

WIT Oklahoma Bar JOURNAL

Volume 86 ♦ No. 8 ♦ March 14, 2015

Municipal Law

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

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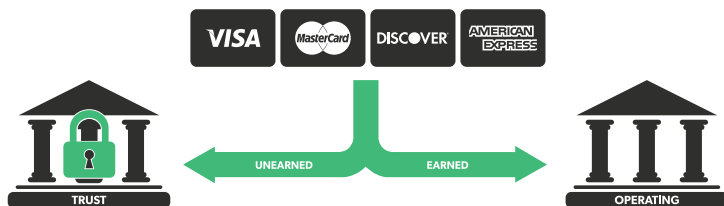
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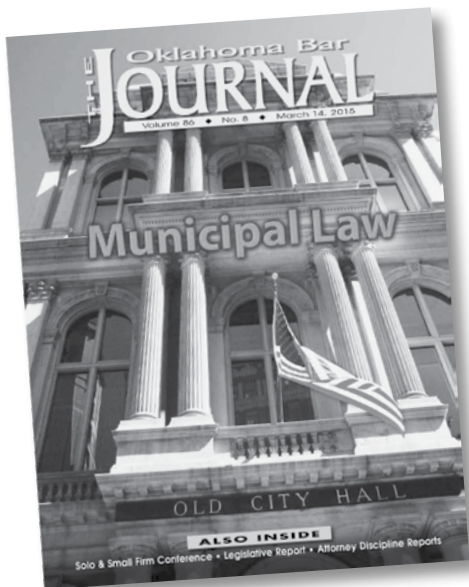
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Attorney-Legislators Deserve Thanks

By David Poarch

Last month the Oklahoma Legislature reconvened as it does each February. A total of 149 elected representatives and senators took their respective seats in their respective chambers after filing more than 2,000 pieces of legislation to consider before they adjourn at the end of May — not to mention tackling the state's near \$7 billion budget while dealing with the impact of declining tax revenues resulting from falling oil prices.

Setting policy and spending other people's money, while honoring the oath each legislator takes to "support and defend the Constitution of the United States and the State of Oklahoma" is a tall order that offers big shoes to fill under the best of circumstances. There is no more honorable service than *selfless* public service. By the same token, there is no greater potential for public harm than *self-centered* public service.

There was a time when public service in the Legislature was largely filled by people educated in the law. Unfortunately, that time has passed. Even among lawyers it is a commonly held belief that their fellow lawyers make up the majority of those serving in the House and Senate. However, the reality is that lawyer-members of the Legislature are only 17 percent of the House and Senate in Oklahoma.

This is not an indictment of non-lawyers serving as legislators. There is certainly no *requirement* that one be a lawyer to serve in that capacity. In fact, our democratic system of representative government contemplates that we will benefit from a rich mixture of voices with a wide variety of experiences serving in the halls of government.

But lawmaking does not occur in a vacuum. It occurs in the present, *guided by the lessons of the past*, while meant to affect the future. All while honoring the social contract we are bound by — the Constitution.

Clearly, the job of legislating is difficult and demanding, subject to the political winds of the moment, time limitations and financial pressures, among other things. By any measure, the service of our elected officials is commendable.

Because there are so few lawyers in the legislative branch, more than 80 percent of the men and women serving in the Oklahoma House and Senate have no formal training or education in the law. Yet, they are the law-makers.

As lawyers, if we choose not to serve in the legislature, we can nevertheless make positive contributions to the lawmaking process by making ourselves available to our own elected representatives. We are unique constituents. As those educated in the law, we offer a singular perspective of the future, *guided by the lessons of the past*, a tool we have been trained to use each day as we serve our clients. Simply sharing that perspective and our knowledge of history, one-on-one with our

elected representatives, fulfills the oath we too have taken as lawyers — to support and defend the Constitution.

I hope you will contact the 17 percent and thank them for their service.

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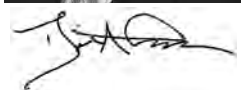
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Municipal Codification Requirements and the Consequences of Noncompliance

By David Davis, Terrell Monks and Ashley Warshell

In order for society to operate under the rule of law, the law must be knowable. This principle has been taught for generations, and many believe it is an observable and verifiable truth. The municipal ordinances in Oklahoma are subject not only to the principle that we, the officers of the court, should enforce and protect, but also subject to the Oklahoma Statutes that define the minimum standards the municipality must meet in its efforts to make its ordinances knowable to the public. Unfortunately, there is reason to believe that many municipalities in Oklahoma are falling well short of the statutory standards that have been set in place. The goal of this paper is to guide the practitioner to the minimum standards that are established in the statutes and encourage compliance.

Some of the applicable statutes contain the proverbial carrot to induce the municipality to comply, and other statutes include the proverbial stick that punishes the municipality that falls short of the standard, but many of the applicable statutes contain neither a punishment for failure nor reward for compliance. The attorney for the municipality has a moral obligation, in support of the rule of law, to assure that the municipality knows and follows the statutory obligations. A Canadian court phrased that obligation and rationale thus: "The rule of

law refers to the regulation of the relationship between the state and individuals by pre-established and knowable laws. The state, no less than the individuals it governs, must be subject to and obey the law. The state's obligation to obey the law is central to the very existence of the rule of law. Without this obligation, there would be no enforceable limit on the state's power over individuals...."¹ The municipality that is not meeting its statutory obligations risks creating a disdain for government generally and the rule of law specifically.

In addition to the suggested philosophical risks, there may be a more substantive risk of litigation against the municipality whose time, energy, and funds are likely better spent on other efforts. The Oklahoma Supreme Court did not welcome with open arms the certification of a class action lawsuit against a municipality that failed to codify and publish its ordinances in compliance with the state statutes, but the court likewise did not slam that door shut.² The following discussion addresses the extent of possible municipal liability as well as some of the possible defenses available to a municipality under these circumstances.

The beginning, for the purposes of this article, is at the point that the governing body has approved a new ordinance. Every ordinance goes into effect 30 days following final passage, unless the ordinance specifies a date that is later than thirty days following passage.³ All ordinances must be kept in an ordinance book after the ordinance is approved by the governing body. The ordinance entry in the ordinance book must contain the text of the ordinance, the date the ordinance was passed by the governing body, the page of the journal that records the final vote on the ordinance adoption, the name of the newspaper that published the ordinance, and the date the ordinance was published.⁴ Compilations and codes (e.g., International Building Code) that are adopted by ordinance need not be maintained in the ordinance book, but a copy of the code must be filed and kept in the office of the city clerk.⁵ Most new ordinances must be published or posted within 15 days of passage by the governing body.^{6,7} If the municipality uses the provisions of the emergency clause to avoid the expense of publishing the full ordinance, special attention should be given to timely posting of the full ordinance and maintaining records of such posting (perhaps in the ordinance book as required by 11 O.S. 14-105), and failure to post or publish the ordinance in full within 15 days of passage appears likely to make the ordinance unenforceable.⁸

The statutes require that the municipal penal ordinances be codified, but the codification of

other ordinances is left to the discretion of the governing body and administration of the city.⁹ If a municipality should fail to compile and publish its penal ordinances every ten years¹⁰ and supplement them every two years, the maximum fine that the municipal court can impose is \$50.^{11, 12} Any ordinance that is not compiled and published as required by the statutes cannot be enforced, if that ordinance was passed prior to the last codification and publication.^{13, 14} However, the failure to timely codify the ordinances has been held to only limit the fine available to the municipal court and not invalidate the ordinance.¹⁵

The governing body of the municipality must notify the public of the publication of the codification of its ordinances. A copy of that resolution should be filed with the county clerk in every county where the city is located. The municipality is also required to provide a copy (at no charge) to the county law librarian. The county law librarian should issue a receipt for the code, and that receipt may be filed with the county clerk of the county.¹⁶ The district court may take judicial notice of the municipal ordinances if they are so filed.¹⁷ The Oklahoma Court of Criminal Appeals will not, however, take judicial notice of the municipal ordinances, even if they are properly filed, and care should be taken to have the ordinance properly in the record.¹⁸

At least three copies of the municipal codification must be maintained in the office of the municipal clerk for the public's use and examination, and copies of the codification must be made available and sold for a "reasonable" price.¹⁹

Many, perhaps most, of the municipalities in Oklahoma can ill afford the litigation that could follow when an intrepid litigator or criminal defense attorney learns that the municipality has been charging defendants much more than the \$50 fine to which the municipal court is limited when the municipal penal codes have not been codified and published in accord with the state statutes. The plaintiff's counsel reading *Sholer v. State ex rel. Department of Public Safety*²⁰ could reach the conclu-

“The statutes require that the municipal penal ordinances be codified, but the codification of other ordinances is left to the discretion of the governing body and administration of the city.”



sion that a municipality was unjustly enriched at the expense of all offending motorists who paid a fine in excess of the statutory limit for the time that the municipality failed to timely codify and publish its ordinances.

Franklin House brought such a lawsuit against the Town of Dickson.²¹ Mr. House alleged that the Town of Dickson had failed to comply with the state statute that required the town to file a copy of its ordinances in the county law library after those ordinances had been codified. The Supreme Court reversed the district court's finding that the case should be maintained as a class action, and remanded the matter to the district court. In the district court the matter continued to a trial on the merits and a judgment was granted against the Town of Dickson. Mr. House and his counsel did not continue to press their request for a class certification.

The *House* court suggested (despite the acknowledged lack of the matter being pled) that a municipality may be able to defend against some or all of such claims by raising the affirmative defense of waiver and estoppel.²² The opinion states "A person may waive a right by conduct or acts which indicate an intention to relinquish it, or by such failure to insist upon it that the party is estopped to afterwards set it up against his adversary."²³ Opposing counsel might be anticipated to argue that it will be difficult to support an assertion that a defendant from whom a particular payment was demanded acted with the intent to relinquish rights where the municipality expressly communicated incorrect information concerning the lawful fine to that defendant. Nonetheless, that language is in the opinion and the argument must be considered by the attorney representing the municipality against a claim that the municipality has overcharged a defendant.

The *House* court also noted that the municipality may raise the defense of impermissible collateral attack on a judgment, citing *Stork v. Stork*.²⁴ The court in *Stork*, however, was applying 12 O.S. §§1031 *et seq.*, the Oklahoma civil procedure code. There is an argument that the civil procedure code, and thus the holdings of *Stork*, do not apply to criminal convictions and fines in a municipal criminal court. Counsel for the municipality may, however, find some success in arguing that by statute there is only one remedy available to a defendant who was wrongly fined in the municipal court, that being the appeal to the district court for a trial *de novo*.²⁵

The costs of complying with the state statutes that require regular codification and publication are not onerous, but the process does require great attention to detail and careful review of the efforts taken by the staff. The risks facing the municipality that fails to comply with the law are both financially daunting and philosophically troubling. Nonetheless, even a casual review of the county law library reveals that Oklahoma municipalities are falling well short of their obligations to codify, publish and deliver their ordinances.

1. *Hitzig v. Canada*, 2003 CanLII 30796 (ON CA).

2. *House v. Town of Dickson*, 2007 OK 57.

3. 11 O.S. §14-103.

4. 11 O.S. §14-105.

5. *Id.*

6. 11 O.S. §14-106 (Ordinances appropriating money are not required to be published or posted.).

7. Ordinances that pass with an emergency clause may be published by title only 11 O.S. §107(E).

8. 11 O.S. §14-106 ("No ordinance ... shall be in force unless published or posted within fifteen (15) days after its passage...").

9. 11 O.S. §§14-109, 14-108.

10. The 10 year codification requirement is deemed satisfied if the biennial supplements are made a part of the permanent volume. 11 O.S. §14-109.

11. 11 O.S. §§14-109, 14-110, 14-111.

12. *House v. Town of Dickson*, 2007 OK 57, 193 P.3d 964, 966; *House v. Town of Dickson*, CJ 2005-144 (Ardmore County Court). Mr. House recovered \$339 plus costs, the difference between his \$389 traffic ticket and the \$50 cap set by §14-111(E) because the Town of Dickson failed to meet the publication requirements of §14-110. The authors suggest that a municipality defending such an appeal may spend far more in legal fees than it saved by not complying with the requirement of regular codification. The staff of the Town of Dickson did not care to share the sum that the town spent defending this case.

13. 11 O.S. §14-109 ("...No municipal ordinance shall be enforced if it is not reflected in such a codification...").

14. The authors suggest the diligent practitioner should review the city codification of its ordinances before sentencing on any serious offense.

15. *Weis v. City of Oklahoma City*, 1981 OK CR 133, 636 P.2d 346, 347 (finding that the ordinance in that case was still enforceable as a penal ordinance even though the city had not timely codified).

16. The filing of the receipt provides proof that the code was properly filed with the county law library, even if the code cannot be located at a later date.

17. The authors suggest that in the absence of such a filing, the municipal prosecutor defending an appeal from the municipal court must put the municipal clerk on the stand to identify the ordinance,

provide a certified copy to the court, and read the ordinance into the record.

18. *Hishaw v. City of Oklahoma City*, 1991 OK CR 122, 822 P.2d 1139, 1140 (stating that the Oklahoma Court of Criminal Appeals will not take judicial notice of a municipal penal code).

19. 11 O.S. §14-110. The authors suggest that these volumes may also serve as the staff reference volumes, provided that they are readily available when requested. The authors suggest that a "reasonable price" can and should be tied to the actual cost of having a local copy shop create a copy of the code, plus a modest sum to offset the expense of delivering the code to the copier.

20. 1995 OK 150.

21. *House v. Town of Dickson*, 2007 OK 57.

22. *Id.* at ¶16.

23. *A.R. Steiger v. Commerce Acceptance of Okla. City Inc.*, 1969 OK 78, ¶38, 455 P.2d 81, 89 (quoting *Scott v. Signal Oil Co.*, 1912 OK 816, 128 P. 694).

24. 1995 OK 61, ¶12, 898 P.2d 732, 738.

25. 11 O.S. 27-129.

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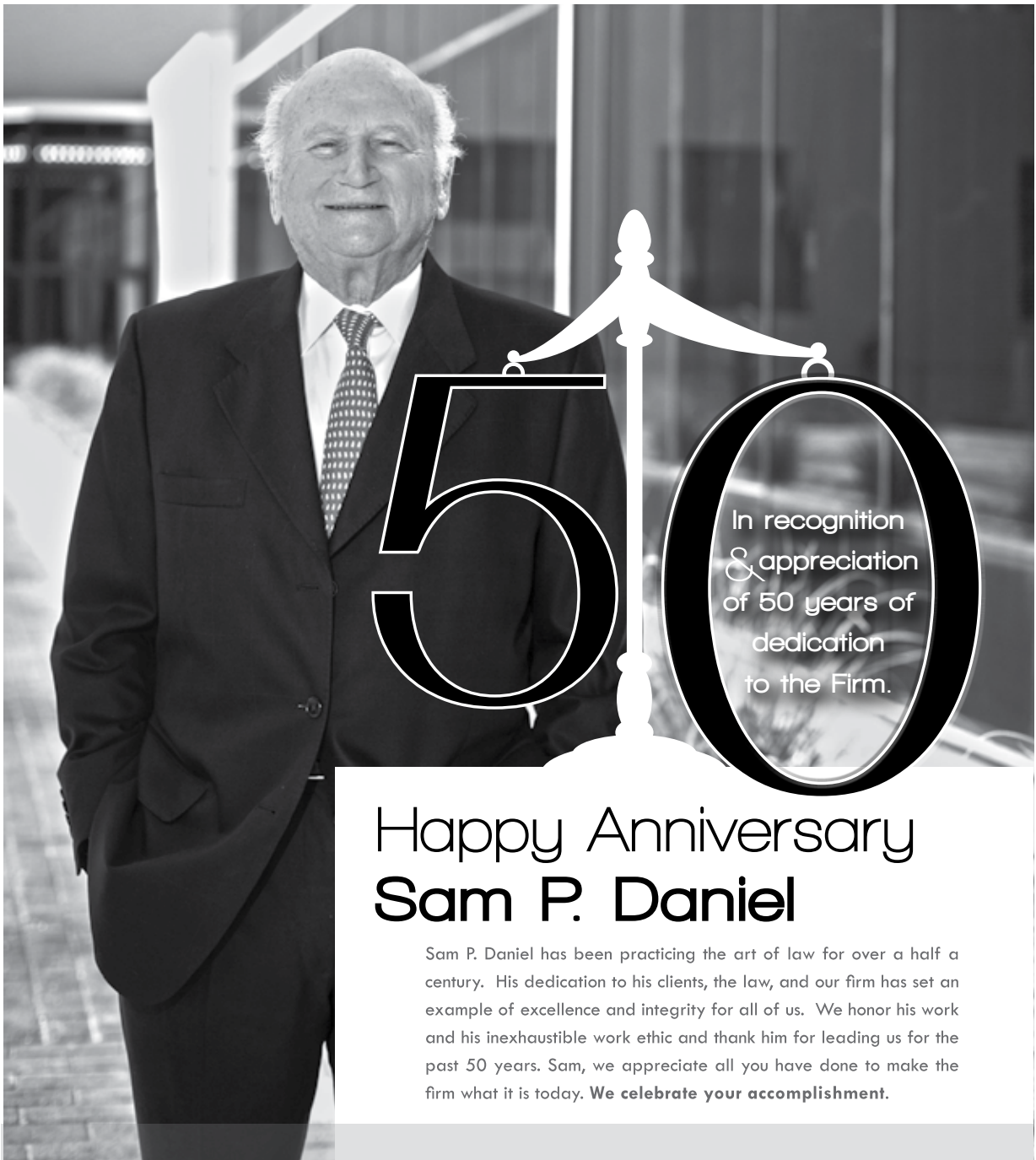
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The Open Meeting Act: A Practitioner's View

By Roy D. Tucker

Of the 733 cities and towns in Oklahoma,¹ many do not have a full-time attorney on staff to provide on demand legal advice in the practical application of the Oklahoma Open Meeting Act (OMA).² Thus, it is likely that at some point in a lawyer's career he or she will be called upon to render an opinion on, or even handle litigation involving, the OMA. Though one court has described the OMA as "neither obscure or incomprehensible [and that] anyone with 10 minutes to spare can read the whole thing and understand virtually every word," there are potential pitfalls not only for elected officials, but also their lawyer.³ This article will focus on the basic tenets of the OMA as they apply to municipalities and how to avoid the most common areas of hazardous terrain.

First and foremost, the general rule of the OMA requires that the public body provide advance public notice of meetings and a description of the business the municipality intends to act on or discuss.⁴ Within this rule is a dense variety of definitions. As the saying goes, the devil is in the details, so it is true with the OMA. "Public Body" for a municipality is its governing body, usually comprised of a city or town council or board of trustees depending on the form of government.⁵ A "meeting" is the conducting of business by a majority of the members of the municipality's public body.⁶ Conversely, it should be stated that without a majority of the members of the public body present, there is no meeting and no violation can occur.⁷ An informal gathering of the public body, such as at civic clubs, where no business of the municipality is conducted is not a meeting.⁸ Municipal staff members are

not part of a public body for purposes of the OMA, nor is the OMA intended to frustrate communication between a public body and its staff.⁹ "Business" includes not only the action taken, but also the entire decision making process from deliberation to formal action.¹⁰ The type of advance "public notice" required for a meeting depends on the type of meeting that is called. The OMA recognizes four types of meetings: Regularly scheduled, special, emergency, and continued or reconvened.¹¹

REGULARLY SCHEDULED MEETINGS

Regularly scheduled meetings are those at which regular business is conducted and which are noticed, in writing and filed with the municipal clerk by Dec. 15 of each calendar year showing the date, time and place of the meeting.¹² **Pitfall: Failure to file written notice of regularly scheduled meetings by Dec. 15**

with the municipal clerk renders all meetings for the upcoming year special meetings increasing the notice requirements. The meeting list must also be on the municipality's website. The OMA requires strict compliance.¹³ The municipality is also required to post a notice of a regularly scheduled meeting at its regular place of business 24 hours prior to the meeting, with the notice containing the date, location and agenda.¹⁴ **Pitfall: Saturdays, Sundays and state holidays are excluded.**¹⁵ Within the same time constraint, the notice must also be posted on the municipality's internet website.¹⁶ If the location, date or time of a regularly scheduled meeting must be changed, written notice 10 days prior to the meeting must be filed with the municipal clerk.¹⁷ **Pitfall: All meeting notices and agendas must be visible before and after business hours in a place easily accessible and convenient to the public.**¹⁸ Much the same as meeting notices, the location and time of meetings must be held in a location convenient and accessible to the public.¹⁹ **Pitfall: While it may seem obvious, the facility where the meeting is held must be unlocked so that the public can enter.**²⁰ The issue most arises during evening meetings where the municipality's staff may, out of habit, lock the doors to the building at 5 p.m.

SPECIAL MEETINGS

Special meetings are meetings other than regularly scheduled meetings.²¹ These meetings must be preceded by 48 hours public notice, also given to the municipal clerk, setting the date, time and place of the meeting.²² The agenda of a special meeting must be posted 24 hours in advance of the meeting in the same manner for regularly scheduled meetings.²³ **Pitfall: Items of "new business," discussed later in the article, are disallowed for special meetings.**²⁴

EMERGENCY AND RECONVENED MEETINGS

Emergency and continued or reconvened meetings are generally the rarest categories of meetings held, but on occasion may be necessary. As one would assume, an emergency meeting is any meeting called "for the purpose of dealing with an emergency."²⁵ The OMA defines an emergency as:

...a situation involving injury to persons or injury and damage to public or personal property or immediate financial loss when

the time requirements for public notice of a special meeting would make such procedure impractical and increase the likelihood of injury or damage or immediate financial loss."²⁶

No specified advanced public notice is required beyond giving as much notice "as is reasonable and possible under the circumstances existing, in person or by telephonic or electronic means."²⁷ However, an agenda is required.²⁸

As a best practice, the practitioner should caution his or her client to always post the notice and agenda at the location of the meeting, place it on the municipality's website, and also provide via facsimile or email to those persons who have previously filed a written request to the municipal clerk to receive such information.²⁹ **Pitfall: To help with any potential challenges to the validity of the emergency meeting, always caution the public body to clearly articulate facts which support the calling of an emergency meeting and make sure those facts are clear in the meeting minutes.** Specifically, this should include the nature of the emergency, the action taken and the reasons for declaring the emergency.³⁰ While the most obvious example of an emergency is the occurrence of a natural disaster, other situations can and do arise which warrant such a meeting, such as sustaining a financial loss for failing to renew a contract.³¹

A continued or reconvened meeting is a meeting assembled for finishing up business of a previous meeting.³² It can be used much like a continuance in court, when time is an issue or additional facts must be researched and presented for the municipal public body to consider. Prior to the conclusion of the originally called meeting, the public body must announce both that the meeting will be continued and time and date at which it will be reconvened.³³ The original meeting agenda cannot be changed, nor new items of discussion added including "new business."³⁴

AGENDA

An agenda is required for all public meetings.³⁵ **Pitfall: The language of the agenda must be worded in such a way as to be simple, direct and comprehensible to a person of ordinary education and intelligence.**³⁶ In practice, there are two common ways of drafting the language of an agenda: "Discuss and take necessary action on [subject]" or "Consider approval of [subject]." **Pitfall: A vague**

agenda item or one that intends to camouflage the intended action of the body is prohibited and will result in a violation of the OMA. An oft-cited example of vagueness relates to an agenda item where the public body provides notice that it will “discuss the employment of the city manager,” but instead, where the body actually plans to take action to award the city manager a bonus. While matters of compensation are subsumed in the definition of “employment,” the agenda item itself was not sufficient to notify the public that an employment bonus was being considered, and a violation of the OMA resulted.³⁷

It is permissible to place an item on the agenda at a regularly scheduled meeting for “new business.” The OMA defines new business as “any matter not known about or which could not have been reasonably foreseen prior to the time of posting.”³⁸ **Pitfall: Using an item of “new business” can be very dangerous because of the ease in which it can be abused. Failing to place an item on the agenda due to oversight will not warrant discussion and action under “new business.”** If the municipality discusses a subject under “new business,” the minutes should reflect the factors supporting that the subject was not known about or was not reasonably foreseeable at the time of the posting. The term “old business” is not found in the OMA. **Pitfall: Taking action under an agenda item listed as “old business” is vague and deceptive and will result in a violation of the OMA.**³⁹

Though not legally required under the First Amendment or the OMA, should a public body choose to allow public comments at any meeting, it must provide for it on the agenda. Since the public body cannot take action on public comments, an agenda item which merely states “public comments” or “visitor’s comments” is sufficient.⁴⁰ **Pitfall: When a public body chooses to allow public comments, it has created a public forum where none existed.**⁴¹ As such, the public body becomes constrained by the protections afforded by the First Amendment, so any restrictions must relate to reasonable time, place and manner of speech.⁴²

“The OMA defines new business as ‘any matter not known about or which could not have been reasonably foreseen prior to the time of posting.’”

EXECUTIVE SESSIONS

Executive sessions allow a public body to close its meeting and discuss certain business in secret. It is one of the largest challenges for avoiding pitfalls because of the limited purposes for meeting in executive session, and the specificity required of the agenda language. **Pitfall: Many public bodies will request executive sessions simply because an item is controversial or they want to discuss a project amongst themselves prior to alerting the public. Executive sessions are not for that purpose.** There are only eight purposes for which a municipality can convene a meeting in executive session, and no others. They are:

- Discussing the employment, hiring, appointment, promotion, demotion, disciplining or resignation of any individual salaried public officer or employee. **Pitfall: This purpose can only be used to discuss a current or prospective employee, not a job opening;**⁴³ however, this agenda item can be used to conduct interviews for a specific position.⁴⁴
- Discussing negotiations concerning employees and representatives of employee groups.
- Discussing the purchase or appraisal of real property. **Pitfall: The OMA specifically restricts who can be present in executive session during this purpose: only the public body, immediate staff and the attorney. Landowners, salespersons or those who may profit directly or indirectly are specifically excluded and would be a violation of the OMA.**⁴⁵
- Confidential communications between a public body and its attorney concerning a pending investigation, claim or action if the public body, with the advice of its attorney, determines that disclosure will seriously impair the ability of the public body to process the claim or conduct a pending investigation, litigation or proceeding in the public interest.
- Discussing any matter where disclosure of information would violate confidentiality requirements of state or federal law.

- Engaging in deliberations or rendering a final or intermediate decision in an individual proceeding pursuant to Article II of the Administrative Procedures Act.
- Discussing the statutory list of items related to terrorism.
- For purposes of conferring on matters pertaining to economic development, including the transfer of property, financing, or the creation of a proposal to entice a business to remain or to locate within their jurisdiction if public disclosure of the matter discussed would interfere with the development of products or services or if public disclosure would violate the confidentiality of the business.⁴⁶ **Pitfall: Be sure that the minutes accurately reflect the finding of the body that public disclosure would interfere with the development or that disclosure would violate the confidentiality of the business. The best practice would be to include that finding as part of any motion made in open session.**

The OMA requires that any agenda where an executive session is proposed contain sufficient information to notify the public that an executive session may occur, the items of business and purposes to be discussed in executive session, and identification of the specific statutory authority in the OMA that allows the body to convene in executive session.⁴⁷ An appropriate sample agenda item could be, "Pursuant to 25 O.S. §307(C)(10), consider convening in executive session for the purpose of conferring on matters pertaining to economic development within the corporate limits, including the transfer of land, and if necessary take appropriate action in open session to approve an agreement with a developer." **Pitfall: The body must vote to authorize an executive session, and once inside no action beyond discussion can be taken. Minutes of the discussion must also be kept.**⁴⁸ **Action, including voting, must be handled in open session.** Under the sample agenda, the public knows the authority for the executive session (§307(C)(10)), the reason for the executive session (economic development and transfer of land), and can anticipate the action of the body (approving an agreement with a developer). **Pitfall: If the practitioner is invited into the executive session, he or she must be mindful not allow the discussion to deviate to another topic, e.g., giving a bonus to the economic**

development director for his or her good work in bringing the deal.

SO A MUNICIPAL CLIENT HAS FALLEN IN THE PIT. NOW WHAT?

A willful violation of the OMA can result in a misdemeanor conviction regardless of criminal intent;⁴⁹ it can invalidate the public body's action, and can result in a civil suit for declarative or injunctive relief against the body, with the plaintiff, as of the 2014 legislative session, being entitled to his attorney's fees.⁵⁰ If the willful violation involves an executive session, the minutes of the meeting, including any tape recordings, can immediately be made public.⁵¹ Willfulness is a question of fact and does not require a showing of bad faith, malice or wantonness, but rather encompasses conscious, purposeful violations of the law or blatant or deliberate disregard of the law by those who know, or should know the requirements of the act. Notice of meetings of public bodies which are deceptively vague and likely to mislead constitute a willful violation and thus nullify the public body's action.⁵² Under the OMA, ignorance of the law is no excuse; a claim of good faith or reliance upon the advice the public body's attorney provides no defense.⁵³

While having little effect on the criminal sanctions and potential claims of violation of the public trust by public officials, if a situation arises where a municipal client concludes that it has willfully violated the OMA such that an action could be deemed invalid, it can cure the violation by fully reconsidering the action at a meeting held in full compliance with the OMA.⁵⁴ The best advice that can be given to a municipal client is — when in doubt, notice.

1. Statistic provided by Carolyn Stager, Oklahoma Municipal League, email to the author, Feb. 17, 2015.

2. 25 Okla. Stat. §§301-314.

3. Matter of Order Declaring Annexation Dated June 28, 1978, 637 P.2d 1270 (Okla. Civ. App. 1981).

4. 25 Okla. Stat. §303.

5. 25 Okla. Stat. §304(1).

6. 25 Okla. Stat. §304(2).

7. *Monkey Island Development Authority v. Staten*, 76 P.3d 84, 87 (Okla. Civ. App. Div. 3 (2003)).

8. *Berry v. Board of Governors of Registered Dentists of Oklahoma*, 611 P.2d 628, 632 (Okla. 1980).

9. *Id.* See also, *Oklahoma State Senate v. State Bd. For Property & Cas. Rates*, 11 P.3d 1242, 1245 (Okla. 2000).

10. 2002 OK AG 026; See also, 25 Okla. Stat. §306.

11. 25 Okla. Stat. §304.

12. 25 Okla. Stat. §304(3); 311(A)(1)

13. Matter of Order Declaring Annexation Dated June 28, 1978, *supra*.

14. 25 Okla. Stat. §311(A)(9).

15. *Id.*

16. 74 Okla. Stat. §3106.2.

17. 25 Okla. Stat. §311(A)(8).

18. 1997 OK AG 98.
19. *Rogers v. Excise Board of Greer County*, 701 P.2d 754 (Okla. 1985).
20. *Id.*
21. 25 Okla. Stat. §304(4).
22. 25 Okla. Stat. §311(A)(11).
23. *Id.*
24. 25 Okla. Stat. §311(A)(11).
25. 25 Okla. Stat. §304(5).
26. *Id.*
27. 25 Okla. Stat. §311(A)12.
28. 25 Okla. Stat. §B(1).
29. 25 Okla. Stat. §311(A)(11).
30. 25 Okla. Stat. §312(B).
31. *See, Weeks v. Northeast Oklahoma Area Vocational-Technical School, Dist. No. 11*, 657 P.2d 1205.
32. 25 Okla. Stat. §304(6).
33. *Id.*
34. 25 Okla. Stat. §311(A)(10).
35. 25 Okla. Stat. §311(B)(1).
36. *Andrews v. Independent School Dist. No. 29 of Cleveland County*, 737 P.2d 929, 931 (Okla. 1987) (quoting from *Haworth Board of Education of Independent School District, I-6, McCurtain County v. Havens*, 637 P.2d 902, 904 (Okla. Civ. App. 1981)).
37. *Wilson v. City of Tecumseh*, 194 P.3d 140 (Okla. Civ. App. Div. 1 2008).
38. 25 Okla. Stat. §311(A)(9).
39. *Okmulgee County Rural Water District No. 2 v. Beggs Public Works Authority*, 211 P.3d 225 (Okla. Civ. App. Div. 3, 2009).
40. 2002 OK AG 26.
41. 1998 OK AG 45.
42. *Perry Education Association v. Perry Local Educators' Association*, 460 U.S. 37 (1983).
43. 2006 OK AG 17.

44. 1997 OK AG 61.
45. 25 Okla. Stat. §307(D); *Lafalier v. Lead-Impacted Communities Relocation Assistance Trust*, 237 P.3d 181, 197 (Okla. 2010).
46. 25 Okla. Stat. §307.
47. 25 Okla. Stat. §311(B)(2)(a)-(c).
48. 96 OK AG 100.
49. *Hillary v. State*, 630 P.2d 791, 793 (Okla. Crim. 1981).
50. 25 Okla. Stat. §314.
51. 25 Okla. Stat. §307(F)(2).
52. *Rogers*, 701 P.2d at 761 (citing *Matter of Order Declaring Annexation, Etc.*, 637 P.2d 1270, 1275 (Okla. Civ. App. 1981)).
53. *Okmulgee County Rural Water District No. 2*, 211 P.3d at 229.
54. 1981 OK AG 214.

ABOUT THE AUTHOR



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\$weet Dreams: Revenue Opportunities and Collection Challenges for Municipal Lodging Taxes in Oklahoma

By Jered T. Davidson

You have been driving for what seems like an eternity. The white lines on the roadway keep getting longer and are starting to blur together. Each passing mile brings headlights from the opposite direction which seem to only get fuzzier. With several hours of driving left in your trip, you yawn and notice a billboard advertising a national hotel chain at the next exit. You put on your blinker, take the off-ramp and pull into the parking lot.

As you walk under the awning through the sliding glass doors, you can't help but notice the number of cars in the parking lot. A friendly voice greets you as you approach the front desk. You exchange information, provide your payment for the night and sign your invoice. You happily walk to your room, key in hand, for a good night's sleep. The next morning you review your bill to find your room rate, state and local sales tax and a lodging tax. You put the invoice in your pocket and head to your car to begin the next leg of your journey.

This exact scene is repeated numerous times every night of the year in Oklahoma. The nearly 935 miles of interstate highways and booming tourism industries provide those cities and towns in Oklahoma which levy lodging taxes significant sources of revenue for vital services and economic development within their communities.

Intuitively, a lodging tax is best thought of as an excise tax levied upon overnight accommodations. Most typically, you think of their

implications on a hotel room, but they can also be extended to other forms of sleeping facilities including, but not limited to: lake cabins, bed and breakfasts, R.V. parks, boarding houses and short-term apartment rentals. Yet how do these taxes originate?

The Oklahoma Constitution confers upon the Legislature the power to levy and collect taxes, including specifically license, franchise and excise taxes.¹ The Legislature is also authorized to grant the power to levy and assess taxes to cities, towns and counties.² Pursuant to this grant of power, the Legislature has granted municipalities the authority to "assess, levy, and collect taxes for general and special purposes of municipal government" subject to the limitation that they be collected in a non-discriminatory and uniform manner.³ In 1970, the attorney general agreed that cities and towns have the authority to levy lodging taxes.⁴ Today, over 40 cities and 13 counties levy a lodging tax.

Municipal lodging taxes, like sales taxes, are subject to approval of a majority of registered

voters residing within the jurisdiction levying the tax.⁵ The process begins with the city or town adopting an ordinance levying the new lodging tax and a resolution authorizing the calling and holding of a special election.⁶ These elections are called in the same manner of other special elections in Oklahoma and must comply with both statutory law and administrative rules of the Oklahoma Tax Commission (the commission). The statutes are very specific as to what notice and filing requirements must be followed for the purposes of submitting a proposition to the voters to levy an additional tax and the ultimate effective date of the tax. This is where the similarities between lodging and sales tax end.

Municipal lodging taxes were traditionally assessed, enforced and collected entirely at the local level. In fact, relatively few cities and towns considered adopting a lodging tax due to the time and financial constraints of the day-to-day administration of the tax. This was especially true for smaller communities when the monthly lodging tax revenue deposited with the city was less than the total value of the municipal employee's time spent overseeing the tax. The policy of maintaining an "independent" process for cities and towns that levy a lodging tax contradicted that of county governments which, subject to statutory requirements, have been allowed to contract with the commission to collect and enforce lodging taxes on their behalf since 2001.⁷ This contradiction was not a creation of the commission, but rather the state legislature, who had yet to confer the power to the commission to collect lodging tax on behalf of municipalities.

The commission, more than any other government organization in Oklahoma, is best suited to collect and enforce municipal lodging taxes. As mentioned previously, the commission administers county lodging taxes and is the sole collector of sales and use tax for the state and all municipalities.⁸ In fact, since 2010 municipalities have been required to contract solely with the commission for the collection of such taxes.⁹

Many communities were displeased over the statutes requiring collection of sales and use tax by the commission, including the city of Tulsa. Prior to the effective date of this new requirement, Tulsa entered into an agreement with a private firm for the collection of sales and use taxes.¹⁰ Tulsa had previously contracted with the commission but was concerned

with the statutorily authorized administrative fee of up to 1.75 percent that could be charged.¹¹ Tulsa sought declaratory judgment in state court on the constitutionality of the requirement to contract with the commission. The District Court ruled in favor of Tulsa and found the statute unconstitutional. The Oklahoma Supreme Court disagreed, overruling the District Court and finding that the statute as written did not unconstitutionally impair Tulsa's obligation of contracts or limit or infringe upon its chartered or constitutional powers.¹²

Given this development, it makes logical sense that the legislature, with the passage of House Bill 1874 in 2013, provided a further extension of the powers to collect taxes at the municipal level by stating that the commission "*may* enter into agreement with any municipality for the collection of a municipally imposed lodging tax."¹³ However, the commission was caught off guard by the enactment of such legislation and was left without any policies or procedures to properly administer municipal lodging taxes.

The main problem associated with lodging tax collection by the commission is the lack of uniformity in lodging tax ordinances. The 53 existing municipal and county lodging tax ordinances and resolutions currently in effect were enacted over a period of years by 53 separate governmental entities. These ordinances and resolutions represent a blend of state statutes and local preferences which has created an opportunity for local governments to craft policies for lodging taxes that are tailored to fit their individual needs and goals.

One example of the lack of uniformity is found in the varying lodging tax rates. A study by the Oklahoma Cooperative Extension Service revealed that the lodging taxes levied by Oklahoma municipalities range from 2 percent to 5 percent per night.¹⁴ However, these numbers appear to be trending upward with some communities recently increasing their rates to up to 8 percent per night. Though these rates may seem high, they are actually in line with, or below, rates charged by cities in the region such as El Paso, Fort Worth and Houston, which have lodging tax rates of up to 15 percent.¹⁵ The commission to-date has managed the various tax rates of the counties and municipalities with relative ease.

The administrative burden to collect municipal lodging taxes is unique. Unlike the existing process for the collection of county lodging taxes, there were no such guidelines in place for the collection of municipal lodging taxes. The authorizing statute requires that municipalities pass a “resolution of intent” allowing the commission to serve as the municipalities’ collection agent for lodging taxes.¹⁶ Upon receipt of the aforementioned resolution, the commission “shall collect” any lodging taxes in the municipality.¹⁷ Prior to collection, the commission and the municipality must enter into an agreement to collect in which the municipality agrees to certain conditions for the commission to serve as collection agent, namely the statutory requirements for notice of administration of collection and the agreement upon the collection fee of 1 percent of the gross collection proceeds generated by the lodging tax.

The overarching theme for collection of taxes by the commission is that their applications must be uniform, consistent and in compliance with the Oklahoma Constitution and state statutes. This necessarily limits some of the autonomy that local jurisdictions will have in regard to their local lodging taxes. The statutes provide that the commission may require some additional information prior to collection such as a list of transactions subject and exempt from collection, as well as defining specific terms such as “hotel” or “motel.”¹⁸

The commission’s guidelines for lodging tax collection established in 2013 specifically provide that for the commission to collect the tax, it must apply to sales of lodging that are currently subject to state sales tax.¹⁹ Likewise, any transactions exempt from the state sales tax shall also be exempt from local lodging tax. In most cases, this will not pose any significant problem; however, how municipalities define certain terms and exemptions could play a part in the commission’s willingness and ability to collect on behalf of municipalities.

The most logical problem is likely how to define the term “lodging.” Oklahoma’s Sales Tax Code provides that “services of furnishing rooms by hotel, apartment hotel, public rooming house, motel, public lodging, house, or

tourist camp” are subject to state sales tax.²⁰ It does not appear that the legislature has defined the terms “lodging,” “hotel” or “motel.” The Oklahoma State Department of Health has defined the term “lodging facility” as “any hotel, motel, tourist court, apartment house, rooming house, or other place where sleeping accommodations are furnished or offered for pay for transient guests, if four (4) or more rooms are available therein for transient guests.”²¹ Municipalities should favor the broadest definitions possible for terms such as “hotel” and the statute authorizing collection allows municipalities to define the terms “hotel, motel, or other facility the occupancy of which would be subject to the lodging tax levy.”²²

“Problems arise when a municipality defines specific exemptions that do not comply with the sales tax code.”

Another significant interplay could be issues with exemptions currently in effect in a particular community. Each lodging tax ordinance is crafted with special care and consideration to accomplish the particular goals and needs of the levying jurisdiction. If a municipality is considering the adoption of a lodging tax and wishes for the commission to collect the tax, the process can be relatively straightforward by either referencing the state exemptions or mirroring their language in the body of the ordinance.

Problems arise when a municipality defines specific exemptions that do not comply with the sales tax code. For example, most existing ordinances provide for exemptions from the tax if patrons fall into certain enumerated categories. These typically include exempting governments and their political subdivisions, schools and churches without necessarily referencing the limits for those exemptions as codified in the Oklahoma statutes.

Several municipalities have exempted “permanent residents” from being subject to the levy of lodging tax. Just as “hotel” has varying definitions, so does the term “permanent resident,” however certain trends tend to emerge. The term is often specific to one individual or family that rents a room for a minimum consecutive period of time (typically 30 days). Upon reaching the required number of days, the individual is deemed to be a permanent resident of the jurisdiction and is no longer responsible or subject to the lodging tax levy.

The Oklahoma statutes do not recognize a permanent resident exclusion for the purpose of sales or lodging tax. Yet, many municipalities see it as a way to incentivize transient businesses (oilfield, construction, etc.) to spend their monies within the confines of their jurisdiction thereby increasing long-term tax receipts. Alienating a potential consumer base by eliminating this exemption could cut off future revenue from these industries vital to municipalities.

Administratively, the commission also requires uniformity in the timelines for reporting, delinquency, notice and effective date provisions for new and changes to existing lodging tax ordinances. Specifically, any commencement, termination or change in levy of a lodging tax must commence on the first day of a calendar quarter following 75 days' notice to the commission.²³ These requirements are in addition to the notice and filing requirements subject to special elections for municipalities.²⁴

The question of uniformity is a major one for the purposes of municipal lodging taxes and ultimate collection by the commission. Each of the aforementioned issues are very manageable to deal with when adopting a lodging tax for the first time. One question that remains outstanding is the treatment of municipalities with existing lodging taxes that now wish for the commission to assume collection duties, but are deemed to not comply with the commission's guidelines. Municipalities may find themselves limited in their options with the fundamental question, "what has been approved by the voters?"

Municipalities should take a conservative approach when attempting to answer this question. The Oklahoma Constitution provides that ordinances levying a tax must specify what the revenues are to be used for and are limited to that purpose.²⁵ The legislature has also required that sales tax ordinances shall describe with specificity the projects or expenditures for which the limited-purpose tax levy would be made and any expenditures must be used for said purpose.²⁶

The law is well settled that any change in a tax levy or the reallocation of tax revenues are questions which must be submitted to the voters for their approval or rejection. Quite commonly, municipalities include a specific section in the levying ordinance authorizing amendments by the governing body for certain admin-

istrative and technical changes as may be necessary for compliance with the Oklahoma Sales Tax Code. In the case of lodging tax ordinances, there is limited authority with respect to the permissible scope that any amendment might have without voter approval.

Similar questions have arisen on sales tax ordinances and are instructive for lodging taxes. The Attorney General has proffered that provided the tax rate and the specified purpose remain unchanged, individual amendments to local sales tax ordinances are to be examined on a case-by-case basis.²⁷ The final outcome is likely to be based upon a nexus of whether 1) the municipality has the power to amend a sales tax ordinance administratively and 2) whether the particular amendment constitutes a major or minor amendment to the ordinance which may alter the perceived purpose of a lodging tax previously approved by the voters.²⁸ Jurisdictions around the country are split on this issue as it presents tough questions regarding the scope of discretion that governing bodies enjoy.²⁹ However, one can reasonably infer that so long as the governing body of the municipality is acting with the goal of being in compliance with a state statute, the situation would not give rise to the opportunity for arbitrary amendments.³⁰

Municipal lodging taxes are certainly not new to Oklahoma. With the recent amendment to allow lodging tax collection at the municipal level by the commission, Oklahoma's municipalities should seriously consider the addition of a lodging tax when examining the arsenal of tools available to increase revenue. Many factors play into the analysis as to whether a municipality should adopt a lodging tax, including whether the tax is viable and to what extent municipalities are willing to collect the tax on their own or in the alternative, compromise local goals with the rigid specifications for collection by the commission. As municipalities continue to look for innovative strategies and solutions to ever-changing economic challenges, perhaps leaders in these communities can rest easier knowing that there are viable options for the levy and collection of lodging taxes at the municipal level.

1. Okla. Const. Art. X, § 12.

2. Okla. Const. Art. X, § 20.

3. 68 Okla. Stat. Ann. § 2701A.1.

4. 1970 OK AG 70-118.

5. 68 Okla. Stat. Ann. § 2705.

6. *Id.* § 2701 *et seq.*

7. *Id.* § 1370.9.

8. *Id.* § 2702.

9. *Id.* (2010 Okla. Sess. Laws, HB 2359, c. 412, § 16, emerg. eff. July 1, 2010).
10. *City of Tulsa v. State*, 2012 OK 47, ¶ 1, 278 P.3d 602.
11. *Id.* at ¶ 9.
12. *Id.* at ¶ 37.
13. 2013 Okla. Sess. Laws 2229, HB 1874, c. 395, §1 (codified as 68 Okla. Stat. Ann. § 2702.1) (emphasis added).
14. Notie Lansford & Mike Woods, *Hospitality or Lodging Taxes as a Source of Revenue for Tourism Economic Development Efforts*, Okla. Coop. Ext. Serv. (AGEC-883).
15. *Id.*
16. 68 Okla. Stat. Ann. § 2702.1(B).
17. *Id.*
18. *Id.*
19. Oklahoma Tax Commission, Guidelines for Collection of Municipal Lodging Tax authorized by HB 1874 (2014) (on file with the Oklahoma Tax Commission) [hereinafter Guidelines].
20. 68 Okla. Stat. Ann. § 1354 A.7.
21. Okla. Admin. Code §310:285-1-2 (2014).
22. 68 Okla. Stat. Ann. § 2701.1 D.3.
23. Guidelines, *supra* note 19.
24. See 26 Okla. Stat. Ann. § 13-102.
25. Okla. Const. Art. X, § 19.
26. 68 Okla. Stat. Ann. §2701B.
27. 2006 OK AG 31.
28. See *Id.* See also 15 McQuillin Municipal Corporations §40.20 (Thompson et al. eds., 3d ed. 2005).
29. 2006 OK AG 31.
30. *Id.*

ABOUT THE AUTHOR



Jered T. Davidson is an associate with The Public Finance Law Group PLLC. His primary practice areas include public finance, economic development and municipal law. He received his B.S. in agricultural economics from Oklahoma State University in 2009, and J.D. with distinction from the University of Oklahoma College of Law in 2012 where he served as a research editor for the *American Indian Law Review*. He is an active volunteer and currently serves on the board of directors of the Oklahoma 4-H Foundation.

NOTICE OF HEARING ON THE PETITION FOR REINSTATEMENT OF GLEN J. BLAKE, SCBD #6237 TO MEMBERSHIP IN THE OKLAHOMA BAR ASSOCIATION

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

Any person desiring to be heard in opposition to or in support of the petition may appear before the Professional Responsibility Tribunal at the Oklahoma Bar Center at 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma, at 9:30 a.m. on **Wednesday, May 13, 2015**. Any person wishing to appear should contact Gina Hendryx, General Counsel, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, Oklahoma 73152, telephone (405) 416-7007.

PROFESSIONAL RESPONSIBILITY TRIBUNAL



Economic Development Agreements – Avoiding and Defending the *Qui Tam*

By Beth Anne Wilkening

The state of Oklahoma is only one of a very small number of states in the country in which municipalities are supported almost exclusively by sales taxes. Property taxes (*ad valorem* taxes) may be utilized by municipalities to pay the principal and interest on general obligation bond indebtedness and to satisfy the payment of municipal judgments.¹ Payment of these obligations, however, is contingent upon timely submission of an estimate of needs, which is a formal request for allocation from the county. Interestingly enough, there is a provision in the Oklahoma Constitution which allows municipalities access to up to 10 mills for operational expenses.² However, the county's excise board has sole and exclusive jurisdiction of this allocation; and most counties, therefore, utilize the entirety of the 10 mills to support their own budgets. This is a longstanding tradition, not likely to be reversed as counties take the position that their expenditures for the benefit of the municipalities in the manner of roadway improvements, infrastructural improvements, and law enforcement, exceed the 10 mill allotment provided for in the state's constitution.

ECONOMIC DEVELOPMENT AGREEMENTS IN OKLAHOMA

The limitation of access to more consistent forms of revenues has resulted in municipalities competing against one another for valuable sales tax generating business entities. It has also resulted in the willingness of elected officials and municipal staff to explore creative and, sometimes, not well-thought-out agreements to incentivize large retailers or other business enterprises to locate in their jurisdic-

tions. Unfortunately, this has occasionally created situations that were detrimental to the cities themselves, as well as for the elected officials.

Prior to 1990, economic development on a mass scale was not embraced by Oklahoma municipalities. This was due in large part to three factors:

1) Public trusts could not engage in retail businesses;³ 2) Oklahoma municipalities could

not enter into any agreement that violated the debt limiting prohibitions of the Oklahoma Constitution.⁴ In other words, as is the case in many municipalities throughout the United States, cities cannot commit resources beyond the fiscal year in support of an activity unless it was appropriated and encumbered or subject to annual appropriation. 3) The voters in Oklahoma are typically very conservative when it comes to taxation. Utilization of tax revenues for purposes other than the direct provision of traditional municipal functions such as police protection, fire protection, maintenance of roadways, provision of clean drinking water, reliable solid waste service and sanitary sewer service, can be somewhat unpopular with many Oklahoma voters. Part of the reservation is undoubtedly the average citizen's lack of understanding of how these municipal functions are funded.

In 1997, the Oklahoma Supreme Court decided the case of *State ex rel. Brown v. City of Warr Acres*.⁵ This case involved a very conservative economic development activity undertaken by the city of Warr Acres, a small community surrounded in its entirety by the city of Oklahoma City.⁶ Like most municipalities throughout the United States, the city of Warr Acres struggled with the cost of providing services to its residents. One of its biggest challenges was the lack of large sales tax-generating businesses that were so vital to its economic wellbeing.

Wal-Mart, a substantial sales tax generator, was thought to provide one of the better solutions to the fiscal condition of the city of Warr Acres. City officials met with representatives of both Wal-Mart and Security Trust Revocable Trust, the owners of a large tract of land, about the possibility of locating a large Wal-Mart store within the city limits.⁷ Prior to the meeting, the landowners were unwilling to sell the property or enter into a long-term lease for the amount Wal-Mart was willing to pay.⁸ City officials convinced the landowners to accept a United States treasury strip security in the face amount of \$499,858.03, along with interest the investment would earn over a 50-year period in exchange for a long-term lease of the land to Wal-Mart.⁹ These Oklahoma economic development pioneers put considerable thought into development of this particular incentive. Purchase of the treasury strip security was made from that fiscal year's budget. By handling it in this manner, citizens in opposition to this economic development activity would not be suc-

cessful in arguing that it would violate the debt-limiting prohibitions of the Oklahoma Constitution.

Second, the treasury security proceeds and accumulated interest would remain in escrow and not be paid to the landowners until the initial 20-year term of the lease had run. Following expiration of the initial lease term, the landowners would receive annual payments from the escrow account.¹⁰ This proposed structure would ensure a measurable return on the investment of the city of Warr Acres. Finally, if the project did not come to fruition or if it failed to meet the benchmarks set forth in the agreement, the remaining funds in escrow would revert to the city of Warr Acres and be deposited in its general fund.¹¹

Unfortunately, as is the case in most municipalities, there were those who disagreed with this particular economic development activity. In the manner provided by law, 10 resident taxpayers filed a demand with the city of Warr Acres seeking recovery of all expenditures made by the city.¹² When no action was taken by the city of Warr Acres, the taxpayers initiated their own suit in the name of the state of Oklahoma.¹³ A very attractive aspect of this particular suit, also known as a *qui tam* action, is that at that time, state statute provided that 1/2 of the funds recovered must be paid as a "reward" to the taxpayers from the recipients of the alleged unauthorized, unlawful, fraudulent or void transaction.¹⁴ The remaining 1/2 would be re-turned to the city coffers.

The Latin phrase "*qui tam pro domino rege quam pro se ipso in hac parte sequitur*," literally means "he who sues in this matter for the king as well as for himself." Also known as taxpayer lawsuits, *qui tam* actions generally provide for initiation of suit in the name of the government to recover funds that logically belong to that entity. *Qui tam* litigants are generally entitled to a "reward" for bringing the action. In federal law, *qui tam* actions are sanctioned under the False Claims Act.¹⁵ The act allows persons and entities with evidence of fraud against federal programs or contracts to sue the wrongdoer on behalf of the United States Government.¹⁶ *Qui tam* litigants are entitled to receive between 15 and 30 percent of the total recovery, regardless of whether it is from a favorable judgment or settlement.¹⁷ Numerous states, including California, Oregon, New York and Virginia, have also enacted legislation that provides for *qui tam* actions. Although they vary in terms of

application and penalty, the purpose is to ensure that governing bodies do not enter into illegal contracts and also to provide a mechanism for the return of illegal expenditures to public bodies. Interestingly enough, many state legislatures have exempted themselves from application of these statutes.

CITY OF BROKEN ARROW V. BASS PRO

In 2006, just over one year into my tenure as city attorney, the city clerk for the city of Broken Arrow received a demand from 17 resident taxpayers.¹⁸ In this document, the taxpayers demanded that the city of Broken Arrow initiate an action against Bass Pro Outdoor World and the developers, Roland Investments LLC and Stonewood Hills BP LLC, Phil Roland and Bank of America to recover certain property and rescind certain contractual obligations.¹⁹ The demand dealt with the city's construction of a building and lease for occupation by Bass Pro and the relevant financing.²⁰ The taxpayers sought recovery in the amount of more than \$20 million, which represented the amount of the note for construction of the building and surrounding premises. As my knowledge of not only the relevant transactions, but also the law on *qui tam* actions was relatively limited, I immediately contacted Leslie Batchelor, a specialist in the field of economic development and the defense of *qui tam* actions.

In response to the *qui tam* demand, the city filed a declaratory judgment action requesting that the district court confirm the validity of transactions utilized to finance, construct, and facilitate the location of a Bass Pro Outdoor World in Broken Arrow.²¹ In support of this petition, the city filed a motion for summary judgment.²² One of the resident taxpayers, Karen Franklin, subsequently filed a motion to intervene to which the city objected.²³ The city then filed a supplement to its motion for summary judgment addressing all allegations raised in the taxpayer's proposed answer, counterclaim and cross-petition, which were attached to the motion to intervene. The District Court denied the taxpayer's motion and granted the city's motion for summary judgment.²⁴ On January 18, 2011, the Oklahoma Supreme Court upheld denial of the taxpayer's motion to intervene, sustaining the ruling of the appellate court which held that her claims were effectively articulated in the city's amended petition as set forth in the *qui tam* demand letter attached as an exhibit to the city's petition. The Supreme Court specifically noted that

all of the materials provided by the city to the trial court showed that her claims were fairly presented by the city.²⁵

Dissatisfied with the trial court's decision and prior to a final determination in the appellate court, taxpayer filed an action with Tulsa County District Court alleging that the city failed to address all issues in the amended and supplemented demand litigated in the declaratory judgment action.²⁶ The city filed a motion to dismiss.²⁷ The subsequent action was held in abeyance pending outcome of the appellate action.²⁸ After the Oklahoma Supreme Court issued its ruling in the intervenor action, the city filed a supplement to its motion to dismiss.²⁹

The city's motion was granted primarily because appellant's case involved the same parties and identical substantive issues raised in the original action.³⁰ The Oklahoma Court of Civil Appeals upheld the denial and the Supreme Court denied certiorari.³¹

At the time of these actions, the Oklahoma Supreme Court had been very active in favorably deciding a number of cases involving an aggressive redevelopment program in the city of Oklahoma City. In fact, the *Moshe Tal* cases, known respectively as *Tal I*, *Tal II*, *Tal III* and *Tal IV*,³² were very instructive on the law of declaratory judgment actions and economic development law in general. They were also representative of the growing acceptability of public/private partnerships in the state of Oklahoma, a more aggressive approach by municipalities to seek out beneficial development, and the willingness of the Supreme Court to uphold these types of agreements.

BEST PRACTICES IN IMPLEMENTING ECONOMIC DEVELOPMENT AGREEMENTS

All Bass Pro transactions were drafted and approved prior to my arrival as city attorney. It was challenging to draw such an incredibly contentious piece of litigation with an opportunity for such a significant award within two years of taking office. As always, however, the experience brought by significant litigation is not only incredibly invaluable, but can be instructive to any attorney representing public bodies. The following can be helpful in preventing and successfully defending these types of actions:

It is a good practice to recommend that the public body engage the best and the brightest specialists to assist in the drafting and defense of economic development agreements. Funds expended on well-qualified bond lawyers, economic development lawyers, and financial advisors, result in untold benefits to public bodies. Also, there are methods of reducing expenses. Generally, legal department staff will make an initial draft of economic development agreements and then forward them to outside counsel for review, editing and comment. This practice not only keeps expenses down, but also provides invaluable first-hand experience.

Draft comprehensive Recitals in the body of all Economic Development Agreements

City department directors frequently express frustration over a “belt and suspenders” approach to even the most simplistic of agreements. Their complaints notwithstanding, legal department staff, with the assistance and direction of seasoned bond lawyer Sam Stone, frequently uses recitals to tell a story of the proposed transaction, including the benefits that the city will receive from it. Recitals also build in consideration for the proposed transactions and support the decisions of the governing body or public trust. As an extra precaution, the agreement’s recitals are generally incorporated into the Resolution to be approved by the governing body or public trust.

Be transparent

In the *Bass Pro* litigation, the resident taxpayer argued that the city violated the Oklahoma Open Meeting Act, the Competitive Bidding Act and anti-fraud statutes.³³ She argued that approval of the resolution was essentially “rubber-stamping” a foregone conclusion that was based upon previous improper discussions of the project in executive sessions of the city council, as well as clandestine meetings of city officials, a developer and representatives from both Bass Pro and a bank.³⁴ When holding discussions regarding economic development agreements, it is critically important to avoid

even the appearance of secret or clandestine communications. It is also vitally important to provide an opportunity for meaningful public debate and to go into considerable detail when providing the background for economic development agreements in public meetings. It is also useful to submit to the governing body a memorandum of understanding which provides a basic outline of the proposed economic development activity. The final details of the project are then resolved by staff and contained in a comprehensive economic development agreement. This avoids the appearance that these agreements are being approved behind closed doors and gives both the elected or appointed officials and the citizens ample opportunity for review and input.

Be professional

Several years ago, the city of Broken Arrow was approached by developers proposing to locate a casino on a Creek Nation allotment. Unfortunately, the casino was located in very close proximity to residential subdivisions and schools. As one might imagine, the public outcry was substantial. Two individuals were particularly vocal and city staff found themselves being the subject of substantial criticism in a very public forum. The temptation to be disrespectful and unprofessional was over-

whelming. Nonetheless, I stayed the course and attempted to remain professional and responsive. Some time later, I came into contact with one of the individuals in a restaurant. I spoke with the individual, inquired about his family and introduced my children to him. When I went to pay my bill, I realized that it had already been taken care of by the individual who had been such a vocal critic. The lesson I learned that day (and also imparted to my children) was that remaining professional and responsive, even in the face of public outcry, pays off in dividends.

Do not underestimate the importance of a Declaratory Judgment Action in accordance with established law

Whenever a municipality receives a demand letter from taxpayers pursuant to the *qui tam* statutes, serious consideration should be given

“It is a good practice to recommend that the public body engage the best and the brightest attorneys to assist in the drafting and defense of economic development agreements.”

to filing a petition for declaratory judgment. The petition should fully and accurately state the claims made by taxpayers, and should ask the court to determine whether these claims are valid. Attaching the demand to the petition and addressing all allegations contained in the demand during motions and briefing are also incredibly important. Filing of a declaratory judgment action should prevent the filing of a separate *qui tam* action, thereby avoiding the possibility of the taxpayers recovering a percentage of any award. Provided the municipality fully and accurately sets forth the claims of the taxpayers, so as to present a justiciable controversy, the taxpayers should not be allowed to intervene in the declaratory judgment action.

Be thoughtful and decisive in litigation

In this type of litigation, it is important to resist the temptation to panic. Rather than immediately placing the matter on the agenda and forcing issues for consideration, it is important to be thoughtful and decisive. Prior to initiation of an action, the *Bass Pro* taxpayers were given an opportunity to appear before the council in an open meeting to discuss their claims. In advance of this, however, legal department staff thoroughly and thoughtfully prepared a declaratory judgment petition, as well as a comprehensive motion for summary judgment and supporting brief. All were reviewed by outside counsel. Although this represented a considerable amount of work in a compressed timeframe, it paid off in dividends. Staff was prepared not only for the public meeting, but also as the litigation moved forward.

CONCLUSION

Economic development agreements can be tremendously valuable to communities and have the potential to advance projects that would not be possible without public/private partnerships. When done properly, they provide increased revenues so necessary for municipal operations. Seeking advice from well qualified attorneys, ensuring transparency in negotiations, and being professional are key to navigating these partnerships. Further, comprehensive, well-thought-out agreements, supported by articulated consideration will

unquestionably assist the municipal counselor or outside attorney in avoiding and defending the dreaded *qui tam*.

1. 62 O.S. § 431.
2. OK. Const. Art. 10 § 6B.
3. 60 O.S. § 178.4.
4. OK. Const. Art. 10 § 26.
5. *State of Oklahoma, ex rel. Brown v. City of Warr Acres*, 946 P.2d 1140, 1997 OK 117.
6. 1997 OK 177, ¶2.
7. 1997 OK 177, ¶3.
8. 1997 OK 177, ¶2.
9. 1997 OK 177, ¶3.
10. 1997 OK 177, ¶4-5.
11. 1997 OK 177, ¶6.
12. 1997 OK 177, ¶8.
13. 1997 OK 177, ¶8.
14. 62 O.S. § 373 (superseded).
15. 31 U.S.C. §§ 3729-3733.
16. *Id.*
17. *Id.*
18. *City of Broken Arrow v. Bass Pro Outdoor World, L.L.C.*, 250 P.3d 305, 2011 OK 1.
19. 2011 OK 1, ¶2-5.
20. 2011 OK 1, ¶2.
21. 2011 OK 1, ¶6.
22. 2011 OK 1, ¶6.
23. 2011 OK 1, ¶8.
24. 2011 OK 1, ¶10.
25. 2011 OK 1, ¶10.
26. *Karen Franklin v. Phil Roland, et al.* Tulsa County District Court Case Number CJ-2006-7568.
27. *Id.*
28. *Id.*
29. *Id.*
30. *Id.*
31. *Karen Franklin v. Phil Roland, et al.*, State of Oklahoma Supreme Court Case Number SD-110298.
32. *Oklahoma City v. Oklahoma City Urban Renewal Authority*, 988 P.2d 901, 1999 OK 71; *State, ex rel. Tal v. Norick*, 991 P.2d 999, 1999 OK 85; *State ex rel. Moshe Tal v. City of Oklahoma City*, 19 P.3d 268, 2000 OK 70; *State ex rel. Moshe Tal v. City of Oklahoma City*, 61 P.3d 234, 2002 OK 97.
33. *City of Broken Arrow v. Bass Pro Outdoor World, L.L.C.*, 2011 OK 1, ¶4.
34. As set forth in trial court briefing of *City of Broken Arrow v. Bass Pro Outdoor World*.

ABOUT THE AUTHOR



Beth Anne Wilkening is the city attorney for the city of Broken Arrow. She has served in that capacity for over 10 years. Prior to that time, she worked for the firm of Rodolf and Todd, served the city of Broken Arrow as a staff attorney and chief deputy, and was a staff attorney for the city of Norman. Ms. Wilkening serves as the chief legal advisor to the Broken Arrow City Council and its boards and trusts. She received her J.D. from the OU College of Law.



The Problem With Grass

By Mark H. Ramsey

Most municipal governments have a problem with grass. Not the kind of “grass” recently legalized in Colorado and Washington, but Bermuda, crab, Johnson, fescue, blue and many others. The problem, of course, is not the grass; rather, it is the failure or refusal of property owners to properly care for and maintain their properties. When a lawn is not mowed for a time, neighbors complain. Those who maintain their lawns and take pride in their homes and property do not appreciate those who do not. At some point, in addition to affecting the aesthetics of the neighborhood, tall grass may even become a fire hazard or sanctuary for vermin.

As this issue of the *Oklahoma Bar Journal* is published, the spring growing season is beginning. This year, as every year, cities and towns throughout Oklahoma will spend thousands of scarce taxpayer dollars and hundreds of expensive hours of employee time attempting to force residents to comply with ordinances requiring proper maintenance; ordinances which usually provide penalties and remedies for non-compliance. The purpose of this article is to discuss the legal tools available to cities and towns for fighting this annual battle. They are found, primarily, in the law of nuisance and in criminal law.¹

STATUTORY AUTHORITY DEFINING GRASS AND TRASH NUISANCES

Oklahoma law relevant to this subject broadly defines “nuisances” as unlawfully doing an act, or omitting to perform a duty, which act or omission 1) annoys, injures, or endangers the comfort, repose, health, or safety of others, 2) offends decency, or 3) in any way renders other persons insecure in life or in the use of property.² Such acts and omissions are public

nuisances if they affect at the same time an entire community or neighborhood or any considerable number of persons, “although the extent of the annoyance or damage inflicted upon the individuals may be unequal.”³

In addition to the broad statutory definition, with exceptions, cities and towns “have the right and power to determine what is and what shall constitute a nuisance within their respective corporate limits, and for the protection of the public health, the public parks and public water supply, shall have such power outside of the corporate limits; and wherever it is practical so to do, said cities and towns shall have the power summarily to abate any such nuisance after notice to the owner, and an opportunity for him [or her] to be heard, if this can be given.”⁴

In addition to these broad definitions in the statutory law of nuisance, the Oklahoma Municipal Code⁵ directly addresses nuisances related to property maintenance by providing procedures for the abatement of nuisances by mowing and cleaning of such properties by

municipal authorities or their agents. While not explicitly defining the nuisance, the statute allows the governing body of a municipality to “cause property within the municipal limits to be cleaned of trash and weeds or [cause] grass to be cut or mowed”⁶ The statute⁷ defines weeds and trash as follows:

1) “Weed” includes, but is not limited to[,] poison ivy, poison oak, or poison sumac and all vegetation at any state of maturity which:

a) exceeds twelve (12) inches in height, except healthy trees, shrubs, or produce for human consumption grown in a tended and cultivated garden[,] unless such trees and shrubbery by their density or location constitute a detriment to the health, benefit and welfare of the public and community or a hazard to traffic or create a fire hazard to the property or otherwise interfere with the mowing of said weeds,

b) regardless of height, harbors, conceals, or invites deposits or accumulation of refuse or trash,

c) harbors rodents or vermin,

d) gives off unpleasant or noxious odors,

e) constitutes a fire or traffic hazard, or

f) is dead or diseased.

The term “weed” shall not include tended crops on land zoned for agricultural use which are planted more than one hundred fifty (150) feet from a parcel zoned for other than agricultural use;

2) “Trash” means any refuse, litter, ashes, leaves, debris, paper, combustible materials, rubbish, offal, or waste, or matter of any kind or form which is uncared for, discarded, or abandoned; ***

Consequently, even though cities and towns are empowered to define nuisances generally, by requiring specific procedures for abatement and by providing specific definitions for the terms “weed” and “trash,” the Legislature appears to have limited that power,⁸ at least with respect to municipalities which do not have specific charter provisions or non-conflicting ordinances.⁹ At a minimum, municipal governing bodies should carefully consider the interplay between these statutes as they adopt and enforce ordinances on this subject.

STATUTORY REMEDIES FOR ENFORCEMENT

“The remedies against a public nuisance are: 1. Indictment or information, or 2. A civil action, or 3. Abatement.”¹⁰ Each of these remedies is discussed below; however, it is unlikely that a civil action has much practical use in this context because of the time and expense involved. Criminal enforcement and abatement are, for this reason, the primary tools for combating weed and trash nuisances.

Criminal enforcement

“The remedy by indictment or information is regulated by the law on crimes and punishment and criminal procedure.”¹¹ Although the Oklahoma Municipal Code does not utilize the terms “indictment or information” in this context, “[e]xcept as otherwise provided by law, the code of procedure in the municipal court shall be the same as is provided for by law for the trial of misdemeanors.”¹² Consequently, a nuisance which is a violation of a municipal ordinance may be made subject to criminal penalties and can be prosecuted pursuant to a complaint filed in municipal court.¹³ Violation of municipal ordinances defining nuisances — like failure to mow and allowing trash to accumulate — may also be penalized.¹⁴

No statute has been found providing for criminal enforcement in district court with regard to weeds, but littering or dumping trash on public or private property is a misdemeanor subject to fine and imprisonment.¹⁵

Civil action

Cities and towns may bring a civil action in district court to abate a nuisance.¹⁶ Although there is authority to the contrary,¹⁷ the statute requires the governing body of the municipality to adopt a resolution directing that the action be brought.¹⁸ If a nuisance is established, the court has the authority to order abatement, to appoint a commissioner to carry out that order, to assess the cost of abatement against the property, and to order the property sold to pay that cost.¹⁹

While little authority has been found in which a city or town has filed such a civil action, it may be useful in situations where the nuisance is unique or where the applicability of the municipal ordinance or a state statute is unclear. Use of a civil action provides greater protection for both the municipality and the property owner since the court’s judgment and interlocutory orders will presumably pro-

tect the constitutional and statutory rights of the parties. As mentioned above, ordinary weed and trash nuisances are not amenable to civil actions because of the time and expense involved.

Abatement

“A public nuisance may be abated by any public body or officer authorized thereto by law.”²⁰ In this context, “abatement” means the act of eliminating or nullifying the nuisance.²¹ In other words, mowing the grass or removing the trash. As such, it is an equitable remedy.²² The remedy does not, however, require judicial process in every case.

In Oklahoma, “[a]ny person injured by a private nuisance may abate it by removing, or, if necessary, destroying the thing which constitutes the nuisance, without committing a breach of the peace or doing unnecessary injury.”²³ Even then, notice to the property owner is generally required.²⁴

Municipal governments, in the exercise of their police power, have statutory authority to define nuisances and to abate them.²⁵ While such abatement proceedings require notice and a hearing, they do not require judicial process, unless the property owner seeks judicial intervention.²⁶ This process is also somewhat time-consuming and expensive; however, the statute provides an even more abbreviated process if the nuisance recurs within within six months of the original notice, which generally covers the growing season.²⁷

PROCEDURES FOR OBTAINING COMPLIANCE

Criminal Procedure

If the remedy of criminal enforcement is utilized, the process required will be familiar to most municipalities. A verified complaint (also known as a citation or ticket) is issued to the offending property owner or leaseholder by a law enforcement officer.²⁸ As with traffic tickets, the defendant is released upon signing the citation and promising to appear at the appointed time and place.²⁹

The municipal court may impose the appropriate fine, costs or imprisonment provided in the applicable municipal ordinance, or may suspend or defer the judgment and sentence of the court on appropriate conditions which could include abatement of the nuisance.³⁰

This procedure can be the most effective because it provides for immediate involve-

ment of the occupant of the property — if he or she can be found, and at least the threat of criminal sanction. This approach is less effective where the property is not occupied and the owner’s whereabouts are unknown.

Civil Procedure

The district courts of Oklahoma are courts of general jurisdiction having powers both at law and in equity.³¹ The Oklahoma Pleading Code provides generally for the rules of procedure in civil actions.³² In cases alleging nuisances, the district courts are given broad authority, and in cases brought by municipalities, the courts have specific authority to order abatement.³³

Again, this procedure is expensive and time-consuming and is generally useful only in extraordinary cases.

Procedure for Abatement by Municipal Authorities

Perhaps the most common alternative to criminal and civil procedure is the statutory procedure for abatement by the municipality. Although authorized in Title 50 of the Oklahoma Statutes (Nuisance),³⁴ abatement of grass and trash nuisances by municipal authorities is perhaps most commonly performed under the procedures in Title 11.³⁵

Section 27-111 of Title 11 of the Oklahoma Statutes is somewhat lengthy and more than a little convoluted. While careful application of the statute is strongly recommended, some general guidelines for using the statutory procedures are included here for consideration.

Once a property is identified as a nuisance because of grass or trash, the following steps — generally taken from the statute — are recommended:³⁶

- Step 1:** Identify property by address and legal description, and identify property owners listed on the county land records and tax rolls. Although the statute only requires notice to the owner shown on the tax rolls, confirmation in the land records is recommended. Even this step will not guarantee that the owner is correctly identified, but should be sufficient for purposes of the statute.
- Step 2:** Send notice to the address on the tax rolls at least 10 days before a hearing by the governing body. Additional notice to other addresses may be indicated. The notice should order the property owner to clean the prop-

NUISANCE ABATEMENT CHECKLIST – MOWING AND CLEANING

<u>Date</u>	<u>Description</u>
_____	Complaint from _____
_____	Investigation by _____
_____	Findings (including names and addresses of interested parties and photos of property) to town administrator, town clerk, town attorney and town board
_____	Notice by town clerk of hearing by town board (at least 10 days before) and to clean or mow weeds or grass and, unless performed within 10 days of date of notice, work will be done by town and lien filed with county clerk and summary abatement and lien without further notice if recurs within six months
_____	— Property owner(s) (as shown on the current year's tax roll)
_____	— Posted on the property by _____
_____	— Published (alternative if needed) in _____
_____	— Receipts for each notice mailed, posted, or published above
_____	Hearing by town board to determine if the property is detrimental or hazard to traffic or fire hazard and property would be benefitted by cleaning or mowing
_____	— Meeting notice (Open Meeting Act Notice)
_____	— Meeting agenda
_____	— Minutes of meeting
_____	— Property owner(s) or representative(s) _____
_____	— Witnesses for town _____
_____	— Witnesses for owner(s) _____
_____	— Finding by town board that: 1) the condition of the property constitutes a hazard and 2) the property would be benefitted by the removal of the condition(s)
_____	Consent of owner(s) (in writing) authorizing removal of trash or mowing of weeds or grass
_____	Order by town board to abate the nuisance within a reasonable time. Must be commenced by _____ and must be completed by _____
_____	— Mailed (certified) to owner(s) and others above
_____	Notice by town clerk describing property, findings of board, lien claim of town for destruction and removal cost which are personal obligations of the owner(s)
_____	— Filed with county clerk
_____	— Mailed (certified) to owner(s) and others above
_____	Town board shall determine 1) the actual cost of dismantling and removing dilapidated building(s), and 2) any other expenses necessary in conjunction with dismantling and removal, and 3) cost of notice and mailing
_____	Notice of competitive bidding
_____	— Published in _____
_____	— Mailed to bidders previously identified
_____	Opening and awarding of bid
_____	Contract with _____
_____	Demolition permit (at least two days before demolition can begin)
_____	Demolition, etc. commenced
_____	Demolition, etc. completed
_____	Notice of dilapidated property, lien and certified statement of costs
_____	— Mailed to owner(s) and others above (certified not required, but recommended)
_____	— Filed with county clerk
_____	— Filed with county treasurer (if not paid within six months)
_____	Paid by owner
_____	Collected by treasurer (if not paid by owner)
_____	Received by town
_____	Closed

erty of trash or to cut or mow the weeds or grass on the property and state that, unless such work is performed within ten (10) days, the work will be completed by the municipality and a lien will be filed against the property for the expense. Language should be included in the notice that any accumulations of trash or excessive weeds or grass on the owner's property occurring within six months from the date of the notice may be summarily abated by the municipal governing body, that the expense of the abatement will be assessed against the owner, and that a lien may be imposed on the property to secure payment, all without further notice to the property owner.

Step 2a: If the property owner cannot be located, post a copy on the property or publish notice one time, at least 10 days before a hearing by the governing body.

Step 2b: If the property owner consents, in writing, to the trash clean-up and mowing, the property owner waives the right to a hearing.

Step 3: The governing body must hold a hearing to determine the following:

1. Whether the trash and/or grass has become detrimental to the health and welfare of the public, a hazard to traffic, or a fire hazard; and
2. Whether the property would be benefited by the removal of the trash or mowing of the grass.

Step 4: After the hearing and an appropriate order by the governing body, the municipality is granted right of entry on the property for trash removal and mowing.

Step 5: Immediately following the clean-up or mowing, the municipal clerk should send a notice of lien to the county clerk with the following:

1. The legal description of the property;
2. A description of the work performed by the municipality; and

3. A statement that the municipality claims a lien on the property for the expense of the clean-up or mowing.

Step 6: The governing body of the municipality determines the actual cost of clean-up or mowing after the work is completed.

Step 7: The municipal clerk sends a certified statement of costs to the property owner(s) (by certified mail) and demands payment. Although not necessarily required, a copy to any mortgage holder(s) may be helpful.

Step 8: If costs are not paid within 30 days, the municipal clerk should forward a certified statement of costs to the county treasurer within 60 days.

Step 9: The county treasurer may credit the certified cost to the property and collect it with the ad valorem taxes. In addition, the costs and any interest become a lien against the property once certified to the treasurer.

Step 10: If the treasurer and municipality agree that the treasurer is unable to collect the assessment, the municipality may pursue a civil action for collection against the owner(s) or an action to foreclose the lien against the property.

Step 11: Upon receiving payment, the municipal clerk must notify the county treasurer to discharge of the lien.

Step 12: If the accumulation of trash or excessive weed or grass growth occurs again within six months **and** language was included in the original notice of the initial abatement, any accumulations of trash or excessive weed or grass growth may be summarily abated without further notice to the owner.

Step 12a: In the event of a second or subsequent abatement, the municipality should follow steps 6-11 and notify the property owner(s) of the additional abatement and the cost thereof, stating that the owner may appeal to the governing body of the municipality within 10 days of the mailing of the notice.

CONCLUSION

The need for abatement of grass and trash nuisances is an unfortunate reality for municipal governments. Statutory tools for addressing such nuisances — while not perfect — attempt to protect the property and due process rights of citizens, while allowing municipalities to protect legitimate concerns for health, safety, and economic interests of the community at large. Judicious application of these tools can beautify neighborhoods and communities, protect investments in property, and avoid conflicts between property owners.

Author's note: House Bill No. 1451 by Rep. Kevin Calvey and Sen. Brian Crain would amend Sections 22-111, 22-112.1, and 22-112.4 of Title 11 of the Oklahoma Statutes. The House County and Municipal Government Committee has considered the bill and has recommended that it "do pass" as amended by a committee substitute. Whether the bill will be considered further is unknown at this writing.

1. This article does not, however, address private nuisances or remedies available to private parties in law or in equity. *See generally*, 50 Okla. Stat. §§3, 10, 12, 13, and 14.

2. *See*, 50 Okla. Stat. §1; *see also*, *Briscoe v. Harper Oil Co.*, 1985 OK 43 ¶9, 702 P.2d 33, 36 ("... the term 'nuisance' signifies in law such a use of property or such a course of conduct irrespective of actual trespass against others, or of malicious or actual criminal intent, which transgresses the just restrictions upon use or conduct which the proximity of other persons or property imposes. It is a class of wrongs which arises from an unreasonable, unwarranted, or unlawful use by a person or entity of property lawfully possessed, but which works an obstruction or injury to the right of another.")

3. 50 Okla. Stat. §2.

4. 50 Okla. Stat. §16. Cities and towns do not have authority to define nuisances on railroad right-of-ways. *See*, 11 Okla. Stat. §22-111(E). The Oklahoma Corporation Commission may, however, adopt regulations related to railroad rights of way within the corporate limits of municipalities. *See*, *Union Pac. R. Co. v. State ex rel. Corp. Com'n*, 2001 OK CIV APP 56 ¶17, 23 P.3d 954. Counties over 550,000 population may also define nuisances by county ordinance. *See*, 50 Okla. Stat. §20.

5. 11 Okla. Stat. §1-101, *et seq.*

6. 11 Okla. Stat. §22-111(A).

7. 11 Okla. Stat. §22-111(D)

8. Where the Legislature has pre-empted the field of regulation, "municipalities have only such power as are [sic] conferred upon them by the Legislature, and ordinances must be strictly construed against the municipalities." *Moore v. City of Tulsa*, 1977 OK 43, 561 P.2d 961, 965 (in the field of regulation of alcoholic beverages); and *Okla. City Mun. Imp. Auth. v. HTB, Inc.*, 1988 OK 149, 769 P.2d 131, 138, fn. 6, quoting *Metro. R. Co. v. Dist. Of Columbia*, 132 U.S.1, 8 (1889) ("*** All municipal governments are but agencies of the superior power of the state or government by which they are constituted, and are invested with only such subordinate powers of local legislation and control as the superior legislature sees fit to confer upon them. ***" *Emphasis omitted*).

9. "A city under its charter and for a purpose justifying exercise of its police powers may enact an ordinance not in conflict with statutes on the same subject. A constitutional exercise of such power to promote the public peace, health and welfare must serve those ends in a uniform way and accomplish a result that does not defeat the express purpose of the statute." *Moore v. City of Tulsa*, 1977 OK 43, 561 P.2d 961, 963 (footnote omitted).

10. 50 Okla. Stat. §8.

11. 50 Okla. Stat. §9.

12. 11 Okla. Stat. §27-113.

13. *Id.*

14. *See*, 11 Okla. Stat. §22-111(C) ("The municipal governing body may enact ordinances to prohibit owners of property or persons otherwise in possession or control located within the municipal limits from

allowing trash to accumulate, or weeds to grow or stand upon the premises and may impose penalties for violation of said ordinances.").

15. *See e.g.*, 21 Okla. Stat. §1761.1 (providing penalties up to \$5,000.00 and imprisonment in the county jail for up to thirty (30) days).

16. *See*, 50 Okla. Stat. §17.

17. *See*, *Suter v. City of Okmulgee*, 1962 OK 180, 373 P.2d 527, 531.

18. *See*, 50 Okla. Stat. §17.

19. *Id.*

20. 50 Okla. Stat. §11.

21. *Black's Law Dictionary* (7th ed., 1999), p. 2.

22. *See e.g.*, *Simons v. Falmestock*, 1938 OK 264 ¶0 (Syllabus by the Court ¶2), 78 P.2d 388 ("As a general rule, courts of equity have power to give relief against either public or private nuisance by compelling the abatement or restraining the continuance or the existing nuisance, or enjoining the commission or establishment of a contemplated nuisance.").

23. 50 Okla. Stat. §14; *see also*, *Hummel v. State*, 1940 OK CR 27 (Syllabus by the Court ¶6), 99 P.2d 913 ("The abatement of a nuisance without first resorting to judicial proceedings may be authorized by statute, because such right of abatement existed at the common law, and was not taken away by the constitutional provision that the owner of property should not be deprived of it without due process of law.")

24. *See*, 50 Okla. Stat. §15 ("Where a private nuisance results from a mere omission of the wrongdoer, and cannot be abated without entering upon his land, reasonable notice must be given to him [or her] before entering to abate it."); *see also*, *Hollenan v. City of Tulsa*, 1945 OK CR 7, 155 P.2d 254, 256 (limiting the *Hummel* case to its peculiar facts and law).

25. *See e.g.*, 50 Okla. Stat. §§8, 11, 16, and 17; *see also*, *Wood v. City of Chickasha*, 1927 OK 77 ¶0 (Syllabus by the Court ¶2), 257 P. 286 ("A municipal corporation of this state in the exercise of its police power delegated to it by [statute], has authority by Legislative act to declare what shall constitute a nuisance, and has power to abate the same.").

26. *See e.g.*, 50 Okla. Stat. §16 (generally) and 11 Okla. Stat. §22-111 (mowing and cleaning trash).

27. *See*, 11 Okla. Stat. §22-111(A)(1) and (B).

28. *See*, 11 Okla. Stat. §§27-115 and 27-115.1 (prosecutions in municipal court not-of-record by verified complaint issued by a law enforcement officer) and §§28-113 and 28-113.1 (prosecutions in municipal court of-record by verified complaint issued by a law enforcement officer).

29. *See*, 11 Okla. Stat. §27-117 (arrest and release on complaint in municipal court not-of-record) and §28-114 (arrest and release on complaint in municipal court of-record).

30. *See*, 11 Okla. Stat. §27-122.1 (providing for modification, reduction, or suspension of sentence in municipal court not-of-record) and §28-123 (providing for modification, reduction, or suspension of sentence in municipal court of-record).

31. *See generally*, Okla. Const., Art. 7 §7(c).

32. *See*, 12 Okla. Stat. §2001, *et seq.*

33. *See*, 50 Okla. Stat. §17.

34. *See*, 50 Okla. Stat. §11.

35. *See*, 11 Okla. Stat. §27-111.

36. This step-by-step approach was suggested in a memorandum by Lindsey Jackson Bennett for use by the Town of Chelsea in Rogers County and is included here with her permission and the author's thanks.

ABOUT THE AUTHOR



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Application of the Open Meeting Act and Open Records Act to Municipalities and/or Municipal Trusts

By *Ted N. Pool*

The right to know and the right to an open government: we all have a right to both, so much so that a violation of the Open Meeting Act or the Open Records Act is a misdemeanor or a felony under certain circumstances. Complaints that a municipality and/or a municipal trust have violated these acts go to the attorney general, the county or the courts. Therefore, it is important to know the rules when it comes to open meetings and open records involving municipalities.

THE OPEN MEETING ACT: TITLE 25 O.S. SECTIONS 301-314

According to the Open Meeting Act, meetings must be at a time and place with an agenda setting out the subject matters to be considered. A meeting requires a quorum of a municipality and/or a municipal trust. Informal gatherings of a majority of the municipality and/or municipal trust when no business is discussed is not a meeting. This can be potentially dangerous. It is easy to slip up and talk about business. Best not to do. Special meetings are not regular or emergency meetings. Emergency meetings involve injury to persons or property or immediate financial loss, when the time requirements of special meetings cannot be met. All votes must be in public and a record must be kept.

Section 307 discusses executive sessions. The language for executive sessions in municipali-

ties and/or municipal trusts is extremely specific for reasons that the public will not know what is happening in such a meeting. This specific language, as it pertains to municipalities, is as follows, to wit:

Section 307. Executive Sessions.

- A. No public body shall hold executive sessions unless otherwise specifically provided in this section.
- B. Executive sessions of the public bodies will be permitted only for the purpose of:
 - 1. Discussing the employment, hiring, appointment, promotion, demotion, disciplining or resignation of any individual salaried public officer or employee;
 - 2. Discussing negotiations concerning employees and representatives of employee groups;

3. Discussing the purchase or appraisal of real property;
 4. Confidential communications between a public body and its attorney concerning a pending investigation, claim, or action if the public body, with the advice of its attorney, determines that disclosure will seriously impair the ability of the public body to process the claim or conduct a pending investigation, litigation, or proceeding in the public interest;
 7. Discussing any matter where disclosure of information would violate confidentiality requirements of state or federal law;
 10. All nonprofit foundations, boards, bureaus, commissions, agencies, trusteeships, authorities, councils, committees, public trusts, task forces or study groups supported in whole or part by public funds or entrusted with the expenditure of public funds for purposes of conferring on matters pertaining to economic development, including the transfer of property, financing, or the creation of a proposal to entice a business to locate within their jurisdiction if public disclosure of the matter discussed would interfere with the development of products or services or if public disclosure would violate the confidentiality of the business;
- D. An executive session for the purpose of discussing the purchase or appraisal of real property shall be limited to members of the public body, the attorney for the public body, and the immediate staff of the public body. No landowner, real estate salesperson, broker, developer, or any other person who may profit directly or indirectly by a proposed transaction concerning real property which is under consideration may be present or participate in the executive session.
- E. No public body may go into an executive session unless the following procedures are strictly complied with:
1. The proposed executive session is noted on the agenda as provided in Section 311 of this title;
 2. The executive session is authorized by a majority vote of a quorum of the members present and the vote is a recorded vote; and
 3. Except for matters considered in executive sessions of the State Banking Board and the Oklahoma Savings and Loan Board, and which are required by state or federal law to be confidential, any vote or action on any item of business considered in an executive session shall be taken in public meeting with the vote of each member publicly cast and recorded.
- F. A willful violation of the provisions of this section shall:
1. Subject each member of the public body to criminal sanctions as provided in Section 314 of this title; and
 2. Cause the minutes and all other records of the executive session, including tape recordings, to be immediately made public.

Section 307.1 allows teleconferences.

Section 311 A.1 states a regular meeting notice must be given every December 15 for the following year. Section 311A.9 requires advanced written notice of at least 24 hours prior thereto with date, time, place and the agenda, excluding Saturdays, Sundays and holidays of the state. The notice must be posted in prominent view at the office of the municipality or municipal trust. A new business item can be considered even though the item is not on the agenda. New business is a matter not known about or that could not have been reasonably foreseen prior to posting.

Section 311 A.10. Continued meetings must be announced at the original meeting and only matters on the original agenda may be considered at the continued meeting.

Section 311 A.11. Special meetings require 48 hours prior notice. The municipality and/or a municipal trust must mail or deliver, to each person or entity that has filed a written request for such notice and paid the statutory fee. Such written notice must be mailed or delivered at least 48 hours prior to the special meeting. Also, the municipality and/or municipal trust shall, at least 24 hours prior to the special meeting, display notice with the date, time, place and agenda of the special meeting. Only post-

ed matters can be considered. The posting as is the case with regular meetings must be posted in prominent public view at the office of the municipality and/or municipal trust or at the location, if no office exists. The 24 hours also, excludes Saturdays and Sundays and legal holidays of the State.

Section 311 A.12. Emergency meetings may be held without the public notice above. Should such meeting be necessary, the person calling same shall give as much advance public notice as is reasonable and possible under the circumstances existing in person or by telephonic or electronic means.

Section 311 B.1. Agenda. All agenda items of business shall be identified, including but not limited to any proposed executive session for the purpose of engaging in deliberations or rendering a final or intermediate decision in an individual proceeding prescribed by the Administrative Procedures Act.

Section 311 B.2. Such an agenda shall:

- a. contain sufficient information for the public to know an executive session will be proposed;
- b. identify the business items and purposes of the executive session; and
- c. set out the provision of Section 307 of this Title 25 which authorizes the executive session

Section 312 A. Meeting minutes: Such minutes shall be kept by a designated person. Such are an official summary of the proceedings, and must show members present and absent, all matters considered and all actions taken. Such are open to public inspection and shall show the manner and notice time per this act.

Section 312 B. Emergency meeting minutes must show the nature of the emergency and the proceedings at such meeting, including reasons for declaring same.

Section 312 C. Anyone attending a municipality and/or a municipal trust public meeting may record the proceedings of same by videotape, audiotape or by any other method so long as such does not interfere with the meeting.

Section 313. Any action taken in willful violation of the act shall be invalid.

Section 314 A. Such violation is a misdemeanor and may be punishable by a fine up to

\$500 or up to one year in the county jail or by both.

Section 314 B.1. If violation, any person may bring civil suit for declarative or injunctive relief or both, and Section 314 B.2, if successful, such person shall be entitled to reasonable attorney fees.

Section 314 C. If the municipality and/or municipal trust successfully defends such suit and the court finds same was clearly frivolous, the court can assess reasonable attorney fees to the municipality and/or municipal trust.

THE OPEN RECORDS ACT: TITLE 51 O.S. SECTIONS 24 A.1 THROUGH 24 A.30

The public has a right of access to the municipality or the municipal trust's records as an exercise of the public's inherent political power. The people are entitled to know and be informed about their government. Some state or federal statutes create a confidentiality privilege. The municipality and/or municipal trust have the burden of establishing such records as are protected by such confidentiality privilege. A municipality and/or municipal trust do not have to follow any procedures for providing access to public records except as required by the Oklahoma Open Records Act.

Section 24A.3.1 defines "record" broadly, as most anything coming into the custody, control or possession of the municipality and/or municipal trust.

Section 24 A.3.1a through Section 24 A.3.1h (1)(2) sets out what are not records. Section 24 A.3.2, defines "public body" as relates to a municipality and/or municipal trust. Section 24 A.3.3, defines "public office" as the location where a municipality and/or municipal trust conducts business or keeps records. Section 24 A.3.4 defines "public official" as any official or employee of a municipality and/or municipal trust. Section 24 A.4 requires a municipality and/or municipal trust to keep complete records of receipt and expenditures of public funds. Such records may be disposed of as allowed by law. Section 24 A.5 requires all records of a municipality and/or municipal trust to be open to any person for inspection, copying, or mechanical reproduction during business hours, provided:

1. The act at Sections 24 A.1 through Section 24 A.28 does not apply to records specifically required by law to be kept confidential including:

- a. protected records by a state privilege, such as attorney-client privilege, work product immunity from discovery, and identity of informer privileges.
- b. Records of lawful municipality and/or municipal trust executive sessions pursuant to Title 25 O.S. Section 301 et seq.

[Note: This paragraph is not a part of the Open Records Act, but nevertheless applies to municipalities and/or municipal trusts, pursuant to Title 74 O.S. Section 150.10(C)(1): reports of a municipality and/or municipal trust law enforcement agencies containing the number and nature of offences and other data submitted to the OSBI shall be an open record.]

3. If a record request contains individual records of persons and such is prescribed by state law the cost may be assessed for each individual record or portion thereof. Otherwise, a municipality and/or a municipal trust may charge only for the reasonable direct costs of copying the record or mechanical reproduction. In no instance shall the record copying fee exceed 25 cents per page for 8 ½ x 14 inches or less or \$1 per page for certified copies. If the request:

- a. is solely commercial, or
- b. would clearly cause excessive disruption of the municipality and/or a municipal trust, then the fee charged may be the direct cost of record search and copying; however, newspaper publication or broadcast by news media shall not constitute a resale or use of a record for trade or commercial purpose and charges for same shall not exceed the direct cost of making the copy. Such schedule of fees charged by a municipality and/or a municipal trust shall be posted at the office and with the municipal and/or municipal trust's clerk. A search fee may not be charged when the record release is in the public interest, including release to the news media, scholars, authors and taxpayers seeking to determine whether such municipality and/or a municipal trust officials are honestly, faithfully and competently performing their duties. Such fees shall not be used to discourage requests for information or as obstacles to disclosure of requested information.

5. A municipality and/or municipal trust must provide prompt, reasonable access to its

records but may establish reasonable procedures to protect the integrity and organization of its records to prevent excessive disruption of essential functions of the municipality and/or a municipal trust.

6. The municipality and/or municipal trust must designate certain persons to be authorized to release records of the municipality and/or municipal trust for inspection, copying or mechanical reproduction. At least one person must be available at all times to release records during regular business hours.

Section 24 A.6. If a municipality and/or municipal trust is open less than 30 hours per week:

A. If such is the case, the municipality and/or municipal trust must post and maintain written notice at its main office and with the county clerk where the municipality and/or a municipal trust is located. Such notice must:

1. designate the days when the records are available for inspection, copying or mechanical reproduction;
2. set out the name, mailing address and telephone number of the person in charge of the records; and
3. describe the procedures for obtaining access to the records at least two days of the week, excluding Saturday and Sunday.

B. The person requesting the record and the person authorized to release the records of the municipality and/or municipal trust may agree to inspection, copying or mechanical reproduction on a day and time other than as designated in such notice.

Section 24A.7:

A. A municipality and/or municipal trust may keep personnel records confidential:

1. which relate to internal personnel investigations including examination and selection material for employment, hiring, appointment, promotion, demotion, discipline or resignation; or
2. if disclosure would constitute a clearly unwarranted invasion of personal privacy such as employee evaluations, payroll deductions, employment applications of persons not hired by the municipality and/or municipal trust,

and transcripts from institutions of higher education maintained in the personnel files of certified public school employees; provided, however, that nothing in this subsection shall be construed to exempt from disclosure the degree obtained and the curriculum on the transcripts of certified public school employees.

B. All personnel records not falling within the exceptions provided in subsection A of this section shall be available for public inspections and copying including records of:

1. an employment application of a person who becomes a public official;
2. the gross receipt of public funds;
3. the date of employment, title or position; and
4. any final disciplinary action resulting in loss of pay, suspension, demotion or termination of employment.

C. Except only if made confidential by statute an employee of a municipality and/or municipal trust shall have a right of access to his own personnel file.

D. A municipality and/or a municipal trust must keep confidential the home address, telephone numbers, and social security numbers of any past or present employee.

Section 24 A.9. Prior to taking action, including making a recommendation or issuing a report, a public official may keep confidential his or her personal notes and personally created materials other than departmental budget requests of a municipality and/or municipal trust prepared as an aid to memory or research leading to the adoption of a public policy or the implementation of a municipality and/or municipal trust project.

Section 24 A.10.

B. If disclosure provides an unfair advantage to competitors or bidders, a municipality and/or municipal trust may keep confidential records relating to:

1. bid specifications for competitive bidding prior to publication by the municipality and/or municipal trust; or
2. contents of sealed bids prior to the opening of same by a municipality and/or a municipal trust; or

3. computer programs or software but not data thereon; or
4. appraisals relating to the sale or acquisition of real estate by a municipality and/or municipal trust prior to award of a contract; or
5. the prospective location of a private business or industry prior to public disclosure of such prospect except for records otherwise open for inspection such as applications for permits or licenses.

Section 24 A.12. Except as provided by the state or local law, the attorney for the municipality and/or municipal trust may keep his or her litigation files and investigatory reports confidential.

Section 24 A.13. Federal records or records generated as a result of federal legislation in possession of the municipality and/or municipal trust, may be kept confidential to the extent required by federal law.

Section 24 A.14. Except for the fact that a communication has been received and that it is or is not a complaint, a municipal official may keep confidential personal communications received by the municipal official from a person exercising rights secured by the Constitution of the state or the United States. The municipal official's written response to this personal communication may be kept confidential only to the extent necessary to protect the identity of the person exercising the right.

Section 24A. 17:

A. Violations by Public Official. Fine up to \$500 or imprisonment in county jail not exceeding one year or both.

B. If a person is denied access to records, he or she:

1. may sue civilly for declarative or injunctive relief or both, but such civil suit shall be limited to records requested and denied prior to filing of the civil suit.
2. If successful, such person shall be entitled to reasonable attorney's fees.

C. If the municipality and/or municipal trust prevails and the court finds the suit was clearly frivolous, the municipality and/or municipal

trust shall be entitled to reasonable attorney's fees.

D. A municipality and/or municipal trust shall not be civilly liable for damages for providing access to records pursuant to the act.

Section 24A.18. Except per Section 24A.4, this act does not impose additional record keeping requirements on the municipality and/or municipal trust or municipal officials.

Section 24A.19. A municipality and/or municipal trust may keep confidential any information related to research if disclosure could affect the conduct or outcome of the research.

Section 24A.20. Access to records under the act which would be available for public inspection, copying, etc., shall not be denied if the municipality and/or municipal trust has the records in a litigation or investigation file if the record or a copy is available for public inspection at another public body.

CONCLUSION

The Legislature did everything in its power to open every governmental agency under their control. If you wish to see how some such agency needs to be examined, don't look here. This article will only open the doors of municipal government. But it opens them wide.

ABOUT THE AUTHOR

Ted Pool earned a bachelor's from OSU in 1961 and a J.D. from the OU College of Law in 1964. While in law school, he served as editor of the *Oklahoma Law Review* and was named to the order of the coif. His practice includes civil litigation matters, specifically municipal, employment and school law. He has practiced for more than 50 years, is a member of the Oklahoma County Bar Association and served as a member of the Board of Directors on the Ethics Committee. He has served on various other boards and committees throughout his career.



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Windmills

New Energy With New Problems

By Mark Ready

The promise of clean energy from commercial windmills, also called “wind turbines,” is widely acclaimed and promoted. It appears to be a wonderful solution to carbon-based emissions. Power companies, such as Oklahoma’s OG&E electric company, have added windmills to their source of electricity to provide an alternative to using coal and natural gas. Our current administration’s policy is to reduce the use of coal especially, and replace it with clean energy, such as windmills. There are tax incentives to invest in windmills. Free wind appears to promise lower electricity costs. Windmill energy seems like a wonderful contribution to our nation’s energy security. However, there are some legal problems that arise when windmill farm developments clash with adjacent property owners.

In Oklahoma, because wind energy is new, there is not a lot of regulation or legal precedence. The Oklahoma Corporation Commission (OCC) regulates oil and gas, motor carriers, telephones and utilities. The Oklahoma Department of Environmental Quality (DEQ) enforces environmental regulations. Certain aspects of windmill farms could fit the jurisdiction of either the OCC or DEQ. The Oklahoma Wind Energy Development Act, 17 Okla. Stat. Ann. §160.11, effective Jan. 1, 2011, addresses decommissioning of windmills when no longer used, verifying payments to lessors and maintaining liability insurance. There have been recent discussions in the Oklahoma Legislature about new legislation on windmills, but so far, nothing significant has happened. There is some wind energy self regulation such as the American Wind Energy Association (AWEA),¹ which promotes wind energy. It is an accredited stan-

dard development body for construction, operation and safety of windmill projects. Currently, they only have three standards: 1) small wind turbine performance and safety, 2) recommended practice for compliance of large land-based wind turbine structures and 3) offshore compliance recommended practices. These standards apply to safety and construction standards, but they do not address issues such as nuisance and property rights.

Piedmont, where I live, faced a proposed wind farm. Piedmont is a small town just northwest of the Oklahoma City limits. The windmill company, Apex Clean Energy (APEX),² proposed the “Kingfisher Wind Farm” covering 16,000 acres adjacent to Piedmont. Immediately, a conflict arose. APEX and property owners who leased their farms to APEX for development (windmill proponents) were facing

opposition from residents of Piedmont, (windmill opponents) who feared loss in property value and loss of enjoyment of their residences and acreages. An opposition group was formed, the Central Oklahoma Property Rights Association (COPRA).³ Several main issues arose, nuisance, inverse condemnation and police power. These issues are especially relevant because of the growing industry of windmill energy development in Oklahoma. The promise of clean, renewable wind energy brings with it problems.

There are numerous instances claiming adverse health effects, unsightliness and threats to wildlife from windmill farms that can be found. Here are some instances and the web links.

1. Windmills are an Eyesore: <http://goo.gl/HJdazm>
2. Wind Turbine Syndrome: <http://goo.gl/xgTAW4>
3. Nature Conservancy Joins Osage Nation Fight Against Wind Farm: <http://goo.gl/V2dbuZ>
4. Windmill Kills Rare Bird: <http://goo.gl/Dnccft>
5. The *Oklahoman* has reported on wind energy's risk to eagles, with one article stating that wind turbines may exceed 400 feet extending into bird flight paths, spinning rotors can cover an area greater than one acre and blade tips can travel more than 150 mph. See "Bird vs. blade: Wind energy's risk to eagles," *The Oklahoman*, Dec. 7, 2013, at pg. 3C (business section).

One protection that landowners have from windmill farms is that Oklahoma specifically excludes windmill farms from exercising eminent domain on private property.⁴ Therefore, if a landowner does not want a windmill on his property, a windmill farm developer can't exercise eminent domain to acquire the rights to the landowner's property. Despite few regulations or legal precedence on windmill farm development, existing laws in the areas of nuisance, inverse condemnation and police power provide avenues of recourse for parties affected by windmill farm development.

NUISANCE

In Piedmont, the first action taken was to outlaw the commercial windmills in its city

limits.⁵ Then, with an amendment dated Aug. 26, 2013 to the Piedmont Code of Ordinances §5 801 *et seq.*, Piedmont added Section 5-820 that declared windmill farms a "public nuisance" pursuant to 50 Okla. Stat. §2, which defines a "public nuisance" as one which affects at the same time an entire community or neighborhood, or any considerable number of persons, although the extent of the annoyance or damage inflicted upon the individuals may be unequal. This allowed further pushing the windmills to beyond three miles of the Piedmont city limits, relying on 50 Okla. Stat. §16, based on adverse impact to the health of its residents.⁶ 50 Okla. Stat. §16 states:

Cities and towns in this state shall have the right and power to determine what is and what shall constitute a nuisance within their respective corporate limits, and for the protection of the public health, the public parks and the public water supply, shall have such power outside of the corporate limits; and wherever it is practical so to do, said cities and towns shall have the power summarily to abate any such nuisance after notice to the owner, and an opportunity for him to be heard, if this can be given.

In addition to a "public nuisance" there is also relief to individuals through a "private nuisance." A "private nuisance" is every nuisance not included in the definition of a public nuisance.⁷

A nuisance consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either: First. Annoys, injures or endangers the comfort, repose, health, or safety of others; or ... Fourth. In any way renders other persons insecure in life, or in use of property, provided, this section shall not apply to preexisting agricultural activities.⁸ It should be noted that nothing done under the express authority of a statute can be deemed a nuisance.⁹

An injunction is a way to stop windmill farms before they get started. Often, when a project like building a landfill, a cattle feedlot or a windmill farm is proposed, the affected property owners will have little satisfaction if they have to wait until the project is completed to file a lawsuit. An injunction is the solution, to halt the offending project before it starts. In *Daffin v. State ex rel. Okla. Dept. of Mines*, 2011 OK 22, 251 P.3d 741, the property owner (Daffin) was prevented from participating in an

informal conference before the Department of Mines regarding issuing a mining permit to T&M Sand and Gravel Inc. Mr. Daffin was allowed to attend the informal conference and listen, but he was not allowed to speak, based on a statutory restriction, 45 Okla. Stat. §724(H) (2) and Oklahoma Administrative Code Rule 460: 10-17-6(a), limiting participation to those who resided in or owned property within one mile of the proposed mining site. Mr. Daffin sought an injunction to allow time for a decision whether the statute and rule deprived him of due process and were unconstitutional. The trial court granted a temporary injunction. The court, affirming the trial court, held that being present at the informal conference without a voice is not a “meaningful opportunity” to be heard.¹⁰ When a neighboring landowner is confronted with harm to his property, he does not have to wait until the actual infliction of such loss; he has a right to seek injunctive relief from the court.¹¹ The court went on to say that it is well settled in Oklahoma that the grounds for issuing a temporary injunction are: 1) the likelihood of success on the merits, 2) irreparable harm to the party seeking injunctive relief if relief is denied, 3) relative effect on the other interested parties, and 4) public policy concerns arising out of the issuance of injunctive relief.¹² Generally, exhaustion of administrative remedies is a prerequisite for resort to the courts. However, this doctrine will not bar court action if an administrative remedy is unavailable, ineffective or would be futile.¹³ The court held that the statute and rule were unconstitutional.¹⁴

INVERSE CONDEMNATION

In Piedmont’s experience with the windmill farm, the issue of inverse condemnation comes into play from two directions. The landowners who leased their land to the windmill farm developers claimed a “taking” by Piedmont’s ordinances banning the windmills from their property, causing potential lost income from royalties. Also, a “taking” by the windmill farm is claimed by the opposing landowners, due to the potential lost property value and lost enjoyment of use.

Section 24, Article II of the Oklahoma Constitution provides that: Private property shall

not be taken or damaged for public use without just compensation.... While eminent domain generally refers to legal proceedings in which the state or other authorized entity asserts its authority to condemn property for public use, inverse condemnation represents merely a “shorthand description of the manner in which a landowner recovers just compensation for a taking of his property when condemnation proceedings have not been instituted.”¹⁵ There are generally two basic grounds that support inverse condemnation actions: physical taking and the enactment of regulation that substantially impair the property’s usefulness.¹⁶ Regulation of a property’s uses may . . . constitute a taking if the regulation (an overt act exercising dominion or control over property) acts to destroy or impair the land’s usefulness.”¹⁷

“ In Piedmont’s experience with the windmill farm, the issue of inverse condemnation comes into play from two directions. ”

Some impairment of the land’s usefulness is not enough to establish damages under Art. 2, §24. There must be substantial impairment resulting from an overt governmental act resulting in an assertion of dominion and control over property.¹⁸ In inverse condemnation actions, whether a taking constitutes substantial interference with the use and enjoyment of property is for the trier of fact to resolve.¹⁹ The determination of a taking must be made by the trier of fact and is not susceptible to summary disposition in inverse condemnation actions.²⁰ The right to a jury trial in inverse condemnation cases is invoked only by following the statutory procedures in 66 O.S. §51 *et seq.*²¹ Failure to comply with the statutory procedure does not waive the right to a judicial determination of the issue of a taking.²² The procedures for an inverse condemnation action are the same as those for eminent domain condemnation in accordance with 66 O.S. 1991 §§51 *et seq.*²³ The common dictionary definition of the word “substantial” is: 1) to support with proof or evidence, verify; 2) not imaginary, true, real; 3) solidly built, strong; 4) ample; 5) considerable in importance, value, degree, amount or extent.²⁴

In Oklahoma, “just compensation” shall mean the value of the property taken, and in addition, any injury to any part of the property not taken. Any special and direct benefits to the part of the property not taken may be off-

set only against any injury to the property not taken. Such compensation shall be ascertained by a board of commissioners of not less than three freeholders, in such manner as may be prescribed by law.²⁵

In Oklahoma, protection for property owners in regards to “takings” includes “damages.” The Oklahoma Constitution includes not only “takings” but also “damage” to private property. Article 2, §24 states “Private property shall not be taken or damaged for public use without just compensation.” Also, Article 2, §23 states “No private property shall be taken or damaged for private use, with or without compensation, unless by consent of the owner....” So the Oklahoma Constitution protects property owners from both “takings” by public entities and “takings” by private entities and it also protects where there are “damages.” There is an independent cause of action for “damages” under Article 2, §§23, 24, in addition to a “nuisance” action.²⁶ The right a person has not to have his property damaged extends beyond physical injury to the property. It includes the right of quiet enjoyment of that property. [I]nterference with the owner’s peaceful occupancy and enjoyment of his premises . . . constitutes the taking of or damage to the premises within the meaning of Section 23, Article 2 of the Constitution....²⁷ Oklahoma courts have recognized a right to compensation for the “noxious fumes and other traits associated with an open sewage lagoon,”²⁸ and the “annoyance and inconvenience” resulting from the operation of nearby oil and gas wells.²⁹

Under the Oklahoma Constitutional provision, it is no defense that the challenged activity is reasonable or even that it has been specifically permitted by the government. So long as the activity causes substantial damage to the property of another, there is liability.³⁰ Although an activity specifically authorized by statute does not bar an action for damages under §23 of the Oklahoma Constitution, it does bar an action for an injunction.³¹ It is important though, to determine whether the permit or license specifically authorizes the challenged activity or whether, the general activity has been legalized but the specific manner it is being done has not.³²

LOCAL GOVERNMENT LAW

As to powers that a municipality can legally exercise, unless there’s a specific limitation, the

municipality may exercise reasonable discretion and any appropriate mode of execution may be employed, carrying with it a presumption of correctness and validity.³³ This ties in to the general principle that actions by a state entity, such as a town, taken for the benefit of the public, are granted greater leeway in what may be done, following the principle of exercising “police power” for the protection of the citizens. “[A]cts done in the proper exercise of the police power, which merely impair the use of property, do not constitute a taking . . . The exercise of the police power, therefore, differs from the exercise of the right of eminent domain, which involves the appropriation of private property to public use . . .”³⁴

CONCLUSION

Ultimately, Piedmont, APEX and COPRA came to an agreement locating the windmill farm away from close proximity to Piedmont. Negotiations and compromise prevailed over litigation. Although windmill energy could prove to be a value to consumers, a profitable investment for companies, an engine for job growth and a solution for energy independence, it would be wise for the state, municipalities, wind energy companies, citizens and others to work out plans to effectively protect and balance the rights of all the citizens in Oklahoma and to proactively avoid problems like those we’ve seen in the past from other emerging industries. Attorneys should become familiar with these issues in order to help their clients involved with or affected by windmill farm development.

1. www.awea.org
2. www.apexcleanenergy.com
3. www.copra.us
4. 27 OKLA. STAT. §7(B).
5. Piedmont, OK Code of Ordinances, §5-801.
6. See 2 OKLA. STAT. §20-18(B)(2) (it appears Piedmont determined that wind farms are reasonably analogous to nuisances from feedlots and they should be three miles outside of the city limits).
7. 50 OKLA. STAT. §3.
8. 50 OKLA. STAT. §1.
9. 50 OKLA. STAT. §4.
10. *Daffin v. State ex rel. Okla. Dept. of Mines*, 2011 OK 22, 251 P.3d 741, 745.
11. *Id.*
12. *Id.*
13. *Id.*
14. *Id.* at 749.
15. *Stewart v. Rood*, 1990 OK 69 ¶38, 796 P.2d 321, 335, rev’d on other grounds by *DuLaney v. Oklahoma State Dept. of Health*, 1993 OK 113, 868 P.2d 676, 677, reh’g denied 1994.
16. *Material Service Corp. v. Rogers County Commissioners*, Okla. Civ. App., Div. 1, 136 P.3d 1063, 1066 (2006).
17. *Id.*
18. *Id.*
19. *Id.*
20. *Williams v. State of Oklahoma Department of Transportation*, Okla. Civ. App., Div. 3, 998 P.2d 1245, 1252 (2000).
21. *Id.* at 1248.

22. *Id.*
23. *Id.* at 1247.
24. *American Heritage Dictionary of the English Language* 1284 (New College Edition 1976).
25. Oklahoma Constitution Article 2, §24.
26. See *Fairfax Oil Co. v. Bolinger*, 97 P.2d 574, 575 (Okla. 1939), *Oklahoma City v. West*, 7 P.2d 888, 891 (Okla. 1931).
27. *Schaeffer v. Schaeffer*, 1987 OK 30, 743 P.2d 1038, 1040).
28. *Id.* at 1039
29. *British-American Oil Producing Co. v. McClain*, 1942 OK 89, 126 P.2d 530, 533.
30. *Id.* at 532.
31. *Gulf Oil Corporation v. Hughes*, 1962 OK 39, 371 P.2d 81, 83.
32. See *Oklahoma City v. West*, 1931 OK 693, 7 P.2d 888, 892.
33. Osborne M. Reynolds, *Local Government Law* 153 (1982).
34. *Suntide Inn Operating Corp. v. State ex rel. Oklahoma State Highway Commission*, 1977 OK 204, 571 P.2d 1207, 1210.

ABOUT THE AUTHOR



Mark Ready is an attorney in Piedmont. He received a B.B.A. with honors from Texas Tech University in 1976 and began working as a landman. In 1994, he graduated with honors from the OU College of Law, receiving the Outstanding Oil & Gas Law Student Award from the Mineral Lawyers Society of Oklahoma City. His work includes oil and gas, contracts, including government contracts, estate planning and general law practice.

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Deadline: Aug. 1, 2016

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

Oklahoma Recognizes Military Spouse Sacrifices with New Licensing Rule

By Elizabeth Jamison

Frequent moves every two to three years to different states or even other countries. Multiple bar exams taken and passed. Job searches repeated every few years. Annual dues and CLE requirements in numerous jurisdictions. Balancing deployments and the instability of the military lifestyle with the demands of a legal career. These are the common stories shared by members of the Military Spouse JD Network (MSJDN), a military spouse attorney bar association that supports licensing rules to accommodate the unique challenges created by pursuing a legal career while married to a servicemember. Now some states, including Oklahoma, are stepping up to help remove barriers to licensing and employment to support military families.

On Dec. 15, 2014, Oklahoma became the 12th state to demonstrate meaningful support for military spouse attorneys when the state's Supreme Court issued an order allowing a licensing accommodation for attorneys moving to the state with an active duty servicemember. The new rule, found in Section 7 of Rule 2, permits an attorney in good standing in another jurisdiction, who is the current spouse of a servicemember in the U.S. Uniformed Services, to be admitted in Oklahoma without taking a bar examination. The attorney must hold a J.D. from a law school accredited by the ABA, submit evidence of a passing score on the multi-state professional responsibility exam, and fulfill several other requirements. Admission is not available under this rule if the applicant has taken and failed the Oklahoma bar exam in the past five years. The special temporary per-

mit to practice granted under this provision ends upon the transfer of the military member out of Oklahoma or the termination of military status of the servicemember or the spouse.

Bar exams are hardly the only hurdles for military spouse attorneys. While many professions allow employees to provide input concerning job location, a military member is under orders to go wherever the service deems is in the national interest for the duration of their commitment. Constant moves test a military spouse's job-seeking skills. A patchwork of prior positions and gaps in employment limits their possibilities for firm promotion. The knowledge that another move is around the corner inhibits long-term client building. Deployments often make them temporarily single parents in need of childcare in areas where they have few contacts. Eliminating the

In Re New Rule Granting Special Temporary Permit to Current Military Spouse

2014 OK 114

Here is the language for the new Section 7:

Section 7. A person who is the current spouse of a servicemember in the United States Uniformed Services and who meets the following requirements may, upon motion, apply to the Supreme Court for a Special Temporary Permit to be admitted to the practice of law in the State of Oklahoma, without the requirement of taking an examination, if the applicant would otherwise be fully qualified to take the bar examination in Oklahoma under the rules of the Supreme Court. An applicant shall:

- a. Apply under this rule upon forms prescribed by the Board of Bar Examiners;
- b. Be at least 18 years of age;
- c. Hold a Juris Doctorate degree from an American Bar Association approved law school;
- d. Be lawfully admitted to practice law in any other state, territory or commonwealth of the United States or in the District of Columbia;
- e. Submit evidence of a passing score on the Multistate Professional Responsibility Examination;
- f. Establish that the applicant is a member in good standing in all jurisdictions where the applicant was previously admitted;
- g. Have good moral character, due respect for the law, and fitness to practice law;
- h. Provide at his or her expense a background investigation to determine character and fitness from the National Conference of Bar Examiners, pursuant to Rule Four, Section 2(e);
- i. Take the oath of attorneys which is set forth in Rule One, Section 4, of the Rules Governing Admission to the Practice of Law in the State of Oklahoma and file the same with the Clerk of the Supreme Court;

continued on next page

need for an additional bar exam relieves a significant portion of these stressors for military spouse attorneys in Oklahoma and expedites their job search efforts, allowing them to contribute to supporting their families. As troop levels are drawn down, it is more important than ever for military spouses to have the opportunity to support their families.

Although some families decide not to move with the servicemember, the resulting geographic separations only compound the hardship on families already saying frequent goodbyes due to training and overseas deployments. 41 percent of MSJDN members have taken two or more bar exams and four out of five members report that their spouse's military service has negatively affected their legal career. Approximately half have made the difficult decision to live apart from their spouse in order to maintain a legal career. The U.S. Department of

“The unemployment rate for military spouses is three times that of their civilian counterparts.”

Defense (DOD) has conducted studies indicating there are significant force benefits to keeping families together. The special temporary permit assists with this by eliminating a cause for separation and allowing military families to stay united.

The unemployment rate for military spouses is three times that of their civilian counterparts. High unemployment and underemployment of military spouses impacts the entire family and are primarily the result of the frequent transfers. Because of the recognized impact on retention and readiness of the force, military spouse licensing and employment are a current priority for the DOD. The new special temporary permit under Section 7 supports this goal and allows military families to live together in Oklahoma while both spouses pursue meaningful careers.

Oklahoma was the 12th state to adopt such a licensing rule proposed by the Military Spouse JD Network to recognize the unique challenges faced by military spouses in the practice of law. Other states to pass comparable rules include

Idaho, Arizona, Texas, Colorado, North Carolina, Illinois, South Dakota, Virginia, Massachusetts, New York and New Jersey. Similar rules are under consideration in Alabama, Alaska, California, Delaware, Florida, Georgia, Ohio, Maryland, South Carolina and Washington.

“We’re so proud of this recognition of military spouse employment issues in a vital military state like Oklahoma. The impact of this rule will be profound on the families of military spouse attorneys,” said Military Spouse JD Network President Rachel Winkler, who oversees the organization’s efforts to propose military spouse licensing accommodations. “Continuing a legal career while following a servicemember is now a viable option for military spouses facing moves to the many military installations in Oklahoma.”

Rule 7’s special temporary permit demonstrates significant support from the state for military families, while still maintaining the high standards required of the legal profession. Accommodating the unique needs of military spouse attorneys comes at little cost but makes a significant difference to military families. While the number of military spouse attorneys in the state may not be large, this new rule sends a message of support to the entire Oklahoma military community.

ABOUT THE AUTHOR



Elizabeth Jamison is the communications director for the Military Spouse JD Network. She currently lives in Rhode Island with her husband, a Navy pilot. In the past five years, they have also lived in California and Florida. Despite the transient military lifestyle, Ms. Jamison maintains her career by managing a virtual law practice and serving of counsel to the Thomas Carter Law Office. She also volunteers with military spouse groups, Legal Aid, and Junior League. She received her J.D. from Thomas Jefferson School of Law, San Diego, Calif.

j. Sign the Roll of Attorneys; provided, however, that if the applicant is unable, by reason of absence, to sign the Roll, applicant may grant the power of attorney to the Administrative Director of the Board of Bar Examiners to sign said Roll of Attorneys for applicant;

k. Submit evidence which is satisfactory to the Supreme Court of the State of Oklahoma that the applicant is the current spouse of a servicemember in the United States Uniformed Services. This provision shall not be construed to apply to former military spouses; and

l. Submit evidence that the servicemember is on military orders within the State of Oklahoma.

No applicant for admission without examination under this section shall be admitted if the applicant has taken and failed an Oklahoma bar examination within the last five years without having later passed the examination.

Upon termination of the military status of either the dependent or the servicemember; or, in the event of a military transfer outside the State of Oklahoma, the right of such person to practice law in the State of Oklahoma shall terminate unless such person shall have been admitted to practice law in the State of Oklahoma pursuant to some other rule.

A person admitted under this section will not incur an application fee pursuant to Rule Seven (f) of these rules.

Any person admitted under this section must comply with the Rules Creating and Controlling the Oklahoma Bar Association as set forth in Title 5, Chapter 1, Appendix 1, Article 2, Section 5.

Any person admitted under this section will be subject to the provisions of Rule Ten of these rules.

Watch List Shrinks

By Duchess Bartmess

The late February deadlines for bills and joint resolutions being reported out of committee have passed. The number of measures that were designated for the Legislative Monitoring Committee to watch has been greatly reduced. The original watch list compiled from the Saturday Legislative Reading Day consisted of 505 measures. As a result of legislative action to date, that list has been reduced to 213 measures, which the committee will continue to watch.

Only one of the bills and joint resolutions discussed in the February report has been reported out of committee.

HB 1119 Now on General Order. Relates to recording and release of mortgages. Reported out of the House Economic Development, Commerce and Real Estate Committee without amendment.

Although the other bills and joint resolutions reported on have not been reported out of the committee assigned to in the house of origin, they can be revived at a later time in the session.

Here is the current status of each of the measures listed in the February report that are still in committee:

SB 768 Addressed commissioners of the state of Oklahoma to the National Conference of Commissioners on Uniform State Laws.

SJR 28 Provided limits on recovery for motor vehicle accidents if claimant is not in compliance with the compulsory insurance law.



HB 1050 Required court order if person refuses to submit to test for determining alcohol concentration in breath or blood except in cases of serious personal injury or death.

HB 1056 Created "Shareholders Bill of Rights Act."

HB 2199 Created new "Lawyers Right to Work Act."

The following bills and joint resolutions came out of committee and are now on general order, ready for consideration by the house of origin, which are still being tracked by the committee.

HB 1042 Prohibits parents who participate in shared parenting time from paying increased child support amount. Reported out of the House Judiciary and Civil Procedure Committee without amendment.

HB 1918 Authorizes court to award presumed father custody if it is in the best interests of the child. Reported out of the House Children, Youth and Family Services Committee without amendment.

HB 1457 Child custody procedure requiring home study and education review prior to modifying order based on child preference. Committee substitute reported out of House Children, Youth, and Family Services Committee.

SB 445 Modifies child support provisions, clarifying adjustment formula. Reported out of the Senate Committee on Judiciary without amendment.

HB 1125 Provides for deleting issuance of marriage licenses requirement, provides for mar-

riage certificates and affidavits of common law marriage. Committee Substitute reported out of House Judiciary and Civil Procedure Committee.

HB 1149 Addresses in terrorem clause prescribing burden of proof in action to contest a will. Committee substitute reported out of House Judiciary and Civil Procedure Committee.

SB 51 Amends section 95 of Title 12, establishing a one-year statute of limitations in actions challenging the constitutionality of an act of the Legislature pursuant to Section 57 of Article V of the Oklahoma Constitution. Reported out of Senate Committee on Judiciary as amended with title stricken.

SB 362 Relating to recording activity of law enforcement in public area. Amended in the Senate Committee on Public Safety and reported out with the title stricken.

SB 356 Authorizing recovery of reasonable attorney fees, costs and litigation expenses by prevailing party in any action subject to the provisions of the Energy Litigation Reform Act. Amended and reported out of the Senate Committee on Judiciary with the title stricken.

SB 765 Establishes two-year statute of limitation on recovery in an action based on tort, contract or otherwise, for damages for injury or death against a health care provider for alleged professional negligence, for the performance of health care services without consent, or for error or omission in the practice of the health care provider's profession. Repeals Section 18

of Title 76. Reported out of Senate Committee on Judiciary as amended with the title stricken.

CURRENT BILL STATUS?

To find the current status of a bill, scroll down to the bottom of the Oklahoma State Legislature's website at www.oklegislature.gov. More information about bills the OBA is watching can be found at www.okbar.org/members/Legislative.

OBA DAY AT THE CAPITOL

Again, every OBA member is encouraged to participate in the OBA Day at the Capitol on Tuesday, March 24. Information regarding pending legislation of interest that may not have been addressed so far in these series of reports will be presented. Regardless of the area of professional interest of an individual bar member, this is a great opportunity to meet and speak to your senator and representative regarding issues important to you. Lunch will be provided at the bar center for attendees. An RSVP is required. So, I say again, put this date on your business calendar and come and participate — let your voice be heard.

ABOUT THE AUTHOR



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



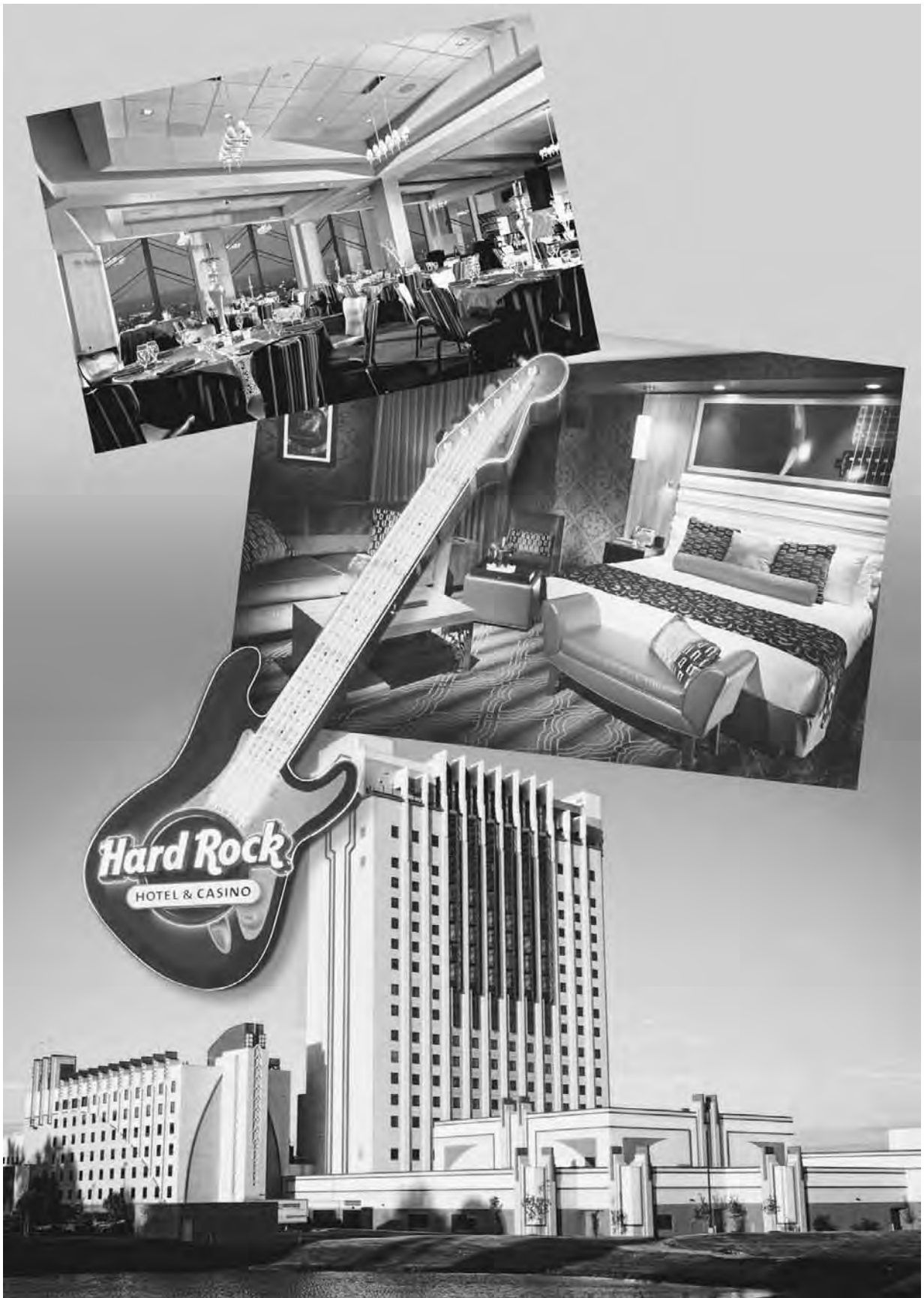
OBA DAY at the CAPITOL

**Tuesday,
March 24, 2015**



TIME	TOPIC/EVENT	SPEAKER/LOCATION
10-10:30 a.m.	Registration	Emerson Hall, Okla. Bar Center 1901 N. Lincoln Blvd.
10:30-10:35 a.m.	Introduce OBA President David A. Poarch Jr.	John Morris Williams OBA Executive Director
10:35-10:40 a.m.	Welcome and Introduction of Senator Kay Floyd	David A. Poarch Jr. OBA President
10:40-10:55 a.m.	How to Communicate Effectively with Law Makers	Senator Kay Floyd
10:55-11:05 a.m.	Access to Justice and other legislation related to the Supreme Court	Chief Justice John Reif
11:05-11:35 a.m.	Pending bills of interest	Clay Taylor, Legislative Liaison
11:35-11:45 a.m.	Bills of interest to the Trial Courts	Judge James B. Croy, Oklahoma Judicial Conference
11:45-12 p.m.	Status of any noteworthy legislation and remaining legislative timelines	Representative Randy Grau
12-12:20 p.m.	Comments on Budget Process	Senator Clark Jolley
12:20-12:55 p.m.	Lunch	Emerson Hall
12:55-1 p.m.	Instructions	John Morris Williams
1 p.m.	Visit with Legislators	State Capitol Building

Please RSVP to debbieb@okbar.org or call Debbie Brink at 405-416-7014; 800-522-8065



2015 OBA Solo & Small Firm Conference and YLD Midyear Meeting

By Jim Calloway

This year's OBA Solo & Small Firm Conference is not to be missed!

This year's conference contains critical information gathered for you all in one place. Even if you may not consider your firm a "small firm," this year's conference is for you. Because this year we are featuring a program called "Practice Management Shoot-out at the OK Bar."

In my view, utilizing practice management software (or services) is key for almost every modern law firm. So much time is saved when the client file is all on the computer network and that each client file has a "home page" displaying certain information with links to everything else, including both internally created and "received and scanned" documents.

This year we will have more practice management software/service vendors than ever before, which will give you a chance to see the very best features of their products in our unique "shootout" talk format. Then you will be able to talk with these vendors in-depth at their display booths.

Having trouble deciding on which package you want? Wondering if your current package is really the best for your firm? You will not have a greater opportunity in-state to do head-to-head comparisons and talk to actual people from the companies about these products that are critical to the future of your law practice.

We are still signing up sponsor/presenters for the shootout and the order of the presentations will be set by random drawing. Check the conference website — www.okbar.net/solo2015 — for updates and to register.

One special guest this year is Ben Schorr. He is CEO of Roland Schorr & Tower, a technology consulting firm, and is the author of many books for lawyers including *The Lawyer's Guide to Microsoft Outlook*, *The Lawyer's Guide to Microsoft Word* and *OneNote in One Hour*. He's been a Microsoft MVP for more than 19 years. He will talk about being more "Hands On with Microsoft Word," along with explaining how MS Office 365 works.

Our other special guest is Joan M. Burda, who practices law in Lakewood, Ohio. Ms.



Burda is the author of the award-winning book, *Estate Planning for Same-Sex Couples*, Second Edition (ABA, 2012) and the book *Gay, Lesbian and Transgender Clients: A Lawyer's Guide* (ABA, 2008). With the 2014 arrival of same sex marriage in Oklahoma, there are many new issues to consider when representing these clients. Ms. Burda will speak on "Estate Planning for the Same Sex Couple" and join Tulsa attorney Keith Jones for a presentation covering both "Representing the LGBT Client and Same Sex Divorce."

Lawyers who practice criminal defense have a wealth of information available this year as Oklahoma City attorney Sonja Porter will conduct a "Wet DUI Lab" on Friday and OBA President-Elect Garvin Isaacs will give a two-hour program, "The Criminal Trial,"

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OKLAHOMA BAR ASSOCIATION
2015 SOLO & SMALL FIRM CONFERENCE
 & YLD MIDYEAR MEETING

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on Saturday. Anyone who has ever heard Garvin Isaacs speak knows the attendees at this program will be in for a treat, and all conference attendees will receive his materials, which include more than 150 pages of motions and forms.

Our Legislative Update panel was so popular last year that we are bringing it back, with Edmond lawyer Noel Tucker serving as the moderator.

Evernote is a great tool for managing your information, especially information that does not fit into one of your established systems. Tulsa attorney Kevin Gassaway has volunteered to give us an in-depth training with his presentation, "Evernote for Lawyers."

On Saturday morning, I'm going to follow up the shoot-out with a program called "Paperless Workflows — Perfecting the Process." My materials will include sample policies for how a firm actually implements the "scan everything that comes in the front door" philosophy without losing track of some important information.

This year you not only have a chance to obtain all 12 hours of MCLE credit, but they will include two hours of ethics credit. Because in addition to our traditional ethics plenary session on Saturday morning, for our Friday evening entertainment and education we are hosting the OBA Family Law Singers Ethics Musical. The previous ethics musicals have always gotten rave reviews, and we are sure this one will be outstanding as well.

YLD MIDYEAR MEETING

Our conference is held in conjunction with the Young Lawyers Division Midyear Meeting. We hope all of our programming is useful for young lawyers, but I want to draw special attention to our programs on "Marketing and Client Development" and "Bankruptcy 7 & 13 Basics." We will also have attorney Brent Dishman inform us about common legal problem for our veterans in "Legal Issues Impacting our Heroes" and Donna Jackson with some strategic insight in her program, "Financial Decisions using Durable POA and Other Devices to Avoid Guardianship." Jeffrey Taylor, also known as the Droid Lawyer, will be giving his presentation on "The Google-Powered Law Office."

You don't want to miss this year's conference. There will be fun, camaraderie, hospitality, prizes and a lot of great information all in one rock and roll-themed location.

Review the accompanying program schedule and visit our website at www.okbar.net/solo2015.

HOTEL RESERVATIONS

Reserve your room by calling 800-760-6700 and using the block code OBAJUNE 182015. Make your reservation by May 27, 2015, to take advantage of the discounted rate.

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

OBA SOLO & SMALL FIRM CONFERENCE

JUNE 18-20 2015 • HARD ROCK HOTEL & CASINO • TULSA, OK

DAY 1 • Thursday June 18

3 -
6:30 p.m.

Conference Registration (Sequoyah Foyer North)

7 p.m.

Dinner (Sky Room, 18th Floor)

DAY 2 • Friday June 19

8:25 a.m.

Welcome

OBA President David Poarch

8:30 –
9:30 a.m.

60 Tips in 60 Minutes

Ben Schorr, Jeffrey Taylor
and Jim Calloway

9:30 a.m.

Break

9:40 -
11 a.m.

Practice Management Shootout at the OK Bar

11:15 a.m.

Break

11:25 a.m. -
12:15 p.m.

**Marketing &
Client Development**
Zach Smith

**Estate Planning for the
Same Sex Couple**
Joan Burda

**Bankruptcy 7 & 13
Basics**
Brian W. Huckabee

12:15 - 1:10 p.m.

LUNCH

(Included in Seminar Registration Fee)

1:10 - 2 p.m.

**Legislative Update
Panel Discussion**
Noel Tucker,
Moderator

**Hands on with
Microsoft Word**
Ben Schorr

**“Wet” DUI Lab
(Part 1)**
Sonya Porter

2 p.m.

Break

2:10 -
3 p.m.

**The Google-Powered
Law Office**
Jeffery Taylor

**Be Forward Thinking – Using
the OBA Planning Ahead
Guide**
Joe Balkenbush

**“Wet” DUI Lab
(Part 2)**
Sonya Porter

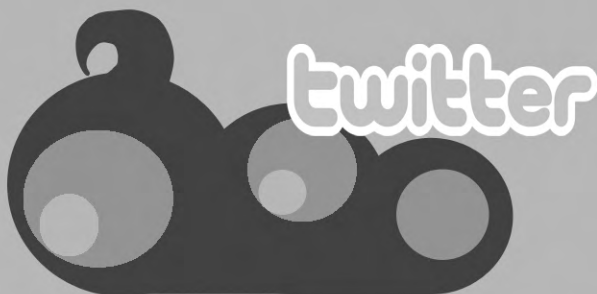
6:30 p.m.

Evening CLE – Family Law Ethics Musical Dinner Theater
(Sky Room, 18th floor)

Approved for 12 hours MCLE / 2 Ethics

DAY 3 • Saturday June 20

8:25 a.m.	Welcome OBA Executive Director John Williams		
8:30 – 9:20 a.m.	Ethics for Solo & Small Firm Lawyers Gina Hendryx and Joe Balkenbush		
9:20 a.m.	Break		
9:30 – 10:20 a.m.	Paperless Workflows - Perfecting the Process Jim Calloway	The Criminal Trial (Part 1) Garvin Isaacs	
10:20 - 10:45 a.m.	Break (Hotel check out)		
10:45 - 11:45 a.m.	Representing the LGBT Client and Same Sex Divorce Keith Jones and Joan Burda	Microsoft Office 365, Surface Pro 3 and Windows 10 Ben Schorr	The Criminal Trial (Part 2) Garvin Isaacs
11:45 a.m.	LUNCH <i>(Included in Seminar Registration Fee)</i>		
12:30 – 1:30 p.m.	Evernote for Lawyers Kevin Gassaway	Legal Issues Impacting our Heroes Brent Dishman	Final Decisions using Durable POA and Other Devices to Avoid Guardianship Donna Jackson
1:30 p.m.	Break		
1:40 - 2:30 p.m.	What's Hot & What's Not in Law Office Management & Technology Ben Schorr, Jeffrey Taylor and Jim Calloway		



For the latest OBA news,
follow us [@OklahomaBar](#)
and [@OBACLE](#)

OKLAHOMA BAR ASSOCIATION

2015 SOLO & SMALL FIRM CONFERENCE

ANDYLD MIDYEAR MEETING

[LIVE]



**REGISTER ONLINE AT
OKBAR.NET/SOLO2015
OR RETURN THIS FORM.**

FULL NAME: _____ OBA#: _____

ADDRESS: _____ CITY/STATE/ZIP: _____

PHONE: _____ FAX: _____ EMAIL: _____

LIST NAME AND CITY AS IT SHOULD
APPEAR ON BADGE IF DIFFERENT FROM ABOVE: _____

REGISTRATION FEES: REGISTRATION FEE INCLUDES 12 HOURS CLE CREDIT, INCLUDING TWO HOURS OF ETHICS. INCLUDES ALL
MEALS: EVENING BUFFET THURSDAY & FRIDAY, BREAKFAST BUFFET FRIDAY & SATURDAY, LUNCH BUFFET FRIDAY & SATURDAY.

EARLY ATTORNEY REGISTRATION (ON OR BEFORE JUNE 4, 2015)

CIRCLE ONE

\$200

LATE REGISTRATION (JUNE 5, 2015 OR AFTER)

\$250

EARLY ATTORNEY & GUEST REGISTRATION (ON OR BEFORE JUNE 4, 2015)

\$300

LATE REGISTRATION (JUNE 5, 2015 OR AFTER)

\$350

GUEST ATTENDEE NAME: _____

EARLY FAMILY REGISTRATION (ON OR BEFORE JUNE 4, 2015)

\$350

LATE REGISTRATION (JUNE 5, 2015 OR AFTER)

\$400

GUEST: _____ GUEST: _____

GUEST: _____ GUEST: _____

GOLF: THERE WILL BE NO ORGANIZED GOLF TOURNAMENT. FOR TEE TIMES AND OTHER INFORMATION,
PLEASE CALL THE CHEROKEE HILLS GOLF COURSE AT 1-800-760-6700, EXT. 6.

MAKE CHECK PAYABLE TO THE OKLAHOMA BAR ASSOCIATION. MAIL MEETING REGISTRATION FORM TO:
CLE REGISTRAR, P.O. BOX 53036, OKLAHOMA CITY, OK 73152. FAX MEETING REGISTRATION FORM TO (405)416-7092.

FOR PAYMENT USING _____ VISA _____ MASTERCARD _____ DISCOVER _____ AMEX

CREDIT CARD: _____

EXPIRATION DATE: _____ AUTHORIZED SIGNATURE: _____

NO DISCOUNTS. CANCELLATIONS WILL BE ACCEPTED AT ANYTIME ON OR BEFORE JUNE 4, 2015 FOR A FULL REFUND : A \$50
FEE WILL BE CHARGED FOR CANCELLATIONS MADE ON OR AFTER JUNE 5, 2015. NO REFUNDS AFTER JUNE 10, 2015. CALL
1 (800) 760-6700 FOR HOTEL RESERVATIONS. REFER TO OKLAHOMA BAR ASSOCIATION WHEN RESERVING ROOM
AND/OR BLOCK CODE OBAJUNE182015 DEADLINE FOR SPECIAL RATE RESERVATIONS IS MAY 27, 2015.



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

January 1, 2014 through December 31, 2014

SCBD No. 6230

Pursuant to the provisions of Rule 14.1, Rules Governing Disciplinary Proceedings (RGDP), 5 O.S. 2011 ch. 1, app. 1-A, the following is the Annual Report of grievances and complaints received and processed for 2014 by the Professional Responsibility Commission and the Office of the General Counsel of the Oklahoma Bar Association.

THE PROFESSIONAL RESPONSIBILITY COMMISSION

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

Lawyer members serving on the Professional Responsibility Commission during 2014 were Melissa Griner DeLacerda, Stillwater; Angela Ailles Bahm, Oklahoma City; William R. Grimm, Tulsa; Jon K. Parsley, Guymon; and Stephen D. Beam, Weatherford. F. Douglas Shirley was appointed as a lawyer member to fulfill the

unexpired term of Jon K. Parsley.¹ Non-Lawyer members were Tony R. Blasier, Oklahoma City and Burt Holmes, Tulsa. Stephen D. Beam served as Chairperson and Tony R. Blasier served as Vice-Chairperson. Commission members serve without compensation but are reimbursed for actual travel expenses.

RESPONSIBILITIES

The Professional Responsibility Commission considers and investigates any alleged ground for discipline, or alleged incapacity, of any lawyer called to its attention, or upon its own motion, and takes such action as deemed appropriate to effectuate the purposes of the Rules Governing Disciplinary Proceedings. Under the supervision of the Professional Responsibility Commission, the Office of the General Counsel investigates all matters involving alleged misconduct or incapacity of any lawyer called to the attention of the General Counsel by grievance or otherwise, and reports to the Professional Responsibility Commission the results of investigations made by or at the direction of the General Counsel. The Professional Responsibility Commission then determines the disposition of grievances or directs the instituting of a formal complaint for alleged misconduct or personal incapacity of an attorney. The attorneys in the Office of the General Counsel prosecute all proceedings

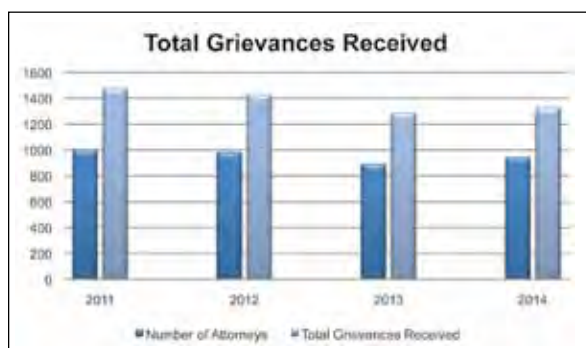
under the Rules Governing Disciplinary Proceedings, supervise the investigative process, and represent the Oklahoma Bar Association at all reinstatement proceedings.

VOLUME OF GRIEVANCES

During 2014, the Office of the General Counsel received 208 formal grievances involving 155 attorneys and 1116 informal grievances involving 894 attorneys. In total, 1324 grievances were received against 945 attorneys. The total number of attorneys differs because some attorneys received both formal and informal grievances. In addition, the Office handled 342 items of general correspondence, which is mail not considered to be a grievance against an attorney.²

On January 1, 2014, 206 formal grievances were carried over from the previous year. During 2014, 208 new formal grievances were opened for investigation. The carryover accounted for a total caseload of 414 formal investigations pending throughout 2014. Of those grievances, 217 investigations were completed by the Office of the General Counsel and presented for review to the Professional Responsibility Commission. Therefore, 197 investigations were pending on December 31, 2014.

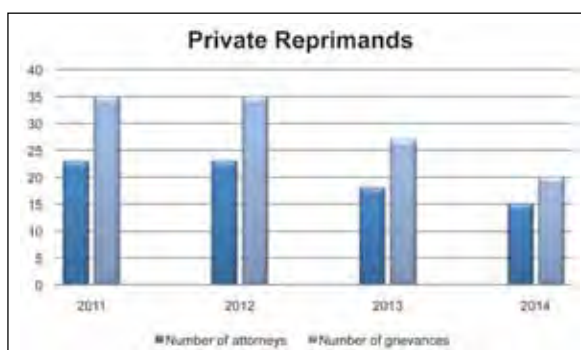
The time required for investigating and concluding each grievance varies depending on the seriousness and complexity of the allegations and the availability of witnesses and documents. The Professional Responsibility Commission requires the Office of the General Counsel to report monthly on all informal and formal grievances received and all investigations completed and ready for disposition by the Commission. In addition, the Commission receives a monthly statistical report on the pending caseload. The Board of Governors is advised statistically each month of the actions taken by the Professional Responsibility Commission.



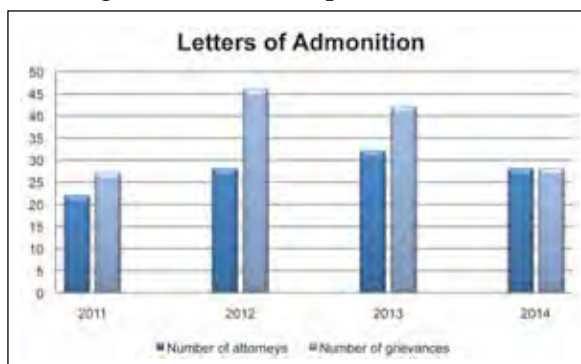
DISCIPLINE IMPOSED BY THE PROFESSIONAL RESPONSIBILITY COMMISSION

1. Formal Charges. During 2014, the Commission voted the filing of formal disciplinary charges against 10 lawyers involving 31 grievances. In addition, the Commission also oversaw the investigation of nine Rule 7, RGDP matters filed with the Chief Justice of the Oklahoma Supreme Court.

2. Private Reprimands. Pursuant to Rule 5.3(c), RGDP, the Professional Responsibility Commission has the authority to impose private reprimands, with the consent of the attorney, in matters of less serious misconduct or if mitigating factors reduce the sanction to be imposed. During 2014, the Commission issued private reprimands to 15 attorneys involving 20 grievances.



3. Letters of Admonition. During 2014, the Commission issued letters of admonition to 28 attorneys involving 28 grievances cautioning that the conduct of the attorney was dangerously close to a violation of a disciplinary rule wherein the Commission believed warranted a warning rather than discipline.



4. Dismissals. The Commission dismissed 17 grievances due to the resignation of the attorney pending disciplinary proceedings, a con-

tinuing lengthy suspension or disbarment of the respondent attorney, or due to the attorney being stricken from membership for non-compliance with MCLE requirements or non-payment of membership dues. Furthermore, the Commission dismissed one grievance due to death of an attorney and 13 grievances upon successful completion of a diversion program by the attorney. The remainder were dismissed where the investigation did not substantiate the allegations by clear and convincing evidence.

5. Diversion Program. The Commission may also refer respondent attorneys to the Discipline Diversion Program where remedial measures are taken to ensure that any deficiency in the representation of a client does not occur in the future. During 2014, the Commission referred 35 attorneys to be admitted into the Diversion Program for conduct involving 41 grievances.

The Discipline Diversion Program is tailored to the individual circumstances of the participating attorney and the misconduct alleged. Oversight of the program is by the OBA Ethics Counsel with the OBA Management Assistance Program Director involved in programming. Program options include: Trust Account School, Professional Responsibility/Ethics School, Law Office Management Training, Communication and Client Relationship Skills, and Professionalism in the Practice of Law class. In 2014, instructional courses were taught by OBA Ethics Counsel Travis Pickens and OBA Management Assistance Program Director Jim Calloway.

As a result of the Trust Account Overdraft Reporting Notifications, the Office of the General Counsel is now able to monitor when attorneys encounter difficulty with management of their IOLTA accounts. Upon recommendation of the Office of the General Counsel, the Professional Responsibility Commission may place those individuals in a tailored program designed to instruct on basic trust accounting procedures.

2014 Attorney Participation in Diversion Program Curriculum

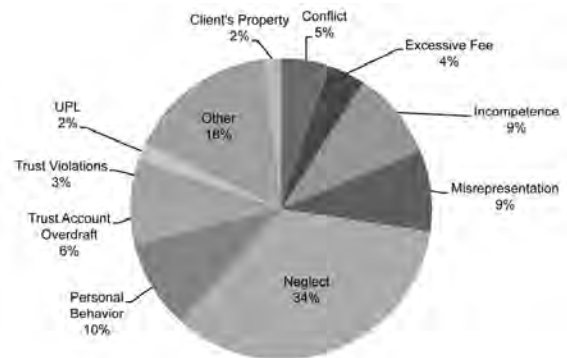
Law Office Management Training:	13 Attorneys
Communication and Client Relationship Skills:	21 Attorneys
Professionalism in the Practice of Law:	18 Attorneys
Professional Responsibility / Ethics School:	21 Attorneys
Client Trust Account School:	21 Attorneys
Law Office Consultations:	18 Attorneys

SURVEY OF GRIEVANCES

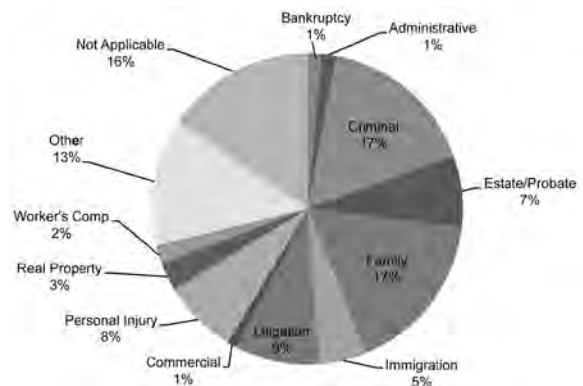
In order to better inform the Oklahoma Supreme Court, the bar and the public of the nature of the grievances received, the numbers of attorneys complained against, and the areas of attorney misconduct involved, the following information is presented.

Total membership of the Oklahoma Bar Association as of December 31, 2014 was 17,649 attorneys. The total number of members include 11,982 males and 5,667 females. Formal and informal grievances were submitted against 945 attorneys. Therefore, approximately five percent of the attorneys licensed to practice law in Oklahoma received a grievance in 2014.

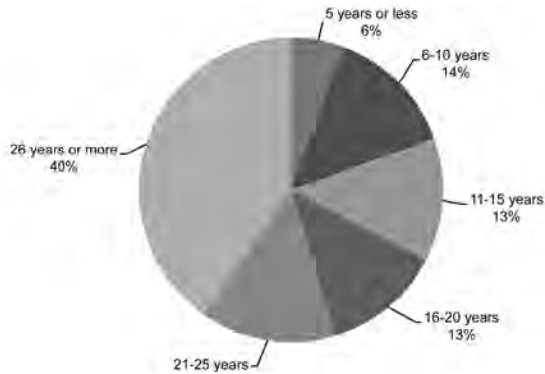
A breakdown of the type of attorney misconduct alleged in the 208 formal grievances received by the Office of the General Counsel in 2014 is as follows:



Of the 208 formal grievances, the area of practice is as follows:



The number of years in practice of the 155 attorneys receiving formal grievances is as follows:



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

DISCIPLINE IMPOSED BY THE OKLAHOMA SUPREME COURT

In 2014, 21 disciplinary cases were acted upon by the Oklahoma Supreme Court. The public sanctions are as follows:

Disbarment:

Respondent	S. Ct. Order Date
Tom J. Wilcox (Rule 6 & Rule 7)	01/14/14
Phillip Offill Jr.	04/15/14

Resignations Pending Disciplinary Proceedings Approved by Court:

Respondent	S. Ct. Order Date
Grant Cheadle	02/10/14
Joel Edward Scott	03/05/14
William Mark Blasdel	05/27/14
Frank Kirk Jr.	07/15/14
M. Clyde Faulkner	07/15/14
Keaton Oberst	09/22/14
Sam George Caporal	11/24/14

Disciplinary Suspensions:

Respondent	Length	S. Ct. Order Date
John Weigel	2 years	02/04/14
William Bernhardt	Deferred 2 years + 1 day	03/25/14
Mark Zannotti	2 years	04/08/14

David W. Knight	1 year	07/16/14
Clayton Ijams	385 days	11/13/14
Steven A. Hart	2 years + 1 day	11/18/14
Will Douglas Bradley	18 months	11/24/14

Public Censure:

Respondent

None

Dismissals:

Respondent	S. Ct. Order Date
Jennifer Layton	03/25/14
Jason Roselius	06/30/14
Susan Byrd	11/10/14

In addition to the public discipline imposed in 2014, the Court also issued the following non-public sanctions:

Disciplinary Suspensions:

Respondent	Length	S. Ct. Order Date
Rule 10 Confidential	Indefinite	09/29/14

Private Reprimands:

Respondent

None

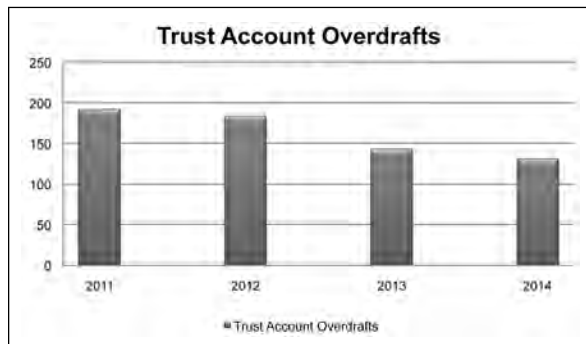
There were 12 attorney discipline cases pending with the Supreme Court of Oklahoma as of January 1, 2014. During 2014, 12 new formal complaints, nine Rule 7 Notices, and two Resignations Pending Disciplinary Proceedings were filed for a total of 35 cases filed and/or pending during the year. On December 31, 2014, 14 cases remained pending before the Oklahoma Supreme Court.

REINSTATEMENTS

There were six reinstatement cases filed with the Oklahoma Supreme Court and pending before the Professional Responsibility Tribunal as of January 1, 2014. There were six new petitions for reinstatement filed in 2014. In 2014, the Oklahoma Supreme Court approved four reinstatements and one application for reinstatement was withdrawn. On December 31, 2014, there were six petitions for reinstatement pending before the Professional Responsibility Tribunal and one petition for reinstatement pending before with the Supreme Court.

TRUST ACCOUNT OVERDRAFT REPORTING

The Office of the General Counsel, under the supervision of the Professional Responsibility Commission has implemented the Trust Account Overdraft Reporting requirements of Rule 1.15(j), Oklahoma Rules of Professional Conduct, 5 O.S. 2011, ch. 1, app. 3-A. Trust Account Overdraft Reporting Agreements are submitted by depository institutions. In 2014, 131 notices of overdraft of a client trust account were received by the Office of the General Counsel. Notification triggers a general inquiry to the attorney requesting an explanation for the deficient account. Based upon the response, an investigation may be commenced. Repeated overdrafts due to negligent accounting practices have resulted in referral to the Discipline Diversion Program for instruction in proper trust accounting procedures.



UNAUTHORIZED PRACTICE OF LAW

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

1. Requests for Investigation. In 2014, the Office of the General Counsel received 26 complaints for investigation of the unauthorized practice of law. The Office of the General Counsel fielded many additional inquiries regarding the unauthorized practice of law that are not reflected in this summary.

2. Practice Areas. Allegations of the unauthorized practice of law encompass various areas of law. In previous years, most unauthorized practice of law complaints involved non-lawyers or paralegals handling divorce and foreclosure matters, but those complaints have steadily declined over the last few years. In 2014, the complaints received reflect a continued increase in specialized areas of practice by

non-lawyers. Examples of such areas of practice investigated in 2014 include immigration, oil & gas, water rights litigation, personal injury and debt resolution. General practice denotes non-lawyers that offer legal services in more than one practice area.



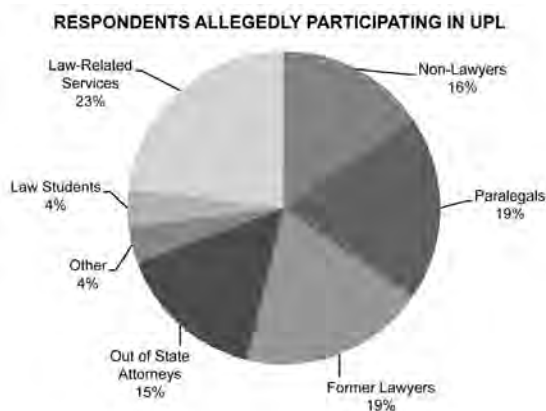
3. Referral Sources. Requests for investigations of the unauthorized practice of law stem from multiple sources. In 2014, the Office of the General Counsel received the most complaints from the opposing party or opposing counsel to the action in which the non-lawyer was participating. A significant number of referrals also come from Oklahoma or out of state attorneys that are not opposing counsel to the involved action. Judicial referrals, requests from State and Federal agencies and harmed members of the public also report alleged instances of individuals engaging in the unauthorized practice of law.

REQUESTS TO INVESTIGATE: REFERRAL SOURCES



4. Respondents. For 2014, most requests for investigation into allegations of the unauthorized practice of law concern law-related services. Examples of law-related services include

process service, oil& gas, real estate, debt collection and tort claim evaluation. For purposes of this summary, the category “paralegal” refers to an individual who advertise as a paralegal and performs various legal tasks for their customers, including legal document preparation. The category “non-lawyers” are individuals that do not perform a law-related service or operate as a paralegal. The “Former Lawyers” category includes lawyers who have been disbarred, stricken, resigned their law license pending disciplinary proceedings, or otherwise voluntarily surrendered their license to practice law in the State of Oklahoma.



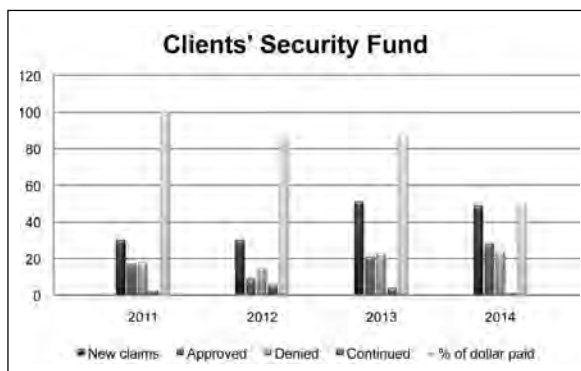
5. Enforcement. In 2014, of the 26 cases opened, the Office of the General Counsel took formal action in 10 matters. Formal action includes issuing cease and desist letters, initiating formal investigations through the attorney discipline process, referring a case to an appropriate state and/or federal enforcement agency or filing the appropriate district court action. Eight cases were closed for no finding of unauthorized practice of law. The remainder of the cases is still pending.

CLIENTS' SECURITY FUND

The Clients' Security Fund was established in 1965 by Court Rules of the Oklahoma Supreme Court. The Fund is administered by the Clients' Security Fund Committee which is comprised of 17 members, 14 lawyer members and 3 non-lawyers, who are appointed in staggered three-year terms by the OBA President with approval from the Board of Governors. In 2014, the Committee was chaired by lawyer member Micheal Salem, Norman. Chairman Salem has served as Chair for the Clients' Security Fund Committee since 2006. The Fund furnishes a means of reimbursement to clients

for financial losses occasioned by dishonest acts of lawyers. It is also intended to protect the reputation of lawyers in general from the consequences of dishonest acts of a very few. The Board of Governors budgets and appropriates \$100,000.00 each year to the Clients' Security Fund for payment of approved claims. In years when the approved amount exceeds the amount available, the amount approved for each claimant will be reduced in proportion on a prorata basis until the total amount paid for all claims in that year is \$100,000.00.

In 2014, due to the high volume of claims received and processed by the Committee, the Board of Governors sought and gained approval from the Supreme Court to increase the payout amount from \$102,847.34 to \$257,118.35. This permitted approved claims in 2014 to be paid at 50% of the approved amount rather than the approximate 20% if the amount had not been increased. The Office of the General Counsel provides staff services for the Committee. In 2014, the Office of the General Counsel investigated and presented to the Committee 53 new claims. The Committee approved 28 claims, denied 24 claims and continued 1 claim into the following year for further investigation.



CIVIL ACTIONS (NON-DISCIPLINE) INVOLVING THE OBA

The Office of the General Counsel has represented the Oklahoma Bar Association in the following civil (non-discipline) matters during 2014:

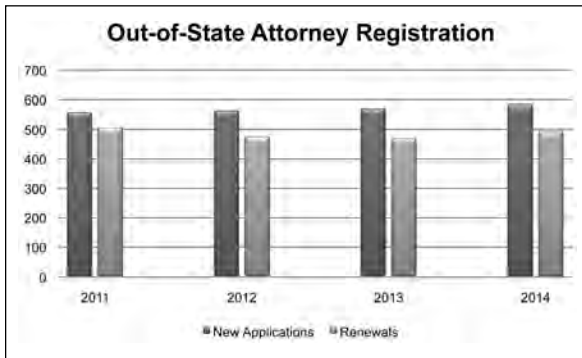
1. *State of Oklahoma ex rel. Oklahoma Bar Association v. Mothershed*, Oklahoma Supreme Court, SCBD 4687.
- *Mothershed v. Justices of the Supreme Court of Oklahoma, et al.* U.S. District Court for the Western District of Oklahoma, Case

- No. CIV-13-435. Mothershed filed a Complaint and Motion on April 29, 2013. The OBA filed a Motion to Dismiss on May 24, 2013. The District Court dismissed the Complaint with prejudice and entered an order of sanctions (pre-filing restrictions) against Mothershed on December 20, 2013. Mothershed filed motions to reconsider which were all denied by the District Court on February 7, 2014.
- *Mothershed v. Justices of the Supreme Court of Oklahoma, et al.*, Tenth Circuit Court of Appeals, Case No. 14-6044, docketed March 3, 2014. Mothershed appealed the dismissal of his Complaint to the Tenth Circuit. The OBA filed a joint answer brief and multiple motions in this matter. On July 1, 2014, the Tenth Circuit entered an Order and Judgment affirming the dismissal and imposition of sanctions.
 - *Mothershed v. Justices of the Supreme Court of Oklahoma, et al.*, United States Supreme Court, Case No. 14-5926. Mothershed filed a Petition for Writ of Certiorari and Motion to Leave to Proceed in Forma Pauperis on August 19, 2014. The OBA filed a Waiver of Response on September 10, 2014. The United States Supreme Court denied Mothershed's Petition on November 3, 2014.
2. *Pemberton v. Melissa DeLacerda*, Oklahoma County Case No. CV-2012-158, filed January 1, 2012. Dismissed February 6, 2012.
 - *Pemberton v. DeLacerda*, Oklahoma Supreme Court Case No. MA-110441, filed March 2, 2012. Pemberton filed a Writ of Mandamus and Application to Assume Original Jurisdiction. The Oklahoma Supreme Court denied Pemberton's Application to Assume Original Jurisdiction on April 23, 2012. The OBA filed its response to Petition in Error on May 14, 2012. The case was consolidated with Case Nos. 110,169 and 110,968 and assigned to the Court of Appeals when at issue on August 22, 2012. The dismissal was affirmed on November 21, 2013. Pemberton filed a Petition for Rehearing on December 5, 2013. The Petition for Rehearing was denied on December 18, 2014.
 - *Pemberton v. DeLacerda*, Oklahoma Supreme Court Case No. MA-110441, filed March January 6, 2014. Mr. Pemberton filed a Petition for Writ of Certiorari. The OBA filed its Response on January 21, 2014. The Oklahoma Supreme Court denied the Petition on March 24, 2014.
 3. *Amber Dawn Malcom v. Oklahoma Bar Association*, Oklahoma Supreme Court Case No. 112621, filed March 6, 2014. Ms. Malcom filed a Petition for Writ of Mandamus and Application to Assume Original Jurisdiction. The OBA filed its response on March 26, 2014. Malcom filed replies on April 7, 2014 and April 22, 2014. The Oklahoma Supreme Court denied Malcom's Application to Assume Original Jurisdiction on May 12, 2014.
 4. *State v. Moore*, Oklahoma County District Court Case No. CF-2004-351. The OBA was served with a subpoena duces tecum for attorney disciplinary records. The OBA filed its Motion to Quash on April 11, 2014. The motion was heard and the subpoena was quashed May 23, 2014.
 5. *Anagnost v. Oklahoma Spine Institute, et al.*, Oklahoma County District Court Case No. CJ-2013-6140. The OBA was served with a subpoena duces tecum for records obtained by OBA from third party for purposes of an attorney discipline investigation. The OBA objected to the production of documents pursuant to the Rules Governing Disciplinary Proceedings. Plaintiff filed a motion to compel performance on April 21, 2014. Plaintiff's Motion was denied on May 30, 2014.

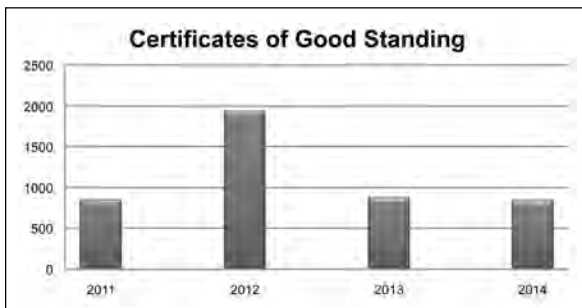
ATTORNEY SUPPORT SERVICES

1. **Out of State Attorney Registration.** In 2014, the Office of the General Counsel processed 584 new applications, 494 renewal applications and 18 renewal late fees submitted by out-of-state attorneys registering to participate in a proceeding before an Oklahoma Court or Tribunal. Out-of-State attorneys appearing pro bono to represent criminal indigent defendants, or on behalf of persons who otherwise would qualify for representation under the guidelines of the Legal Services Corporation due to their incomes, may request a waiver of the application fee from the Oklahoma Bar Association. Certificates of Compliance are issued after confirmation of the application information, the applicant's good standing in his/her licensing jurisdiction and payment of applicable fees. All obtained and verified information is submitted to the Oklahoma Court or

Tribunal as an exhibit to a “Motion to Admit Pro Hac Vice.”



2. Certificates of Good Standing. In 2014, the Office of the General Counsel prepared 848 Certificates of Good Standing/Disciplinary History at the request of Oklahoma Bar Association members. There is no fee to the attorney for preparation of same.



ETHICS AND EDUCATION

During 2014, the General Counsel, Assistant General Counsels, and the Professional Responsibility Commission members presented more than 75 hours of continuing legal education programs to county bar association meetings,

attorney practice groups, OBA programs, law school classes and various legal organizations. In these sessions, disciplinary and investigative procedures, case law, and ethical standards within the profession were discussed. These efforts direct lawyers to a better understanding of their ethical requirements and the disciplinary process, and informs the public of the efforts of the Oklahoma Bar Association to regulate the conduct of its members. In addition, the General Counsel was a regular contributor to *The Oklahoma Bar Journal*.

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

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

Gina Hendryx,
General Counsel
Oklahoma Bar Association

1. Jon Parsley resigned his position on the Professional Responsibility Commission April 4, 2014 upon being appointed District Judge for Texas County.

2. The initial submission of a trust account overdraft notification is classified as general correspondence. The classification may change to a formal grievance after investigation.



Professional Responsibility Tribunal Annual Report

January 1, 2014 — December 31, 2014

SCBD No. 6231

INTRODUCTION

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

COMPOSITION AND APPOINTMENT

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

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

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

The lawyer members of the PRT who served during all or part of 2014 were: Jeremy J. Beaver, McAlester; M. Joe Crosthwait, Jr., Midwest City; Tom Gruber, Oklahoma City; John B. Heatly, Oklahoma City; Gerald L. Hilsher, Tulsa; William G. LaSorsa, Tulsa; Charles Laster, Shawnee; Susan B. Loving, Edmond; Kelli M. Masters, Oklahoma City; Mary Quinn-Cooper, Tulsa; Michael E. Smith, Oklahoma City; Louis Don Smitherman, Oklahoma City; Neal E. Stauffer, Tulsa; and Noel K. Tucker, Edmond.

The non-lawyer members who served during all or part of 2014 were: Steven W. Beebe, Duncan; James W. Chappel, Norman; Christian C. Crawford, Stillwater; James Richard Daniel, Oklahoma City; Linda C. Haneborg, Oklahoma City; Kirk V. Pittman, Seiling; and Mary Lee Townsend, Tulsa.

The annual meeting was held on June 19, 2014, at the Oklahoma Bar Association offices. Agenda items included a presentation by Gina Hendryx, General Counsel¹ of the Oklahoma Bar Association, recognition of new members and members whose terms had ended, and discussions concerning the work of the PRT. M. Joe Crosthwait, Jr. was elected Chief Master

and Neal Stauffer was elected Vice-Chief Master, each to serve a one-year term.

GOVERNANCE

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

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

ACTION TAKEN AFTER NOTICE RECEIVED

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

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

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

After a proceeding is placed in the hands of a Trial Panel, it exercises general supervisory control over all pre-hearing and hearing issues.

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

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

TRIAL PANEL REPORTS

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

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

ANNUAL REPORTS

Rule 14.1, RGDP, requires the PRT to report annually on its activities for the preceding year.

As a function of its organization, the PRT operates from July 1 through June 30. However, annual reports are based on the calendar year. Therefore, this Annual Report covers the activities of the PRT for the preceding year, 2014.

ACTIVITY IN 2014

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

In regard to new matters, the PRT received notice of the filing of thirteen (13) disciplinary complaints and six (6) reinstatement petitions. Trial Panels conducted a total of eighteen (18) hearings; Ten (10) in disciplinary proceedings and eight (8) in reinstatement proceedings.

On December 31, 2014, a total of 15 matters, eight (8) disciplinary and seven (7) reinstatement proceedings, were pending before the PRT.

CONCLUSION

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

Dated this 6th day of February, 2015.

PROFESSIONAL RESPONSIBILITY
TRIBUNAL



M. Joe Crosthwait, Jr., Chief Master

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

Proceeding Type	Pending Jan. 1, 2014	New Matters In 2014	Hearings Held 2014	Trial Panel Reports Filed	Pending Dec. 31, 2014
Disciplinary	2	13	10*	7	8
Reinstatement	6	6	8	5	7

* In 2014, ten (10) disciplinary hearings were held over for a total of twenty-one (21) days

How are Things at the OBA?

By John Morris Williams

That is the question I am most often asked by OBA members. Things are absolutely perfect. Well, sorta, well maybe, well... things are okay. The truth is that things are pretty darn good. We have a great new president, an engaged Board of Governors and a really terrific membership to serve. Financially we are in good shape; the staff I work with is incredible, and we are finally getting the HVAC systems replaced on the west side of the building this year. Lights are on, the heat is working and lots of things are happening.

Presentations promoting the **Oklahoma's Promise program** at Clinton Middle School, Douglass Mid-High in Oklahoma City and Seminole Middle School have been very successful. Check out our webpage and Facebook posts on this. Each of us should be extremely proud of President David Poarch and his presentation. Also, our partners Sonic and the Thunder Cares Foundation are to be thanked again for their generous support. One more presentation will be made at Tulsa Central Junior High School.

The OBA project was the brainchild of then Chief Justice Tom Colbert and embraced by Immediate Past President Renée DeMoss. There are so many others that have contributed and helped that a universal "thank you" needs to go out to staff and

the membership. Custer, Oklahoma, Seminole and Tulsa County Bar Associations should be specially thanked for volunteering for the parent night programs that accompany the student presentations. And we couldn't have done this project without these lawyers in particular — Mike Turpen, Oklahoma City Thunder General Counsel Michael Winger, Sonic CEO Cliff Hudson and Higher Education Chancellor Glen Johnson, who helped in great measure. I am so grateful to have the opportunity to be involved in this project.

“Lights are on,
the heat is working
and lots of things are
happening.”

Yes, the **Oklahoma Legislature** is in session. We held our annual “Bill Reading Day” on Jan. 30. We had 40 OBA members come in on that Saturday and go through more than 2,100 pieces of legislation. Things are pretty good at the OBA to have 40 members come in on a Saturday to do this work. We did give them lunch and a couple of hours of CLE. Not much compensation when you consider

the hourly rate of all these folks. We built out a list of over 500 bills we are watching. The purpose of the list is to be informative about bills that might affect the practice of law, the courts or clients. Informational only, the list is not a statement of any position by the OBA. The event is a really good refresher in existing law, as well as proposed new laws. Thank you Duchess Bartmess, chairperson of the Legislative Monitoring Committee. I am grateful for your hard work and that you are just plain old fun to work with.

We are in the process of **hiring a new ethics counsel**. First, to my dear friend and former colleague, Travis Pickens, thank you for your years of dedicated service to the OBA. Like many of you, I miss him. Former Assistant General Counsel Mike Speegle graciously agreed to come out of retirement to temporarily staff the ethics counsel office. Talk about someone I owe big time! Mike, thank you for filling in during our hour(s) of need. We hope to have the position filled within the next few weeks. We had some exceptional candidates apply, and this will not be an easy decision for the hiring team.


Day at the Capitol is scheduled for Tuesday, March 24. I just got word that Sen. Clark Jolley, Senate Appropriations Committee chairperson, will be one

of our speakers. With the budget issues this year, he has one of the toughest jobs in the state. Also, Rep. Randy Grau, House Judiciary Committee chairperson, is going to speak. Many of you know Rep. Grau from his involvement in our ethics programs. Other great speakers will be Sen. Kay Floyd and Chief Justice John Reif, plus other notable

persons you won't want to miss. I am grateful for these OBA members giving us some of their time when they are busier than any of us can imagine.

Things are good at the OBA and as you can see it is because of many exceptional volunteers. I am grateful to so many people who do so many good works. Lots more is happening. Next

time you see me ask me, and I will tell you more.



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

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Reports Reflect Attorney Discipline Activities

By Gina Hendryx

In this issue of the *Oklahoma Bar Journal*, you will find the 2014 annual reports of the Professional Responsibility Commission (PRC) and the Professional Responsibility Tribunal (PRT). The PRT is the panel of masters who conducts hearings on formal complaints filed against lawyers and on applications for reinstatement to the practice of law. The panel consists of 21 members, 14 of whom are active members in good standing of the Oklahoma Bar Association and seven members who are nonlawyers.

The PRC considers and investigates any alleged ground for discipline or alleged incapacity of any lawyer. The commission consists of seven members, five of whom are active members in good standing of the OBA and two nonlawyers. Under the supervision of the PRC, the Office of the General Counsel investigates all matters involving alleged misconduct or incapacity of any lawyer called to the attention of the General Counsel. The PRC determines the disposition of all formal grievances.

The Office of the General Counsel received 1,324 grievances involving 945 attorneys in 2014. This compares to 1,285 complaints involving 890 attor-

neys in 2013. Complaints must be in writing and signed by the complainant. At the end of 2014, the OBA membership was 17,649. Considering the total membership, less than six percent of the licensed attorneys in the state of Oklahoma received a complaint in 2014. Of the grievances reviewed in 2014, 208 were referred for formal

“The primary complaint lodged against Oklahoma attorneys continues to be client/file neglect.”

investigation. While the overall number of grievances was up over last year, the number referred for formal investigation decreased by 22.

In addition to the statistics on bar complaints and resolution of same, the PRC annual report details the participation of attorneys in the Discipline

2014



1,324 grievances filed
Up 39 from 2013

LESS THAN 6%

Percentage of members
who received a complaint



208 grievances referred
for formal investigation
22 less than 2013

Diversion Program. The PRC may refer an attorney to this program in lieu of the filing of formal discipline charges. In diversion, remedial measures are taken to ensure that deficiencies in the representation of a client do not recur in the future. During 2014, 35 attorneys were referred to the program for conduct involving 41 grievances. Those attorneys participated in classes that included law office management, communication and client relationship skills, professionalism, professional responsibility, and trust accounting procedures. In

addition to these classes, 18 attorneys had in-office consultations with a law office management assistance specialist.

The primary complaint lodged against Oklahoma attorneys continues to be client/file neglect. More than one-third of the grievances filed with the Office of the General Counsel allege dissatisfaction due to the attorney's failure to respond to client inquiries or the delay in moving the matter to conclusion.

In addition to attorney grievances and reinstatement proceedings, the Office of the General Counsel continued its investigations in 2014 of allegations of the unauthorized practice of law. Over 26 requests to review these practices were acted upon in 2014. The majority of referrals came from lawyers and judges concerned about the increase in nonlawyers engaging in the practice of law.

The reports set forth in detail the day-to-day workloads of the PRT, PRC and Office of the General Counsel. Whether investigating discipline matters, prosecuting the unauthorized practice of law or representing the OBA in nondiscipline matters, these entities work together to promote professionalism in the practice of law while protecting the public.

Ms. Hendryx is the OBA general counsel.

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- ✓ Combine lecture, discussion groups, case studies, role-play, demonstrations, and provide marketing strategies for launching a successful mediation practice.

Meeting Summary

The Oklahoma Bar Association Board of Governors met via telephone conference call on Jan. 15, 2015.

REPORT OF THE PRESIDENT

President Poarch reported he gave a state of the bar address to the Garfield County Bar Association and participated in planning for the OBA Oklahoma's Promise promotion project. He attended the Board of Governors holiday party and swearing-in ceremony for Supreme Court Chief Justice John Reif and Vice Chief Justice Douglas Combs.

REPORT OF THE PAST PRESIDENT

Past President DeMoss reported she attended the board's holiday event and swearing in of the Supreme Court chief justice and vice-chief justice. She presented eight Friends of Justice awards to legislators at the State Capitol and participated in planning for the OBA Oklahoma's Promise promotion project.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the swearing in of Judge Virgin in Norman, meeting with the Legislative Monitoring Committee chairperson to prepare for OBA Reading Day, planning conference for Clinton School Oklahoma's Promise assembly and parent teacher night, staff directors meeting,

monthly staff celebration, swearing in of Chief Justice Reif and numerous planning meetings.

BOARD MEMBER REPORTS

Governor Dexter reported she attended the swearing-in ceremony for Chief Justice John Reif and Vice Chief Justice Douglas Combs. She is also participating in the OBA High School Mock Trial Program as a coach for Owasso High School. **Governor Gifford**, unable to attend the meeting, reported via email that he attended the Professionalism Symposium, Board of Governors Christmas party, OBA Human Trafficking Task Force teleconference and swearing-in ceremony for the Supreme Court chief and vice-chief justices. **Governor Gotwals** reported he attended the Tulsa County Bar Association president's Christmas party, Tulsa County Bar Foundation meeting, Tulsa County family law meeting and Tulsa Family Court Quality Assurance Panel meeting and its Christmas party. He also worked on the Tulsa County Bar Foundation building project. **Governor Kinslow** reported he attended the retirement reception for Comanche County Associate District Judge C. William Stratton and swearing-in ceremonies for Comanche County Associate District Judge Lisa Shaw, Stephens County District Judge Kenny Graham and Comanche County Special

District Judge Susan Zwaan. **Governor Knighton** reported he attended the December Board of Governors Christmas party and January 2015 Cleveland County Bar Association meeting. He also reviewed the Law-related Education Committee report and tried some of the educational games on the iCivics.org website. **Governor Marshall** reported he attended the Professionalism Symposium, Board of Governors Christmas party, Legal Intern Committee meeting (by phone) and swearing-in ceremony for the Supreme Court chief and vice-chief justices. **Governor Porter** reported she attended the swearing-in ceremony for Chief Justice John Reif and Vice Chief Justice Douglas Combs. **Governor Sain** reported he attended the McCurtain County Bar Association monthly meeting. **Governor Stevens** reported he attended the Professionalism Symposium, January Cleveland County Bar Association meeting, Board of Governors Christmas party, Rules of Professional Conduct Committee meeting and swearing-in ceremonies for District Judge Jeff Virgin and Special Judge Lee Shilling. **Governor Tucker** attended the Law Day Committee meeting. **Governor Weedn** reported he attended the Ottawa County Bar Association meeting, at which preparations for Law Day and an after-hours family dinner were discussed. He received an appointment as the Board of

Governors liaison to the Strategic Planning Committee and attended the swearing in of the Northeast Judicial District for all elected and appointed judges from District 1 as well as judges from Craig, Rogers and Delaware counties, who were all sworn in by Chief Justice-Elect Reif.

YOUNG LAWYERS DIVISION REPORT

Governor McGill reported the division's first meeting of the year is scheduled for Jan. 24. She and the executive officers have had several discussions planning for 2015, and they have participated in conference calls regarding a bid to host an ABA YLD conference in Oklahoma City. She recently completed the appointments of YLD liaisons to OBA committees as well as YLD committee chair appointments. She has had discussions with most of the committee chairs regarding goals for 2015.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported the Professional Responsibility Commission met in December. Two new members were appointed and will attend their first meeting in January. The new PRC chairperson is Angela Ailles Bahm, and Tony Blasier was reelected as vice-chair. She announced recent staff changes — Manni Arzola has been promoted to investigator, Tanner Condley has been promot-

ed to lead investigator, and Ben Douglas has been hired as the out-of-state compliance coordinator. A written report of PRC actions and OBA disciplinary matters for December was submitted to the board for its review.

BOARD LIAISON REPORTS

Governor Marshall reported the Legal Intern Committee is working on revising forms. Governor Porter reported the Women in Law Committee recently met for a year-end wrap up. Governor Stevens reported the Rules of Professional Conduct Committee held an organizational meeting for the coming year and identified potential issues to work on during 2015. Governor Tucker reported the Law Day Committee is working on the *Ask A Lawyer* TV show segments. Last year the number of phone calls to the hotline and county bar participation were both down, and the committee is trying to spur enthusiasm for the public community service project.

OKLAHOMA'S PROMISE

Executive Director Williams briefed the board on the Oklahoma's Promise program that offers free college tuition to qualifying students. Former Chief Justice Colbert asked the OBA's assistance last year to help promote the program administered by the state Regents for Higher Education. President Poarch is continuing that commitment. Four schools in Clinton, Oklahoma City,

Seminole and Tulsa have agreed to hold a short assembly to educate eighth graders about the program and to hand out NBA Thunder backpacks containing program information and sign-up instructions. County bar associations will provide volunteers to help parents enroll their students in the free program online at separate parent-teacher events following the assemblies. He reported that Sonic Corp has donated \$20 gift cards to reward parents who sign up, and the Thunder donated luggage tags in addition to the backpacks.

YOUNG ADULT GUIDE

It was announced the Law-related Education Program's young adult guide called, *You're 18 Now – It's Your Responsibility!* is now available in iOS and Android formats.

MAGNA CARTA EXHIBIT

Executive Director Williams reported the OBA will join the Office of the Secretary of State and others in sponsoring the ABA's traveling Magna Carta exhibit at the Oklahoma State Capitol building.

NEXT MEETING

The Board of Governors met Feb. 20, 2015. A summary of those actions will be published after the minutes are approved. The next board meeting will be Monday, March 23, 2015, at 5 p.m. at the Oklahoma Bar Center.

OBF is Springing Forward

By Jack L. Brown

Spring time is upon us once again, and for basketball fans, that means just one thing: March Madness! Even if your team has been eliminated, many will continue to watch this great collegiate tradition for all the drama and excitement. For the individual players and teams, this is the chance to reap the benefits of the hard work they've put it in all year long by being crowned the national champions.

The OBF has also been hard at work all year long, growing into a more-than

\$12 million nonprofit organization, with revenues close to \$1 million annually, the benefits of which are reaped by individuals who are assisted by statewide organizations for children, the poor, the elderly and other various nonprofits that are supported by grant awards from the bar foundation.

For example, the Center for Children and Families (CCFI) in Cleveland County, with the help of OBF grant funding, was able to help a father client and his two minor children ages 10 and five, who were struggling with court-ordered, supervised visitations with their mother. The children had not seen their mother in over six months. Attempted visits over the past year resulted in the mother often showing up intoxicated, leading to conflict felt, seen and heard by both children. The mother was not being held accountable and the family needed a neutral third party to supervise.

During the first few months of supervised visitation in a clinical setting, the CCFI staff observed a high level of discomfort between the children and their mother. In addition



the staff also observed the minor son, who is autistic, becoming emotionally deregulated and the minor daughter having to step up and help parent her brother. Over time, with the support and supervision of the CCFI staff, the initial discomfort faded away as mother and children bonded over games and gym activities, building the foundation of a healthy relationship. The children were comforted by the consistent presence of CCFI staff during the visits. The mother also worked hard with the staff to learn positive play

2014 OBF Grant Awards Update

*Thank you to all those generous donors who stepped forward to help make an increase in grant award levels possible during 2014. The OBF was able to close the year with **\$511,481** in total grant and scholarship awards. Thank you for your continued support.*

techniques and gained confidence through the program and was able to maintain sobriety during visitation times. Through the services of CCFI, funded by the OBF, and the dedication of their parents, the minor children are now benefiting from a safe, consistent and loving relationship with their biological mother.

However, there is still more for the OBF to do and improve on. As five-time NBA champion and two-time NBA MVP Tim Duncan once said, "Good, better, best. Never let it rest, until your good is better and your better is best." The OBF's success needs to be improved upon in order to maintain our upward growth and ability to provide additional and larger grants to public service organi-

zations affecting our justice system and the people we serve. All Oklahoma lawyers should consider it their duty to be a Fellow of the Oklahoma Bar Foundation. Remember, "It is only the farmer who faithfully plants seeds in the spring, who reaps a harvest in the autumn." (*B.C. Forbes*). **Please sign up to become an OBF Fellow or make a contribution to OBF to help assist others in need but without means.**

ABOUT THE AUTHOR



Jack L. Brown practices in Tulsa and serves as OBF president.

He can be reached at jbrown@jonesgotcher.com.

OBF Seeks Resource Development & Communications Director

The Oklahoma Bar Foundation seeks a highly-skilled development officer to lead its fundraising development program into the future. To learn more about the Oklahoma City-based position or to refer others, please visit the OBF website at www.okbarfoundation.org

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Get Plugged In

By LeAnne McGill

Over the next few months, the Young Lawyers Division will be participating in many great projects, and we would love for you to get involved. There is a place for every young lawyer within our organization, and our board members are ready and willing to help you get plugged in.

COMMUNITY SERVICE COMMITTEE

The Community Service Committee is charged with planning programs and services for the YLD to participate in that benefit various communities and organizations throughout Oklahoma. This year the committee is chaired by Brandi Nowakowski of Shawnee and Maureen Johnson of Tulsa. Currently, the co-chairs are looking for ideas for the YLD's Annual Day of Service that is scheduled for Oct. 17, 2015. There will also be some small community service events held throughout the year, including one scheduled for March 21, 2015, benefitting Shared Blessings in McAlester. We would welcome YLD'ers from across the state at both of these events.

CONTINUING LEGAL EDUCATION COMMITTEE

This year, Nathan Richter of Yukon and Brad Brown of Tulsa are chairing the Continuing Legal Education Committee and will be working with OBA Educational Programs Director

Susan Krug to put together a CLE with topics of particular interest to young lawyers. The CLE is tentatively scheduled for this fall and will be presented in Oklahoma City and Tulsa. If there is a topic you would like to see presented, we would love to hear from you.

DIVERSITY COMMITTEE

April Moaning of Oklahoma City has been tasked with revitalizing the YLD Diversity Committee and formulating a plan to encourage diverse representation and participation in the YLD. The committee seeks to increase diversity in the legal profession and promote programs and resources that enhance knowledge and encourage understanding of diversity. If the goals of this committee are of interest to you, I encourage you to contact myself or April about joining this committee and helping formulate a plan for this year's project.

HOSPITALITY COMMITTEE

Always one of the most popular YLD committees, the Hospitality Committee is in the trusty hands of Faye Rodgers of Edmond, Lane Neal of Oklahoma City and Matt Mickle of Durant. These three individuals will make sure you have a good time and get your social fix at the YLD

Committee Chairs

Robert Bailey
robertbailey@baileyandpoarch.com

Brad Brown
bbrown@jonesgotcher.com

Jennifer Castillo
jcastillo@HallEstill.com

Rachel Gusman
rgusman@gblaw.org

Jordan Haygood
jordan.haygood@gmail.com

Maureen Johnson
mmjohnson@riggsabney.com

Lauren Lembo Kelliher
llembo@gphglaw.com

Blake Lynch
blake.e.lynch@gmail.com

Matt Mickle
matt@micklelaw.com

April Moaning
aprilmoaninglaw@gmail.com

Lane Neal
lneal@dlb.net

Brandi Nowakowski
brandi@stuartclover.com

Nathan Richter
nathan@dentonlawfirm.com

Faye Rodgers
faye@mcgillrodgers.com

Midyear Meeting held in conjunction with the Solo & Small Firm Conference in June and at the OBA Annual Meeting in November. The YLD Midyear

Meeting will be at the Hard Rock Hotel and Casino in Tulsa from June 18-20, 2015, and the Annual Meeting will be in Oklahoma City in November. Come see what Faye, Lane and Matt have in store for you!

KICK IT FORWARD COMMITTEE

Last year, the YLD started the Kick It Forward program to raise funds to provide financial assistance to lawyers who were unable to pay their OBA bar dues. This year the YLD is planning the Kick It Forward Kickball Tournament to raise funds for the Kick it Forward program. The Kickball Tournament is scheduled for Aug. 29, 2015, in Oklahoma City. The task force, led by myself and Jennifer Castillo of Oklahoma City, is looking for volunteers to assist with the tournament as well as to recruit teams to play in the tournament. This event is open to anyone, not only members of our division.

MEMBERSHIP COMMITTEE

Blake Lynch of McAlester and Jordan Haygood of Oklahoma City are planning some great membership events as the co-chairs of the Membership Committee. Currently, Blake has planned a membership event in McAlester to take place before the Shared Blessings community service project on March 21, 2015. Additionally, Jordan is working on putting a social event together in March in Oklahoma City. Watch your email and our Facebook page for the details if you are interested in joining us at these events. If you would like the membership committee to plan an event in your county, please do not hesitate to contact us and we will see what we can do.

NEW ATTORNEY ORIENTATION COMMITTEE

The New Attorney Orientation Committee is always one of the hardest working YLD committees. This year the committee is chaired by Rachel Gusman of Tulsa, Robert Bailey

of Norman and Lauren Lembo Kelliher of Oklahoma City. They have already organized the preparation and dissemination of the bar exam survival kits to all the test takers at the February bar exam, and they are in the process of planning the reception at the spring swearing-in ceremony which is scheduled for April 21, 2015. This committee is very important as it is often a new attorney's first contact with the YLD.

There are lots of projects to choose from. Email the chair of the committee you'd like to work on, and we'll get you plugged in. Another way to connect is to like us on Facebook at www.facebook.com/obayld.

ABOUT THE AUTHOR



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



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Moore High School Wins Mock Trial Championship

Moore High School defeated a team from Owasso High School in the final round of competition to claim the 2015 Oklahoma High School Mock Trial Championship. The final round was held March 3 at the OU Law Center in Norman. Teams are paired with volunteer attorney coaches; Moore's team is coached by Charlie Glidewell, while Owasso's attorney coaches are Judge Daman Cantrell and attorneys Deidre Dexter, Rob Ridenour and Ken Underwood.

The two teams argued a case focusing on the criminal prosecution of an individual accused of aggravated robbery with a dangerous weapon. Moore High School is now preparing to represent the state at the national competition to be held in Raleigh, North Carolina, in May.

OBA President David Poarch of Norman said, "I am proud of all of the hard work these students did to prepare for this competition. Both teams did an excellent job, and I know Moore High School will represent Oklahoma well at the national competition. No matter the outcome, the students are able to take away useful skills and a better understanding of our legal system. That to me is a win."



The Moore High School mock trial team displays their trophy after winning the 2015 Oklahoma High School Mock Trial Championship on March 3. The team is now preparing to compete in the national competition in May.

The Mock Trial Program is funded by the Oklahoma Bar Foundation. Volunteer lawyers make up the OBA High School Mock Trial Program Executive Committee, which staffs and coordinates the program through all phases of competition. Nearly 400 judges and attorneys volunteered their time to work with mock trial teams as coaches and to conduct the competitions. Edmond lawyer Dan Couch serves as Mock Trial Committee chairperson.

March 24 is OBA Day at the Capitol – Agenda Announced

The agenda for this year's OBA Day at the Capitol will feature a number of distinguished speakers commenting on pending legislation. Members of the judiciary joining us March 24 will be Chief Justice John Reif and Judge James B. Croy. From the Legislature will be Sen. Kay Floyd of Oklahoma City, Rep. Randy Grau of Edmond and Sen. Clark Jolley of Edmond. OBA President David Poarch of Norman will also be speaking. Registration for the day's events begins at 10 a.m. at the bar center; OBA President David Poarch and Executive Director John Morris Williams will welcome guests and begin programming at 10:30. Lunch will be provided, and our visit to the Capitol begins at 1 p.m. Please don't miss this important opportunity to share your concerns with Oklahoma's lawmakers! RSVP to debbieb@okbar.org or call Debbie Brink at 405-416-7014; 800-522-8065.



LHL Discussion Group Hosts Upcoming Meeting

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

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

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OBA Member Resignations

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

Melissa Jean Alcorn
OBA No. 20606
P.O. Box 1404
Montrose, CO 81402

Anita Nana Denne Ayisi
OBA No. 30476
P.O. Box KN 1127
Kaneshie, Accra, FO

Andrea Marie Braeutigam
OBA No. 19414
2017 N.W. 47th Street
Oklahoma City, OK 73118

R. Gareth Evans
OBA No. 2782
3041 W. Washington St.
Bradford, PA 16701

Sue Griffin
OBA No. 14854
220 N. Zapata Hwy. 11
Laredo, TX 78043-4464

Barry Neil Johnson
OBA No. 21566
7804 Village Trail Drive
Dallas, TX 75254

Steven Russell Jones
OBA No. 31292
P.O. Box 8
507 High Street
Prairie Home, MO 65068

Giannina Marin
OBA No. 22426
1000 N.W. 57th Court,
Ste. 350
Miami, FL 33126

Derek McCammon
OBA No. 5861
709 Gleneagles Drive
Edmond, OK 73013-1805

Tamara Moran-Smith
OBA No. 14510
9248 E. 58th Street
Tulsa, OK 74145

Angela Porter
OBA No. 17283
2843 Galena Street
Denver, CO 80238-3026

Scott Lambert Porter
OBA No. 17123
2843 Galena Street
Denver, CO 80238-3026

Zachary Rod Francis
Schreiner
OBA No. 22707
7668 Gray Way
Arvada, CO 80003

Brian Scott Sever
OBA No. 19701
4623 31st Road South, A2
Arlington, VA 22206

Ashley Drew Stokes
OBA No. 22728
1800 S. Brentwood Blvd.,
Apt. 417
St. Louis, MO 63144

Nell Fickie Stranburg
OBA No. 10294
409 Beard Street
Tallahassee, FL 32303-6317

Larry David Stubbs
OBA No. 20925
5457 W. Wheeler Road
Fayetteville, AR 72704

Harold Edward Terry
OBA No. 8905
2804 Mirage
Yukon, OK 73099

OBA Member Reinstatements

The following OBA members suspended for nonpayment of dues or noncompliance with the Rules for Mandatory Continuing Legal Education have complied with the requirements for reinstatement, and notice is hereby given of such reinstatements:

Merl Lynn Stanley Jr.
OBA No. 22909
9732 Lake Chase Island Way
Tampa, FL 33626

Trey Adolph Wirz III
OBA No. 18496
8207 Misty Landing Court
Humble, TX 77396

Kudos

Tsinena Bruno-Thompson, president and CEO of Oklahoma Lawyers for Children, was named the recipient of the first Deprived Advocacy Award presented by the OBA Juvenile Law Section. This inaugural award recognizes an attorney working in the area of deprived law who has distinguished themselves over the past year in their advocacy for children, parents or the state.

International Masters of Gaming Law (IMGL) recently announced the re-election of **Mike McBride III** as treasurer. One of only two general members from Oklahoma, Mr. McBride serves as Crowe & Dunlevy's Indian law and gaming practice group chair in the firm's Tulsa office. IMGL is an invitation-only, nonprofit organization focused on scholarship, ethics and professionalism of the gaming industry.

Edmond City Attorney **Steve Murdock** was recently named the Citizens Bank of Edmond's Citizen of the Year. He was honored for demonstrating excellence by receiving professional awards that brought acclaim to Edmond.

William G. Paul, advisory director in Crowe & Dunlevy's Oklahoma City

office, is the 2015 recipient of the National Conference of Bar Presidents (NCBP) Fellows Award. The award recognizes the accomplishments of a past bar president who has demonstrated a continuing commitment to leadership, service, the work of the organized bar and the purposes of the NCBP.

Jane G. Rowe of Albuquerque, N.M., received the 2014 Justice Pamela B. Minzner Outstanding Advocacy for Women Award for her work with a unique homeless program called Saranam. Saranam is a two-year comprehensive housing and education program for homeless families in New Mexico.

On The Move

Third-generation attorney **David E. Burget** joins Hall Estill's Oklahoma City office as an associate. He received his J.D. from the OU College of Law in 2013 and has experience in employment law, general civil litigation, oil and gas litigation, and personal injury law.

Schaffer Herring PLLC of Tulsa announces that **John A. Burkhardt Jr.** joined the firm. His civil and appellate law practice focuses on litigation in federal and state courts, as well as non-litiga-

tion business client counseling, with a focus on business and complex commercial litigation, particularly oil and gas litigation.

Pignato, Cooper, Kolker & Roberson PC of Oklahoma City announces that **Dixie A. Craven** has joined the firm as an associate, where she will practice in the area of general insurance defense. She is a 2013 graduate of the OU College of Law.

Fries & Fries PC of Bartlesville announces that **Robert J. Fries** has returned to the firm to join his son, Robert C. Fries, in the law practice, having most recently served as vice president of human resources and employment counsel for Groendyke Transport Inc. in Enid. Mr. Robert J. Fries' practice will concentrate on general business law, labor and employment, administrative agency matters and litigation. He graduated from the TU School of Law in 1988.

Steven L. Holcombe announces the opening of his law office in downtown Pawhuska at 600 Kihekah Avenue. His practice focuses on real estate, oil and gas, civil litigation, business transactions, probate, wills, estate planning and Osage Indian Law. He received his J.D. in 1982 from the TU College of Law. He may be reached at (918) 287-8762.

The shareholders of Fellers Snider elected **Bryan N.B. King** to serve as the law firm's president. Mr. King,

who joined the firm as an attorney in 1995, has been serving on the firm's executive committee for the past five years. The shareholders also elected Greg Castro of Oklahoma City and Travis Fulkerson of Tulsa to serve on the firm's executive committee with Kevin Donelson and Terry Watt. Doneen Jones was reelected to serve as corporate secretary.

The Fellers Snider law firm announced that **R. Blaine Nice** and **Philip R. Feist** have become shareholders. Mr. Nice is a civil litigator with close to 30 years of legal experience. Based out of the Oklahoma City office, his practice focuses on issues related to municipal law including zoning and planning, contracts and labor matters. He received his J.D. from the OU College of Law. Mr. Feist, who has more than 22 years of legal experience, has focused his practice on estate planning, wills, trusts and family businesses for the past 18 years. He received his J.D. from the University of San Diego School of Law. He is based out of the firm's Tulsa office.

Matthew D. Paque, an environmental attorney, has joined McAfee & Taft in Oklahoma City. His practice areas include environmental permitting, regulatory compliance, enforcement defense, environmental issues in

complex transactional matters and tort litigation. He graduated from the OU College of Law in 2003.

Phillips Murrah PC law firm is expanding with the addition of **Scott M. Rayburn** of Oklahoma City, who joins the firm's transactional practice group as an of counsel attorney. His practice is focused on business transactions, entity formation and structure and capital raising and formation.

Robinett law firm of Tulsa announces that **Charles R. Swartz** and **Jacob W. Aycock** have been named partners, changing the name of the firm to Robinett, Swartz & Aycock. Mr. Swartz will continue to focus his practice on commercial litigation and personal injury, and Mr. Aycock will continue to focus his practice on family law. In addition, **Ryan A. McDonald** has joined the firm as an associate. Mr. McDonald earned his law degree from Washington University in St. Louis and is also licensed to practice law in Missouri.

Kevin L. Patrick of Basalt, Colo., announces his law firm has recently changed its name to Waterlaw — Patrick, Miller, Noto. The firm, which has an office in Tulsa, will continue to focus on water law, water rights, water and wastewater planning and water quality issues.

Eddie Wyant recently opened the Wyant Law Firm PLLC in Enid. Mr. Wyant was the previous district attorney for Delaware and Ottawa Counties and chose to not seek a fourth term in office. He practices in several areas including personal injury, criminal law, probate and estate planning.

How to place an announcement: The *Oklahoma Bar Journal* welcomes short articles or news items about OBA members and upcoming meetings. If you are an OBA member and you've moved, become a partner, hired an associate, taken on a partner, received a promotion or an award, or given a talk or speech with statewide or national stature, we'd like to hear from you. Sections, committees, and county bar associations are encouraged to submit short stories about upcoming or recent activities. Honors bestowed by other publications (e.g., *Super Lawyers*, *Best Lawyers*, etc.) will not be accepted as announcements. (Oklahoma-based publications are the exception.) Information selected for publication is printed at no cost, subject to editing, and printed as space permits.

Submit news items via email to:

Mackenzie McDaniel
Communications Dept.
Oklahoma Bar Association
405-416-7084
barbriefs@okbar.org

Articles for the May 16 issue must be received by April 13.

Retired District Judge **Glenn Dale Carter** of Tecumseh died Feb. 9. He was born Oct. 30, 1936, in Tecumseh and was a 1954 graduate of Tecumseh High School. He earned a bachelor's degree from Oklahoma Baptist University and in 1963 a law degree from the OU College of Law. **He served in the U.S. Army and Army Reserves.** He was a justice of the peace, a deputy sheriff, an assistant county attorney, associate district judge and district judge. He was an authority and innovator in juvenile and family law and a driving force behind Hope House (now Youth and Family Resource Center), the Unzner Center and the CASA program. He also helped establish Shawnee's drug court. He was a longtime member of the First Christian Church of Shawnee, where he was an elder emeritus and former board chairman. He was an active member of the Tecumseh Alumni Association and the historical societies of Tecumseh and Pottawatomie County. Memorial donations may be made to the Glenn Dale Carter Scholarship at Oklahoma Baptist University.

Donald E. Cummings of Tulsa died Feb. 17. He was born Nov. 18, 1940, in Tulsa and graduated from Will Rogers High School. He graduated from the TU College of Law in 1965. He practiced first as general counsel for a Fortune 500 company in Houston before returning to Tulsa where he maintained a solo practice. He was a member for many years of the original Tulsa Bassmasters,

honing the skills of his favorite pastime — catch-and-release fishing. He was also an artist, writer, storyteller and collector of museum-quality, antique Native American, Western and Civil War artifacts.

Clifford Clark Dougherty of Edmond died Feb. 14. He was born Feb. 9, 1935, and moved to Oklahoma City with his family as a child, graduating from Classen High School. He graduated from OU in 1958 with a B.S. in chemical engineering. He began studying law in 1963, ultimately earning a J.D. from the OCU School of Law in 1966 while working full time as a chemical engineer. He began his law career as a patent attorney for BS&B at its corporate offices in Kansas City. He returned to Oklahoma City and joined the firm that ultimately became the boutique IP law firm of Laney, Dougherty, Hessin, and Beavers. In 1998, that firm formed the basis of the Intellectual Property Group of McAfee and Taft, where Mr. Dougherty practiced until his retirement in 2005. He was active in the American Bar Association and other community organizations, and was a member of New Covenant United Methodist Church. Among his survivors is his son, OBA member Cliff Dougherty III.

Judge **James O. Ellison** of Tulsa died Nov. 22, 2014. He was born on Jan. 11, 1929 in St. Louis, Mo. He graduated from OU in 1951 and was appointed U.S. district judge in the Northern District of Oklahoma on Sept. 28, 1979,

by former President Jimmy Carter after being nominated by U.S. Sen. David Boren. He oversaw the deinstitutionalization of the Hissom Memorial Center in Sand Springs, and he later served as chief judge for the district from 1992 to 1994 before assuming senior status until 2005. He spent more than 25 years in private practice before being appointed, including a stint as a one-man law practice in the Red Fork community with his wife as his secretary. He later joined the law firm of Boone, Ellison and Smith, which grew to be a major law firm in Tulsa. **He was a captain in the U.S. Army from 1951 to 1953.** A 1946 graduate of the Oklahoma Military Academy (now the site of Rogers State University), he was named to the OMA Hall of Fame earlier this year. He received the RSU Constitutional Award in 2000.

Richard D. Hampton of Oklahoma City died Feb. 3. He was born May 14, 1925, near Choctaw and graduated from Putnam City High School in 1943. **He entered the service in 1943, under the 102nd Infantry Division as a line soldier in a light machine squad. His combat duty was in the 9th Army north of Aachen, Germany. While in the infantry, Richard was awarded the Combat Infantry Badge, the Purple Heart, the Bronze Star, the Good Conduct Medal and an Honorable Discharge.** In 1946, he returned to Oklahoma City where he completed his undergraduate studies at OCU, then graduated from the OU College of Law in 1950. He worked as a clerk for

Judge Carl Traub and in the Municipal Counselor's Office for the City of Oklahoma City. He worked for the firm of Felix, Bowman, Griffin and McIntyre and later partnered in Wheeler, Parsons and Hampton. He retired after 64 years as a trial lawyer. He was a longtime active member of Putnam City Christian Church, where he served as Elder for many years and was chairman of the board. He was a two-term president of OKC West Association and served as chairman of the board and secretary of Stemen Laboratories. He played violin, loved music, was an avid reader and student of history.

Brad Elliott LeMarr of Broken Arrow died Jan. 20. He was born June 22, 1974. He graduated from Broken Arrow High School in 1992. After completing his undergraduate degree at East Central University, he continued his education at OU, Florida State University, the University of St. Andrews in Scotland and the University of Alabama. His pursuit of knowledge resulted in three master's degrees in history, classics and library information studies, as well as a J.D. His love of history took him on many adventures around the world including two

archaeological expeditions in Caesarea, Israel, and classical studies at the American School in Athens, Greece. His professional career included teaching at several universities. He was also a licensed attorney in Alabama and was a member of the American Bar Association.

Edward Hudlow Maddox Jr. of Tuttle died June 18, 2014. He was born Dec. 21, 1921, in Comanche and graduated from McAlester High School. **He was inducted in 1942 into the U.S. Army Air Corp where he served overseas in World War II and earned several medals.** Upon returning, he entered college and earned accounting and law degrees. After retiring a first time, he went back to college and earned a master's degree in finance, then went back to work before retiring a second time at the age of 90.

Elizabeth Maggi of Tulsa died Feb. 7. She was born Feb. 2, 1943, and attended high school in Bristow. She earned her B.S. in nursing from OU in 1965. **She joined the U.S. Army while still in college, and in 1968 was deployed to serve as military nurse in Vietnam.** After returning stateside, she worked as a nurse in California and obtained her master's

degree in nursing from UCLA. She later taught nursing at the University of Tulsa. She then graduated from the TU College of Law in 1986. As an attorney, she worked successively for the law firms of Chapel Wilkinson, Riggs Abney and Howard & Widows. She later became in-house counsel for a number of hospitals, most recently with the OSU Medical Center. Memorial donations may be made to Clare House Hospice of Tulsa, Disabled American Vets or the Westie Rescue Foundation.

Susan Arlene Winters of Las Vegas, Nev., died Jan. 3. She was born in Altus on March 14, 1966. She graduated from Blanchard High School in 1984. After high school, she attended OU where she completed her coursework in three years and received her bachelor's degree in political science. She received her J.D. from OU in 1990 and practiced law in Oklahoma City before taking a job with Clark County District Attorney's Office in Las Vegas. She left the district attorney's office and entered private practice there. Most recently she began helping her father and brother in the Winters Restaurant Group as its attorney.

One-day travel ideas

Want to take your family somewhere for Spring Break, but can't go too far out of town? Check out these ideas for day trips.



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Opening a new practice

Starting a new law practice? Check out the wealth of information about going solo and starting your own office, compiled by the OBA's Management Assistance Program.

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

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EXPERIENCED LITIGATION/COLLECTION/BANKRUPTCY ASSOCIATE (2-5 years). AV rated NW OKC law firm seeks associate with such experience. Salary commensurate with experience. Please send résumé and cover letter to "Box N," Oklahoma Bar Association, PO Box 53036, Oklahoma City, OK 73152.

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

LAW OFFICE SEEKING INDIVIDUAL WITH EXTENSIVE LEGAL EXPERIENCE, legal secretary or paralegal to assist attorneys in law office in Enid, Oklahoma. Must be willing to relocate and be available to work extended hours as needed. Benefits include two weeks paid vacation per year as well as one week of paid sick leave. JOB DUTIES INCLUDE BUT NOT LIMITED TO: 1) Researching relevant information on cases; 2) Summarizing information into written reports; 3) Assisting attorneys during trial; 4) Preparing legal documents including federal and state depositions, notices and subpoenas, trial subpoenas, Rule 17c subpoenas, and duces tecum; 5) Preparing correspondence; 6) Analyze legal documents; 7) Oklahoma and Federal trial and appellate procedures. SKILLS NECESSARY: 1) The ability to perform legal research using a variety of programs; 2) The ability to interview witnesses and accurately document what was learned; 3) Good writing and communication skills; 4) Ability to prioritize and work under a tight schedule; 5) Knowledge of Word, Wordperfect and Excel; 6) In-depth knowledge of legal terminology and principles; 7) The ability to analyze legal documents for accuracy. Send résumé to enidlawfirm@gmail.com.

TULSA MIDTOWN AV-RATED BOUTIQUE BANKING FIRM is looking for an experienced litigation attorney with five-plus years of experience and an ability or aptitude to manage complex banking and corporate related litigation. Please send résumés to the attention of Holly Squier at has@drumlaw.com.

SEEKING ATTORNEY WITH MINIMUM OF 5 YEARS LITIGATION EXPERIENCE to join Carr and Carr's OkC trial team. Attorney will handle plaintiff personal injury and bad faith cases. Attorney will be working directly with OkC managing attorney Tye Smith to assist in all stages of litigation and trial. Attorney must have confidence in litigation skills and ability to work cases independently. Go to www.CarrCarr.com/ employment to apply. No phone calls, please.

PT ATTORNEY FOR ELDER LAW NON-PROFIT – 20 hours per week. Estate and incapacity planning, guardianship, probate. May include supervising interns, public speaking, and developing educational materials. Apply to [sstewart@senior-law.org](mailto:ssstewart@senior-law.org). Address correspondence to Sarah C. Stewart, Executive Director.

POSITIONS AVAILABLE

THE CITY OF OKLAHOMA CITY IS CURRENTLY ACCEPTING APPLICATIONS for an Assistant Municipal Counselor I. Qualified applicants will possess an Oklahoma license to practice law and be eligible for admission to practice in federal court. (Licensed interns expecting to take the bar exam in July 2015, with governmental tort claims or litigation experience, will also be considered.) This is an entry level position which provides legal representation and guidance to the City, its officers, departments and trusts to ensure that all City operations are performed in a manner consistent with the requirements of federal and state laws and city ordinances. This position is located in the Litigation Division of the Office of the Municipal Counselor; and, experience in litigation and municipal law is desirable. Applications and résumés will be accepted through March 27, 2015. Apply on-line at <http://www.okc.gov/jobs>. Additional information may be obtained at Jobline: 405-297-2419 or TDD (Hearing Impaired) 405-297-2549. EEO.

LEGAL RESEARCH AND WRITING PROFESSOR. Oklahoma City University School of Law. Oklahoma City University School of Law is accepting applications for the position of Legal Research and Writing Professor. This is a nine-month, non-tenure track position. The Legal Research and Writing (LR&W) Professor will teach two sections of Legal Research and Writing, a first-year required class, in both the fall and spring semesters. Each section contains approximately twenty students. In addition to teaching, LR&W professors are expected to grade numerous written assignments throughout each semester. The Legal Research and Writing Professor will work closely with the Director during his or her first year as a faculty member. After the first year, although some assignments are uniform, LR&W professors have significant autonomy in designing their own assignments and classes. Faculty members are also expected to serve as advisors to a small group of students each academic year, in addition to maintaining regular office hours. Review of applications will begin immediately. The application deadline is April 2, 2015. Please apply online at: http://okcu.silkroad.com/epostings/jobs/submit.cfm?fuseaction=dspjob&company_id=16211&version=1&jobid=558. Oklahoma City University is an equal opportunity employer and affirms the values and goals of diversity.

NORMAN LAW FIRM IS SEEKING sharp, motivated attorneys for fast-paced transactional work. Members of our growing firm enjoy a team atmosphere and an energetic environment. Attorneys will be part of a creative process in solving tax cases, handle an assigned caseload, and will be assisted by an experienced support staff. Our firm offers health insurance benefits, paid vacation, paid personal days, and a 401K matching program. Applicants need to be admitted to practice law in Oklahoma. No tax experience necessary. Submit cover letter and résumé to Justin@irshelpok.com.

POSITIONS AVAILABLE

SEEKING ATTORNEY WITH STRONG RESEARCH AND WRITING SKILLS to become a member of Carr and Carr's OkC trial team. Attorney will work directly with OkC's managing attorney Tye Smith to assist with case preparation. Attorney will be primarily responsible for researching and writing on issues of negligence and bad faith. Prior similar experience required. Go to www.CarrCarr.com/employment to apply. No phone calls, please.

ESTABLISHED OKC LAW FIRM seeks workers' compensation attorney with 0 – 5 years' experience. Salary based on experience. Send résumés to jobs@lawterlaw.com.

ESTABLISHED CHICKASHA AND ANADARKO LAW FIRM is seeking a partner-track Associate Attorney with 1 to 5 years of experience primarily in Divorce – Family Law. Position will also include some Civil litigation and Criminal defense work. Salary range negotiable based upon experience. Send résumé to: Bret Burns, 519 W. Chickasha Avenue, Chickasha, Oklahoma, 73018 or call for an appointment at 405-320-5911.

POSITIONS WANTED

LICENSED OKLAHOMA (1989) AND PATENT ATTORNEY (1999) available for hire as in-house or within product liability firm - litigation experience, modest salary requirements and existing limited clientele. See résumé at www.patentlawman.com. No benefits required. Inquiry 405-833-7058 or rhomburg@cox.net.

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The Chase

By B.J. Brockett

In the early morning hours of May 1965, I drove my 1963 Chevy from Oklahoma City to Guymon for a jury trial. I was a young lawyer with limited trial experience. I was appearing on behalf of a Florida plaintiff which had sold merchandise to a retail store in Guymon. The owner had refused to pay, so suit was filed. The amount in controversy was less than \$2,000. A live witness from Florida was not economically feasible. My only evidence was deposition testimony. I was hoping the case could be settled and trial avoided.

I arrived timely and tried to negotiate a settlement with the defendant's older, more seasoned lawyer. He was unmovable. A jury of 12 men was impaneled. They were all members of a religious group and wore full beards. There was no expression in the visible part of their faces. The trial was brief, but the jurors took their duty seriously. They deliberated until about 4 p.m., finding for the defendant.

The firm I worked for had a judgment against another business in Guymon. I had brought the file with me. I hoped to call on the judgment debtor before returning to Oklahoma City. I located the business, and the debtor was there. After some considerable haggling and threats of an execution levy, the debtor decided to pay — but needed some time to raise the money. I waited while the debt-

or's friends, relatives or whoever came to the store with cash. I finally left for home around 7 p.m.

Even though I had lost the jury trial, I felt the trip had not been completely wasted. I had, after all, collected a judgment and had the cash in my pocket. The weather was nice, and I was feeling pretty good, until just before the little town of



Hardesty. In the rear view mirror I saw two men in a 1958 Ford close behind me. They were passing a bottle between them.

About two miles out of Hardesty, the Ford went around me and began to slow down, blocking the highway to keep me from passing. An arm came out of the driver's side and motioned for me to pull over. I reached for a pistol I kept in the glove box. It wasn't there. I had taken it out and had forgotten to put it back. Survival instincts kicked in. These guys were about to bring me to a stop. I prayed for traffic, and there

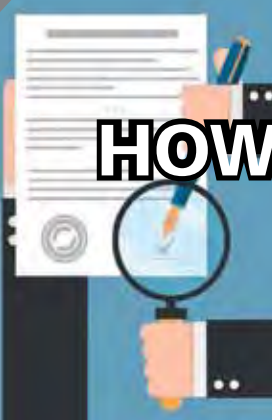
was none. It was beginning to get dark.

I went far to the right and the Ford swerved over to block me. I made my move, pedal to the metal, swerving quickly back to the left and going partly into the bar ditch. I was around them, and the race was on.

I can't now recall how fast that Chevy was going, but it was top speed. The Ford was close behind. Up and down those hills we went. It's a long way from Hardesty to Woodward, and there's not much in between. I prayed for a patrolman, probably the only time in my 84 years that I have done that. No luck. But I was gaining a little ground on the Ford.

Finally, after forever (so it seemed) we came to a large hill. I was now about 200 yards ahead of the Ford. As I topped that hill, I saw white smoke come from the Ford as it pulled to the side of the road. I assumed the engine had blown. But not wanting to take chances, I kept my speed for another two or three miles. Within minutes of slowing down, there was the patrolman I had prayed for. I didn't stop to visit. Besides, the pursuers were no longer behind me, and what could I tell him? I have always believed that the debtor sent those men to get his money back. But who knows?

Mr. Brockett practices in Oklahoma City.



HOW TO DRAFT A CONTRACT: THE NUTS & BOLTS OF LEGAL DRAFTING

Presented by Lenne' Eidson Espenschied

This seminar focuses on identifying and eliminating the common sources of ambiguity in legal documents that can lead to disputes and even litigation. Experienced corporate and transactional lawyers will undoubtedly recognize some of the common language we untangle in this seminar. Lenne' Edison Espenschied, a highly regarded national presenter and author of *Contract Drafting: Powerful Prose in Transactional Practice* (ABA Fundamentals, 2010) and *The Grammar and Writing Handbook for Lawyers*, will condense hazy theories of drafting into concise, clear, practical techniques that can be applied immediately to improve the clarity and overall quality of all your legal documents.

8:30 a.m.	Registration and Continental Breakfast	12:10 p.m.	Drafting Techniques
9:00	The Framework	1:50	Break
9:50	Break	2:00	Finishing Strong
10:00	Preparation	2:50	Adjourn
11:40	Networking lunch (included in registration)		

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