

OKLAHOMA BAR JOURNAL

Volume 86 ♦ No. 33 ♦ Dec. 19, 2015

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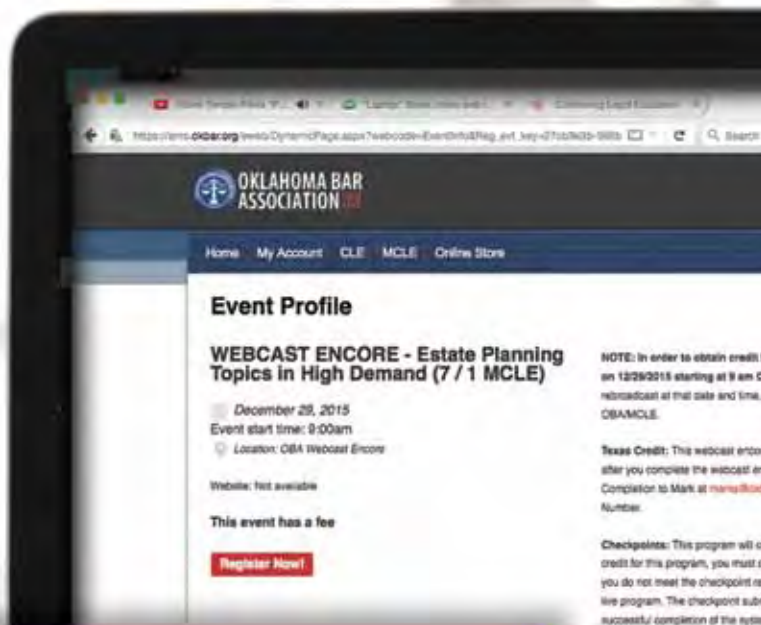
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ANATOMY FOR LAWYERS: ESSENTIAL TOOLS TO PROPERLY EVALUATE AND MAKE YOUR CASE

With Samuel D. Hodge, Jr.

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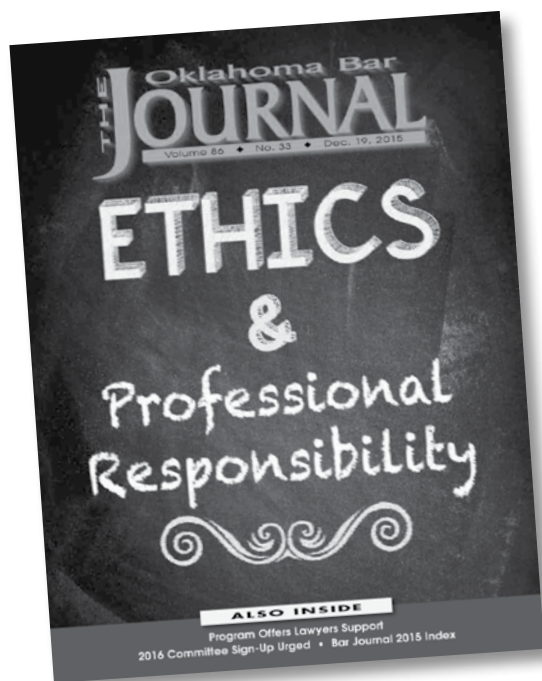
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Bar Members Issued a Call to Action

By David Poarch

Our defining value as a state and nation is not majority rule, but individual liberty. It is the central principle underlying our constitutional form of government — the notion that a government “of the people” must be administered according to the law and not according to the will of the powerful, whether a single person or a group. The rule of law.

Essential to our way of life is a fair and impartial judicial system. A passive or subservient judiciary is inconsistent with a constitutional government. As pointed out by George Will in a column published earlier this year, those “...clamoring for judicial restraint are waving a banner...to emancipate government, freeing it to pursue whatever collective endeavors it fancies, sacrificing individual rights to a spurious majoritarian ethic.”

As lawyers, we are the life’s blood of the judicial branch. As spelled out on the face of the license issued to each of us by the Supreme Court when we were admitted to practice law, we are sworn “in open Court...to support, protect and defend the Constitution of the United States and the Constitution of the State of Oklahoma.” Lawyers, not just judges and justices, are the third

co-equal branch of government, and as such we are sworn to action, not silence.

The pledge we have taken as lawyers, and the resulting status we hold in society, is neither inconsequential nor one of mere convenience. No matter where it comes from or how it occurs, when the independence of our judicial branch is endangered, it is incumbent upon each of us, as members of that branch, to respond. If we remain disinterested, disengaged or just too busy to be bothered, we are complicit in subordinating the full benefit of the constitutional guarantees we are meant to enjoy to the ever changing ideological whims of the momentary majority — the unhappy but predictable consequence of our collective

submissive silence. To believe otherwise is to deny what history demonstrates: that those in power, regardless of where they are on the political spectrum, by and large believe that when they are in the ideological majority they should enjoy a relatively unconstrained right to make rules for everyone, self-assured in the rationalization that they represent the “will of the majority.”

So, this is an unabashed call to action. As lawyers we are powerful members of society who are sworn to protect and defend the Constitution’s promise of individual liberty when a fair and impartial judicial branch is threatened. But we are only powerful if and when we actually show up.

As I close my year as president of our association, I hope that I have inspired you to re-examine your larger role as a unique citizen whose knowledge of the law sets you apart from others in society — a sworn member of the third branch of government. One whose education and training others look to for leadership and guidance on issues of importance as they are debated in the marketplace of ideas.

I am proud to be a lawyer. We have much to offer our fellow citizens. Thank you for allowing me to serve as your president. Go forth and continue to do good work.

No matter where it comes from or how it occurs, when the independence of our judicial branch is endangered, it is incumbent upon each of us, as members of that branch, to respond.



David Poarch

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Ethics

& PROFESSIONAL RESPONSIBILITY

Civility in Lawyers' Writing

By Douglas E. Abrams

A few years ago, ABA President Stephen N. Zack decried the legal profession's "continuing slide into the gutter of incivility."¹ An ABA resolution "affirm[ed] the principle of civility as a foundation for democracy and the rule of law, and urge[d] lawyers to set a high standard for civil discourse."²

The ABA initiative echoes federal and state courts that call civility "a linchpin of our legal system,"³ a "bedrock principle,"⁴ and "a hallmark of professionalism."⁵ Justice Anthony M. Kennedy said that civility "defines our common cause in advancing the rule of law."⁶ Chief Justice Warren E. Burger called civility a "lubricant[]" that prevent[s] lawsuits from turning into combat."⁷

"Courtesy is an essential element of effective advocacy," agreed Justice John Paul Stevens.⁸

The adversary system's pressures can strain the tone and tenor of a lawyer's oral speech, but the strain on civility can be especially great when lawyers write. Words on paper arrive without the facial expression, tone of voice, body language or contemporaneous opportunity for explanation that can soothe face-to-face communication. Writing appears cold on the page, dependent not necessarily on what the writer intends or implies, but on what readers infer.

This article is in three parts. Part I describes two manifestations of incivility, a lawyer's written derision of an opponent and a lawyer's written disrespect of the court. Part II describes how either manifestation can weaken the client's

cause. Part III describes how incivility in writing can also compromise both the lawyer's own personal enrichment and the lawyer's professional standing among the bench and bar.

PART I

"[C]ivility is not a sign of weakness," President John F. Kennedy assured Americans in his Inaugural Address in 1961 as he anticipated four years of faceoffs with the Soviets.⁹

"Civility assumes that we will disagree," said Yale law professor Stephen L. Carter. "It requires us not to mask our differences but to resolve them respectfully."¹⁰ The advice prevails, regardless of whether incivility pits lawyer on lawyer, or whether it pits lawyer against the court. Each of the two manifestations of incivility warrants a representative example here.

Lawyer-On-Lawyer Incivility

When Chief U.S. Bankruptcy Judge Terrence L. Michael of the Northern District of Oklahoma recently considered whether to approve a compromise in *In re Gordon*, the contending lawyers in the Chapter 7 proceeding detoured into written lawyer-on-lawyer invective.¹¹

In a filing to support its motion to compel discovery from the bankruptcy trustee in *Gordon*, the lawyer for creditor Commerce Bank charged that the trustee and the United States had engaged in “a pattern ... to avoid any meaningful examination of the legal validity of the litigation plan they have concocted to bring ... a series of baseless claims.”¹²

“[T]hey know,” the bank’s lawyer continued, “that a careful examination of the process will show the several fatal procedural flaws that will prevent these claims from being asserted.”¹³ “Only by sweeping these issues under the rug will the trustee be able to play his end game strategy of asserting wild claims ... in hopes of coercing Commerce Bank into a settlement (which the Trustee hopes will generate significant contingency fees for himself).”¹⁴

The trustee charged that the bank’s lawyer had impugned his character with accusations that he had compromised his fiduciary obligations for personal gain. Judge Michael denied the trustee’s sanctions motion on procedural grounds, but he chastised the bank’s lawyer because “personal and vitriolic accusations have no place as part of a litigation strategy.”¹⁵ The court instructed the parties to “leave the venom at home”¹⁶ because “[w]hether you like (or get along well with) your opposition has little to do with the merits of a particular case.”¹⁷

Some courts have moved beyond instruction. In the exercise of inherent authority, these courts have sanctioned lawyers, or have denied attorneys’ fees, for incivility.¹⁸ Some courts have even sanctioned the client who, having retained the lawyer, bears some responsibility for the lawyer’s conduct.¹⁹

Lawyer-on-Court Incivility

Gordon’s written recriminations pitted counsel against counsel, but lawyers sometimes venture into incivility that disrespects judges and the court. Every appeal involves at least one party who believes that the lower court reached an incorrect outcome, but few judges deserve criticism for incompetence. Lawyers for aggrieved parties are more likely to receive a serious hearing (and more likely to perform their roles as officers of the court) by firmly and forcefully, but respectfully, arguing a judge’s good faith misapplication of the law to the facts, rather than by resorting to insinuations about the judge.

Insinuations surfaced during the federal district court’s review of the magistrate judge’s report and recommendation in *In re Photochromic Lens Antitrust Litigation*.²⁰ A party’s lawyer contended that the magistrate judge was “misled” concerning relevant legal standards, and that the judge made her recommendation without “any reference to the voluminous underlying record.” The lawyer further contended that she “conducted no analysis, much less a ‘rigorous analysis,’” and decided “based on no evidence, a superficial misreading of the evidence, or highly misleading evidence.”²¹

The district court approved the magistrate judge’s recommendation and report in significant part, but did not stop there. The court also publicly reprimanded the lawyer for crossing the line: “It is disrespectful and unbecoming of a lawyer to resort to such language, particularly when directed toward a judicial officer. Its use connotes arrogance, and reflects an unprofessional, if not immature litigation strategy of casting angry aspersions rather than addressing the merits . . . in a dignified and respectful manner.”²²

PART II

Incivility’s Costs to the Client

Lawyers whose writing descends into incivility risk weakening the client’s cause, perhaps irreparably. The chief justice of the Maine Supreme Court confided that “[a]s soon as I see an attack of any kind on the other party, opposing counsel, or the trial judge, I begin to discount the merits of the argument.”²³

As they determine the parties’ rights and obligations by applying fact to law, perhaps judges sometimes react this way because civility projects strength and incivility projects weakness. “Rudeness is the weak man’s imitation of strength,” said philosopher Eric Hoffer.²⁴

The lawyer’s first step toward civility may be an early candid talk with the client, who may feel grievously wronged and may believe that the surest path to vindication is representation by a junkyard dog waiting to be unleashed. The client’s instincts may stem from movies and television dramas, whose portrayals of lawyers sometimes sacrifice realism for entertainment.

Without this early talk, the client may mistake the lawyer’s civility for meekness and courtesy for concession. The client needs to understand that a take-no-prisoners strategy can disgust any decision-maker who shares the

sensibilities expressed by the justices and judges quoted above.

One Illinois trial judge recently had this advice for lawyers: "No judge has ever been heard to endorse or encourage the use [of mean-spirited] writing. Not one. You may feel better writing it and your client may feel better reading it, but your audience is the judge, and judges abhor it."²⁵ Judicial abhorrence scores the client no points.

Justice Sandra Day O'Connor said, "It is enough for the ideas and positions of the parties to clash; the lawyers don't have to."²⁶

"It isn't necessary to say anything nasty about your adversary or to make deriding comments about the opposing brief," added Justice Ruth Bader Ginsburg, who said that such comments "are just distractions. You should aim to persuade the judge by the power of *your* reasoning and not by denigrating the opposing side ... If the other side is truly bad, the judges are smart enough to understand that; they don't need the lawyer's aid."²⁷

Judges are not alone in advancing civility for projecting strength. John W. Davis, perhaps the 20th century's greatest Supreme Court advocate, understood his judicial audience. "Controversies between counsel," he wrote, "impose on the court the wholly unnecessary burden and annoyance of preserving order and maintaining the decorum of its proceedings. Such things can irritate; they can never persuade."²⁸

PART III

Incivility's Costs to the Lawyer

Aside from compromising the client's interests, incivility can damage the lawyer's own personal enrichment and professional standing. Incivility "takes the fun from the practice of law," said Judge Duane Benton of the U.S. Court of Appeals for the 8th Circuit.²⁹

"Being a lawyer can be pleasant or unpleasant," explained Judge William J. Bauer of the U.S. Court of Appeals for the 7th Circuit, who added, "[w]hen we treat each other and those with whom we have professional contact with

civility, patience and even kindness, the job becomes more pleasant and easier."³⁰

Moving from the lawyer's personal enrichment to professional standing, the preamble to the ABA Model Rules of Professional Conduct recites "the lawyer's obligation zealously 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."³¹ Model Rule 8.4(d) operates against "conduct that is prejudicial to the administration of justice."³²

The model rules' spotlight on professional obligation is fortified by commands for civility in federal and state court rules;³³ state admissions oaths,³⁴ and unofficial codes that some professional organizations maintain for their member lawyers.³⁵ The ABA Model Code of Judicial Conduct imposes reciprocal obligations of civility on judges in the performance of their official duties.³⁶

These professional commands and expectations mean that descent into incivility can damage the lawyer's reputation with judges and other lawyers. The damage seems greatest when the court's opinion calls out the offending lawyer publicly, either by name or by leaving the lawyer readily identifiable from the appearances listed atop the opinion. In the two

decisions featured in part I of this article, the offenders may have had belated second thoughts when the court shined the spotlight.

"Just as lawyers gossip about judges and most litigators have a 'book' on the performances of trial judges, we judges keep our own book on litigators who practice before us," confided one federal district judge.³⁷

During my judicial clerkship, I learned early that when many judges pick up a brief or other submission, they look first for the writer's name. A writer with a track record for civil, candid, forceful advocacy gets a head start; a writer who has fallen short must make up lost ground.

Incivility brings tarnish, but civility brings luster. Justice Kennedy called civility "the mark of an accomplished and superb profes-

“...If the other side is truly bad, the judges are smart enough to understand that; they don't need the lawyer's aid.”

sional.”³⁸ A veteran federal district judge concurred: “The lawyers who are the most skillful tend to be reasonably civil lawyers because they project an image of self-confidence. They don’t have to stoop to the level of acrimony.”³⁹

Even without public rebuke or other disdain from the bench, word gets around. In cities, suburbs and outstate areas alike, the bench and bar usually remain bound by mutual relationships, word of mouth, recollections and past experiences. Lawyers with sterling reputations for civility stand a better chance of receiving civility in return. Sooner or later, for example, a lawyer may need a stipulation, consent to a continuance or similar accommodation from opposing counsel or the court. Like other people, lawyers get what they give.

In a challenging employment market, maintaining a reputation for civility can also enhance a lawyer’s professional mobility. Lawyers sometimes receive appealing lateral job offers from a nearby public- or private-sector adversary who respects not only their competence, but also their professionalism. Being smart is not enough. Plenty of lawyers are smart, but fewer lawyers earn respect for genuine professionalism as they seek the best possible outcomes for their clients. Because few Americans (including few lawyers) spend their entire careers with their first employer, enhanced lateral mobility can be a significant reward for unswerving commitment to an honorable law practice.

As members of a largely self-governing profession devoted to the rule of law,⁴⁰ lawyers are judged by expectations sometimes higher than the expectations that judge other professionals. President Theodore Roosevelt said “[c]ourtesy is as much a mark of a gentleman as courage.”⁴¹

“The greater the man, the greater courtesy,” wrote British Poet Laureate Alfred Lord Tennyson in his epic poem, *Idylls of the King*.⁴²

The greater the lawyer too.

CONCLUSION: THE WILL TO WIN

“All advocacy involves conflict and calls for the will to win,” said New Jersey Supreme Court Chief Justice Arthur T. Vanderbilt. But the will to win is only one ingredient of professionalism. “Advocates,” he added, “must have character,” marked by “certain general standards of conduct, of manners, and of expres-

sion.”⁴³ One prime marker of an advocate’s character is civility.

Civility in advocacy resembles sportsmanship in athletics. Sportsmanship presumes that each athlete wants to win within the rules of the game; a sportsmanlike athlete who does not care about winning should not play. Civility similarly presumes that each advocate wants to win within the rules of professionalism; a civil advocate who does not care about winning should not represent a client. Civility and forceful advocacy, like sportsmanship and forceful athleticism, define the total package.

Note: This article originally appeared in Precedent, a publication of The Missouri Bar. Reprinted by permission.

1. James Podgers (ed.), “From Many Voices, a Call for Public Civility,” 97 A.B.A.J. 58, 58 (Sept. 2011) (quoting Zack).
2. *Id.*
3. *Wilson v. Airtherm Prods., Inc.*, 436 F.3d 906, 912 n.5 (8th Cir. 2006).
4. *Wescott Agri-Prods, Inc. v. Sterling State Bank, Inc.*, 682 F.3d 1091, 1096 (8th Cir. 2012).
5. *Cardello v. Cardello*, No. FA020088156S, 2002 WL 31875435 * 1 (Conn. Super. Ct. Dec. 4, 2002).
6. Louis H. Pollak, “Professional Attitude,” 84 A.B.A.J. 66, 66 (Aug. 1998) (quoting Justice Kennedy).
7. Warren E. Burger, “The Necessity for Civility,” 52 F.R.D. 211, 214-15 (1971).
8. Marvin E. Aspen, “Let Us Be ‘Officers of the Court,’” 83 A.B.A.J. 94, 96 (July 1997) (quoting Justice Stevens).
9. Joint Congressional Comm. on Inaugural Ceremonies, *Address by John F. Kennedy*, 1961 (Jan. 20, 1961).
10. Stephen L. Carter, *Civility* 132 (1998).
11. 484 B.R. 825 (N.D. Okla. 2013).
12. *In re Gordon*, 484 B.R. 825, 827 (N.D. Okla. 2013).
13. *Id.*
14. *Id.* at 827-28.
15. *Id.* at 828.
16. *Id.* at 830-31.
17. *Id.* at 830.
18. G.M. Filisko, “You’re OUT OF ORDER!,” 99 A.B.A.J. 32 (Jan. 2013); *Wescott Agri-Prods, Inc.*, *supra* note 5, at 1095-96 (citation omitted).
19. *See, e.g., Wescott Agri-Prods, Inc.*, *supra* note 4, at 1096 (citation omitted).
20. No. 8:10-md-02173-T-27EAJ, 2014 WL 1338605 (M.D. Fla. Apr. 3, 2014).
21. *Id.* at *1 n.1.
22. *Id.*
23. Leigh Ingalls Saufley, “Amphibians and Appellate Courts,” 14 MAINE B.J. 46, 49 (Jan. 1999).
24. Eric Hoffer, *The Passionate State of Mind: And Other Aphorisms* 100. (1955).
25. Naomi Kogan Dein, “The Need for Civility in Legal Writing,” 21 CBA RECORD 54 (Feb./Mar. 2007) (quoting Judge Michael B. Hyman).
26. Sandra Day O’Connor, “Professionalism,” 76 Wash. U.L.Q. 5, 9 (1998).
27. “Interviews with United States Supreme Court Justices: Justice Ruth Bader Ginsburg,” 13 SCRIBES J. LEG. WRITING 133, 142 (2010) (quoting Justice Ginsburg) (italics in original).
28. John W. Davis, “The Argument of an Appeal,” 26 A.B.A.J. 895, 898 (1940).
29. Duane Benton, “Chief Justice’s Address to Members of the Missouri Bar, Sept. 24, 1998,” 54 J. MO. BAR 302, 302 (1998).
30. J. Timothy Eaton, “Civility, Judge Bauer and the CBA,” 28 CBA RECORD 8 (2014) (quoting Judge Bauer; citation omitted).
31. ABA Model Rules of Prof’l Conduct, Preamble [9] (2015).
32. *Id.*, R. 8.4(d) (2015).
33. *E.g., Standards for Professional Conduct Within the Seventh Federal Judicial Circuit* 120-21, 123 (2013).
34. Filisko, *supra* note 18 (quoting S.C. oath).

35. See, e.g., *Am. Bd. of Trial Advocates' Principles of Civility, Integrity, and Professionalism*, <https://www.abota.org/index.cfm?pg=Civility>.
36. ABA Model Code of Judicial Conduct R. 2.8(B) (2015).
37. Aspen, *supra* note 8, at 96.
38. Louis H. Pollak, *supra* note 6 (quoting Justice Kennedy).
39. Laura Castro Trognitz, "Bench Talk," 86 *A.B.A.J.* 56 (Mar. 2000) (quoting Judge John G. Koeltl, S.D.N.Y.).
40. ABA Model Rules of Prof'l Conduct, Preamble [10] (2015).
41. Cliff Sain, "Earth's Atmosphere," *Springfield (Mo.) News-Leader*, Feb. 26, 2008, at 3C (quoting Roosevelt).
42. Alfred, Lord Tennyson, *Idylls of the King, The Last Tournament*, line 631 (1859-85).
43. Arthur T. Vanderbilt, "Forensic Persuasion," 7 *Wash. & Lee L. Rev.* 123, 130 (1950).

ABOUT THE AUTHOR



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Ethics

& PROFESSIONAL RESPONSIBILITY

Succession Planning – Attorney Planning in the Event of Death or Incapacity – You’ve Got to Do It!

By Joe Balkenbush

When you read the title of this article you probably thought, “Great – one more thing for me to do!” I know where you are coming from. As attorneys, we have more to do than we can get done in the time we have.

This matter is so important that you must make time to prepare your succession plan. Oklahoma Rules of Professional Conduct (ORPC) Rule 1.3 comment [5] and Rules Governing Disciplinary Proceedings Rules 12.1-12.3 mandate it!

The Oklahoma Bar Association has created a handbook to help you fulfill your ethical obligations to protect your clients’ interests in the event of your inability to continue practicing law due to an accident, unexpected illness, disability, impairment, incapacity or death. It has the added benefit of protecting the people most important to you — your family, friends and colleagues!

When an attorney who works in a firm setting becomes incapacitated or passes away, the firm will usually take care of the client files and other issues as needed. However, when a solo practitioner passes away, there is usually no one there to pick up the pieces for the clients. The job of closing the practice falls to the family of the attorney or on the attorney’s friends.

As attorneys, it is our ethical responsibility, and perhaps more importantly our moral

responsibility to our family, friends and/or colleagues, to not leave them with the burden of winding up our practice.

So, how do we plan for our incapacity or death, especially when we know that one of those eventualities is going to occur? There are two questions that need to be answered:

- 1) What steps should lawyers take to ensure their clients’ matters will not be neglected in the event of their incapacity or death?
- 2) What obligations do lawyers representing the estates of deceased lawyers, or appointed or otherwise responsible for review of the files of a lawyer who is incapacitated or dies, have with regard to the deceased lawyer’s client files and property?

In late 2014, the OBA adopted a handbook and forms titled *The Planning Ahead Guide: Attorney Transition Planning in the Event of Death or Incapacity*. That document is available in its entirety on the OBA website.

As you will see, the documents are voluminous. But don’t be overwhelmed, the majority

of the handbook is made up of checklists and forms.

There are five chapters in the materials. They are:

- 1) The Duty to Plan Ahead
- 2) Answers to Frequently Asked Questions
- 3) Checklists
- 4) Sample Forms
- 5) Articles, Rules, Formal Opinions and Resources

CHAPTER 1 — THE DUTY TO PLAN AHEAD

It is difficult to think about events that could render you unable to continue practicing law, or at least temporarily unable to practice law. Unfortunately, accidents, unexpected illnesses, mental challenges and untimely death do occur. I have had numerous calls in the nine months that I have been ethics counsel. The calls have come from spouses, children, parents, friends, a bank or fellow attorney asking what they should do with client files, a trust account or pending litigation. Once or twice a year the bar association is notified that a lawyer has “disappeared,” usually because of a mental health challenge or substance abuse. The “missing” lawyer is included within the scope of these materials as well. If any of these events happen to you, your clients’ interests may be unprotected unless you have put a succession plan into place.

The point is, a lawyer should arrange to safeguard the clients’ interests in the event of the lawyer’s death, incapacity or disappearance. The Oklahoma Bar Association offers this handbook to help you fulfill your ethical responsibilities and to provide guidance for reducing future malpractice claims against you and your estate.

The OBA ethics counsel and Management Assistance Program director can help you understand the steps to take when planning ahead. The bar association itself cannot wind down your practice for you; but we can help you put a plan in place.

In the handbook, certain terminology is used. The following are a couple of the most important terms:

- The term *assisting attorney* refers to the lawyer with whom you have made arrangements to close your practice.

- The term *authorized signer* refers to the person you have authorized as a signer on your lawyer trust account.
- The term *planning attorney* refers to you, your estate or your personal representative.

The handbook also contains sample agreements between the planning attorney and his/her designees (assisting attorney, authorized signer). There is a “full form” and a “short form.” The sample *Agreement — Full Form*, authorizes the assisting attorney to transfer client files, sign checks on your operating account and close your practice. The form also provides for payment to the assisting attorney for services rendered, designates the procedure for termination of the assisting attorney’s services, and provides the assisting attorney with the option to purchase the law practice. The full form also provides for the appointment of an authorized signer on your lawyer trust account.

The sample *Agreement — Short Form*, includes an appointment of an assisting attorney, authorization to sign on your operating account and consent to close your office. It also provides for the appointment of an authorized signer on your trust account. It does not include many of the provisions found in the full form version, but it does include the authorizations most critical to protecting your clients’ interests.

Implementing the Plan

The first step in the planning process is for you to find someone — preferably an attorney — to close your practice in the event of your death, incapacity or disappearance, and put an agreement in place.

The agreement can include provisions that give the assisting attorney authority to wind down your financial affairs, provide your clients with a final accounting and statement, collect fees on your behalf, and liquidate or sell your practice pursuant to ORPC 1.17. Arrangements for payment by you or your estate to the assisting attorney for services rendered can also be included in the agreement.

At the beginning of your relationship, it is crucial for you and the assisting attorney to establish the scope of the assisting attorney’s duty to you and your clients. If the assisting attorney represents you as *your* attorney, he or she may be prohibited from representing your clients on some, or possibly *all*, matters. Under this arrangement, the assisting attorney would owe his or her fiduciary obligations to you. For

example, the assisting attorney could inform your clients of your legal malpractice or ethical violations only if you consented. However, if the assisting attorney is not *your* attorney, he or she may have an ethical obligation to inform your clients of your misdeeds.

Whether or not the assisting attorney is representing you, that person must be aware of conflict-of-interest issues and check for conflicts if he or she 1) is providing legal services to your clients or 2) must review confidential file information to assist with transferring clients' files. Your office staff should be instructed to initially review your files to "pull" the files where there is an obvious conflict of interest (e.g., assisting attorney is opposing counsel) so that the assisting attorney never sees any information contained in those files.

In addition to arranging for an assisting attorney, you may also want to arrange for an authorized signer on your trust account. It is best to choose someone other than your assisting attorney to act as the authorized signer on your trust account. This provides for checks and balances, since two people will have access to your records and information. It also avoids the potential for any conflicting fiduciary duties that may arise if the trust account does not balance.

Planning ahead to protect your clients' interests in the event of your disability or death involves some difficult decisions, including the type of access your assisting attorney and/or authorized signer will have, the conditions under which they will have access and who will determine when those conditions are met.

If you are incapacitated, for example, you may not be able to give consent to someone to assist you. Under what circumstances do you want someone to step in? How will it be determined that you are incapacitated, and who do you want to make this decision?

One approach is to give the assisting attorney and/or authorized signer access only during a specific time period or after a specific event and to allow the assisting attorney and/or authorized signer to determine whether the contingency has occurred.

“If you do not make arrangements to allow someone access to the trust account, your clients' money will remain in the trust account until a court orders access.”

Another approach is to have someone else (such as a spouse or partner, trusted friend, or family member) keep the applicable documents (such as a limited power of attorney for the assisting attorney and/or the authorized signer) until he or she determines that the specific event has occurred.

A third approach is to provide the assisting attorney and/or authorized signer with access to records and accounts at all times.

Access to Your Trust Account

As mentioned above, when arranging to have someone take over or wind down your financial affairs, you should also consider whether you want someone to have access to your trust account. If you do not make arrangements to allow someone access to the trust account, your clients' money will remain in the trust account until a court orders access. For example, if you become physically, mentally or emotionally unable to manage your law practice and no access arrangements were made, your clients' money will most likely remain in your trust account until either a probate is opened and a personal representative is appointed or the OBA's general counsel petitions the court to appoint lawyers to notify clients and take any immediate action necessary to protect them. Both of these approaches are far less desirable than making plans yourself. In many instances, the client needs the money he or she has on deposit in the lawyer's trust account to hire a new lawyer, and a delay puts the client in a difficult position. This is likely to prompt ethics complaints, Client Security Fund claims, malpractice complaints or other civil suits.

There are no easy solutions to these questions, and there is no way to know absolutely whether you are making the right choice. There are many important decisions to make. Each person must look at the options available to him or her, weigh the relative risks, and make the best choices they can.

So, how should client's be notified? Once you have made arrangements with an assisting attorney and/or authorized signer, you need to provide your clients with information about your plan. The easiest way to do that is to include the information in your fee agreement

and related materials. That way, clients are provided with the necessary information about your arrangement and they have an opportunity to object. Your client's signature on a properly prepared fee agreement provides their consent and written authorization for the assisting attorney to proceed on their behalf, if necessary.

There are some other steps that can be taken while you are still practicing to make the process of closing your office smooth and inexpensive. These steps include:

- Making sure that your office procedures manual explains how to produce a list of client names and addresses for open files. How many of you have an office procedures manual?
- Keeping all deadlines and follow-up dates on your calendaring system.
- Thoroughly documenting client files.
- Keeping your time and billing records up-to-date.
- Familiarizing your assisting attorney and/or authorized signer with your office systems.
- Renewing your written agreement with the assisting attorney and/or authorized signer each year, and
- Making sure you do not keep clients' original documents, such as wills or other estate plans.

More on this issue later.

If your office is in good order, the assisting attorney will not have to charge more than a minimum fee for closing the practice. Your law office will then be an asset that can be sold and the proceeds paid to you or your estate. An organized law practice is a valuable asset. In contrast, a disorganized practice requires a large investment of time and money to get it organized.

There are some special considerations when a sole practitioner passes away. If you authorize another lawyer to administer your practice in the event of incapacity or disappearance, that authority terminates when you die. Upon your death, the personal representative of your estate has the legal authority to administer your practice. He or she must be informed of your arrangement with the assisting attorney and/or authorized signer, and about your desire to have the assisting attorney and/or

authorized signer carry out the duties of your agreement. The personal representative of your estate can then authorize the assisting attorney and/or authorized signer to proceed.

It is imperative that you have an up-to-date will nominating a personal representative (and alternates if the first nominee cannot or will not serve) so that probate proceedings can begin promptly and the personal representative can be appointed without delay.

Oklahoma law gives broad powers to a personal representative to continue a decedent's business to preserve its value, to sell, or wind down the business, and to hire professionals to help administer the estate. For the personal representative's protection, you may want to include language in your will that expressly authorizes that person to arrange for closure of your law practice and authorize access to and distribution of funds in the operating and trust accounts. The appropriate language will depend on the nature of the practice and the arrangements you make ahead of time.

It is also important to allocate sufficient funds to pay an assisting attorney and/or authorized signer and necessary support staff in the event of death, incapacity or disappearance. You might consider maintaining a disability insurance policy or other funds in an amount sufficient to cover these projected office closing expenses.

The main thing is that you start now. Don't put it off.

We encourage you to first select an attorney to assist you, and then follow the procedures outlined in the handbook. This is something you can do now, at little or no expense, to plan for your future and protect your assets; again, don't put it off — start the process now!

CHAPTER 2 — FREQUENTLY ASKED QUESTIONS

Chapter 2 contains a number of frequently asked questions and provides the answers to those questions. If you are planning to close your office or if you are considering helping a friend or colleague close his or her practice, you should think through a number of issues. How you structure your agreement will determine what the assisting attorney must do if he or she finds 1) errors in the files, such as missed deadlines, or 2) misappropriation of client funds.

Discussing these issues at the beginning of the relationship will help to avoid misunderstandings later when the assisting attorney interacts with the planning attorney's former clients. As set out above, if these issues are not discussed, the planning attorney and the assisting attorney may be surprised to find that the assisting attorney 1) has an obligation to inform the clients about a potential malpractice claim or 2) may be required to report the planning attorney to the OBA.

The best way to avoid these problems is to have a written agreement between the planning attorney and assisting attorney, and when applicable, with the planning attorney's former clients. If there is no written agreement clarifying the obligations and relationships, an assisting attorney may find that the planning attorney believes the assisting attorney is representing the planning attorney's interests. At the same time, the former clients of the planning attorney may also believe that the assisting attorney is representing their interests. It is important to keep in mind an attorney-client relationship can be established by the reasonable belief of a would-be client.

This frequently asked questions section reviews some of the most relevant issues and the various arrangements the planning attorney and the assisting attorney can make.

CHAPTER 3 — CHECKLISTS

Chapter 3 of the handbook is titled "Checklists." There are checklists for:

- lawyers planning to protect clients' interests in the event of the lawyer's death, incapacity or disappearance,
- for closing another attorney's office,
- for closing your own office and
- for closing your IOLTA account.

Rather than going through each checklist, you can review the handbook and use whatever checklist is appropriate. The checklists are fairly exhaustive and are an excellent resource to ensure you don't forget anything while planning.

CHAPTER 4 — FORMS

Chapter 4 contains all of the forms discussed so far, and a number of other forms relevant to you planning ahead for your inevitable demise — that sounds nice doesn't it! There is an Agreement — Full Form, Agreement — Short

Form, Limited Power of Attorney and 13 other forms for your use.

The intent of the handbook is to provide all of the necessary forms. A number of the forms are even helpful in the day-to-day practice of law.

CHAPTER 5 — ARTICLES, RULES, FORMAL OPINIONS AND RESOURCES

Chapter 5 of the handbook is titled "Articles, Rules, Formal Opinions and Resources." It deals with file retention and destruction, what documents should you retain from a client's file, organization and destruction of closed files, is it ok to store files electronically, and the last section, don't let lawyers and probate eat up your hard-earned money!

Let's look at file retention first. The ORPC do not provide specific direction or guidelines on the general subject of file retention. As every attorney knows (???), Rule 1.15 (a), titled Safekeeping Property (more commonly known as the trust account rule) requires that complete records of client account funds and other client property be kept for five years after termination of the representation. So, it follows that a good general office policy for file retention would be to use the five year rule as a starting point. The length of time that a file should be retained depends on the type of case and/or the contents of the file. Consider, for example:

- 1) Cases involving a minor
- 2) Probate, estate and guardianship matters
- 3) Contracts or other agreements that are still in effect
- 4) Cases in which a judgment should be renewed
- 5) Files establishing a tax basis in property
- 6) Criminal law files
- 7) Support and custody files in which the children are minors or the support obligation continues
- 8) Corporate books and records
- 9) Adoption files
- 10) Intellectual property files
- 11) Real estate title claims and title insurance work
- 12) Files of problem clients

Ultimately, the decision should be based on factors such as statutes of limitations, other substantive law, the nature of the particular

case and the client's needs. A lawyer should also consult his or her malpractice carrier for any specific requirements it has on document retention.

When you have decided to dispose of client files, there is a question of what, if anything, should you retain from a client's file? All lawyers and law firms should implement a written file storage, management and retention policy, and should follow the policy. Considerations for the retention policy include:

- 1) How long files will be maintained.
- 2) Return of original documents to the client immediately after use or upon conclusion of the representation.
- 3) The client may have the file or a complete copy of the file, but must pay appropriate retrieval charges (if stored off-site) and copy charges.
- 4) If not retrieved by the client, the file will be destroyed once the designated time period passes.
- 5) Clients should be sent a closing letter notifying them of their right to take any documents not previously furnished to them and advising them of the date that the file documents will be destroyed.
- 6) The law firm's file retention policy should be set out in the fee agreement, or as an exhibit to it.

When closing your file, returning original documents to clients, or transferring files to their new attorneys, be sure to get a receipt for the property and keep the receipt in your paper or electronic file.

Step one in the file retention process begins when you are retained by the client. Your fee agreement or a document retention section attached as an exhibit should notify the client that you will eventually destroy the file and should specify when that will occur. The client's signature on the fee agreement will provide consent to destroy the file. An attorney should almost always avoid holding the client's original documents and return them as soon as possible.

The next step is closing the file. It is recommended that you send the client a closing letter notifying of a specific destruction date and that you calendar that date. Or you can ensure the client has a complete copy of the file. That includes all pleadings, correspondence and

other papers and documents. If you choose the latter alternative, be sure to document that the client has a complete file. That means the paper or electronic file you have in your office is yours (and can be destroyed without permission) and the file the client has is the client's copy. File closing is also a good time to advise clients of your firm's policy on retrieving and providing file material once a matter is closed.

The final step in the file retention process involves reviewing the firm's electronic records for client-related material. Electronic data may reside on network servers, Web servers, Extranets, Intranets, the Internet, local hard drives of firm PCs, laptops, home computers, zip drives, disks, portable memory sticks and flash drives, PDAs and Smartphones, or other media. Examples include email communications, instant messages, electronic faxes, digitized evidence, word processing, or other documents generated during the course of the case. (Jim Calloway, OBA MAP director, can probably provide additional examples). Review these sources to ensure the client file is complete. If these documents exist only in electronic form, you may choose to store them electronically or print them out and place them in the client's file.

If you possess electronic data containing clients' personal information you may be required by federal or state law to develop, implement and maintain safeguards to protect the security and disposal of the data. Be certain you comply with such requirements.

You should also have a procedure regarding the organization and destruction of closed files. You should keep a permanent inventory of files you destroy and the destruction dates. Before destroying any client file, review it carefully. Some files need to be kept longer than others, as noted above. Others may contain conflict information that needs to be added to your conflict database or original documents of the client, which should never be destroyed. Always retain proof of the client's knowledge and acquiescence to destruction of the file. This is easily done by including the client's consent in your fee agreement and document retention policy (which has been approved by the client) and retaining the closing letters with your inventory of destroyed files. Follow the same guidelines when evaluating whether to destroy electronic records.

A lawyer must protect a client's confidences when disposing of file contents. This generally means that the file must be shredded or incinerated. Care should be taken if these tasks are contracted to outside companies. The lawyer should ensure that documents are disposed of without review by the contractor's employees or others. You should retain an index of destroyed files, copies of your fee agreement as well as the closing letter or other correspondence which notifies the client of your file retention policy.

There is no requirement that you must maintain a "paper" file. If you have gone to a paperless office or are just trying to cut down on paper, it is proper to store file material electronically. The key is to be sure and "back up" your files. It is best to do that offsite. In the case of a computer failure, you will be able to retrieve all of your information.

CONCLUSION

There may not be any more important task that each and every practicing attorney should prioritize than preparing his or her succession plan. The OBA and the literally dozens of lawyers who participated in reviewing, revising and compiling the handbook have made your succession planning as uncomplicated as possible. All that is required is you take the time to do it! You will have done your family, friends and colleagues a great service by taking the time to complete your succession plan. Please feel free to contact Mr. Calloway or me if you have any questions regarding the process of "planning ahead." Our contact information can be found on the OBA website and throughout every bar journal.

ABOUT THE AUTHOR



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



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Privilege and Work-Product Considerations for Using an Expert as a Consultant

By Shane Henry and Aaron Bundy

Lawyers come from many different backgrounds. Some of us are engineers; others artists. Even for those of us with highly-concentrated practices, few, if any of us, have the control or ability to ensure that our clients and their needs perfectly align with our own training and experience. Experts are often required for preparation in both criminal and civil trials.¹ For example, in *Ake v. Oklahoma*,² the United States Supreme Court held, “[W]hen a defendant demonstrates to the trial judge that his sanity at the time of the offense is to be a significant factor at trial, the state must, at a minimum, assure the defendant access to a competent psychiatrist **who will conduct an appropriate examination and assist in evaluation, preparation, and presentation of the defense.**” (Emphasis added).

The court in *Ake* specified that the mere “likelihood” of a sanity issue was sufficient for the defense to have access to a psychiatrist for consultation and examination purposes.³ In civil cases, our clients, or the opposing party, may be subject to a physical or mental examination due to the nature of claims made.⁴ From time to time, we may even be hired by a non-English speaking client — a problem for those of us who aren’t bilingual. As a result, we must frequently engage other professionals to assist us with communicating with clients and understanding the issues. Any time a third party is

involved in our case, we must consider the potential impact on our duty of confidentiality.⁵

ATTORNEY-CLIENT PRIVILEGE AND THIRD-PARTY EXPERTS — THE GENERAL RULE

“The attorney-client privilege is the oldest of the privileges for confidential communications known to the common law.⁶ Its purpose is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of jus-

tice. The privilege recognizes that sound legal advice or advocacy serves public ends and that such advice or advocacy depends upon the lawyer's being fully informed by the client."⁷ "[T]he [attorney-client] privilege exists to protect not only the giving of professional advice to those who can act on it **but also the giving of information to the lawyer to enable him to give sound and informed advice.**"⁸

Generally, the presence of an unnecessary third party destroys the attorney-client privilege. However, the cases leave the door open for the presence of nonlawyer necessities. "As a general rule, if a client chooses to make or to receive a communication to or from his attorney *in the open presence of unnecessary third persons, the communication ceases to be confidential* and is not entitled to the protection afforded by the rule of confidentiality."⁹ The rule stated in *Chandler* is true even if the third party did not hear the communication.¹⁰

In short, the presence of third persons — be they relatives or friends of the client — who are not essential to the transmission of information or whose presence is not reasonably necessary for the protection of the client's interests, will belie the necessary element of confidentiality and vitiate the claim to an attorney-client privilege. Where there is no confidence reposed, no privilege can be asserted.¹¹

THE KOVEL DOCTRINE AND THE EXCEPTION TO THE THIRD-PARTY RULE

Who then may be present, other than the client and the lawyer, without destroying the privilege? A case from the United States Court of Appeals 2nd Circuit, *United States v. Kovel*,¹² concerning extension of the attorney-client privilege to nonlawyers, has such excellent analysis and is so important that its holding has been referred to as, "The Kovel Doctrine." Louis Kovel was a former IRS agent with accounting expertise who worked for a law firm that specialized in tax law.¹³ He was subpoenaed to testify before a grand jury concerning one of the firm's clients. Kovel refused to answer material questions about the client on the grounds of

attorney-client privilege.¹⁴ After several hearings where he refused to answer, other than citing the privilege, he was found by the trial judge to be in direct contempt of court and sentenced to a year of imprisonment, with no bail.¹⁵

The appellate court's analysis of application of the attorney-client privilege relied heavily on Wigmore's treatise on Evidence.¹⁶ Determining that the attorney-client privilege may indeed extend to nonlawyers, the appellate court continued,

What is vital to the privilege is that the communication be made in confidence for the purpose of obtaining legal advice from the lawyer.¹⁷

The appellate court also used the analogy of a lawyer with a non-English speaking client, stating, "This analogy of the client speaking a foreign

language is by no means irrelevant to the appeal at hand. Accounting concepts are a foreign language to some lawyers in almost all cases, and to almost all lawyers in some cases."¹⁸ So long as legal advice from the lawyer is being sought, the lawyer need not even be present at the meeting.¹⁹ Conversely, "If what is sought is not legal advice but only accounting service, as in *Olender v. United States*, 210 F.2d 795, 805-806 (9 Cir. 1954), see *Reisman v. Caplin*, 61-2 U.S. T.C. ¶19673 (1961), or if the advice sought is the accountant's rather than the lawyer's, no privilege exists."²⁰

Finally, the appellate court discussed Kovel's refusal to answer questions under the circumstances: "[A] witness claiming the attorney-client privilege may not refuse to disclose to the judge the circumstances into which the judge must inquire in order to rule on the claim[.]"²¹ The court held, "[I]n order to preserve Kovel's position on appeal counsel should have proffered the necessary evidence and, if the judge would not receive it, should have made an offer of proof, along the lines prescribed in civil cases by F.R.Civ.Proc. 43(c), 28 U.S.C."²² Remanding the case for more information, the appellate court concluded, "[T]he proper practice is for the judge to conduct his

“Generally, the presence of an unnecessary third party destroys the attorney-client privilege. However, the cases leave the door open for the presence of nonlawyer necessities.”

preliminary inquiry into the existence of the privilege with the jury excused[.]”²³

The *Kovel* Doctrine is an attorney-client privilege concept. Cases subsequent to *Kovel* tend to treat the doctrine narrowly. See, e.g., the federal magistrate’s discovery memorandum and order of March 27, 2015, in *Scott v. Chipotle Mexican Grill, Inc.*, Dist. Court, SD New York 2014. Many of the cases cited in *Scott* emphasize the *Kovel* excerpt quoted above: “What is vital to the privilege is that the communication be made *in confidence* for the purpose of obtaining legal advice *from the lawyer*.” The third-party’s role should be to enhance the communication to and with the lawyer, and the ultimate advice or opinion must come from the lawyer, not the third party. Distinction must also be made between the attorney-client privilege and the work product doctrine. The magistrate expressly noted in *Scott, supra*, p. 4, that a work product claim had not been asserted in that case by the responding party. The attorney-client privilege and work product are distinct concepts, as discussed below.

OKLAHOMA’S WORK PRODUCT DOCTRINE

The seminal case on the work product doctrine in Oklahoma is *Ellison v. Gray*, 1985 OK 35, 702 P.2d 360. Following are three non-sequential paragraphs from *Ellison*:

¶10 The work product doctrine was established in *Hickman v. Taylor*, 329 U.S. 495, 510-17, 67 S.Ct. 385, 393-96, 91 L.Ed. 451, 462-65 (1947), when the United States Supreme Court recognized that an attorney simultaneously must protect the rightful interest of his/her client, while functioning with some degree of privacy free from unnecessary intrusions by adversary counsel. Without this protection, attorneys would hesitate to note their impressions because of the possibility of discovery by opposing counsel. In *Hickman*, the court found that some documents were covered by a qualified immunity from discovery. The court held that while certain private memoranda, written statements of witnesses, and mental impressions or personal recollections, prepared or formed by an attorney in the course of professional duties for use in prosecuting the client’s case and contained in the lawyer’s files or mind were not protected by the attorney-client privilege, they were protected from discov-

ery as the work product of the attorney. The court held that in the absence of a strong showing of necessity, or a vigorous indication or claim that denial of discovery would unduly prejudice the preparation of the inquiring party’s case, cause undue hardship, or result in injustice, discovery must be denied. *Hickman* does not proscribe absolutely the discovery of opinion work product — it allows discovery only in rare instances.

¶7 During the course of a particular representation, the attorney draws from various mental impressions consisting of conclusions, legal theories, and opinions, evaluations of strength and weakness, and inferences drawn from interviews of witnesses. The sum total of these impressions, when reduced to writing, is the attorney’s work product. Only the distilled product which is communicated to the client, or any communication received by the client from counsel which is intermixed with work product, is discoverable. Ordinary work product consists of factual information garnered by counsel acting in a professional capacity in anticipation of litigation. It includes facts gathered from the parties and witnesses, and materials discovered through investigations of counsel or his/her agents. Although ordinary work product is cloaked with a qualified immunity, it may be discovered upon a showing of the inability to secure the substantial equivalent of the materials without undue hardship. The opinion work product area is carved out to protect the right of counsel to privacy in the analysis and preparation of the client’s case. Opinion work product includes the lawyer’s trial strategies, theories, and inferences drawn from the research and investigative efforts of counsel. Historically, the thoughts of an attorney have been free from invasion, and the impressions, theories, trial tactics, and opinions of counsel have been sheltered from disclosure. Opinion work product enjoys a virtual immunity from discovery, and it may be discovered only under extraordinary circumstances.

¶8 Although the two are closely related, an attorney’s work product is not synonymous with the attorney-client privilege. The work product rule remains closely identified with the attorney-client privilege

because work product represents efforts expended by the attorney during the course of the professional relationship. The attorney-client privilege belongs to the client and must be invoked by the client. The attorney's work product exemption may be claimed by the attorney and not by the client; information which is not protected from discovery by the attorney-client privilege may nonetheless be exempt as work product.

Oklahoma's work-product doctrine is statutorily found at Okla. Stat. tit. 12 §3226. Okla. Stat. tit. 12 §3226(B)(3) states,

3. TRIAL PREPARATION: MATERIALS.

a. Unless as provided by paragraph 4 of this subsection, a party may **not** discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative, **including the other party's attorney, consultant, surety, indemnitor, insurer or agent**. Subject to paragraph 4 of this subsection, such materials may be discovered if:

(1) they are otherwise discoverable under paragraph 1 of this subsection, and

(2) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

b. If the court orders discovery of such materials, the court shall protect against disclosure of the mental impressions, conclusions, opinions or legal theories of a party's attorney or other representative concerning the litigation.

c. A party or other person may, upon request and without the required showing, obtain the person's own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and the provisions of paragraph 4 of subsection A of Section 3237 of this title apply to the award of expenses. A previous statement is either:

(1) a written statement that the person has signed or otherwise adopted or approved, or

(2) a contemporaneous stenographic, mechanical, electrical, or other recording, or a transcription thereof, which recites substantially verbatim the person's oral statement.

Okla. Stat. tit. 12 §3226(B)(4)(c), concerning experts, provides the following protection:

4. TRIAL PREPARATION: EXPERTS.

c. A party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial, except as provided in Section 3235 of this title or upon a showing of exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

We can hire experts to help us communicate with our clients under the protection of the attorney-client privilege through the *Kovel* Doctrine. We can consult with experts to assist us in case theory development and trial preparation with the protection of the work product doctrine. The attorney must work carefully and closely with any expert engaged as a consultant in anticipation of litigation and for trial preparation. The purpose and role of the expert should be identified and agreed-to from the onset, especially concerning whether the expert will or will not testify at trial. The role of the expert must be communicated to the client from the onset. If the consulting expert renders an opinion to the client, the expert's opinion will almost certainly not be protected by the attorney-client privilege. However, an expert opinion or report given in anticipation of litigation and for trial preparation may be protected from disclosure by the work product doctrine.

1. *Ake* can be read to require the appointment of an expert for consultation and preparation of cross-examination of government witnesses, even if the expert will never testify in the matter. See the Brief for American Psychological Association and Oklahoma Psychological Association as Amici Curiae Supporting Petitioner, pp. 26-30, *Ake*, *supra*, Web. 6 Sept. 2015. <<http://www.apa.org/about/offices/ogc/amicus/ake.pdf>>.

2. 470 U.S. 68, 83 (1985).

3. *Id.* at 82-83.

4. Okla. Stat. tit. 12 §3235.

5. Rule 1.6 of Oklahoma Rules of Professional Conduct.

6. 8 J. Wigmore, Evidence §2290 (McNaughton rev. 1961).

7. *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981).

8. *Id.* at 390 (emphasis added).

9. *Chandler v. Denton*, 1987 OK 38, ¶21, 741 P.2d 855, 865 (emphasis in original).

10. *Id.* at 865-866.

11. *Id.* at 866.

12. 296 F.2d 918.

13. *Id.* at 919.
14. *Id.*
15. *Id.* at 920.
16. *Kovel, supra*, at 921.
17. *Id.* at 922.
18. *Id.*
19. *Id.*
20. *Id.*
21. *Id.* at 924.
22. *Id.* at 923.

23. *Id.* at 924. Also see *Chandler, supra*, at ¶20, 865: "In order to establish the privilege, it must be shown that the status occupied by the parties was that of attorney and client and that their communications were of a confidential nature. Whether a communication is privileged from disclosure is for the trial judge to decide in light of a preliminary inquiry into the existence and validity of the privilege. The burden to establish the privileged status of testimony sought to be excluded rests on the party asserting it. The trial judge's ruling is conclusive in the absence of an abused discretion."


ABOUT THE AUTHORS




Aaron Bundy is a lawyer with the Tulsa law firm of Fry & Elder. His practice areas include high-conflict family law as well as criminal defense and appellate work. He has served as a guardian *ad litem* and attorney for minor children in contested custody disputes. He is a frequent CLE presenter on trial practice and other trial-related issues. He is a 2006 graduate of the TU College of Law.



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Attorney Discipline in Oklahoma: A Historical Perspective

By William R. Grimm

The origins of the Oklahoma legal profession and judicial system can be traced to the settlements in Indian Territory by the Five Civilized Tribes establishing tribal or council courts. Each tribal nation had its own separate system of administering justice and regulated the privilege of those appearing before its tribunals. The federal court with early jurisdiction over tribal courts and crimes committed in Indian Territory was located in the Western District of Arkansas at Fort Smith, Arkansas. In 1883, Congress divided jurisdiction over Indian Territory among federal district courts of Arkansas, Texas and Kansas which determined bar admission practices and discipline. Finally, with the Courts Act of 1895, Congress created federal courts within the Indian Territory, eliminating the jurisdiction of the outside federal courts over the region on Sept. 1, 1896. In 1898, the Curtis Act abolished the jurisdiction of all Indian tribunals in Indian Territory.

In 1890, Congress passed the Oklahoma Organic Act which created two separate territories — Oklahoma and Indian. The Organic Act created a Supreme Court for the territory and new territorial district courts for Oklahoma Territory in the western part of the territory. The territorial Supreme Court consisted of three justices who functioned as trial judges for both criminal and civil matters in Oklahoma Territory and appellate jurisdiction for Indian Territory matters. Additionally, the Organic Act created three federal court divisions in

Muskogee, McAlester and Ardmore for Indian Territory, and continued the jurisdiction of existing Indian tribunals over tribal matters. With the creation of twin territories in 1890 were also twin bar associations. The Muskogee Bar Association established in 1889 with more than 130 lawyers changed its name to the Indian Territory Bar Association in 1900 for attorneys in the eastern part of the territory. The Oklahoma Territory Bar Association was organized in 1890 with more than 200 lawyers primarily in the Oklahoma County area. On Sept. 17, 1904, the

two associations joined to form Bar Association of Oklahoma, which is the forerunner of today's Oklahoma Bar Association.

The 1893 Statutes of Oklahoma (1893 Statutes) provided for an examination of all applicants for admission to practice before the courts of the territory. In addition to examination, the territorial court judges granted admission to lawyers coming from other states upon submission of a certificate of admission from a court of that state. Grounds for suspension or disbarment included 1) conviction of a felony, or misdemeanor involving moral turpitude; 2) willful disobedience of an order connected with or in the course of the profession; 3) willful violation of the duties of an attorney as defined in the statutes; or 4) deceit or collusion with intent to deceive a judge. A proceeding to remove or suspend an attorney could be commenced by any court or motion by an individual upon written sworn statement of the accusation.

The first reported disbarment proceeding was *Dean v. Stone*, 1894 OK 2, wherein a disbarred Indiana attorney, in order to gain admission before the Oklahoma County court, submitted a certificate of attorney admission from a circuit court of Indiana which bore date long prior to the date of his disbarment. Upon learning of this deceit, the judge appointed a committee of the Oklahoma Territory Bar Association to prosecute disbarment proceedings against J.C. Dean for the cancellation of his license to practice law based upon the 1893 Statutes which made it a cause for disbarment for an attorney to be guilty of deceit or collusion with intent to deceive a judge. A single Supreme Court justice delivered the *Stone* opinion, as Justice Scott, a sitting justice of the court served on the prosecuting committee.

The territorial Supreme Court was faced with its second disbarment proceeding in the matter of *In re Brown*, 1895 OK 7, when an Oklahoma County district court judge issued an order of suspension to attorney J.L. Brown pending a disbarment hearing. Brown appealed his suspension to the territorial Supreme Court which noted in its opinion that the district court had the inherent power to suspend or disbar attorneys from practice in the nature of a civil proceeding without jury trial. However, under the 1893 Statutes a right of appeal exists for the Supreme Court to consider and make the final determination on disbarment.

With statehood in 1907, the passage of the Oklahoma Constitution provided for a state Supreme Court with original and appellate jurisdiction consisting of five justices and a series of district courts in each county. All attorneys licensed to practice in any court of record in the territory of Oklahoma, or in any of the United States courts for the Indian Territory, or any court of record of any of the Five Civilized Tribes, were eligible to practice in any court of the state without examination. All others had to be examined by a commission appointed by the Supreme Court.

The first reported public reprimand issued by the Oklahoma Supreme Court was in the matter of *In re Brown*, 1909 OK 176, wherein the court felt constrained to accept the report of dismissal of the charges due to insufficient evidence by the State Bar Commission appointed to investigate two former partners, H.H. Brown and R.F. Turner. The law firm of Brown and Turner received a \$100 retainer to assist with the prosecution of a criminal action against Ben Lindsay and Lon Chieves for robbery. The law firm had a judgment against Lindsay for prior fees owed. After the lawyers dissolved their partnership, Brown continued to prosecute the case against Lindsay and Chieves, but dismissed the case when called for trial due to lack of witnesses after consultation with his client. Turner, who had previously been approached by Lindsay to secure a dismissal of the case, and upon learning of the dismissal, had a third party approach Lindsay and secure a \$250 note and mortgage, which Lindsay executed believing Turner had secured dismissal of the case. The State Bar Commission was constrained to find any evidence that Brown was aware of the Turner/Lindsay transaction. The court noted that the commission's report concluded that notwithstanding the insufficiency of the evidence against the former partners, the conduct was reprehensible and merited a public rebuke.

In 1917, in the matter of *In re Williams*, 1917 OK 459, the court disbarred an attorney and judge on the grounds of moral turpitude based upon a misdemeanor conviction of a single count of criminal conspiracy where the purpose and object of which was to unlawfully control and manage the probate practice before the probate court of Adair County. Pursuant to the recommendations of the State Bar Commission, the Supreme Court appointed a referee who submitted his report finding that the two

unjustly dissipated funds of the estates of minors and incompetent full-blood Indians.

In 1929 the Oklahoma Legislature enacted The State Bar Act (1929 Act) providing for the creation of the State Bar Association of Oklahoma (State Bar) with mandatory membership of all attorneys in the state. The 1929 Act established the sole qualification for the eligibility of admission to practice law was passage of a written examination after three years of required study. In addition, the 1929 Act established the ABA Canons of Professional Ethics (Canons) as the first rules of professional conduct for lawyers and causes and procedures for disbarment. To enforce the Canons, the 1929 Act created a State Bar executive council (now the OBA Board of Governors) composed of 13 members, each justice of the Supreme Court appointed one of nine members and the remaining four members were elected by State Bar members. The executive council was empowered to institute complaints against attorneys, conduct hearings and report its findings of suspension or disbarment to the Supreme Court.

In 1934 Congress enacted the Indian Reorganization Act allowing Indian tribes to exercise their sovereignty to adopt constitutions in order to establish their own justice codes and operate court systems enforcing those laws. Inherent in the tribal court system was the admission and discipline of lawyers appearing before the courts. Today, Oklahoma has 39 tribal justice courts with general civil jurisdiction and limited criminal jurisdiction of matters occurring on tribal lands administered by the various Native American nations in the state.

Soon after the enactment 1929 Act, the Oklahoma Supreme Court received its first challenge to the State Bar's authority to administer disciplinary proceedings. The State Bar executive council charged attorneys, Q.P. McGhee and Frank R. Burns, with disbarment proceedings arising from their felony convictions in Craig County for harboring, aiding and assisting a person guilty of a felony. The attorneys obtained a writ of prohibition from the Ottawa County district court against the State Bar challenging its authority to proceed against them as an improper delegation of the Supreme Court's constitutional powers. On April 21, 1931, in *State Bar of Oklahoma v. McGhee*, 1931 OK 161, the Supreme Court upheld the State Bar's authority to conduct disciplinary proceedings pursuant to its proscribed rules for

suspension of license to practice, disbarment and other disciplinary measures and report findings to the court. The court noted in its *McGhee* decision that the Oklahoma Legislature, in the exercise of its power, saw fit to create an arm of the Supreme Court and vest it with certain authority and powers to carry out the functions of the Supreme Court under its supervision.

Subsequently, in the matter of *In re Dick*, 1933 OK 579, the Supreme Court found that the findings or recommendations of a report from the executive council are merely advisory and only recommendations. The court stated that it will consider all the facts and circumstances to ascertain whether or not any charge has been proven by the record which merits discipline.

On Dec. 15, 1936, the court issued another seminal disciplinary decision, *In re Bozarth*, 1936 OK 811. On Dec. 15, 1933, Mark Bozarth, a sitting judge for Okmulgee County, was convicted in the district court of Oklahoma County of a felony charge of obtaining property under false pretenses when the judge submitted false oaths for salary warrants to the state auditor. After affirmation of the conviction by the Court of Criminal Appeals, the State Bar instituted disbarment proceedings. On March 15, 1933, Gov. E.W. Marland granted Mr. Bozarth a full and free pardon of the offenses for which he was convicted. The Board of Governors of the State Bar proceeded with its hearing and recommended disbarment.

In the *Bozarth* decision, the controlling question was whether the pardon issued by Gov. Marland constituted a full and complete defense to the disbarment proceeding. The Supreme Court stated that it was solely vested with power to organize, regulate and control the State Bar for the administration of justice under the Oklahoma Constitution, Article 7 §1, and its authority was protected from encroachment by Article 4 §1. The court reasoned that the power to grant one to become an officer of the court as an attorney is a privilege which may be withdrawn under that same power to remove an attorney found to be unworthy. The court concluded that a gubernatorial pardon cannot encroach upon its inherent power to disbar an attorney from the privilege of practicing law.

The 1938 Legislature passed two bills that became law, effective on July 28, 1939, designed to punish the court for a series of decisions unpopular with legislative members. The first

was Title 5 O.S. §15 which allowed graduates from a grade “A” law school in the state to be admitted to the bar without examination. This bill was passed primarily in retaliation because a senator’s son failed the bar examination and was denied admission by the Supreme Court on appeal of his denial from the Board of Bar Examiners. The second was more controversial as it repealed the State Bar Act of 1929. Both laws were designed to encroach upon the court’s constitutional powers as the third branch of government.

In the fall of 1939, the Supreme Court rendered two opinions which set the course for today’s bar association. The first decision was on Oct. 10, 1939, wherein the court, using its sole right to regulate and control practice of law under the Oklahoma Constitution, created the Oklahoma Bar Association (OBA) in its opinion in the matter of *In re Integration of the State Bar of Oklahoma*, 1939 OK 378. The court reasoned that attorneys are officers of the court with responsibility to aid courts in securing the administration of justice by establishing the Rules Creating and Controlling the OBA (Rules Creating & Controlling) which we operate under today.

The next significant decision was rendered on Nov. 22, 1939, in the matter of *In re Bledsoe*, 1939 OK 506, wherein the court declared Title 5 O.S. §15 unconstitutional as a legislative infringement upon the court’s supervision and control of the courts. William A. Bledsoe, a graduate of the University of Tulsa law school, filed his application for admission to the bar contending he was entitled to a license to practice law without the necessity of a written examination to determine his qualifications predicated upon the provisions Title 5 O.S. §15. The court declared it had inherent powers under the Oklahoma Constitution to determine qualifications of persons to be admitted to practice law. The court reasoned that the legislature may not prescribe rules and regulations which deprive the courts of their inherent power to regulate the admission to the bar. Additionally, the legislature was without authority to control the judicial branch in performance of its duty to decide who shall enjoy the privilege to practice law, including disci-

pline or the qualifications for admission to practice law.

Under the Rules Creating & Controlling, the OBA Board of Governors had the authority to investigate and prosecute complaints against lawyers for disciplinary matter through an OBA Grievance Committee. This system became widely unpopular and not well suited for disciplinary matters as lawyers sometimes refused to act as prosecutors and examiners against fellow lawyers. In 1949, the Supreme Court adopted disciplinary rules recommended by the OBA State Wide Disciplinary Committee which included a requirement that all law schools within the state offer a class in legal ethics. In 1960, a retired FBI agent was hired by the OBA as the first full-time investigator while the Board of Governors continued to hear disciplinary matters.

In 1966, the OBA recommended to the court sweeping changes for its organization regarding governance and discipline, including employment of a first full-time general counsel with investigative powers and all members of the Board of Governors were to be elected by the House of Delegates during its annual meeting. Subsequently, in 1969 the House of Delegates recommended replacing the Canons with the Oklahoma Code of Professional Responsibility (Code), with its disciplinary rules and comments, which

the court authorized in 1970.

Subsequently, in 1977 the Supreme Court adopted rules for the formation of the Professional Responsibility Commission (PRC). The new rules separated the investigative responsibilities and prosecution duties for enforcing the Code from the OBA Board of Governors to a seven-member PRC. Craig Tweedy, a Creek County lawyer, filed a disciplinary grievance against three lawyers for alleged professional misconduct arising in a pending civil matter. The PRC investigated the matter on two separate occasions finding the grievance unripe for formal disciplinary charges. Dissatisfied with the PRC’s findings, Mr. Tweedy challenged the PRC rules in his application for original jurisdiction to the Supreme Court for an order commanding a re-investigation of his grievance and establishing a bar committee to study the

“In the fall of 1939, the Supreme Court rendered two opinions which set the course for today’s bar association.”

PRC's need for a larger staff of lawyers, bigger budget and better investigative procedures.

In its decision in *Tweety v. OBA*, 1981 OK 12, the court denied the writ because Mr. Tweety failed to invoke the Board of Governors' reviewing power over the PRC actions. However, the court went on to state its constitutionally mandated duty to act as the state's sole and final tribunal for adjudication of disciplinary charges was inconsistent with oversight of the PRC's delegated power to investigate and prosecute a grievance. The court reasoned that the exercise of prosecutorial judgment for enforcement of the Code rests delegated to the PRC and must remain free of the court's intervention due to its constitutional responsibility for the administration of discipline for violations of the Code.

Shortly after the *Tweety* decision, the Rules Governing Disciplinary Proceedings (Rules Governing) were adopted by Supreme Court order on Feb. 23, 1981, to become effective on July 1, 1981 (Tit. 5 - Ch 1; App 1-A). Some of the primary revisions incorporated into the Rules Governing provided for the removal of the Board of Governors from considering any disciplinary matters by vesting the PRC with sole responsibility to investigate and prosecute violations of the Code and the unauthorized practice of law. Subsequently, in 1988, the Supreme Court adopted the Oklahoma Rules of Professional Conduct (ORPC) which superseded the Code. In 2006, the court adopted revisions to the ORPC.

CONCLUSION

Today, the PRC functions under the Rules Governing as a grand jury proceeding with investigative responsibilities to determine the sufficiency of the evidentiary support to the allegations for a ORPC violation against a lawyer for prosecution by the general counsel. The PRC has discretion under Rule 5.3 of the Rules Governing to administer private reprimands, admonishments, dismissals or commence a formal disciplinary proceeding for asserted violations of the ORPC. All PRC proceedings are confidential. If the PRC determines a formal

complaint should be commenced before the Supreme Court, the Professional Responsibility Tribunal (PRT) will conduct a hearing and make a written report of its findings to the Supreme Court for de novo review of the evidence in support of a ORPC violation and decide potential disciplinary punishment, if any.

The Oklahoma Supreme Court manages the state's lawyer discipline system through the PRC. When a lawyer receives a grievance through the OBA general counsel's office, the PRC must consider the evidence which supports its allegations. Upon determination that the conduct may fail to meet the ethical standards established by the ORPC, the lawyer is subject to disciplinary action through the Discipline Diversion Program or formal charges of misconduct. A lawyer accused of professional misconduct will be granted a hearing before the PRT made up of two lawyers and one lay person. If the PRT finds, by clear and convincing evidence, that the lawyer is guilty of misconduct, the PRT makes findings of fact, conclusions of law and recommendations for discipline, which then are filed with the Supreme Court. It is the sole responsibility of the Supreme Court to determine any discipline to be taken against the lawyer.

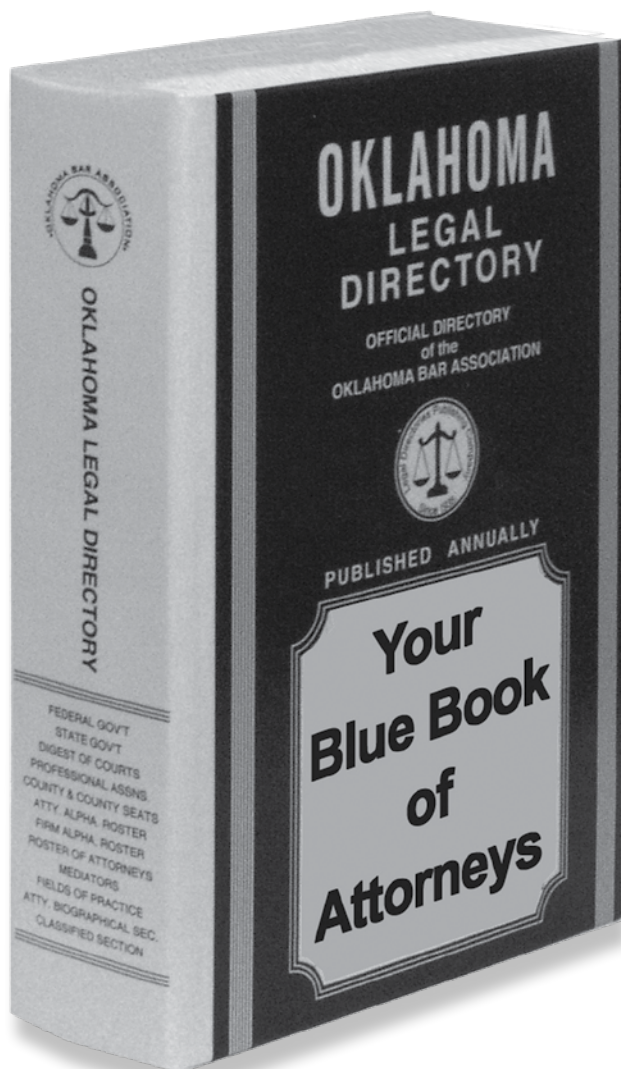
ABOUT THE AUTHOR



William R. Grimm practices primarily in business and commercial litigation. He received his J.D. in 1973 and a bachelor of business administration in accounting and finance in 1970 from the University of Oklahoma. He is an active member of many professional and civic organizations. Mr. Grimm served as OBA president in 2006. He currently serves as a member of the Professional Responsibility Commission and as co-chair of the OBA Unauthorized Practice of Law Task Force. Also, he is an ABA member and was selected as an American Bar Fellow in 2003.

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Items to Consider With Fee Applications

By Jennifer Johnson

Attorney's fee applications can present a variety of issues for the applicant depending upon the purpose of the application and the type of case. Standard practice in Oklahoma courts requires the court to rely on certain factors to establish a reasonable attorney's fee; however, there are certain cases where additional factors also need to be considered. Additionally, there are also certain ethical conundrums that can pose problems with fee applications. This article focuses solely on Oklahoma state court proceedings, and practitioners should locate federal rules and protocol when in federal court. Attorneys must also consider Rule 1.5 of the Oklahoma Rules of Professional Conduct in collecting fees, and maintain that the total fee or expenses are not unreasonable.

BURK

The Oklahoma Supreme Court has outlined a two-step process to guide the court in arriving at a reasonable fee. First, the court must determine the "lodestar" amount based upon the hourly rate within the market and the number of reasonable hours expended. This "lodestar" formula should not be applied exclusively. There are other interacting factors that are important to the analysis. The court can enhance or reduce the "lodestar" number by applying the factors found in *Okla. ex rel. Burk v. City of Okla.* 598 P.2d 659 (Okla. 1979) (hereinafter *Burk*) (also enumerated in Rule 1.5 of the Oklahoma Rules of Professional Conduct).¹

The fee must also bear a reasonable relationship to the amount in controversy; however, no percentage above which a fee's relationship to the award could be deemed unreasonable has been identified.² Any attorney practicing in certain areas where fee awards are possible should be familiar with the *Burk* factors, which are as follows:

- 1) The time and labor required
- 2) The novelty and difficulty of the questions
- 3) The skill requisite to perform the legal services properly

- 4) The preclusion of other employment by the attorney due to acceptance of the case
- 5) The customary fee
- 6) Whether the fee is fixed or contingent
- 7) Time limitations imposed by the client or the circumstances
- 8) The amount involved and the results obtained
- 9) The experience, reputation and ability of the attorney
- 10) The “undesirability” of the case
- 11) The nature and length of the professional relationship with the client
- 12) Awards in similar cases.

The *Burk* factors are instructive to the court, but they do provide flexibility as well. The reasonableness of the fee rests in the court’s sound discretion.³ Fees for the same case could vary depending upon the attorney involved, the need of the client or a variety of other factors.

BEYOND BURK

The *Burk* factors are a great starting point, but other factors should be considered when preparing a fee application in a case where a fee award is possible. The form of the fee application is important. A motion or application for attorney fees should include a sworn affidavit from the attorney containing detailed billing entries.⁴

The actual billing entries should be carefully considered in the fee application and supporting affidavit. Billing entries should be sufficiently detailed so the court can determine whether the fee request is reasonable.⁵ Further, the trial court should make clear and specific factual findings and computations to support its fee award.⁶ Failure to submit detailed time entries should result in a denial of the fee application.⁷ Be mindful that reconstructed and/or heavily edited billing records cannot support a fee application.⁸

Certain tactics can be implemented if a practitioner is contesting the opposing party’s fee

application. The most useful tactic can be to attack the pleading itself. Case law gives us certain rules for fee applications and sworn billings that can be used when preparing an objection to a fee application. First, a practitioner should closely analyze the billing records in the application to determine whether any billing inconsistencies stand out. Hours that are not actually billed to a client’s case cannot later be billed to an adversary;⁹ however, the actual amount due under an attorney/client agreement is not the basis for calculating a fee award.¹⁰

A court can reduce the amount sought in a fee application when the billing entries are too vague.¹¹ As such, detailed billing statements are important. Any applications for fees received by opposing counsel should be thoroughly analyzed for vagueness. One particularly vague time entry could be what the courts refer to as “block billing.” Block billing occurs when several tasks are lumped together into one time entry. For example, a billing entry consisting of two hours billed for “phone calls to client, email to opposing counsel and drafting of a petition” would be considered a block billing. Block billing is not proper form in a fee application.¹² Block billing prevents the opposing party, but more importantly the court, from determining whether the actual amount of time spent on each task was reasonable. Block billing can also lead to the assumption that the applicant’s time records were either recon-

structed or altered, which would require further inquiry, or cause a denial of the fee application.

A fee application should be parsed to find entries that could potentially be simple clerical work instead of billable attorney time. Clerical work is not compensable. Some entries such as “prepare exhibits” or “draft letter” could often be making copies or simple drafting (copying necessary papers can be awarded as “costs,” but not subjected to the attorney’s hourly rate.)¹³ The attorney should cross-reference their own records to determine whether time entries such as these contained actual attorney work or were items that contained only clerical work.

The type of case should also be considered when applying for fees or contesting a fee application. Most civil cases follow the *Burk*

“A court can reduce the amount sought in a fee application when the billing entries are too vague.”

formula with only a few extraneous factors that can be brought to the court's attention; however, domestic cases are quite different. In domestic cases, fees can be awarded on an equitable basis.¹⁴ A counsel fee award does not depend upon a party's status as a prevailing party.

The law favors each party paying their own fees in a domestic matter, and the party requesting fees has the burden to prove that equity requires his or her fees to be paid by the opposing party.¹⁵ Some things the court may consider in determining whether to award fees in a domestic matter are the need of the requesting party and the ability of the opposing party to pay. The total amount of assets in the marital estate and the disparity of asset distribution will also be considered if the matter is a dissolution of marriage.¹⁶ The fee argument will sound much like an alimony argument. Once the court determines that it is equitable for one litigant to pay another's fees, the court will analyze reasonableness based upon the *Burk* factors. When applying for fees in a domestic matter, the applicant or the opposing party should consider the vagueness of the entries, the *Burk* factors and also the additional domestic-specific factors discussed herein.

The bottom line of fee application drafting preparedness, or rather the common theme in the various authorities, is to provide honest and detailed billing records which are not reconstructed. In order to do that, the attorney must keep his or her own honest and detailed billing records as a matter of practice. Good billing habits are the best starting point for successful fee applications later.

FINAL CONSIDERATIONS

The attorney must always keep in mind professional obligations to the client. Clients must be advised of the risks and benefits involved with filing a fee application. Preparation of the fee and further hearing(s) could be expensive for the client in the event that the application is denied. Rule 1.4 of the Oklahoma Rules of Professional Conduct require the attorney to explain the matter to the client to the extent rea-

sonably necessary to permit the client to make an informed decision.

Whether an attorney is drafting his or her own application for fees, or opposing a fee application from another party, all of the items discussed herein should be considered. The attorney drafting the fee application should understand what the courts consider when determining the reasonableness of a fee or specific billing entries, which would better prepare the attorney for preemptively combating an objection. The objecting attorney should know the items to look for when parsing the language of a fee application and the attached billing entries. The most important thing for an attorney to do is present the court with honest, actual and detailed billing records. That way the attorney does not risk having an application denied for vagueness or unreasonableness.

1. *Henderson v. Horace Mann Ins. Co.*, 560 F. Supp. 2d 1099 (N.D. Okla. 2008).
2. *Spencer v. Okla. Gas & Elec. Co.*, 171 P.3d 890 (Okla. 2007).
3. *Unterkircher v. Adams*, 714 P.2d 193 (Okla. 1985).
4. *JLEE Co., L.L.C. v. Reneau Seed Co.*, 332 P.3d 297, 299 (Okla. Civ. App. 2014).
5. *Spencer v. Okla. Gas & Elec. Co.*, 171 P.3d 890 (Okla. 2007).
6. *Id.*
7. *Brown v. Curtis*, 71 P.3d 34 (Okla. Civ. App. 2003).
8. *See State of Okla. ex rel. Burk v. City of Oklahoma City*, 598 P.2d 659, 662 (Okla. 1979).
9. *In re Latshaw Drilling, LLC*, 481 B.R. 765, 800 (N.D. Okla. 2012).
10. *Henderson v. Horace Mann Ins. Co.*, 560 F. Supp. 2d 1099, 1104 (N.D. Okla. 2008).
11. *Okla. Natural Gas Co. v. Apache Corp.*, 355 F. Supp. 2d 1246 (N.D. Okla. 2004).
12. *See Oklahoma Natural Gas v. Apache Corp.*, 355 F. Supp. 2d 1246, 1263-64 (N.D. Okla. 2004) (applying Oklahoma law); *Pursley v. Mack Energy Co.*, 908 P.2d 289, 291-92 (Okla. Civ. App. 1995).
13. 12 Okla. Stat. §942
14. 43 O.S. §110(C), *see also Finger v. Finger*, 923 P.2d 1195 (Okla. Civ. App. 1996).
15. *Pierce v. Pierce*, 39 P.3d 791 (Okla. 2001).
16. *Zink v. Zink*, 390 P.2d 504, 509 (Okla. 1964). *See also Romans v. Romans*, 366 P.2d 760 (Okla. 1961).

ABOUT THE AUTHOR



Jennifer Johnson received her J.D. from the OCU School of Law in 2007. She then returned to her hometown of Henryetta and joined the Gaither Law Office. Her practice focuses on domestic and civil litigation.



Remember the Children Ethical Duties When Representing Children

By Courtney L. Eagan

Mmeet E.M., a 4-year-old boy who has been taken into emergency custody by the Oklahoma Department of Human Services (DHS). E.M. was removed in the month of August. The home E.M. was removed from had no running water, no electric and no gas. It was apparent the utilities had been off for quite some time, yet the family had continued to use the toilet and tub when they needed to use the restroom. The stench in the home was overpowering. However, this is not the reason DHS was called to the home. They were called there because someone had reported that E.M. had been seen repeatedly with black eyes and other bodily injuries. You receive notification from the judge that the state of Oklahoma has filed a deprived petition and you have been appointed to represent E.M. What is ethically required of as an attorney for a child? What is the role? What voice can a four-year-old really have?

As the attorney for the child, the first step is to make arrangements to see the child as soon as possible.¹ Additionally, Oklahoma law requires that "[e]xcept for good cause shown, the attorney *shall* meet with the child prior to *any* hearing in such proceeding."² Simply meeting with the child once or twice over the entire course of the case will not satisfy the ethical duty to the child. The statute also makes clear that the Legislature intended that these meetings with the minor child should be a personal visit and only if there are exigent circumstances should a telephone call to the child be

substituted for a face-to-face meeting.³ This requirement can often be difficult depending on where the child has been placed. However, the attorney has an ethical obligation to make every effort to meet face-to-face with the child prior to any hearing. If the appointment is to a very young child who may not have the ability to communicate or a child with a disability that would prohibit the attorney from forming a "meaningful attorney-client relationship," the statute allows the attorney to speak with the custodian or caretaker for the child.⁴ In the case of E.M., an initial meeting with the child while

the caretaker is present should be able to supply an attorney with the information that is needed to determine if a meaningful attorney-client relationship is possible.

As the attorney appointed for the child you must understand that role. An attorney for the child is not a guardian *ad litem*. An attorney for the child is appointed to represent the child and “any expressed interests of the child.”⁵ The law only allows the attorney to substitute their own judgment for that of the child if the child cannot express an interest.⁶ This would be the case if the child was very young and preverbal or when there is some other defined reason the child cannot make judgments on their own.⁷ If an appointment is made to a child that cannot express an interest, the attorney must look to objective criteria to determine what is in the child’s best interest.⁸ The law specifically states that the attorney cannot rely solely on “life experience or instinct.”⁹ 10A O.S. §1-4-306 provides objective criteria to consider, but are not limited to, the following:

- 1) a determination of the circumstances of the child through a full and efficient investigation,
- 2) assessment of the child at the moment of the determination,
- 3) examination of all options in light of the permanency plans available to the child, and
- 4) utilization of medical, mental health and educational professionals, social workers and other related experts.¹⁰

As part of the inquiry, the attorney has the authority to interview witnesses, participate as all other parties do in the case and make recommendations to the court that are adequate for representing the interests of the child.¹¹ If it is necessary for there to be someone appointed to solely represent the best interest of the child, then a request can be made that a guardian *ad litem* be appointed for the child.¹²

Finally, for any attorney who is court-appointed to handle any juvenile court responsibilities, there is a statutory requirement that you complete a minimum of six hours of education and training related to “juvenile law,

child abuse and neglect, foster care and out-of-home placement, domestic violence, behavioral health treatment, and other similar topics.”¹³ Failure to comply with the yearly provision would again be an ethical breach of duty to the client. It should also be noted that any attorney for the child should make all pertinent inquiry to determine whether the Indian Child Welfare Act (ICWA) and Oklahoma Indian Child Welfare Act (OICWA) are applicable to a case. By doing so, you can help ensure the child receives any and all benefits that are available and you can ensure all procedural standards are adhered to throughout the course of the case.

Remember that E.M. and all of the children in these cases are the most important people in them. In order to adequately represent children and meet all of the ethical obligations, an attorney interested in handling these types of matters needs to be aware of what the law requires. The representation of children can be the most rewarding cases, but it demands additional time and effort to ethically represent them fully.

“An attorney for the child is appointed to represent the child and ‘any expressed interests of the child.’”

1. 10A O.S. §1-4-306(A)(2)(b) (2015).
2. *Id.* (emphasis added).
3. *Id.*
4. *Id.*
5. 10A §1-4-306(A)(2)(c) (2015).
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. (A)(2)(C)(1-4) (2015).
11. 10A O.S. §1-4-306(A)(2)(c) (2015).
12. 10A §1-4-306(B)(1) (2015).
13. 10A §1-8-101(A)(1) (2013).

ABOUT THE AUTHOR



Okmulgee lawyer Courtney L. Eagan practices with the firm of McKenna and Prescott. Her practice primarily consists of representing children in juvenile deprived cases and as a guardian *ad litem* in both state and tribal courts. In addition to her main area of practice she also handles adoptions, guardianships and divorce matters. She is a citizen of the Cherokee Nation of Oklahoma and is a 2009 graduate of the TU College of Law.

‘Uncle Jimmy’ Had a Still

“Uncle Jimmy” was a client of Abraham Lincoln and his law partner, William Herndon. He was the first male child born west of the Cumberland Gap, a backwoodsman, and his son was a soldier in the Indian Hawk Wars under Abraham Lincoln.

He was my great, great, great, great, uncle.

One day, while Abraham Lincoln was giving a speech, he was interrupted by Uncle Jimmy, perhaps having partaken of some of his own stash.

Five generations later, after having two grandfathers, a father, a brother, an uncle, a husband and a son who had a drinking problem, I am here. I didn’t get alcoholism, but I got depression. I was 37 years old and wondered if a fine education, a husband, two beautiful children, a beautiful home in Edmond and a great church were all there were to life. By the grace of God, I was led to the educational series “A Chance to Change” and with eyes wide open and a chin dropped to the chest, I learned about the disease of alcoholism and how it had affected my family.

My father came home from World War II with PTSD (shell shock), alcoholism and two Purple Hearts. Living with alcoholics is “too much for



most of us” and it was for me. I attended treatment for co-dependency and depression in Tucson in 1988 and again, by the grace of God, I was in recovery. I was so ready and willing to try anything. I promised myself I would always go to meetings, because I never wanted to feel or have a life as I did for the first half of my life. I’m convinced that without recovery and proper medication, I would have been in and out of mental wards or perhaps even

suicidal. I take the medication daily to feel like “myself.”

I got myself back, because I had lost me. I was the middle child, the only female, the caretaker and the peacemaker. I am a good mediator! Duh! Today, I don’t have a lot of what I used to have, either materially or personally, but I have much more — peace, serenity, love, service, contentment and a close relationship with the God of my understanding. I had to learn to love myself and overcome fears. I would never have been able to attend law school without recovery. I loved my law school attitude — enjoy and finish without worrying about what happened between matriculation and graduation.

I enjoy what I do in my practice and do it well, much because of my history. We have a saying in recovery, “You can’t keep it unless you’re willing to give it away.” Lawyers Helping Lawyers will give it away if you need it. Members of the committee will help you personally and directly. Don’t be afraid to call. It is all confidential and we don’t tell the OBA anything!

Editor’s Note: The author of this article, who is an OBA member, asked to remain anonymous.

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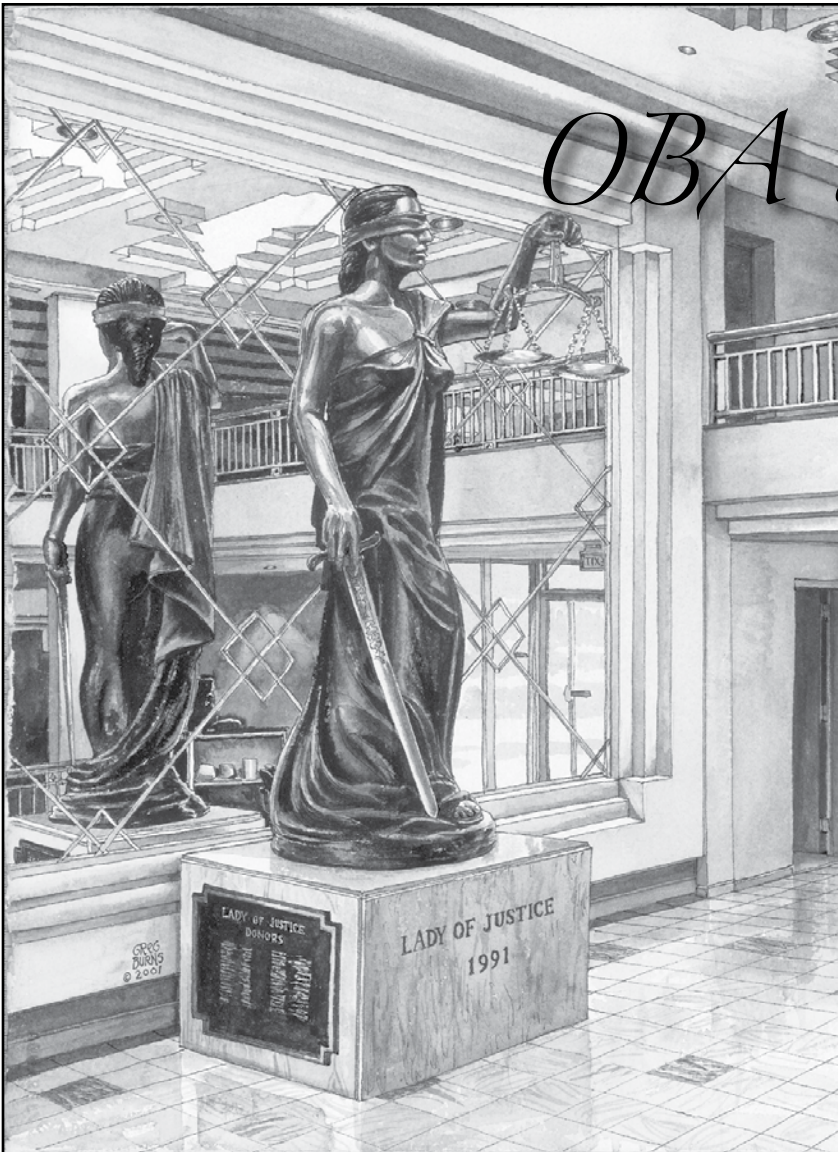
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2015: The Year That Was

By John Morris Williams

I remember in grade school counting up the years until the year 2000. At the time it seemed like forever, and I would be very old if I lived until then. Well, 2015 is almost over. As for being very old, I have learned it is all relative.

First, a huge THANK YOU to 2015 President David Poarch. Your leadership, calm demeanor and friendship made this year go by very quickly. David's unique career path as a federal prosecutor, assistant law school dean and private practitioner gave him deep understanding of many issues that required attention this year. He and Teana Lewis Poarch are the most fun and interesting people you will ever meet. Thank you for your tireless service.

The big story for the last few years has been centered on activities at the state Capitol. This year the story never got very big. Thank goodness. While there were several proposed bills that would have changed the way we select judges and the operation of the Oklahoma Bar Association, none of them got far. Some of the bills were with-

drawn and moved from one committee to another. I felt like I was in the movie, *Airplane*, where the plane finally lands and skids through the airport. As the plane careened down the inside of the terminal, the overhead announcement rapidly announced the flight arriving at numerous gates as it skidded past one and then another.



Although none of the bills were passed, many are still active for the upcoming 2016 session. That will be a story for another year. But, for this year, it ends with all is well.

We swore in a new chief and vice chief justice. The Oklahoma Supreme Court reactivated the Access to Justice Commission, and it is off to a very good start. Our Oklahoma Lawyers for America's Heroes program

continues to set record amounts of pro bono service, and in the last part of the year the legal clinics were most impressive.

The OBA launched new association management software. To say this was a great experience would be less than truthful. It has been an exercise in patience, creatively and at times frustration. Making a major

change in the way people do their work is always a challenge. Making such a change with the number of customizations we required and teaching the vendor how we do business was no small feat. I am praying next year will be easier at least on this issue.

We held our Annual Meeting in Oklahoma City. I cannot recall a year where I heard so few complaints about the venue. Your OBA staff did an outstanding job. Never, ever have I had so many compliments on the staff. As always, I wish more of you would have participated. The new section-sponsored social event has really added a nice touch to the meeting. Thank you, OBA sections!

I would be remiss if I did not mention the OBA Solo & Small Firm Conference. It was simply

amazing this year. The planning committee outdid itself. The vendor "Shootout" was a small stroke of genius. I would have said a giant stroke, but you-know-who has a big enough head with my bragging on him and his national award this year.

Our YLD Kick It Forward fundraising project was over the top. On a Saturday in August an amazing group of young lawyers raised more than \$10,000 to help fellow lawyers who are struggling financially. I was there; hundreds of people turned out, and many brought their pets and children — and no one had their head buried in a cell phone. The food trucks

also made it a festive event. YLD Chair LeAnne McGill and her board should be mighty proud of themselves. Past President Jim Stuart came in drag. He perhaps should not be so proud. I have no problem with the cross dressing, but Jim just doesn't have the figure for it.

I mentioned staff earlier. There are some people who put in extra effort helping us update our systems. Robbin Watson and her IT staff, Administration Director Craig Combs, Tracy Sanders in membership, Susan Damron Krug and Mark Schneidewent in CLE and Debbie Brink in my office. I am grateful for the talent they bring to us.

It was a pretty good year. So far we are within budget. The new HVAC system for the west side of the building will be put in before the end of the year, and we are primed and ready for 2016. I want to send my best wishes to you and yours for the holiday season and the New Year. Thank you for being part of my 2015 — even if I am old.



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

OKLAHOMA BAR JOURNAL EDITORIAL CALENDAR

2016 Issues

■ January
Meet Your OBA
Editor: Carol Manning

■ February
Probate
Editor: Judge Allen Welch
allen.welch@oscn.net
Deadline: Oct. 1, 2015

■ March
Criminal Law
Editor: Melissa DeLacerda
melissde@aol.com
Deadline: Oct. 1, 2015

■ April
Law Day
Editor: Carol Manning

■ May
Indian Law
Editor: Leslie Taylor
leslietaylorjd@gmail.com
Deadline: Jan. 1, 2016

■ August
Bankruptcy
Editor: Amanda Grant
Amanda@spiro-law.com
Deadline: May 1, 2016

■ September
Bar Convention
Editor: Carol Manning

■ October
Real Property
Editor: Shannon Prescott
shanlpres@yahoo.com
Deadline: May 1, 2016

■ November
President's Topic
Editor: Melissa DeLacerda
melissde@aol.com
Deadline: Aug. 1, 2016

■ December
Ethics & Professional Responsibility
Editor: Renée DeMoss
rdemoss@gablelaw.com
Deadline: Aug. 1, 2016

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

2015 Year-End Roundup

By Jim Calloway

This year I have been writing a lot about change in law offices. If you missed reading any of the prior Law Practice Tips columns in the *Oklahoma Bar Journal* they are online.¹ I'm sure that some readers are tired of hearing about systemic change in the legal marketplace and wondering how changes will impact them.

So to wrap up the year 2015, I thought I would cover a few simple tips and some new or improved tools.

WHICH USB?

By now all of us are familiar with the standard USB plug. Lawyers were early adapters of USB flash drives and USB plug is now the way we attach most of our devices to our computer. The problem with standard USB ports is that as phones, tablets and other devices get smaller, a standard USB will not fit. So we have now seen adoption of mini-USB and micro-USB connectors. So now most of us have a collection of cables with the standard USB connector on one end and either a mini-USB or micro-USB connector on the other. Being aware of these differences is important in case one of your connecting cables is damaged or lost. Buying a replacement

from the company that sold you the device may be quite expensive. But as long as you understand that the connector is most likely either a mini-USB or micro-USB connector, you will likely find that you have another cable that will serve the purpose. (iPhone/iPad users must use proprietary devices.)



Micro-USB, Mini-USB and Standard USB

FILING EMAILS IN OUTLOOK FOLDERS

The volume of email we receive is a challenge for us all. But emails relating to client files have to be treated with special care. Many lawyers who would never dream of failing to file a single physical correspondence in the client file often have a different process where email is concerned. But the reality today is that you will receive more emails than traditional correspondence on most of your client files. Many of today's practice management solutions have a one- or two-click method for saving emails into the client files.

Many lawyers still sort their emails into a number of custom folders in Outlook, including client emails.

An inexpensive utility to help you file emails in Outlook folders is SimplyFile 4 from Techhit.com. SimplyFile works with all recent versions of Outlook, including Office 365

accounts. SimplyFile allows you to quickly sort emails into various Outlook folders by examining the email and "guessing" where it should be filed. Since a misfiled email can be big trouble, you make the final decision, but after using SimplyFile for a while, most users will find that it always guesses the correct folder. SimplyFile saves a lot of time for those who use Outlook folders to store and sort emails. It also makes it simple to file from the "Sent Items" folder, a step many lawyers dealing with their inboxes forget to do. I received a review copy of SimplyFile from Techhit.com and the company gave me the link to an in-depth review of the product.²

SimplyFile has a free 30-day free trial and costs \$49.95.

The downside of filing in Outlook email folders occurs when there are several lawyers

working on a client file. All documents should be contained in the client file, but using Outlook folders means only one lawyer has access to those emails. There are ways to cope with this, including using Adobe Acrobat to print an entire folder to a single PDF document, which can be easily filed in the client's digital case file. But even if a lawyer works in a firm that uses practice management software to file each email individually, it is probably worth the purchase price to organize many of the nonclient emails (CLE presentations, family matters, recreation) into folders where they can be quickly accessed.

SPEECH RECOGNITION

In my Nov. 21, 2015, *Oklahoma Bar Journal* Law Practice Tips column, "Strategy and Tactics: Plan Your Work and Work Your Plan," I stated that every lawyer who types less than 30 or 40 words per minute should be given a microphone and a copy of Dragon NaturallySpeaking. I'm revising that slightly now to say that almost every lawyer should purchase and use Dragon NaturallySpeaking. Even if you are a speedy typist, there are times when dictation will be much easier, such as when you are holding papers in your hands or paging through a book.

My other observations include:

- You can still talk faster than you can type.
- Dictating is less tiring and a more ergonomic way to work.
- You can dictate with your eyes closed.

- You can use those well-honed dictation skills without paying a transcriptionist.

The newly released Dragon Professional Individual Edition now costs \$300. You can get the wireless version that includes a Bluetooth headset for \$400. You can save by upgrading if you own a copy of Dragon Pro or Premium version 12. Considering how much a transcriptionist charges these days, it is time for many lawyers to give Dragon a try (or another try.)

“You can still talk faster than you can type.”

I'm trying out the Bluetooth headset purchased as a part of the wireless bundle above, but it sometimes makes my ear a bit tired and I revert back to the Blue Snowball microphone. Oklahoma lawyer David Holden reported to me that he didn't like headsets and got tired of the ear discomfort from the single ear device, so he bought the MXL AC404 USB Conference Microphone for around \$75. (List price: \$129.95.) He reports great results with this device. It just sits on his desk and he no longer has to wear a headset or "ear bob."

I used to leave Dragon on for most of the day and would use the verbal commands "Wake up" and "Go to Sleep" when I wanted to start and stop dicta-



MXL AC404 USB Conference Microphone

tion. But that meant that Dragon is listening all the time — which uses up other system resources. I now use the hotkey to turn it off and on. The default hotkey is the + next to the numerical keypad which means it is a larger key and the farthest one to the right on both of my keyboards. I now use that key at least a dozen times a day to turn Dragon off and on. I have to admit that I notice my emails are sometimes longer since I dictate most of them.

If you are purchasing a new computer that you intend to use for speech recognition, do yourself a favor and purchase a lot of memory for it. If you have a relatively new computer, inquire with your IT department (or your outside tech support) about how much it would cost to increase the memory. When dictating, it is more satisfying if the words appear quickly on the screen without a lag. More memory helps with that. If you're a first-time user of Dragon NaturallySpeaking, make sure and use the software to do verbal corrections when possible rather than using the keyboard. That way you teach the program how to do better in the future.

KEYBOARD SHORTCUTS

I love keyboard shortcuts. But the problem is you can only memorize so many of them.

Here is one that lawyers can use every day. CTRL + P opens the print dialog box and hitting "Enter" starts the print job. This is significantly quicker than fishing around with the mouse to pull down a menu. Want to print several copies? Before hitting Enter, use the arrow keys to change the number of copies to be printed.

Have you ever closed a browser tab and then really wanted it back? Browser history is sometimes a challenge to use to locate a closed tab. But this year at our OBA Solo and Small Firm Conference I learned of the keystroke combination CTRL + Shift + T. This works in all major browsers to reopen that browser tab you just accidentally closed. It's not the easiest keystroke combination to remember, but as long as you know it exists you can always use Google to find the keystroke combination if you don't remember it. (Not to suggest that I had to do that myself the first time I needed it.)

WHAT ABOUT OFFICE 365?

The end of the year may find you buying new office equipment. You may also update some software and many lawyers are concerned about

Microsoft changing its delivery model to Office 365. Some are concerned about being forced to use "the cloud" or that a subscription will be much more expensive.

Microsoft guru Ben Schorr recently wrote a nice blog post on this topic, "What Software Comes with Office 365?"³ He notes:

"One common misunderstanding about this is that people think that means the software is web-based (like Google Docs) or that you have to be always connected to the Internet in order to use it. Office 2016 via Office 365 (yes, I know it gets confusing) is installed on your local hard drive just like your current version of Microsoft Office probably is. The differences are that Office software installed through Office 365 will periodically check in with Microsoft to make sure your subscription is still active and Microsoft will frequently push updates and even new features to you. This also means that you don't have to worry about keeping track of installation

DVDs in case you ever need to reinstall the software. As long as the Internet is available, your installation files are available."

Ben also notes that the subscription fee is priced so that, for now at least it would take four or more years of monthly payments to equal the current purchase price of Microsoft Office. I would encourage you to read Ben's complete blog post and also make plans to hear him when he speaks at our 2016 OBA Solo & Small Firm Conference June 23-25 at the Choctaw Casino Resort in Durant.

Thanks for reading. I will let each of you get back to closing out your 2015.

Mr. Calloway is OBA Management Assistance Program Director. Need a quick answer to a tech problem or help solving a management dilemma? Contact him at 405-416-7008, 1-800-522-8065 or jimc@okbar.org. It's a free member benefit!

1. www.okbar.org/members/MAP/MAPArticles
2. www.techhit.com/SimplyFile/SimplyFile_review_TechnoLawyer.pdf
3. <http://rolandschorr.com/index.php/2015/12/05/what-software-comes-with-office-365/>

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Grantee Spotlight: Teen Court

By Candice Jones

The holidays are a great reminder to be thankful. At the Oklahoma Bar Foundation we are thankful for our grantees and the amazing work they do in communities across the state. Check out our spotlight grantee — Teen Court, serving Comanche County.

Teen Court's mission is to assist in positive and practical resolutions to misdemeanor offenses committed by first-time juvenile offenders between the ages of 11 and 18.

"Our goal is to reduce teenage misdemeanor offenses and to increase the importance of being a good, productive citizen in society," says Marcia Frazier, executive director of Teen Court. "Our caseload consists of assault and battery, theft, misdemeanor drug and alcohol-related offenses committed by first-time offenders."

Teen Court is made up of teenage and adult judges who decide the sentences for juvenile offenders who plead guilty and have chosen to appear before their peers in exchange for formal charges not being filed.

ADRIAN'S STORY

Adrian came through on charges of disorderly conduct for fighting in school in Janu-



Student volunteer prosecuting attorney, Nyjheal Bridgewater, questions a Teen Court defendant.

“Teen Court’s mission is to assist in positive and practical resolutions to misdemeanor offenses committed by first-time juvenile offenders between the ages of 11 and 18.”

ary. He was arrested and ordered to attend Teen Court. Adrian completed educational classes on conflict resolution and anger management. He completed his court sanctions of 20 hours of community service, three jury duties and an essay on “fighting.” Last week, Adrian told the Teen Court executive director, “I have learned so much from Teen Court. Can I start volunteering and will you train me to be an attorney, so I can help other kids?” Adrian has begun his training with Teen Court’s attorneys and will be helping as a volunteer.

The foundation has given more than \$80,000 in grant funding to Teen Court over the last seven years. When you give to the foundation, you support programs like Teen Court that help address issues and prevent future problems. Last year 124 cases were heard and sentenced. Of those defendants 97 percent successfully

completed the program and have not had a repeated arrest.

Thank you Teen Court for changing the lives of our high-risk youth and giving them the chance to succeed!

For more information about the bar foundation's grantees please visit www.okbarfoundation.org.

ABOUT THE AUTHOR



Candice Jones is director of development and communications for the Oklahoma Bar Foundation.

Tributes and Memorials



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

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2015 Was a Great Year for YLD Projects

By LeAnne McGill

As I reflect on my year as YLD chair, I feel honored to have led this amazing group of young lawyers. I am extremely proud of the work the Board of Directors accomplished during 2015. We had a busy year and were always hard at work.

By far the most exciting accomplishment of the year for me was the overwhelming success of the Kick It Forward Kickball Tournament. I am amazed at the amount of money raised and the number of players who participated in the event. I owe so many thanks to Faye Rodgers and Stephanie Cox for making sure this event was pulled off without any major problems. I also want to recognize Renée DeMoss for helping us raise so much money and the entire OBA Communications Department for helping us promote the event so well.

The kickball tournament was not our only successful event of the year. As usual, the Community Service Committee co-chaired by Brandi Nowakowski and Maureen Johnson made sure that our annual Day of Service benefited a worthy cause. Maureen and Brandi coordinated the stuffing of approximately 200 backpacks full of food for hungry children across the state. Our New Attorney Orientation Committee, led by Rachel Gusman and Robert Bailey, ensured that all bar exam test takers had their

“By far the most exciting accomplishment of the year for me was the overwhelming success of the Kick It Forward Kickball Tournament.”

essential Bar Exam Survival Kit. The committee also provided refreshments at the swearing-in ceremonies for all those who passed the exam.

The Membership Committee, co-chaired by Jordan Haygood and Blake Lynch, held several events geared at increasing young lawyer involvement in our division. And for the first time since I have been on the board, the Diversity Committee, chaired by April Moaning, held several events aimed at increasing diversity in our profession. April's hard work and innovative thinking earned her the Outstanding Committee Chair Award for 2015.

This year's projects would not have been possible without the dedication and commitment of my fellow board members. Having been active in the YLD

YLD Election Results Announced

Congratulations to the officers and members who will serve on the 2016 YLD Board of Directors

Officers

Chair Bryon Will, Oklahoma City
Chair-Elect Lane Neal, Oklahoma City
Treasurer Nathan Richter, Mustang
Secretary Brandi Nowakowski, Shawnee
Immediate Past Chair
LeAnne McGill, Edmond

Directors

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Aaron Pembleton, Nowata

District 2

Blake Lynch, McAlester

District 3

Sarah Stewart, Oklahoma City

District 3

Dylan Erwin, Oklahoma City

District 3

Jordan Haygood, Oklahoma City

District 4

Dustin Conner, Enid

District 5

Allyson Dow, Norman

District 6

Clayton Baker, Tulsa

District 6

Brad Brown, Tulsa

continued on next page

since 2006, I have many fond memories of the young lawyers with whom I have served. During the last four years on the executive board, I have learned so much. Each of the prior chairs I served with inspired me and influenced me as a leader. To Roy Tucker, Jennifer Castillo, Joe Vorndran and Kaleb Hennigh, I am forever grateful for the memories we share as a result of this organization. I am thankful for everything each of you taught me. I learned a lot of important lessons because of each of you and am, no doubt, a better leader and a better person because of your influence.

To Bryon Will and Lane Neal, good luck as you take on the task of leading this division. Letting go of this board will be hard for me, but it is a little easier knowing I am leaving it in

your capable hands. To John Morris Williams, I am eternally indebted to you for never giving up on me and always being supportive. I know it is your job, but you do it so well. You have always gone above and beyond, and I cannot thank you enough. And finally a special thanks to Faye Rodgers, Alice Clary, Stephanie Cox and Jordan Johnson. Each of you will always be a part of team M&R. I could not have made it through this year without all your help.

ABOUT THE AUTHOR



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

District 6

Maureen Johnson, Tulsa

District 7

John Hammons, Muskogee

District 8

Brandi Nowakowski, Shawnee

District 9

open

At Large

Robert Bailey, Norman

At Large

April Moaning, Oklahoma City

At Large

Faye Rodgers, Edmond

At Large

Piper Bowers, Enid

At Large Rural

Matt Sheets, McAlester

At Large Rural

Nathan Richter, Mustang



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Facing financial challenges?

You may be eligible to apply to the Kick It Forward program to pay your OBA dues this year. This program, started by the Young Lawyers Division, is open to Oklahoma bar members of all ages. Find more info and the application form at tinyurl.com/kickitforward.

Apply for assistance.

Application deadline: Jan. 31, 2016

See website for eligibility requirements and application form.

Applicants are asked to write an essay of 250 words or less sharing why you believe you should be selected as a recipient.

Applications will be reviewed by a committee, and applicants will be notified whether they are a recipient by Feb. 10, 2016.

Donate.

Help lawyers needing financial assistance to pay their dues.

Options:

- ❶ Look for the donation line on your dues statement.
- ❷ Mail a check payable to the OBA, PO Box 53036, Oklahoma City, OK 73152. Include program name on the lower left corner of the check.
- ❸ Donate online at <https://goo.gl/xHRQrf> → click on Kick It Forward → login

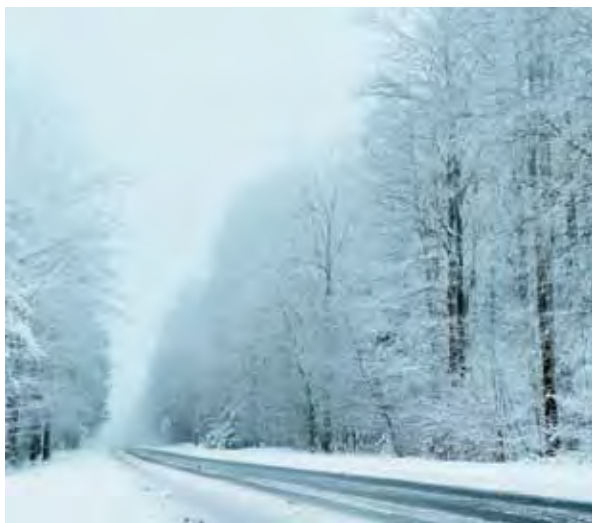
December

24-25 OBA Closed - Christmas

January

1 OBA Closed - New Year's Day

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



7 OBA Mock Trial Committee meeting; 5:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Marsha Rogers Chojnacki 918-596-5951

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

8 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

12 OBA Law Day Committee meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Richard Vreeland 405-360-6631

13 OBA Women in Law Committee meeting; 3:30 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Kimberly Hays 918-592-2800

14 OBA Board of Governors meeting; 2 p.m.; Teleconference; Contact John Morris Williams 405-416-7000

15 OBA Board of Governors Swearing In Ceremony; 10:30 a.m.; Supreme Court Ceremonial Courtroom, State Capitol, Oklahoma City; Contact John Morris Williams 405-416-7000

18 OBA Closed - Martin Luther King Day

20 OBA Indian Law Section meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Trisha Archer 918-619-9191

22 OBA Lawyers Helping Lawyers Committee meeting; 12 p.m.; 406 S. Boulder, Ste. 432, Tulsa, Office of Hugh Hood; Contact Jeanne Snider 405-366-5423

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

February

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

4 OBA Mock Trial Committee meeting; 5:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Marsha Rogers Chojnacki 918-596-5951

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

- 5 OBA Alternative Dispute Resolution Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Ken Morgan Stoner 405-705-2910
- 10 OBA Women in Law Committee meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Kimberly Hays 918-592-2800
- 12 OBA Law-related Education Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Suzanne Heggy 405-556-9615
- OBA Board of Editors meeting;** 1:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Melissa DeLacerda 405-624-8383
- OBA Family Law Section meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Michelle K. Smith 405-759-2333
- 15 OBA Closed** - President's Day
- 17 OBA Indian Law Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Trisha Archer 918-619-9191
- 18 OBA Mock Trial Committee meeting;** 5:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Marsha Rogers Chojnacki 918-596-5951
- 19 OBA Board of Governors meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City; Contact John Morris Williams 405-416-7000
- 25 OBA Professionalism Committee meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Patricia Podolec 405-760-3358



March

- 1 OBA Government and Administrative Law Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City; Contact John E. Miley 405-557-7146
- 4 OBA Alternative Dispute Resolution Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Ken Morgan Stoner 405-705-2910
- 9 OBA Women in Law Committee meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Kimberly Hays 918-592-2800
- 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
- 16 OBA Indian Law Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Trisha Archer 918-619-9191



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OBA Member William J. Ross Inducted into Oklahoma Hall of Fame

OBA member William J. “Bill” Ross, chairman of the Inasmuch Foundation and Ethics and Excellence in Journalism Foundation was inducted into the Oklahoma Hall of Fame Nov. 19. He was one of eight in the hall’s 88th induction class which featured representatives from the worlds of sports, arts, entertainment, business, philanthropy and education.

He was an Oklahoma City assistant municipal counselor until joining the law firm Rainey, Flynn, Green and Anderson in 1960. He became senior partner in 1975, and the firm was renamed Rainey, Ross, Rice & Binns. His other honors include OU Honorary Doctor of Humane Letters, OCU Honorary Doctor of Humane Letters, OKCPS Wall of Fame and Oklahoma College of Law Order of the Owl. He served OU College of Law Board of Visitors co-chairman and headed the building campaign raising \$15 million.



Induction into the Oklahoma Hall of Fame is considered the single-highest honor an individual can receive from the state. Inductees will have their biographies, photos and fun facts available through interactive exhibits at the Gaylord-Pickens Museum.

LHL Discussion Group Hosts January Meeting

“Stress Management and the Practice of Law” will be the topic of the Jan. 7 meeting of the Lawyers Helping Lawyers monthly discussion group. Each meeting, always the first Thursday of the month, is facilitated by committee members and a licensed mental health professional. The group meets from 6 to 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.*

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MCLE Deadline Approaching

Dec. 31 is the deadline to earn any remaining CLE credit you need for 2015 without having to pay a late fee. Not sure how much credit you still need? You can view your MCLE transcript online at my.OKBar.org. You can also pay dues online and register for any CLE you still need. Check out great CLE offerings at www.okbar.org/members/CLE! If you have questions about your credits, email MCLE@okbar.org.



New OBA Board Members to Take Oath

Nine new members of the OBA Board of Governors are set to be sworn into their positions Jan. 15, 2016, at 10:30 a.m. in the Supreme Court Ceremonial Courtroom at the State Capitol. Officers set to take the oath are Garvin A. Isaacs, Oklahoma City, president; Linda S. Thomas, Bartlesville, president-elect; and Paul D. Brunton, Tulsa, vice president.

To be sworn into the Board of Governors to represent their judicial districts for three-year terms are John W. Coyle III, Oklahoma City; Kaleb K. Hennigh, Enid; James L. Kee, Duncan; and Alissa Hutter, Norman, at large.

To be sworn into one-year terms on the board are David A. Poarch Jr., Norman, immediate past president; and Bryon Will, Oklahoma City, Young Lawyers Division chairperson.



OBA Holiday Hours

The Oklahoma Bar Center will be closed Dec. 24-25 for the Christmas holiday. In addition, the bar center will also be closed Jan. 1, 2016, for the New Year's holiday.

OBA Member Resignations

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

Gerald Alvin Bollinger, OBA No. 931
5100 N. Brookline, Suite 600
Oklahoma City, OK 73112

David Edward Finck, OBA No. 31436
700 Louisiana, Suite 4100
Houston, TX 77002

Howard Yale Held, OBA No. 30942
4625 Valley Forge Lane N.
Plymouth, MN 55442

Katherine Lee Laws, OBA No. 22026
9757 Water Oak Drive
Fairfax, VA 22031

Robert Stephen Payne, OBA No. 6990
1584 San Marino Court
Punta Gorda, FL 33950

Roberta J. Potts, OBA No. 12442
12986 N. Westminster Drive
Oro Valley, AZ 85755

Judy B. Stover, OBA No. 13430
1706 Hockley Drive
Hingham, MA 02043

Aspiring Writers Take Note

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



Connect With the OBA Through Social Media

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



Kudos

Audrey Farnum, staff attorney and administrative hearing officer at the Oklahoma Tax Commission Office of Administrative Law Judges, received the Keith Boyd Award for Employee of the Year at the Disability Employment Law Conference. The award recognizes people with disabilities who excel in the workplace. Ms. Farnum was recognized for her success as an attorney, overcoming her blindness and for her involvement in the disability community. She graduated the OCU School of Law in 1999.

The Association of Fundraising Professionals Eastern Oklahoma Chapter recently recognized **Hannibal B. Johnson**, author and independent consultant, for his outstanding diversity and inclusion in philanthropy and his efforts in leading the New Voices Board Internship through Leadership Tulsa. He received his J.D. from Harvard Law School in 1984.

Terry Mason Moore of the Moore Law Office in Fairfax was appointed and represented the Osage Nation at the 7th Annual White House Tribal Nations Conference where President Barack Obama and members of his Cabinet discussed issues of importance to tribal leaders and how the administration

can continue to make progress on improving nation-to-nation relationships. Each federally recognized tribe was allowed only one representative. She graduated from the University of New Mexico School of Law in 1983.

On The Move

Baker and Ihrig PC announces that **Ky Dowdy Corley** has joined the firm. He will practice in the area of general trial practice, with emphasis on family law, criminal, probate and estate planning, contract law and general litigation. Mr. Corley earned his J.D. from the OCU School of Law in 2015. The firm has been renamed as Baker, Ihrig & Corley PC.

Dylan Erwin has joined **Andrews Davis** to practice criminal defense in the firm's civil litigation, trial and appellate practice departments. Mr. Erwin previously served as the assistant district attorney for Comanche and Cotton counties. He received his J.D. from the OU College of Law in 2014.

Atkinson, Haskins, Nellis, Brittingham, Gladd & Fiasco announces that **Mark D. Freudenheim, Drew D. McNeil** and **Dru A. Prosser** have joined the firm as associates. Mr. Freudenheim and

Mr. Prosser practice in the area of civil litigation, with an emphasis on insurance law and medical malpractice defense. Both graduated from the TU College of Law in 2015. Mr. McNeil practices in the areas of appellate advocacy and civil litigation, with an emphasis on research and writing. He graduated from the OU College of Law in 2015.

Kayce L. Gisinger has joined **Phillips Murrah** as an of counsel attorney. She defends clients in cases involving product liability, auto and trucking negligence, premises liability, medical malpractice, legal malpractice, employment law and general negligence. She received her J.D. from the OCU School of Law in 1988.

Graves McLain PLLC has named **Rachel E. Gusman** as a junior partner of the firm. Ms. Gusman practices in the areas of medical negligence, motor vehicle accidents, personal injuries, vaccine injuries and civil rights litigation. She graduated from the TU College of Law in 2008.

Drummond Law PLLC announces that **Logan L. James** has joined the firm as an associate. His practice will focus on banking, employment, oil and gas, construction and complex civil litigation. Mr. James received his J.D. from the TU College of Law in 2015.

Hall Estill announces three new associates. **Courtney Kelley** and **Joel Johnston** have joined the firm's Tulsa office, and **Ashley Roche** has been added to the firm's Oklahoma City office. Ms. Kelley will practice primarily in the areas of energy and natural resources. She received her J.D. from the Washburn University School of Law in 2015. Mr. Johnston will focus his practice in environmental services. He graduated from the TU College of Law in 2015. Ms. Roche's primary focus will also be energy and natural resources. She received her J.D. from the Southern Methodist University Dedman School of Law in 2015.

Doerner Saunders announced that **William C. Kellough** has been admitted as a certified commercial arbitrator with the American Arbitration Association. Mr. Kellough has practiced law for 40 years, serving eight years as a district judge. He arbitrates all types of commercial transactions and graduated from University of Texas at Austin School of Law in 1975.

David W. Lee has become an of counsel attorney with Collins, Zorn & Wagner PC and **Alison B. Levine** has joined the firm as an associate attorney. Mr. Lee will continue to focus on civil rights and employment defense. He received his J.D. from the OU College of Law. Ms. Levine's practice will include civil rights and employment defense. She earned her J.D. from the University of Louisville, Brandeis School of Law in 2008.

Miller & Johnson PLLC announces that **Stephen**

R. Palmer has joined the firm. Mr. Palmer has a wide range of litigation experience, including insurance defense, auto and truck liability defense, premises liability, class action litigation, products liability and business and commercial litigation. He earned his J.D. from the OCU School of Law in 1996.

Col. **Brent Wright**, partner and registered investment advisor with Pinnacle Holdings LLC, has been promoted to the position of vice wing commander, 138th Fighter Wing, Tulsa Air National Guard Base. As second-in-command, he ensures the combat readiness of the second largest combat coded Air National Guard F-16 unit. He assists the wing commander with organizing, training and equipping more than 1,200 guard and technician forces. He also serves as the director of the governor's task force to ensure a successful mission change to the F-35A Lightning II. He graduated from the TU College of Law in 1992.



Michael P. Atkinson was one of 13 Fellows of the American College of Trial Lawyers who recently presented in the college's Advanced Trial Advocacy Symposium. His presentations were "The Successful Opening," "Advanced Jury Trial Strategies: Voir Dire," "Preserving the Record on Appeal," "Jury Trial Panel Discussion and Questions"

and "The Successful Closing." He graduated from the OU College of Law.

Brandon C. Bickle recently spoke to a group of 50 bankers during the 2015 Consumer Lending School conference sponsored by the Oklahoma Bankers Association. He covered what bankers need to know when customers file bankruptcy. He received his J.D. from the TU College of Law in 2008.

Steve Heinen recently presented, "Handling the Sale of a Business" at the National Business Institute's seminar. He addressed nondisclosure agreements, letters of intent and due diligence. Mr. Heinen graduated from Harvard University School of Law in 1991.

Leslie L. Lynch presented to a group of 75 during an event sponsored by the Oklahoma Association of Defense Counsel on "Open Statements." Ms. Lynch also presented two webinars on, "The Exempt vs. Non Exempt Dilemma: How the Rules are Changing," with attorney **Michael J. Lambert**.

Jeffery W. Massey recently addressed the Oklahoma Conservative Political Action Committee regarding the legal and historical significance of Union and Confederate veterans' issues following the Civil War. Mr. Massey also recently addressed the Oklahoma County Criminal Defense Lawyers Association speaking on, "Habeas Corpus: For King, Country and Presidents." The address focused on the historical implications of the great writ and its unique role in the development of English common law after the Norman

Conquest. He received his J.D. from the OU College of Law in 1990.

Bob Murphy was a featured speaker for the Washington Network of Adjudicatory Agencies' continuing legal education seminar, "Bridging Troubled Waters: Impartiality, Integrity & Insight," in Tumwater, Washington. Mr. Murphy covered the history of the code of judicial conduct and highlighted emerging trends in judicial ethics including pitfalls of social media. He graduated from the OU College of Law.

Ronald N. Ricketts presented at the Oklahoma Bar Association's continuing legal education arbitration seminar at the Oklahoma Bar Center in Oklahoma City. He graduated from the TU College of Law in 1968.

Robert N. Sheets recently presented at the National Business Institute's Construction Law: Advanced Issues and Answers seminar. Mr.

Sheets' presentation, "Change Orders and Extra Work — Payment Issues Disentangled," focused on issues regarding real versus perceived changes, changes due to defective plans and specifications and payment issues and lien claims. He received his J.D. from the OCU School of Law in 1979.

Tom C. Vincent II moderated a panel of attorneys during the recent Community Bankers of Oklahoma annual convention. The session, "From Capitol Hill to the Customer's Experience," focused on key issues impacting bankers and their customers. Members on the panel included attorneys **Jeffrey D. Hassell, Diana T. Vermeire and Thomas J. Hutchison**. He also presented, "Social Media," to the Tulsa-area Human Resources Association during its recent annual Employment Law and Practices Seminar. He graduated from the Washington & Lee School of Law in 1994.

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:

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Articles for the Feb. 13 issue must be received by Jan. 11.

IN MEMORIAM

William John Patterson of Ketchum, died Nov. 6. He was born Aug. 15, 1950, in Chicago. Mr. Patterson grew up in Springfield, Missouri, and graduated from Parkview High School in 1968. He attended TU and Southwest

Missouri State University. He received his J.D. from the TU College of Law and worked as a criminal defense attorney in Tulsa and the surrounding area until he passed. **He served in the U.S. Navy and was honorably discharged.**

Mr. Patterson enjoyed riding motorcycles and boating on Grand Lake. He was known among friends for his Super Bowl parties and general love of sports.

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25 Ways to Fight Holiday Stress

It's easy to feel not-so-wonderful during this most wonderful time of the year. Here are 25 ways to help you fight the seasonal blues and to stay happy, healthy and energized.



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Holiday Gift Guide for Lawyers

Not sure what to give your coworker for Christmas this year? Check out this holiday gift guide to find the perfect gift.



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New Year's Resolutions

As we begin planning for the new year, many of us will make resolutions. Here are five resolutions you can make to help make your professional and personal life richer and more fulfilling.

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EXECUTIVE OFFICE SUITE. North Classen Boulevard. Furnished. Rent includes parking and receptionist. Call Kari 405-843-9923.

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PROFESSIONAL OFFICE BUILDING in NW Norman with two spacious offices available together or separately (one is furnished). Beautiful reception area with receptionist, conference rooms, file room, kitchen and high speed internet included. Upgrade your location and save on overhead. Call 405-360-0400.

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POSITIONS AVAILABLE

DISTRICT 15 (MUSKOGEE COUNTY) IS SEEKING AN ASSISTANT DISTRICT ATTORNEY with 0 to 5 years of prosecutorial experience. Send résumés or inquiries thru Dec. 31, 2015, to orvil.loge@dac.state.ok.us or Orvil Loge, District Attorney, Muskogee County District Attorney's Office, 220 State Street, Muskogee, OK 74464.

POSITIONS AVAILABLE

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.

OKLAHOMA CITY LAW FIRM IS SEEKING AN ESTABLISHED ATTORNEY with significant experience with property and casualty insurance matters, including coverage litigation in state and federal court. Writing samples required. Send resume and writing samples to "Box X," Oklahoma Bar Association, PO Box 53036, Oklahoma City, OK 73152.

FULL SERVICE, AV-RATED, DOWNTOWN TULSA LAW FIRM seeks associate attorney with 3 - 6 years' commercial litigation experience. Solid deposition and trial experience is a must. Our firm offers a competitive salary and benefits, with bonus opportunity. Submit résumé and references to "Box P," Oklahoma Bar Association; PO Box 53036; Oklahoma City, OK 73152.

THE U.S. ATTORNEY'S OFFICE FOR THE WESTERN DISTRICT OF OKLAHOMA is seeking applicants for one or more assistant U.S. attorney positions (experience with civil and/or criminal asset forfeiture matters preferred). Salary is based on the number of years of professional attorney experience. Applicants must possess a J.D. degree, be an active member of the bar in good standing (any U.S. jurisdiction), and have at least three (3) years post-J.D. legal or other relevant experience. See vacancy announcement 16-OKW-1562553-A-01 at www.usajobs.gov (Exec Office for US Attorneys). Applications must be submitted online. See "How to Apply" section of announcement for specific information. Questions may be directed to Denea Wylie, Human Resources Officer, via email at Denea.Wylie2@usdoj.gov. This announcement is open through Dec. 31, 2015.

DOERNER, SAUNDERS, DANIEL & ANDERSON SEEKS AN ATTORNEY for its Oklahoma City office with 3-5 years of experience in commercial litigation and transactions. Oil/gas and administrative law experience a plus. Compensation DOE. Great benefits and friendly atmosphere. Submit confidential résumé, references, writing sample and salary requirements to hr@dnda.com.

STEIDLEY & NEAL PLLC, seeks an associate attorney for its Tulsa office to assist in civil litigation. This position primarily involves assisting in general insurance defense matters, including some research and writing, discovery, taking depositions and trials. Competitive salary and other benefits commensurate with level of experience. Would consider recent graduates. Please submit a résumé and salary requirements to Steidley & Neal, Tulsa, OK, 74137, attention Dwain Witt, Administrator.

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Do you want a fulfilling career where you can really make a difference in the lives of people? Are you fervent about equal justice? Does a program with a purpose motivate you? *Legal Aid Services of Oklahoma, Inc. (LASO)* is searching for an attorney for its Lawton Law Office.

We are a statewide, civil law firm providing legal services to the impoverished and senior population of Oklahoma. With more than 20 offices and a staff of 155+, we are committed to the mission of equal justice.

The successful individuals will have a passion for justice and empathy for impoverished individuals, computer literate and willingness to learn and contribute to a positive work environment. In return, the employee receives a great benefit package including paid health, dental, life insurance plan, a pension and generous leave benefits. Additionally, LASO offers a great work environment and educational/career opportunities.

To start making a difference, complete our application and submit it to Legal Aid Services of Oklahoma.

The online application can be found:

<https://legalaidokemployment.wufoo.com/forms/z7x4z5/>

Print application

http://www.legalaidok.org/documents/388541_Employment_Application_Revised_10.2008.pdf

Legal Aid is an Equal Opportunity/
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THE DEPARTMENT OF HUMAN SERVICES, Legal Services Division, is seeking qualified applicants with a minimum of 3 years relevant experience to fill a full-time legal secretary position in its Oklahoma City office. This position offers a competitive salary with excellent state benefits. Strong organizational skills and an awareness of time constraints are absolute necessities. The successful applicant will provide assistance and secretarial support for 3-5 attorneys. Duties include calendaring deadlines for court and administrative proceedings and preparing, organizing, maintaining, and filing pleadings and other documents in accordance with applicable rules and law. Send résumés to Retta.Hudson@okdhs.org.

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THE SEMINOLE NATION OF OKLAHOMA is soliciting applications for one district judge and one Supreme Court justice. To be eligible for either office, a candidate must: a) be a licensed attorney who is an enrolled member of a federally recognized Indian tribe, is in good standing with the licensing authorities where licensed and who possesses a demonstrated background in tribal court practice; b) have demonstrated moral integrity and fairness in his business, public and private life; c) never been convicted of a felony or an offense punishable by banishment, whether or not actually imprisoned or banished, and have not been convicted of any offense, except traffic offenses, for a period of ten years next preceding his appointment. The ten year period shall begin to run from the date the person was unconditionally released from supervision of any sort as a result of a conviction. d) Have regularly abstained from the excessive use of alcohol and use of illegal drugs or psychotoxic chemical solvents; e) be not less than twenty-five (25) years of age; and f) not be a member of the general council, or the holder of any other elective office of this nation, provided, that a candidate who is a member of the general council, or the holder of some other elective office of the nation, may be confirmed as a judge subject to his resignation. Upon resignation from his office, he may be sworn in as and assume the duties of judicial office. All judges of the district court shall serve four (4) year terms of office beginning from the date of their confirmation and until their successors take office, unless removed for cause, or by death or resignation. All judges so appointed shall be eligible for reappointment at the expiration of their terms. All justices of the Supreme Court shall serve six (6) year terms of office beginning from the date of their confirmation and until their successors take office, unless removed for cause, or by death or resignation. All justices so appointed shall be eligible for reappointment at the expiration of their terms. Application deadline is 5 p.m. Jan. 20, 2015. Applications for either position or inquiries should be directed to: Alvina Coker, General Council Secretary, Seminole Nation of Oklahoma, P.O. Box 1498, Wewoka, OK 74884, 405-257-7200.

COFFEY, SENGER & MCDANIEL, PLLC seeks a research and writing attorney with 4 to 7 years of experience. Will also hire on a contract basis. Please submit résumé and writing sample to amy@csmlawgroup.com.

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THE NATIONAL CHRISTIAN FOUNDATION HEARTLAND is seeking an attorney to fill the role of Vice President of Outreach. This role will be based in Tulsa, OK. This person will have strong relational skills, public speaking and writing skills. A strong component of this role will be to build relationships in the local community to grow donor advised funds and non-liquid gifting in the community. The National Christian Foundation Heartland is an affiliate of NCF, the 12th largest charity in the country and the largest Christian grant making organization in the country. Please email an initial inquiry with resume and 3 references to Rick McGlocklin at rmcglocklin@nationalchristian.com.— Rick McGlocklin COO/CFO, National Christian Foundation Heartland; 706 N. Lindenwood Dr., Olathe, KS 66062; rmcglocklin@nationalchristian.com; 913-310-0279.

D.A. INVESTIGATOR POSITION AVAILABLE IN MUSKOGEE COUNTY. Must be computer proficient. Must have a minimum of 3 year's experience and must be CLEET certified. Please submit résumés to Orvil Loge, Muskogee County District Attorney, 220 State Street, Muskogee, OK 74401 or orvil.loge@dac.state.ok.us.

THE LAW OFFICE OF MICHAEL H. GITHENS seeks an experienced legal secretary to join the GEICO Staff Counsel Office in Oklahoma City. The successful candidate will assist attorneys in defending civil litigation matters. Two years of related legal secretary experience, as well as exceptional computer, communication, organizational and time management skills are required. Grade and salary for this position will be commensurate with the applicant's experience level. If interested, please go to the GEICO website, search for the job post for this position and submit your application and résumé online.

COFFEY, SENGER & McDANIEL, PLLC seeks a litigation attorney with 3 to 7 years of experience for their South Tulsa and/or Oklahoma City office. Trucking litigation experience is preferred. Please submit résumé and writing sample to amy@cgmlawok.com.

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A Return to Civility

By Bob Burke

One of my friends blames the lack of civility in the nation to cable television's need to fill 24 hours with controversy. The guests who rant the loudest and constantly interrupt get invited back. Another friend believes we generally are less civil than previous generations because of stress — we are short and inconsiderate because we are stressed to the max.

Whatever the reason, perhaps it is time to revisit a short book by President George Washington, *Rules of Civility & Decent Behavior*, his version of an ancient French Jesuit list of manners from the 16th century.

Washington gave 110 rules to guide our public persona. Many are humorous: "Sleep not when others speak; Spit not into the fire; In the presence of others, sing not to yourself; Keep your nails clean and short; Gaze not on the blemishes of others and ask not how they came; and my favorite, Cleanse not your teeth with the table napkin or fork." However, the bulk of Washington's serious suggestions are as relevant today as they were when our country was in its infancy.

The first of Washington's rules was paramount in his eyes: "Every Action done in Company, ought to be with Some Sign of Respect, to those that are Present" (Treat every-



one with respect). Other rules include, "Show Nothing to your Friend that may affright him" (Be considerate of others. Do not embarrass others), "Be not hasty to believe flying Reports to the Disparagement of any" (Do not be quick to believe bad reports about others) and "Do not laugh too loud or too much at any Public Spectacle" (Don't draw attention to yourself).

We, as attorneys and leaders in our communities, ought to lead the way in practicing honesty and civility. President Washington's rules are appropriate for dealing with other counsel, clients and judges.

- When you must give advice or criticism, consider the time, whether it should be in private or public.

- Strive not with your superiors in argument, but always submit your judgment to others with humility.
- Be not apt to relate news if you know not the truth (Don't talk unless you have all the facts).
- Undertake not what you cannot perform, but be careful to keep your promise (Don't start what you cannot finish).
- Let your discourse be short and comprehensive (When you speak, be concise).
- Associate yourself with men of good quality, for it is better to be alone than in bad company.

Washington saved his best rule of civility for the last, number 110, "Labor to keep alive in your breast that little spark of celestial fire called conscience." We should not allow ourselves to become jaded, cynical or calloused.

Attorneys are often the link between a client and loss of freedom or financial ruin. We will fulfill the high qualities of our calling if we follow the rules of civility so carefully penned by the father of our country.

Mr. Burke practices in Oklahoma City.

Make sure you HAVE ALL YOUR CLE Before beginning the New Year!!!

Join featured speaker Stuart I. Teicher, Esq., a professional legal educator who focuses on ethics law and writing instruction. A practicing attorney for 20 years, Stuart's career is now dedicated to helping fellow attorneys survive the practice of law and thrive in the profession. He teaches seminars, provides in-house training to law firms, legal departments, and also gives keynote speeches at conventions and association meetings.

The Code of Kryptonite: Ethical Limitations on Lawyers' Superpowers

DECEMBER 30, 2015

1-4 p.m.

**Oklahoma Bar Center
1901 N. Lincoln Blvd. OKC, OK**

Did the drafters of our ethics code believe that lawyers are superheroes? It seems so. In this unique program, Stuart Teicher, Esq. (the "CLE Performer") weaves together talk of superpowers, superheroes, and other fun stuff to explain important ethics rules and explore both the breadth and limitations on a lawyer's power.



The Fear Factor: How Good Lawyers Get into Bad Ethical Trouble

DECEMBER 31, 2015

9 a.m. - 11:45 a.m.

**Oklahoma Bar Center
1901 N. Lincoln Blvd. OKC, OK**

The scariest stories are those tales where responsible lawyers who care about acting in an appropriate manner get into disciplinary trouble. In this program, we learn about the common missteps that are made by otherwise responsible attorneys. After hearing this program you'll embark upon your career as a safer, stronger attorney.



Wednesday, Dec. 30 Program

1:00 p.m. Advice for the Advisor

- The perils of pursuing superhero status- personal conflict - Rule 1.8
- Allocation of decision making authority between lawyer and client. Hypotheticals illustrating different subsections of Rule 1.2 and... what if you have a representative of a client who's gone bad? What if there are disagreements?
- Discussion of the possible need to withdraw, Rule 1.16
- The need to keep our big mouths shut - Rule 1.6
- The need to maintain our independence - Rules 5.4 and 2.1)

2:30 Break

2:45 Assertive Advocacy

- Rule 4.1 and misrepresentation
- Candor and the duty to be truthful to the tribunal (and how that can get tricky for GC's)
- Rule 3.3. Things to watch out for when supervising outside counsel
- Misrepresentation issues when using LinkedIn
- Other key tech issues that push the limits of our superpowers.
- The Duty to Review our social media presence (NYSBA Advisory Opinion; SC Opinion on Avvo)
- The "anti-bullying rules" like 3.4 and 4.4 and what it really means to be a Zealous Advocate (professionalism issues).

4:00 p.m. Adjourn

Thursday, Dec. 31 Program

9:00 Dealing with some tough situations

- Rule 5.2. Responsibilities of a Subordinate Lawyer—what if you're told to do something that sounds unethical?
- A lawyer's duty to report professional misconduct : Rule 8.3
- The dicey world of misrepresentation: understanding "The Fab Five of Lawyer Lies"
- Rules 8.1, 3.3, 4.1, 7.1 and 8.4

10:00 Break

10:10 Supervision issues

- A lawyer's duty regarding associates : Rule 5.1
- The ever expanding duty regarding nonlawyer assistants: Rule 5.3
- Issues with "independent contractors" and contract attorneys

Understanding the important trend toward professionalism in the practice and how it's illustrated through a history of the ethics code

Conflicts - (To withdraw or not to withdraw, we hope that's not the question...)

- Demystifying how the conflict rules actually work and how they all fit together
- Rules 1.7, 1.8, 1.9 and 1.13

We must mention "the Really Bad Stuff": Sex, Drugs & Money

- A word about substance abuse
- Watching that your client relationships stay on appropriate levels: Rule 1.8(j)
- Money issues-- a Rule 1.15 refresher
- Recap and Closing

11:45 Adjourn

CLE CREDIT: This course has been approved by the Oklahoma Bar Association Mandatory Continuing Legal Education Commission for 6 hours of mandatory CLE credit, including 6 hours of ethics for both programs, 3 hours of mandatory CLE credit, including 3 hours of ethics for Wednesday, Dec. 30 only, and 3 hours of mandatory CLE credit, including 3 hours of ethics for Thursday, Dec. 31 only.

TUITION: \$225 (both programs); or \$120 (one program) for early-bird registrations received with payment at least four, full business days prior to the first seminar date; \$250 (both programs), \$135 (one program) for registrations received with payment within four, full business days of the first seminar date. \$275 walk-ins (both programs) \$150 (one program). To receive a \$10 discount for the live onsite program, register online <http://www.okbar.org/members/CLE>. You may also register for the live webcast (pricing varies).



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