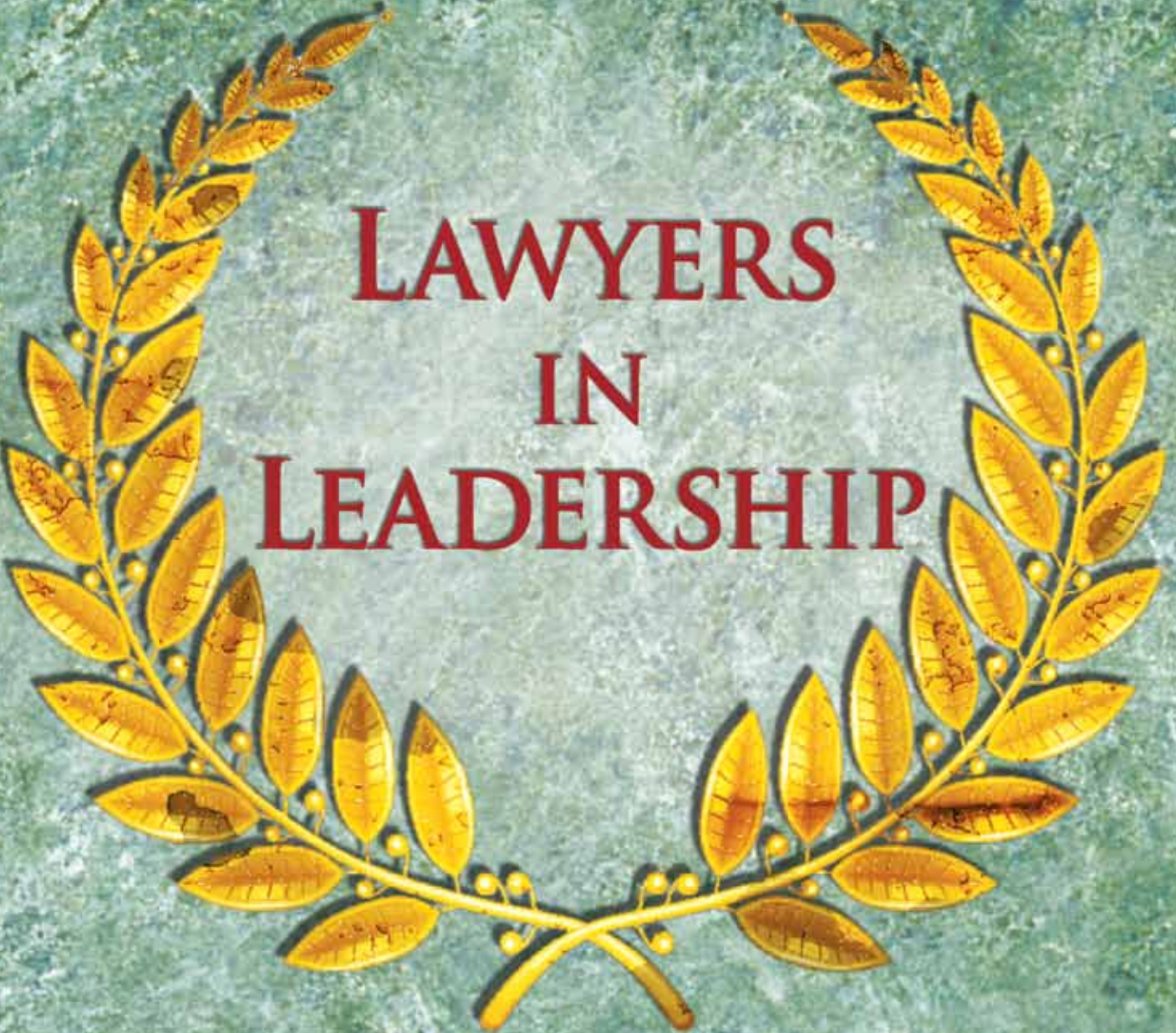


# WIT Oklahoma Bar JOURNAL

Volume 86 ♦ No. 30 ♦ Nov. 21, 2015



## LAWYERS IN LEADERSHIP

### ALSO INSIDE

Amendments to UCC Article 9 • Oklahoma Family Wealth Preservation Trust Act  
Electronic Commerce and Incorporation by Reference in Contract Law  
Due Process in Tax Sales • Annual Meeting Highlights



# BANKRUPTCY

## 30th Annual Advanced Bankruptcy Seminar UnHappy Days are Here Again?

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**DEC. 3 & 4, 2015**

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**CLE CREDIT:** This course has been approved by the Oklahoma Bar Association Mandatory Continuing Legal Education Commission for 12 hours of mandatory CLE credit, including 1 hour of ethics for both days, 6 hours of mandatory CLE credit, including 1 hour of ethics for Thursday, Dec. 3 only, and 6 hours of mandatory CLE credit, including 0 hour of ethics for Friday, Dec. 4 only.

**TUITION:** \$225 (both days); or \$150 (one day) for early-bird registrations received with payment at least four, full business days prior to the first seminar date; \$250 (both days), \$175 (one day) for registrations received with payment within four, full business days of the first seminar date. \$275 walk-ins (both days) \$200 (one day). To receive a \$10 discount for the live onsite program, register online <http://www.okbar.org/members/CLE>. You may also register for the live webcast but no discount is available.



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### Thursday, Dec. 3 Program

- 8:30 a.m. **Registration and Continental Breakfast**
- 9 a.m. **Form Changes Effective Dec. 2015**  
Brian Huckabee, Huckabee & Huckabee Inc.
- 9:50 a.m. **Break**
- 10 a.m. **Peregrine Financial Group Bankruptcy**  
Ira Bodenstein, Shaw Fishman Glantz & Towbin LLC
- 10:50 a.m. **BAPCPA 10 Years In – Did Anything Really Change?**  
Panel Discussion: Moderator, Charles Greenough  
Panelists: Karen Carden Walsh, Roger Everett, Gregory T. Colpitts, The Colpitts Law Firm
- 11:40 a.m. **Networking lunch** (included in all-day registration)
- 12:10 p.m. **Church Bankruptcies**  
Professor Pamela Foohey, University of Indiana
- 1 p.m. **Student Loans – How Can You Help Your Client if the Debt is Non-Dischargeable**  
Natalie Eness, EC MC  
Mac D. Finlayson, Eller & Detrich
- 1:50 p.m. **Break**
- 2 p.m. **2015 Recent Developments: Sid & Sam Show 2015**  
Sam G. Bratton II, Doerner, Saunders, Daniel & Anderson, and Sidney K. Swinson, Gable & Gotwals
- 3 p.m. **Adjourn**

### Friday, Dec. 4 Program

- 8:30 a.m. **Registration and Continental Breakfast**
- 9 a.m. **State of the State Economy 2015 and Beyond**  
Chad Wilkerson, Vice President, Oklahoma City branch executive and regional economist, Federal Reserve Bank of Oklahoma City
- 9:50 a.m. **Break**
- 10 a.m. **Ethics**  
Honorable Terrence Michael, Chief Judge, United States Bankruptcy Court of the Northern District of Oklahoma
- 10:50 a.m. **Hospital and Other Medical Provider Bankruptcies**  
Judy Hamilton Morse, Crowe & Dunlevy
- 11:40 a.m. **Networking lunch** (included in registration)
- 12:10 p.m. **Drilling on Anyway Energy Co. Chapter 11 Bankruptcy Part 1**  
Panel Discussion: Moderator, Charles Greenough;  
Panelists: Gary McDonald, McDonald, McCann, Metcalf & Carwile; Blaine Schwabe, Gable Gotwals; Bill Wallander, Vinson & Elkins; and Charles Snyder, Trial Attorney Office of the United States Trustee
- 1 p.m. **Drilling on Anyway Energy Co. Chapter 11 Bankruptcy Part 2**
- 1:50 p.m. **Break**
- 2 p.m. **Judges Panel**  
Honorable Sarah Hall & Honorable Janice Loyd of the United States Bankruptcy Court for the Western District of Oklahoma; Honorable Terrence Michael and Honorable Dana Rasura of the United States Bankruptcy Court for the Northern District of Oklahoma; and Honorable Tom R. Cornish of the United States Bankruptcy Court for the Eastern District of Oklahoma
- 3 p.m. **Adjourn**

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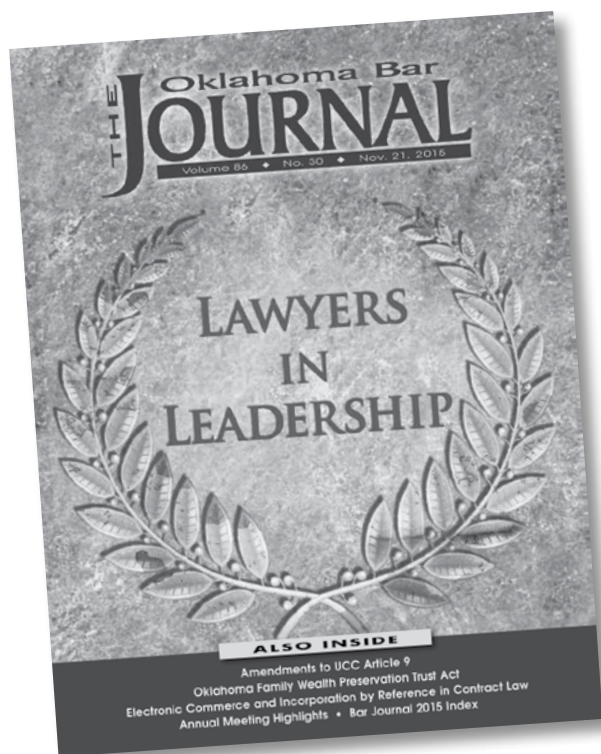
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EDITOR: MELISSA DELACERDA

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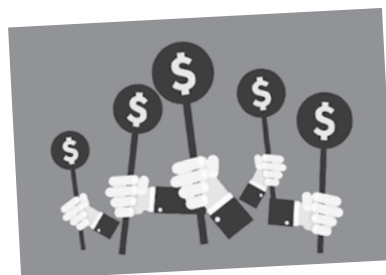
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ELECTRONIC  
COMMERCE



# Judicial 'Reform' Study Foretells Future Legislative Actions

By David Poarch

Earlier this month, the Oklahoma House of Representatives scheduled several interim studies intended to address issues affecting all Oklahomans. No doubt, these studies foreshadow subjects that will be addressed in the upcoming session of the Legislature to commence in February 2016. Having said that, as lawyers we should pay particularly close attention to one interim study that was conducted — Interim Study H15-121 to address the professed need for “judicial reform.”

The detailed justification for the study included, among others, assertions that the courts have “stricken several enactments of the Legislature without just cause,” through “actions that constitute an abuse of power, judicial tyranny, usurpation of the role of the Legislature and legislating from the bench,” including among others, abortion. According to the request, part of the problem “is that the judicial selection process in Oklahoma is tilted sharply toward the lawyer’s special interest group, the Oklahoma Bar Association (OBA).”

Branding the Oklahoma Bar Association as a “special interest group” is, for lack of a better term, rather laughable. To suggest that our association represents one unified “interest” flies in the face of reality; the reality that our membership runs the broad gamut of the political spectrum. Perhaps the best evidence of this reality is the fact that the legislator calling for this interim study is one of our own members! I am confident that there are those among us who hold a different view.

Predictably, Interim Study H15-121 will prompt legislative proposals in the next session. Action that we as members of the third co-equal branch of government have a sworn duty to engage with to ensure that any proposed changes, by whomever and for whatever reason, do not undermine the way we govern ourselves, which includes the constitutional guarantee that all citizens have access to *fair and impartial courts*. If protecting the public’s right to a fair trial is a “special interest,” then so be it.

We are not alone. It is evident that protecting this fundamental constitutional structure matters as much to non-lawyers. DRI, the self-described “leading organization of defense attorneys and in-house counsel,” ([www.dri.org](http://www.dri.org)) last month released its Fourth Annual National Poll on the Civil Justice System showing that a large majority of Americans, across more than 10 demographic categories, oppose legislative or executive interference intended to influence the decisions of the courts.

Among registered voters, the poll found that 68 percent oppose any attempt to reduce court funding by state legislators because of unhappiness with a court decision; opposition that is bipartisan (Democrats 71 percent; Republicans 63 percent, Independents 69 percent). Likewise, voters oppose other forms of retaliation as well. Sixty percent would oppose action by legislators to limit the court’s ability to rule on certain issues, and 55 percent oppose efforts to remove judges over disagreement with court decisions.

Regardless of your position on the need for Interim Study H15-121, I hope you will find time to let your local legislators know how you feel. Let them know that as lawyers our only special interest is in continued access to fair and impartial justice for all citizens, not guaranteed outcomes for a select few brought about by threats of retaliatory legislative action.

To read President Poarch’s letter to the editor on this topic sent to newspapers statewide, go to [www.okbar.org](http://www.okbar.org).

*If protecting the public’s right to a fair trial is a “special interest,” then so be it.*



*David Poarch*

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# Lawyers in Leadership

Among our peers, and even among nonlawyers, it is widely acknowledged that service and leadership are core values of the legal profession. Many of us can relate to the notion that service beyond self and a willingness to contribute to the greater good in some way pointed us in the direction of law school. As a result, the legal profession is well represented at all levels of leadership. In Oklahoma from the beginning, lawyers have served as governors, state legislators, judges, prosecutors, general counsel, law firm managing partners, heads of corporate, energy, banking, government and nonprofit organizations. And we continue to do so.

This feature article highlights a few of the many Oklahoma Bar Association members who have distinguished themselves as leaders outside the practice of law. They share how valuable their legal education has been — and their secrets of success, which can be used as inspiration for other lawyers to become leaders.

— David Poarch, OBA President



## ■ Jari Askins

**Administrative Office of the Courts  
Administrative Director**

---

The red dirt of southwestern Oklahoma is seemingly embedded in my DNA. I grew up in Duncan and still have a home there. It is where I learned to work hard, dream a little, have faith and care about my community. My parents were very civic-minded. They taught my brother, sister and me that it is important to care about what happens to other people. Dad was a businessman who valued honesty, integrity and a “customer-first” attitude. Mother was a volunteer leader with several local and statewide organizations. All their lives, they modeled for us how to give back to our community. Dad taught us the work ethic that all three of us have to this day and that same work ethic is now emerging in our next generation, as well. Both of my parents instilled in us the lesson that giving back always matters.



Law school was never my plan. Two years after college, I decided to study law simply because I wanted to learn more. When speaking with students, I often share a favorite quote from Abraham Lincoln, “I will study and get ready and perhaps someday my chance will come.” Taking chances I never imagined led to a career I never dreamed. My family’s business is in the land title industry, so I began my practice in oil and gas law. That path changed after I accepted appointment as special judge for Stephens County. Serving on the bench really is where I developed the desire to become a legislator – to run for state representative. While writing or debating legislation, I relied upon my judicial experience to consider how new laws would be implemented and interpreted.



*Jari Askins at her desk in the AOC office, located in the Oklahoma Judicial Center in Oklahoma City.*

My legal background has helped me at every stage of my career. I learned to analyze situations and resolve issues whether it was the application of statutes or agency policies or government regulations. Those skills were valuable as I worked to understand the needs of my constituents and to assist in finding the resources they sought. Returning to public service this past year at the Pardon and Parole Board and the Department of Human Services allowed me to utilize those skills again in addressing problems from financial shortfall to children in crisis.

Good lawyers are good communicators. Communication is fundamental to building trust and building a team. Without support, it is difficult for anyone to achieve success as a leader. No one can do it alone. And now my career has come full circle. With the opportunity to serve as administrative director of the courts, I am once again working with Oklahoma judges, court clerks and court reporters.

**“ My legal background has helped me at every stage of my career. I learned to analyze situations and resolve issues whether it was the application of statutes or agency policies or government regulations. ”**

**What tips would you give someone wanting to develop their leadership skills?**

Leadership takes practice, practice, practice. The OBA Leadership Academy, Young Lawyers Division and OBA committees offer numerous opportunities to become involved and learn or enhance skills that will benefit an individual on any career path.

**What advantage does your legal background give you in your current leadership role?**

Law school required critical thinking, analysis of difficult (often emotional) situations and problem solving, which helped equip me for diverse roles in public service.

**What are the traits of an effective leader?**

Integrity and dependability are more important than any title or leadership position. My favorite

leaders are good communicators who are willing to listen to and accept ideas from different layers within the organization. They build strong teams and have the self-confidence to recognize that strengths are best spread among several, not vested in a few.

**To what would you attribute your success as a leader?**

I have had help from a lot of other people. My success is truly because of the people who were willing to give me a chance,

whether it was by appointment as a judge or by election to office. I tried to respect their trust by working hard not to let them down.

**Why would you encourage other lawyers to get involved in leadership?**

Lawyers learn to advocate for different positions in a legal setting. Those skills are important in teaching a younger generation how to express differing opinions

in a respectful manner. Lawyers can exercise the same advocacy in civic organizations and volunteer service projects and, perhaps, keep the art of civil discourse from disappearing.

**What was your first leadership role or how did you first become involved in leadership?**

My second-grade teacher picked me as a team leader in class for a math exercise. By giving me the responsibility of choosing the

members of my team, she instilled confidence in me that I could be a leader of my classmates. The first time I recall making signs and asking for votes, I was 11 years old. After winning my age division, I had to make a short talk each week in front of a group of 50-55 young girls. I learned about the expectation and responsibility to motivate others and to lead by example.



## ■ David Boren

### OU President

---

I have not practiced law in more than 40 years, but every day I am grateful for my legal education. Throughout my time as a state legislator, governor, U.S. senator and now as a university president, I have made use of what I learned in law school.

In every situation it has been helpful to try to “think like a lawyer.” Law schools give their students that ability as we go through the rigors of learning case law, procedure, legal principles and argumentation. “Thinking like a lawyer” means putting facts into a conceptual and analytical framework. It means carefully weighing the alternatives. It means setting priorities and recognizing risks. It means placing today’s situation in an historical context. It also means appropriately documenting a course of action and “making a record.” Those learned skills are applicable in making nearly every major decision which the leaders of any organization must make.

I did practice law as a sole practitioner in Seminole and Wewoka at least part-time for six years. Counseling and representing others in a



*President David Boren with students on the OU campus in Norman.*

*Photo Credit: Aaron Snow*



**“ At the university, legal issues must be faced each day ranging from questions about ‘state action,’ to free speech issues, to the boundaries of disciplinary actions. ”**

**What tips would you give someone wanting to develop their leadership skills?**

I would read the biographies of great leaders and study their decision-making. It is crucial to develop a moral compass and have a firm grasp of what is right and wrong. Then, a leader must have the courage to do what is right and fear not.

**What advantage does your legal background give you in your current leadership role?**

The ability to analyze problems in a coherent way and “to think like a lawyer.” One must make the right decision and then “make a record” to demonstrate what has been done and why.

**What are traits of an effective leader?**

Unselfishness is critically important. Too many so-called “public servants” forget that public service is about service and not about power. Being a true leader requires that the good of the institution or the country is

myriad of situations was extremely rewarding. After I became governor of Oklahoma, I, of course, ceased to actually practice as a lawyer, and I never returned to the practice.

As a state legislator my legal training was very helpful. When I first entered the Legislature, the staff was very small, and it was sometimes faster to draft my own bills. Obviously, legislative drafting and the ability to interpret and modify proposed bills and existing laws was learned in law school. I also was able to draft my own amendments and rapidly make needed changes in the course of a legislative debate.

When I later served in the U.S. Senate, I still sometimes drafted important amendments or bills myself. Once a parliamentarian ruled one of my amendments “out of order” because it had not been through the bill drafting staff. The top parliamentarian was called, and he ruled that my amendment was “in order” because I had properly drafted it. I silently thanked my law school training. That self-drafted amendment ended up creating the largest educational overseas study program since the Fulbright Program!

As governor, the ability to analyze legal issues was extremely important. There were issues ranging from the meaning of statutes to questions of constitutional authority. Presidents of universities and governors are also often sued in their official capacities, and it is helpful to be able to discuss issues in a shorthand fashion with legal counsels.

At the university, legal issues must be faced each day ranging from questions about “state action,” to free speech issues, to the boundaries of disciplinary actions.

Whether it has been in my role as a legislator at the state and federal level or as a governor, or now at the university, virtually every day I have needed to “think like a lawyer.” I will always be grateful to the faculty at the OU College of Law for the knowledge I received from them. Law professors certainly helped shape my future. There is no better preparation for leadership in any sector than the study of law.

always put ahead of self-interest. Of course, the ability to think critically, be decisive and give credit to others are also very important.

**To what would you attribute your success as a leader?**

I have tried to always realize that leadership is a team effort and almost nothing can be achieved by yourself alone.

**Why would you encourage other lawyers to get involved in leadership?**

Lawyers understand that the rule of law is the glue of our society. As stewards of the law, those with legal training have an obligation to lead.

**What was your first leadership role or how did you first become involved in leadership?**

I became a leader in student organizations while I was still in school.



## ■ Gary Clark

**OSU Senior VP and General Counsel**

---

### **What tips would you give someone wanting to develop their leadership skills?**

There are many books and articles on leadership styles. Understanding the “theory” of leadership may be helpful. But the only way to improve your leadership skills is to get involved in an organization that you believe in so you can devote the time and energy to making a difference while practicing and honing your leadership skills as you move up through the ranks.

### **What advantage does your legal background give you in your current leadership role?**

Practicing law is all about solving problems. Getting the facts and eliminating the irrelevant information, then researching the controlling laws, regulations, customs and practices to find a solution. I use those same skills daily in seeking ways to resolve the various issues that are presented to me. I have found that I don’t generally see the questions that have easy answers.

After the first few weeks of law school, I was dismayed to hear so many of my classmates say how much they “loved” law school. To the contrary, I was completely out of my comfort zone. For the first time in my life, the teachers were not giving us answers, they were just asking questions. How were we to know what to memorize and regurgitate on tests — which by the way now only happened once a semester? There was no way to build up a nice grade average, just a high-stakes test at the end of the semester. The Socratic Method was an entirely new experience for a good many of us.

It was only when we learned that the goal of our law school professors in asking a seemingly never-ending series of questions was to teach us how to “think like a lawyer” rather than to help us memorize the “law” (an impossible task), that the fog began to clear.

In the spring of my first year of law school, the movie, *The Paper Chase*, came out. My wife and I attended. I saw characteristics of some of my professors in Professor Kingsfield and of some of my law school classmates in the movie characters in the study groups. Professor Kingsfield had the line, “[y]ou come in here with a head full of mush and you leave thinking like a lawyer.” After the movie, my wife unbelievably asked, “It’s not like that, is it?” Well, yes and no. No professor had called students to the front of the class, handed them a dime for a pay phone and told them to call their mother to come and get them. But there were some professors who seemed to enjoy embarrassing students.

The fear of being embarrassed can be a great motivator. All law students, some faster than others, learn to spot and narrow the real issue to be decided. As Einstein stated, “A problem properly defined is often half solved.” They also learn to sift through the facts and determine which of them are really important to the resolution of the issue presented as well as those that are merely “red herrings.” Various possible alternative solutions must be considered and evaluated. Lastly, they learn to communicate concisely, whether in writing or orally.

**“The fear of being embarrassed can be a great motivator. All law students, some faster than others, learn to spot and narrow the real issue to be decided.”**





*Gary Clark presents Professor Hailin Qu with the OSU Eminent Faculty Award.*

*Photo Credit: OSU*

But law school is not the end of one's education on how to think like a lawyer. I was fortunate to practice with three different law firms in private practice, learning from exceptional lawyers in each of them. John Athens was an excellent mentor, teaching the value of leaving no stone unturned in discovering the facts and examining various legal theories that might be dispositive of a case. He also taught the absolute necessity of being professional even on the few occasions when the opponent was not. A leader must be open to all ideas, regardless of who suggests it.

Former partners Gary Baker, Craig Hoster, Gary McSpadden and Dana Rasure are all outstanding examples of exceptional lawyers of great intellect and the highest integrity who, in managing a law firm, placed great value on consensus building. Leaders realize that the team won't be nearly as productive if the members are not "sold" on the solution. A successful leader will ensure that everyone helps set the goals and understands their role in attaining those goals.

Lawyers must apply logic as they resolve issues. The value of clean logical thinking was demonstrated regularly by a younger lawyer (and now successful banker), Dee Sokolosky, who is still the most logical thinker I have encountered. Realizing the logical consequences of an action is critical to success. Muddled thinking can sabotage the best-intentioned plan.

Lawyers are taught and expected to have a heightened sense of ethics in all instances. We have all seen examples of temporary success, e.g., Enron, where there is an absence of ethical behavior. Enduring achievements require ethical decisions by the organization. That starts with the leader. Leaders will never have the respect and support of their team if they lack integrity.

I found the practice of law to be fulfilling. Working with and against good lawyers is rewarding. But clearly the most enjoyable part was helping people with problems or matters they did not have the ability to solve on their own.

Having served on the Board of Regents for Oklahoma State University and the A&M Colleges, I developed a deep passion for the importance of higher education for young, and not so young, students. When the opportunity to serve as a vice president and

## **What are traits of an effective leader?**

Effective leaders are honest and ethical. Leaders care about people and want to leave the world, region, state or community in better shape than it was found. They are passionate about the common goals of the group. They work together to define and refine the realistic goals the group wants to achieve. Leaders don't worry about who gets the credit, but about the results. They recognize the various talents of the members of the group and seek their input and help in the areas where they can be most effective. A leader makes everyone feel they are an important part of the group's effort and praises their contributions. Leaders are persistent, because success does not always happen immediately or easily. They are prepared for meetings and activities so that the members of the group feel that real progress is being made.

## **To what would you attribute your success as a leader?**

Someone else will have to judge how successful I have been, but I have tried to employ the traits listed above when I have been involved in an organization, whether as a leader or as a member.

## **Why would you encourage other lawyers to get involved in leadership?**

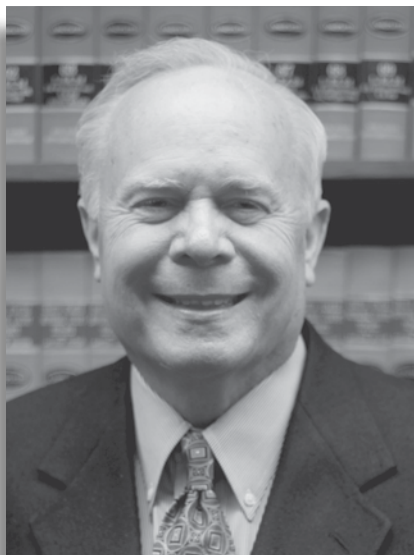
There is a real sense of inner satisfaction to have played a role in meeting a group's goals. It may be that no one will remember, or even know of, your part in some successful project. But you will see little children playing on that new playground equipment, battered spouses staying temporarily in a safe place or simplified discovery rules that save clients considerable expense, and know you were an integral part of the effort that led to this progress.

*continued on next page*

general counsel for the Oklahoma State University Foundation came my way, I felt so fortunate. Not only could I use my legal training and experience, but I could also be involved in the management of an organization dedicated to raising funds to provide scholarships for students and resources for the university. (There was the side benefit of no more timesheets.)

When, a few years later, soon-to-be OSU President Burns Hargis (a lawyer by training and experience) shared his vision for OSU and asked me to assist him in making it happen, I overcame my initial concerns about becoming an “administrator/bureaucrat” and gladly joined him. What a great experience it has been — even better than I imagined! Working with a visionary and tireless leader is a blessing. Good things are happening at OSU and to be even a small part of that is amazingly gratifying. “Thinking like a lawyer” has been invaluable to me daily as I am called upon to resolve issues that can’t be predicted but must be expected.

In short, legal training does an excellent job preparing leaders to have the skills to define problems precisely, to gather the relevant facts, to integrate different perspectives and solutions, to forge a consensus on a solution and then to implement it in a way that makes a positive and ethical difference. Isn’t that why most of us went to law school in the first place, to have a fulfilling life by making a difference — leaving things better than we found them?



**What tips would you give someone wanting to develop their leadership skills?**

You become a leader by taking chances and working hard. Both are required. If you play it safe, you can only be a follower. If you don’t work hard, you will not be a

**What was your first leadership role or how did you first become involved in leadership?**

My first significant leadership role was as a state officer in the FFA, a great organization to develop young leaders. My experience there played a part in my agreeing to serve on the Tulsa County Bar Association Board of Directors years later. Serving on the board, I came to feel that we needed significant improvements in several areas. I thought I could help bring those about by running for president. Fortunately for me, enough members were willing to give me that chance. With the help of a number of lawyers and the bar staff, we were able to accomplish those changes.

## ■ Mark Hammons

### Oklahoma Democratic Party Chair

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I did my undergraduate work at the University of Oklahoma. After graduating, I was elected to the Oklahoma House of Representatives. While serving as a House member, I attended Oklahoma City University at night to get my law degree. I briefly associated with a law firm, before starting my own firm in 1997.

Like many starting lawyers, I began with a general practice doing all forms of legal work. Because of my interest in politics and government service, I started representing some of the cities and towns in my home area of Canadian County. My work for city government lead me into employment law and civil rights work — the area where I found my greatest passion.

I developed my private practice focusing on civil rights work and later concentrating on employment discrimination.

In January of this year I decided to run for chairman of the Oklahoma Democratic Party, and I was elected. I sought this position because I felt Oklahoma was moving away from its populist roots. Political party work challenged me to use my legal training in a new way. The first opportunity to do this came shortly after I was



“ **Political party work challenged me to use my legal training in a new way.** ”

elected chairman. I was faced with a new set of ethics rules that prohibited raising money and distributing campaign material on state-owned or leased property.

I understood that this restriction violated basic free speech rights, and I asked the Oklahoma Ethics Commission to withdraw those rules. When the commission failed to act in a timely manner, it became necessary to file suit setting out why the rules were invalid and should be set aside. We won that battle and reopened traditional forums such as college campus and state parks for political activities.

I expect there will be other opportunities for my legal experience to be helpful in preserving the rights of citizens to participate in elections.

While my experience involved constitutional issues, each attorney has experience that directly relates to the rights and interest of citizens. Whether it is understanding the difficulty of divorce and custody, the necessity of caring for injured citizens or balancing the rights of the public, the victim and the accused in the criminal system, our profession invites us to be leaders. I encourage every attorney to rise to that challenge.



*Mark Hammons appears with Mike Turpen, Kevin Ogle and Oklahoma GOP Chair Pam Pollard on the KFOR TV show, "Flashpoint," a political affairs talk show.*

leader even if you offer new ideas and approaches. Part of being a leader is earning respect and that means following up ideas with action.

#### **What advantage does your legal background give you in your current leadership role?**

The law trains you to analyze, organize and present facts and ideas in order to persuade a jury. A good leader needs that skill. Furthermore, organizing and analyzing facts helps a leader to understand and avoid bad decisions.

#### **What are the traits of an effective leader?**

An effective leader must balance thoughtfulness with action and

inspiration with realism. No task should be too small and no hours should be too long. He or she must lead by action and not just words.

#### **To what would you attribute your success as a leader?**

I wouldn't call myself a success. You keep working to achieve and let others decide how to view the results.

#### **Why would you encourage other lawyers to get involved in leadership?**

Our profession is uniquely intertwined with the judicial branch of government. If we don't attempt to exercise positive leadership, the entire judicial branch fails. That

would be tragic, because the judicial branch is charged with protecting our most basic rights and freedoms and dispensing justice. When we take our oath as attorneys, we are promising to represent not just our client as individuals but an entire system of justice. Being a leader is part of the job.

#### **What was your first leadership role or how did you first become involved in leadership?**

I ran for student council president in high school. I've been involved ever since. I want to at least play a role in the decisions that affect me, so what choice do I have?



# ■ V. Burns Hargis

**OSU President**

More than half of America's presidents have been lawyers. The others probably wished for a law degree on many occasions. A legal education prepares leaders. It teaches critical thinking, problem solving, justice and fairness, and many other qualities.

A functional society is founded on the rule of law. Every issue facing society has a legal aspect and individuals with the skills and qualities garnered from a legal education have distinct perspective and contributions to offer no matter where their careers take them.

My legal education prepared me well for a diverse career that has included the courtroom but extended to politics, banking, television and now higher education.

A law degree provides a unique education that greatly expands understanding and abilities. The development of analytical skills enhances curiosity and creativity, two things that tend to be pounded out of youngsters as they start in school. Young children must conform rather than ask why. Curiosity and creativity lead to solutions and innovation that your organization and our world need.

As a law student, it may seem the research and fact-finding will never end. The payoff for that work extends well beyond the current project or case. Many of the decisions faced on any job involve complexity, uncertainty and, frankly, they can get

“ In all my career positions, and particularly as president of Oklahoma State University, I have learned the most by listening. ”

## **What tips would you give someone wanting to develop their leadership skills?**

I don't think you can learn to be a leader from a book. Getting involved in organizations whose mission you support is the best way. Being a good follower is the first step. Be the “go-to” person the leader turns to for difficult tasks. Then, volunteering to take on projects, especially when others have not, and working with different kinds of personalities to perform the task will teach you how to successfully lead an effort. You'll make mistakes but you learn from them.

## **What advantage does your legal background give you in your current leadership role?**

Being a leader requires the ability to persuade others to share and adopt your vision. That's what lawyers do. They persuade one's client, the opposing attorney, a judge or a jury to adopt their position. I also think lawyers are trained to analyze a problem logically and develop a

strategy to solve the problem. Being able to present the relevant facts and issues in a way that leads to the conclusion you advocate is a key leadership attribute.

## **What are traits of an effective leader?**

- High moral character
- Good listener, empathy
- Creative with a high tolerance for mistakes, resilient
- Enthusiastic
- Collaborative
- Ability to delegate
- Positive attitude
- Decisive, makes timely decisions
- Can articulate the vision
- Sense of humor, especially self-effacing humor

messy. The research skills learned in law school lead to informed decision making and enhanced value to employers.

Time in law school also sharpens interpersonal and communications skills such as reading comprehension, public speaking and writing. Those qualities add knowledge, instill confidence and help build the relationships that lead to success.

My biggest job as president of Oklahoma State University is interacting with the university's many stakeholders. That includes faculty and staff who make things work on our campuses and in our classrooms, alumni and donors that provide critical funding, state leaders who oversee our state's public universities, and most importantly, students who have many choices of where to earn their higher education degree.



*President Burns Hargis and students signal "Go Pokes" at freshman convocation in Stillwater.*

*Photo Credit: OSU*

When it comes to communication skills, I want to borrow from one of our nation's most influential lawyers, and the namesake of my Oklahoma City high school, John Marshall. He spoke to what I think is one of the greatest qualities gained from a legal education when he said, "To listen well is as powerful a means of communication and influence as to talk well."

In all my career positions, and particularly as OSU president, I have learned the most by listening. Listening leads to new ideas, smarter decisions, understanding, compassion and better leadership.

It's hard to slow down and take the time to truly listen. Every organization has multiple stakeholders. You are wise to give each a voice. Wherever your career takes you, listen.

My undergraduate degree from Oklahoma State University and my law degree from the University of Oklahoma are among my most prized possessions and have led to a career rich with opportunities and fulfillment. I recommend a law degree to anyone determined enough to achieve it.

### **To what would you attribute your success as a leader?**

To the extent I have had success, I have enjoyed taking on difficult tasks and persuading the right people to join in the effort. I try to emulate the traits described above. When I came to the OSU presidency, the creation of the fundraising campaign for \$1 billion was a difficult task to be sure. But, it was achieved because the goal was audacious and difficult, but people were convinced of the benefits that would inure to OSU and bought (literally) into the effort.

### **Why would you encourage other lawyers to get involved in leadership?**

For two reasons: 1) as noted, lawyers have been trained to persuade others and, as such, are uniquely suited to lead important efforts to a successful conclusion and 2) as David Brooks has written, we all need to think more about our eulogy than our resume. With lawyers leading, good things can happen and the lawyers involved are better for it. Just think of all the lawyers who were leaders in the founding of our nation.

### **What was your first leadership role or how did you first become involved in leadership?**

It would have been in college at OSU. I moved so much before college, I wasn't anywhere long enough to get into a leadership role. But, my fraternity pushed me into leadership roles, and I discovered that I enjoyed being involved in trying to make things better. I've done it ever since with mixed success!





## ■ Jason Hitch

**Hitch Enterprises Co-CEO and  
Chairman of the Board**

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I started law school with the full expectation of practicing law for a few years in Oklahoma City or elsewhere to gain experience before heading back to the home company in Guymon. I have a younger brother, and it wasn't exactly clear that there was room for both of us in my family company. I started law school in the fall of 1994 and graduated in the spring of 1997. At my grandfather's urging, I took some work with an attorney named Terry Weins, who then had an office on N.W. 59th between N. May and N. Independence Ave. in Oklahoma City.

During the spring of 1996 my grandfather had a heart attack and passed away. At that point my father called me and asked that I change my plans and move home immediately after law school so that I could start learning the family business from the managerial side of things. That, as they say, changed everything. I started spending more time looking at our industry news and shaping my law studies around what I "thought" I would most need.

I was wrong on a lot of assumptions as to what I would need to know, but it worked out just fine. I also started attending cattlemen's meetings and participating in committees. I was also taking some computer courses at OU and then teaching classes to company employees, which was great experience at standing up and speaking in front of people.

I changed jobs and went to work at the Oklahoma Supreme Court in 1996 in the IT Department. Justice Kauger was just starting her push to overhaul the case reporting system and modernize it away from Westlaw. It was very interesting, and several of my fellow students were there to boot. Later, we would sometimes get together and study for the bar exam at lunch and after work.

**What tips would you give someone wanting to develop their leadership skills?**

I would recommend that they get involved in community or social organizations. I find that taking a leadership in these organizations is great practice and fantastic networking, not to mention there is a big need and people will overlook any learning errors that are made by volunteers. I also find this is good practice for new attorneys as we tend to be very opinionated and sometimes hard to work with as a consequence of the assertive instruction techniques used in law school. Working with other volunteers who can and will quit can make you learn a bit of politics very quickly and for me retaught me to "listen" to the other people on my committee.

**“It certainly wasn't my plan to be leading a company by 37 but that is what happened. I certainly couldn't have done it without my brother and my wife but the biggest help was a very experienced staff.”**

I moved home around Jan. 1, 1998, and went to work in the family company immediately. I started out doing some legal work on our land files and talking to the oil and gas companies that were operating on our land. I also started working with our managers and supervisors on employee-related issues.

But my biggest learning opportunity was through our membership in several industry organizations. In 1997 the furor over the hog industry coming to Oklahoma was at its highest pitch, and I spent a lot of time at the Capitol trying to head off a moratorium. I spoke in front of countless legislators and their staff and committees. It was disheartening to lose the issue, but it was great experience — and I got to see a lot of very good orators and listen to a great deal of political wrangling. The industry group committees are led by volunteers, and at my father's urging, I volunteered to join committee leadership.

My father became ill with cancer in 2003 and my brother and I started taking over a lot of the company duties. By 2008 he had passed away, and we were running the company. It certainly wasn't my plan to be leading a company by 37, but that is what happened. I certainly couldn't have done it without my brother and my wife, but the biggest help was from a very experienced staff. We are a fifth-generation family company, and some of our employees are/were 30 to 40-year employees — some even second and third generation with us.

The company is Hitch Enterprises Inc., which is headquartered in Guymon and has 12 subsidiary corporations. It has approximately 300 employees who work in cattle feed yards, pork production and farming and ranching in addition to managerial and professional staff. The company is a family-owned company wholly owned by my brother and me. It was founded in 1884 as a cattle ranch and farm. I am co-CEO and chairman of the board for the company.



*A cowboy at Hitch Enterprises rides through the feed yard looking for sick animals. In the background is the feed mill for the feed yard.*

### **What advantage does your legal background give you in your current leadership role?**

I think that the leadership roles I have held since law school have mostly benefited from my level-headedness. I learned early in law school not to let myself be baited or angered by other people if at all possible. Keeping my cool when crap hits the fan is one of the big blessings I received from law school. Other less obvious advantages are some basic knowledge of process and bureaucracy. I also have found that thinking things through before answering was something that I learned in my legal training. Sometimes the right answer is "I don't know or I need to research that."

### **What are traits of an effective leader?**

For me and my applications, effective leaders are good listeners but also very good managers of the time you take from other people. As a volunteer leader, everyone is there on their private time, and leaders need to respect that. I carry that over to my employees. I will listen attentively, but I will also keep things moving and cut off repetitive speakers. I try to set hard start times and solid stop times. Most successful leaders I have been around are good at managing time, expectations and spend more time taking care of issues before the meeting than in the meeting itself.

### **To what would you attribute your success as a leader?**

I had a great leader as a father and grandfather, so I was raised around it to some extent. I also had lots of opportunity by way of volunteering and, believe me, I learn mostly the hard way by screwing up. I can learn from other people's mistakes, but I really remember it if I screw it up myself. Being willing to volunteer

and volunteer to lead is a commitment, but it has been a great help to me.

**Why would you encourage other lawyers to get involved in leadership?**

I think it is very rewarding and can lead to great networking for work. I also have found that it gives me some good perspective on how my employees and former

clients got themselves into the messes that we have to work on as attorneys.

**What was your first leadership role or how did you first become involved in leadership?**

My first adult leadership opportunity was in the Guymon Chamber of Commerce and in the beef association committee structure. I was asked to be on the chamber

board and then as the chair right out of law school. The chamber was going through some very difficult reorganization struggles, and I learned a lot. The beef associations were looking for new committee leadership at the same time due to burn out of the prior people, so I sort of got to jump into a clean slate. I found both to be difficult but very rewarding.



**What tips would you give someone wanting to develop their leadership skills?**

Seek individual and perhaps isolated opportunities on short-term projects at work or in the community.

**What advantage does your legal background give you in your current leadership role?**

As CEO of a publicly traded company, I have better appreciation for the areas of our business that are regulated. From a governance standpoint, my legal education is of benefit when working with the Board of Directors and stockholders.

## ■ J. Clifford Hudson

### **Sonic Corp. Chairman of the Board, President and CEO**

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After graduating from law school, Leslie, my wife, and I returned to Oklahoma City where we had both grown up. Leslie and I had met at Northwest Classen High School. She is an epidemiologist and would be working at the University of Oklahoma; I had secured a job with an Oklahoma City law firm with plans to practice corporate and securities law.

It was the early '80s though, and the oil bust left everyone scrambling for business. In 1984, I invited an officer of Sonic to a social event, thinking that I might land some Sonic business for the law firm. My guest, however, spent a lot of time telling me about a legal opening at Sonic that I might consider pursuing.

I joined Sonic in March 1984 as an attorney and served in that capacity for the next eight years. While many people might have chosen to keep to that path, my experiences in the first decade of my employment at Sonic prepared me to lead the company.

My eight years as Sonic general counsel afforded me several internal leadership opportunities in the form of leveraged buy-outs in 1986 and 1988 and, ultimately, leading the organization through an IPO in 1990-91. Leading those initiatives exposed me to a depth of the financial and operational aspects of the business that I had less exposure to strictly as legal counsel. I had become a significant stockholder and worked in close concert with other members of senior management and key franchisee leadership.

Promotions to CFO in 1992 and to COO in 1993 left me in good position to become CEO in 1995 when that position opened up. In the quick-service restaurant industry, it's unusual for a CEO to have served as general counsel. As the leader of a public company, however, my legal education serves me well every day, and



**“ My eight years as Sonic general counsel afforded me several internal leadership opportunities in the form of leveraged buyouts in 1986 and 1988 and, ultimately, leading the organization through an IPO in 1990-91. ”**

In addition, the critical analysis skills that a legal education develops helps me determine strategies that will or will not work for our business.

#### **What are the traits of an effective leader?**

Leaders I admire have:

- A clear sense of the objectives they want to accomplish
- The ability to envision and communicate strategies to achieve those objectives
- The ability to instill in others a belief that the path is right, and
- A capacity to implement tactics that achieve those same objectives.

#### **To what would you attribute your success as a leader?**

My early engagement as an adolescent in school and community activities gave me a sense of potential I might have to achieve a positive impact. From high school student council to local political campaigns, I began to understand what success looked like by working alongside successful lead-

the critical analysis developed through a legal education helps me with decision-making continuously.

Governance is a critical competency for any chief executive, and as the leader of a public-traded company, that's particularly true of my role at Sonic. Working with an independent board of directors, as well as the company's senior management, means that I utilize my business law education and practice into our work on marketing, operations and human resources in partnership with our franchisees every day.

A legal education and relatively short private law practice career prepared me for an exceptional opportunity. My path to CEO of Sonic may not be the most conventional, but law is a growing background for CEOs, and I wouldn't trade it for another path.



*Cliff Hudson with the crew at the Bricktown Sonic in Oklahoma City.*

*Photo Credit: Sonic*

ers. That success encouraged me to engage even more and ultimately became a cornerstone for my success in business and other community endeavors as an adult.

#### **Why would you encourage other lawyers to get involved in leadership?**

I would encourage anyone to get involved in leadership if they have the desire to be a leader.

#### **What was your first leadership role or how did you become involved in leadership?**

At the age of 13, I was elected president of the Webster Junior High School Boys Glee Club. This position included the responsibility of conducting the glee club when our choir director was absent. Leading dozens of teenage boys to harmonize developed my self-concept and taught me how to bring a group together to achieve success. I draw on that experience today.



# ■ Natalie Shirley

**OSU-OKC President and Oklahoma Secretary  
of Education and Workplace Development**

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## **What tips would you give someone wanting to develop their leadership skills?**

First and foremost, make sure you understand your team's worldview. You need to understand their perspective, their filters and their personalities. Using this information to inform your leadership is vital.

For example, I once had a team member who was a highly combative person. In order to lead him, I had to go toe-to-toe with him every day on everything. It was what he understood and what he respected. It was not necessarily my style, but adaptation by a leader is required to get the best out of his or her team.

I have other team members who work best with praise and yet others who need constant feedback. Understanding what employees need in order to get optimal results is essential to effective leadership.

## **What advantage does your legal background give you in your current leadership role?**

As I mentioned earlier, my legal education taught me how to think critically, parse through large amounts

I wanted to be a lawyer since I was 7 years old, although I'm not sure why. No one in my family had a college education, and my dad did not even graduate from high school — but with encouragement from my parents, it was my dream to be a lawyer.

Once I finished law school, but with no experience in law, I decided to collect as many legal experiences as possible to help me find my legal calling. I started with working for a state agency, the Oklahoma Securities Commission, after law school. Next, I went into private practice at a litigation firm. Then, true to the nature of plans, mine changed; I was recruited by a Washington, D.C. group to work in the mutual fund industry.

While in D.C., I learned two things. First, my variety of experiences made me appreciate being a lawyer. But second, I found I had a greater interest and aptitude for business. Over time, I was asked to handle fewer legal tasks and increasingly more corporate matters.

So, although the original plan changed, my law degree and truly, my legal education, continues to be useful. My legal education taught me to think critically, parse through large amounts of dense information and repackage that information in order to tell a meaningful story. These skills are important for day-to-day business: negotiating, contracts, handling personnel matters and problem-solving.

Additionally, my legal education assists me in establishing a proper relationship with my legal staff. My legal counsel's job is to understand the law and to recommend courses of action designed to protect the company. My job is to weigh legal counsel's advice with the needs and interests of the enterprise. As a fellow lawyer, I understand the importance of counsel's opinion and am respectful of their views, but my own education allows me to place the proper weight on counsel's advice.

Although I am open in this article about my early interest in the law and how my legal education has informed my practices as a

“ My legal education taught me to think critically, parse through large amounts of dense information, and repackage that information in order to tell a meaningful story. ”

leader, I have to admit, I've not always been so open about my career with casual acquaintances.

For the 20 years I lived in D.C., I flew to Oklahoma regularly. On these flights, I was inevitably asked what I did for a living. Early on, I would say I am a lawyer. Inevitably, I would get responses of pity and endless lawyer jokes. My occupation was an open invitation for a frustrating conversation where I was a captive audience to ceaseless droning and unsolicited advice. Keep in mind, these flights were frequent and always after a long work week.

of information and repackage that information in order to tell a meaningful story. I use those skills in my daily interactions with my team, with stakeholders and with the public.

### **What are traits of an effective leader?**

There are many traits, such as good judgment, decisiveness and critical thinking that are essential for effective leadership. An overarching trait that is equally important is flexibility. Leaders must be flexible because they are called on to use different skills at different times.

Sometimes I am the policy leader, and sometimes I am the decision-maker. At other times, I am the chief team builder or cheerleader, or even comforter-in-chief, such as when 9/11 occurred or at the death of an employee's child.

### **To what would you attribute your success as a leader?**

I look at my leadership skills as a toolbox. Just as different jobs require different tools (you wouldn't use a hammer if you needed a screwdriver), different issues require different skills. And truthfully, sometimes I use them in rapid succession until I get the result I want.

Very quickly, I learned that the correct answer to "What do you do?" was not "I'm a lawyer." I needed a snappy answer that would shut down further conversation.

Shortly after that epiphany, I sat next to a gentleman who asked the inevitable question, "What do you do for a living?"

I looked him in the eye, extended my arms, cracked my knuckles and confidently replied, "I'm a proctologist." My chatty seatmate grew quiet, and I was able to work in peace. I continued to use this response for years.



*President Natalie Shirley with OSU-OKC students and employees on campus in Oklahoma City.*

*Photo Credit: OSU-OKC*

In my toolbox are tools such as past lessons, humor, candor, emotions, the "mommy voice," timing, experience and most importantly, the ability to choose a great team who balance my weaknesses.

It has been said that Winston Churchill's greatest victory was over Winston Churchill. I think this is true of all of us. I learned a long time ago when I lost my temper, I lost control of the situation. So, I began to intentionally develop the discipline to control my emotions.

### **Why would you encourage other lawyers to get involved in leadership?**

I wouldn't. I say this not because lawyers don't make good leaders;

they do. Lawyers can be leaders because they have the tools, education and ability to analyze and think critically. However, this doesn't mean lawyers should be leaders. I say this, because if you are a lawyer, and you haven't yet become involved in leadership, then leadership likely isn't your passion. For example, my husband is an entrepreneur. That's his passion and that's the way his brain works. I am not an entrepreneur. That's just not the cloth from which I was cut. The world doesn't need leaders for leadership's sake. The world needs just as many entrepreneurs, teachers, students and followers. That said, the world also needs better leaders. So I



would say that if you are already involved in leadership, work hard to develop your character, skills and courage to become an even better leader that others deem worthy of following.

**What was your first leadership role or how did you first become involved in leadership?**

Within weeks of working for a large summer camp in 1977, I was named (at 19 years old) the director of the swimming program. Campers came to the swimming pool as soon as they arrived so that their swimming level could be evaluated. Those who could swim the length of the pool and back could go water skiing and sailing, but the others had to take swimming lessons until they could demonstrate they could swim. The

kids who went to this camp paid to go and generally were middle class kids. As the kids came to the pool, I would ask if they could swim. If they said, "Yes," I would have them jump into the pool and swim back and forth. If they said, "No" (and many would), I would say "great" and shuffle them off to swimming lessons. This system worked well.

However, in the middle of the summer, we hosted a group of inner city kids for a week, and I did with these kids what I had done with the earlier campers. I asked if they could swim; if they said, "Yes," I lined them up and had them jump into the pool to demonstrate it. Every child I asked said he or she could swim. I lined them up, they jumped in and almost all of them nearly drowned

before I plucked them from the water.

As a young leader, I was a failure, and where I failed that week was that I didn't understand the culture of the people I was leading. If I had, I would have understood that there was no way an inner city kid was going to admit they didn't know how to do something. Moreover, I failed to give them a soft place to land – a face-saving option. Those two lessons have informed almost every decision I have made since and every path I have taken – whether I was leading a \$500 million dollar company that handled billions of dollars or managing 2,000 people. Those lessons still inform my leadership today.



## ■ Lt. Gen. Harry M. Wyatt III

### Retired Air National Guard Director

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I graduated from Stillwater High School in 1967 and went to Southern Methodist University in Dallas, Texas, on a football scholarship. I graduated from SMU in 1971 (four-year plan) with a degree in business administration (and lettered in football and baseball). The Vietnam War was still going on, and anyone graduating from college became subject to the military draft unless attending medical school or law school. I had been accepted to SMU law school upon graduation, but the law was changed shortly before I graduated from undergraduate school to eliminate the law school deferment from the draft. So upon graduation with my business degree, I became subject to the draft.

I was not real keen on being drafted to serve on the ground in Vietnam, so before I graduated, I began checking out the various military services' officer commissioning programs and flight schools. I settled on the U.S. Air Force officer commissioning program (Officer Training School or OTS) and went to OTS in San Antonio, Texas, in August 1971. I graduated from OTS in November 1971 as a second lieutenant and went to Undergraduate Pilot Training (UPT) beginning in March 1972. I graduated from UPT, earning my pilot's wings, in January 1973 and began serving my six-year military commitment as a fighter pilot.

I still wanted to attend law school, but the Air Force had no program for serving as both a pilot and lawyer, so I transferred my mili-

tary commitment from the U.S. Air Force to the Air National Guard (a reserve component of the U.S. Air Force) in August 1977 and enrolled in the University of Tulsa College of Law in the fall of 1977. I continued to fly with the 138th Fighter Wing, Tulsa ANG part time while I attended law school as a full-time student. I graduated from law school in May 1980, passed the bar and went to work for the Logan and Lowery Law Firm in Vinita while continuing to serve in a part-time status with the Air National Guard as a pilot.

I made partner with Logan and Lowery in 1983 but moved to Stillwater to open a solo practice in 1985. I practiced in Stillwater until January 1998, when Gov. Frank Keating appointed me to fill the associate district judge vacancy in Vinita, Craig County. I continued to serve the ANG as a part-time fighter pilot during this time. I was elected as the associate district judge of Craig County in the elections of 1998 and 2002 while also serving as the commander of the 138 Fighter Wing, Tulsa ANG as a part-timer.

Before I could begin serving my second full-term as a judge, Gov. Keating asked me to serve as the interim and acting adjutant general during the last few months of his second term. Gov. Brad Henry then asked me to continue serving as the adjutant general as he began the first of his two terms as governor in January 2003. I accepted and resigned my judicial position in January 2003. The adjutant general commands the Oklahoma Air National Guard and the Oklahoma Army National Guard when they are not mobilized for service under the president of the United States.

In late 2008, Gov. Henry nominated me to be the director of the National Guard and President George W. Bush accepted Gov. Henry's nomination. President Bush nominated me for the position and



*While in military service, Lt. Gen. Bud Wyatt (left) is greeted by Col. John Kent upon his arrival in a C-12 (right) to a F-15 base.*

**“ I had been accepted to SMU law school upon graduation, but the law was changed shortly before I graduated from undergraduate school to eliminate the law school deferment from the draft. ”**

## **What tips would you give someone wanting to develop their leadership skills?**

I would first ask the person if they really wanted to be a leader and why. If someone could not easily answer those questions, then they would probably struggle in developing their leadership skills and styles. There are many academic courses and books on leadership, and while those are helpful, the best sources for leadership tips are biographies of leaders or articles on leadership written by those leaders.

Secondly, I would suggest that the person identify their own personal characteristics that could help or contribute to developing their own leadership styles. A leader cannot simply mimic the traits or characteristics of other leaders. They must be comfortable in their own style of leadership. Be yourself, not someone else.

## **What advantage does your legal background give you in your current leadership style?**

I will try to answer this question as it related to my nonlegal leadership roles as a former Air National Guard Fighter Wing commander, former adjunct general for the state of Oklahoma and as a former director of the Air National Guard.

My legal background consists of law school, 18 years as a private practitioner of law and five-plus years as a state court trial judge. This background has taught me that hard work, preparation, listening, caring for my clients, respect of individuals and patience are prerequisites for the successful practice of law. Combine those traits with an intense desire to win and a hatred to lose, and I think you have the ingredients for a successful law practice. Coincidentally, these same traits also make for good leaders in most other occupations, including the military. The process of legal thinking and

for promotion to 3-star lieutenant general and the U.S. Congress confirmed my nomination effective Feb. 1, 2009. The term of service was for four years in Washington, D.C. at the Pentagon, and I officially retired from the Air Force on Jan. 31, 2013, after 43 years of military service, 10 years as an active duty member of the Air Force and 33 years as a part-time Air National Guardsman. In early 2014, Judge Gary Maxey announced his retirement at the end of his term from the position as associate district judge of Craig County. I filed for the position that I had held from January 1998 through January 2003 and was elected without opposition. I began serving again as the associate district judge on Jan. 12, 2015.

My decision to give up the traditional practice of law for a military career, nonlegal in nature, was due to many different factors. First, I never felt that I was “giving up” a career in law. I felt that it was more of a leave of absence, verified by the fact that after my military retirement, I have resumed my traditional practice of law as a state trial court judge. Second, after Sept. 11, 2001, I felt a sense of patriotism and military service, as did many other Americans in all walks of life. Third, two governors had asked for my military service, and it is hard to say “no” to two governors. And fourth, I knew that my legal skills would serve me well in my military leadership endeavors.

analysis gave me a certain advantage in the military world that many of my peers were missing. Most decisions at the top levels of the Air Force are made by pilots or “operators” who have very little, if any, legal training. A good military leader advocated for his or her people and what better skills to be an advocate than those of a lawyer?

#### **What are the traits of an effective leader?**

I think an effective leader 1) has a passion for his/her work and profession, 2) recognizes that leadership is a privilege, 3) cares more about the people he or she leads than themselves, 4) knows that the trust and respect of the people they lead is a fleeting thing and must be earned every day, 5) is fair, 6) gives everyone the respect and dignity that each human being deserves, 7) listens to different points of view, 8) creates a diverse organization that reflects differing points of view, 9) leads by example, 10) trusts

people to do their job, gives people the tools and responsibilities to do their job and holds them accountable, 11) creates an atmosphere of collaboration and consensus building, 12) influences people to want to do their job at the highest levels of success, 13) sets a strategic vision, goals and objectives and is comfortable in letting people figure out how to reach those visions, goals and objectives, 14) has a sense of humor and is not afraid to display it, 15) does not take himself/herself too seriously, 16) communicates, 17) mentors and develops future leaders better than himself and finally, 18) has fun in doing all of the above.

#### **To what would you attribute your success as a leader?**

By faithfully practicing the traits set forth above. By being open and honest with those we serve. By being supported by a loving and faithful family and spouse (it is a team effort, you know). By believing that success is

what happens when preparation meets opportunity. And, most importantly, by my faith in a loving, compassionate and trusting God.

#### **Why would you encourage other lawyers to get involved in leadership?**

Becoming involved in leadership is a person's recognition that life does not remain status quo — that life and things can be better, but only if there is change for the better; that change will happen in the absence of leadership; that change for the better will only happen with good leadership; and that commitment to leadership is a way to “pay it forward,” if you will. If you really think about what lawyers do, they are leaders. They lead their clients through challenging and traumatic situations to a place of peace, serenity and resolution. They lead juries to a desired verdict. They can even lead doubting judges (I am one now) to correct legal decisions. They can lead organizations to accomplish their stated goals and objectives.

#### **What was your first leadership role or how did you first become involved in leadership?**

I was blessed with some pretty good athletic skills, and young athletes tend to gravitate toward the better athletes for leadership. So, I found myself thrust into leadership roles without thinking too much about it. Later, I began making decisions to vie for leadership positions academically and in student government and church. It was often difficult, and I know I made several mistakes along the way, but I felt that I had something to offer. I think it made me a better person, able to think less about what I wanted and more about what was best for the team or the organization. As I matured, the stakes got higher and the organizations got larger and more complex and leadership became more demanding. But through it all, I felt very privileged to lead.



# 2015 EMPLOYMENT LAW SEMINAR

Presented by the Oklahoma Employment Lawyers Association

- DATE:** Friday, December 11, 2015 from 9:00 a.m. to 5:00 p.m.  
**LOCATION:** Crabtown in Bricktown, Oklahoma City, Oklahoma, 303 E. Sheridan Ave., Okc, OK  
**CLE CREDIT:** CLE credit proposed for 8.0 hours including 1 hour of ethics  
**TUITION:** \$175.00<sup>1</sup> for registration by Nov. 27, 2015. (*Buffet lunch included*)  
\$200.00 for registration Nov. 28 and after  
\$50.00 discount for OELA members & government/public service attorneys  
**CANCELLATION:** There will be a \$25.00 charge for cancellations prior to Nov. 27  
**POLICY:** No refunds after Nov. 29, however electronic materials will be provided. Materials may be purchased separately from the CLE for \$50.00 (CD) or \$100 (hard copy)  
**REGISTRATION:** Make checks payable to: OELA  
Send registrations to: OELA, 325 Dean A. McGee Ave., Okla. City, Oklahoma, 73102;  
Fax No: 405-235-6111  
For more information, contact Amber Hurst, Tara Faulkner or Laurie Hammons at 405-235-6100

## PROGRAM

- 9:00-10:00 **U.S. Supreme Court Update** (Mark Hammons, *Hammons, Gowens, Hurst & Associates*)  
10:00-10:50 **Changes to FLSA Regulations** (Christine Cave, *Employers Legal Resource Center*)  
10:50-11:00 Break  
11:00-12:00 **Tips from the Bench: Do's and Don't's for Motions & Oral Argument** (Honorable Judges Timothy D. DeGiusti and Patricia G. Parrish)  
1:00-2:00 **10<sup>th</sup> Circuit and State Case Law Update** (Lauren Johnston, *Leonard & Associates* and Kristin M. Simpsen, *McAfee & Taft*)  
2:00-2:50 **Nuts & Bolts of Qui Tam & False Claims Act Litigation** (Wayne Allison, *Allison Legal*)  
2:50-3:00 Break  
3:00-3:30 **Updates to the Federal Rules of Civil Procedure** (Nathaniel Haskins, *Hall Estill*)  
3:30-4:00 **Fast Tips on Appellate Briefing** (Amber L. Hurst, *Hammons, Gowens, Hurst & Associates*)  
4:00-5:00 **Ethics Updates** (Joe Balkenbush, *OBA Ethics Counsel*)

## REGISTRATION FORM

Complete registration form below and fax 405-235-6111, email [laurie@hammonslaw.com](mailto:laurie@hammonslaw.com) or mail the registration to 325 Dean A. McGee Ave., Oklahoma City, Oklahoma 73102.

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Are you a member of OELA? Yes \_\_\_\_ No \_\_\_\_ OBA No. \_\_\_\_\_  
Are you a municipal, county or state attorney? Yes \_\_\_\_ No \_\_\_\_  
Would you like a hard copy of the materials (\$50 extra): Yes \_\_\_\_ No \_\_\_\_

<sup>1</sup> Materials will be provided in electronic format (CD or equivalent). There will be an additional \$50 charge for hard copies. If you would like a hard copy of the materials, please note your request on the registration form.

# Financial Institutions and Commercial Law Section Oklahoma Enacts 2010 Amendments to UCC Article 9

By Alvin C. Harrell and Fred H. Miller

## INTRODUCTION

In 2010, the uniform text of Uniform Commercial Code (UCC) Article 9 (governing security interests in personal property and fixtures) was revised by the sponsoring organizations.<sup>1</sup> Consistent with longstanding practice,<sup>2</sup> the 2010 amendments to the uniform text (2010 amendments) were then offered to the states for enactment into law. The 2010 amendments essentially represent a fine-tuning of Article 9 as to a handful of problem areas that warranted further clarification after the comprehensive revisions to the uniform text in 1998 (with technical amendments in 1999).<sup>3</sup>

## BACKGROUND

The 1998-1999 revisions to Article 9 rank as probably the most successful uniform law revision project in history, in terms of scope and effect and also in terms of prompt enactment (being enacted in all U.S. jurisdictions within the three-year uniform enactment period).<sup>4</sup> As had been the case with other recent UCC revisions, Oklahoma was among the first states to enact the 1998-1999 revisions. Given that the 2010 amendments represent relatively modest and uncontroversial changes to the 1998-1999 uniform text, in nearly all instances merely clarifying existing UCC (and Oklahoma) law, many observers expected that Oklahoma would quickly enact the 2010 amendments as well. But that was not to be.

## ENACTMENT OF THE 2010 AMENDMENTS IN OKLAHOMA

In May 2015, Oklahoma became the last state to enact the 2010 amendments,<sup>5</sup> doing so outside the uniform enactment period, meaning that there is a gap between the uniform effective date of July 1, 2013, applicable in most other jurisdictions, and the Nov. 1, 2015, effective date of the 2010 amendments in Oklahoma.<sup>6</sup> For issues and transactions arising in this gap period, there is some risk that Oklahoma law may be different (or at least less clear) than the law of other jurisdictions.<sup>7</sup>

## OKLAHOMA COMMENTS

Recognizing the need to address this situation, in 2014 the UCC Committee of the OBA Financial Institutions and Commercial Law Section reconvened its Legislative Review Subcommittee to draft

new (2014) Oklahoma Comments for Oklahoma's UCC Article 9, as published in the *Oklahoma Statutes Annotated*.<sup>8</sup> The result was 2014 Oklahoma Comments for UCC Article 9, published in the latest hardback edition of the *Oklahoma Statutes Annotated* for Title 12A, along with the then-current text of Oklahoma Article 9 (which did not include the 2010 amendments). Also included in the hardback edition are: the pre-2010 Official Comments and the earlier Oklahoma Comments addressing the impact in Oklahoma of the 1998-1999 revision to Article 9.

“...many observers expected that Oklahoma would quickly enact the 2010 amendments as well. But that was not to be.”

Thus, the hardback edition of Title 12A includes three sets of UCC Comments: the pre-2010 Official Comments; the 1998-1999 Oklahoma Comments; and 2014 Oklahoma Comments addressing the impact of Oklahoma's failure at that time to enact the 2010 amendments. The 2014 Oklahoma Comments continue to have relevance to transactions subject to Oklahoma Article 9 before the Nov. 1, 2015, effective date of Oklahoma's enactment of the 2010 amendments. However, Oklahoma's June 2015 enactment of the 2010 amendments then required a further updating of the 2014 Oklahoma Comments, to address the effects of the 2015 enactment. Thus, the Legislative Review Subcommittee reconvened to draft 2015 Oklahoma Comments for publication in a new pocket part supplement to Title 12A (along with the new statutory text and Official Comments reflecting the 2010 amendments).

#### THE 2010 AMENDMENTS

While the 2010 amendments are mostly clarifications of prior law (including some, as noted in the 2014 and 2015 Oklahoma Comments, that appear only in Official Comments to the uniform text), there are a few places where clarification required revisions to the statutory text in ways that change prior law.<sup>9</sup> The two most important of these are at section 9-503 (affecting the name of an individual debtor as shown on a form UCC-1 (Article 9 financing statement)), and section 9-316 (affecting the grace period for automatic perfection of a security interest when the place to file changes by reason of a change in the location of the debtor or the collateral).<sup>10</sup> This is not the place for a full explanation of the impact of these changes,<sup>11</sup> but interested parties should be aware of the need to consider the issues. There are also some changes to the requirements for the safe-harbor model forms, at sections 9-516 and 9-521, which may warrant some updating efforts.

Additionally, clarifications are made in the 2010 amendments (and/or the Official Comments) which relate to such things as: electronic authentication (section 9-102(a)(7)); certificates of title (sections 9-102(a)(10) and 9-311);<sup>12</sup> "control" (sections 9-104 and 9-105); anti-assignment clauses (sections 9-406 and

9-408); and disposition sales of collateral (sections 9-611 and 9-613). While these clarifications may not require changes in parties' practices or procedures (an issue that must be considered on a case-by-case basis in the context of a specific scenario), as they largely restate existing law, nonetheless interested parties may need to be aware of any potential impact in a given transaction.

#### CONCLUSION

It is surprising that such uncontroversial clarifications of the law, as embodied in the 2010 amendments, would spark resistance as they did in the Oklahoma Legislature so as to delay the enactment for five years (thereby creating potential and unwarranted transition and choice of law problems for Oklahoma transactions). Hopefully, the 2015 Oklahoma Comments will help to minimize these problems, and over time the resulting potential complexities can be minimized. The narrow scope of the changes and the broad consistency

with prior law also should help. Most importantly, however, going forward this important Oklahoma law is once again consistent with the law in all other states.

**“...Oklahoma's June 2015 enactment of the 2010 amendments then required a further updating of the 2014 Oklahoma Comments...”**

1. See NCCUSL, <http://www.uniformlaws.org/>. The sponsoring organizations are: The Uniform Law Commission (ULA), also known as the National Conference of Commissioners on Uniform State Laws (NCCUSL); and the American Law Institute (ALI); with the active participation of the American Bar Association (ABA) and many other parties and organizations.

2. The NCCUSL was organized by the states in 1892, and offered the Uniform Sales Act (precursor to UCC Article 2) for enactment by the states in 1906.

3. See discussion below. On the 1998-1999 revisions, e.g., Oklahoma Comments for the 1998-1999 revisions, in Tit. 12A Okla. Stat. Annot. §§1-9-101 *et seq.*

4. See UCC Article 9, Secured Transactions (1998) Summary, available at [http://www.uniformlaws.org/ActSummary.aspx?title=UCC%20Article%209,%20Secured%20Transactions%20\(1998\)](http://www.uniformlaws.org/ActSummary.aspx?title=UCC%20Article%209,%20Secured%20Transactions%20(1998)). Oklahoma has a claim to significant credit for this success. The Co-Reporter for the 1998-1999 revision was former Oklahoma lawyer and OCU. Adjunct Professor Charles W. Mooney Jr., and University of Oklahoma Law Professor Fred H. Miller was the Executive Director of NCCUSL throughout the revision and enactment process.

5. Oklahoma Enrolled House Bill No. 1773 passed the legislature in May 2015 and was signed by Governor Mary Fallin on June 4, 2015 (to be codified in scattered sections of Tit. 12A Okla. Stat. §§1-9-101 *et seq.*).

6. As noted below, the 2014 and 2015 Oklahoma Comments are designed in part to address this problem. See, e.g., Fred H. Miller, *Oklahoma Comments and the 2010 Amendments to UCC Article 9*, 68 Consumer Fin. L. Q. Rep. 360 (2014).

7. *Id.* See also Brooke M. Donnelly, *The Not-So-Uniform Uniform Law – Oklahoma's Unamended Article 9*, 68 Consumer Fin. L.Q. Rep. 374 (2014).

8. Tit. 12A Okla. Stat. Annot. §§9-101 to End.



9. For additional overviews of the 2010 amendments, see, e.g.: Alvin C. Harrell, *The 2010 Amendments to the Uniform Text of Article 9*, 65 Consumer Fin. L. Q. Rep. 138 (2011); Thomas J. Buiteweg, *Revised UCC Article 9 Provisions Affecting Vehicle Finance*, id. at 147.

10. See generally sources cited *supra* at notes 6, 7 & 9.

11. That is a role for the 2015 Oklahoma Comments, which cover these issues. See also other sources cited *supra* at notes 6–9.

12. See also: sources cited *supra* at note 9; and for discussion of related issues, see, e.g., Julie R. Caggiano & Alvin C. Harrell, *Common Certificate of Title Litigation and UCC Article 9 Issues, and the Impact of CT Laws*, 65 Consumer Fin. L.Q. Rep. 446 (2011).

## ABOUT THE AUTHORS



Alvin C. Harrell is a professor of law at the OCU School of Law and president of Home Savings and Loan Association of Oklahoma City. He is co-author of a dozen books, including *The Law of Modern Payment Systems and Notes* (with Professor Fred H. Miller). He is editor of the *Consumer Finance Law Quarterly Report*.

He chaired the ABA UCC Committee task forces on State Certificate of Title Laws and Oil and Gas Finance.



Fred H. Miller is professor emeritus at the OU College of Law, where he joined the faculty in 1966. He graduated in 1959 from the University of Michigan and received his J.D. from the same university in 1962. He has served as commissioner from Oklahoma to National Conference of Commissioners on Uni-

form State Laws since 1975, and is also former executive director, chair of the Executive Committee and past president of the conference. He has served in leadership roles in several law-related organizations, authored more than 100 legal articles and has spoken at numerous CLE programs.



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# LGBT EQUALITY AND THE LAW

Where we are, where we're going, and what it can mean for your clients

**Program Presenter:** Brady Henderson, Legal Director, ACLU

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The LGBT equality movement is swiftly changing family law, and not just in legalizing same-sex marriage. Parentage, adoption, child support, and inheritance are all undergoing rapid changes to accommodate a newer and broader definition of the American family. This presentation will focus primarily on family law, but touch on elements of other evolving areas of law commonly dealt with in Oklahoma district courts. We also will discuss broader LGBT legal issues likely to impact Oklahoma law in the next one to five years, such as coming conflicts in employment law, free speech, religious freedom, and even commerce.

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# Oklahoma's Family Wealth Preservation Trust Act: Now More Than Ever

By Philip R. Feist

Asset protection, as a matter of public policy, is endorsed throughout our country. At a practical level, everyone who locks their house believes in asset protection. To one degree or another, state statutes are in force to protect corporate shareholders, homeowners, retirement plans, the tools of one's trade, vehicles and life insurance. In addition, 15 states also have domestic asset protection trust (DAPT) statutes that attempt to protect trust assets from the claims of the settlor's creditors. Oklahoma is one of those 15 states, with three unique features that distinguish our Oklahoma Family Wealth Preservation Trust Act from all of the others: 1) a preservation trust can be *revocable*; 2) a preservation trust is an *exemption* trust not a spendthrift trust or a discretionary distribution trust; and 3) a preservation trust grantor cannot be a *beneficiary* of her own trust.

The act made its appearance in 2004, and from its inception, its unique features were overshadowed by a limitation and an ambiguity. The limitation was that only \$1 million could be contributed to a preservation trust — which, in itself, invited litigation concerning asset valuation. The ambiguity lay in the oral legislative history behind the act, which held that, to satisfy the act's requirement that at least half of preservation trust assets must be "Oklahoma assets," the inventory of assets held by entities organized under Oklahoma law had to be evaluated for "Oklahoma asset" analysis purposes, even though the statute by its terms provided that "equity . . . issued by an Oklahoma-based company" was, itself, an "Oklahoma asset."

Steven Oshins, a nationally recognized asset protection planning lawyer, recognized both of these deficits in the act. Each year he publishes

a "Domestic Asset Protection Trust State Rankings Chart," and each year, Oklahoma has competed for last place against all other DAPT jurisdictions. In his current chart, where our state places last among all 15 DAPT jurisdictions, he notes that trust assets "must be majority Oklahoma assets." Secondly, in his "Domestic Asset Protection Trusts — Key Factors Examined," published as *Steve Leimberg's Asset Protection Email Newsletter #150* on April 26, 2010, Mr. Oshins' standout comment about Oklahoma was that its "DAPT statutes are the only DAPT statutes that allow a revocable trust, but the protection is limited to \$1,000,000."

But Senate Bill No. 1904, signed into law by Gov. Fallin on April 21, 2014, promises to be a game-changer. That bill addressed both of Mr. Oshins' noted concerns about the act: 1) by removing the contribution cap and 2) by clarifying that equity of an Oklahoma-based

company is, “without reference to assets owned by the Oklahoma-based company,” an Oklahoma asset.

With these two factors set right, the act has captured the attention of the national asset protection bar.

#### FOUR OF THE STRENGTHS OF THE ACT

##### *The Oklahoma-Asset Requirement Has Protection Benefits*

Michael Passananti, in his very helpful article, “Domestic Asset Protection Trusts: The Risks and Roadblocks Which May Hinder Their Effectiveness,”<sup>1</sup> discusses the full faith and credit issues relating to enforcing a judgment against a debtor grantor of a DAPT in a non-DAPT jurisdiction. He concludes that if a foreign court obtains *in rem* jurisdiction over DAPT assets or *in personam* jurisdiction over a DAPT trustee, then the public policy of that nonDAPT jurisdiction could apply to allow the court to disregard the DAPT, and reach DAPT assets located in that jurisdiction to satisfy creditor claims against the debtor grantor. In its May 2013 decision in the *Huber* case, the U.S. Bankruptcy Court for the Western District of Washington reached the same conclusion and disregarded a Washington resident debtor’s Alaska trust to make trust assets located in that state part of the bankruptcy estate.<sup>2</sup>

The recent revision to the act clarifying that, for preservation trust purposes, non-Oklahoma assets can be transformed into “Oklahoma assets” by being held in an Oklahoma entity, is material to both the *in rem* and the *in personam* issues relating to the jurisdiction of a non-Oklahoma court. If the preservation trust trustee is otherwise careful to avoid jurisdictional minimal contacts<sup>3</sup> with a non-Oklahoma grantor’s state, an Oklahoma entity (which is owned, in part,<sup>4</sup> by the grantor’s preservation trust) which is domesticated in the grantor’s state of residence to hold assets in that jurisdiction could protect preservation trust assets held inside the entity. In such a case, the preservation trust assets would be protected due to the statutory protections given to entities under the law of that foreign jurisdiction, not because of the Oklahoma Preservation Trust Act. Failing to pierce the veil of the preservation trust’s entity interest in the non-Oklahoma grantor’s jurisdiction, the creditor would have to domesticate his judgment in Oklahoma, and attempt to reach preservation trust assets through the Oklahoma courts; but in Oklahoma, assets of a

properly drafted and administered preservation trust would be protected under the express language of the act.

Finally, the revocation power — which, under the act, cannot be exercised under judicial compulsion — does raise this question: could the foreign court in the non-Oklahoma grantor’s state of residence, where the judgment in favor of the grantor’s creditor was rendered, hold the grantor in contempt for not exercising the revocation power, as has been done by the federal courts with regard to grantors of foreign (non-U.S.) asset protection trusts?<sup>5</sup> Or, since under the express terms of the Oklahoma act the revocation power is essentially suspended, so that the power is effectively unavailable to the grantor in such a situation, and the preservation trustee is not authorized to honor an exercise of the power under judicial compulsion, would the full faith and credit clause rescue the non-Oklahoma grantor from contempt liability in her state of residence, by requiring that the foreign court recognize this effect of the Oklahoma act? Or, since by law the revocation power cannot be exercised by the non-Oklahoma grantor, and if the indenture governing the preservation trust contained prohibitions on the trustee recognition of a grantor’s exercise of the revocation power under compulsion, could the grantor plead legal impossibility as a defense to contempt? Another commentator suggests that the enforceability of the foreign court’s judgment should be analyzed on the basis of conflict of laws principles.<sup>6</sup> In any event, this issue should inform prudent drafting of the preservation trust indenture and careful administration of the trust itself.

##### *The Requirement for a Corporate Trustee Has Protection Benefits*

The act requires that at least one of the trustees of a preservation trust be an “Oklahoma-based bank that maintains a trust department or an Oklahoma-based trust company.”<sup>7</sup> The involvement of a professional trustee gives a high level of assurance that proper due diligence will go into vetting the grantor and his situation, as well as the assets contributed to a preservation trust, for purposes relating to the Uniform Fraudulent Transfer Act, which is incorporated into the act by explicit reference.<sup>8</sup> In addition, a preservation trust that comes under judicial scrutiny should enjoy a presumption of proper administration, which may not be the case with a discretionary distribution asset pro-



tection trust where an individual trustee may be required to establish that presumption by producing records properly maintained in the regular course of trust administration.

### *The Act Protects Creditors' Rights*

The fact that the Uniform Fraudulent Transfer Act is a continuing grid through which grantors and contributed assets are evaluated guarantees that the preservation trust will not be used to abrogate or deny the legitimate rights of creditors. The act further provides that the existing rights of secured creditors in assets contributed to a preservation trust are also fully protected.<sup>9</sup>

### *Revocability Has its Benefits*

Of all the DAPT statutes, only in Oklahoma can an asset protection trust be settled as a revocable trust. A revocable preservation trust does not violate any common law principle of trusts, inasmuch as a grantor cannot be a beneficiary of her own preservation trust; so the protections of the act do not come to the grantor as a beneficiary, or otherwise.<sup>10</sup> A revocation power is not an interest in trust property but, rather, it is a power over property, and repossession of trust property by the grantor upon exercise of the revocation power also does not constitute a beneficial interest in trust property.

A preservation trust being revocable, and not having the grantor as a beneficiary, and having the benefit of professional vetting by a corporate trustee, raises a robust argument that the 10-year claw-back provision of 11 U.S.C. §548(e) (1) should not apply to a preservation trust.<sup>11</sup> In addition, the clear exemption language of Sec. 12 of the act<sup>12</sup> parallels the exemption language that applies to an individual retirement account (also a self-settled trust arrangement) under Oklahoma law.<sup>13</sup> Note, however, that the case of a revocable preservation trust settled by a non-Oklahoma grantor in the U.S. bankruptcy venue presents a vulnerability that will require astute planning. As was pointed out at the March 13, 2015, OBA CLE seminar on the act,<sup>14</sup> a preservation trust grantor's revocation power would come into the hands of the bankruptcy

trustee as an asset of the debtor's estate, by operation of law and not by judicial action, and would be exercisable by the bankruptcy trustee; and while the exemption protections of the act should be available to Oklahoma residents, they would not be available to a non-Oklahoma debtor because, in bankruptcy, only the exemptions of the debtor's own state or of the bankruptcy code are available to a debtor.

### **A CAUTIONARY COMMENT**

A grantor's indiscriminate and whimsical exercise of the revocation power will almost certainly open up a preservation trust to a "pierce-the-veil" attack by a creditor, on the premise that the grantor's self-benefit treatment of her preservation trust belies any family-benefit purpose for which the trust was settled. To deflect such an attack, a grantor, in her preservation trust indenture, would be well advised to consider placing restrictions on her exercise of the revocation power; for instance, time-and-extent restrictions (e.g. the power can only be exercised during the last week of a calendar quarter, and only to the extent of \_\_\_ percent of the value of trust assets), and/or purpose restrictions (e.g. for medical emergencies of the grantor, and for the health, education, maintenance and support of those for whose

support the grantor is legally responsible). In fact, if the exercise of the revocation power is strictly limited to purpose-related restrictions, and no time-and-extent exercise of the power is permitted, then these may serve to impede exercise of the power by a non-Oklahoma bankruptcy trustee as well. Also, providing in the preservation trust indenture that the revocation power is not transferrable could further protect the power from creditor assault outside Oklahoma. Lastly, the presence of a corporate trustee, with a duty to enforce those restrictions and limitations, lends strength to the protective fabric of the preservation trust.

### **FINAL COMMENTS**

Oklahoma's Family Wealth Preservation Trust Act has interjected two legal concepts — revocability and exemption-based protection — into the national asset protection trust dis-

**“A grantor's indiscriminate and whimsical exercise of the revocation power will almost certainly open up a preservation trust to a ‘pierce-the-veil’ attack by a creditor...”**

cussion. Successful use of the act will take into account at least the following four considerations: 1) a Family Wealth Preservation Trust is for...well, *family*. Only the grantor's spouse, descendants, ancestors, a tax-exempt charity and trusts for any of these, are "permitted beneficiaries" of a preservation trust. Exemptions, by their nature, concern particular assets that are related to protection purposes sanctioned by public policy, as determined by a state's constitution and the actions of its legislature. This said, an Oklahoma preservation trust is a vehicle for preserving family wealth for family purposes, not for the direct benefit of grantors, and should not be available for other persons or purposes. 2) the act puts in place procedural elements that, together, combine to guarantee as much as possible a positive protection result; these include the requirements for a corporate trustee, an Oklahoma situs for at least half of trust assets and statutory standards (in Oklahoma's Uniform Fraudulent Transfer Act) for vetting grantors and assets to prevent fraud on creditors. 3) experienced estate planning lawyers understand that the preservation trust is only one of several available asset protection instruments, and that an effective protection plan is a symphony involving several of those instruments, not a solo played by one of them. 4) using a preservation trust only in situations where "bad facts" and "bad acts" (that is, where a client is trying to obstruct the claims of creditors, as those terms are defined under the Uniform Fraudulent Transfer Act) are not present will ensure that a preservation trust will be considered on its merits, not on the demerits of its settlor, if it ever comes under judicial scrutiny.

1. *ACTEC Journal*, Winter 2006, pages 260-271.

2. *In re Donald G. Huber*, 493 B.R. 798 (W.D. Wash. 2013). For an excellent discussion of the *Huber* case, see the analysis by Jonathan D. Blattmachr and Johnathan G. Blattmachr, *Leimberg Asset Protection Planning Newsletter* #225, May 11, 2013.

3. See Passananti citations: *Hanson v. Denckla*, 357 U.S. 235 (1958); *McGee v. International Life Insurance Co.*, 355 U.S. 200 (1957); *International Shoe Company v. Washington*, 326 U.S. 310 (1945); *NAPA Development Corp. Inc. v. Pollution Control Financing Authority*, 346 F.Supp.2d 730 (E.D. Pa. 2004); *Zippo Manufacturing Co. v. Zippo Dot Com, Inc.*, 952 F.Supp. 1119 (W.D. Pa. 1997); *Weintraub v. Walt Disney World Co.*, 825 F.Supp. 717 (E.D. Pa. 1993); *Rose v. Firststar Bank*, 819 A.2d 1247 (2003).

4. The assets held by an LLC that is wholly owned by a preservation trust may be vulnerable to creditor attack. See *In re Albright*, 291 B.R. 538 (Bankr.D.Colo 2003) (since, in a single-member LLC, there are no non-debtor members to protect, and therefore no other parties' interests would be affected by allowing creditors to reach the debtor LLC owner's interest itself, the court held that charging order protection does not exist to protect the debtor's LLC member interest from his creditors); *In re Elmann*, 319 B.R. 200 (Bankr.D.Ariz 2005) (because the operating agreement of a limited liability company imposes no

obligations on its members, it is not an executory contract. Consequently when a member who is not the manager files a Chapter 7 case, his trustee acquires all of the member's rights and interests pursuant to §§541(a) & (c)(1) of the Bankruptcy Code, and the limitations of §§365(c) and (e) do not apply), withdrawn as condition of court approval of settlement, 337 B.R. 228.

5. See *Lawrence v. Goldberg*, 279 F.3d 1294 (11th Cir. 2002); *Federal Trade Commission v. Affordable Media*, 179 F.3d 1228 (9th Cir. 1999); *U.S. v. Bank of Nova Scotia*, 740 F.2d 817 (11th Cir. 1984).

6. See Shaftel and Bundy, "Domestic Asset Protection Trusts Created by Nonresident Grantors," *Estate Planning Journal* (April 2005).

7. 31 O.S. §1, Sec. 5, subsec. b. The term "Oklahoma-based" includes the requirement that the bank or trust company authorized to do business in Oklahoma also has a "place of business" at a "physical location" in the State.

8. 31 O.S. §17, "Any transfer of monies or property by a grantor to a preservation trust shall be subject to the provisions of the Uniform Fraudulent Transfer Act."

9. 31 O.S. §12, "[t]ransfer of an asset to a preservation trust does not affect any mortgage, security interest or lien to which that asset is subject."

10. By explicitly incorporating the Oklahoma Uniform Fraudulent Transfer Act into the Preservation Trust Act (at its §17), a preservation trust grantor cannot use family member beneficiaries as a conduit to indirectly access preservation trust assets. See 24 O.S. §116, B.1 (transfer to an "insider" prohibited) with §113.7a(1) (definition of an "insider" includes a family member).

11. The definitive case to date on what constitutes a "similar device" for purposes of 11 U.S.C. §548(e)(1)(A) is *In re Castellano*, 514 B.R. 555 (Bankr.N.D.Ill. 2014), where, at 561, citing Black's Law Dictionary, the court defines a "self-settled trust" to be "[a] trust in which the settlor is also the person who is to receive the benefits from the trust, usually set up in an attempt to protect the trust assets from creditors." Black's Law Dictionary 1746, 10th ed. 2014." (emph. Added). By contrast, preservation trusts are *dissimilar* devices inasmuch as grantors cannot be a beneficiary, and limitation on a grantor's revocation power under creditor duress is expressly statutory and not self-drafted.

12. "... the corpus and income of a preservation trust shall be exempt from attachment or execution and every other species of forced sale and no judgment, decree, or execution can be a lien on the trust for the payment of debts of a grantor, except a child support judgment."

13. 31 O.S. §1, Sec. A., subsec. 20 ("... exempt from attachment or execution and every other species of forced sale for the payment of debts ...").

14. Comments presented by Mark Sanders, shareholder at GableGotwals in Tulsa, Oklahoma, and adjunct professor of bankruptcy law at the University of Tulsa School of Law. Mr. Sanders was a law clerk for the Honorable Albert S. Dabrowski, Chief United States Bankruptcy Judge for the District of Connecticut for over 15 years before joining GableGotwals.

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# Due Process in Tax Sales

*By Ashley Warshell and Terrell Monks*

Every year on the second Monday in June, real properties subject to tax liens which have remained unpaid for at least three years are sold at county tax sales.<sup>1</sup> In preparation for these tax sales, the county treasurer's office is required to research the parties interested in each property and attempt notice at all addresses that are likely to be correct. The procedural rules governing this process are outlined in Title 68, Article 31 of the Oklahoma statutes, and the effectiveness of the county treasurer's resale deed issued to the tax sale buyer is dependent on whether these procedures have been followed. For example, the statute states that "[n]either failure to send notice to any mortgagee of record of said real estate nor failure to receive notice as provided for by this section shall invalidate the resale, but the resale tax deed shall be ineffective to extinguish any mortgage on said real estate of a mortgagee to whom no notice was sent."<sup>2</sup>

In other words, if the county fails to send notice to a mortgagee of record, the buyer at the tax sale takes title subject to that mortgage. This requirement is consistent with the constitutional concept of due process, which requires the government to give notice prior to the taking of a property interest from a private citizen.<sup>3</sup> Therefore, a party wishing to attack or defend the effectiveness of a tax resale deed against the interest of a prior owner or an encumbrancer of record may do so on both constitutional grounds and based on the procedural requirements provided in the Oklahoma statute.

## STATUTORY PROCEDURES

The Oklahoma statute requires the treasurer to give notice of an impending tax sale by certified mail to the record owner of the property, in

addition to all mortgagees of record, at least 30 days prior to the tax sale.<sup>4</sup> This notice must include the property's legal description and state the time and place of the tax sale.<sup>5</sup> In addition, the statute mandates the exercise of "reasonable diligence" in ascertaining the address of a mortgagee of record.<sup>6</sup> If, despite the exercise of reasonable diligence, the treasurer cannot ascertain such an address, the treasurer is permitted to file an affidavit to that effect and rely on notice by publication.<sup>7</sup> Note, however, that the statutory language does not expressly permit this type of substitute notice with respect to the owner.

## WHO IS A MORTGAGEE OF RECORD?

As noted above, the statutory procedure requires that notice be given to "all mortgagees of record," but how broadly should this lan-

guage be interpreted? Are judgment lienholders entitled to the same protection as a mortgagee? Judgment liens are nonconsensual encumbrances on real property, which are governed by a separate set of statutes and subject to different treatment under the law.<sup>8</sup> For example, judgment liens may be subject to lien avoidance or modification in bankruptcy,<sup>9</sup> whereas a mortgage may be removed or modified only in more limited circumstances.<sup>10</sup> Judgment liens are not mentioned in the Oklahoma statute governing notice of tax sales, and principles of statutory construction suggest that the express mention of mortgagees indicates an intent to exclude all other categories of interested lienholders. In other words, it is reasonable to conclude that if the legislature had intended to provide judgment lienholders the same protection as mortgagees of record, it would have either mentioned them specifically or used a broader term.

## DUE PROCESS

In 1950 the United States Supreme Court decided *Mullane v. Central Hanover Bank & Trust Co.*,<sup>11</sup> addressing issues relating to notice of a judicial settlement of accounts to the beneficiaries of a common trust fund. The only notice given to the beneficiaries in *Mullane* was by newspaper publication, which the court found was not sufficiently reliable to meet due process standards with respect to beneficiaries whose interests and whereabouts were ascertainable with the exercise of due diligence.<sup>12</sup> In its analysis, the court weighed the individual's 14th Amendment interest against the interest of the state, stating that "[a]n elementary and fundamental requirement of due process... is notice reasonably calculated, under all the circumstances, to apprise the interested parties of the pendency of the action and afford them an opportunity to present their objections."<sup>13</sup> However, the court limited its holding to beneficiaries with known interests and addresses, overruling constitutional objections as to beneficiaries with unknown interests or where actual notice was not reasonably possible or practical.<sup>14</sup>

In 1989, the Oklahoma Supreme Court decided *Wells Fargo Credit Corp. v. Zeigler*,<sup>15</sup> addressing the due process issue in the context of a tax sale. In *Zeigler*, the county treasurer mailed notice by certified mail to Wells Fargo, a mortgagee, at its address shown on the promissory note and in the telephone directory.<sup>16</sup> Neither the envelope nor a signed return receipt was

returned to the treasurer's office, and the property was thereafter sold at a tax sale.<sup>17</sup> In construing the Oklahoma statute, the court stated that "no notice is sent unless there has been an exercise of reasonable diligence,"<sup>18</sup> and that "the absence of a return receipt was a red flag, alerting the county treasurer to exercise reasonable diligence in locating Wells Fargo."<sup>19</sup> The court found that Wells Fargo did not receive actual notice, and that due process was violated under circumstances where notice was published and mailed without proof of actual receipt.<sup>20</sup> As a result, the tax deed issued to the tax sale buyer was valid, but the buyer's interest was acquired subject to the Wells Fargo mortgage,<sup>21</sup> and the tax sale buyer was not entitled to reimbursement or an adjustment of the tax sale purchase price.<sup>22</sup> In addition, the court allowed Wells Fargo to collect its attorney's fees from the tax sale buyer.<sup>23</sup>

One conclusion to be drawn from the *Zeigler* opinion is that checking the loan documents and telephone directory for addresses does not satisfy the standard of reasonable diligence where actual notice does not result. In *Zeigler*, the Oklahoma Supreme Court declined to elaborate on what subsequent efforts might have been sufficient; nor did it address how the analysis might change if reasonable diligence would not have yielded a correct address. However, much of the more recent due process case law seems to suggest that nothing short of actual notice is sufficient.<sup>24</sup> This raises the question: What if the notice had been sent to a correct address and left unclaimed, and no amount of additional due diligence could have yielded any other address that would have been likely to reach the addressee?

The United States Court of Appeals for the 4th Circuit gave some weight to these considerations in deciding *Plemons v. Gale*,<sup>25</sup> where the owner of property subject to a tax sale had moved to a new address which was not listed in the telephone directory. West Virginia's statutory scheme, similar to the applicable Oklahoma statute,<sup>26</sup> required the exercise "reasonably diligent efforts" in providing notice.<sup>27</sup> Although the court maintained that something more must be done when the party knows that notice to a property owner has failed,<sup>28</sup> it acknowledged that reasonable efforts will not always result in actual notice, and that there are instances where reasonable follow-up efforts might prove ineffectual.<sup>29</sup> As a result, the district court's decision was vacated, and the



case was remanded for a determination as to what efforts were made and whether a search of public documents would have yielded a proper address.<sup>30</sup> Note, however, that this approach has not been specifically adopted in any precedent binding in Oklahoma.

The United States Supreme Court continued developing the *Mullane* “reasonably calculated” standard in 2006, adding that even if mailed notice was reasonably calculated at the time it was sent, subsequent efforts might be required based on the particular circumstances of the case.<sup>31</sup> For example, in *Jones v. Flowers*,<sup>32</sup> where notice of a tax sale sent to the property owner’s former address was returned unclaimed, the state should have taken “additional reasonable steps,” such as resending the notice via regular mail, posting notice on the front door, or addressing otherwise undeliverable mail to “occupant.”<sup>33</sup> The court reasoned that since the state had notice that its first attempt was unsuccessful, it should have taken additional steps to address the possibility that the intended recipient was no longer at that address, or had simply decided not to retrieve his certified mail.<sup>34</sup>

In December 2014, the Oklahoma Court of Civil Appeals issued its decision in *Beneficial Financial I Inc. v. Love*,<sup>35</sup> providing some guidance as to what additional steps may satisfy Oklahoma’s reasonable diligence standard. In *Love*, the county treasurer’s office mailed notice to the mortgagee of record, Beneficial Oklahoma Inc., at the address indicated in the mortgage; the envelope was returned to the treasurer marked “not deliverable as addressed/unable to forward,” with a handwritten note that “this business has been gone 4 years.”<sup>36</sup> The treasurer subsequently posted a notice on the door of the subject property and sent a letter via facsimile to the mortgagee, stating “IF YOU KNOW ANYTHING ABOUT BENEFICIAL OKLAHOMA INC. WHOSE ADDRESS WAS 981 W. WILL ROGERS BLVD. CLAREMORE, OK 74017, PLEASE CALL OUR OFFICE ASAP!”<sup>37</sup> Although the treasurer’s office never received a response to the facsimile message or any other indication that notice to the mort-

gagee had been accomplished, the court nonetheless found that the treasurer’s efforts went above and beyond the statutory requirements.<sup>38</sup> The key difference in *Love* appears to be that the mortgagee had undergone a merger and failed to provide notice that it had a new name and address. The court admonished the mortgagee for failing to update its information by recording additional documentation with the county clerk or providing a forwarding address to the post office, pointing out that the mortgagee had not presented any evidence that its new name and address would have been discoverable upon the exercise of additional reasonable efforts.<sup>39</sup>

“...the envelope was returned to the treasurer marked ‘not deliverable as addressed/unable to forward,’ with a handwritten note that ‘this business has been gone 4 years.’”

More recently, the Oklahoma Supreme Court overturned a decision of the Court of Civil Appeals which affirmed summary judgment in favor of a county treasurer in comparable circumstances.<sup>40</sup> In *Crownover*, the county treasurer mailed notice to the property owner by certified mail to his address of record, which was returned marked “Not Deliverable as Addressed Unable to Forward.”<sup>41</sup> The property owner no longer lived at the address, but provided the county with no notice of his address change other than by paying his taxes one time with a check that stat-

ed his correct address.<sup>42</sup> The parties in *Crownover* agreed that the statutory procedure had been followed, and the property owner’s appeal was based solely on due process.<sup>43</sup> In its analysis, the court discussed many of the cases mentioned above, reiterating the additional reasonable steps suggested by the *Flowers* court.<sup>44</sup> The court found that it was inconsistent with state and federal jurisprudence for the county to “simply shrug and claim it complied with the notice statute.”<sup>45</sup> Perhaps this court was further persuaded by the fact that the tax sale purchaser was able to locate and contact the prior owner without issue when he wanted to inquire about purchasing a boat and trailer that had been left on the property.<sup>46</sup>

#### ADDITIONAL REASONABLE STEPS

Although the specifics and adequacy of any of the “additional reasonable steps” contemplated, but not explained, in *Flowers* and *Crownover* may be debatable, at least one prac-

tical conclusion may be drawn from this discussion: The presence of a returned certified mail envelope addressed to an interested party in a tax sale should be recognized as a red flag, both for the county treasurer and in particular for the prospective purchaser. Additional reasonable efforts should be made after such an envelope has been returned, and county treasurers would be wise to at least resend such notices by regular mail, which provides an inexpensive and simple method for addressing the issues raised in the cases discussed above. The absence of any documentation regarding subsequent efforts may be an indication that the prospective purchaser's interest is at risk.

## CONCLUSION

The status of the law on these issues, whether described in terms of due process or reasonable diligence, is both well-developed and in need of clarification. Although case law provides numerous examples of efforts that have fallen short, these cases are fact-specific, and largely indicate what a county treasurer should *not* do. More examples of efforts that meet the minimum requirements would be helpful in evaluating whether a tax sale property is worth investing the necessary time and money. In Oklahoma, the *Love* court at least acknowledged that something short of actual notice can satisfy the reasonable diligence standard, although even this case is arguably limited to its facts. Given the number of cases holding that notice was insufficient, the potential tax sale buyer would be well-advised to make inquiry into these issues prior to placing a bid at a tax sale, especially where encumbrances may exceed the value of the property and attorney's fees may be recoverable in foreclosure.

## FOR COUNTY TREASURERS AND THEIR COUNSEL:

- 1) Mail notices to interested parties by regular mail in addition to certified mail.
- 2) Check for addresses in the county records of every county office, including the court clerk and assessor's offices.
- 3) Use an investigative research system such as Thomson Reuters CLEAR system to search for up-to-date addresses for all interested parties.
- 4) Always print search results and maintain copies in the file.

- 5) Recognize that returned mail is a red flag and establish follow-up procedures to address this issue when needed.
- 6) Post the notice in a conspicuous location on the property.

## FOR PROPERTY OWNERS/MORTGAGEES/ OTHER INTERESTED PARTIES AND THEIR COUNSEL:

- 1) Determine whether the interested party could have been located by asking the following:
  - a. Was a correct address listed with the county assessor's office?
  - b. Was a correct address available in the county's land records? Addresses for grantees, mortgagees, and holders of other encumbrances of record may be listed on recorded documents.
  - c. Was a correct address listed with the court clerk's office? Addresses may be available for defendants who have been sued or have received traffic or other criminal citations.
  - d. Was a correct address listed in the telephone directory?
  - e. Was the notice posted on the property subject to the tax sale?
  - f. Did the interested party call the county and report a change of address?
  - g. Was a correct address available from any other publicly available sources, such as a website?
- 2) Ask to review the county treasurer's file; look for documentation that reasonable diligence was exercised in the attempt to locate the interested party.

1. See Okla. Stat. tit. 68, §3105.
2. Okla. Stat. tit. 68, §3127.
3. See U.S. Const. amend. XIV §1.
4. Okla. Stat. tit. 68, §3127.
5. *Id.*
6. *Id.*
7. *Id.*
8. See Okla. Stat. tit. 12, §681 et. seq., 11 U.S.C. §522(f)(1) (2010).
9. See, e.g., 11 U.S.C. §522(f)(1) (2010) (Chapter 7 debtor may avoid the fixing of judicial lien to the extent that it impairs an exemption).
10. See, e.g., 11 U.S.C. §1322(b)(2) (2010) (Chapter 13 plan may modify the rights of secured parties, except with respect to a security interest in real estate which is the debtor's principal residence).
11. 339 U.S. 306 (1950).
12. *Id.* at 310, 315, 317.
13. *Id.* at 314.
14. *Id.* at 317, 318.
15. 1989 OK 113, 780 P.2d 703.
16. *Id.* at 704.
17. *Id.*

18. *Id.* at 706.

19. *Id.* at 705.

20. *Id.*

21. *Id.* at 704, 705.

22. *Id.* at 706.

23. *Id.* at 704, citing Okla. Stat. tit. 42, §176.

24. *Stottlemire v. Haworth*, 1998 OK CIV APP 31, ¶6 (“To the extent that *Wells Fargo* requires that the owner of property subject to tax resale actually receive notice of the tax resale proceedings and inasmuch as the uncontroverted evidence in the present case shows no such actual receipt of notice of the tax resale proceedings by Appellee, we hold the trial court committed no error in setting aside Appellants’ resale tax deed.”) (emphasis added)

25. 396 F.3d 569 (4th Cir. 2005).

26. Okla. Stat. tit. 68, §3127.

27. *Id.* at 572, citing: W. Va. Code Ann. §11A-3-22 (2002); W. Va. Code Ann. §11A-4-4(b) (2002).

28. *Id.* at 574-576, citing: *Schwartz v. Dey*, 665 S.W. 2d 993, 935 (Mo. 1984); *Malone v. Robinson*, 614 A.2d 33, 38 (D.C. 1992); *Bank of America v. Giant Inland Empire R.V. Ctr. Inc.*, 78 Cal. App. 4th 1267, 93 Cal. Rptr. 2d 626, 635 (Cal. Ct. App. 2000); *Tracy v. County of Chester*, 489 A.2d 1334; *Kennedy v. Mossafa*, 100 N.Y.2d 1, 789 N.E. 2d 607 (N.Y. 2003).

29. *Id.* at 577.

30. *Id.* at 578.

31. *Jones v. Flowers*, 547 U.S. 220, 229 (2006).

32. *Id.*

33. *Id.* at 234, 235.

34. *Id.* at 235.

35. 2014 OK CIV APP 103.

36. *Id.* at ¶ 8.

37. *Id.* at ¶ 10 n.6.

38. *Id.* at ¶ 11.

39. *Id.*

40. *Crownover v. Keel*, 2015 OK 35, \_\_ P.3d \_\_.

41. *Id.* at ¶ 7.

42. *Id.* at ¶ 5.

43. *Id.* at ¶ 17.

44. *Id.* at ¶ 21.

45. *Id.* at ¶ 22.

46. *Id.* at footnote 1.

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# Electronic Commerce and Incorporation by Reference in Contract Law

By Alvin C. Harrell

In *Walker v. Bulldirect.com Technologies, Inc.*,<sup>1</sup> the Oklahoma Supreme Court considered the standard that must be met to incorporate a separate (extrinsic) electronic record into a contract by reference. The issue arises when it is argued that separate records<sup>2</sup> should be read together as parts of the contract by reason of a reference to the extrinsic record in the record executed by the contracting parties.<sup>3</sup> The *Walker* court noted that Oklahoma authority on the issue is sparse, and treated the matter as an issue of first impression.<sup>4</sup> It is an issue of increased importance in view of the expansion of electronic commerce, given that electronic contracts frequently involve the cross-referencing of extrinsic material via links between web pages.<sup>5</sup>

As noted elsewhere,<sup>6</sup> the cases on this issue often involve one or more of three subject areas that are lightning rods for modern controversies: 1) arbitration clauses; 2) choice-of-forum (or choice-of-law) clauses; and 3) warranty disclaimers.<sup>7</sup> Sometimes these are intertwined with the effects of a change-in-terms notice, and in the electronic contracting context there may be additional issues relating to assent in a “clickwrap,” “modified clickwrap,” “browsewrap” or “shrinkwrap” transaction.<sup>8</sup>

In all of these scenarios the substantive law issues are governed by traditional contract law principles,<sup>9</sup> supplemented on narrow issues by the Uniform Electronic Transactions Act (UETA) and/or the Uniform Commercial Code (UCC).<sup>10</sup> The guiding principle in the analysis (as recognized in *Walker*) is to ascertain the expressed intent of the parties, recognizing the

foundational concept that contract law is the embodiment of party autonomy. Thus, the issue of incorporation by reference addressed in *Walker* goes to the heart of the standards required for the legal recognition of private bargains, perhaps the single most important underpinning for a modern, just and prosperous society.<sup>11</sup>

## BACKGROUND OF THE WALKER CASE

The Walkers purchased flooring materials from Bulldirect.com (BuildDirect) in a contract sent to the Walkers by email.<sup>12</sup> They printed it out and signed the printed contract, and returned it to BuildDirect by facsimile (fax) transmission.<sup>13</sup> The printed contract stated that: “[a]ll orders are subject to BuildDirect’s ‘Terms of Sale.’”<sup>14</sup> The Walkers received and installed the flooring, and subsequently alleged that their home became infested with “nonindige-



nous wood-boring insects” which damaged their home, as a result of insect larvae contained in the BuildDirect flooring.<sup>15</sup> They filed a class action suit against BuildDirect, alleging fraud, breach of contract, negligence, trespass, breach of implied warranties, deceptive trade practices, products liability and nuisance.<sup>16</sup>

BuildDirect moved to compel arbitration, based on an arbitration clause in the “Terms and Conditions” referenced in the printed contract signed by the Walkers.<sup>17</sup> BuildDirect noted that the terms and conditions were separately available on the BuildDirect website, accessible by clicking on a hyperlink under that label, under the heading “Customer Service.”<sup>18</sup> The Walkers responded that they were not aware of these terms and that the terms were not properly incorporated by reference into the contract.<sup>19</sup>

The district court denied BuildDirect’s motion to compel arbitration, on grounds the contract was ambiguous and that the court could not say as a matter of law that the terms and conditions were incorporated by reference.<sup>20</sup> BuildDirect appealed to the United States Court of Appeals for the 10th Circuit, which certified the question to the Oklahoma Supreme Court (as a matter of state law).<sup>21</sup>

## OKLAHOMA SUPREME COURT OPINION

Arbitration agreements are subject to the Federal Arbitration Act (FAA),<sup>22</sup> but state contract law governs contract formation and interpretation issues.<sup>23</sup> In *Walker*, the Oklahoma Supreme Court began its opinion by reemphasizing basic tenets of contract law, e.g., “the paramount objective of contract interpretation is to effectuate the intent of the parties as expressed by the terms of the contract.”<sup>24</sup> As noted, the question in *Walker* was whether the Terms and Conditions that included the arbitration clause were incorporated by reference into the parties’ contract.

The Oklahoma Supreme Court read the existing, limited precedent on the issue as requiring that the incorporated material be “clearly identified in the text” of the contract, or subject to “words of express incorporation,” but concluded that the specific legal standards needed to apply this general test on the facts of the *Walker* case were “lacking.”<sup>25</sup> The court proceeded to analyze the issue in view of the guidance articulated by Professor Williston in his treatise, *Williston on Contracts*.<sup>26</sup>

*Williston* indicates as the basic test that an incorporation by reference is effective when (in the words of the Oklahoma Supreme Court) “the underlying contract makes clear reference to the separate document, the identity of the separate document may be ascertained beyond doubt, and the parties to the agreement had knowledge of and assented to the incorporation.”<sup>27</sup> These standards remain unchanged in the context of electronic contracts, and upon incorporation the extrinsic material becomes part of the parties’ contract.<sup>28</sup> The narrow question in *Walker* was whether the terms and conditions including the arbitration clause were properly incorporated by reference, using this standard.

BuildDirect argued that the terms and conditions containing the arbitration clause were expressly incorporated into the contract, placing the Walkers on notice of the relevant provisions.<sup>29</sup> The Walkers argued that they did not have notice of, and did not agree to, the terms and conditions.<sup>30</sup> As have other courts,<sup>31</sup> the Oklahoma Supreme Court focused on whether the Walkers were provided reasonable notice of the incorporated material, applying the standard of a “reasonable prudent person.”<sup>32</sup> “Notice” includes “circumstances that would alert a reasonable, prudent person to investigate[.]” and “a party’s failure to read duly incorporated terms will not excuse the obligation to be bound.”<sup>33</sup> As noted, this language in the court’s opinion reemphasizes the basic tenets of contract law. “But,” the court went on to state, “incorporation will fail when this Court must employ a forced construction to ‘construe an ambiguity ... to import a more favorable consideration to either party than that expressed in the contract.’”<sup>34</sup>

The language of incorporation in the Walkers’ printed contract, making the contract “subject to” the separately available “Terms and Conditions,”<sup>35</sup> may seem to meet the test for incorporation by reference, but that was not the court’s conclusion.<sup>36</sup> Instead, the court concluded that the terms and conditions were not incorporated by reference into the contract.<sup>37</sup> The primary basis for the court’s conclusion was that “[m]erely placing quotation marks around the phrase terms of sale, without more, was insufficient to convey to the Walkers ... [a] reference to anything more than the multitude of sales terms already expressly enumerated” in the printed contract.<sup>38</sup> Thus, “the phrase ‘Terms of Sale’ fails to clearly and unambigu-

ously state that the parties intended to incorporate any additional terms ....<sup>39</sup> The court concluded "[t]hat [this] oblique reference falls short of this Court's demanding standard[,] and ... buttresses this Court's conclusion that the Walkers neither assented to nor had notice of the additional online terms."<sup>40</sup>

The court's opinion goes on to provide guidance as to how BuildDirect could have provided for the desired incorporation by reference, *e.g.*, by using "words of express incorporation or clearly referencing, identifying and directing the Walkers to the document to be incorporated."<sup>41</sup> In contrast, the court concluded, the Walkers' printed contract gave "every appearance of being a complete agreement – capturing the price, payment method, delivery and sales terms ...."<sup>42</sup> The court concluded that "[n]o reasonable prudent person ... would have notice to think otherwise."<sup>43</sup>

The conclusion to the court's opinion sets out three specific requirements to be met in order to have an effective incorporation by reference:

- 1) the underlying contract makes clear reference to the extrinsic document[;]
- 2) the identity and location of the extrinsic document may be ascertained beyond doubt[;]
- and 3) the parties to the agreement had knowledge of and assented to its incorporation.<sup>44</sup>

## ANALYSIS OF WALKER

Issues of contract interpretation (ascertaining the intent of the parties based on their expression in the terms of the contract<sup>45</sup>) often involve questions of fact, and indeed have some inherent subjectivity. For this reason it is essential that courts apply consistent legal standards of interpretation, in order to sustain the rule of law in an otherwise largely (and potentially chaotic) subjective analysis. Thus, articulation of these standards is an important function of the law, essential to the maintenance of the contract law principles that are necessary to modern society and distinguish us from our medieval ancestors.<sup>46</sup>

The *Walker* court deserves credit for reiterating the time-honored principles at the foundation of this legal structure.<sup>47</sup> But, if these principles are to have meaning, they must be given effect in the context of widely-recognized modern practices. In essence, words of agreement must have meaning, and those meanings must be generally recognized by courts.

Several examples are presented in the *Walker* case. The first is the phrase "subject to."<sup>48</sup> If this language is to have any meaning, it is to subordinate the subject text to the extrinsic, referenced material; that is, it incorporates the extrinsic material by reference. That is the way it has been interpreted by courts and others in American law,<sup>49</sup> and there should be no doubt that this language in the *Walker* contract meets the first of the three tests articulated in the conclusion to the court's *Walker* opinion. Presumably the court did not intend to fault the use of this terminology to achieve incorporation by reference,<sup>50</sup> and a careful reading of the *Walker* opinion indicates that this was not the problem identified by the court.

Thus, it is important to note that the phrase "subject to" was not the focus of the *Walker* analysis. Instead, the stated basis for the *Walker* decision was the court's second and third tests,<sup>51</sup> focusing on identification of the extrinsic material and the parties' understanding of its importance. The court stated that placing quotation marks around the phrase "Terms of Sale," "without more, was insufficient to convey ... [a] reference to anything other than the multitude of sales terms already expressly enumerated within the four corners of the Contract."<sup>52</sup> The court further explained its reasoning as follows:

That oblique reference falls short of this Court's demanding standard. And, it buttresses this Court's conclusion that the Walkers neither assented to nor had notice of the additional online terms.

\* \* \*

Therefore, BuildDirect's attempt at incorporation was nothing more than a vague allusion.<sup>53</sup>

It appears, then, that the problem in *Walker* was that the phrase "Terms of Sale" did not sufficiently connote a reference to the extrinsic contract terms, *i.e.*, to terms outside the record being directly executed by the parties. To satisfy the court's "demanding standard," as articulated in the second test stated in the court's conclusion,<sup>54</sup> the incorporation by reference (arguably using the phrase "subject to" would be sufficient) needs to identify the extrinsic material as such, in order to make clear that something outside the executed record is being incorporated in the agreement. In other words, it must be clear that the agreement is subject to something more than the record being directly executed by the parties. Then, under the third

test, the proponent must show that “the parties to the agreement had knowledge of and assented to its incorporation.”<sup>55</sup>

For the most part these are reasonable standards, and have counterparts in electronic contracting cases from other jurisdictions.<sup>56</sup> The *Walker* analysis does not require the use of any specific, or “magic” language, merely words indicating that the reference is to something extrinsic. On the facts of *Walker*, it appears that a minimal addition of language indicating that the terms of sale contained supplementary provisions that could be separately accessed would have been sufficient. Clearly the safest way to do this is by providing for a separate assent at the end of or adjacent to a link to the extrinsic terms or to provide a reference to the cite containing the extrinsic terms,<sup>57</sup> although arguably this goes beyond what is required as a matter of contract law. The focal requirement, as indicated in *Walker*, is some indication that the parties had notice that the extrinsic material was part of their contract.<sup>58</sup> Arguably the incorporation of the additional “Terms of Sale” in the *Walker* transaction came very close to meeting this standard.<sup>59</sup> Thus, a selective review of other electronic contracting cases with similarities to *Walker* may be instructive in determining more precisely what contract law requires in this context.

## OTHER CASES

### *Introduction*

The cases noted here are not precisely on point for the *Walker* case, but the issues are similar enough to be related and relevant. In this regard, a few initial observations are appropriate.

First, these cases (like *Walker*) involve contracts for sales of goods, and therefore are subject to UCC Article 2,<sup>60</sup> even if the contracts are formed (at least in part) electronically and are also subject to the UETA.<sup>61</sup> The *Walker* court did not discuss either the UCC or the UETA, presumably because the issues in the case were governed by the general contract law principles that provide the foundation for both uniform laws.<sup>62</sup> But this should not obscure the potential role for application of a uniform law

in such cases, *e.g.*, as to contract formation or procedural unconscionability.<sup>63</sup>

Another introductory point worthy of note is to recognize again<sup>64</sup> that many of these cases involve the possible application of an arbitration clause (or a forum selection clause with a similar purpose, *e.g.*, avoiding an unattractive judicial forum). The Congress and United States Supreme Court have articulated a strong public policy in favor of arbitration, as provided in the FAA.<sup>65</sup> But as others have noted,<sup>66</sup> some courts remain somewhat hostile to arbitration, and a strict application of contract law requirements is one of the few ways to vent that hostility within the confines of the FAA.<sup>67</sup>

Additionally, it can be noted that many of these cases relate to the question of whether a clickwrap or browsewrap assent has been sufficient to form a contract.<sup>68</sup>

While not the precise issue in *Walker*, these issues are related, even similar, to the question of assent to the Terms of Sale in *Walker*. The *Walker* court held that the incorporation by reference of Build-Direct’s terms of sale was not sufficient as assent to extrinsic terms including an arbitration clause.<sup>69</sup> While not precisely the issue in the clickwrap and browsewrap cases noted below, the basic issue in *Walker* is similar, *i.e.*: What is required as evidence of assent to contract terms?

“Another introductory point worthy of note is to recognize again that many of these cases involve the possible application of an arbitration clause...”

Finally, as others have also noted,<sup>70</sup> there is an increasing division between business-to-business (B2B) transactions and business-to-consumer (B2C) cases. While there have always been reasons to distinguish between cases based on the sophistication levels of the parties,<sup>71</sup> the increased emphasis on this factor (now enhanced by the expanded federal authority being exercised by the Bureau of Consumer Financial Protection<sup>72</sup>) also inevitably means that freedom of contract is diminished for consumer transactions,<sup>73</sup> and the transaction costs are increased due to the greater legal risks.

### *Selected B2B Cases*

With these caveats in mind, consider some illustrative cases on assent to contract terms. In *Appliance Zone, LLC v. TexTag, Inc.*,<sup>74</sup> the NexTag

website provided for assent to the contract terms by clicking on a box adjacent to the following language: "I accept the NexTag Terms of Service."<sup>75</sup> The court held that this was sufficient as notice and assent, turning aside arguments that the arrangement was procedurally unconscionable and that the terms were inconspicuous.<sup>76</sup> The court rejected the argument that the incorporated terms had to appear on the same page as the "I agree" box, noting that the incorporation by reference was "typical for the online retail industry."<sup>77</sup> The resemblance of these facts and legal issues to those in *Walker*, including even the contract language, is apparent, with the possibly relevant distinction that *Appliance Zone* was a B2B case.<sup>78</sup>

Similarly, *Margae*<sup>79</sup> was a B2B case involving assent to a forum selection clause (in a contract modification). The contract permitted a prospective modification by a posting on the defendant's website, essentially incorporating future modifications by reference.<sup>80</sup> In upholding the referenced terms, the court emphasized that both parties were sophisticated business entities.<sup>81</sup>

In comparison to *Walker*, the browsewrap cases create even greater difficulties for the party seeking to enforce the contract, given that there is no adjacent manifestation of assent, only the ability to access the contested terms via a hyperlink.<sup>82</sup> Yet a typical case is *PDC Laboratories, Inc. v. Hach Co.*,<sup>83</sup> where the online "Terms and Conditions of Sale" (containing the relevant warranty disclaimer) were hyperlinked. The buyer (the plaintiff suing for breach of warranty) was not required to click a box to accept the terms; instead, the last page of the order form instructed the buyer to "Review terms, add any comments, and submit order[.]" followed by a hyperlink to the terms including the disclaimer.<sup>84</sup> The court held that the referenced terms were adequately communicated to the buyer, citing the UCC Article 2 definition of "conspicuous"<sup>85</sup> and *Hubbert v. Dell Corp.*<sup>86</sup> The *PDC Laboratories* court stated a rule similar to that of the Oklahoma Supreme Court in *Walker*, namely that the test is whether the referenced terms are reasonably communicated to the buyer,<sup>87</sup> but reached a different result on similar facts.

These B2B cases are not exhaustive but appear to be illustrative of the broader case law. Among these cases, *Walker* is an outlier. But, if the law is to be divided between commercial and consumer transactions, perhaps a

better comparison is the B2C cases, noted below.

### B2C Cases

*Hines v. Overstock.com, Inc.*<sup>88</sup> was a browsewrap case in a B2C transaction. Moringiello and Reynolds characterize the facts of this case as "a good lesson on how not to present website terms and conditions."<sup>89</sup> The website stated that merely "entering this site will constitute your acceptance of these Terms and Conditions."<sup>90</sup> The link to the terms was at the bottom of the page in small print, between a link to the seller's privacy policy and its trademark, and the ordering process did not require scrolling to that portion of the web page.<sup>91</sup> The court held that this was not sufficient as actual or constructive notice of the referenced terms. This seems more consistent with *Walker* (as compared to the cases noted above), but it should be noted that the problem in *Hines* was the inconspicuous location of the cross-reference (not noted as a problem in *Walker*), rather than the adequacy of the language. There was no indication in *Hines* that a hyperlink cross-reference to the relevant terms was problematic per se.

Another illustrative B2C case is *Van Tassell v. United Marketing Group, LLC*,<sup>92</sup> again (as in *Walker*) involving assent to an arbitration clause. The defendants, seeking to enforce the arbitration clause in a browserwrap agreement, relied unsuccessfully on *PDC Laboratories* and *Hubbert*.<sup>93</sup> The "Terms and Conditions" containing the arbitration clause were displayed on the defendants' websites, but a hyperlink did not appear on either the home page or the checkout pages. To find the terms and conditions, it was necessary to scroll to the bottom of the home page and click the "Customer Service" link, then scroll to the bottom of the Customer Services page or click another link near the end of that list, entitled "Conditions of Use, Notices and Disclaimers." The *Van Tassell* court concluded that a user could complete his or her transaction without receiving notice of the arbitration clause. Interestingly, the court seems to suggest that the B2B cases cited by the defendants (*PDC Laboratories* and *Hubbert*) would be persuasive authority in this B2C case, if the notice given in *Van Tassell* had been as conspicuous as the notice in those B2B cases.<sup>94</sup>

In contrast to *Hines* and *Van Tassell*, in *Swift v. Zynga Game Network, Inc.*<sup>95</sup> the court enforced



an arbitration clause that was included in terms of service linked to but not visible on the transaction screen. The user was required to click an “accept” button directly above a notice stating that the assent constituted an agreement to the terms of service, along with a hyperlink to the terms. The court held that this provided sufficient notice of and an opportunity to review the terms of service.<sup>96</sup> A similar case is *Vernon v. Qwest Communications International, Inc.*,<sup>97</sup> where Qwest sent existing customers a letter notifying them of new contract terms (a change in terms notice), including an arbitration clause, and new customers who signed up on the internet checked a box indicating agreement to the relevant “Terms and Conditions,” with a reference to the location of the terms and a request that the customer review them. The court held that this was sufficient notice and enforced the arbitration clause.<sup>98</sup>

The B2C (and B2B) cases seem consistent with *Walker* in stating the general contract law rule, that the test is whether the incorporation by reference is conspicuous and notice is reasonably communicated to the other party. As noted by Moringiello and Reynolds: “[I]t is not enough that the terms can be found somewhere; the terms also must be presented in such a way that they can be found by the reasonable user.”<sup>99</sup> Not surprisingly, this may require greater clarity with respect to less sophisticated consumer users. Although the precise parameters of this qualification may be somewhat murky in the context of a given scenario, it seems clear that the safest approach is to provide a specific notice that additional terms are being incorporated, together with directions to the location of those terms and adequate evidence of assent to the contract. Particular care is required in meeting these requirements in consumer transactions.

## CONCLUSION

In addition to the basic contract law principles noted above, *Walker* illustrates a growing gap between commercial and consumer transactions law. *Walker* is an outlier compared to some of the commercial contracting cases; as between commercial entities it is quite possible the incorporation by reference in *Walker* would have been effective.<sup>100</sup> It is in the context of other case decisions that focus on the protection of consumers that *Walker* fits more comfortably.<sup>101</sup> In *Walker*, the contract law requirement for assent on the basis of reasonable notice of the contract terms was interpreted to require that a

merchant contracting with a consumer reach out to more fully highlight all of the applicable terms.<sup>102</sup> In the view of the *Walker* court: “Such a standard ensures that Oklahoma consumers are protected from deceptive and unfair trade practices.”<sup>103</sup>

It is difficult to argue with this purpose, and probably few would dispute the need for full and effective disclosure of contract terms and evidence of assent. However, it should be noted that the requirement for a heightened standard of technical compliance may not be entirely beneficial to consumers. To the extent that contracting with consumers is made more difficult and legally hazardous by the addition of a technical judicial gloss to consumer protection law (and then becomes more expensive due to increased legal risks), rather than following standard commercial practices, consumers may suffer reduced access or higher costs in transactions that are common in the commercial world. This has been an emerging trend in American law in recent decades, and may be accelerating.<sup>104</sup>

It can be noted in this regard that some of the recent efforts to protect consumers have cut-off many consumers from access to home mortgage loans that formerly were widely available.<sup>105</sup> Some may argue that this is the way it should be, and your author does not debate the point here. Nor is there any intent to suggest similar effects from *Walker*. But one need not disapprove of the *Walker* analysis in order to note that it fits a pattern of cases limiting the enforcement of consumer contracts. In this regard, it may tempting for lawyers and courts to focus on protecting an individual consumer from some of the traditional standards of contract law, without fully contemplating the cumulative effects (and costs) of such an approach.<sup>106</sup> It is a point worthy of consideration in studying the rationale of cases like *Walker*.

1. 2015 OK 30, 2015 WL 2074964 (S.Ct. May 5, 2015). Supporting citations in the court’s opinion are omitted from this article unless otherwise noted.

2. The term “record” includes both written and electronic records. See Uniform Electronic Transactions Act (UETA) §2(7) & (13), and cmts. 6 & 10; Okla. UETA, 12A Okla. Stat. §§15-102(7), (9) & 16.

3. This is not to be confused with the composite document rule, a more discretionary rule that may apply even without an incorporation by reference, allowing the court to consider the evidentiary value of separate records that have sufficient relation to each other as to have probative value as regards the parties’ intent, e.g., for purposes of satisfying the statute of frauds. See, e.g.: *Mitchell v. Shepard Mall State Bank*, 458 F.2d 700 (10th Cir. 1972); John D. Calamari & Joseph M. Perillo, *Contracts* §312 (1970).

4. *Walker*, 2015 OK 30, at ¶10. However, as noted below, similar issues have been the subject of litigation elsewhere.

5. For summaries of related cases and issues (some of which are addressed in this article), see, e.g.: Deborah Davis Boykin, “Survey of E-Contracting Cases: Browsewrap, Clickwrap, and Modified Clickwrap Agreements,” 68 *Bus. Law.* 257 (2010); Juliet M. Moringiello & William L. Reynolds, “Electronic Contracting Cases 2009 – 2010,” 66 *Bus. Law.* 175 (2010) [hereinafter Moringiello & Reynolds 2010]; Juliet M. Moringiello & William L. Reynolds, “Electronic Contracting Cases 2008 – 2009,” 65 *Bus. Law.* 317 (2009) [hereinafter Moringiello & Reynolds 2009]. As noted below, in *Walker* the terms of the contract were partly written and partly electronic.

6. See *supra* note 5 and discussion of other cases *infra*.

7. See *supra* note 5. Regarding arbitration (the issue in *Walker*, as noted below), see generally Christine A. Scheuneman, Joseph T. Lynyak, III, & Amy L. Pierce, “The CFPB’s Arbitration Study – A Warning to Consumer Financial Service Companies,” 68 *Consumer Fin. L.Q. Rep.* 32 (2014).

8. See, e.g., authorities cited *supra* at note 5.

9. See, e.g., *Walker*, 2015 OK 30, at ¶¶9 & 11. See also *infra* note 25.

10. See *supra* note 2. See also Moringiello & Reynolds (2009), *supra* note 5, at 322 – 23.

11. See, e.g., John Edward Murray Jr., *Contracts: Cases and Materials* 1 – 2 (7th ed. 2015). See also *infra* note 46.

12. *Walker*, 2015 OK 30, at ¶3. In this article your author uses the term “printed contract” to mean the written documentation, recognizing that the contract is the agreement between the parties, not its documentation. See, e.g., Murray, *supra* note 11, at 2 – 6.

13. *Walker*, 2015 OK 30, at ¶3. Under the UETA, a facsimile copy is treated the same as the signed original. See *supra* note 2 and UETA §7 & cmt.

14. *Walker*, 2015 OK 30, at ¶3.

15. *Id.* at ¶¶4 & 5.

16. *Id.* at ¶5.

17. *Id.* at ¶6.

18. *Id.*

19. *Id.* at ¶7.

20. *Id.*

21. *Id.*

22. Pub. L. No. 80-282, 61 Stat. 669 (1947) (codified as amended at 9 U.S.C.A. §§1 – 16). See generally Scheuneman, Lynyak & Pierce, *supra* note 7.

23. See, e.g., *Walker*, 2015 OK 30, at ¶8. In *Walker* the parties agreed that Oklahoma law applied.

24. *Walker*, 2015 OK 30, at ¶9.

25. *Id.* at ¶10 (citing: *Monkey Island Dev. Auth. v. Staten*, 76 P.3d 84 (Okla. Civ. App. 2003); and *High Sierra Energy, LP v. Hull*, 241 P.3d 1139 (Okla. Civ. App. 2010)).

26. *Id.* at ¶11 (citing 11 *Williston on Contracts* §30.25 (4th ed. 1999)).

27. *Id.* This language overstates the latter requirement. See *infra* this text at notes 31 – 33 and note 44.

28. See *Walker*, 2015 OK 30, at ¶(also citing Okla. Stat. tit. 15 §158, and *One Beacon Ins. v. Crowley Marine Serv.*, 648 F.3d 258 (5th Cir. 2011)).

29. *Id.* at ¶12.

30. *Id.*

31. See *supra* note 5.

32. *Walker*, 2015 OK 30, at ¶13.

33. *Id.* (citing: *One Beacon Ins.*, 648 F.3d at 268 & 269; *Cooper v. Fleischer*, 103 P. 1016 (1909); and *McDonald v. McKinney Nursery Co.*, 143 P. 191 (1914)).

34. *Id.* (quoting *Porter v. Okla. Farm Bureau Mut. Ins. Co.*, 330 P.3d 511 (2014)).

35. See *supra* this text at note 14.

36. *Walker*, 2015 OK 30, at ¶14. See *infra* this text at notes 48 – 50.

37. *Walker*, 2015 OK 30, at ¶14.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Id.* at ¶15.

42. *Id.*

43. *Id.*

44. *Id.* at ¶16. As indicated above, this description overstates the third requirement, as proof of actual knowledge is not required. See, e.g., *supra* this text at notes 27 – 34, and discussion below.

45. See, e.g., *supra* this text at notes 9 – 11 & 23 – 26.

46. See, e.g., *supra* note 11. Something over 90 percent of all measurable human progress has occurred since the English common law judges created contract law in the 17th and 18th centuries. See, e.g., Matthew Scholnfeld, Opinion, “Air Jordan and the 1%,” *Wall Str. J.*, July 11, 2012, at A11. “The rules of the game changed dramatically in the second half of the 18th century with the industrial revolution, which embodied the workings of what we now know as capitalism – the system that would lift millions out of grinding poverty.” John

Plender, *Morality and the Money Motive*, *Fin. Times*, July 19, 2015, at 7. “The liberation of hundreds of millions from desperate poverty ranks among the greatest success stories in history[, though it] is a story that remains largely untold and mostly unheralded.” William McGurn, Opinion, The Weekend Interview with Arthur Brooks, “Playing the Music of Capitalism,” *Wall Str. J.*, July 11 – 12, 2015, at A9.

47. See *supra* this text at notes 9 – 11 & 23 – 26.

48. See the precise language of the contract at issue in *Walker*, *supra* this text at note 14.

49. A typical, and instructive, example is in UCC Article 3 §3-106, cmt. 1, stating that language in a promissory note providing that “this note is subject to” extrinsic material will require examination of the extrinsic material to determine the resulting legal rights (in effect incorporating the extrinsic material and therefore rendering the note non-negotiable).

50. The court stated that: “BuildDirect could easily have accomplished that purpose by drafting the contract employing words of express incorporation ....” *Walker*, 2015 OK 30, at ¶15. See also *supra* this text at note 35. Absent an unprecedented strictness of interpretation, it is difficult to conceive a more express incorporation than the phrase “subject to.”

51. See *supra* this text at notes 41 – 44.

52. *Walker*, 2015 OK 30, at ¶14. See also *supra* this text at notes 35 – 40.

53. *Walker*, 2015 OK 30, at ¶¶14 – 15. See also *supra* this text at notes 40 – 43.

54. See *supra* this text at note 44.

55. *Id.* See also *supra* this text at notes 27 – 34.

56. *Id.* See also sources cited *supra* at note 5; and see discussion below.

57. See, e.g., Moringiello & Reynolds 2009, *supra* note 5, at 326 (citing *American Law Institute, Principles of Software Contracts* (Proposed Final Draft 2009)).

58. See *supra* this text at notes 40 – 43.

59. *Id.* Perhaps even adding the word “additional” or “separate” in front of the reference to “Terms of Sale” would be sufficient to address the *Walker* concerns. Almost certainly, a link or cross-reference to the location of the additional terms, if conspicuous, would be sufficient. See discussion below.

60. See UCC §2-102; and see *infra* note 61.

61. See, e.g., Moringiello & Reynolds 2009, *supra* note 5, at 322 – 23 (noting the relation between the UCC and the UETA).

62. See *id.*; and see UCC §1-103 & UETA Prefatory Note.

63. See UCC Article 2 pt. 2, and §2-302. See also *supra* this text at notes 5 – 7 & 9 – 10.

64. See *supra* this text at notes 5 & 7.

65. See *supra* notes 7 & 22.

66. See, e.g., email of Bob Luttrell, an attorney with McAfee & Taft in Oklahoma City, referencing the *Walker* decision in a distribution to owner-banking@okbar.org: “Oklahoma has never been too friendly to arbitration provisions.”

67. See *supra* note 7.

68. See, e.g., Moringiello & Reynolds 2010, *supra* note 3, at 175, for definitions of these terms.

69. See *supra* this text at notes 8 & 29 – 43.

70. See, e.g., Moringiello & Reynolds 2009, *supra* note 5, at 318 – 19.

71. See, e.g.: *supra* this text & note 62; UCC §2-102 (deferring to consumer protection statutes); Murray, *supra* note 11, at 468 – 87.

72. See, e.g., Scheuneman, Lynyak & Pierce, *supra* note 7.

73. See, e.g., *id.* (referencing *Margae, Inc. v. Clear Link Technologies, LLC*, 2008 WL 2465450 (D. Utah June 16, 2008) (“there were two sophisticated parties, so the court properly respected their freedom of contract.”).

74. 2009 U.S. Dist. LEXIS 120049 (S.D. Ind. Dec. 22, 2009) (noted in Moringiello & Reynolds 2010, *supra* note 5, at 176).

75. *Appliance Zone, id.*, at \*9 – 10.

76. *Id.* at \*11 – 12.

77. *Id.* at \*12.

78. See Moringiello & Reynolds 2010, *supra* note 5, at 176 – 77. *Appliance Zone* also was a clickwrap case involving a forum selection clause, but that distinction seems irrelevant here given that the means of assent was not at issue in *Walker*.

79. 2008 WL 2465450. See *supra* note 73.

80. *Margae*, 2008 WL 2465450, at \*2 (noted in Moringiello & Reynolds 2009, *supra* note 5, at 318 – 19).

81. Both parties were internet marketing companies. *Id.* at \*5 – 6.

82. See, e.g., the definition of browsewrap in Moringiello & Reynolds 2010, *supra* note 5, at 175.

83. 2009 U.S. Dist. LEXIS 75378 (C.D. Ill. Aug. 25, 2009) (hyper-linked warranty disclaimer).

84. *Id.* (as noted in Moringiello & Reynolds 2010, *supra* note 5, at 177).

85. UCC §1-201(b)(10). See also UCC §2-302.

86. 835 N.E.2d 113 (Ill. Ct. App. 2005).

87. *PDC Laboratories*, 2009 U.S. Dist. LEXIS 75378, at \*8 – 9 (as noted in *Moringiello & Reynolds* 2010, *supra* note 5, at 178).

88. 668 F.Supp.2d 362 (E.D. N.Y. 2009) (noted in *Moringiello & Reynolds* 2010, *supra* note 5, at 178).

89. *Id.*

90. *Id.*

91. *Id.*, 668 F.Supp.2d at 365 – 67.

92. 795 F.Supp.2d 770 (N.D. Ill. 2011) (as noted in *Boykin*, *supra* note 5, at 257 – 59).

93. *See supra* Part V.B.

94. *Van Tassell*, 795 F.Supp.2d at 792 (as quoted in *Boykin*, *supra* note 5, at 258). For another case, similar to *Van Tassell*, see *Jerez v. JD Closeouts, LLC*, 943 N.Y.S. 2d 392 (D.Ct. Nassau Cnty. 2012) (noted in *Boykin*, *supra* note 5, at 259). In *Jerez*, the forum selection clause was “buried” and “submerged” within “Terms of Sale” on the defendants’ “About Us” web page, which could only be accessed by clicking an “inconspicuous” link. *Id.*

95. 805 F.Supp.2d 904 (N.D. Ca. 2011) (noted in *Boykin*, *supra* note 5, at 259).

96. *Id.* at 912. For another, similar case, see *Sherman v. AT&T Inc.*, 2012 WL 1021823 (N.D. Ill. March 26, 2012) (the user completed an online registration form indicating acceptance of the AT&T terms of service, containing an arbitration clause, and “actively clicked that he accepted the hyperlinked terms”). The court held that this was sufficient as notice of and assent to the arbitration clause. *Id.* at \*3 – 5 (as noted in *Boykin*, *supra* note 5, at 260 – 61).

97. 2012 WL 768125 (D. Colo. Mar. 8, 2012) (also noted in *Boykin*, *supra* note 5, at 261).

98. *Id.* at \*12 – 13.

99. *Moringiello & Reynolds* 2010, *supra* note 5, at 180, quoting Juliet M. *Moringiello & William L. Reynolds*, “Survey of the Law of Cyberspace: Internet Contracting Cases 2004 – 2005,” 61 *Bus. Law.* 433, 436 (2005).

100. *See* discussion above.

101. *Id.*

102. It should be noted again that this still does not require the consumer to actually access, or read, the incorporated terms. *See, e.g., Walker*, 2015 OK 30, at ¶13: “[A] party’s failure to read duly incorporated terms will not excuse the obligation to be bound” (citing *McDonald v. McKinney Nursery Co.*, 1914 OK 438, 143 P. 191). *See generally supra* this text and notes 22–44.

103. *Id.*

104. *See, e.g.,* Niall Ferguson, *The Great Degeneration* (2013), reviewed in George Melloan, Bookshelf, “A Jeremaid to Heed,” *Wall Str. J.*, June 20, 2013, at A19; Niall Ferguson, Opinion, “The Regulated States of America,” *Wall Str. J.*, June 19, 2013, at A15; Iain McDaniel, Adam Ferguson in *The Scottish Enlightenment* (2013), reviewed in Jeffrey Collins, Bookshelf, “A Skeptical Modern,” *Wall Str. J.*, Mar. 25, 2013, at A15. This is, to some extent, a gradual reversal of the greatest

development in the history of private law, when the English common law judges grafted the law of merchants (the “Law Merchant”) onto the English common law, creating the law of contracts and permitting (for the first time) ordinary citizens (who were at that time essentially economic serfs) to engage in legally-enforceable private contracts on the same terms as members of the commercial and political elite. *See supra* this note. Philosophically at least, it can be said to have begun with the *Magna Carta* in 1215, but it took the English judicial revolution associated with contract law to bring the aspirations to practical fulfillment. *See, e.g.,* Daniel Hannan, Review, “Eight Centuries of Liberty?,” *Wall Str. J.*, May 30 – 31, 2015, at C1. The industrial revolution, and most of history’s material improvements in ordinary life, soon followed. *See, e.g., supra* note 46.

105. *See, e.g.,* Joe Light, “FHA Aims to Clarify Loan-Rule Conditions,” *Wall Str. J.*, May 22, 2015 at C5 (reporting that major mortgage lenders have been “driven ... away” from making FHA loans by regulatory burdens and risks applicable to transactions with low-income borrowers). Arguably the results have been unsatisfactory for some of the intended beneficiaries. *See, e.g.,* Nick Timiraos, The Outlook, “Behind the Rise of the New Housing Headwind,” *Wall Str. J.*, June 8, 2015, at A2 (“The U.S. Homeownership rate is below where it was 20 years ago [and recent research] predicts Homeownership will continue to slip for at least 15 years .... The upshot is that fewer than half of new households formed this decade and next will own homes.”).

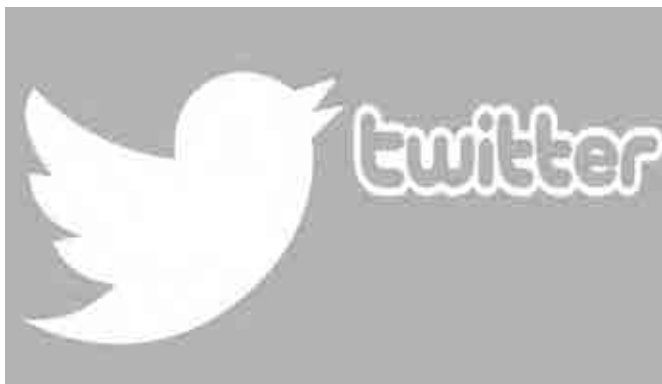
106. *See, e.g.,* Greg Ip, Capital Account, “Cost Analysis Missing in Bank Rule Debate,” *Wall Str. J.*, May 14, 2015, at A2.

## ABOUT THE AUTHOR



Alvin C. Harrell is a professor of law at OCU School of Law and president of Home Savings and Loan Association of Oklahoma City. He is co-author of a dozen books, including *The Law of Modern Payment Systems and Notes* (with Professor Fred H. Miller). He is editor of *Consumer Finance Law Quarterly Report*.

He chaired the ABA UCC Committee task forces on State Certificate of Title Laws and Oil and Gas Finance.



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and @OBACLE

# House of Delegates Actions

The following resolution and title examination standards report were submitted to the House of Delegates at the 111th Oklahoma Bar Association Annual Meeting at 10:30 a.m. Friday, Nov. 6, 2015, at the Sheraton Hotel in Oklahoma City. Actions are as follows:

## RESOLUTION NO. 1: CLIENTS' SECURITY FUND RULES

BE IT RESOLVED by the House of Delegates of the Oklahoma Bar Association that the amendments to the Clients' Security Fund Rules, as published in the Oklahoma Bar Journal and posted on the OBA website at [www.amokbar.org](http://www.amokbar.org), be approved and adopted by the Supreme Court. (Requires a majority vote for passage. OBA Bylaws Art. VIII Sec. 5) (Submitted by the Clients' Security Fund Task Force and OBA Board of Governors.)

**ADOPTED**

## TITLE EXAMINATION STANDARDS

Action: The Oklahoma Title Examinations Standards revisions and additions published in *The Oklahoma Bar Journal* 86 2069 (Oct. 17, 2015) were approved in the proposed form. The revisions and additions are effective immediately.

**ADOPTED**

## 2016 OBA Officers and New Board Members

### Officers

President  
*Garvin A. Isaacs, Oklahoma City*

President-Elect  
*Linda S. Thomas, Bartlesville*

Vice President  
*Paul D. Brunton, Tulsa*

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Supreme Court Judicial District Four  
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OBA ANNUAL MEETING 2015  
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# 2016



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Duncan  
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## OBA OFFICERS AND NEW BOARD MEMBERS



**ALISSA HUTTER**  
Norman  
Member At Large



**BRYON J. WILL**  
Oklahoma City  
YLD Chair



# OBA 111TH ANNUAL MEETING



OBA President David Poarch welcomes key-note speaker Eric Liu to the Annual Meeting. Mr. Liu signed copies of his books for numerous meeting attendees.



OBA President Poarch, Chief Justice John Reif and OBA Vice President Glenn Devoll enjoy the Wednesday evening President's Reception.



Keynote speaker Eric Liu presents "The True Meaning of Patriotism" during the Annual Luncheon sponsored by the OBA Family Law Section.



State Sen. David Holt of Oklahoma City speaks during the Thursday CLE Plenary session. He was part of a panel discussing the topic "Democracy is Not a Spectator Sport."

David Poarch presents the OBA President's Award to lawyer John E. Green of Oklahoma City. Mr. Green was honored in appreciation of his enduring and steadfast leadership. He was recognized for being a pioneering OBA member, a mentor of generations and a revered community leader.



Meeting attendees enjoyed great food and a festive atmosphere during the "It's Five O'Clock Somewhere" reception sponsored by the OBA sections.



Rep. Richard Morrisette of Oklahoma City, Justice Noma Gurich and lawyer John Miley enjoy the atmosphere during the "It's Five O'Clock Somewhere" reception.



TU Law Professor Anna Carpenter, Access to Justice Commission Chairperson David Riggs and Vice Chief Justice Douglas Combs discuss the status of the Access to Justice Commission during the annual President's Breakfast.

Students from Oklahoma City's Douglass High School Junior ROTC form a color guard to lead General Assembly attendees in the Pledge of Allegiance.



Oklahoma Bar Foundation President Jack Brown presents the 2015 Roger Scott Memorial Award to Lawton lawyer Dietmar Caudle.



Bartlesville lawyer Linda Thomas addresses the House of Delegates. Ms. Thomas was elected president-elect during the Annual Meeting and will serve as 2017 OBA president.



Court of Criminal Appeals Presiding Judge C. Clancy Smith and Chief Justice John Reif speak about issues related to the judiciary during Friday's General Assembly.



2014 YLD Chair Kaleb Hennigh, Chair-Elect Bryon Will and 2015 YLD Chair LeAnne McGill attend the Young Lawyers Division Annual Meeting. Mr. Will was presented the YLD Officer of the Year Award.

OBA President-Elect Garvin Isaacs presides over the Friday meeting of the House of Delegates.



# Enhance Your Networking, Join a 2016 OBA Committee

It is time for all of us to come together and promote public confidence in the judicial branch of government. We need to work together. OBA committees will help with this project. Please consider joining a committee and participate in educating the public on the history of our country and its three branches of government.

You benefit from the contacts you make, and the association benefits from the work that is done. New members with fresh ideas are encouraged to become involved. Geography is a non-issue with today's technology. Teleconferencing from your desk and videoconferencing in Tulsa make it easy to attend meetings if you can't be there in person.

Sign up today. Option #1 – online at [www.okbar.org](http://www.okbar.org), scroll down to the bottom of the page. Look for "Members" and click on "Join a Committee." Options #2 & #3 – Fill out this form and mail or fax as set forth below. I'll be making appointments soon, so please sign up by Dec. 11, 2015. I'm counting on your support next year to keep our committees active.



Garvin Isaacs, President-Elect

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

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Please Type or Print

Name \_\_\_\_\_

Telephone \_\_\_\_\_ OBA # \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State/Zip \_\_\_\_\_

FAX \_\_\_\_\_ E-mail \_\_\_\_\_

Committee Name

1st Choice \_\_\_\_\_

2nd Choice \_\_\_\_\_

3rd Choice \_\_\_\_\_

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

1st Choice ☐ Yes ☐ No

2nd Choice ☐ Yes ☐ No

3rd Choice ☐ Yes ☐ No

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

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

\_\_\_\_\_  
\_\_\_\_\_

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

Fax: (405) 416-7001

## Standing Committees

- Access to Justice
- Awards
- Bar Association Technology
- Bar Center Facilities
- Bench and Bar
- Communications
- Disaster Response and Relief
- Diversity
- Group Insurance
- Law Day
- Law-related Education
- Law Schools
- Lawyers Helping Lawyers Assistance Program
- Legal Intern
- Legislative Monitoring
- Member Services
- Military Assistance
- Paralegal
- Professionalism
- Rules of Professional Conduct
- Solo and Small Firm Conference Planning
- Strategic Planning
- Uniform Laws
- Women in Law
- Work/Life Balance

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

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

## The Code of Kryptonite: Ethical Limitations on Lawyers' Superpowers

**DECEMBER 30, 2015**

**1-4 p.m.**

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



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

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

**DECEMBER 31, 2015**

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

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



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

## Wednesday, Dec. 30 Program

**1:00 p.m. Advice for the Advisor**

- The perils of pursuing superhero status: personal conflict - Rule 1.8
- Allocation of decision making authority between lawyer and client... Hypotheticals illustrating different subsections of Rule 1.2 and... what if you have a representative of a client who's gone bad? What if there are disagreements?
- Discussion of the possible need to withdraw, Rule 1.16
- The need to keep our big mouths shut - Rule 1.6
- The need to maintain our independence - Rules 5.4 and 2.1)
- 2:30 Break**
- 2:45 Assertive Advocacy**
- Rule 4.1 and misrepresentation
- Candor and the duty to be truthful to the tribunal (and how that can get tricky for GC's)
- Rule 3.3: Things to watch out for when supervising outside counsel
- Misrepresentation issues when using LinkedIn
- Other key tech issues that push the limits of our superpowers
- The Duty to Review our social media presence (NYSBA Advisory Opinion, SG Opinion on Avvo)
- The "anti-bullying rules" like 3.4 and 4.4 and what it really means to be a Zealous Advocate (professionalism issues).

**4:00 p.m. Adjourn**

## Thursday, Dec. 31 Program

**9:00 Dealing with some tough situations**

- Rule 5.2: Responsibilities of a Subordinate Lawyer—what if you're told to do something that sounds unethical?
- A lawyer's duty to report professional misconduct: Rule 8.3
- The dicey world of misrepresentation: understanding "The Fab Five of Lawyer Lies"
- Rules 8.1, 3.3, 4.1, 7.1 and 8.4
- 10:00 Break**
- 10:10 Supervision Issues**
- A lawyer's duty regarding associates: Rule 5.1
- The ever expanding duty regarding nonlawyer assistants: Rule 5.3
- Issues with "independent contractors" and contract attorneys

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

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

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

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

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

**11:45 Adjourn**

**CLE CREDIT:** This course has been approved by the Oklahoma Bar Association Mandatory Continuing Legal Education Commission for 6 hours of mandatory CLE credit, including 5 hours of ethics for both days, 3 hours of mandatory CLE credit, including 3 hours of ethics for Wednesday, Dec. 30 only, and 3 hours of mandatory CLE credit, including 3 hours of ethics for Thursday, Dec. 31 only.

**TUITION:** \$225 (both days); or \$150 (one day) for early-bird registrations received with payment at least four, full business days prior to the first seminar date; \$250 (both days); \$175 (one day) for registrations received with payment within four, full business days of the first seminar date; \$275 walk-ins (both days); \$200 (one day). To receive a \$10 discount for the live onsite program, register online <http://www.okbar.org/members/CLE>. You may also register for the live webcast (pricing varies).

**REGISTER ONLINE AT [WWW.OKBAR.ORG/MEMBERS/CLE](http://WWW.OKBAR.ORG/MEMBERS/CLE)**



# Diverse Enough?

By John Morris Williams

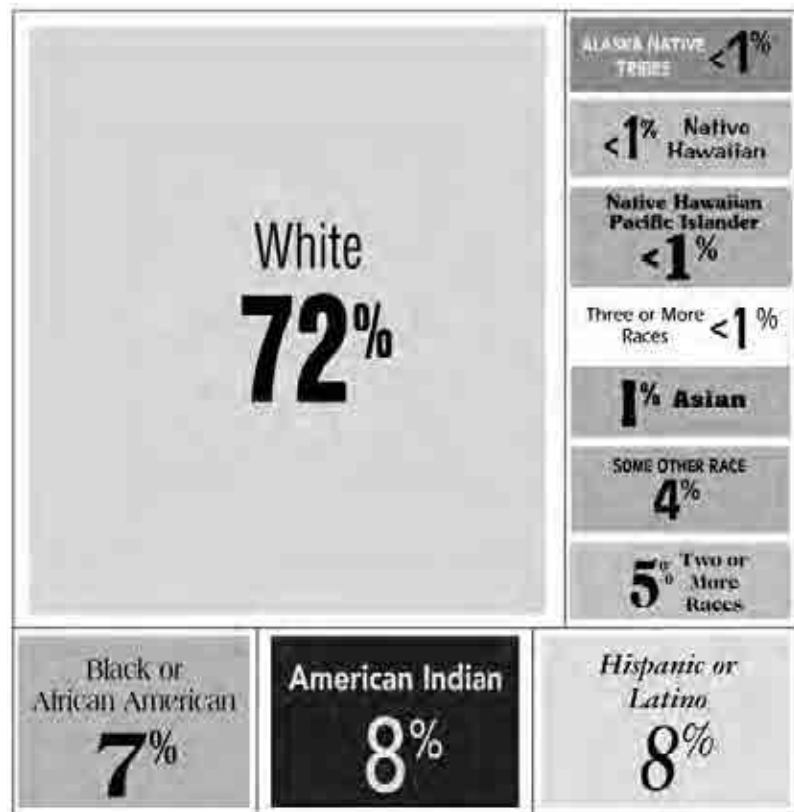
The Diversity Committee just held its annual awards event. All I have to say about that is: “well done!” Jabar Shumate gave the keynote address and demonstrated not only his known talent, but also the commitment of the University of Oklahoma to ensure that it is a place of teaching and learning for everyone who enrolls. Teaching and learning about how our actions, even out of ignorance, affect others is a worthwhile endeavor. Former Speaker Kris Steele in his remarks after accepting an award for his organization, TEEM, reminded us “there are no spare Oklahomans.”

I like the idea that no one is “spare.” If someone were to ask me if there were any spare lawyers I would certainly say there are not. In pondering that notion I tried to imagine what that would even mean. Given the consistently low ratings of access to justice in the state of Oklahoma I submit that in many places not only do we not have any spares, but we have some real needs as well.

The Diversity Committee event really made me think once again on how the OBA is doing as a welcoming organization and how well our organization reflects the citizens we serve. For

2015, the U.S. Census Bureau estimates the following racial demographics for Oklahoma:

personal experience that if we were all DNA tested these labels would quickly change and the multiracial categories would be



2015 racial demographics for Oklahoma provided by the U.S. Census Bureau.

First, I want to say the titles are from the Census Bureau. Secondly, I believe based on my

the overwhelming majority. However, this is all skin-deep stuff so we get what we get for demographic purposes.

If the lawyer population is representative of the general population then more than one out of every four Oklahoma lawyers would be something other than "white." The OBA does not keep mandatory racial or ethnic classifications. You can use your own observations to judge how we are doing.

A few years ago I was on the diversity advisory board for a national organization. One of the things I remembered most was people saying that "when no one in the room looks like me I wonder what is going on." This also applied to business and retail settings. It quickly became apparent to me that diversity was good business. If you are excluding more than one-fourth of the population from your hiring practices, that is a bad business practice.

I will let someone else talk to you about the legal ramifications. On the other hand I have also heard the complaint about there not being enough lawyers of color to hire. Which again leads me to ponder are we diverse enough and if not what do we need to do about it?

I have only touched on race and ethnicity. When you bring gender, sexual orientation, physical disabilities, religion and other identifiers into the mix the job of being diverse and inclusive is a bit more of a task than just appointing someone of color.

I think our members are sensitive to these issues. However, as I look around large gatherings of members I realize we have work to do. I do not think we are diverse enough

when our goal is to serve the public. For the public to have confidence in us we must be a mirror of the community. Clients need to be able to walk into the room and be able to identify with someone like them whether it is their lawyer, opposing counsel, a judge or support staff.

Diverse enough? I challenge you to ask yourself "are we diverse enough" and help us as public citizens to ensure that we lead by example of what both the law and civilized society demand of us.



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

## OKLAHOMA BAR JOURNAL EDITORIAL CALENDAR

### 2015 Issues

- December  
**Ethics & Professional Responsibility**  
Editor: Shannon L. Prescott  
[shanlpres@yahoo.com](mailto:shanlpres@yahoo.com)  
Deadline: Aug. 1, 2015

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

### 2016 Issues

- January  
**Meet Your OBA**  
Editor: Carol Manning
- February  
**Probate**  
Editor: Judge Allen Welch  
[allen.welch@oscn.net](mailto:allen.welch@oscn.net)  
Deadline: Oct. 1, 2015
- March  
**Criminal Law**  
Editor: Melissa DeLacerda  
[melissde@aol.com](mailto:melissde@aol.com)  
Deadline: Oct. 1, 2015
- April  
**Law Day**  
Editor: Carol Manning
- May  
**Indian Law**  
Editor: Leslie Taylor  
[leslietaylorjd@gmail.com](mailto:leslietaylorjd@gmail.com)  
Deadline: Jan. 1, 2016

- August  
**Bankruptcy**  
Editor: Amanda Grant  
[Amanda@spiro-law.com](mailto:Amanda@spiro-law.com)  
Deadline: May 1, 2016
- September  
**Bar Convention**  
Editor: Carol Manning
- October  
**Real Property**  
Editor: Shannon Prescott  
[shanlpres@yahoo.com](mailto:shanlpres@yahoo.com)  
Deadline: May 1, 2016
- November  
**President's Topic**  
Editor: Melissa DeLacerda  
[melissde@aol.com](mailto:melissde@aol.com)  
Deadline: Aug. 1, 2016
- December  
**Ethics & Professional Responsibility**  
Editor: Renée DeMoss  
[rdemoss@gablelaw.com](mailto:rdemoss@gablelaw.com)  
Deadline: Aug. 1, 2016

# Strategy and Tactics: Plan Your Work and Work Your Plan

By Jim Calloway

Adopting a strategic plan for your law practice probably doesn't sound like an exciting proposition to many lawyers. This is particularly true if some eager beaver wants to schedule a mandatory weekend retreat for the entire law firm to work on a strategic plan. No one would dispute the need for a business plan. But many of us have been involved in strategic planning exercises for volunteer organizations that generated a lot of words and ideas, but didn't seem to really change things.

Last month in this space, I wrote a column titled "How is Your Law Practice Going to Change?" While there are many necessary changes that lawyers should be implementing in their business operations, this column was also intended to highlight the many changes occurring in society and in the way businesses operate, which will provide many opportunities for lawyers.

As the year draws to a close, making plans for next year is a very important practice. If you want to make positive changes in your law practice for next year, you certainly cannot wait to make your plan until New Year's Eve.

That is a really lousy way to celebrate the new year.



Strategy relates to what you want to accomplish and the goals you set. Tactics relate more to how you will accomplish your goals. A strategy for many businesses might be increasing revenue or market share. Various types of tactics can include everything from spending more money on marketing to hiring more employees to increase production.

My personal hope is that many lawyers and law firms plan to improve their business operations by implementing (or better incorporating) improved operations next year. This includes many items I have written about in "Law Practice Tips" such as better implementation of practice management software and services, adopting automated document assembly, improving procedure manuals and workflow checklists, improving client satisfaction tools and implementing speech recognition for poor typists, to name a few.

The start of a new year is a natural time to focus on strategy relating to your vision and long-term plans for your law firm. Adopting automated document assembly or revamping your billing process to make it more effective may be critically important for your firm and therefore one of your highest priorities. But those are tactics, not strategies. "Future Proofing Your Law Firm" was the title for one of my Practice Management Advice columns in the ABA's *Law Practice Magazine* back in the summer of 2013.

The points I made in that column still serve as a framework

for visionary strategic planning for law firms today.

**Behave as if it is all about the clients, because it is.** We are in a service profession. But it is often easy to focus on the quality of legal services provided at the expense of customer service. We must remember that clients pay attention to both your communications and work product. Every law firm strategic plan must pay attention to the client experience. With the opening of each new matter, lawyers should discuss their client's expectations and goals and record this information in the client file. We must always remember that this is how the client will judge our services. A corollary is that it is becoming an increasingly risky proposition to represent clients with completely unrealistic expectations. A disgruntled former client — even one with an objectively great result — is not an asset for a law firm.

**Ignore technology advances at your peril.** Information technology and the speed of information flow today is more a part of our daily lives and daily business operations. This is especially true for lawyers, who spend a large amount of their time processing and managing information. What used to be contained in shelves full of law books and paper client files is now more properly managed in the digital format. Information technology management must be an important part of your strategic plan.

**Have a better answer for "What will the total cost be?"** We all like predictable costs. Anytime you can quote a potential client a fixed fee, you increase the chance that a client will hire your firm. But even where a range of total fees and costs is based on many factors,

you should be able to outline those factors to the prospective client and show how they impact cost.

**Know your word processor. Love your word processor.** Lawyers are wordsmiths. We draft lots of correspondence, contracts, pleadings and memoranda. Today's lawyer should understand word processing tools like Microsoft Word Quick Parts, macros and templates.

“ **Every lawyer who types less than 30 or 40 words a minute should be given a microphone and a copy of Dragon NaturallySpeaking...** ”

Every lawyer who types less than 30 or 40 words a minute should be given a microphone and a copy of Dragon NaturallySpeaking and then provided with training on how to make it actually work for them. (I don't really care whether you call that one a strategy or a tactic — it is critical!)

**Practice being both efficient and effective.** Management guru Peter F. Drucker's often-quoted statement on this topic is: "Efficiency is doing the thing right. Effectiveness is doing the right thing." Setting up new tools to capture every stray tenth of an hour so that it can be billed may be efficient, but it is not very effective if the client is already pressuring the firm

to reduce the attorney fees it pays. Staff reductions may look efficient on the financial side. But training staff to help you provide extra value to your clients may be more effective and more positive.

**Appreciate that law firm growth cannot be infinite.** Law firms have a historical track record of impressive revenue growth over the last several decades. But the past does not always predict the future. Blogger and law firm consultant Bruce MacEwen's book *Growth Is Dead: Now What?* is available on Amazon via his blog.<sup>1</sup> It is an inexpensive purchase and a worthwhile read, no matter what the size of your law firm. We all worry about change and challenges. But the interesting thing about today's technologically driven business environment is that lower revenues need not equal lower profits.

The above ought to include enough items to fuel any law firm strategic planning retreat. Of course for any business to do real strategic planning, the past few years of financial data will be required. For those who would like a primer on law firm management, *First Among Equals: How to Manage a Group of Professionals* by Patrick J. McKenna and David H. Maister is a classic, and it is available at quite a reasonable price on Amazon.com.

Lawyers are often criticized for not acting like businesspeople. It is certainly true that historically law firms, at least until they became large law firms, behaved more as a collection of individual professional service providers with pooled resources, expenses and revenues than like many traditional businesses.

Lawyers tended to focus more on new developments in the law and developing new clients than on trends that might be revealed by reading the *Wall Street Journal* or *Harvard Business Review*. Those two areas still require a lawyer's attention. Today's changes, often fueled by technology advances, happen so quickly that the law, and certainly law-makers, often lag behind. This lag makes keeping on top of new developments in the law even more challenging, but it also means that there is a greater opportunity for the lawyer to provide value when a regulatory framework is not settled and uncertain.

Strategic planning is very important for today's law firm, including solo practitioners and small law firms. Lawyers tend to work very hard and stay very busy. It is important to step back regularly and look at possible improvements to the law practice to provide better client service and efficient operations. Many law firms know the changes that they need to accomplish already, but seem to suffer from the lack of available time to research and implement these changes. Strategic planning is the best way to determine how to free up resources for long-term goals.

Your strategic plan will be unique. It will be based on your interests, your existing client base, your geographical loca-

tion and the practice areas of the law firm's focus. It need not be a lengthy document. In fact, for smaller law firms, a list of bulleted points and their prioritization rank is probably the most manageable result.

Any future planning exercise requires that all of the stakeholders participate. So, while there may be certain issues that are best considered only by the firm's lawyers or by the partners, it is generally the case that critical staff members need to be incorporated into the process for it to have value and success.

### POPULAR STRATEGIC TOOL

One popular strategic management tool is to employ the SWOT analysis, where attention is paid to the law firm's strengths, weaknesses, opportunities and threats. While the firm retreat is a popular format, it is also possible that a series of luncheons or afternoons may work well. The challenge is that lawyers will attempt to "escape from" the process, citing deadlines or client emergencies. If the firm decides to make some changes based on this process, it is important that everybody was given the opportunity to be heard and to participate. So participation must be mandatory.

It is desirable, but not necessary, to cover all outstanding issues. If the firm management

could agree on taking steps to solve the three most pressing future concerns of the firm, many would agree that is an outstanding first result. But ultimately, regular strategic planning meetings to review plans, discuss success and failures, and make modifications for the future will become a part of the practice of law for successful law firms.

The simple question that all of the lawyers in a firm should discuss is what they want to be doing next year, five years from now and 10 years from now. We won't have the ability to foresee all of the changes on our horizon. But we can control our destiny to a greater extent if we follow the adage to "plan your work and work your plan."

The great Yogi Berra passed away Sept. 22, 2015. He was known for his skill on the baseball diamond and his quotable quotes. My favorite Yogism relates to strategic planning: "You've got to be careful if you don't know where you're going because you might not get there."

1. adamsmithesq.com

*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](mailto:jimc@okbar.org). It's a free member benefit!*



# A Couple of Not-So-Random Thoughts Regarding Your Ethical Responsibilities

By Joe Balkenbush

## WHAT YOU DON'T KNOW CAN HURT YOU

When I accepted the position of ethics counsel at the OBA, I thought I was pretty familiar with the Oklahoma Rules of Professional Conduct (ORPC)<sup>1</sup> and Rules Governing Disciplinary Proceedings (RGDP).<sup>2</sup> It didn't take very long for me to realize how much I didn't know. The learning curve has been pretty steep. After a few months as ethics counsel, it has become clear to me that some of my fellow members of the bar are equally unfamiliar with these rules.

We have all heard the saying "you don't know what you don't know." Unless you are intimately familiar with the ORPC and RGDP, you don't know what you don't know. How can you comply with the rules when you don't know what they are or what they require? The obvious solution is to read the rules! As we all know, the ORPC and RGDP are codified in Title 5 of the Oklahoma Statutes titled "Attorneys and the State Bar."

Since I arrived at the OBA, more than 1,000 telephone calls and/or emails have come into

my office. Some callers have admittedly not read the relevant rule prior to their call. If the caller were familiar with the relevant rule and the comments following the rule, the answer to the question posed might

**“ Unless you are intimately familiar with the ORPC and RGDP, you don't know what you don't know. ”**

have been clear. If not, call me! Or, if you would like some assurance that your understanding of the rule and its application is correct, call me! The OBA created the position of ethics counsel so attorneys can be proactive regarding ethical issues that arise and obtain a timely answer to their questions. Take advantage of the available resource and contact me with any questions.

Per Oklahoma law, all contact with the ethics counsel is privileged and confidential.<sup>3</sup> A record of each call is maintained along with the name of the inquiring attorney, the attorney's bar number and telephone number, a brief synopsis of the facts stated and advice/guidance given. Any advice/guidance given by the ethics counsel is advisory in nature and is not binding upon the Office of the General Counsel, the Professional Responsibility Tribunal (PRT) or the Supreme Court. Calls to ethics counsel can be a mitigating factor when the general counsel, PRT or Supreme Court is determining what consequences, if any, should be imposed. My office is a resource for OBA members concerning their own conduct, not the conduct of another attorney. Also, the office of ethics counsel is not a resource for non-OBA attorneys or members of the general public.

Knowledge of the ORPC and RGDP is essential to the practice of law. These rules are just as important as an attorney's knowledge of the substantive law of the areas in which they practice. Lack of knowledge of rules could result in an attor-

ney's license being suspended or worse. Few, if any, lawyers set out to violate the rules. But again, you don't know what you don't know. Read the rules! There are 57 of them. If an attorney reads one rule each week, the task would be completed in about a year. There's no reason why the rules couldn't be read more quickly, but as we all know, the longest journey begins with the first step! So, take that first step and become familiar with and knowledgeable of the ORPC and RGDP.

### **SUCCESSION PLANNING IS IMPERATIVE**

So far in 2015, one attorney or more has become incapacitated, passed away or otherwise not able to continue the practice of law. Every month, I have received a call from a mother, father, child or friend of an attorney asking for help in clos-

ing down an attorney's law practice. None of us want to leave our loved ones with that task. The easy solution is to prepare your succession plan. All of the necessary forms have been prepared and are available to you, free of charge. In 2014, the OBA created *The Planning Ahead Guide: Attorney Transition Planning In The Event Of Death Or Incapacity*.<sup>4</sup>

Please take the time to review the materials prepared for you in the planning guide. Simply appointing a successor attorney to deal with your clients, their files and cases will be a positive first step in planning ahead!

Although your familiarity with the ORPC and RGDP are of paramount importance, preparation of your succession plan is equally important. I urge you to follow the advice you would give any client regarding the necessity of estate

planning. Likewise, it is a necessity for each and every attorney to have a succession plan. It's not a matter of if an attorney will need to plan for such eventualities, it's when! An attorney's law practice is certainly part of his or her estate. Please don't burden your loved ones with the difficult task of closing a law practice. No one plans to fail, they fail to plan!

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

1. [www.oscn.net/applications/oscn/Index.asp?ftdb=STOKST05&level=1](http://www.oscn.net/applications/oscn/Index.asp?ftdb=STOKST05&level=1)
2. [www.oscn.net/applications/oscn/index.asp?ftdb=STOKRUDP&level=1](http://www.oscn.net/applications/oscn/index.asp?ftdb=STOKRUDP&level=1)
3. Title 5 O.S. Appendix 3A, Rule 8.3(d)
4. [My.okbar.org/oba\\_attorney\\_transition\\_planning\\_guide.pdf](http://My.okbar.org/oba_attorney_transition_planning_guide.pdf). The link to the pdf may be found at [My.okbar.org](http://My.okbar.org) on the righthand side of the webpage after logging in and is titled *Attorney Transition Planning Guide*.

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# Meeting Summaries

*The Oklahoma Bar Association Board of Governors met at the Holiday Inn Express & Suites in Norman on Sept. 25, 2015.*

## REPORT OF THE PRESIDENT

President Poarch reported he participated in the admission ceremony for new admittees at the Capitol and in the From the School House to the White House CLE presentation. He attended the Budget Committee meeting, Boiling Springs Institute in Woodward, Women in Law Conference in Oklahoma City and dinner hosted by the Cleveland County Bar Association honoring the Board of Governors.

## REPORT OF THE PAST PRESIDENT

Past President DeMoss reported she attended the Budget Committee meeting and reviewed articles being considered by the Board of Editors. She attended the Women in Law Conference luncheon and also participated as a panel member for one of the conference sessions.

## REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the Oklahoma Supreme Court Access to Justice Commission meeting, From the School House to the White House CLE seminar, Hughes County Bar Association meeting and 50-year pin presentation, Budget Committee meeting, new member swearing-in ceremony, meeting with

President-Elect Isaacs regarding a 2016 OCU program, Women in Law Conference luncheon, Cleveland County Bar Association reception, staff directors meeting and interim study meeting on courthouse security at the House of Representatives. Executive Director Williams reported President Poarch did a great job at the From the School House to the White House CLE presentation. He said about 65 people attended including Leadership Academy members, and he heard many positive comments about the seminar.

## BOARD MEMBER REPORTS

**Governor Gifford** reported he attended the Oklahoma County Bar Association Board of Directors meeting and U.S. Army Judge Advocate General's worldwide CLE at the Judge Advocate General's Learning Center and School. **Governor Gotwals** reported he attended the Quality Assurance Panel meeting for the Tulsa family court, Tulsa County Bar Association Board and Committee Chairs Leadership Retreat, Inns of Court fall banquet, OBA Awards Committee meeting and Beta Theta Pi house rededication and alumni reunion/reception at OU. **Governor Hicks** reported he attended the Tulsa County Bar Foundation Board of Trustees meeting, Metropolitan Bar Conference board teleconference and participated in discussions with OBA Leadership Academy leadership. **Governor Kinslow** reported he attended the

Budget Committee meeting, Member Services Committee meeting and Comanche County Bar Association monthly meeting. **Governor Knighton** reported he attended the September Cleveland County Bar Association meeting, Law-related Education Committee meeting, Cleveland County Bar Association social hour and dinner and Lawyers Helping Lawyers Assistance Program Committee meeting. **Governor Marshall** reported he attended the OBF/OBA dinner, Licensed Legal Intern Committee meeting, Boiling Springs Legal Institute and Cleveland County Bar Association dinner for OBA board members. **Governor Porter** reported she attended the Oklahoma County Bar Association annual dinner, Oklahoma County bar's CLE Committee meeting, Cleveland County Bar Association social for the Board of Governors, William J. Holloway Jr. Inn of Court opening banquet and Women in Law Conference, where she served as moderator for the judicial panel. **Governor Sain** reported he attended the McCurtain County Bar Association luncheon and OBA/OBF dinner in Oklahoma City. **Governor Stevens** reported he attended the OBA/OBF dinner and September Cleveland County Bar Association meeting. **Governor Tucker** reported he attended Muskogee County Bar Association monthly meeting, special county bar meeting to consider a reinstatement resolution and the OBA/OBF joint dinner. **Governor Weedn** reported he

attended the OBA/OBF joint dinner, Ottawa County Bar Association meeting and Budget Committee meeting.

### **YOUNG LAWYERS DIVISION REPORT**

Governor McGill reported she helped staff the Kick It Forward Kickball Tournament, which was well attended and raised about \$10,000 for the program. She attended the Oklahoma County Bar Association Family Law Section meeting, OBA Budget Committee meeting, OBA Family Law Section meeting, Ruth Bader Ginsburg Inn of Court 20th anniversary, new attorney swearing-in ceremony and Solo & Small Firm Conference Planning Committee meeting.

### **REPORT OF THE SUPREME COURT LIAISON**

Justice Kauger reported the next free movie night with the justices CLE will be the film *Belle* on Oct. 29. She said a joint meeting of federal, state and tribal judges will take place Nov. 6 at the Oklahoma Judicial Center. The meeting will be moderated by Judge Jerome Holmes, U.S. Court of Appeals 10th Circuit. She said a Dec. 10 movie night will feature a live performance of *A Tuna Christmas*, a two-man play set in the fictional town of Tuna, Texas.

### **BOARD LIAISON REPORTS**

Governor Stevens and General Counsel Hendryx said the Rules of Professional Conduct Committee is reviewing changes recommended by the ABA. Governor Gotwals reported the Professionalism Committee has decided not to hold a symposium this year and will instead try to work with Educational Programs Director Susan Krug on doing a CLE program at the Annual Meeting. The commit-

tee has developed a professionalism pledge, which it hopes to be added at new admittee swearing-in ceremonies. The committee asked for direction on where to submit its proposal. He also reported a Tulsa County Bar Association committee distributed Tulsa attorney Fred Slicker's professionalism book to all new admittees. Governor Marshall reported Legal Intern Committee members are researching two inquiries: 1) regarding an interpretation to provide a reinstatement procedure for an intern who had not registered for the bar exam after graduation and 2) should a provision be made to address whether character and fitness completion should be required. Governor Porter said the Women in Law Conference had a good turnout with a great keynote speaker. Panel discussions were also very good, with Past President DeMoss serving on one. Executive Director Williams said the OBA Budget Committee has approved the budget for publication, and the board will review the proposed 2016 budget at its next meeting. Governor Knighton said the Law-related Education Committee promoted Constitution Day activities in schools and continues to work on updating the legal guide for young adults. A special working committee is pursuing re-establishing the Oklahoma Teacher of the Year Award. Governor Kinslow said the Member Services Committee heard a presentation from Citrix, and information will be submitted to the board for its consideration. It was reported the Bench and Bar Committee is discussing judicial surveys, and the Diversity Committee will hold its award dinner Oct. 15. President-Elect Isaacs said he has invited Fordham University law professor Zephyr

Teachout to speak in Oklahoma City on April 1, 2016, on the Citizens United case.

### **REPORT OF THE GENERAL COUNSEL**

General Counsel Hendryx updated board members on the lawsuit filed against the OBA by an individual in Illinois regarding a complaint of criminal defamation. She reported the Illinois attorney hired to represent the OBA successfully filed and argued a motion to dismiss the case. The OBA is completely out of the litigation. The attorney will refund the portion of the retainer that was not used. She reported a written report of Professional Responsibility Commission actions and OBA disciplinary matters for August was submitted to the board for its review.

### **RATIFICATION OF EMAIL VOTE FOR MCLE PROGRAM DEVELOPMENT**

The board voted to ratify an email vote approving agreements with the Pennsylvania Continuing Legal Education Board (PaCLEB) for new software to track members' MCLE credit and an annual license.

### **RATIFICATION OF EMAIL VOTE APPROVING AGREEMENT WITH AN ILLINOIS LAW FIRM**

The board voted to ratify the email vote approving the legal services agreement with the Illinois law firm.

### **AWARDS COMMITTEE RECOMMENDATIONS**

Awards Committee Chair Jennifer Castillo briefed the board that nominations were received for all awards; however, the committee did not think nominations in four categories were strong enough to merit an award this year. She reviewed

the committee's recommendations and answered questions. Governor Gotwals added comments from the meeting. The board approved the Awards Committee recommendations for OBA awards. Governor Marshall recommended that President Poarch call award recipients notifying them of the honor in addition to sending them a letter. President Poarch agreed to do so.

### **PROPOSED NEW MEMBER BENEFIT**

Management Assistance Program Director Jim Calloway reported the Member Services Committee heard a presentation from Citrix, which offers a number of services that would benefit OBA members. The committee recommends the OBA approve Citrix at its highest level of member benefit as an endorsed vendor. Mr. Calloway reviewed the services. The board authorized negotiations with Citrix and an agreement to be drafted.

### **CLIENTS' SECURITY FUND COMMITTEE APPOINTMENT**

The board approved President Poarch's appointment of Bradley J. Brown, Tulsa, to complete the unexpired term of Cesar Tavares. The term will expire Dec. 31, 2016.



*The Oklahoma Bar Association Board of Governors met at the Oklahoma Bar Center in Oklahoma City on Oct. 23, 2015.*

### **REPORT OF THE PRESIDENT**

President Poarch reported he participated in planning for the Access to Justice Commission panel discussion at the Annual Meeting President's Breakfast and a telephone conference call

with OBA staff and Eric Liu, Annual Meeting keynote speaker. He attended the Conference of Southern Bar Presidents meeting in Alexandria, Virginia. He also presented Ada Lois Sipuel awards at the Diversity Committee awards dinner at the Oklahoma Judicial Center, responded to an interview request from a local television station conducting an investigative report on unauthorized practice of law issues and wrote a bar journal article.

### **REPORT OF THE VICE PRESIDENT**

Vice President Devoll reported he attended the Garfield County Bar Association meeting and worked on plans for the Board of Governors has been event.

### **REPORT OF THE PRESIDENT-ELECT**

President-Elect Isaacs reported he attended the OBA Strategic Planning Committee meeting and OBA budget hearing. He did a presentation on the history of trial by jury at the Beckham County Bar Association meeting and submitted an article titled "For \$900 Million You Can Buy Your Way Out of the Death Penalty" for the bar journal.

### **REPORT OF THE EXECUTIVE DIRECTOR**

Executive Director Williams reported he attended the Southern Conference of Bar Presidents meeting, budget hearing, Diversity Committee awards dinner, monthly staff celebration, Young Lawyers Division board meeting and meetings on the new association management system. He also helped YLD members stuff backpacks and make deliveries as part of the division's community service project.

## **BOARD MEMBER REPORTS**

**Governor Gifford** reported he attended the Cleveland County Bar Association reception for board members and the Oklahoma County Bar Association Board of Directors meeting. **Governor Gotwals** reported he attended the Inns of Court Pupilage Group meeting and brainstorming for a presentation in January on "Representing the Unpopular Client," Tulsa County Family Court Quality Assurance Panel meeting, Tulsa County Bar Foundation budget preliminary meeting, Tulsa County Bar Association Family Law Section meeting, TCBA Board of Directors meeting and TCBF meeting. He also participated in the inspection of the TCBA building renovation project with the architect and campaign chair. **Governor Hicks** reported he attended the Tulsa County Bar Association Awards & Nominations Committee meeting, University of Tulsa Friends of Finance luncheon and OBA Ethics in 18 Holes CLE seminar with Ethics Counsel Joe Balkenbush. **Governor Jackson** reported he attended the October Garfield County Bar Association meeting. **Governor Kin-slow** reported he attended the Comanche County Bar Association meeting. **Governor Knighton** reported he attended the Cleveland County Bar Association reception for the Board of Governors and September Lawyers Helping Lawyers Assistance Program meeting. **Governor Marshall** reported he attended the Cleveland County Bar Association reception for the Board of Governors. **Governor Porter** reported she attended the Cleveland County Bar Association monthly luncheon meeting and the William J. Holloway Jr. Inn of Court meeting. **Governor Sain**



reported he attended the McCurtain County Bar Association luncheon, McCurtain Memorial Hospital Foundation meeting and Cleveland County Bar Association dinner. **Governor Stevens** reported he attended the Cleveland County Bar Association reception for the Board of Governors and the October Cleveland County Bar Association meeting. **Governor Tucker** reported he attended the Muskogee County Bar Association meeting, Cleveland County Bar Association reception for the board, Oklahoma Association of Municipal Attorneys annual meeting and Women in Safe Homes Inc. annual walk for domestic violence awareness. **Governor Weeden**, unable to attend the meeting, reported via email he attended the Cleveland County Bar Association reception for board members and the Ottawa County Bar Association monthly meeting.

## **BOARD LIAISON REPORTS**

Governor Knighton reported during September the Law-related Education Program held four Peaceful Resolutions for Oklahoma Students training sessions for elementary and middle/high schools. The LRE coordinator will attend a national meeting in Pennsylvania. He said teachers are being surveyed about interest in a Teacher of the Year Award. He also reported the Lawyers

Helping Lawyers Assistance Program conducted a training session for lawyers working with lawyers who need help. President Poarch reported the Diversity Committee awards dinner was well attended. Governor Porter reported the Women in Law Committee at its meeting did a wrap up of their recent conference and planned a social event in December. She said all the conference speakers received high marks from attendees.

## **REPORT OF THE GENERAL COUNSEL**

General Counsel Hendryx reported the Professional Responsibility Commission did not meet in September. A written report of OBA disciplinary matters for September was submitted to the board for its review.

## **PROPOSED NEW MEMBER BENEFIT**

Executive Director Williams reported changes were made to a proposed member benefit agreement with Citrix, and the proposed agreement will be emailed soon to board members for a vote. The board requested to see both the redline and final versions of the agreement.

## **OBA AWARDS**

Governor Gotwals complimented President Poarch on

calling all the OBA award winners within 24 hours of the board's final approval of Awards Committee recommendations. He heard good comments from recipients.

## **PROPOSED 2016 OBA BUDGET**

Administration Director Combs reviewed the budget executive summary, which describes changes from the previous year. Discussion followed. The budget includes an increase in funding of public education. President-Elect Isaacs shared with the board his plan to work with the courts to designate a Juror Appreciation Month in Oklahoma. He wants people who serve on juries to understand their role is vital to this country's constitutional process. The board approved the proposed budget and to submit it to the Oklahoma Supreme Court for its approval.

## **NEXT MEETING**

The Board of Governors met Nov. 4, 2015, in conjunction with the Annual Meeting. A summary of those actions will be published after the minutes are approved. The next board meeting will be at 10 a.m. Friday, Dec. 11, 2015, at the Oklahoma Bar Center in Oklahoma City.

## 2015 OBF Scholarship Recipients

Sheridan Lindley from the University of Oklahoma College of Law has been awarded the Maurice H. Merrill Memorial Public Law Scholarship. She has a Bachelor's degree in business administration, *summa cum laude*, economics and a minor in Spanish from OU. She is a member of the National Honor Society of Collegiate Scholars, Chi Omega Sorority, Pre-Law Society and Campus Activities Council Crew.



*Sheridan Lindley*

"Law school and the work involved can be mentally and emotionally exhausting, but the financial burden it imposes has caused me just as much stress," Ms. Lindley said. "The Maurice H. Merrill Scholarship helped to ease this burden, and I am extremely grateful for being chosen as the recipient. I am the first person in my family to pursue a career in the field of law, and I want to set a good example and meet the high academic standards I have established for myself. The scholarship helped me take one step closer toward achieving these goals."

Ms. Lindley has received the following honors: National Merit Scholar, Byrd Scholar, Oklahoma All-State Scholar, dean's honor roll, president's honor roll and Beta Gamma Sigma at the Price College of Business.

This scholarship was named for Maurice H. Merrill, attorney and OU law professor. The

scholarship fund was created in 1968 through gifts in memory of Professor Merrill and was increased in size in 1984 to provide an annual scholarship for research in the field of public law. The Merrill fund is a permanent endowment that provides for the award of scholarship funding annually to an OU law school student.

### **OBF FELLOW SCHOLARSHIP**

#### **ANNE DANIEL**

University of Tulsa College of Law student Anne Daniel received the Oklahoma Bar Foundation's Fellow Scholarship. She has a B.A. in English literature from Texas Christian University. She is the first place award recipient in the Edge Law Firm Criminal Competition and is the current editor for the *University of Tulsa Law Review*. Ms. Daniel comes from a long line of passionate attorneys, as both her parents, her grandfather and four of her



*Anne Daniel*

uncles practice law. She plans to pursue a career in criminal law.

"The OBF has always been supportive of law students in the state of Oklahoma," Ms. Daniels said. "I am thankful and grateful to be one of the recipients of the OBF Scholarships, and look forward to being an attorney in Oklahoma beginning this spring."

Ms. Daniels has received the following honors: TU faculty honor roll, dean's honor roll and board of advocates.

The OBF Fellow Scholarship was created in 2006 in celebration of the foundation's 60th year of service. The OBF established the scholarship to provide financial assistance to law students currently enrolled in Oklahoma with a demonstrated intent to practice law in Oklahoma.



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\_\_\_\_ **\$10,000/year** *Community Cornerstone*

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# Another Successful Day of Service

By Brandi N. Nowakowski

On Oct. 17, 2015, the YLD held our annual Day of Service project. This year, we decided to do a hunger prevention project for school children across the state. We chose a backpack project that would provide supplemental backpacks for extended school breaks, as opposed to the “weekend backpacks” that are generally provided.

In speaking with the Regional Food Bank and the Eastern

Oklahoma Food Bank, we became aware of a need for “supplemental” packs. Many or all of the schools we provided backpacks to had some sort of backpack program in place for students in need; however, it seemed that all could benefit from additional resources/provisions for these longer holiday breaks, such as Thanksgiving or Christmas.

Thankfully, Thunder Cares graciously agreed to allow us to

use the leftover backpacks that had been donated for Oklahoma’s Promise. FireLake Grocery in Shawnee (of the Citizen Potawatomi Nation) was incredibly helpful as well. They ordered all of the food for us from their suppliers and provided them to us at wholesale cost! Without the assistance of Thunder Cares and FireLake, this project would not have been so successful! We were able to do so much more good thanks to their generosity.

Our board members packed approximately 200 Thunder backpacks, each containing food for about five days.



*Brandi Nowakowski shows off one of the backpacks donated by Thunder Cares.*

The packs were delivered to the following:

- 1) Garber Elementary – Garfield County
- 2) Calumet Elementary – Canadian County
- 3) Boys and Girls Club of Nowata, serving Nowata Public Schools – Nowata County
- 4) Washington Elementary in Lawton – Comanche County
- 5) Maud Elementary – Pottawatomie and Seminole Counties
- 6) Shared Blessings in McAlester – to be distributed to multiple schools<sup>1</sup>

## The backpacks contained the following products:

- Shelf-stable milk and chocolate milk
- Juice boxes
- Granola bars
- Fruit grain bars
- Cereal
- Cereal bars
- Oatmeal
- Peanut butter and cheese crackers
- Pre-packaged mixed fruit
- Raisins
- Applesauce
- Pudding cups
- Cheez-Its
- Easy-Mac
- Chef Boyardee beefaroni and ravioli pop-top microwave meals





*The YLD stuffs backpacks for their Day of Service backpack project.*

When selecting schools, I asked our board members to suggest schools in their districts which could benefit from this project, and we considered the percentage of students receiving free or reduced lunches, as that number is indicative of need.

Further, I decided to select schools located outside of the Tulsa and OKC metro areas, primarily in rural Oklahoma.

The largest cities and more metropolitan areas are more likely to have the benefit of several nonprofit or charitable organizations and churches that are already serving that need for their communities. The rural areas of Oklahoma are less likely to

have these resources, or as many of them, available. As another young lawyer noted, in his small town, people come together to address the needs of the community, but they have fewer resources with which to do so.

At one of our recipient schools, the school administrator mentioned that the school backpack program coordinator came to her a few days prior

and said there were three more children who needed to be added to the program. The coordinator was concerned that the program was running low on resources, but they added the children anyway. Thankfully, we were able to fill that need and provide additional resources to that school. It was perfect timing, and I am so glad we could help!

1. Shared Blessings serves roughly 700 kids at 18 different schools, though the exact number of schools they were able to provide these backpacks for is not known.

#### ABOUT THE AUTHOR



Ms. Nowakowski is an attorney in Shawnee and represents District 8 on the YLD Board of Directors.

On Thursday, Nov. 5, 2015, in coordination with the OBA Annual Meeting, the YLD presented their annual awards.

YLD Chair LeAnne McGill (left) presented the following awards: (from left) Bryon Will, Outstanding Officer; Carol Manning representing the OBA Communications Department, Friend of the YLD; April Moaning, Outstanding Committee



Chair; Faye Rodgers, Outstanding Director; Stephanie Cox, YLD Fellow; and Renée DeMoss, YLD Fellow. YLD 2014 Chair Kaleb Henneigh assisted in the awards presentation.

## November

26-27 **OBA Closed** - Thanksgiving

## December

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

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

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

**9 OBA Women in Law Committee meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Kimberly Hays 918-592-2800

**11 OBA Board of Governors meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City; Contact John Morris Williams 405-416-7000

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

**OBA Family Law Section meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Michelle K. Smith 405-759-2333

**OBA Rules of Professional Conduct Committee meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Paul B. Middleton 405-235-7600

**15 OBA Bench and Bar Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Judge David B. Lewis 405-556-9611

**OBA Diversity Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Tiece I. Dempsey 405-524-6395



**OBA Licensed Legal Intern Committee meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Candace G. Blalock 405-238-0143

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

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

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

24-25 **OBA Closed** - Christmas

## January

**1 OBA Closed** - New Year's Day

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

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



- 8 OBA Law-related Education Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Suzanne Heggy 405-556-9615
- OBA Family Law Section meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Michelle K. Smith 405-759-2333
- 13 OBA Women in Law Committee meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Kimberly Hays 918-592-2800
- 14 OBA Board of Governors meeting;** 2 p.m.; Teleconference; Contact John Morris Williams 405-416-7000
- 18 OBA Closed** - Martin Luther King Day
- 20 OBA Indian Law Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Trisha Archer 918-619-9191

- 22 OBA Lawyers Helping Lawyers Committee meeting;** 12 p.m.; 406 S. Boulder, Ste. 432, Tulsa, Office of Hugh Hood; Contact Jeanne Snider 405-366-5423
- 28 OBA Professionalism Committee meeting** 4 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Patricia Podolec 405-760-3358

## February

- 2 OBA Government and Administrative Law Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City; Contact John E. Miley 405-557-7146
- 4 Lawyers Helping Lawyers discussion group;** 6 p.m.; 701 NW 13th St., Office of Tom Cummings, Oklahoma City; Contact Jeanne Snider 405-366-5423
- 5 OBA Alternative Dispute Resolution Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Ken Morgan Stoner 405-705-2910
- 10 OBA Women in Law Committee meeting;** 3:30 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Kimberly Hays 918-592-2800
- 12 OBA Law-related Education Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Suzanne Heggy 405-556-9615
- OBA Family Law Section meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Michelle K. Smith 405-759-2333

### **OBA Member Resignations**

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

Ted Daniel Rossier  
OBA No. 16041  
4008 Glasgow Dr.  
Norman, OK 73072

Adam Dale Shelton  
OBA No. 20841  
1851 Bassett St., No. 510  
Denver, CO 80202

Janet Frye Steele  
OBA No. 31451  
3801 Bridgeport Rd.  
Norman, OK 73072

### **OBA Member Reinstatement**

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

Mitchell Kenneth Coatney  
OBA No. 21066  
16224 Muirfield Place  
Edmond, OK 73013

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### **Connect With the OBA Through Social Media**

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



### **LHL Discussion Group Hosts December Meeting**

"Practice of Law and Spirituality" will be the topic of the Dec. 3 meeting of the Lawyers Helping Lawyers monthly discussion group. Each meeting, always the first Thursday of each month, is facilitated by committee members and a licensed mental health professional. The group meets from 6 to 7:30 p.m. at the office of Tom Cummings, 701 N.W. 13th St. Oklahoma City. There is no cost to attend and snacks will be provided. RSVPs to Kim Reber, [kimreber@cabainc.com](mailto: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.*

### **LAWYERS HELPING LAWYERS ASSISTANCE PROGRAM**

**Call 24/7 — 800-364-7886**

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### **Aspiring Writers Take Note**

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



## Hughes County Celebrates Long-time Bar Member



*OBA member Victor Pryor of Holdenville was recently presented with a certificate and pin recognizing 50 years of service to the bar association by OBA Executive Director John Morris Williams. Many members of the local county bar association turned out for the occasion. The OBA congratulates all lawyers who are celebrating milestone anniversaries in 2015!*

## Court Employees Recognized

The Case Management Assist Team for the Bankruptcy Court for the Western District of Oklahoma was recently presented with a Director's Award for Excellence in Court Operations by the Administrative Office of the U.S. Courts.

The award was presented in recognition of the team's development of CMA, now used by 37 bankruptcy courts and two district courts with other courts in the implementation stage. CMA works alongside the Case Management/Electronic Case Files System to distribute, organize, prioritize, and assign work for a case administrator, among other capabilities. Financial officers also may use it to monitor payments due and judges and clerks may use it to remain current on court filings.

Team members are IT manager Scott Bellingham, administrative support analyst Annamarie Cooper, Bankruptcy Clerk of Court Grant Price, Chief Deputy Bankruptcy Clerk of Court Sheila Sewell, operations manager Penny Wallis and automation supervisor Ronn Folk.





## OBA Staff Members Earn Honors

The OBA is very proud of two staff members who were recently presented awards by professional organizations with whom they are affiliated. Law-related Education Coordinator **Jane McConnell** received the Mike Adkins Memorial Friend of Social Studies Award from the Oklahoma Council for the Social Studies. The honor is given to an individual who has made numerous and exceptional contributions over an extended period of leadership in social studies education in the state of Oklahoma. *Law Practice Magazine* has named OBA Management Assistance Program Director **Jim Calloway** as the recipient of the Robert Wilkins Award for Best Column for the publication's 2014-15 editorial year.



## Melissa McLawhorn Houston Appointed Interim Labor Commissioner

Governor Mary Fallin has announced she will appoint Melissa McLawhorn Houston as Oklahoma labor commissioner until January 2019. Ms. Houston, who has been chief of staff and policy adviser for Oklahoma Attorney General Scott Pruitt since 2011, will fill the remaining term of former Labor Commissioner Mark Costello, who died in August. The commissioner of labor is responsible for the enforcement of labor laws that promote fairness and equity in the workforce, including state wage laws, workers' compensation compliance, state Occupational Safety and Health Administration laws for public employers, child labor laws and various other duties.



Ms. Houston is an experienced administrator with an extensive background in state government. Before serving as the attorney general's chief of staff, she served for nine years (2002-2011) as the chief of staff for the Oklahoma Office of Homeland Security. Prior to that, she served as deputy director for the Oklahoma Sheriffs Association and as an attorney for the Oklahoma Truth in Sentencing Policy Advisory Commission. She is a 1994 graduate of the OU College of Law.

## Heroes Program Celebrates Fifth Anniversary

On Veterans Day 2010, the OBA launched Oklahoma Lawyers for America's Heroes to provide free legal advice and assistance to qualifying active duty servicemen and women and veterans. As of this year, more than \$2.7 million in legal services have been donated by Oklahoma lawyers through the Heroes program. Nearly 700 lawyer volunteers have participated and more than 3,600 heroes have received services under the program.

A great need still exists for Oklahoma lawyers to volunteer for the program, especially in the area of family law. The mission is to offer one-on-one legal counsel to those members of the guard or reserve who are currently or have honorably served this nation who otherwise cannot afford or do not have access to the services they need. Please visit [www.okbar.org/heroes](http://www.okbar.org/heroes) to learn more about the program. To volunteer, contact Gisele Perryman at 405-416-7086 or email [heroes@okbar.org](mailto:heroes@okbar.org).



# Kudos

The International Municipal Lawyers Association has announced **Andrea Lynn Chism** as a member of its 2015 class of Local Government Fellows. The program was established in 1999 to recognize attorneys as legal specialists in the field of local government law and to promote competency in the field. She earned her J.D. from the OCU School of Law in 2007.

**Glenn Floyd** was honored by the American College of Bond Counsel for his contributions to the college as a founding fellow and former president. He is a part of The Floyd Law Firm of Norman and graduated from the OU College of Law in 1967.

**Harry Birdwell** received the Distinguished Alumni Award given out annually by the OSU Alumni Association. The award recognizes alumni who attain distinctive success in their chosen profession, perform outstanding services to their communities and strive to support the advancement of OSU. He earned his J.D. from the OU College of Law in 1975.

**Craig A. Fitzgerald** has been selected as a Litigation Counsel of America fellow. The LCA is a trial lawyer honorary society composed of less than one-half of 1 percent of American lawyers. Fellow-

ship in the LCA is highly selective and by invitation only. Fellows are selected based upon excellence and accomplishment in litigation, both at the trial and appellate levels, and superior ethical reputation. He earned his J.D. from Vanderbilt University Law School in 1992.

# On The Move

**GableGotwals** has announced that **Andrea Pickryl** and **James M. Scears** joined the firm's Tulsa office. Ms. Pickryl's primary focus will be transactional law. She earned her J.D. with honors from the TU College of Law in 2015. Mr. Scears focuses his practice on tax law, as well as estate and trust planning. He returns to Oklahoma after practicing law in Zurich, Switzerland. He graduated from the OU College of Law in 2012 and holds an LL.M. in taxation from New York University School of Law.

**Sherwood, McCormick & Robert** has announced that **Grant A. Carpenter** joined the firm. His practice will include business litigation, nonprofit law, personal injury and elder law. He graduated from the OU College of Law in 2015.

**Lauren M. Marciano** has joined the firm of Rhodes,

Hieronymus, Jones, Tucker and Gable as an associate. Her practice is concentrated in civil defense litigation and she received her J.D. from the TU College of Law in 2012.

**Lloyd** and **Karla McAlister** have announced the addition of two new partners to their firm, **Brandon Baker** and **Cara Nicklas**. The firm will be known as McAlister, McAlister, Baker & Nicklas PLLC. Mr. Baker practices primarily in the areas of business formation, business transactions, real estate transactions and oil and gas transactions. He received his J.D. from the OU College of Law in 2006. Ms. Nicklas' practice focuses on employment law, civil and business litigation, probate and trust litigation, guardianship and estate planning. She received her J.D. from the OCU School of Law in 1990.

**McAfee & Taft** has announced that **Jenny M. Odom** and **Kaitlyn E. Schrick** joined the firm. Ms. Odom represents and counsels clients in a broad range of business transactions and compliance matters with an emphasis on issues affecting the healthcare industry. She graduated with honors from the OU College of Law in 2015. Ms. Schrick is a transactional lawyer whose practice encompasses a broad range of corporate and business matters. She earned her J.D. with honors from the OU College of Law in 2015.

Crowe & Dunlevy recently announced attorney **Louis W. Utsch** joined the firm as a director in the Oklahoma City office. He is a member of the firm's Taxation Practice Group. Mr. Utsch has concentrated his career in the practice of energy tax law and tax consulting. He received his J.D. from the University of Virginia in 1993.

Legal Aid Services of Oklahoma Inc. welcomes attorneys **Stephanie A. Hansen** and **Daniel A. Sanders** to the McAlester Legal Aid office. Ms. Hansen will focus on family law matters. She earned her J.D. from Regent University in Virginia in 2015. Mr. Sanders will focus primarily on social security benefits and received his J.D. from the OCU School of Law in 2002.

The law firm of Norman Wohlgemuth Chandler Jeter Barnett & Ray has announced the addition of **Barrett Powers** and **Alex Telarik**. Both Mr. Powers and Mr. Telarik will focus on complex civil litigation. Mr. Powers earned his J.D. with honors from the TU College of Law in 2015. Mr. Telarik also earned his J.D. in 2015 from Wake Forest University School of Law.

Fulmer Group PLLC announces the opening of their new office located in the historic Buick Building in Automobile Alley, 1101 N. Broadway, Oklahoma City, Oklahoma 73103. They can be reached by telephone at 405-510-0077. Fulmer Group represents individuals and small businesses in insurance bad faith and class action litigation, as well as personal injury matters.

**Stephen DeGuisti** has been named senior vice president and general counsel of the BP Lower 48 Onshore business in Houston, Texas. He was previously with PostRock Energy Corp. in Oklahoma City for five years. Before that he was with Crowe & Dunlevy for 25 years. He earned his J.D. from the OU College of Law in 1983.

The Fellers Snider law firm recently welcomed associate attorney **Michael A. Fagan** to the firm. He will be based out of the firm's Oklahoma City office and will focus on workers' compensation law as well as general civil litigation. He earned his J.D. from the University of Missouri-Kansas City School of Law in 2007.

## At The Podium

**Curtis Craig** and **Chris Paul** presented a program at the 2015 Association of Oil Pipe Lines' Annual Business Conference in Atlanta, Georgia, on "Comprehensive Compliance Programs-Issues and Tools." The presentation covered challenges faced by counsel in dealing with compliance in a highly regulated environment, and the tools they use to help their organizations stay in compliance and address issues of noncompliance.

**Professor Marty Ludlum** recently spoke to several classes at Chien Hsin University in Jhongli, Taiwan. His presentations were "Civil

versus Common Law" and "International Trade Issues."

**Lorrie Corbin Bamford** returned as a guest lecturer at the 2015 Society for Corporate Compliance and Ethics' Annual Conference in Las Vegas, Nevada. She presented "How to Attract, Empower and Retain Ethical Employees."

**T. Douglas Stump** recently spoke on "Unusual Admissions at the Border and Beyond" at the 2015 Rocky Mountain Fall Conference hosted by the Colorado Chapter of the American Immigration Lawyers Association. He was also a featured speaker at the 2015 AILA National Fall Conference in Minneapolis where he presented materials on "I-601A Provisional Waivers and Practical Guidance for a Successful Application."

**Bryce P. Harp** recently spoke at the 2015 Annual Conference of the Missouri Credit Association. His presentation "'To Be or Not to Be' in Compliance with Oklahoma's Pre-Lien Notice Requirements" discussed the costly consequences of failing to adhere to the notice requirements set forth in Title 42.

**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 Jan. 17 issue must be received by Dec. 14.*

## IN MEMORIAM

**R**ichard E. Dixon of Duncan died Sept. 16. He was born July 13, 1936, and graduated from high school in Enid. He graduated from OU with his bachelor's degree and earned the rank of first lieutenant through his ROTC studies. **He served in the U.S. Army for two years and remained active in the Army Reserves for many years.** He received his J.D. from the OU College of Law in 1964 and went to work in the trust department of City National Bank in Oklahoma City. In 1968, he moved to Duncan and began working as vice president and trust officer at Security National Bank Trust Company. He served as the Oklahoma Bankers Association director and president, treasurer of Centennial Duncan Inc, Duncan Youth Council and Duncan Industrial Foundation director and treasurer, First Oklahoma Life Insurance Co. director and president of the DHS Booster Club. Memorial contributions may be made in his name to the Communities Foundation of Oklahoma, Duncan Regional Hospital Foundation, Little Lighthouse or to a charity of your choice.

**J**ames Edward Poe of Tulsa died Sept. 26. He was born Feb. 21, 1935, in Garfield, Arkansas, and received his J.D. from the TU College of Law. During his 55 years of

practice, he was Tulsa County Bar Association past president, which also recognized him as Outstanding Senior Lawyer and awarded him the Lifetime Achievement Award. He served as an Oklahoma Bar Association board member and was a recipient of the Neil E. Bogan Award for Professionalism. He also served 26 years on the Oklahoma Attorneys Mutual Insurance Company board and was a sustaining fellow of the Oklahoma Bar Foundation. He served many civic and charitable organizations, most notably nine years on the Tulsa County Excise and Equalization Board and the Alzheimer's Association of Oklahoma.

**R**ichard Amatucci of Tulsa died Aug. 16. He was born May 8, 1934, and graduated from Holy Family Cathedral School. **After serving in the U.S. Army**, he received his J.D. from the TU College of Law and was a practicing attorney for 50 years.

**A**llen Hoffman Stocker of Bartlesville died Oct. 6. He was born April 29, 1926, and graduated from College High School in 1944. **After Pearl Harbor, he enlisted in the Navy and served in World War II as a radio technician aboard the U.S.S. Tutuila in the Pacific.** Following completion of his military service he attended the Uni-

versity of Missouri where he received his J.D. in 1951. He began his legal career in Missouri before returning to Bartlesville where he started his own law firm. He was a 64-year member of the Oklahoma Bar Association, an Oklahoma Bar Foundation fellow, served on the Green Country Village Retirement Community board, the Bartlesville Community Center board and the Family Healthcare Clinic board. He was active in the Oklahoma Democratic Party and many other community and charitable organizations. He enjoyed spending time with his wife, children, family and friends and is survived by his daughter and OBA member Susan B. Shields. Memorial contributions may be made in his name to St. Jude's Children's Research Hospital, 501 St. Jude Place, Memphis, TN 38105 or to the U.S. Holocaust Memorial Museum, 100 Raoul Wallenberg Pl, SW, Washington, D.C. 20024.

**G**reg Jenkins of Caney died Sept. 24. He was born Dec. 23, 1962, and earned his bachelor's degree from Southeastern Oklahoma University in accounting. He received his J.D. from the OU College of Law in 1988. He served in the district attorney's office for more than 25 years in the criminal division of Atoka, Bryan and Coal



counties. He was a member of the Harmony Baptist Church for more than 20 years and a youth Sunday School teacher for 15 years. He enjoyed collecting comic books, playing fantasy baseball, watching OU football and playing video games with his son.

**Jack E. Phillips** of Bartlesville died Sept. 23. He was born Aug. 18, 1938, and graduated from Duke University with a bachelor's degree in chemistry. In 1961, he worked in the Washington, D.C. Patent Office for two years which led to his decision to become an attorney. He received his J.D. from George Washington University. In 1964, he relocated to Bartlesville where he began working for Phillips Petroleum Co. in its patent division. He later became associate general patent counsel and trademark counsel and remained with Phillips Petroleum Co. until his retirement in 1996. He was a member of the First United Methodist Church and served on the church's board of trustees and memorial committee. Other activities included serving on the YMCA board of directors, the Board of Family Crisis & Counseling and the Native American Medical Clinic board. Memorial contributions may be made in his name to Project Transformation, c/o Bartlesville First Church, 4715 Price Rd., Bartlesville, OK 74006 or to The Journey Home, 3406 S.E. Kentucky, Bartlesville, OK 74006.

**James Carter "Jim" Bass** of El Reno died Sept. 26. He was born July 3, 1938, and graduated from El Reno High School in 1956. **After serving in the Army as a first lieutenant**

**at Fort Benjamin Harrison in Indianapolis, Indiana, for two years,** he attended the OCU School of Law where he received in J.D. in 1966. He joined his father-in-law in his law firm in El Reno. He was a member of the American Bar Foundation, American College of Trust and Estate Counsel, American College of Trial Lawyers and the Canadian County Bar Association. He was named an El Reno Distinguished Alumni and was a founder of American Heritage Bank. Active in his community, he served on the governing boards of Oklahoma Medical Research Foundation and Oklahoma City University. He was a former member of the El Reno City Council and the Park View Hospital Authority board of trustees. Memorial contributions may be made in his name to Oklahoma Medical Research Foundation (OMRF) at 825 NE 13th St, Oklahoma City, OK 73104.

**Retired Judge James P. Garrett** died Oct. 16. He was born Jan. 5, 1922, and graduated from Mangum High School and received his undergraduate degree from OU. **After graduation, he enlisted and served his country as lieutenant in the U.S. Navy during World War II. He was part of the Naval forces that invaded Normandy during the D-Day Invasion.** When he returned from duty, he received his J.D. from the OU School of Law. His professional career spanned several decades as an assistant district attorney in Carter County, assistant attorney general and practicing private law. He was a member and deacon at the First Baptist Church in Mangum and a member of the

Village Baptist Church in Oklahoma City. He was also an active member of the Oklahoma Toastmasters Club, Rotary International, Kiwanis International and the BPOE. Memorial contributions may be made in his name to BritVil Community Food Pantry, Oklahoma Medical Research Foundation or a charity of your choosing.

**Ruth E. Moran** of Oklahoma City died Oct. 8. She was born Sept. 8, 1923, and graduated from Stillwater High School. She received her J.D. from the OU College of Law in 1945 and worked for the State of Oklahoma at the State Land Office. In 1949, she and her husband started the law firm of Moran and Moran. She was a member of the Oklahoma Genealogical Society board, Oklahoma Historical Society board of directors and was appointed by Gov. George Nigh to serve as a member of the Oklahoma Historical Records Advisory Board. In recognition of her outstanding contributions to genealogical research in the state of Oklahoma the Ruth Eager Moran Chair was created by the Oklahoma Historical Society and she was the first recipient of the award. She was also recognized as one of the pioneers of women lawyers in Oklahoma.

**Richard Brooks O'Connor** of Oklahoma City died Oct. 7. He was born Sept. 9, 1929, and graduated from Wentworth Military Academy and The University of Missouri. **He joined the Navy and received his wings in 1955, when he was selected to serve as one of 14 members of Fighter Squadron VF-11, the Red Rippers, the**



**Navy's oldest continuously active fighter squadron.** After surviving many dangerous missions, he returned to the United States and enrolled at the OCU School of Law where he received his J.D. He opened his law office, concentrating in aviation law. He was a prolific reader of all subject matter from philosophy to history, was an avid sailor and loved driving imported sports cars.

**H**arry C. Marberry of Oklahoma City died Sept. 11. He was born May 4, 1920, and attended Southern Illinois University. **In 1943, he was called to active duty in the Army Air Corps and served as a weather observer for three years in Scotland and France.** After WWII he attended law school and began practicing in oil and gas law. His practice spanned more than 50 years. He was active in politics and helped found the young Republican Party and served as Oklahoma Republican Party chairman in 1960. He enjoyed playing golf at Quail Creek Country Club, playing bridge, reading mysteries and traveling. Memorial contributions may be made in his name to Westminster Presbyterian

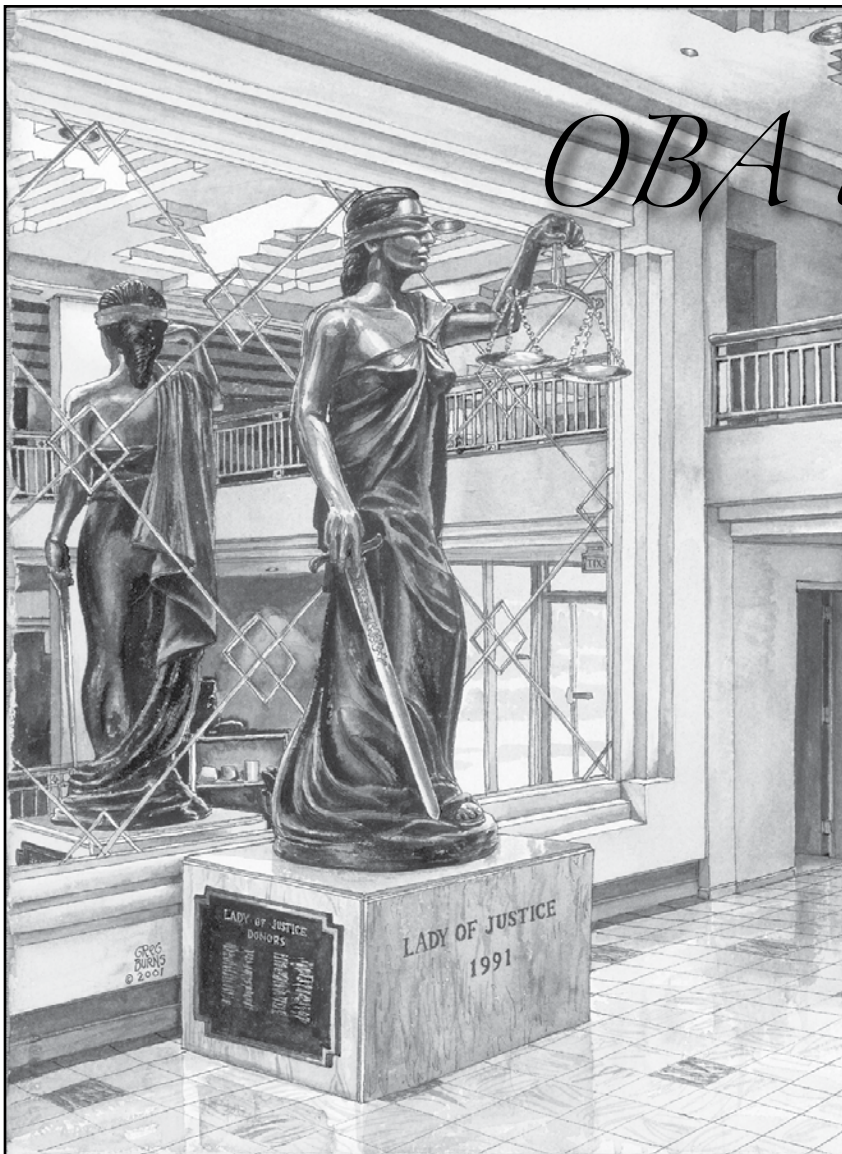
Church or a charity of your choice.

**J**ohn D. Chiaf Sr. of Oklahoma City died Sept. 17. He was born Aug. 1, 1922, in Brooklyn, New York, where he quit school at the age of nine and went to work as a pharmacist assistant to help support his family during the depression. **He served in the Army Air Corps during WWII** and after his discharge moved to Oklahoma City where he obtained his GED and received a J.D. from the OCU School of Law in 1952. He practiced law for more than 50 years, with an undying and never-ending passion for helping those in need. Memorial contributions may be made in his name to the Alzheimer's Association-Oklahoma Chapter.

**J**erry D. Sokolosky of Oklahoma City died Sept. 27. He was born April 12, 1937, and received his J.D. from the OU College of Law in 1963. He was a partner with the firm Able Musser Sokolosky and Clark for decades. He was elected to the Oklahoma House of Representatives in 1964 representing the 9th District until 1968. President Carter appointed him to the Judicial Selection Committee and he also served as the

National Council on Crime and Delinquency state chairman and as a hearings judge for the Oklahoma Real Estate Commission. He was the organizing attorney for new charters for five state community banks and authored numerous articles for the *Law Review* and the suspense novel *Politics Money and Drugs*. He was an avid pilot, scuba diver and snow skier. Memorial contributions may be made in his name to St. Gregory's University, c/o Marketing and Development Dept., 1900 W MacArthur St, Shawnee, OK 74804.

**T**homas S. Crewson of Tulsa died Oct. 14. He was born Oct. 13, 1932, and **served in the U.S. Army where he attained the rank of second lieutenant.** He earned his J.D. from the TU College of Law and was a member of the OBA for more than 50 years. He served as an attorney in private practice, a municipal court judge for the City of Tulsa, a Tulsa County juvenile court referee and as a state district court judge and chief judge of the Tulsa County Juvenile Court. He was active in Boy Scouts of America, Kappa Sigma Fraternity and the Tulsa Ski Club.



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Questions: call Debbie Brink, (405) 416-7014;  
(800) 522-8065 or email [debbieb@okbar.org](mailto:debbieb@okbar.org)

## Practice gratitude

One of the best ways to lower stress is to practice gratitude; and with Thanksgiving just around the corner, now is the perfect time to reflect. Here are nine tips for cultivating gratitude.



[www.unstuck.com/gratitude.html](http://www.unstuck.com/gratitude.html)

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## Be an active citizen

Were you inspired by our Annual Meeting Luncheon speaker, Eric Liu, to get out and be a part of your community? Check out his Citizen University Facebook page for some great information on how to become more active!



[www.facebook.com/CitizenUniversity](http://www.facebook.com/CitizenUniversity)

## Make your workday easier

Let's be honest — sometimes work can be daunting. If you're feeling a little run down or burnt out (or even before that happens), try these tips on making your workday a little simpler.



[goo.gl/LWurPg](http://goo.gl/LWurPg)

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## Find your voice

...your social media voice, that is! Attorney at Work is at it again with some great tips on enhancing your law practice. This time, it's about finding your social media voice and audience so you may gain valuable interaction with clients and clients-to-be!



[goo.gl/rrUPvh](http://goo.gl/rrUPvh)



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**OF COUNSEL LEGAL RESOURCES — SINCE 1992 —** Exclusive research & writing. Highest quality: trial and appellate, state and federal, admitted and practiced U.S. Supreme Court. Over 20 published opinions with numerous reversals on certiorari. **MaryGaye LeBoeuf** 405-728-9925, marygaye@cox.net.

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NATIONWIDE LAW FIRM SEEKS JUNIOR ASSOCIATE with 0-3 years experience. Candidates must be self-motivated and detail-oriented. Competitive compensation package. Please send résumé and cover letter to Klepper Law Firm, attn.: Tim, PO Box 271320 OKC, OK 73137.

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

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

Ardmore is located south of Oklahoma City metro just off of I-35 and is half way between Oklahoma City and Dallas. Ardmore is a progressive, attractive city bustling with activity. Founded before statehood, its history is diverse and rich. Ardmore was born with the establishment of the Santa Fe Railroad in 1887 while Oklahoma was still Indian Territory. Initially, the community's roots were agricultural with cotton as the primary crop. At one point, it boasted the largest inland cotton market in the United States.

This was the beginning of a city destined to become one of the premiere towns in the state of Oklahoma. The successful individual will possess a passion for justice and empathy for impoverished individuals; be computer literate and willing to learn and contribute to a positive work environment. In return, the employee receives a great benefit package including paid health, dental, life insurance plan, a pension, and generous leave benefits. Additionally, LASO offers a great work environment and educational/career opportunities.

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

The online application can be found:

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OKC AV RATED LAW FIRM seeking associate with excellent litigation, research, and writing skills, 1-5 years' experience for general civil/commercial defense practice, health care law. Must have solid litigation experience for all phases of Pretrial discovery and Trial experience with excellent research and writing skills. Submit a confidential résumé with references, writing sample and salary requirements to "Box E," OBA PO Box 53036, OKC 73152.



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

THE 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.

GRAVES McLAIN PLLC, a Tulsa personal injury law firm is seeking an OFFICE MANAGER to oversee HR matters, insurance, bookkeeping with QuickBooks, and marketing and employee oversight. Position requires experience in management as law office administrator. Complete benefits package with 401(k), Profit Sharing, and Medical Insurance. Salary commensurate with experience. Please send résumé via email to dan@gravesmclain.com.

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LITIGATION ATTORNEY NEEDED WITH 3+ YEARS OF EXPERIENCE for AV-rated mid-sized NW OKC law firm to help with litigation concerning oil & gas titles and real property titles, and probates. Send cover letter and résumé to "Box S," Oklahoma Bar Association; PO Box 53036; Oklahoma City, OK 73152.

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

SOUTH OKC FIRM with a very busy and diverse practice seeks an attorney that is motivated and has expertise to practice in family law, estate planning, wills, trusts, and bankruptcy. Other opportunities within the firm include, briefing, general litigation work (depositions, client prep), and assisting with employment related discrimination cases. If interested please send a résumé: Attention Office Manager to PO Box 890420 OKC, OK 73189.

GRAVES McLAIN PLLC, a Tulsa personal injury law firm, seeks an ASSOCIATE ATTORNEY with 2-5 year experience in civil litigation. Salary commensurate with experience. Complete benefits package with 401(k), Profit Sharing, and Medical Insurance. Please send résumé via email to dan@gravesmclain.com.

## POSITIONS AVAILABLE

### MAKE A DIFFERENCE AS A CIVIL ATTORNEY

*"This nation was founded by men of many nations and backgrounds. It was founded on the principle that all men are created equal, and that the rights of every man are diminished when the rights of one man are threatened ..."*

John F. Kennedy

Do you want to make a real difference in the lives of people? Are you fervent about equal justice? Legal Aid Services of Oklahoma (LASO) is a nonprofit law firm dedicated to the civil legal needs of low-income persons. If you are passionate about poverty law, LASO is the place for you, offering opportunities to make a difference. We have 22 law offices across Oklahoma, and we are looking for passionate attorneys.

LASO offers a competitive salary and a generous benefits package, including health, dental, life, pension and an LRAP. Additionally, LASO offers a great work environment and educational/career opportunities.

The online application can be found:

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FAMILY LAW FIRM SEEKS ATTORNEY with minimum one year's experience. Résumé; writing sample and two references required. Mail to "Box CD," Oklahoma Bar Association, PO Box 53036, Oklahoma City, OK 73152.

CURRENTLY SEEKING LITIGATION ATTORNEY AND LEGAL ASSISTANT with at least 2 years litigation experience needed to assist Enid Law Firm with busy civil & criminal litigation/trial practice. Send résumé, with references to: PO Box 5188, Enid, Oklahoma 73702. Fax to 580-233-4443 or Email to: eric@ericnedwardslaw.com.

THE OKLAHOMA ATTORNEY GENERAL'S OFFICE is seeking an attorney for the Criminal Appeals Unit. The Criminal Appeals Unit represents the state in the criminal appeals process to ensure that the decisions rendered by judges and juries are upheld in the appellate courts. The successful candidate will be responsible for representing the State in criminal appellate cases before the Oklahoma Court of Criminal Appeals and representing prison wardens in federal habeas actions. Applicants should have strong research and writing skills and accomplished oral advocacy skills. Applicants must be a licensed attorney in the State of Oklahoma with zero to three years of experience in the practice of law. A writing sample must accompany resume to be considered. Excellent benefits. Salary is commensurate with experience. EOE. Send résumé and a writing sample to resumes@oag.ok.gov.

## POSITIONS AVAILABLE

### ***MAKE A DIFFERENCE AS THE ATTORNEY for a Domestic Violence Survivor***

Do you want to ensure that survivors of domestic violence obtain justice and an end to violence in their lives for themselves and their children? Are you fervent about equal justice? Legal Aid Services of Oklahoma (LASO) is a nonprofit law firm dedicated to the civil legal needs of low-income persons. If you are passionate about advocating for the rights of domestic violence survivors, LASO is the place for you, offering opportunities to make a difference and to be part of a dedicated team. LASO has 22 law offices across Oklahoma, and LASO has a rare opening for a passionate attorney to represent domestic violence survivors in LASO's Oklahoma City Law Office. The successful candidate will have 3+ years of experience in the practice of Family Law, with meaningful experience in all aspects of representing survivors of domestic violence.

LASO offers a competitive salary and a very generous benefits package, including health, dental, life, pension, liberal paid time off and loan assistance repayment. Additionally, LASO offers a great work environment and educational/career opportunities.

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STEIDLEY & NEAL, PLLC, is searching for an associate attorney with excellent research and writing experience for its' Tulsa office. Competitive salary and other benefits commensurate with level of experience. Looking for a motivated research and writing candidate interested in civil litigation, with an emphasis in insurance defense. Would consider hiring on a contract basis. Applications will be kept in strict confidence. Send resume and writing sample to Steidley & Neal, located in CityPlex Towers, 53rd Floor, 2448 E. 81st St., Tulsa, OK, 74137, attention Dwain Witt, Administrator.

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

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

## POSITIONS AVAILABLE

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CHILD SUPPORT SERVICES, a division of the Oklahoma Department of Human Services. DIRECTOR of Child Support Services. The Oklahoma Department of Human Services (DHS) is seeking a full-time unclassified Director of Child Support Services (CSS), with offices in Oklahoma City, Oklahoma. DHS is seeking an experienced executive to lead, direct and coordinate a diverse and dynamic program division. The Director of CSS must be able to lead and manage a large statewide child support enforcement division, motivate employees to accomplish organizational objectives and supervise high-level managers. The Director of CSS must have sound ethical business judgment and be able to solve complex and diverse issues involving program administration, employees, clients, customers and state and federal partners to achieve expectations of excellence in service delivery to the citizens of Oklahoma. The successful candidate will coordinate multiple priorities across program lines, analyze state and federal law and regulations and develop efficient policies, practices and plans. The Director of CSS must have superior oral and written communication skills. DHS prefers candidates with a Juris Doctorate or Master's degree with eight years professional level experience in legal management, human services or closely related work, including four years in an administrative or supervisory capacity; or an equivalent combination of education and experience. To apply, please visit [www.okdhs.org/careers](http://www.okdhs.org/careers). Complete the online application and submit through Human Capital Management (HCM). Applications must be received no later than 11:59 p.m. on December 4, 2015. For information on how to apply for this employment opportunity, please contact Andrea Paulk-McKeown at 405-521-6395, or by email at [Andrea.PaukMcKeown@okdhs.org](mailto:Andrea.PaukMcKeown@okdhs.org). THE STATE OF OKLAHOMA IS AN EQUAL OPPORTUNITY EMPLOYER.

## POSITIONS AVAILABLE

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

ESTABLISHED LAW FIRM IN TULSA IS LOOKING TO HIRE AN ASSOCIATE ATTORNEY or Law Student who has experience/knowledge in Personal Injury (car/motorcycle wrecks, etc.), Workers' Compensation and Social Security. Strong writing and legal research skills are required, able to prepare and review discovery, research and write memos and briefs, be familiar with medical knowledge and outlines, be self-motivated and willing to help out in all situations, including client contact, trial preparations, depositions and possible court appearances (depending on knowledge and certifications). Benefits and other office matters will be discussed upon application/review. Please submit inquiries and resumes in confidence with salary requirements included to "Box N," Oklahoma Bar Association, PO Box 53036, Oklahoma City, OK 73152.

## POSITIONS AVAILABLE

STEIDLEY & NEAL, PLLC, seeks an associate attorney for its McAlester office to assist in civil litigation. This position primarily involves assisting in civil rights and general insurance defense matters, including some research and writing, discovery, taking depositions and trials. Competitive salary and other benefits commensurate with level of experience. Would consider recent graduates. Please submit a resume and salary requirements to Steidley & Neal, P. O. Box 1165, McAlester, OK, 74502, attention Dwain Witt, Administrator.

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# What Happened to the Dress Code?

By R. Robyn Assaf

Admittedly it has been decades since I graduated from law school, passed the bar and was sworn into the state and federal courts. For those events, I knew a business suit was required. During law school we were instructed that professional attire aka suits were mandatory during oral argument competitions, moot court etc. I applied that information to real court appearances and believe that our professional standing as attorneys and officers of the court calls for the wearing of a suit or professional dress. In the interest of full disclosure, I am a female. To my understanding wearing a dress to court still means including a jacket to meet the business attire standard. Recently I have seen outfits in court that looked more like yoga clothes than professional attire. There is always a black jacket behind my office door to put over a dress or slacks in case of an unscheduled court appearance. I would not feel right showing up like I am having a “casual Friday” when the judge is in a formal robe.

So why are so many young attorneys dressed down in professional settings? Are professional looking clothes too expensive? Anyone who has



looked at the price of designer jeans and shirts knows those are much more pricey than a basic suit on sale. Women’s suits can be bought for less than the price of a single Polo shirt. The same price points apply to a man’s basic blue

blazer and slacks. Suits and dress suits are always on sale at the mall, online or can easily be found at thrift or consignment shops. A couple of suits with different shirts or tops can go a long way.

Evidently the British recognized the problem with the dress code way back when and adopted the robe for the barristers appearing in court. Hollywood still portrays lawyers in suits and professional attire (although sometimes too short or low cut) so the blame is not on them. With firms and companies adopting a casual dress code, or none at all, it appears that “dress for success” has become a thing of the past. Lawyers are professionals and the court should never adopt a casual dress code.

It is fine to dress in jeans or khakis with T-shirts or sweats while in the office performing research and writing. I’m all for being comfortable when tackling a tedious legal research task. However, when scheduled to appear in court you are a professional and should dress accordingly.

*Ms. Assaf practices in Oklahoma City.*

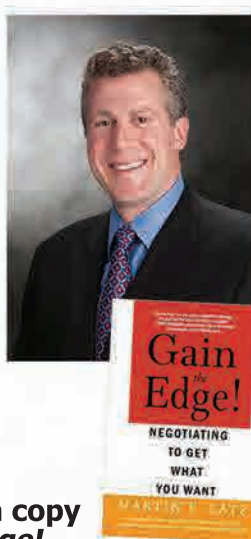




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