 73152.*

Rules Governing Disciplinary Proceedings.
Chapter 1, App. 1-A

Rule 3. General Counsel.

§3.3. Grievances Against the General Counsel of the Association.

(a) Whenever a grievance ~~is filed~~, or information is received by the Commission which could lead to the filing of a formal complaint against the General Counsel of the Association, the members of the Commission, and the President and the Executive Director of the Association shall immediately be notified.

(b) If a disciplinary grievance is made against:

(1) The General Counsel or member of General Counsel's staff alleging grounds for the imposition of discipline pursuant to these Rules, the Professional Responsibility Commission (PRC) shall consider the matter on the basis of the grievance. After

review and consideration, the PRC may take any of the following actions or any combination thereof: (1) Require the General Counsel to make a response; (2) Appoint an Investigator; (3) Appoint a special counsel to investigate and present the case; or (4) Take such other steps as are necessary to facilitate the prompt resolution of the grievance. ~~the Professional Responsibility Commission shall appoint a special counsel to investigate and present the case;~~

(2) A member of the Professional Responsibility Commission, the President of the Oklahoma Bar Association with concurrence of the Board of Governors, shall appoint a special three (3) member Commission to act on the grievance in conformance with these Rules;

(3) A member of the Professional Responsibility Tribunal, all procedures mandated by these Rules shall be followed, except the Supreme Court shall appoint a special Tribunal Panel to hear the case in the event formal charges are filed.

(4) A member of the Supreme Court, the matter shall be referred to the Oklahoma Council on Judicial Complaints.

(c) The President and the Executive Director of the Association shall be kept fully informed of all action taken by the Commission in the matter.

End of Session Legislative Report - Part 2

By *Duchess Bartmess*

This report is part two of the Legislative Monitoring Committee end of session report. You can find part one at *OBJ* 86 1475 (July 11, 2015). Listed here are the balance of the measures being monitored by the committee that have been approved, other bills approved or vetoed which may be of interest to OBA members in their individual practices and proposed constitutional amendments to be submitted to the vote of the people.

Sunset bills, appropriation bills and bills naming roads, bridges or highways are not addressed in this report.

APPROVED BILLS MONITORED BY LMC

Children and Family Law Issues:

HB 1007 New law regarding obligation of religious official to solemnize a marriage.

HB 1042 Shared parenting time child support provisions.

HB 1078 Definitions and independent living plan provisions in Children's Code.

HB 1079 Allows foster parent to submit report to court for review hearing.

HB 1273 Definition of sexual exploitation in Children's Code.

HB 1320 Amends provisions regarding termination of parental rights.

HB 1409 Time period regarding voluntary and informed consent prior to abortion.



HB 1438 Requires continuing education courses for hospice administrators.

HB 1463 Procedures regarding statewide stroke prevention system.

HB 1834 Requires inquiry as to potential Indian lineage in regard to taking child into custody.

HB 1874 Licensing requirements for bail bondsmen.

HB 1918 Addresses court awarding custody to presumed father.

HB 2157 Enacts Family Support Accountability Act.

SB 292 Modifies definition of abuse regarding children.

SB 486 Addresses Uniform Interstate Family Support Act.

SB 60 Domestic violence issues including authorizing waivers and requiring training.

SB 511 Creates Advisory Council on child homelessness.

HB 1721 Creates "Oklahoma Unborn Child Protection from Dismemberment Abortion Act."

HB 2166 Confidentiality of records of Commission on Children and Youth.

SB 180 Guardians ad litem and court-appointment special advocates to meet with and observe child in appropriate settings, including current placement.

General Government Issues:

HB 1032 Exception to participation in executive sessions regarding property sales.

HB 1044 Creates Oklahoma Auto Salvage Act of 2015.

HB 1122 Addresses stray markings on documents submitted for filing with county clerk.

HB 1376 Relates to Public Employees Retirement System.

HB 1484 Filing procedures for initiative and referendum petitions.

HB 1567 Application of deductibles and co-payment or co-insurance provisions for state employees.

HB 1681 Addresses procedures regarding the Government Tort Claims Act.

HB 1749 Prohibits payroll deductions for membership in organization which collectively bargains on behalf of its membership.

HB 1902 Establishes civil immunity for removing child from motor vehicle using forcible entry.

HB 2182 Creates Incentive Evaluation Act.

SB 23 Open records exception for business information kept by higher education institution.

SB 28 Modifies requirements for state purchasing director.

SB 114 State agencies to provide change of address information to State Election Board.

Natural Resources Issues:

HB 1514 Addresses interested property owner in Concentrated Animal Feeding Operations Act.

OTHER VETOED BILLS

The following measures were vetoed:

HB 1748 Public finance-imposed requirements for disclosure of federal funds and analysis.

HB 1890 Addressed the Uniform Building Code Commission.

SB 141 Motor vehicles fees for reports.

SB 352 Public bidding authorized local bid preference.

SB 549 Modifies salaries of certain officers.

SB 591 Exceptions for professions and occupations apprentices for registration.

SB 676 Procedures necessary to obtain state authority in Clean Air Act.

CONSTITUTIONAL AMENDMENTS

Two proposed constitutional amendments were adopted and sent to the secretary of state for submission to the people for a vote:

HJR 1012 Regarding the right to engage in farming and ranching practices.

SJR 31 Addresses the death penalty and methods of execution.

OTHER APPROVED BILLS BY CATEGORY

Children

HB 1118 Creates the Child Care Center Bill of Rights.

HB 1903 Provides exemption regarding children under age of 18.

SB 115 Addresses criminal background checks for employees of medical foster homes.

SB 534 Creates Child Abuse Multi-disciplinary Team Account Fund and funding.

SB 721 Addresses trafficking in children.

Teachers

SB 20 Provides for certification of out-of-state teachers.

SB 706 Amends evaluation policies relating to teacher effectiveness.

SB 711 Expands reasons and procedures regarding teacher dismissal or non-re-employment.

Schools

HB 1268 Requirements for personal financial literacy passport for high school graduation.

HB 1521 Exclusions regarding teacher compensation.

HB 1684 Requires schools to establish sexual abuse prevention programs.

HB 1691 Authorizes boards of education to contract with public or private nonsectarian entity to provide educational and administrative services for the school district.

HB 2014 Creates Special Reserve School Resource Officer Act.

HB 2069 Change of residency of children in foster care.

SB 5 Immunity from liability for education employees for use of reasonable force.

SB 505 Creates Statewide Virtual Charter School Board Revolving Funds.

SB 630 Procedures regarding reading proficiency in grades 1-3.

SB 782 Twenty-seven page bill regarding charter schools requirements.

Revenue and Taxation

HB 1400 Requires county sales tax levy submitted to county voters to embrace but one subject.

HB 1407 Ad valorem taxation assessment percentages and procedures.

HB 1743 Clarifies Ad Valorem Tax Code proper parties on appeal.

HB 2131 Repeals provisions in Business Activity Code.

HB 2235 Authorizes tax commission to contract for technology systems, information and services to authenticate income tax returns and identify fraudulent refund claims.

HB 2236 Voluntary compliance initiative.

SB 335 Requires detailed schedules of descriptions and corresponding values by taxing jurisdiction of all pipeline company property listed to be given to county assessor.

SB 336 Sales tax exemptions.

SB 575 Income tax refund checkoffs.

Motor Vehicles

HB 2179 Modifies provisional driver license requirements.

SB 34 Allows online renewal for licenses and identification cards.

SB 390 Modifies restrictions for graduate Class D licenses.

SB 451 Used motor vehicles.

SB 465 Lien release provisions on motor vehicle certificates of title.

Consumer Credit

SB 375 Addresses credit service organizations and pawnshop licensing.

SB 376 Addresses administrative provisions pursuant to Uniform Consumer Credit Code.

SB 382 Procedures regarding supervised lenders.

Insurance

HB 1515 New law regarding cancer therapy insurance claims.

SB 439 Regulation of insurance adjusters.

Labor

HB 1001 Employment Security Act of 1980 coverage, tax and exemptions.

HB 1375 Repeals Minimum Wage on Public Works.

HB 1969 New law creating Oklahoma Employment First Act.

Open Records

HB 1037 Adds to information to be available pursuant to Oklahoma Open Records Act.

HB 1103 New law regarding report of contagious or infectious animal diseases under Open Records Act.

Cities and Towns

HB 1322 New law regarding limits on cities and towns adoption of ordinances.

HB 1456 Owner consent procedures for annexation.

SB 399 Modifies requirements for filing for municipal office.

SB 438 Municipal Campaign Finance and Financial Disclosure Act procedures.

SB 809 New law authorizing regulation by municipalities and other political subdivisions on issues incidental to oil and gas operations within its boundaries.

Criminal Law

HB 1350 Stalking and victim protection orders.

HB 1396 Carrying a handgun applications.

HB 1548 Courts to review and modify sentences.

SB 101 Adds new provisions relating to eligibility for licensure of bail bondsmen.

SB 167 Zone of safety restrictions applicable to convicted sex offenders.

SB 578 Changes control of long-term care decisions to Department of Corrections.

SB 586 Authorizing bail bondsman of same insurer to assist with apprehension.

SB 764 Authority of community sentencing planning council.

Intoxicating Liquor

SB 178 Intoxicating beverages regarding persons 21 years old.

SB 420 Creates licenses for small farm wineries with authority to bottle and sell wine.

SB 425 Forty-four page bill adding types of intoxicating liquors licenses authorized.

SB 690 New law regarding brewer sales agreements.

Other Approved Bills of Note

HB 1577 Increases time allow landlord to return security deposit.

HB 2168 Twenty-eight page bill modifying license or certificate qualifications for several professions and occupations.

HB 2233 Supreme Court revolving funds.

SB 249 Adds to authority to State Board of Behavioral Health Licensure.

SB 312 Additional special election procedures and limitations.

SB 370 Adds regulation of accounting business office during sale or transfer.

SB 377 Creates Oklahoma Mortgage Secure and Fair Enforcement Licensing Act.

SB 417 New law adding procedures for Department of Agriculture regarding abandoned or stolen property.

SB 763 Creates Independent Living Act.

SB 767 Addresses Administrative Workers' Compensation Act.

As always, this is not a complete list of all new or amended laws coming out of this legislative session. That list of governor-approved legislation is available through www.oklegislature.gov for anyone to check for laws of special interest not listed in this final report.

Also, because 2015 was the first general session of the 55th Oklahoma Legislature, many measures introduced were not acted upon. They, pursuant to legislative rules, can be acted upon during the next general session in 2016. Any bills designated for the committee to monitor which are still considered active will continue to be watched in the next session.

ABOUT THE AUTHOR



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



For the latest OBA news,
follow us [@OklahomaBar](https://twitter.com/OklahomaBar)
and [@OBACLE](https://twitter.com/OBACLE)

SOVEREIGNTY SYMPOSIUM XXVIII

OKLAHOMA CITY • JUNE 3-4, 2015



Oklahoma State Treasurer Ken Miller (left) and Oklahoma Supreme Court Vice-Chief Justice Doug Combs.



Keynote Speaker Baroness Emma Nicholson of Winterbourne and Oklahoma Supreme Court Justice Noma Gurich.



Lt. Col. Christopher C. Straub, U.S. Army, (ret.), Vice President, AMAR U.S. (left); OBA President-Elect Garvin Isaacs Jr.; Dr. Terry Neese.



Sovereignty Award Winner Gayleen Rabakukk and Oklahoma Supreme Court Justice James Winchester.

Dr. Jim Collard and Chairman John "Rocky" Barrett of the Citizen Potawatomi Nation.



All photos by Stu Ostler



East Central University President and OBA member John R. Hargrave (left) and Judge Jerome Holmes, U.S. Court of Appeals for the 10th Circuit.



Kevin Washburn, Assistant Secretary of the Interior for Indian Affairs (left) and Oklahoma Supreme Court Chief Justice John Reif.



OCU President Robert Henry, playwright Mary Kathryn Nagle, playwright and Sovereignty Symposium Honored One Suzan Shown Harjo and John Echohawk, Executive Director, Native American Rights Fund.



Lady Chairman Amber Toppah of the Kiowa Tribe of Oklahoma presents a blanket to Baroness Emma Nicholson.



Baroness Emma Nicholson with Chief Justice John Reif.



Oklahoma Supreme Court Justice Steven Taylor and Gov. Mary Fallin.



Suzan Shown Harjo receiving a painting from Brent Greenwood.



Associate District Judge Elizabeth Brown, Adair County, and attorney C. Steven Hager, Oklahoma Indian Legal Services and winner of the 2015 Hargrave Prize for faculty writing.



Maj. Gen. William P. Bowden, U.S. Air Force (ret.).



Brad Morse, Dean of the Faculty of Law, Thompson Rivers University, British Columbia, Canada; Judge Jerry Goodman, Oklahoma Court of Civil Appeals, Tulsa; and Professor Lindsay Robertson, OU College of Law.



Dr. Jim Collard, Citizen Potawatomi Nation Director of Planning and Economic Development; Derek Osborn, Legislative Assistant for Sen. James Lankford; Pat Neeley, Undersecretary of Commerce for Business Affairs, Chickasaw Nation; Jon Chiappe, Director, Research and Economic Analysis, Oklahoma Department of Commerce; Oklahoma Secretary of State Chris Benge; Oklahoma State Treasurer Ken Miller; David Nimmo, CEO/President, Chickasaw Nation Industries; Judge Brian Goree, Oklahoma Court of Civil Appeals, Oklahoma City.

2016 OBA Board of Governors Vacancies

Nominating Petition deadline: 5 p.m. Friday, Sept. 4, 2015

OFFICERS

President Elect

Current: Garvin Isaacs Jr., Oklahoma City
Mr. Isaacs automatically becomes
OBA president Jan. 1, 2016
(One-year term: 2016)
Nominees: **Vacant**

Vice President

Current: Glenn A. Devoll, Enid
(One-year term: 2016)
Nominee: **Vacant**

BOARD OF GOVERNORS

Supreme Court Judicial District Three

Current: Robert D. Gifford II, Oklahoma City
Oklahoma County
(Three-year term: 2016-2018)
Nominee: **Vacant**

Supreme Court Judicial District Four

Current: Douglas L. Jackson, Enid
Alfalfa, Beaver, Beckham, Blaine, Cimarron, Custer,
Dewey, Ellis, Garfield, Harper, Kingfisher, Major,
Roger Mills, Texas, Washita, Woods and Woodward
(Three-year term: 2016-2018)
Nominee: **Vacant**

Supreme Court Judicial District Five

Current: Rickey Joe Knighton II, Norman
Carter, Cleveland, Garvin, Grady, Jefferson, Love,
McClain, Murray and Stephens counties
(Three-year term: 2016-2018)
Nominee: **Vacant**

Member At Large

Current: Richard Stevens, Norman
(Three-year term: 2016-2018)
Nominee: **Vacant**

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. 4, during the Nov. 4-6 OBA Annual Meeting. Terms of the present OBA officers and governors will terminate Dec. 31, 2015.

Nomination and resolution forms can be found at www.okbar.org/members/BOG/BOGvacancies.

Open a Law Office and Discover Value in Your OBA Membership

By John Morris Williams

It has been a long time since I opened a law office. I remember my wise aunt asking me how it was going when I opened my own office. My response was that I was fearful. She quickly replied, "You would be a fool not to be."

Opening an office can be a daunting task for someone who has never managed a business, made a payroll or acquired office space. There can be many moving parts to starting your own practice. But it was through this experience that I learned the value of my professional associations. While I do not agree with the American Bar Association on every issue, I can honestly say it has the best publications on opening a law office. Having access to its publications is one of the best values of membership.

The Oklahoma Bar Association has unparalleled resources to open a law office. The OBA Management Assistance Program (MAP) offers an extensive array of products and services. You can borrow books from its lending library, attend "Opening Your Practice" programming that includes free lunch and get



great practice tips from Jim Calloway's blog and much, much more. You would be a fool to open a law office in Oklahoma and not utilize these great resources. Sure you can find most of the information on your own, but when you are in the business of selling time, this becomes a "no brainer."

The OBA MAP also can give you invaluable assistance in picking billing and timekeeping software, software to create forms and documents and information on marketing in the digital age. Two full-time staff members devote their time everyday to exploring, testing and communicating the latest in law office technology, trends in the practice of law and understanding the complexities in

practicing law in the 21st century. Things are a changin' and before you hang out a shingle (either literally or digitally), you best call the OBA MAP staff at 405-416-7008 or 800-522-8065.

If you make any money, you are going to need a banking relationship. If you handle someone else's money (including unearned client retainers), the

Oklahoma Rules of Professional Conduct 1.15 require that you have a trust account in an approved bank and that your trust account be set up as an IOLTA account (Interest on Lawyers Trust Account). The Oklahoma Bar Foundation can assist you in locating an approved bank. Also, your bank will need to be in compliance with section K of Rule 1.15 for the purpose of overdraft reporting compliance. The OBA general counsel maintains a list of banks approved for section K compliance.

Your banking relationship will be helpful in compliance with withholding taxes for employees and making quarterly tax deposits. Failure to withhold and timely remit withholding taxes has been the basis for serious

disciplinary action by the Oklahoma Supreme Court. Setting up your banking relationships, tax accountings and your office procedures to ensure compliance with all state and federal tax laws and regulations is not only good business, it is essential to avoid potential loss of licensure.

Lastly, you may need to acquire health, disability or loss of income insurance, malpractice insurance and set up your own retirement plan. The OBA has endorsed relationships with pro-

viders for all these services. You can review the list of providers and much more on the OBA website at www.okbar.org/members/Members/Benefits.

Opening your own law office can be both an exciting and overwhelming task. When it comes to helping you get organized and running an efficient, professional office, the OBA offers unmatched knowledge and resources. If there is ever a time to realize the value of your membership, it is when you

open, expand or improve your practice. From software selection to marketing in the digital age the OBA has the resources and tools to assist you. Don't open your office without us!



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

INVESTIGATOR OFFICE OF THE GENERAL COUNSEL OKLAHOMA BAR ASSOCIATION

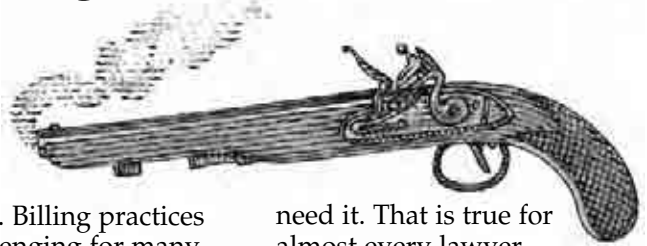
Applications are now being accepted for an experienced Investigator for the Office of the General Counsel, Oklahoma Bar Association. Investigators review allegations against members of the bar which may involve violations of the rules of professional conduct. Duties include interviewing witnesses, reviewing legal documents and financial statements, preparing reports, and testifying at disciplinary and reinstatement hearings before the Professional Responsibility Tribunal. Applicants should have a degree from an accredited university or comparable work experience, possess excellent writing skills, and be able to work independently. Some travel may be required. Law enforcement, accounting, legal, or financial crimes investigation experience strongly preferred. Salary negotiable, depending upon credentials and experience. Excellent benefits including retirement, health, and life insurance. Résumés and cover letters should be submitted by September 1, 2015 to Gina L. Hendryx, General Counsel, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152 or electronically to ginah@okbar.org.

THE OKLAHOMA BAR ASSOCIATION IS AN EQUAL OPPORTUNITY EMPLOYER

The Smoke Clears...

...After the Practice Management Shootout at the OK Bar

By Jim Calloway



A great, enthusiastic crowd attended our Practice Management Shootout at the OK Bar at the 2015 OBA Solo & Small Firm Conference. Read on to learn how we are sharing this information with the other OBA members.

First of all, thanks to the representatives for our six participants: MyCase, Firm Manager, Firm Central, Clio, RocketMatter and PracticeMaster/Tabs3. It is more difficult to cover several topics in 10 minutes than you may think and there is more pressure in a competitive environment.

We had seven presentations in the shootout. I took the first 10 minutes to make my case as to why I believe practice management software is critical and the materials supplied to the attendees included an essay from me on that topic.

I think the one thing all the attendees learned is that even though there are several different practice management solutions, they share much in common. Organizing scanned documents into client folders and subfolders, managing a calendar and providing for note-taking within each client file can only be done in a few dif-

ferent ways. Billing practices can be challenging for many reasons, but most completed law firm bills look alike. However, the visual interface to do those tasks can be set up in many different ways. But there are also differences between the product — being hosted in the cloud versus installed on your office server is one difference.

We also saw at the conference some products may have synchronization with other software packages the firm may already use. The focus of the product can be different as well. One can have detailed built-in financial reports that one law firm really wants while another may focus on client communication and collaboration tools. That is why there are often free trials or money-back guarantees. One important consideration is the interface. You should select a product with a visual interface you find comfortable because you will be looking at that interface every day for many hours each week.

If you already have a great practice management software solution that is working well for you, I congratulate you. If you don't have practice management software now, you

need it. That is true for almost every lawyer reading this.

(I will now pause for a moment while you mentally catalog reasons why your law firm is the exception to that rule.)

But for most readers, you are not the exception. The term "paperless office" may still bother some lawyers. Many believe computers have caused more printed pages than they have reduced. But digital workflow makes sense for you on many levels.

Your future demands instant access to documents when you need them, a complete backup of all important information in your client files, less time spent looking for lost files or lost documents, the ability to make a billing entry or reminder quickly whether at the office or through a mobile device and the ability to easily share documents with clients, co-counsel or opposing counsel electronically.

Practice management software, including the cloud-based services, lets you improve in all of those areas. Those who attended the

Practice Management Shootout now have much more information about what tool to select. We want to share that information with you.

Just log into MyOKBar and you will find a PDF file named "Shootout at the OK Bar Materials" right there on the initial page. It is a free, 86-page file containing my essay about practice management software and the presentation materials from our shootout participants. It won't be posted there forever as we make other changes, so go ahead and download it now.

From my point of view, I don't care as much which product or service you select as much as I care that you *do* select one. This can be a challenging decision, involving an investment of otherwise billable hours. It is easy to research and research and then get back to the legal work that you have to do for clients. Once you put in the initial few hours of research, putting in another day of research is not likely to benefit you. The right answer for your firm consists of setting the date on which you make this decision. Our six shootout vendors are not the only tools that do this, but they are all fine choices.

Invest the time and research. Make a choice. And then invest the time learning how to use your new practice management tool whether it is

“ Just log into MyOKBar and you will find a PDF file named “Shootout at the OK Bar Materials” right there on the initial page. It is a free, 86-page file containing my essay about practice management software and the presentation materials from our shootout participants. ”

through online video tutorials, telephone calls with the helpdesk, reading written materials or having a consultant to help you with the initial setup and training.

I hope that after several months you will be comfortable

with the change and will regret waiting so long to make the transition.

Downloading the file we are providing for you is the first step. Do that today. Then you can set your deadline to arrive at a final decision. I have spent a lot of time advising Oklahoma lawyers about improving their practices and my advice to you is that this is a most important step because otherwise inertia and familiar practices will keep you from making this big change. A free trial is important as is watching online videos and reading the online reviews.

Whether opening your own law practice or maintaining a well established one, these tools are important for your future and for your future clients.

In the next issue of the *Oklahoma Bar Journal*, I will cover the processes and procedures involved in implementing digital work flow using practice management software.

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!

Things Have Changed!

What You Need to Know About Flat Fees, Nonrefundable Retainers and Trust Accounts

By Joe Balkenbush

Oklahoma attorneys have often used fee agreements which provided for a flat fee, nonrefundable retainer stating that the fee was earned upon receipt. Upon execution of the fee agreement and payment of the retainer, the attorney would deposit the funds in his/her operating account. If a portion of the retainer needed to be refunded, the attorney would pay the refund out of their operating account.

Per the Supreme Court of Oklahoma in *State ex rel. Oklahoma Bar Association v. Weigel*,¹ that practice is clearly no longer appropriate. In *Weigel*, the court stated in its ruling that "The use of the term 'nonrefundable retainer' to represent an advance payment of fees for legal services the attorney will perform in the future is impermissible. Such fees may be designated as fixed fees but cannot impair a client's rights under Rule 1.16(d). The fees are not 'nonrefundable' because if the attorney withdraws or is terminated before completing the work, the attorney must refund the unearned portion of the advance."

The facts of the case relevant to this article are that Mr. Weigel had entered into a flat fee nonrefundable retainer agree-

ment with a number of his clients. He then deposited the retainers in his operating account. Subsequently, he disbursed all or some of the funds from the operating account for personal and business expenses prior to "earning" the amounts he disbursed.

Let's take a look at the applicable Oklahoma Rules of Professional Conduct (ORPC) when considering flat fees, nonrefundable retainers and trust accounts. They are:

- Rule 1.5 titled "Fees"
- Rule 1.15 titled "Safekeeping Property" and
- Rule 1.16 titled "Declining or Terminating Representation."

Rule 1.5 provides in pertinent part:

- a) A lawyer shall not make an agreement for, charge or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
 - 1) the time and labor required, the novelty and difficulty of the questions involved, and the skill

requisite to perform the legal service properly;

- 2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - 3) the fee customarily charged in the locality for similar legal services;
 - 4) the amount involved and the results obtained;
 - 5) the time limitations imposed by the client or by the circumstances;
 - 6) the nature and length of the professional relationship with the client;
 - 7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
 - 8) whether the fee is fixed or contingent.
- b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the repre-

sentation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

Rule 1.15 provides in pertinent part:

- a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the written consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

Rule 1.16 provides in pertinent part:

- d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expenses that has not been earned or incurred. The lawyer may

retain papers relating to the client to the extent permitted by other law.

When Rules 1.5, 1.15 and 1.16 are read in conjunction with the court's ruling in *Weigel*, it is clear that attorneys who use fee agreements that provide for payment of a flat fee must deposit the retainer into their trust account. The word "nonrefundable" should not be used. Last, the funds may only be withdrawn when the fees are earned.

I used the "thesaurus" tab on my computer to try to find another word for non-refundable. Even the computer does not have another word. If the Supreme Court ruling in *Weigel* isn't enough for you, surely the fact that the thesaurus couldn't find a replacement is a good reason not to use the word!

FLAT FEES/FIXED FEES

Flat fees (fixed fees) have been used by attorneys and clients for centuries. Essentially, they are fees paid by a client at the outset of a matter intended to be the entire fee attributable to a specific task. Fees paid in advance for this purpose are intended to cover a specified amount of work by the attorney for a particular matter. The attorney usually does not receive any additional fee even if more work is required, unless specifically agreed to by the client. Clients often prefer fees to be a specified sum because it allows them to know the total cost for legal services in advance, permitting them to budget based on a fixed sum, rather than face potentially unlimited hourly fees that may exceed their ability to pay.

Be sure to:

- Delete the word "nonrefundable" from your fee agreements.
- Include language in your fee agreement regarding the procedure/plan concerning how the retainer will be withdrawn.
- Deposit all retainers in your trust account.
- Only take funds from your trust account after the work has been performed.
- If representation is terminated for whatever reason, refund any unearned portion of the retainer to the client promptly.

The next question is when are the fees earned? Fees are earned when work is performed. The retainer may be withdrawn in stages, but there must be work that is done to justify the withdrawal.

Here are a couple of examples:

- In a criminal case, the attorney agrees to represent a client up to the preliminary hearing for a flat fee. Assume there are four separate "stages" — the client meeting, initial court appearance, investigation and entry of a plea. It would be reasonable to withdraw 25 percent of the retainer at the end of each stage.
- In a bankruptcy case, there might be five stages. The initial client meeting, preparation of the appropriate pleadings, review and execution of the pleadings by the client, appearance at a Section 341 meeting of creditors

and the discharge in bankruptcy. Therefore, 20 percent of the retainer could be withdrawn at each stage.

The point is to develop a reasonable procedure/plan to withdraw the retainer as work is performed and fees are earned. Both the Office of the General Counsel and I strongly advise you to include the procedure/plan to withdraw the retainer in your fee agreement. That way the client has been informed and has agreed to the procedure/plan in writing. They won't be able to later successfully object to how the retainer was withdrawn.

Again, the attorney and client can agree to use any reasonable method to withdraw the retainer. It does not need to be tied to hours worked, but it must be reasonable. So long as there is a written agreement between the attorney and client and the method of withdrawal is reasonable, you will not run afoul of the ORPC.

It all goes back to the fact that fees must be *earned* to be taken. If no work has been done, then the fees have not been earned.² Regarding Rule 1.15 titled Safekeeping Property (generically known as the rule regarding trust accounts), the safe and simple interpretation is that all unearned legal fees must be deposited in your trust account, including but not limited to all retainers, whether they are flat fees or hourly fees. Only money that has been earned may be removed from your trust account and deposited into your operating account.

TERMINATION OF REPRESENTATION BEFORE THE CASE IS CONCLUDED

Seems pretty uncomplicated so far, right? The problem arises if representation is terminated before the case is concluded. That situation invokes application of Rule 1.16 (d). In the criminal case scenario above, per the flat fee agreement, the attorney agreed to represent the client up to preliminary hearing. If representation is terminated after the initial court appearance (two stages completed), the attorney has only performed 50 percent of the work he/she agreed to perform. Therefore, 50 percent of the retainer should be refunded. If the attorney has followed the above procedure, there would still be 50 percent of the retainer in a trust account.

Regarding the bankruptcy case example above, assume that the client won the lottery after the Section 341 hearing. Obviously, the case would have to be dismissed. Therefore, the attorney has earned 80 percent (four stages completed) of the retainer fee, and 20 percent of the retainer should be refunded.

Rules 1.16 and 1.15(b) require a lawyer to refund the unearned retainer and to do so in a timely manner.

On Dec. 13, 2002, OBA Ethics Opinion No. 317 was issued. The opinion dealt with (among other things) the issue of flat fee nonrefundable retainers. Ethics Opinion 317 stated in relevant part that "the LEC (Legal Ethics Commission) does not offer an opinion regarding the enforceable nature of fee contracts containing nonrefundable 'engagement fee' or 'fixed fee' provisions." The

opinion went on to provide that "the likelihood of enforcement of these types of nonrefundable retainers is enhanced by implementing certain safeguards." Essentially, per Ethics Opinion 317, flat fee nonrefundable retainer agreements would be acceptable (not an ORPC violation) so long as "certain safeguards" were used.

The Supreme Court's ruling in *Weigel* at least clarifies Ethics Opinion No. 317. As set out above, the Supreme Court ruled that "the use of the term 'nonrefundable retainer' to represent an advance payment of fees for hours of legal services that the attorney will perform in the future is impermissible. Such fees may be designated as fixed fees, but cannot impair a client's rights under Rule 1.16(d). The fees are not 'nonrefundable' because if the attorney withdraws or is terminated before completing the work, the attorney must refund the unearned portion of the advance."

The defendant attorney in *Weigel* attempted to rely upon Ethics Opinion 317 as support for his actions, arguing that opinion addressed "availability fees, fixed fees and hourly fees" that were designated as a nonrefundable retainer in the fee agreement. As is evident from the above, even if it was previously acceptable, it is no longer.

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

1. 2014 OK 4, 321 P.3d 168 (Okla. 2014).

2. See ORPC 1.5 and the comments to the rule.

Meeting Summaries

The Oklahoma Bar Association Board of Governors met at the Enid Event Center and Convention Hall in Enid on April 24, 2015.

REPORT OF THE PRESIDENT

President Poarch reported he attended OBA Day at the Capitol, Cleveland County Bar Association luncheon, Annual Meeting planning meeting and President's Leadership Initiative meeting. He filmed a segment for the OBA *Ask A Lawyer* TV show on OETA and participated in the ribbon-cutting ceremony for the grand opening of OCU Law's new building and in the presentation of awards at the Supreme Court Courtroom to school children (K-12) who won OBA Law Day contests. He spoke at both the OU Law Pro Bono Awards ceremony and at the swearing in of new admittees.

REPORT OF THE VICE PRESIDENT

Vice President Devoll reported he worked on preparations for hosting the April Board of Governors meeting in Enid and contacted state legislators on several occasions regarding pending legislation. He attended the Garfield County Bar Association meeting and OBA Bench and Bar Committee meeting via telephone.

REPORT OF THE PRESIDENT-ELECT

President-Elect Isaacs reported he participated in OBA Day at the Capitol, filmed a seg-

ment for the *Ask A Lawyer* TV show, spoke at the Oklahoma Paralegal Association spring seminar and attended the funeral of former board member Jerry McCombs.

REPORT OF THE PAST PRESIDENT

Past President DeMoss reported she participated in the Oklahoma's Promise program presentation to eighth graders at Central Junior High in Tulsa, contacted legislators regarding proposed bills and worked on planning for the Master Lawyers Section and Litigation Section.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended OBA Day at the Capitol, Oklahoma Bar Foundation retreat, Law Day contest awards presentation at the Supreme Court Courtroom, funeral of former board member Jerry McCombs, monthly OBA staff celebration, Oklahoma's Promise presentation in Tulsa and new admittee ceremonies. He spoke at the Pittsburg County Bar Association meeting and met with the visiting Pennsylvania MCLE team. He participated in meetings with the Bar Association Technology Committee, President-Elect Isaacs to present the president's book, President Poarch and staff about the OBA Annual Meeting, staff directors, Legislative Monitoring Committee, Bench and Bar Committee and

YLD chair-elect to discuss 2016 programs.

BOARD MEMBER REPORTS

Governor Gifford reported he encouraged Oklahoma House of Representative committee members to vote against SB 583, presented at the OBA CLE "Movie Night at the Supreme Court" that showed *Breaker Morant*, attended the Oklahoma County Bar Association board of directors meeting and OCU Law's grand opening. **Governor Gotwals** reported he attended OBA Day at the Capitol, Tulsa County Bar Foundation/Legal Aid Services of Oklahoma meeting, Quality Assurance Panel for the Tulsa County Family Court meeting, special meeting for Tulsa Central High School Foundation to discuss a basketball championship ring fundraiser, OBA ADR Section CLE via teleconference at OSU-Tulsa, Tulsa County Bar Association Family Law Section meeting and TCBA board of directors meeting. **Governor Hicks** reported he attended OBA Day at the Capitol, April Tulsa County Bar Association Executive Committee meeting, TCBA board meeting and teleconference of the ABA Metropolitan Bar Conference Executive Committee. He met with Tulsa County Presiding Judge Carlos Chappelle regarding pending legislative issues affecting the judiciary, reviewed minutes of the March 31 OBA Access to Justice Committee meeting

chaired by Michael Speck, chaired the April Tulsa County Bar Foundation Charity Golf Committee meeting to finalize details for the May 18 event and assisted in obtaining a commendation from Gov. Fallin in honor of the 50-year anniversary of practice by Tulsa lawyer Sam Daniel Sr. **Governor Jackson** reported he attended OBA Day at the Capitol and the Garfield County Bar Association meeting. **Governor Kinslow** reported he participated in OBA Day at the Capitol, encouraged Oklahoma House of Representatives committee members to vote against SB 583 and attended the Clients' Security Fund Committee meeting. **Governor Knighton** reported he attended OBA Day at the Capitol, April Cleveland County Bar Association meeting, Lawyers Helping Lawyers Assistance Program meeting, Law-related Education Committee meeting and Law Day program at the OU College of Law for gifted and talented students at Longfellow Middle School. **Governor Marshall** reported he attended OBA Day at the Capitol and the Pottawatomie County Bar Association April meeting. **Governor Porter** reported she attended Day at the Capitol, OCU Law's grand opening, Canadian County Bar Association March meeting, Women in Law Committee meeting and swearing-in of new attorneys. She moderated and presented at an OBA-CLE program and presented CLE for the Oklahoma County Criminal Defense Lawyers Association. **Governor Sain** reported he attended the McCurtain County Bar Association luncheon, McCurtain Memorial Hospital Foundation board meeting. He also conducted an auction for the Edmond Public Schools Foun-

dation. **Governor Stevens** reported he attended OBA Day at the Capitol and the April Cleveland County Bar Association meeting. **Governor Tucker** reported he attended the Muskogee County Bar Association meeting and county bar spring banquet planning meeting. **Governor Weeden** reported he attended OBA Day at the Capitol, reported Law Day contest results to the Ottawa County Bar Association and met with the Ottawa County Law Day chair regarding the local contest.

YOUNG LAWYERS DIVISION REPORT

Governor McGill, unable to attend the meeting, reported via email she participated in the New Attorney Orientation Committee teleconference, Kick it Forward sponsorship meetings, ABA YLD Four Corners Leadership Conference in Aspen and YLD membership event at Pete's Place in McAlester. She attended OBA Day at the Capitol, dedication of the Conger Courtroom at OCU Law School and spoke at the new admittee swearing-in ceremonies.

BOARD LIAISON REPORTS

Governor Gotwals reported the Professionalism Committee discussed its last symposium and will be voting at its next meeting on whether to hold another symposium this year. The committee is also considering submitting regular articles to the *Oklahoma Bar Journal* and working with Oklahoma's law schools. Governor Knighton reported the Lawyers Helping Lawyers Committee is discussing fundraising and is struggling with how to motivate committee members to attend meetings.

Governor Hicks reported the Access to Justice Committee met to brainstorm ideas and will hold its next meeting June 2. Executive Director Williams reported the Solo & Small Firm Conference has been very successful this year in recruiting sponsors. One of the conference sessions will be a "shoot out" of six vendors offering products for solo and small firm lawyers. Governor Knighton reported the OBA Law-related Education program recently hosted Oklahoma Close Up, a four-day government studies program for high school students designed to strengthen knowledge of the political process. Registration is now open for the Hatton W. Sumners Teacher Institute that will be offered by the OBA in the summer. The institute, made possible with a grant from the Sumners Foundation, provides teachers with materials to enrich social studies programs. He also said the LRE Committee discussed bringing back the Supreme Court Teacher of the Year award. It was reported the Diversity Committee is seeking nominations for OBA Diversity Awards. Governor Stevens reported the Rules of Professional Conduct Committee is still working on its proposal for changes to one last issue. Vice President Devoll and Executive Director Williams reported the Bench and Bar Committee met and discussed pending legislation. Governor Kinslow reported the Clients' Security Fund Committee met to review submitted claims. Governor Porter reported the Women in Law Committee is working to finalize its keynote speaker for its conference this year. She said the committee joined with Lawyers Fighting Hunger to provide Easter dinners to 500 families in need in

the Tulsa area. Committee members collected and distributed more than 5,000 Easter eggs filled with candy to families attending the event.

REPORT OF THE GENERAL COUNSEL

Executive Director Williams reported General Counsel Hendryx was out on medical leave. A written report of Professional Responsibility Commission actions and OBA disciplinary matters will be submitted at the next meeting.

NOMINEES FOR THE OKLAHOMA DOMESTIC VIOLENCE FATALITY REVIEW BOARD

The board voted to ratify the email vote to approve the nominations of Karen Mueller, Oklahoma City; Cindee Pichot, Noble; and Heather Cline, Oklahoma City; to the attorney general for consideration and appointment of one to the Oklahoma Domestic Violence Fatality Review Board. The term expires June 30, 2017.

DISTRICT ATTORNEYS COUNCIL APPOINTMENT

The board approved President Poarch's recommendation to reappoint John M. Wampler, Duke, to the District Attorneys Council. The term expires June 30, 2018.

PROFESSIONAL RESPONSIBILITY TRIBUNAL APPOINTMENTS

The board approved President Poarch's recommendation to reappoint Tom Gruber, Oklahoma City; Mary Quinn-Cooper, Tulsa; Gerald L. Hilsher, Tulsa; and M. Joe Crosthwait, Midwest City; to the Professional Responsibility Tribunal. Their terms expire June 30, 2018.

LEGISLATIVE REPORT

Executive Director Williams briefed the board on pending legislation.

RESOLUTIONS

The board voted to issue resolutions of appreciation to the Gungoll Jackson law firm, Garfield County Bar Association, County Bar President Karig Culver, Vice President Glenn Devoll and Gungoll Jackson Administrative Assistant Jackie McFarland for their hospitality and efforts in hosting a Thursday evening reception and dinner at Groendyke Lodge in conjunction with the board's meeting in Enid Friday morning.



The Oklahoma Bar Association Board of Governors met at The Price Tower in Bartlesville on May 29, 2015.

REPORT OF THE PRESIDENT

President Poarch reported he spoke at the Seminole County Law Day luncheon and monitored legislative initiatives and budgeting issues as the session closed. He attended the dinner for the Board of Governors hosted by the Garfield County Bar Association in Enid, Oklahoma County Bar Association Law Day luncheon, Oklahoma Conference on Aging VIP reception and Master Lawyers Section meeting.

REPORT OF THE VICE PRESIDENT

Vice President Devoll reported he attended the Bench and Bar Committee meeting, dinner for the Board of Governors hosted by the Garfield County Bar Association and Garfield County Bar Association meet-

ing. He helped finalize plans for the board meeting in Enid.

REPORT OF THE PRESIDENT-ELECT

President-Elect Isaacs reported he spoke on the history of trial by jury at both the Tri-County Bar Association (Choctaw, McCurtain and Pushmataha counties) meeting in Idabel and the Pittsburg County Bar Association Law Day event in McAlester. He also attended the Oklahoma County Bar Association Law Day luncheon.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended a meeting with the software supplier regarding progress on the new management software, Seminole County Law Day event, Tulsa County Law Day event, Payne County Law Day dinner, Muskogee County Law Day dinner, meetings on legislative issues, meeting with the Mexican consul, Access to Justice Commission meeting, Bench and Bar Committee meeting, meeting on a new HVAC system, monthly staff celebration, staff directors meeting and Washington County Bar Association dinner. He also met with East Central University's president, instructor and students in the paralegal program and gave them a tour of the bar center.

BOARD MEMBER REPORTS

Governor Gifford, unable to attend the meeting, reported via email he attended the dinner hosted by the Garfield County Bar Association and Oklahoma County Bar Association board of directors meeting. He participated in the CLE Movie Night with the Supreme Court. **Governor**

Gotwals reported he attended two Quality Assurance Panel meetings, Tulsa County Bar Association/Tulsa County Bar Foundation Law Day luncheon at the Tulsa Country Club, Alternative Dispute Resolution Section meeting and CLE via video conference at OSU-Tulsa, Inns of Court spring banquet honoring the life of Judge Jim Ellison, OBA Master Lawyers Section lunch and learn on technology tips presented by OBA Management Assistance Program Director Jim Calloway, Skiatook Schools official building dedication for the Brooks Walton Activity Center, TCBA Family Law Section meeting, TCBA board of directors meeting, TCBA Capital Campaign Steering Committee meeting and TCBA Brown Bag CLE that featured Chief Justice John F. Reif speaking on "The Separation of Powers." He also conducted exit interviews for seniors graduating from Tulsa Central High School. **Governor Hicks** reported he attended the Law Day luncheon for Tulsa County, TU law school alumni gala at Gilcrease Museum, TCBA Executive Committee meeting and TCBA board of directors meeting. He also chaired the TCBF golf tournament at Bailey Ranch Golf Club raising about \$30,000 for charities and participated in a teleconference board meeting of the National Conference of Bar Presidents Metro Bar Caucus. **Governor Jackson** reported he attended the Garfield County Bar Association May meeting, county bar's reception and dinner for the Board of Governors and Civil Procedure and Evidence Code Committee meeting. **Governor Kinslow** reported he attended the Comanche County Law Day luncheon. **Governor Knighton** reported he attend-

ed the Cleveland County Bar Association meeting and Lawyers Helping Lawyers Committee Assistance Program meeting. He also presented two hours of continuing education to the Oklahoma Municipal Court Clerks Association. **Governor Marshall** reported he attended the Garfield County Bar Association reception, Seminole County Bar Association luncheon and Muskogee County Bar Association Law Day banquet. **Governor Porter** reported she attended the Tri-County Bar Association Law Day banquet in Idabel and ReMerge luncheon on behalf of the Women in Law Committee. **Governor Sain** reported he attended the McCurtain Memorial Hospital Foundation Board meeting, Tri-County Bar Association Law Day banquet and McCurtain County Bar Association luncheon. **Governor Stevens** reported he attended the Cleveland County Bar Association meeting, CCBA Law Day lecture, CCBA Ask A Lawyer, CCBA Law Day reception and Garfield County Bar Association reception for the Board of Governors. **Governor Tucker** reported he attended the Muskogee County Bar spring banquet held in conjunction with Law Day, TU Law alumni gala, Muskogee County Bar Association monthly meeting and board event hosted by the Garfield County Bar Association. He also presented one hour of continuing education at the Oklahoma Clerks and Treasurers Conference held in McAlester. **Governor Weedn** reported he hosted Law Day activities at his firm in Ottawa County, helped organize the trial of *Wolf v. Pig* presented by lawyers to local elementary students who served as the jury and presented a bar association award at Miami High

School to Lillian Swingle for her artwork entered in the OBA Law Day contest. He attended the Ottawa County Bar Association meeting.

YOUNG LAWYERS DIVISION REPORT

Governor McGill reported she chaired the YLD April board meeting and participated in a YLD conference call. She attended several meetings about the Kick it Forward Program and ABA YLD spring conference in Tampa, Florida.

BOARD LIAISON REPORTS

Past President DeMoss reported the Law Schools Committee has completed its annual visits to the three law schools. Governor Gotwals reported the Professionalism Committee voted to hold a symposium this year. The committee is working on a new definition of professionalism and is reevaluating committee goals. Governor Knighton reported the Law-related Education Committee is working on criteria for a Teacher of the Year Award. He also reported the Lawyers Helping Lawyers Committee will hold a discussion group and have a booth at the Solo & Small Firm Conference. The committee also plans to offer a breakfast meeting with a speaker during the OBA Annual Meeting. Governor McGill reported the Diversity Committee is currently accepting nominations for OBA Diversity Awards and plans to hold two social events this year. Governor Porter reported the Women in Law Committee will hold its conference Sept. 17 at the Embassy Suites in Oklahoma City and has selected Carey Lohrenz, first female naval aviator to fly the F-14 Tomcat in the U.S. military, as the key-

note speaker. She said the committee has formed a partnership with ReMerge, a female diversion program in Oklahoma County designed to transform pregnant women and mothers facing incarceration into productive community citizens. Executive Director Williams reported the Bench and Bar Committee discussed the judicial budget approved by the Legislature at its recent meeting. Governor Kinslow reported a task force has been organized for the Client's Security Fund, and the task force will submit a proposal to the Board of Governors for consideration by the House of Delegates.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported a written report of Professional Responsibility Commission actions and OBA disciplinary matters for April was submitted to the board for its review. She said the PRC will hold its annual meeting in late June and will elect new leaders. She briefed board members on the PRC's composition, purpose and how it operates. The Professional Responsibility Tribunal will also meet in June.

GOVERNMENT AND ADMINISTRATIVE LAW PRACTICE SECTION DUES INCREASE

The board approved the increase of Government and Administrative Law Practice Section dues from \$10 to \$15 annually beginning in 2016 as requested by the section.

ETHICS COUNSEL TRAVEL EXPENSES

The board approved the reimbursement for meals of Ethics Counsel Joe Balkenbush

during out-of-state travel to speak at the Workers' Compensation Section conference.

APPLICATION TO SUSPEND MEMBERS FOR FAILURE TO PAY 2015 DUES

The board authorized Executive Director Williams to submit a recommendation to the Supreme Court to suspend OBA members for nonpayment of 2015 dues.

APPLICATION TO SUSPEND MEMBERS FOR FAILURE TO COMPLY WITH 2014 MCLE REQUIREMENTS

The board authorized Executive Director Williams to submit a recommendation to the Supreme Court to suspend OBA members for failure to comply with 2014 MCLE requirements.

APPLICATION TO STRIKE MEMBERS FOR FAILURE TO PAY 2014 DUES

The board authorized Executive Director Williams to submit a recommendation to the Supreme Court to strike OBA members for failure to reinstate after suspension for nonpayment of 2014 dues.

APPLICATION TO STRIKE MEMBERS FOR FAILURE TO COMPLY WITH 2013 MCLE REQUIREMENTS

The board authorized Executive Director Williams to submit a recommendation to the Supreme Court to strike OBA members for failure to reinstate after suspension for failure to comply with 2013 MCLE requirements.

COUNCIL ON JUDICIAL COMPLAINTS LEASE RENEWAL

Executive Director Williams reported a modification on the

lease with the Council on Judicial Complaints was expected, but it was not available for the board meeting. The board decided to table any action until a document is received.

PROFESSIONAL RESPONSIBILITY TRIBUNAL APPOINTMENT

The board approved President Poarch's recommendation to appoint to the PRT D. Kenyon "Ken" Williams, Tulsa, to complete the unexpired term of William LaSorsa, who has moved out of state. The term will expire June 30, 2016.

RESOLUTIONS

The board voted to issue resolutions of appreciation to the Washington County Bar Association and Linda Thomas, Bartlesville, for their hospitality and efforts in hosting a Thursday evening reception and dinner at the Bartlesville Community Center in conjunction with the board's meeting in Bartlesville Friday morning.

JUDICIAL NOMINATING COMMISSION ELECTION

President Poarch reported candidates for the District 5 position are Jim Priest, Chad Taylor, Jim Webb, Nancy Parrott, Michael Githens, Lance Leffel and Douglas Parr. District 6 candidates are Melissa DeLacerda, David Ezzell and Fenton Ramey. Ballots will be mailed to OBA members in those districts on June 5, 2015, and must be returned by 5 p.m. on June 19, 2015.

LAW DAY 2015 REPORT

Board members viewed a video showing a brief overview of the statewide Law Day projects accomplished by the Law Day Committee, with assistance from the OBA Com-

munications Department. Law Day Committee Chairs Jennifer Prilliman and Richard Vreeland reviewed the results achieved in conducting contests for school children, producing a one-hour TV show and offering free legal advice. Report highlights were a total of 1,199 contest entries (17 percent increase), nearly 1,300 people given legal advice by 200+ volunteer lawyers and 29 county bar associations participating. Law Day activities, which boost public understanding of the role of law and the legal profession, resulted in more than 3.8 million people reached using a wide variety of promotion and educational efforts. Estimated cost was \$14 per 1,000 impressions. The board thanked the committee leaders for their hard work and impressive results.



The Oklahoma Bar Association Board of Governors met at The Hard Rock Hotel and Casino in Tulsa on June 18, 2015, in conjunction with the Solo & Small Firm Conference.

REPORT OF THE PRESIDENT

President Poarch reported he attended the National Judicial College in Reno, Nevada, Washington County bar reception in Bartlesville and Oklahoma County Bar Association awards luncheon.

REPORT OF THE VICE PRESIDENT

Vice President Devoll reported he attended the Garfield County Bar Association meeting and the Washington County Bar Association board dinner.

REPORT OF THE PAST PRESIDENT

Past President DeMoss reported she attended the Washington County Bar Association reception and gave the welcome at the Sovereignty Symposium. She prepared a report for the Board of Editors meeting.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the Young Lawyers Division board meeting, monthly staff celebration, Sovereignty Symposium, Legal Intern Committee meeting, Oklahoma County Bar Association annual luncheon, meeting with Vice Chief Justice Combs and Jim Calloway to discuss joint OBA and Judicial Conference programming, conference with Mike Moniz regarding renewal of the ABA Retirement Program marketing agreement, new association management software meeting, planning meeting with President Poarch and President-Elect Isaacs, meeting with the Legislative Monitoring Committee chair regarding committee organization for 2016, Bench and Bar Committee meeting and meeting with representatives from J2 and Dobson Communications regarding the sale of Dobson back up services. He also conducted staff evaluations and carried out Judicial Nominating Commission elections.

BOARD MEMBER REPORTS

Governor Gotwals reported he attended the reception and dinner hosted by the Washington County Bar Association and Tulsa County Bar Association Family Law Section meeting. He chaired the Tulsa County Board Foundation

meeting. **Governor Hicks** reported he attended the Tulsa County Bar Association YLD Trivia Night fundraising event and Tulsa County Bar Foundation board meeting. **Governor Jackson** reported he attended the Garfield County Bar Association meeting and Washington County Bar Association meeting. He also monitored civil procedure litigation. **Governor Kinslow** reported he attended the dinner hosted by the Washington County Bar Association and continued to work on the Clients' Security Fund Task Force. **Governor Knighton** reported he attended the Washington County Bar Association dinner and OBA Law-related Education Committee meeting. **Governor Marshall** reported he attended the Washington County Bar Association reception and dinner in addition to the OBA Legal Intern Committee meeting. **Governor Porter** reported she attended the Washington County Bar Association dinner and OBA Women in Law Committee meeting. **Governor Sain** reported he attended the McCurtain County Bar Association monthly meeting. **Governor Stevens** reported he attended the Washington County reception for the Board of Governors, Cleveland County Bar Association meeting and Rules of Professional Conduct Committee meeting. **Governor Tucker** reported he attended the Washington County Bar Association Board of Governors reception. **Governor Weedn** reported he attended the Ottawa County Bar Association monthly meeting, Board of Governors reception and dinner hosted by the Washington County Bar Association and Sovereignty Symposium in Oklahoma City.

YOUNG LAWYERS DIVISION REPORT

Governor McGill reported she chaired the YLD May board meeting and attended the Washington County Bar Association Board of Governors reception, YLD volunteer event at HOBY and YLD Kick it Forward meeting.

BOARD LIAISON REPORTS

Governor Marshall reported the Legal Intern Committee held an intern swearing-in ceremony at OCU School of Law. The law school offered an hour-long tour. Governor Porter reported the Women in Law Committee is putting together panelists for its conference on Sept. 17. Governor Knighton reported the Law-related Education Committee will review the young adult guide for updates needed as a result of legislation passed during the recent legislative session. Committee members are working on a plan to increase participation for a School/Teacher of the Year award. The LRE program is conducting the Hatton Sumner Institute this week for teachers. Governor Stevens reported the Rules of Professional Conduct Committee is working on amendments to the comments. He also said the Bench and Bar Committee is discussing conducting an appellate judicial survey. Governor Gotwals reported the Professionalism Committee continues to work on a committee mission statement, definition of professionalism and professionalism pledge that it envisions could be taken in conjunction with the oath of attorney at swearing-in ceremonies.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported a written report of Professional Responsibility Commission actions and OBA disciplinary matters for May was submitted to the board for its review.

CREATION OF DISABILITY LAW SECTION

Edmond attorney Miles Mitzner submitted petitions with the required number of signatures to create a section and proposed bylaws. He said the group plans to offer a CLE seminar in September. The board approved the creation of the section and approved the proposed bylaws with the amendment to change the annual section dues from \$20 to \$25. The board also voted to amend the section name on the proposed bylaws to the OBA Disability Law Section to eliminate inconsistency in the documents submitted.

CLE ANNUAL REPORT

OBA Educational Programs Director Krug reviewed the 2014 results of OBA continuing legal education efforts. She reported last year the OBA switched its online vendor to Peachtree, and the payment method changed to a flat fee, which increased revenue. She also reported there was a significant increase in attendance of live programs and of the 790 Oklahoma CLE providers, the OBA still ranks first. She said in the future instead of offering the same live program in both Oklahoma City and Tulsa, the department will try simulcasting to reduce expenses.

PROPOSED RULES GOV- ERNING DISCIPLINARY PROCEEDINGS RULE 3.3 CHANGES

Professional Responsibility Commission Chair Angela Ailes-Bahm reviewed the proposed changes to Rule 3.3 regarding grievances against the OBA general counsel. She explained the changes would allow the PRC more options in what action to take should information be received that could lead to a grievance being filed. Ms. Ailes-Bahm requested minor capitalization changes to the document submitted to ensure consistent style. The board voted to publish the proposed rule changes in the *Oklahoma Bar Journal* and to ask for member comments within 90 days. Bar members will have the option of emailing their comments or mailing them.

BUDGET COMMITTEE APPOINTMENTS

The board approved President-Elect Isaacs's appointments to the Budget Committee. Appointments from the Board of Governors are President Poarch, Past President DeMoss, Governor Kinslow and Governor Weedn. Appointments from the House of Delegates are Judge Rick Bozarth, Taloga; Gerald Dennis, Antlers; Richard Sitzman, Oklahoma City; Judge Barbara Swinton, Oklahoma City; and Judge Patricia Parrish, Oklahoma City.

NEXT MEETING

The Board of Governors met July 15, 2015, by conference call. A summary of those actions will be published after the minutes are approved. The next board meeting will be at 10 a.m. Friday, Aug. 21, 2015, in Oklahoma City.

OBF Announces Court Grants in 10 Counties

By Jack L. Brown

Requests totaling \$141,876 came to the Oklahoma Bar Foundation's grant committee last month from judges at county courts across the state. The OBF's Court Grant Program is unique not only to Oklahoma but is the only program like it in the nation.

With court budgets being cut to the bare minimum, these court grants provide much needed assistance for our state's courts and judges to acquire the technology or other needs in their courtrooms to assist them in hearings and trials.

Most of the funds for court projects are made possible through *cy pres* awards to the OBF. This provides specific funding for courtroom technology, capital improvements and extraordinary expenses that cannot be met by existing funding. *Cy pres* is a court-approved method of distributing damage funds remaining from class action lawsuits to appropriate charitable causes.

"The foundation has been gratified to have been the recipient of *cy pres* funds and has utilized those funds, through

its Grants and Awards Program, to meet the fundamental needs of attorneys and litigants to present their legal issues to the courts," said OBF Grants & Awards Chair Judge Millie Otey of Tulsa. "The OBF is proud to help provide state-wide support for the administration of justice." Trustees voted approval of \$90,775 in court grants at its July 10 board meeting.

2015 OBF COURT GRANTS

- **District Court of Pittsburg County:** Digital courtroom recording system. \$5,820

- **District Court of Stephens County:** Video courtroom arraignment system. \$12,640
- **District Court of Roger Mills County:** Digital courtroom recording/video system. \$14,110
- **District Court of Seminole County:** Digital courtroom sound system. \$6,470
- **District Court of Harper County:** Courtroom tools/furnishings equipment. \$21,145



The District Court of Pittsburg County in McAlester was one of 10 district courts that received grants totaling \$90,775 from the OBF Trustees.

- **District Court of Cotton County:** Digital courtroom recording system. \$5,245
- **District Court of Muskogee County:** Courtroom video system. \$5,525
- **District Court of Noble County:** Courtroom digital audio system. \$4,250

- **District Court Ellis County:** Courtroom digital recording system. \$4,525
- **District Court of Tulsa County:** Netbook computers to be used to automate case management. \$11,045

Since 2009 the OBF has awarded \$543,927 in court grants to 46 counties.

ABOUT THE AUTHOR



Jack L. Brown practices in Tulsa and serves as OBF president. He can be reached at jbrown@jonesgotcher.com.

New Direction of the OBF

The Oklahoma Bar Foundation is in the works of implementing an exciting fund development and communications program. The OBF hired bar fundraising expert Dennis Dorgan earlier in the year to begin a strategy for a fundraising initiative. Part of that strategy was to hire a director of development and communications to raise money for the foundation's grantees, court awards and scholarships.



*Candice Jones, OBF
Director of Development
and Communications*

Candice Jones was hired in March of this year. She comes to the OBF from The Oklahoma Media Co. where she worked as a marketing consultant and previously worked as the vice president of resource development at United Way of Norman. She has a Bachelor of Arts in journalism and a minor in sociology from the University of Oklahoma.

"My heart is in nonprofit and joining the bar foundation has been a perfect fit for me. I have been visiting our grantees over the past few months, and I am touched and truly honored to be a part of this mission. We are beyond blessed to have these organizations doing good works in our communi-

ties. Our grantees simply cannot operate without donations, and we need to increase their funding. I am excited about the potential we have to raise money for law-related charities across the state," Ms. Jones said.

She will be working with a development committee comprised of OBF Trustees from all over the state:

*Co-Chair - Gabe Bass, OKC
Co-Chair - Alan Souter, Tulsa
Steve Barghols, OKC
Jennifer Castillo, OKC
Gary Farabough, Ardmore
Amber Peckio Garrett, Tulsa
Patrick O'Hara, Edmond
Bret Smith, Muskogee
Kara Smith, OKC
John Morris Williams, OKC
Joe Vorndran, Shawnee*

"The board is very excited and supportive of the new direction of the OBF, and we look forward to sharing our mission and increasing fundraising efforts to help so many low-income Oklahomans gain access to representation in our legal system," said OBF President Jack Brown.

The foundation will be focusing on outreach this fall and will look to partner with law firms, attorneys and legal organizations to raise money for enhanced grant programs.



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

- | | |
|---|---|
| <input type="checkbox"/> I want to be an OBF Fellow now – Bill me later | <input type="checkbox"/> \$100 enclosed and bill annually |
| <input type="checkbox"/> Total amount enclosed \$1,000 | <input type="checkbox"/> New lawyer 1st year, \$25 enclosed & bill annually as stated |
| <input type="checkbox"/> New lawyer within 3 years, \$50 enclosed and bill annually as stated | <input type="checkbox"/> I want to be recognized at the highest level of Sustaining Fellow and will continue my annual gift of \$100
(initial pledge should be complete) |
| <input type="checkbox"/> I want to be recognized at the highest Leadership level of Benefactor Fellow and annually contribute at least \$300
(initial pledge should be complete) | <input type="checkbox"/> My charitable contribution to help offset the Grant Program Crisis |

COMMUNITY FELLOW ENROLLMENT ONLY

- ☐ OBA Section or Committee ☐ Law firm/office ☐ County Bar Association ☐ IOLTA Bank
☐ Corporation/Business ☐ Other Group

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

\$_____ Patron \$2,500

\$_____ Partner \$1,000

\$_____ Supporter \$250

Signature and Date _____ OBA Bar # _____

Print Name and Title _____

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THANK YOU FOR YOUR GENEROSITY AND SUPPORT!

Kickball Tournament to Help Struggling Lawyers Pay Bar Dues

By LeAnne McGill

On Saturday, Aug. 29, the Young Lawyers Division will hold its first Kick It Forward Kickball Tournament at Wiley Post Park, 2021 S. Robinson, in Oklahoma City. Teams will join together and vie for the honor of "Most Spirited Team," "Most Points in a Game," "Lowest Points in a Game" as well as first, second and third place. And all of this fun will be to support the Kick It Forward program.

The Kick It Forward program was started in 2014 after the YLD realized there was a need for a financial assistance program for attorneys who are struggling to pay their annual bar dues. The program provides financial assistance to attorneys who cannot afford to pay their bar dues. Attorneys must apply to receive this assistance, and the committee reviews the applications on an annual basis. The number of attorneys who receive assistance depends on the funding available. To increase support for this program and to allow us to assist more attorneys, we created the Kick It Forward Kickball Tournament.

Even if you did not register a team, we encourage you to



come attend the tournament. It will be a fun event and a great opportunity to network with lawyers, family and friends from across the state. Admission for spectators is only \$10, and you do not have to be an attorney to attend. Pinky's Rolling Fresh Food Truck and Parking Lot Party Food Truck will both be there to serve us their delicious food, and Choc Beer will be on site to serve beverages. We will have a winners and a losers bracket, so there will be plenty of kickball action to watch.

Thus far, the generous sponsors of this tournament have helped the Kick It Forward Committee raise more than \$7,000. Thanks to our Grand Slam sponsors Stuart & Clover and Hall Estill, we are well on our way to our goal of \$10,000, but we still need your help! If you are interested in being a sponsor, please let me know. I also want to give a special thank you to several OBA staff

members for helping us with the tournament. Carol Manning, Brandon Haynie and Joanna Hensley have been instrumental in helping us plan this event.

I hope you will take this opportunity to come support the Kick It Forward program and spend a Saturday having a great time with the YLD board of directors and all of our kickball players. You can buy spectator tickets in advance by emailing me at LeAnne@McGillRodgers.com for an order form, or you can buy them the day of the event.



Like OBA/YLD on Facebook
facebook.com/OBAYLD

ABOUT THE AUTHOR



LeAnne McGill practices in Edmond and serves as the YLD chairperson. She may be contacted at leanne@mcgillrogers.com.

OKLAHOMA BAR ASSOCIATION
YOUNG LAWYERS DIVISION
PRESENTS

1st Annual Young Lawyers Division Kick It Forward
KICKBALL TOURNAMENT

Benefitting the OBA YLD Kick It Forward Program

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August

- 15 OBA Real Property Law Section meeting;** 9:30 a.m.; Stroud Conference Center; Contact Lucas J. Munson 405-513-7707
- 18 OBA Bench and Bar Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact David B. Lewis 405-556-9611
- OBA Diversity Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Tiece I. Dempsey 405-524-6395
- 19 OBA Indian Law Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Trisha Archer 918-619-9191



- 21 OBA Board of Governors meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City; Contact John Morris Williams 405-416-7000
- OBA Rules of Professional Conduct Committee meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Paul B. Middleton 405-235-7600
- 27 OBA Professionalism Committee meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Patricia Podolec 405-760-3358
- 28 OBA Professional Responsibility Commission meeting;** 9:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Gina Hendryx 405-416-7007

September

- 1 OBA Government and Administrative Law Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City; Contact John E. Miley 405-557-7146
- 3 Lawyers Helping Lawyers discussion group;** 6 p.m.; 701 NW 13th St., Office of Tom Cummings, Oklahoma City; Contact Jeanne Snider 405-366-5423
- 4 OBA Alternative Dispute Resolution Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Ken Morgan Stoner 405-705-2910
- 7 OBA Closed - Labor Day observed**
- 8 OBA Diversity Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Tiece I. Dempsey 405-524-6395
- 9 OBA Women in Law Committee meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Kimberly Hays 918-592-2800
- 10 OBA Awards Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Jennifer Castillo 405-553-2854
- 11 OBA Law-related Education Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Suzanne Heggy 405-556-9615
- OBA Family Law Section meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Michelle K. Smith 405-759-2333
- 15 OBA Bench and Bar Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Judge David B. Lewis 405-556-9611
- OBA Diversity Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Tiece I. Dempsey 405-524-6395
- 16 OBA Indian Law Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Trisha Archer 918-619-9191

18 OBA Professional Responsibility Commission meeting; 9:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Gina Hendryx 405-416-7007

OBA Board of Editors meeting; 9:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Melissa DeLacerda 405-624-8383

19 OBA Real Property Law Section meeting; 9:30 a.m.; Tulsa County Bar Center, Tulsa; Contact Lucas J. Munson 405-513-7707

23 OBA Financial Institutions and Commercial Law Section meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Eric L. Johnson 405-602-3812

24 OBA Professionalism Committee meeting; 4 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Patricia Podolec 405-760-3358

25 OBA Board of Governors meeting; 10 a.m.; Norman; Contact John Morris Williams 405-416-7000

OBA Lawyers Helping Lawyers Committee meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Jeanne Snider 405-366-5423

30 OBA Clients' Security Fund Committee meeting; 2 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Micheal C. Salem 405-366-1234

October

1 Lawyers Helping Lawyers discussion group; 6 p.m.; 701 NW 13th St., Office of Tom Cummings, Oklahoma City; Contact Jeanne Snider 405-366-5423



2 OBA Alternative Dispute Resolution Section meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Ken Morgan Stoner 405-705-2910

6 OBA Government and Administrative Law Section meeting; 4 p.m.; Oklahoma Bar Center, Oklahoma City; Contact John E. Miley 405-557-7146

9 OBA Law-related Education Committee meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Suzanne Heggy 405-556-9615

Oklahoma City Real Property Lawyers Association

Join us for September CLE

7:15 a.m., Friday, September 11, 2015

Water for 2060: Drought-Proofing Oklahoma

An overview of the Oklahoma Comprehensive Water Plan

Sara D. Gibson

*Deputy General Counsel
Oklahoma Water Resources Board*

Community Room on the 3rd 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 September 2015 meeting free of charge. Seating is limited, so please make your reservation by **Tuesday, September 8, 2015**, by contacting the OKCRPLA at okcrpla@gmail.com.

DeLacerda and Webb Elected to JNC

Attorneys Melissa DeLacerda of Stillwater and Jim R. Webb of Oklahoma City were recently elected by their fellow lawyers to serve on the state's Judicial Nominating Commission. They will serve as two of the six lawyers on the 15-member commission, which plays a key role in the selection of Oklahoma judges. Ms. DeLacerda will represent District 6, which is composed of 23 counties in the northwestern part of the state. Mr. Webb will represent District 5, comprised of all of Oklahoma County except for those portions described as State Senate District No. 42 and House District No. 96 as they existed in 1967.

Ms. DeLacerda has been in private practice in Payne and surrounding counties for more than 30 years. Her practice primarily focuses on litigation. She has served on numerous OBA committees through the years. She was a YLD board member, Board of Governors member and OBA president in 2003. She has served on the Professional Responsibility Commission and numerous task forces and she currently chairs the *Oklahoma Bar Journal* Board of Editors. She is the author of *West Practice Series Volume on Family Law*.

Mr. Webb has served as the executive vice president general counsel and corporate secretary for Chesapeake Energy Corp. since January 2014. Prior to joining Chesapeake in 2012, he practiced with McAfee & Taft in Oklahoma City from 1995-2012 and Gorsuch Kirgis in Denver, Colorado, from 1993-1995, representing both plaintiffs and defendants, and both individuals and companies. He currently serves as Oklahoma County Bar Association president. He has been outspoken on the constitutional mandate for a strong, independent, nonpolitical judiciary in Oklahoma, allowing the judges to make decisions based on the facts, the law and nothing else. He has received the OBA Outstanding Pro Bono Service Award, OCBA Professional Service Award, OCBA Community Service Award and *Journal Record* Leadership in Law award. He serves on the board of multiple charities and graduated from Washington University in St. Louis School of Law in 1993.

The OBA is charged with conducting elections of the lawyer members of the commission, and elections are held each odd-numbered year for members from two districts.

In addition to the six lawyer members of the Judicial Nominating Commission, there are six nonlawyers appointed by the governor and three at-large members. Of those three, one is selected by the speaker of the House of Representatives, one is selected by president pro tempore of the Senate and one is selected by at least eight commission members. All serve six-year terms, except the members at large who serve two-year terms. More information about the Judicial Nominating Commission is available at www.oscn.net/jnc/about.



Melissa DeLacerda



Jim Webb



Aspiring Writers Take Note

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

Fastcase Unveils New Platform



The brand new Fastcase 7 promises a greatly improved experience for online legal researchers. The faster, more powerful new version is under-

going beta testing and will be available by invitation only. Invitations will be distributed through bar associations that have affinity relationships with Fastcase. OBA members may request an invitation by emailing support@fastcase.com. Remember: The OBA offers this online legal research software as a free benefit to all OBA members.

Important Upcoming Dates

Don't forget! The Oklahoma Bar Center will be closed Monday, Sept. 7 in observance of Labor Day. The upcoming leadership CLE, "From the School House to the White House," is set for Sept. 24, and be sure to docket the OBA Annual Meeting to be held in Oklahoma City Nov. 4-6.



LHL Discussion Group Hosts Upcoming Meeting

"Dealing with the Adversarial Nature of the Practice of Law" will be the topic of the Sept. 3 meeting of the Lawyers Helping Lawyers monthly discussion group. Each meeting, always the first Thursday of each month, is facilitated by committee members and a licensed mental health professional. The group meets from 6 – 7:30 p.m. at the office of Tom Cummings, 701 N.W. 13th St. Oklahoma City. There is no cost to attend and snacks will be provided. RSVPs to Kim Reber; kimreber@cabainc.com, are encouraged to ensure there is food for all.



- *Interested in forming a discussion group in Tulsa? Contact Hugh Hood: 918-747-4357*

Connect With the OBA Through Social Media

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



OBA Member Resignation

The following member has resigned as a member of the association and notice is hereby given of such resignation:

Sharon Kay Jackson Wendell • OBA No. 30803
1708 Sunset Blvd., 2nd Floor West • Houston, TX 77005

Kudos

Hall Estill associate **Tami Hines** was honored by the American College of Consumer Financial Services Lawyers during its 2015 annual meeting as a winner of its annual writing competition. Each year the ACCFSL seeks to recognize written contributions to the field of consumer financial services law. She is the winner of the student category for her article, *MERS: Sometimes Agent, Sometimes Principal, Often Misconstrued*. She graduated from the OCU School of Law in 2014.

Gov. Mary Fallin appointed **Bruce W. Day** to the Commission for Education Quality and Accountability. He will serve a four-year term. The newly created commission will focus on setting teacher preparation standards, student performance and directing a more efficient and productive state educational effort to match current and anticipated workforce needs. He graduated from the OU College of Law in 1972.

Special Olympics Oklahoma named Hall Estill attorney **Elaine R. Turner** the 2015 Volunteer of the Year. She has organized Capitol Area Special Olympic events since 1996. Each year Special Olympics Oklahoma presents this award to outstanding volunteers who are committed to the athletes and who put their

all into volunteering. She graduated from the OCU School of Law in 1989.

Susan Jordan of Jordan Law PLLC, with offices in Oklahoma and Austin, has been selected to the 2015 list as a member of the Nation's Top One Percent by the National Association of Distinguished Counsel. NADC is an organization dedicated to promoting the highest standards of legal excellence. Its mission is to objectively recognize the attorneys who elevate the standards of the bar and provide a benchmark for other lawyers to emulate. She graduated from Southern Methodist University Dedman School of Law in 1995.

Mary Holloway Richard of Phillips Murrah's healthcare practice group was appointed vice chair of the American Health Lawyers Association's Behavioral Health Task Force. The Behavioral Health Task Force was established by the nationwide professional organization to provide education for attorneys about the legal issues that arise in the provision of services to behavioral health patients and to alcohol and drug treatment providers and patients. She graduated from George Washington University School of Law in 1980.

Jake Jones was reappointed to serve as the Oklahoma Indigent Defense System Board chairman. He was first appointed to the board by Gov. Keating and reappointed by Govs. Henry and Fallin. He is a partner with Kirk and

Chaney law firm and graduated from the OU College of Law in 1982.

Melody V. Suess received her Executive LL.M. in taxation through Georgetown Law School with a certificate in state and local taxation. She is currently a deputy general counsel for the Oklahoma Tax Commission and has worked in the Tulsa office of the OTC for 12 years.

Kevin Donelson was appointed to the Board of Adjustment by Oklahoma City Mayor Mick Cornett. He was appointed to fill **Mark Stonecipher's** term which runs until October 2016. Mr. Stonecipher vacated his seat after being elected to the city council.

The American College of Trust and Estate Counsel, an organization of peer-elected trust and estate lawyers, has named Crowe & Dunlevy attorney **Cynda C. Ottaway** president-elect. ACTEC inaugurated the 2015-2016 officers during a recent annual meeting in Marco Island, Florida. She graduated from the OU College of Law in 1978.

The Oklahoma Human Resource State Council presented Crowe & Dunlevy attorney **Leonard Court** with the 2015 Excellence in Human Resource Management Award. The award signifies a professional who demonstrates the organization's mission of serving the human resource professional and advancing the profession. He received his J.D. from Harvard University 1972.

McAfee & Taft attorneys **Reid Robison** and **Curtis Thomas** were presented with a total of three awards by the Oklahoma County Bar Association at the organization's 2015 awards luncheon. Mr. Robison was honored with the Bobby G. Knapp Leadership Award for his sustaining and effective leadership, stewardship and professionalism. He was noted for his efforts for reaching out to young lawyers and getting them involved in the bar association. He graduated from the OU College of Law in 1968. Mr. Thomas was honored with the President's Professionalism Award for his work chairing the Law Day Committee for the past three years and the Outstanding Young Lawyer Division Director Award, which was voted on by the YLD board of directors. He graduated from the OU College of Law in 2009.

Matthew D. Stump was appointed by the American Immigration Lawyers Association to serve as the organization's U.S. Department of Homeland Security Vermont Service Center Liaison Committee chairman. He will lead a team of immigration attorneys and subject matter experts in identifying and addressing concerning legal trends, represent AILA at USCIS stakeholder meetings and will assist AILA attorneys requiring liaison assistance with complex immigration issues. He graduated from the OCU School of Law in 2006.

Crowe & Dunlevy attorney **D. Michael McBride III** received the Mary Townsend Crowe Service Award from the Oklahoma Federation of

Indian Women. The OFIW statewide Award Committee selected him as an outstanding individual who has gone above and beyond the call of duty to serve and benefit American Indians. He graduated from the OU College of Law in 1993.

Larry Tawwater was sworn in as the American Association for Justice president at the organization's annual convention in Montreal. AAJ is a powerful voice in protecting consumer rights and preserving the civil justice system. It provides education tools for its attorney members and serves as one of the most forceful advocates for consumers on Capitol Hill. He graduated from the OU College of Law in 1972.

The American Bar Association Law Practice Division honored **Mark Robertson** with its Samuel S. Smith Award, given annually to an individual who has demonstrated excellence in law practice management throughout their lifetime. He graduated from the OU College of Law in 1975.

The Tulsa County Bar Association announced their 2015-2016 officers. **E. Zack Smith**, a member of the Gorospe & Smith PLLC Law Firm, will serve as president. **Matt Farris** with Rogers and Bell Law Firm will serve as president-elect and **Christina Vaughn** was elected vice president. She is with McAfee & Taft. **Ken Williams**, an attorney with Hall Estill, will serve as past president. **Richard D. White**, with the Barber & Bartz Law Firm, was elected treasurer and **Ann Keele**, with Monroe & Kelle PC, was elected secretary. Trish L. Archer, Archer Law PLLC,

will serve as the TCBA library trustee. Directors at large are **Valery O. Giebel**, with the Pray Walker Law Firm and **Kimberly K. Moore-Waite**, with Legal Aid Services of Oklahoma. **Kara Gruel**, Gruel Law Firm PLLC, was appointed by Mr. Smith to serve as the budget chair. This was the first year for an electronic voting process. Only two paper ballots were cast.

Dunlap Coddling received a Beacon Award for Charitable Influence from *The Journal Record*. The award recognized organizations for demonstrating a company culture that encourages and supports volunteerism, charitable giving and community involvement by its members. In 2014, the firm volunteered more than 1,000 hours and contributed \$150,000 to hosting, supporting and funding nearly 150 events.



Klint A. Cowan of Fellers Snider was appointed to serve a three-year term as the attorney general for Kaw Nation. He will represent the Kaw Nation in all criminal cases in the courts of the Kaw Nation, and in all civil actions wherein the Kaw Nation is a party and shall provide an opinion as to the constitutionality of laws at the request of the chair, tribal council or general council. He graduated from the TU College of Law in 2004.

Joe Saye was elected vice president, general counsel and corporate secretary for CH2M-WG Idaho LLC, a contractor for a multibillion dollar environment cleanup at the Department of Energy's Idaho National Laboratory site. He received a J.D. from the OU College of Law in 1980, a Masters of Law in Military from the Judge Advocate General's School in 1988 and a Masters of Law in environmental law from the George Washington University School of Law in 1991.

Leah Jo Edwards was appointed as the district judge for Garvin and McClain counties. She has served as the first assistant district attorney in Grady County and currently serves as the Grady and Canadian County Women's Service and Family Resource Center president. She graduated from the OU College of Law.

McAfee & Taft announced the addition of **Rachael F. Hughes** to its litigation group. She is a trial lawyer whose practice encompasses the areas of business litigation, appellate advocacy, insurance litigation and administrative proceedings with an emphasis on research and writing. She graduated from the TU College of Law in 2013.

The Brawner Law Firm announced the renaming of the firm to Brawner, Lott & Associates. **R. Dean Lott, Larry C. Brawner** and **Teresa Davis** will continue to practice in the area of worker's compensation defense. **John Valentine** has joined the firm and will also practice in the area of worker's compensation defense. He graduated

from the OCU School of Law in 2001.

The law firm of Evans & Davis announced that **Bryan Evans** has been admitted to the State Bar of Arizona and that **John D. Weaver** has joined the firm as senior attorney. With the admission to the State Bar of Arizona, the firm enhanced its presence throughout Arizona to better serve existing clients, their families and referrals throughout the state. Mr. Evans graduated from the OU College of Law in 2001. Mr. Weaver will focus on real estate and banking law. He graduated from the OU College of Law in 2004.

Hall Estill announced the addition of **Megan Beck** as special counsel in the firm's Tulsa office, the election of **Sarah E. Hansel, John F. Heil III** and **James C. Milton** to the firm's board of directors and **Larry G. Ball** and **James M. Reed** to the firm's executive committee. Ms. Beck will practice in the family service arena, with an emphasis on custody, divorce and guardianship matters. She graduated from the University of Missouri-Kansas City School of Law in 2005. Ms. Hansel joined the firm in 1989 and rejoined in 2006. She is an active volunteer in the Tulsa community and serves as the Parent Child Center of Tulsa board of directors president. She graduated from the OU College of Law in 1989. Mr. Heil joined the firm in 2000 after working as an assistant district attorney in Tulsa County. He graduated from the TU College of Law in 1994. Mr. Milton joined the firm in 2012. He is an American College of Trust & Estate Counsel fellow and serves as

the Oklahoma Bar Association Civil Procedure & Evidence Code Committee chair. He graduated from the University of Texas at Austin School of Law in 1995. Mr. Ball joined the firm in 2003 and graduated from the OU College of Law in 1987. Mr. Reed joined the firm in 1988 and is a former adjunct professional at Tulsa Community College. He graduated from the University of Arkansas School of Law in 1982.

Crowe & Dunlevy announced **Donald K. Shandy** joined the firm as a director in the Oklahoma City office. He will join the firm's environment and energy and natural resources practice groups. He graduated from the OU College of Law in 1985.

United States Administrative Law Judge James Linehan has been moved to Region 6 in McAlester by the Social Security Administration. His duties will encompass social security hearings in Oklahoma as well as surrounding states within Region 6. He graduated from the OCU School of Law in 1986.

Christensen Law Group announced that **Cori H. Loomis** joined the firm's Oklahoma City office. She will practice corporate and healthcare law. She graduated from the University of Texas at Austin School of Law in 1994.

Family law attorneys Tamera A. Childers and Rebecca L. Post announced the opening of their law firm, ChildersPost PLLC. Their practice will concentrate on divorce, paternity, guardianships, child custody, child

support, visitation, enforcement and modification and protective orders. Childers-Post is located at 21 Centre Park, 2642 East 21st Street, Suite 240, Tulsa 74114; 918-574-8990; tamera@childerspost.com and becky@childerspost.com.

Jeffrey I. Crain announced the opening of Crain & Associates PLLC in northwest Oklahoma City near Meridian Avenue and Kilpatrick Turnpike. He has experience in estate planning and administration, wills, trusts, guardianship, probate and real estate. His office will be located at 4500 Memorial Circle, Suite B, Oklahoma City 73142; 406-356-6118; www.JeffCrainLaw.com.

Doerner, Saunders, Daniel & Anderson announced that **L. Dru McQueen** joined its Tulsa office and **Cynthia J. Becker, Patrick Mensching** and **Michael C. Wofford** have been named partners. Ms. McQueen has 10 years of experience in private practice and will focus her practice on commercial litigation, employment law, environmental law and commercial transactions. She graduated from the TU College of Law in 1982. Ms. Becker devotes her practice to general and commercial litigation, including federal and state cases involving contracts, real estate, construction and debtor and creditor rights. She graduated from Florida State University School of Law in 1996. Mr. Mensching focuses in the areas of commercial and fraud litigation, mortgage foreclosure, commercial collections and general civil litigations. He graduated from the TU College of Law in 1982. Mr. Wofford practices in

the areas of environmental and natural resources law, including advocacy of water supply, water pollution and water rights issues on behalf of industry, landowners and municipalities. He graduated from the OU College of Law in 1977.

Barrow & Grimm announced **Joseph Allen** joined the firm as an associate attorney. His primary focus will be business law and civil litigation. He graduated from the OU College of Law in 2013.

DeBee Gilchrist Attorneys & Counselors announced the relocation of its office to 1200 NW 63rd Street, Suite 5000, Oklahoma City 73116. The firm will continue to offer legal, business and financial counsel to a variety of local, regional and international companies as well as individuals and nonprofit entities. The firm can be reached at 405-232-7777 or you can visit www.debeegilchrist.com.

Melissa F. Cornell announced the opening of her firm Cornell Law Firm. She will continue to focus her practice on family law and will provide lower cost mediation services for attorneys and their clients in need of a less stressful, more satisfying resolution of their conflict. Cornell Law Firm is located at 2504 E 21st Street, Suite A, Tulsa 74114; 918-574-8901; www.clftulsa.com or email info@clftulsa.com.

The Senior Law Resource Center announced that **William J. Bergner Sr.** has been hired as the executive director. He is an attorney with more than 33 years of experience in litigation, mediation, arbitration and dealing

with government agencies, both state and federal. He graduated from the OU College of Law in 1981.

Sherwood, McCormick & Robert announced **Kristin Straily** joined the firm as an associate. Her practice will focus on social security disability, both initial filing and appeals, elder law and medical malpractice. She graduated from the TU College of Law in 2011.

Judge Robert H. Jones is stepping down from the bench. He will continue to devote himself to the needs of his clients and is not retiring from the practice of law. He has contributed to the civic life of the City of Shawnee in his 57 years of law practice.

At The Podium

Richard B. Noulles presented to the Tulsa County Bar Association Energy & Mineral Section on "From the Wellhead to Market: State and Federal Viewpoints on Post Production Costs."

LeAnn Ellis, Susan Jordan, David McKinney, Megan Burrows and **Philip Hixon** presented a series of healthcare topics to OSU Medical School residents and medical staff. Topics included "End of Life Concepts," "Physician Risk Management," "Contracts," "Patient/Family Legal Rights," "Stark, EMTALA and Compliance" and "Medicolegal and Ethical Issues."

Graydon D. Luthey Jr. spoke at the Tribal Online

Gaming Conference in Phoenix, Arizona. His topic was "Tribal-State Compacts: Determining the Extent to Which Tribes Need to Negotiate Updated Terms to Accommodate Internet Gaming."

Joseph H. Paulk presented a keynote speech titled "Value" to the Association of Attorney Mediators in New Orleans, Louisiana. The national meeting presentation highlighted results from a survey conducted over several months by him and his staff into what mediation participants truly value in a mediation.

Mark Christiansen presented a program regarding frac litigation at the 61st Annual Rocky Mountain Mineral Law Institute in Anchorage, Alaska. They discussed the unsettled state of the law, and industry responses to date concerning the legal standards to be applied to disputes in which an operator's fracture treatment of a new horizontal well is alleged to have caused damage to the nearby vertical well of another operator.

Eric L. Johnson was a featured panelist at the 17th Annual Conference of the National Alliance of Buy

Here, Pay Here Dealers in Las Vegas. The topic of the panel discussion was "Is Your Dealership Ready for the Coming Regulatory Challenges?" He also spoke at the Counselor Library's 2015 Consumer Financial Services Conference on the topic of "Practical Compliance for Auto Finance and Leasing Professionals" and at the 2015 National Independent Auto Dealer Association Convention & Expo on the topic of "Writing the Right Report: Complying with the Fair Credit Reporting Act."

Chris Smith presented a core conversation at the South-by-Southwest Interactive Festival in Austin, Texas. He spoke on the topic of mobility and work life balance, incorporating his experience establishing a law practice in both Oklahoma City and Dallas.

Wallace Kunzman Jr. participated in a fireside chat at the Investment Program Association 2015 Executive Summit in Washington D.C. The topics discussed included MASAA initiatives related to investor suitability and the review and exam process of broker-dealers. He also participated in an IPA webinar discussing the

implementation of changes to the customer account statements rule and other FINRA initiatives.

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:

Mackenzie McDaniel
Communications Dept.
Oklahoma Bar Association
405-416-7084
barbriefs@okbar.org

Articles for the Sept. 12 issue must be received by Aug. 10.

IN MEMORIAM

Kenneth Edison Holmes of Ponca City died May 24. He was born Aug. 4, 1934, and graduated from the OU College of Law in 1963. **He was an officer in the U.S. Army from 1955 to 1959 and was an officer and nuclear weapons commander in the U.S. Army with the rank of captain at White Sands of**

Alamogordo, New Mexico. When he completed his tour, he remained in the Army Reserves. He has served as assistant city attorney, municipal judge and mayor of Ponca City. At the time of his death he was a partner at Holmes and Yates Law PLLC in Ponca City. Memorial contributions may be made to Grace Episco-

pal Church, 109 N. 13th Street, Ponca City, OK 74601 or to the M.D. Anderson Cancer Center (note "Ohanian toxic metal research" with payment), c/o Mary E Silverstein, Department Administrator, Department of Leukemia, 1515 Holcombe Blvd., Houston, TX 77030.

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OIL AND GAS RESEARCH

Redbud Land Company is a centrally located, Oklahoma based, landman service company. We serve attorneys statewide and assist with determining their clients' Oil & Gas assets and positions. www.redbubland.com, lance@redbubland.com, 405-563-2359.

EXPERT LEGAL CONSULTANT AND WITNESS on Oil and Gas titles, and Real Property titles – KRAETTLI Q. EPPERSON, OKC attorney and adjunct law professor. Contact him at kqe@meehoge.com or 405-858-5601. See www.eppersonlaw.com.

PROFESSIONAL CONSULTANT AND EXPERT WITNESS regarding Trust, Fiduciary, Real Estate, and Contract Issues; 24 years private law practice and 16 years as trust officer in major banks; DON WIECHMANN, Oklahoma attorney at donew66@yahoo.com or 405-834-8265.

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OFFICE SPACE

OFFICE SPACE FOR LEASE: Large office space located at 5929 N. May Ave., Ste. 300, OKC. Internet, wi-fi, phone, copier, kitchen and conference room included. \$530 per month. To inquire, call Suzanne 405-463-6819.

OFFICE SPACE FOR LEASE IN ESTABLISHED FIRM. Space located in Boulder Towers at 1437 S. Boulder Ave, Suite 1080, Tulsa, OK. Space includes two conference rooms, kitchen, reception area, security and free parking. \$1,000 per month. Contact Robert Williams at 918-749-5566 or rwilliams@trsvlaw.com.

LUXURY OFFICE SPACE - Three offices for lease, \$670, \$690 furnished and \$870 in the Esperanza Office Park near NW 150th and May in OKC. Lease includes: Fully furnished reception area; receptionist; conference room; complete kitchen; fax; high-speed internet; building security; and, free parking. Please contact Gregg Renegar at 405-285-8118.

PERIMETER CENTER OFFICE COMPLEX, located at 39th and Tulsa currently has available offices ranging in size from 802 – 3,500 square feet. Executive Suites: Single unfurnished offices offered on a month-to-month lease term. Offices vary in size, ranging in price from \$200 to \$650 per month. Please call 405-943-3001 M-F from 8 a.m. to 5 p.m. for appointment.

OFFICE SPACE

SOUTH OKC OFFICE SPACE available in a building complex surrounding a tranquil park-like setting in the Willowbrook Gardens Professional Building complex located on South Walker Avenue just south of I-240. Call Jason Leonard at 405-570-4550 or Jana Leonard at 405-239-3800.

POSITIONS AVAILABLE

OKLAHOMA CITY PLAINTIFF'S FIRM

seeks attorney with at least 5 years experience in personal injury. Must be able to bring case load and client base. Great atmosphere with experienced support staff, great location in South OKC with fantastic offices and facilities. Submit résumé to "Box CC," Oklahoma Bar Association, PO Box 53036, Oklahoma City, OK 73152

EDMOND LAW FIRM seeks associate attorney for civil litigation. Self-starter with strong work ethic, research and writing skills, interpersonal skills, ability to work in a team environment and manage a diverse caseload. Prefer 5-10 years of relevant experience. Benefits offered. Compensation based on experience and existing business. Please submit salary requirements, résumé and writing sample to edmondfirm@gmail.com.

ENID / DOWNTOWN OKC FIRM SEEKS EXPERIENCED PARALEGAL with minimum of 3 years' experience. College degree and paralegal certification strongly preferred. Salary commensurate with experience. Send résumé to blanton@gungolljackson.com.

NORMAN LAW FIRM IS SEEKING sharp, motivated attorneys for fast-paced transactional work. Members of our growing firm enjoy a team atmosphere and an energetic environment. Attorneys will be part of a creative process in solving tax cases, handle an assigned caseload, and will be assisted by an experienced support staff. Our firm offers health insurance benefits, paid vacation, paid personal days, and a 401K matching program. Applicants need to be admitted to practice law in Oklahoma. No tax experience necessary. Submit cover letter and résumé to Justin@irshelpok.com.

RESPECTED NORTHEAST OKLAHOMA LAW FIRM has an immediate opening for a Legal Assistant with 3+ years of litigation experience. This position requires attention to detail, ability to work independently as well as on the team, and excellent communication/interpersonal skills. Knowledge of computer programs and systems a plus. Competitive salary depending on experience. Please submit résumé along with references to NEOKlawfirm@gmail.com. All inquiries will remain confidential.

ESTABLISHED LAW OFFICE AND CPA FIRM in South Central Oklahoma, looking for an experienced legal assistant or newly admitted attorney with tax background. Compensation and benefits negotiable based upon experience. Please email résumé to: cindy@cajohnsonenterprises.com.

POSITIONS AVAILABLE

ENID / DOWNTOWN OKC FIRM SEEKS civil litigation attorney with 2-5 years' experience. Salary based on the firm's experience-based employment track. Send résumé, writing sample and cover letter to blanton@gungolljackson.com.

THE OKLAHOMA TAX COMMISSION, LEGAL DIVISION seeks an attorney for an opening in its OKC office. Applicants must be licensed to practice law in Oklahoma. 0-5 years' experience preferred. Submit cover letter, résumé, and writing sample to applicants@oktax.state.ok.us. The OTC is an equal opportunity employer.

OKC AV RATED LAW FIRM SEEKING ASSOCIATE with excellent litigation, research, and writing skills, 1-5 years experience for general civil/commercial defense practice, health care law. Must have solid litigation experience for all phases of pretrial discovery and trial experience with excellent research and writing skills. Submit a confidential résumé with references, writing sample and salary requirements to Box "U," Oklahoma Bar Association, PO Box 53036, Oklahoma City, OK 73152.

AV RATED DOWNTOWN OKC LAW FIRM SEEKS ATTORNEY with two or more years of experience with estate planning. Compensation based on experience and origination. Parking/Health/Dental paid. Send résumé to Box "T," Oklahoma Bar Association, PO Box 53036, Oklahoma City, OK 73152.

TULSA FIRM SEEKING ATTORNEY WITH 0-5 YEARS' EXPERIENCE. Recent graduates who are awaiting bar exam results are also encouraged to apply. Position will commence in late August to early September. Compensation based on experience. Firm practices in the area of estate planning, probate, guardianship, adoption, family law, civil and business litigation, and criminal defense. New associate would be expected to work with attorneys in all areas of practice but would primarily be responsible over time for family law cases. Firm members are willing to train and mentor but expect a self-starter with solid writing skills and problem solving abilities that include knowing when to ask questions and/or for help. Firm members are also ideally searching for someone who has a strong work ethic and interpersonal skills. We are a smaller firm with a wonderful staff of paralegals. Please submit cover letter, résumé, and one to three writing samples to "Box JJ," Oklahoma Bar Association, PO Box 53036, Oklahoma City, OK 73152.

ASSISTANT GENERAL COUNSEL for the Regional University System of Oklahoma. Position involves research, writing and application of higher education law which includes compliance with federal and state laws and regulations and employment and contract law. Submit résumé and writing sample electronically to generalcounsel@ruso.edu.

POSITIONS AVAILABLE

ATTORNEY (WITH 3 TO 5 YEARS EXPERIENCE) needed for general civil practice to include Workers Comp experience, by AV-rated Tulsa insurance and transportation defense firm. Very busy, fast-paced office offering competitive salary commensurate with experience, health/life insurance, 401k, etc. Candidates with strong academic background and practical litigation experience, please send a résumé and writing sample (10 pg. max) in confidence via email to office@gabmh.com.

PARALEGAL (2015-033). TINKER FEDERAL CREDIT UNION has an immediate opening for an experienced full-time Paralegal in our OKC Legal department. This position will interact with various departments within the credit union as well as opposing counsel, co-counsel and judicial/regulatory entities. This position requires the ability to communicate effectively both orally and in writing, attention to detail, filing/organizational skills, proficiency in Microsoft Office, conduct legal research, draft standard documents and pleadings, compose correspondence and legal memoranda, assist in compiling data and drafting reports, ability to adapt easily to new concepts and responsibilities while prioritizing assignments, a positive attitude and commitment to excellence. Salary range \$37,350 - \$44,817. Ideal candidates will have basic knowledge of the following: powers of attorney, wills & trust documents, OSCN, guardianship documents, and document production. Qualified candidates will have: Associate's Degree, 5+ year's related experience, completion of an ABA approved paralegal program, and certification by NALA. Apply online: www.tinkerfcu.org. Credit verification will be evaluated prior to interview. Educational, employment, and professional certifications will be verified for final candidates. Selected candidate is subject to substance/alcohol testing. We promote a substance-free workplace: "Equal Opportunity Employer, M/F/Disability/Veteran."

HARTZOG CONGER CASON & NEVILLE is seeking a 2-6 year attorney to work in the firm's business and corporate group. Applicants should have a strong academic background with experience in complex business transactions. Applicants should submit a résumé and cover letter to: "Box KK," Oklahoma Bar Association, P.O. Box 53506, Oklahoma City, OK 73152. Applications will be kept in strict confidence.

DURBIN, LARIMORE & BIALICK, P.C., A MIDTOWN OKC AV-RATED FIRM, SEEKS 5-15 years of experience in oil and gas law, including drilling, pipeline and pollution litigation. Salary commensurate with experience. Please submit cover letter and résumé to radams@dlb.net.

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.

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HARTZOG CONGER CASON & NEVILLE is seeking a 2-6 year attorney to work in the firm's estate planning group. Applicants should have a strong academic background. Applicants should submit a résumé and cover letter to: "Box W," Oklahoma Bar Association, P.O. Box 53506, Oklahoma City, OK 73152. Applications will be kept in strict confidence.

AV RATED, INSURANCE DEFENSE LAW FIRM, located in Norman, Oklahoma, with emphasis on Commercial Trucking Litigation, seeks associate attorney with 3-5 years of litigation experience and excellent writing skills. Compensation package is commensurate with level of experience. Please send résumé in confidence via email to shawna@millsfirm.com.

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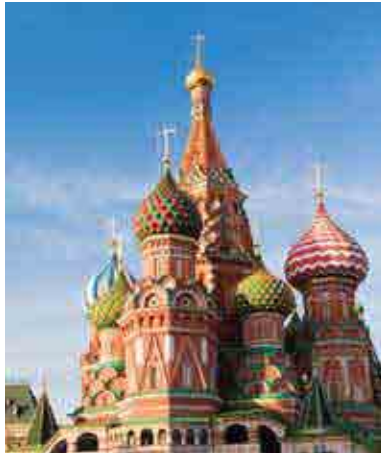
Siberian Nightmare

By L. Robert LaRaia

It was March of 1993. I was in the middle of Red Square on a bitterly cold day. At one side of this huge open space stood the forbidding walls of the Kremlin with the glassed-in crypt containing Lenin's preserved body. On the opposite side of the square, the glass show windows of a large department store displayed an abundance of luxury goods. It struck me then that capitalism had conquered communism, and I wondered if Lenin was turning over in his shrine. I was in the heart of the place that had been for all my life, the home of the enemy. As a child of the Cold War and a former Army officer trained to fight that very enemy, I thought I was in the middle of a dream.

If it was a dream, it only lasted until I boarded a small propeller plane for a four-hour flight to Western Siberia where my client/employer was conducting a venture with a Russian company in equal partnership to revive a huge oil field's once prolific production levels. Years of forced output quotas and lack of conservation practices had rendered the field almost moribund. The deal was simple: the Western company provides the capital, the technology and the expertise; the Russians get half of the profits. The Siberian town was the ugliest place I had ever seen. Large cinder block apartment houses lined the muddy streets where steel rebar sprang from the broken concrete like weeds in a field.

I often wondered how the Russians, with a legacy of such beauty in the arts, literature and dance, could tolerate living in such squalor. But after visiting some people living in those apartments and seeing the articles of art and beauty they had, I concluded that,



under the communist system, all that was owned in common and, in consequence, owned by none, was neglected for lack of pride of ownership. On the other hand, what was kept closest to one's being, what one owned in spite of the communistic system, was still cared for and appreciated for its beauty.

We stayed in a sanitarium, a place where under the old system the ordinary folk had been afforded a week or so of vacation every year. In that supposedly classless society, the prominent party members were given more elaborate vacations at Black Sea resorts. We had small rooms, each with a bathroom that had a toilet (and, if you were lucky, a toilet seat to go with it), a sink and a shower. If you stood in the shower too long, your feet would turn a burnt orange. When it came time to leave and go back to civilization, the song "Hotel California" used to run through my head. I was never sure whether a plane would show up to take us out of there. "You can check out but you can never leave."

Our offices were primitive too. Sometimes the electricity worked,

sometimes it didn't. The building was only a few years old but seemed much older, with mismatched linoleum tile on the floors, doors that wouldn't shut and walls that were far from plumb. Work was difficult, and dealing with the Russian partner was almost impossible. The bosses weren't interested in concepts like "sanctity of contract." They wanted money now! No matter that it would take years to revive the oil field's production to a profitable level. I still have chilling memories of some of the meetings we had when the Russians demanded money and threatened to have us arrested.

Let me end by telling a story that demonstrates a truth about the Russian people — they're basically good folks. Every day on our way to and from work, we would pass a giant bronze statue, portraying a striding man holding up a small pick that geologists use to chip away at rocks. The statue honored "Alyosha," the geologist who had discovered the giant oil field in which we were involved. One day, as we neared it, we saw a wedding party.

They were plain people. We stopped and timidly asked if we could take some pictures. The bride's father came up to us with open arms and, in a bit of slurred Russian and broken English, insisted that we join the party. He poured us glasses of Russia champagne (not great stuff!). We drank toasts to the couple. Joy reigned that day, and the memory of that experience is what I cherish above all else that I remember about my Siberian nightmare.

Mr. La Raia is an OBA member who lives in Houston, Texas.



Doing Your Job as a Trial Lawyer: Experts and Trial Tactics

SEPTEMBER 25, 2015

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

Program Planners/Moderator:
M. Shane Henry, Fry & Elder

This seminar will focus on working with and cross examining psychological experts as well as opening statements, trial tactics and cross examination.

CANCELLATIONS:

Cancellations will be accepted at any time prior to the seminar date; however, a \$25 fee will be charged for cancellations made within four full business days of the seminar date. Cancellations, refunds, or transfers will not be accepted on or after the seminar date.

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continuing legal education

8:30 a.m.

Registration and Continental Breakfast

9:00 a.m.

Psychologists at Trial; Working with and cross examining psychological experts:

M. Shane Henry, Aaron Bundy and
Dr. Eric Nelson, Ph.D.

1. Qualifications
2. Consulting vs. Testifying
3. Credibility of the Hired Gun
4. Retaining & Working with your Expert
5. Understanding the Psychological Tests
6. Collateral Sources
7. Daubert Analysis
8. Recommendations

Noon

Networking lunch with Big Truck Tacos
(included in registration)

1:00 p.m.

Opening Statements, Trial Tactics and Cross Examination

M. Shane Henry and Aaron Bundy

1. Credibility
2. Storytelling
3. Trilogies
4. Primacy and Recency
5. Body Movement
6. Sequencing
7. Control Techniques
8. Goals at Trial

3:00 p.m.

Adjourn

This course has been approved by the Oklahoma Bar Association Mandatory Continuing Legal Education Commission for 6 hours of mandatory CLE credit, including 0 hours of ethics.

TUITION: \$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. \$200 walk-ins. To receive a \$10 live program discount register online at www.okbar.org/members/cle. The program will also be webcast at a non-discounted price.

**Printed materials will not be available the day of the seminar; however, you can order a copy to be mailed to you at a later date for \$25.

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