

THE OKLAHOMA BAR JOURNAL

Volume 87 ♦ No. 21 ♦ Aug. 20, 2016

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With Liberty and Justice for All

By Garvin A. Isaacs

As lawyers we have a responsibility to uphold public confidence in the judicial system and to remember that under our Constitution every person regardless of their race, color, creed or income is entitled to equal justice under the law.

This month the OBA, together with the Oklahoma Access to Justice Commission and American Bar Association, is embarking on a project to give civil pro bono legal advice to Oklahomans who can't afford to hire an attorney. People post their questions on a website. You choose which questions to answer and how much time you devote to helping people. Lawyer identities are anonymous. I urge you to be one of the first to sign up for the Oklahoma Free Legal Answers project. Read the story in this issue for details.

Here is an example from history of the importance of pro bono legal services. As I write this, I think about our Pledge of Allegiance to the flag of the United States of America that guarantees liberty and justice for all.

Two role models for us are A. J. Poppleton and John L. Webster. These two attorneys joined together to represent Standing Bear *pro bono* in an effort to uphold public confidence in the judicial system. Here is what happened.

On July 9, 1868, the 14th Amendment to the U.S. Constitution was adopted.

The Citizenship Clause reads:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

Fast forward seven years to 1875.

In 1875 the Ponca Tribe was living in a small area between Nebraska and South Dakota on the Niobrara and Missouri Rivers. The federal government decided to move them 500 miles south to Indian Territory, which is now Oklahoma. The Ponca Tribe had never been at war with the United States on any issue. The Poncas were one of the most peaceful Indian tribes in the



Portrait of Standing Bear

Photo credit: Nebraska State Historical Society. RG1227.PH2-2. Copy and reuse restrictions apply.

history of our country. Chief of the Poncas was Standing Bear.

Standing Bear and the Poncas were disturbed when they were ordered to leave their village on the Niobrara River. During the 500-mile walk down to Oklahoma, Standing Bear's young daughter, Prairie Flower, died of consumption and was buried in Milford, Nebraska.

After arriving in Oklahoma, Standing Bear's son, Bear Shield, became ill. Standing Bear promised him he would bury him back in Nebraska at his former home if he died. In January 1879 when Bear Shield died, Standing Bear and his followers left Indian Territory without permission from the U.S. government and headed back to Nebraska.

Stationed at Fort Omaha in Nebraska, General George Crook received orders from the U.S. government to arrest Standing Bear for leaving Oklahoma. General Crook

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Garvin A. Isaacs
President Isaacs
practices in Oklahoma City.
apacheoklahoma@gmail.com
405-232-2060

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JOURNAL STAFF

JOHN MORRIS WILLIAMS
Editor-in-Chief
johnw@okbar.org

CAROL A. MANNING, Editor
carolm@okbar.org

LACEY BYNUM
Communications Specialist
[laceyp@okbar.org](mailto:lacey@okbar.org)

MACKENZIE MCDANIEL
Advertising Manager
advertising@okbar.org

LAURA STONE
Communications Specialist
lauras@okbar.org



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Fees on Fees: *Baker Botts v. ASARCO*

By Michael R. Pacewicz

Even practitioners who have only passing familiarity with bankruptcy law are likely aware (perhaps painfully) that many of the concepts, customs and rules that apply to the representation of parties in civil litigation are either absent entirely or are significantly different in the bankruptcy world. Chief among those differences are direct court involvement in approving the employment of attorneys and other professionals who provide services to the bankruptcy debtor and close scrutiny of the fees and expenses for which attorneys and professionals seek compensation and reimbursement. This article discusses the second of those two concepts.

Pursuant to Section 330 of the Bankruptcy Code,¹ bankruptcy courts may award professionals employed by a bankruptcy debtor “reasonable compensation for actual, necessary services rendered by [the professional].”² As might be expected, questions of what constitutes “reasonable compensation” or “actual, necessary services” under the Bankruptcy Code have generated no small amount of controversy. This has often resulted in litigation in which the professional must defend a fee application against objections raised by a creditor or creditors, the U.S. trustee or sometimes the professional’s own client, the debtor. Until recently, it was unclear whether professionals forced to fight for their fees could receive compensation for services provided and expenses incurred in that fight; that is to say, whether the professional could recover “fees on fees.”³ In June 2015 a divided U.S. Supreme Court put that lingering question to rest. In *Baker Botts LLP et al., v. ASARCO LLC*,⁴ the court held that Section 330 of the Bankruptcy Code does not allow professionals employed by the bankruptcy estate to recover attorney fees for work performed

defending the professional’s fee application in court proceedings.

BACKGROUND

ASARCO, a company engaged in the mining, smelting and refining of copper, filed for relief under Chapter 11 of the Bankruptcy Code in 2005 in the U.S. Bankruptcy Court for the Southern District of Texas. ASARCO continued to run its business operations as debtor-in-possession and obtained permission from the bankruptcy court to engage Baker Botts LLP and Jordan, Hyden, Womble, Culbreth & Holzer PC to provide legal services during the bankruptcy.⁵ By any measure, the law firms’ representation of ASARCO was a success. As a result of the law firms’ efforts, ASARCO successfully prosecuted fraudulent transfer claims against its parent company and obtained a judgment worth between \$7 billion and \$10 billion. ASARCO successfully reorganized and emerged from bankruptcy in 2009 with \$1.4 billion in cash, resolution of its environmental liabilities and with all of its creditors having been paid in full.⁶

At the conclusion of the bankruptcy case, the law firms sought the bankruptcy court's approval of their compensation. ASARCO, which was once again controlled by its parent company, objected to the amounts sought by the law firms. After a six-day trial, the bankruptcy court awarded the law firms \$120 million in fees plus a \$4.1 million fee enhancement and more than \$5 million in fees associated with defending their fee applications.⁷ ASARCO appealed to the U.S. District Court for the Southern District of Texas, which affirmed the bankruptcy court's awarding of fees incurred in defending the firms' fee applications.⁸

Not to be deterred, ASARCO appealed to the U.S. Court of Appeals for the 5th Circuit. The 5th Circuit reversed. In doing so the appellate court stressed that Section 330(a) of the Bankruptcy Code provides that "professional services are compensable only if they are likely to benefit the debtor's estate or are necessary to case administration."⁹ The primary beneficiary of a professional fee application is the professional, the court noted.¹⁰ The circuit court also emphasized that Section 330(a)(6) of the Bankruptcy Code specifies that fees may be awarded for preparing a fee application, but that is wholly different from authorizing fees to defend the application in court. Further, Section 330(a)(6) limits the award to the "level and skill reasonably required to prepare the application," which "emphasizes scrivener's skills over other professional work," the appellate court stated.¹¹ The language in Section 330(a)(6) does not encompass litigation over a fee application, the court concluded.¹²

On appeal to the Supreme Court, the law firms argued that the 5th Circuit's analysis ignored the part of Section 330(a) that instructs bankruptcy courts to consider whether the professional services rendered were necessary to the administration of the bankruptcy case or beneficial to its completion.¹³ Because professional fees are an administrative expense of the estate which must be approved by the bankruptcy court and paid before distributions are made to unsecured creditors, the defense of fee applications is necessary to the administration of the case, the law firms asserted.¹⁴ Furthermore, the firms noted, a bankruptcy case cannot be completed until the bankruptcy court issues an order allocating compensation.¹⁵ The U.S. filed an amicus brief arguing, *inter alia*, that depriving professionals of fees incurred in defending fee applications dilutes their com-

pensation for actual and necessary services provided to the debtor and that fees for defending fee applications are akin to fees arising out of the underlying representation of the debtor.¹⁶

THE SUPREME COURT DECISION

The Supreme Court found the law firms' arguments unavailing. Writing for the majority, Justice Thomas began his analysis by noting that the "bedrock principle known as the American rule" provides the court's "basic point of reference when considering the award of attorney's fees."¹⁷ The court will deviate from the American rule only where Congress has provided explicit statutory authority, the court wrote, and no such express authority permits the recovery of fees incurred in defending fee applications.¹⁸ Rather, Section 330(a)(1) of the Bankruptcy Code authorizes reasonable compensation for actual, necessary services rendered by the professional. That language, the court observed,

[N]either specifically nor explicitly authorizes courts to shift the costs of adversarial litigation from one side to the other — in this case, from the attorneys seeking fees to the administrator of the estate — as most statutes that displace the American Rule do.¹⁹

Moreover, Section 330(a)(1) speaks in terms of "services" provided by the professional and "services" generally means "labor performed for another," the court noted. According to the majority, time spent litigating a fee application against the administrator of the bankruptcy estate does not fit that definition.²⁰ The court further noted that adopting the law firms' argument could lead to a professional receiving compensation for unsuccessfully defending a fee application, a result the court indicated would be inconsistent with most fee-shifting statutes, which normally award fees to prevailing parties.²¹

The U.S. fared no better with the majority. The court rejected the U.S.' argument that compensation for defending a fee application should be considered part of compensation for underlying services in the bankruptcy case. The court reasoned that because Section 330(a)(1) authorizes compensation only for necessary services rendered by the professional, the fact that defending a fee application does not equate with providing services forecloses the awarding of compensation for such activity.²²

The court also rejected the U.S. trustee's argument that because time spent preparing a fee application is compensable, time spent defending one must be compensable also. The court again emphasized that while the preparation of a fee application can fairly be characterized as a "service" rendered to the administrator of the estate, litigating a fee application cannot.²³

Lastly, the majority was unconvinced by the U.S.' argument that awarding compensation for defending fee applications is necessary to avoid diluting the professional's fees and thereby undermining Congress's goal of ensuring talented and qualified professionals will undertake bankruptcy work. The court observed that absent express statutory authorization no attorneys are allowed compensation for fee-defense litigation, thus bankruptcy practitioners will be no worse off than their colleagues if they are not permitted to recover fees for defending fee applications. Moreover, the statutory text of Section 330(a)(1) does not authorize the awarding of fees for fee litigation and it is not within the court's authority to rewrite that text, the majority wrote.²⁴

THE DISSENT

In dissent, Justice Breyer wrote that a bankruptcy court should have the discretion to consider fees associated with defending a fee application as a relevant factor in deciding what constitutes "reasonable compensation" for purposes of Section 330(a)(1) of the Bankruptcy Code.²⁵ Justice Breyer theorized that an attorney who is forced to spend a significant portion of their overall fee defending a fee application against a meritless objection, but who is denied compensation for doing so, might ultimately receive compensation that is not "reasonable" under the Bankruptcy Code.²⁶ Taking the majority's American rule analysis head on, the dissent essentially argued that the majority employed a cramped reading of Section 330(a)(1) that would require a statute to specifically mention fee defense in order for such work to be compensable and that such a requirement cannot be reconciled with the court's extant jurisprudence.²⁷

Notably, the dissent did not argue that compensation for defending fee applications should be awarded in all instances:

The majority asserts that by interpreting the phrase "reasonable compensation," I have effectively "excise[d] the phrase 'for

“Although perhaps not consistent with the plain language of Section 330, Justice Breyer’s approach has some appeal, at least from an equitable standpoint.”

actual, necessary services rendered' from the statute." *Ante*, at 2167. But the majority misunderstands my views. The statute permits compensation for fee-defense work as a part of compensation for the *underlying services*. Thus, where fee-defense work is not necessary to ensure reasonable compensation for some underlying service, then under my reading of the statute, a court should not consider that work when calculating compensation.²⁸

Finally, the dissent asserted that a rule prohibiting professionals from recovering fees incurred in defending fee applications is inconsistent with Section 330(a)(6)'s provision allowing compensation for the preparation of fee applications, an activity the majority characterized as a "service":

The majority suggests that a fee application *must* be a service "because the preparation of a fee application is not required for lawyers practicing in areas other than bankruptcy as a condition to getting paid." *Ante*, at 2167 (quoting 78 Fed.Reg. 36250 (2013)). But if the existence of a legal requirement specific to bankruptcy were sufficient to make an activity a compensable service, then the time that a professional spends at a hearing defending his or her fees would also be compensable. After all, the statute permits a court to award compensation only after "a hearing" with respect to the issue. §330(a)(1). And there is no such requirement for most attorneys, who simply bill their clients and are paid their fees. But the majority does not believe that preparing for or appearing at such a hearing — an integral part of fee-defense work — is compensable. The majority simply cannot reconcile its narrow interpretation of "reasonable compensation" with §330(a)(6)'s provision for fee-application preparation fees.²⁹

Although perhaps not consistent with the plain language of Section 330, Justice Breyer's approach has some appeal, at least from an equitable standpoint. As one court has stated:

The court cannot turn a blind eye to the impact that *Baker Botts* will have on the members of the bar whose livelihood depends on approval of fees under §330. Today's decision, and [the Chapter 12 trustee's counsel's] unhappy experience with [the debtor's counsel], presents a telling example of the hardship to estate professionals (and debtor's counsel in chapter 12 and 13 cases) whose fee petitions draw objection. [The trustee's counsel] has spent at least \$1,925.00 of his own (non-compensable) time seeking \$6,625.00 in fees for presenting his client. Constrained by *Baker Botts*, the court will approve fees in a reduced amount, totaling only \$4,700.00 for the first and second applications. This means that [the trustee's counsel] will net only \$2,781.00, resulting in an effective rate of approximately \$146.00 per hour. The result, though dictated by recent precedent, undermines important policies affecting administration of estates. This calculation suggests that, in some cases, the court and counsel will have to rely more heavily on Fed. R. Bankr.P. 9011, 28 U.S.C. §1927, and perhaps other authorities to police frivolous or vexatious objections to fee petitions, and ensure that, as a practical matter, "compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title [11]." 11 U.S.C. §330(a)(3)(F). To his credit, [the trustee's counsel] did not press for such relief during the telephonic hearing, though the record in this case may have supported it. Going forward, counsel should be aware that the court will use appropriate measures, including sanctions, to deter unfounded objections and mitigate the peculiar hardships that the American Rule may visit upon bankruptcy professionals entitled to reasonable compensation under §330(a).³⁰

EPILOGUE

Since *ASARCO* was decided, courts have applied it in various contexts and scenarios with differing results. The U.S. Bankruptcy Court for the District of Delaware sustained an objection to applications for employment from counsel for the official committee of unsecured

creditors where the applications contained provisions entitling them to compensation from the debtors' estates for fees, costs and expenses related to the successful defense of their fees.³¹ The committee argued that it was seeking approval of the fee defense provisions under Section 328(a) of the Bankruptcy Code, rather than Section 330(a) and that *ASARCO* was therefore inapplicable. The committee also argued that parties could contractually agree to provisions relating to fee litigation without running afoul of *ASARCO*.³²

The bankruptcy court rejected the first argument noting that Section 328, like Section 330 does not expressly authorize compensation for defending fee applications. The bankruptcy court then found that the agreements between the committee and its counsel did not provide an exception to the American rule because, *inter alia*, they would require a nonparty to the agreements (the estate) to pay the defense fee and because "retention agreements in bankruptcy are not simply contractual matters."³³ Rather, the bankruptcy court must approve the terms of employment of professionals and those terms must be in accordance with the Bankruptcy Code.³⁴ The bankruptcy court also adopted the *ASARCO* majority's view that defending a fee application did not constitute the providing of services under the Bankruptcy Code.³⁵

The U.S. Bankruptcy Court for the Northern District of Illinois similarly rejected a contract exception argument to *ASARCO* asserted by the debtor's financial advisor.³⁶ The financial advisor argued that its engagement letter and retention order provided for the recovery of attorney fees and costs incurred in defending fee applications and that it was entitled to reasonable compensation under Section 330(a)(1). The bankruptcy court noted that its retention order expressly stated that the financial advisor's fees were subject to review under Section 330 and *ASARCO* prohibits the recovery of fee-litigation fees under that statute. The bankruptcy court also found that the fees were not incurred in connection with services provided under the financial advisor's agreement with the debtor, were not reasonably likely to benefit the estate and were not necessary to the administration of the bankruptcy case. The bankruptcy court found it notable that the fees were incurred in fee litigation against the estate.³⁷

Conversely, the U.S. Bankruptcy Court for the Eastern District of New York found that fees incurred in fee litigation were compensa-

ble where the professional provided services to a receiver who operated real property owned by the debtor prior to the filing of the bankruptcy petition.³⁸ After the debtor filed its bankruptcy petition, the receiver turned over the property and filed a proof of claim for prepetition expenses of the property, the receiver's commission and its legal fees. The proof of claim was allowed by the bankruptcy court following an eight-day trial.³⁹

The receiver filed a fee application seeking compensation for services rendered by its legal counsel in the bankruptcy case and the debtor objected. The bankruptcy court first distinguished *ASARCO* by noting that the fees at issue in *ASARCO* emanated from a dispute between the debtor and its counsel, whereas the fees in the case before it related directly to the providing of services to the law firm's client, the receiver. Thus, the bankruptcy court reasoned the *ASARCO* court's conclusion that litigating against one's own client did not constitute "services" under the Bankruptcy Code did not apply.⁴⁰

Next, the bankruptcy court stressed that the case before it was governed by Section 503(b)(4) of the Bankruptcy Code, not Section 330. Section 503(b)(4), the bankruptcy court observed, allows compensation for the attorney of an entity, including a receiver, whose expense is allowable as an administrative expense claim under Section 503(b)(3). Because the administrative expense claim must be allowable before the fees may be recovered, the *ASARCO* majority's concern that an attorney might recover fees for unsuccessfully defending an application for compensation is not present in cases involving Section 503(b)(4), the bankruptcy court reasoned:

The requirement that the attorney seeking fees under §503(b)(4) represent an entity whose expense is allowable also underscores that §503(b)(4) constitutes an explicit fee shifting statute under the standard articulated in *ASARCO*. Section 503(b)(4) specifically provides for attorney's fees for the "prevailing party" — in this case, an entity whose expenses have been determined to be allowable under §503(b)(3)(A)-(E). *See Id.* at 2164 (noting that fee-shifting statutes usually authorize award of reasonable attorney's fee to a prevailing party in an adversarial action). In this case, the Receiver engaged in extensive litigation with the Debtor over his expenses and

compensation and prevailed. Under §503(b)(4), his counsel is entitled to reasonable compensation for services rendered to the Receiver in the case, and the holding of *ASARCO* does not require a different result.

It should be emphasized that the "professional" in *29 Brooklyn Avenue* was a receiver appointed *before* the bankruptcy filing rather than a professional employed by the debtor pursuant to Section 327 of the Bankruptcy Code.⁴²

CONCLUSION

Undoubtedly, *ASARCO* has led to some consternation among attorneys and other professionals who regularly provide services to debtors in bankruptcy. Devoting time, energy and resources to defending a fee application in bankruptcy court without the possibility of receiving compensation for such work seems a harsh result, at least where the dispute is not between the professional and its client and where the professional ultimately prevails. Fortunately, fee disputes are relatively rare in Oklahoma, which does not see bankruptcy cases the size of *ASARCO* or applications for fees exceeding \$100 million. Nevertheless, bankruptcy practitioners and other professionals in Oklahoma would be well advised to attempt to resolve any disputes regarding their fees before litigation commences.

1. 11 U.S.C. §101, *et seq.*
2. 11 U.S.C. §330(a)(1).
3. For a discussion of conflicting decisions regarding "fees on fees," see 2-28 Collier Bankruptcy Practice Guide P 28.13 n.2.
4. 135 S.Ct. 2158
5. *See id.*, at 2163.
6. *See id.*
7. *See id.*
8. *In re ASARCO, LLC*, 2013 WL 1292704 (S.D. Tex. March 26, 2013).
9. *In re ASARCO, LLC*, 751 F.3d 291, 299 (5th Cir. 2014).
10. *See id.*
11. *See id.*, at 300.
12. *See id.*
13. *Baker Botts LLP v. ASARCO, LLC*, 2014 WL 6845689 (U.S.), 25 (U.S. 2014).
14. *See id.*
15. *See id.*
16. *Baker Botts, LLP v. ASARCO, LLC*, 2014 WL 7166531 (U.S.), 18 (U.S. 2014).
17. *ASARCO*, 135 S.Ct. at 2164.
18. *See id.*
19. *Id.*, at 2165.
20. *See id.*
21. *See id.*, at 2166.
22. *See id.*, at 2167. Oddly, the U.S. trustee and the dissent both conceded that defending a fee application is not a service within the meaning of Section 330(a)(1). *See id.*
23. *See id.*
24. *See id.*, at 2169. The majority further observed that the U.S. trustee had argued against the "dilution" theory before the 5th Circuit Court of Appeals. *See id.*, at 2168.
25. *See id.*, at 2170.
26. *See id.*

27. See *id.*, at 2171-2172 discussing the court's holding in *Commissioner v. Jean*, 496 U.S. 154 (1990), a case involving the Equal Access to Justice Act.

28. *Id.* (emphasis in original).

29. *Id.*, at 2172-2173 (emphasis in original).

30. *In re Huepenbecker*, 546 B.R. 381, 385 (Bankr. W.D. Mich. 2015).

31. See *In re Boomerang Tube, Inc.*, 2016 WL 3859333 (Bankr. D. Del. January 29, 2016).

32. See *id.*, at *2-3.

33. *Id.*, at *4.

34. See *id.*

35. See *id.*

36. See *In re River Road Hotel Partners, LLC*, 536 B.R. 228 (Bankr. N.D. Ill. 2015).

37. See *id.*, at 241.

38. See *In re 29 Brooklyn Avenue, LLC*, 2016 WL 1714123 (Bankr. E.D.N.Y. April 27, 2016).

39. See *id.*

40. See *id.*

41. *Id.* The bankruptcy court also noted that the debtor's confirmed Chapter 11 plan provided for full payment of all claims of creditors and the only expense left unpaid was the receiver's claim. Because the debtor was a single-member limited liability company, any reduction in the receiver's claim would benefit only the single member and neither the debtor nor its creditors would be prejudiced by awarding the requested fees.

42. See also, *In re Macco Properties, Inc.*, 540 B.R. 793, 796 (W.D. Okla. 2016) appeal pending, wherein the bankruptcy court found ASARCO inapplicable on the bases, *inter alia*, that the case before it did not involve a dispute between estate professionals and the debtor and the estate professionals sought compensation for defending themselves against tort claims brought by third parties.

ABOUT THE AUTHOR



Michael R. Pacewicz is a Crowe & Dunlevy attorney based in the firm's Tulsa office. He is a member of the bankruptcy and creditor's rights practice group, where he represents Chapter 11 debtors as well as creditors. He also practices in the areas of complex commercial litigation, securities litigation, construction law, telecommunications law, insurance defense and landlord-tenant disputes.

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

Any person desiring to be heard in opposition to or in support of the petition may appear before the Professional Responsibility Tribunal at the Oklahoma Bar Center at 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma, at 9:30 a.m. on **Wednesday, Sept. 28, 2016**. Any person wishing to appear should contact Gina Hendryx, General Counsel, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, Oklahoma 73152, telephone (405) 416-7007.

PROFESSIONAL RESPONSIBILITY TRIBUNAL



Bankruptcy and Divorce

By Tracey Garrison

In a bankruptcy practice, a lawyer should ask clients if they have been divorced or are contemplating divorce, as there are many areas where bankruptcy and divorce are intertwined. Similarly, a family practice lawyer should ask clients if they have filed bankruptcy or are intending to file.

Debtors who are also former spouses have issues other debtors do not have to worry about. For example, clients reluctant to file a Chapter 7 bankruptcy because they have been threatened by a former spouse that contempt charges will be filed against them and they will be sent to jail. Most of us have heard that the purpose of filing a Chapter 7 bankruptcy is to obtain a fresh start by discharging one's debts. However, if a debt is related to a divorce decree, it may not be dischargeable or it may leave the debtor liable to the former spouse.¹

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCA) created the term domestic support obligation (DSO).² A DSO is a debt that is:

- A) owed to or recoverable by —
 - i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or
 - ii) a governmental unit;
- B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;
- C) established or subject to establishment before, on, or after the date of the order for relief in a case under this title, by reason of applicable provisions of —

- i) a separation agreement, divorce decree, or property settlement agreement;
- ii) an order of a court of record; or
- iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; . . .³

If a debt qualifies as a DSO it cannot be discharged in a Chapter 7 bankruptcy.⁴ Further, property settlement agreements can no longer be discharged in a Chapter 7 and if the divorce decree awards money to a spouse in lieu of a property division, it cannot be discharged in a Chapter 7.⁵ However, a Chapter 13 still allows some marital obligations to be discharged. A debtor tried to benefit from this in the case *In Re: Loomis*.⁶ In this case the debtor attempted to file a Chapter 13 rather than a 7 in order to discharge debts from his divorce decree. His case was dismissed because he did not have regular income. His only income was money his girlfriend gave him and the court found it was not reliable and certain enough on which to base a Chapter 13 (which lasts from three to five years, depending upon the circumstances).

If a debtor owes a DSO, the former spouse needs to be listed as a creditor in the bankruptcy so that he/she receives notice of the bankruptcy. In the Northern District (which covers Tulsa and surrounding towns), debtors fill out Form 4002-1B, which is an affidavit stating whether or not the debtor owes a DSO to a former spouse. If the answer is yes, the debtor is required to list the name and address of the former spouse and the name and address of the debtor's employer.

This affidavit is not filed with the court, but is given to the trustee for the case.

Discharging a debt obligation in a divorce decree has been affected by BAPCA.⁷ If a spouse is ordered in a divorce decree to pay a debt and the decree has a hold harmless clause, the hold harmless clause means the obligor spouse agreed to indemnify the obligee spouse if the obligor spouse does not pay the debt. Therefore, the obligor spouse who filed bankruptcy is still liable to the other for the debt. This is especially notable with regard to credit card debt.

In a case from the Northern District, a former spouse was not allowed to discharge credit card debts.⁸ In this case, a divorce decree ordered the former husband to pay two credit card debts. In addition, the decree contained a hold harmless clause to indemnify the obligee spouse. The obligor spouse subsequently filed bankruptcy, leaving the debts unpaid. Both parties and the court agreed that the credit card debt was not a DSO. The court stated that, "...BAPCA has altered the function of this Court with regard to obligations incurred in separation agreements and divorce decrees."⁹ The court continued, "[a]lthough the purpose of bankruptcy is to provide the honest but unfortunate debtor with a fresh start, statutory exceptions to discharge have been created [by Congress]..."¹⁰ The court further stated that BAPCA essentially made all obligations to a former spouse found in a separation agreement or divorce decree nondischargeable, whether or not they are directly related to support.¹¹

If you suspect your client may need to file bankruptcy, you may not want a hold harmless clause in your decree. For example, I represented a party in a divorce where each side wanted the other to be awarded the marital home and the mortgage payments. My client ultimately took the house and mortgage upon the condition that there was no hold harmless clause in case she needed to file bankruptcy in the future.

An area of frustration for clients is when both parties are liable for a debt, the divorce decree ordered one of the parties to pay it, the former

spouse did not pay it (or has filed bankruptcy) and now the creditor is pursuing the party who was not ordered to pay it. The unfortunate reality is that if the party has good credit and wants to keep it, the best course of action may be to pay it. The party can file contempt, but contempt has to be willful. If a party has to file for bankruptcy, is it willful that he/she did not pay the debt? Often, the party left holding the bag decides to file bankruptcy as well. If a client either does not want to file bankruptcy or is not eligible for a Chapter 7 and does not want to file a Chapter 13, the lawyer can try to negotiate debt reduction. However, the client should be cautioned that forgiven debt outside bankruptcy of \$600 or more is taxable income.

A major way bankruptcy affects divorce is the bankruptcy stay. When a debtor files for bankruptcy, an automatic stay is put into place which prevents creditors from trying to collect debts.¹² A secured creditor has to file a motion to lift the bankruptcy stay and obtain an order from the court before the creditor can resume collection activities.¹³ There is a lot of confusion about stays affecting divorce. The parties can obtain a divorce, and they can obtain a DSO without needing to file a motion to lift the stay.¹⁴ However, the parties cannot divide property without a motion to lift the stay.¹⁵ There is an exception to the automatic stay for, among other things:

- A) of the commencement or continuation of a civil action or proceeding
 - i) for the establishment of paternity;
 - ii) for the establishment or modification of an order for domestic support obligations;
 - iii) concerning child custody or visitation;
 - iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or
 - v) regarding domestic violence;
- B) the collection of a domestic support obligation from property that is not
 - i) property of the estate;

“ When a debtor files for bankruptcy, an automatic stay is put into place which prevents creditors from trying to collect debts. ”

C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute; ...¹⁶

As stated above, a motion to lift the bankruptcy stay is still required for property division in a divorce action.¹⁷ If one is not certain if the debt is a DSO or property division, one can always act in an abundance of caution and file a motion to lift the bankruptcy stay, commonly called a comfort order. However if the stay release is not really needed, it may be denied, as the debtor discovered in the case *In Re: Markle*.¹⁸ The debtor's application stated that the divorce decree would not affect property of the bankruptcy estate so the court denied it as it was not needed. The court further stated that it hoped the order would put an end to the matter once and for all and it was placing the order on the internet so it could be easily accessed.

When a debtor files bankruptcy, the debtor is allowed to exempt property.¹⁹ Although bankruptcy is federal law, one looks to Oklahoma law to determine which property is exempt. Even if property is not exempt, the bankruptcy trustee may decide to abandon the asset. For example, a single debtor is allowed to exempt one vehicle with \$7,500 of equity. The debtor may have a second vehicle which is old, junked, does not run and essentially has no value, which the trustee may decide is not worth administering and therefore the debtor will retain it. Under BAPCA, even if an asset is exempt, a creditor spouse with a DSO claim can go after exempt assets.²⁰

In addition to the above, another reason for a lawyer to ask potential clients if they have been divorced is to ascertain whether the divorce decree awarded the debtor property which would not be exempt in a bankruptcy, which the debtor has not yet received. Some decrees allow the obligor several years to make periodic payments toward a property settlement. If the time has not run, the attorney needs to advise the client that the property is at risk of being taken by the trustee when it is received. If the amount of the property yet to be received is low compared to the amount of debt which will be discharged, the client may decide to file anyway, but the attorney needs to discuss this with the client before filing, as it is the client's decision to make, not the attorney's. Another reason a divorce lawyer should ask their clients if they intend to file bankruptcy is because in a

Chapter 7, a debtor can discharge the fees owed to their attorney. However, debtors cannot discharge fees owed to the other side's attorney if it was court-ordered that they pay it.

A bankruptcy attorney also needs to be aware that if there is a divorce decree within 180 days after filing the bankruptcy, and a debtor receives nonexempt property via the decree, the assets are at risk of being taken by the trustee.²¹

A divorce can affect a debtor's decision as to whether or not to sign a reaffirmation agreement. A lawyer should always thoroughly discuss reaffirmation agreements with clients before filing bankruptcy. If a debtor signs a reaffirmation agreement, the debtor will still be personally liable to the creditor for the debt, as if the bankruptcy never happened as to this debt. In conjunction with discussing reaffirmation agreements, remind clients that they cannot file another Chapter 7 for eight years so they need to be certain this is what they want and to consider the consequences if they lose a job and cannot make the payments. Debtors who have a car or mortgage with a former spouse as a co-debtor and have been threatened by the former spouse that they had better make the payments or they will file contempt charges, feel pressure to sign a reaffirmation agreement.²²

Accuracy in preparing paperwork, especially bankruptcy paperwork, is very important. For one thing, amending schedules of assets will extend the deadline for creditors to object to the exemption of the asset. While researching this article I came across a case wherein the attorney stated in his motion that the attached death certificate was his evidence the man in question was deceased. Unfortunately, the death certificate was of a woman who was not mentioned anywhere in the motion.

This article has not addressed all the ways bankruptcy and divorce affect each other but hopefully has clarified several important ones for both bankruptcy and divorce practitioners.

1. For purposes of this article I use the term divorce decree rather than decree of dissolution.

2. 11 U.S.C. sec. 101(14A).

3. *Id.*

4. 11 U.S.C. sec. 523(a)(5).

5. 11 U.S.C. sec. 523(a)(15).

6. 487 B.R. 296 (Bank. N.D. Okla. 2013).

7. One area BAPCA has effected discharges is in the timing of complaints, which I do not discuss in this paper, but it can be found at 11 U.S.C. 523.

8. *In re Hosterman*, 07-10575-M (Bankr. N.D. Okla. 2007).

9. *Id.* at 9.

10. *Id.*

11. *Id.* at 12.

12. 11 U.S.C. sec. 362.

13. In my practice, a stay is most often filed when a debtor falls behind on a mortgage or vehicle loan. When I interview potential clients for Chapter 7 one of the questions I always ask is if they have a mortgage and/or vehicle loan. If so, I ask if they are behind. If so, I ask if they can realistically catch up because if not, the mortgage company and vehicle financing company will file a motion to lift the bankruptcy stay and the house and vehicle can be lost.

14. 11 U.S.C. sec. 362.

15. *Id.*

16. *Id.*

17. *Id.*

18. 04-13661 (Bankr. N.D.Okla. 2004)

19. 11 U.S.C. sec. 522(b).

20. 11 U.S.C. sec. 522(c).

21. 11 U.S.C. sec. 541.

ABOUT THE AUTHOR



Tracey Garrison graduated from the TU College of Law in 2006 with honors and was a legal assistant for nearly 17 years before becoming an attorney. She has her own law practice, Garrison Law Office PLLC. She practices in the areas of bankruptcy, family-member adoptions, probate, name changes, guardianships and divorce.



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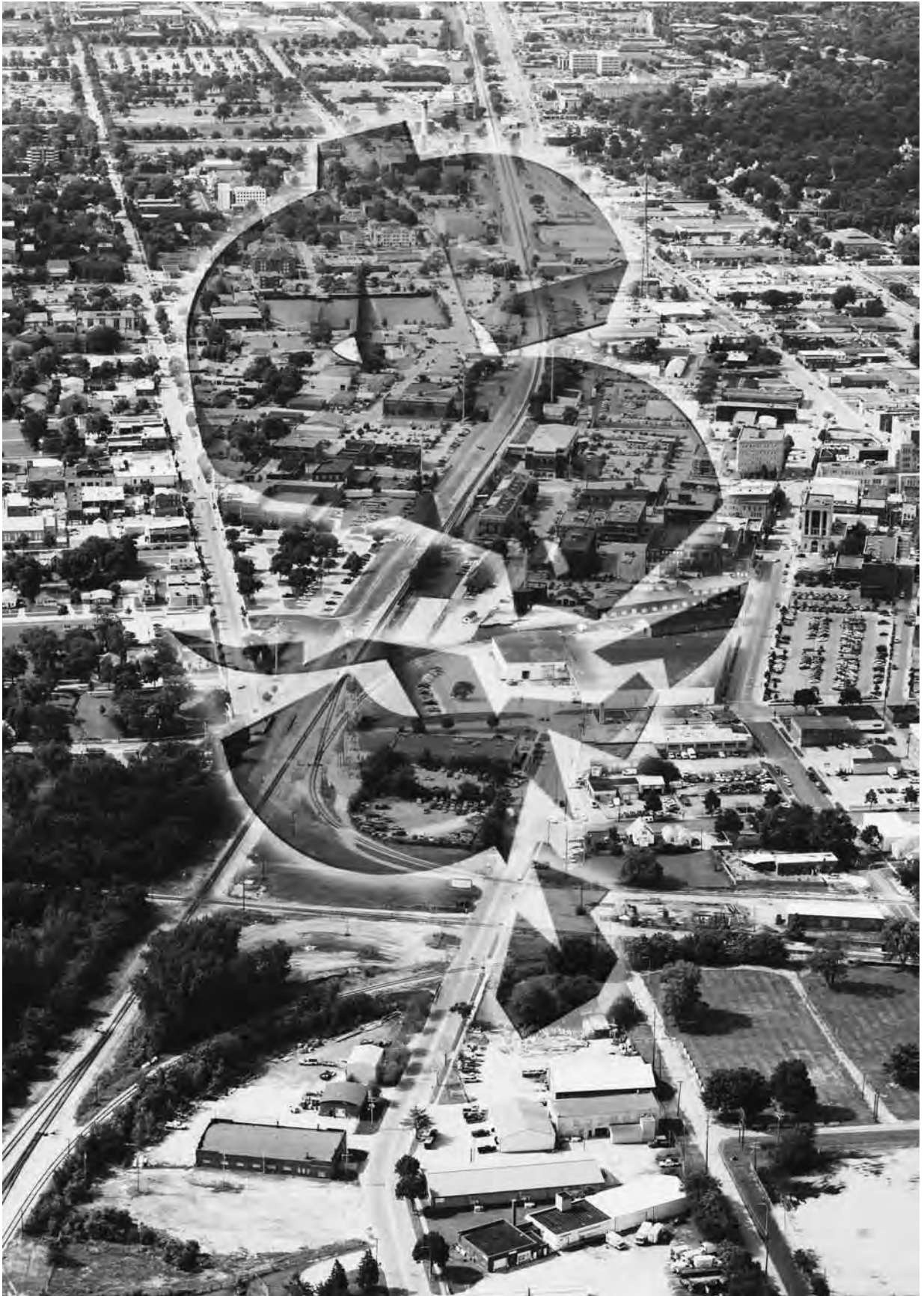
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Municipalities in Bankruptcy

By J. Clay Christensen and Cori H. Loomis

Economic hardships have forced numerous municipalities to seek protection under Chapter 9 of the Bankruptcy Code. Falling incomes and decreased business revenues combine to devastate tax receipts, leaving states and cities in financial straits. Small communities may be doubly impacted when the loss of a large employer results in people moving away to pursue employment elsewhere. We are seeing this play out today throughout the country, as well as in Oklahoma with our state's recent \$1.3 billion budget shortfall.

The purpose of municipal bankruptcy is to provide an umbrella under which insolvent municipalities can obtain temporary protection from creditors so that the municipality can establish a repayment plan with its creditors.¹ Recent well-known examples of large municipal bankruptcies include San Bernardino, California, and Detroit.

On the horizon it appears that Atlantic City, New Jersey, may be the next large filing as city leaders predict they will be out of cash by June of this year.² Puerto Rico's financial crisis has also been in the news lately. However Puerto Rico municipalities are statutorily precluded from filing Chapter 9 bankruptcies.³ Unless Congress amends the Bankruptcy Code, Chapter 9 will remain unavailable to otherwise qualifying entities in Puerto Rico.

Within the 10th Circuit, of which Oklahoma is a part, 19 Chapter 9 cases have been filed since 1984. In roughly the same time period, the 9th Circuit saw 53 such cases filed, while the 5th Circuit saw about 35. Interestingly of those 19 10th Circuit filings, 13 were filed in Oklahoma.

Many may not realize that Chapter 9 bankruptcy is available to more than simply towns and cities. The Bankruptcy Code⁴ defines municipality as any "political subdivision or public

agency or instrumentality of a State."⁵ The term public agency is not defined in the code, but has been found to mean any authority or agency that is subject to control by a public authority, whether at the municipal or state level.⁶ The term instrumentality of a state is also undefined. Therefore in addition to cities, entities eligible for Chapter 9 have included industrial authorities, water and sanitation districts and hospital trust authorities.

ELIGIBILITY REQUIREMENTS FOR CHAPTER 9

The eligibility requirements under Chapter 9 "are to be construed broadly to provide access to relief in furtherance of the Code's underlying policies."⁷ To be eligible, a debtor must be 1) a municipality, 2) authorized by state law to file bankruptcy, 3) insolvent, 4) desirous of effecting a reorganization plan and 5) meet one of several prebankruptcy debt negotiation options.⁸ Oklahoma has specifically authorized bankruptcy as an option for qualifying municipalities.⁹

Unlike Chapter 11 debtors, Chapter 9 debtors must be insolvent. The Bankruptcy Code has eliminated the balance sheet test for insolvency of municipalities.¹⁰ With respect to a municipality, insolvency is defined in one of two ways: the municipality is generally not paying its debts as

they become due or it is unable to pay its debts as they become due.¹¹

Regarding prebankruptcy negotiation, a municipality must 1) negotiate in good faith with its creditors holding a majority in amount of claims of each class that it intends to impair, whether those creditors agree to such treatment or not, 2) be unable to negotiate because such action is impracticable or 3) reasonably believe a creditor may try to obtain a preferential transfer.¹²

Whether negotiations with creditors are impracticable depends upon the circumstances of each case. Debtors have satisfied this element by evidence of sheer volume of creditors,¹³ by a need to file quickly to preserve their assets,¹⁴ by a need to act quickly to protect the public from harm¹⁵ or by showing creditors are not willing to negotiate.¹⁶

CHAPTER 9 HAS A LIMITED EFFECT ON MUNICIPAL OPERATIONS

Although municipalities may partake in the federal bankruptcy process, the 10th Amendment to the Constitution places substantial restrictions on the power federal bankruptcy courts would otherwise have over Chapter 9 debtors. The court's reduced role is codified in the first several sections of Chapter 9. Bankruptcy courts are expressly prohibited from interfering with any of the debtor's political or governmental powers, its property, revenues or income producing property without the consent of the debtor.¹⁷ Consequently neither Bankruptcy Code §541 nor §363 is applicable in Chapter 9. As a result no bankruptcy estate is created in the case, and municipalities do not need the court's permission to deal with assets. The absence of §363 also means debtors do not need court permission to use a secured lender's "cash collateral,"¹⁸ eliminating one of the most hotly contested issues found in Chapter 11.

There is also a reduced role for the U.S. trustee in these cases. The function of the U.S. trustee is largely set forth in 28 U.S.C. §586. Under this provision the trustee is to "super-vise the administration of cases and trustees in cases under chapter 7, 11, 12, 13, or 15 of title 11..."¹⁹ Noticeably absent from this statute is any reference to Chapter 9. Indeed the U.S.

trustee neither monitors the financial operations of the debtor nor oversees the administration of the case. Trustees do not conduct initial debtor meetings or meetings of creditors in Chapter 9 cases.²⁰ The trustee's sole role in Chapter 9 cases is to establish a creditors' committee²¹ and to appoint a trustee to prosecute avoidance actions if the debtor refuses to take such action itself.²²

Once a Chapter 9 bankruptcy petition is filed and the petitioner's eligibility established, it has far fewer burdens than a Chapter 11 debtor. For example Chapter 9 debtors file only a list of creditors.²³ They are not required to file bankruptcy schedules or statements of financial affairs.²⁴ Further debtors have no monthly or other reporting obligations because 11 U.S.C. §§1106 and 1107 are not operative in Chapter 9.²⁵

ADJUSTMENT OF MUNICIPAL DEBT

In addition to the reduced oversight and reporting duties noted above, four additional code provisions make Chapter 9 especially beneficial to municipalities. First, Chapter 9 debtors enjoy an expanded automatic stay.²⁶ Even though no estate is created in a Chapter 9 case, the automatic stay under 11 U.S.C. §362 protects both the municipality and its property. Additionally 11 U.S.C. §922 extends

the stay to prohibit, among other things, proceedings against officers and inhabitants of the debtor where those proceedings seek to enforce a claim against the debtor.

Second, unlike Chapter 11, only the debtor may file a plan of reorganization.²⁷ Consequently the debtor never battles over exclusivity periods²⁸ as Chapter 11 debtors often must. Third, no Chapter 9 case can be converted to a liquidation.

Fourth, the Bankruptcy Code does not prescribe any predetermined deadlines within which a plan must be filed. These benefits allow the debtor far more control over its restructuring efforts and timeline.²⁹

Formulating a plan for a municipality's debts is very similar to Chapter 11. Both the required content and process for confirmation are nearly identical. The plan must categorize creditors

“Whether negotiations with creditors are impracticable depends upon the circumstances of each case.”

into similar classes. The plan may, but is not required to, provide for repayment of all debts in full. Each class of impaired claims must vote for the plan. Should less than every impaired class vote for the plan, the debtor may still obtain confirmation through a “cramdown” as long as one impaired class accepts the plan, just as in Chapter 11.

Municipalities possess financial options for funding plan payments not available to Chapter 11 debtors. Debtors across the various chapters of the Bankruptcy Code may obtain loans and other traditional lending facilities, but municipalities have additional opportunities. Municipal bond offerings can bring in needed funds as well as small, local sales tax increases.

Ultimately Chapter 9 bankruptcy offers cities, towns, trust authorities and other municipalities a flexible, favorable arena within which to adjust debts. In light of the ongoing budget crises in Oklahoma, we may well see more Chapter 9 cases on the horizon.

1. *In re Hamilton Creek Metro. Dist.*, 143 F.3d 1381, 1386 (10th Cir. 1998) (citing *In re Addison Community Hosp. Auth.*, 175 B.R. 646, 649 (Bankr.E.D.Mich.1994) and H.R.Rep. No. 95–595, at 263 (1977), reprinted in 1978 U.S.C.C.A.N. 5787, 5963.)

2. *Atlantic City Makes Debt Payment as Mayor Averts a Default*, www.abi.org/newsroom/bankruptcy-headlines/atlantic-city-makes-debt-payment-as-mayor-averts-a-default.

3. 11 U.S.C. §101(52).

4. 11 U.S.C. §101 *et seq.*

5. 11 U.S.C. §101(40)

6. *In re Greene Cty. Hosp.*, 59 B.R. 388, 389-90 (S.D. Miss. 1986).

7. *In re Hamilton Creek Metro. Dist.*, *supra*, 143 F.3d at 1384.

8. 11 U.S.C. §109(c).

9. Okla. Stat. tit. 62, §283.

10. *In re Mount Carbon Metro. Dist.*, 242 B.R. 18, 32-33 (Bankr. D. Colo. 1999)

11. 11 U.S.C.A. §101(32)(C)

12. 11 U.S.C. §109(c)(5).

13. *In re County of Orange*, 183 B.R. 594, 607 (Bankr.C.D.Cal.1995) (quoting *In re Sullivan County Reg'l Refuse Disposal Dist.*, 165 B.R. 60, 79 n. 55.)

14. *In re City of Vallejo*, 408 B.R. 280, 298 (B.A.P. 9th Cir. 2009) (citing *Valley Health Sys.*, 383 B.R. 156, 163 (Bankr. C.D. Cal. 2008).

15. *In re City of Vallejo*, 408 B.R. 280, 298 (B.A.P. 9th Cir. 2009).

16. *In re City of Detroit, Mich.*, 504 B.R. 97, 179 (Bankr. E.D. Mich. 2013) (It is impracticable to negotiate with a group that asserts that their position is immutable.).

17. 11 U.S.C. §904.

18. The term cash collateral means cash, deposit accounts, negotiable instruments and similar assets upon which a lender has secured interest. *See*, 11 U.S.C. §363(a).

19. 28 U.S.C. §586(3).

20. 11 U.S.C. §901 does not make §341 applicable to Chapter 9.

21. 11 U.S.C. §§901(a), 1103.

22. 11 U.S.C. §926.

23. 11 U.S.C. §924.

24. *See*, Fed. R. Bankr. P. 1007(b)(1).

25. *See*, 11 U.S.C. §901(a).

26. 11 U.S.C. §§362, 901(a), 922(a).

27. Compare 11 U.S.C. §1121(c) and §941.

28. 11 U.S.C. §1121(b).

29. 11 U.S.C. §941.

ABOUT THE AUTHORS



J. Clay Christensen is the managing director for Christensen Law Group PLLC. He has nearly 30 years as a practicing attorney in Oklahoma City and surrounding areas. He graduated from OU in 1986 with high honors and in the top 3 percent of his class. Mr. Christensen practices corporate governance, bankruptcy, oil and gas, real estate and agricultural law.



Cori H. Loomis is employed at Christensen Law Group in Oklahoma City focusing on representation of health care providers. Ms. Loomis graduated from OU and the University of Texas School of Law. She participates in numerous civic and charitable activities including the Downtown Rotary Club and Leadership Oklahoma City. She serves on the board of Prevent Blindness of Oklahoma and The Children's Center and Rehabilitation Hospital in Bethany. She has been awarded many awards including *The Journal Record's* “Fifty Making a Difference” in 2014.



Consider Bankruptcy When Drafting Settlement Agreements

By Jeffrey E. Tate

Settle! Settle!! Settle!!! Those are the sentiments of many on both sides of litigation, weary of the time litigation can take from their work and of the money it can drain from their coffers. Defendants want to capture their risk and reduce their exposure, while plaintiffs hope to stake out a certain recovery.

For plaintiffs, many times a settlement agreement is much like a judgment: it's just not worth the paper that it's printed on. This can be especially true when bankruptcy enters the picture.

The two most commonly used methods of spoiling a settlement agreement after bankruptcy are the preference statute¹ and the fraudulent transfer statute.² Typically settlement involves both parties giving value to the other. Consequently fraudulent transfer issues are far less frequent than preference issues. An exception to this is where two parties do in fact collude prior to an anticipated bankruptcy to create a settlement structure that transfers assets from the soon-to-be-bankrupt party to the other party, the value of which significantly exceeds any debt owed or other consideration given.

Under the Bankruptcy Code³ preference is defined by Section 547 as a transfer of an interest of the debtor in property:

- 1) to or for the benefit of creditor;
- 2) for or on account of an antecedent debt owed by the debtor;
- 3) made while the debtor was insolvent and
- 4) that enables the creditor to receive more on its claim than it would have, had the payment not been made and the claim paid through the bankruptcy proceeding.

Insider⁴ creditors risk return of settlement payments made within a year of bankruptcy,⁵ while noninsiders face only a 90-day window of vulnerability.⁶

Most settlement payments made within the applicable preference window are preferences, and traditional defenses typically do not apply to these payments.⁷ Defending preference actions can be expensive. Commonly, defendants are already experiencing financial hardship for multiple reasons by the time litigation commences. For this reason every plaintiff should carefully draft settlement agreements in a manner to best protect payments and other concessions from the Bankruptcy Code's preference provisions. While it's true there is "only so much you can do," the fact remains there are some things you can do.

THE 'YOU DON'T SAY' METHODS OF AVOIDING PREFERENCE HEADACHES

There are several obvious, though sometimes overlooked, methods of preventing bankruptcy headaches that can follow settlement. The problem is these methods are almost never available.

*Get a Third Party to Pay or
Guaranty the Settlement Payment*

Lenders require third-party guaranties for a reason. The more people obligated to pay a single debt the greater the likelihood that at least

“ An old Chinese saying posits that the best time to plant a tree was 100 years ago, but the second best time is today. ”

one will be able to pay it. Always look for a spouse, parent, relative, related company or other party opportunity to guaranty settlement payments. Additionally if the source of a settlement payment is not property in which a bankruptcy debtor has an interest, that debtor's trustee cannot recover the payment as a preference. As a corollary to this suggestion, try to obtain a lien on property of the third party to secure the settlement payment if possible.

Get Paid Today

It goes without saying the longer time passes following a settlement payment the more likely that payment will be outside of the applicable preference recovery window. An old Chinese saying posits that the best time to plant a tree was 100 years ago, but the second best time is today. The same holds true for settlement payments. The sooner they come in, the faster the clock begins to run on avoidance action windows in bankruptcy.

Get a Lien on the Debtor's Property and Perfect It Today

Having collateral to secure an obligation does not always ensure full payment, but it often assures some payment. Always seek to have the debtor grant a security interest in his or her property, but remember both the granting and the perfecting of a security interest are as much a transfer of an interest in a debtor's property as a cash payment.⁸ Perfect any security interest immediately to prevent having a consensual lien avoided as a preference.

THE 'I HADN'T THOUGHT OF THAT' METHODS OF AVOIDING PREFERENCE HEADACHES

There are several not-so-obvious methods of averting preference headaches following settlement. To benefit from these, the wily attorney should determine whether the debtor's total financial obligations are made up of primarily consumer debts⁹ or of primarily nonconsumer debts. Consumer debts are those debts incurred

by an individual primarily for a personal, family or household purpose. By contrast nonconsumer debt is a debt incurred with a profit motive.¹⁰

Structure Settlement Payments Owed by a Debtor With Primarily Consumer Debts to Dodge the Definitional Preference Amount

11 U.S.C. §547(c)(8) states that:

c) The trustee may not avoid under this section a transfer —

8) if, in a case filed by an individual debtor whose debts are primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than \$600;

Thus if your debtor's debts are primarily (*i.e.* 50.01 percent) consumer debts and the obligation is small enough, try to structure monthly payments of \$199.99 or less. Doing this will ensure your client never receives \$600 or more in any given 90-day preference window. This may make the payout a little longer, but it will definitely prevent your client from reaching into his pocket to repay a preferential payment.

Structure Settlement Payments Owed by a Debtor With Primarily Nonconsumer Debts to Dodge the Definitional Preference Amount

11 U.S.C. §547(c)(9) states that:

c) The trustee may not avoid under this section a transfer —

9) if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than \$6,225.

If your debtor's debts are primarily (*i.e.* 50.01 percent) nonconsumer debts, try to structure monthly settlement payments of \$2,074.99 or less when possible. Again your client may not receive all of its money if bankruptcy is filed, but it won't have to come out of pocket for a preference settlement with a bankruptcy trustee either.

DO NOT TURN A SMALL BANKRUPTCY RECOVERY INTO A MINUSCULE BANKRUPTCY RECOVERY

Many settlements upon execution contractually reduce an outstanding amount owed and

provide for a release of liability above the reduced amount. For example it is not uncommon for a \$100,000 debt to be settled for \$50,000 in this way. Outside of bankruptcy, the creditor's receipt of \$50,000 is simply the benefit of its bargain. This benefit can be wiped out or substantially reduced if the debtor files bankruptcy after executing the settlement agreement.

Whether a debtor files bankruptcy under Chapter 7, 11 or 13, his unsecured creditors will often recover only a small percentage of the full amount owed them. Using the settlement example above and assuming a recovery in bankruptcy of 25 percent, a creditor will always prefer a 25 percent return of its original \$100,000 claim over a 25 percent return of the \$50,000 settlement amount.

Consequently a creditor's settlement agreement should always try to accomplish three things. First the agreement should state the full amount of the claim the creditor says is due whether the debtor stipulates to the correctness of that amount or not.

Second you must understand your client's receipt of a settlement check is not the same as having collected funds sitting in her bank account. This distinction is important because the preference period under §547(b) begins to run from the date a check is *honored* not when it was written, received or deposited.¹¹ Therefore a settlement agreement should expressly delay the effective date of any releases or dismissals until at least 91 days have passed after the creditor has collected (not merely received) all of its settlement funds.

Third a settlement agreement should expressly state if any condition of settlement, including collection of all funds for longer than 91 days, is not met then the creditor's entire claim is preserved. In this way if a bankruptcy is filed your client can assert the full amount owed and not be limited to asserting a lower settlement amount.

Clearly, not every suggestion above will be available to you in every given settlement situation. However, settlement negotiations are fluid affairs that call for creativity as well as forethought. Understanding potential bankruptcy implications will help you craft agreements that place your client in the best position should a bankruptcy be filed.

1. 11 U.S.C. §547.

2. 11 U.S.C. §548.

3. 11 U.S.C. §101 *et seq.*

4. 11 U.S.C. §101(31).

5. 11 U.S.C. §547(b)(4)(B).

6. 11 U.S.C. §547(b)(4)(A).

7. *See*, 11 U.S.C. § 547(c).

8. *See, In re Barragree*, 159 B.R. 43, 45 (Bankr. W.D. Okla. 1993) (perfection of a security interest constitutes a potentially avoidable transfer); *Vogel v. Russell Transfer, Inc.*, 852 F.2d 797, 798 (4th Cir. 1998) (The grant of a security interest is a transfer within the definition of Section 547 and the trustee may avoid it if it is not perfect in time.)

9. 11 U.S.C. §101(8).

10. *In re Stewart*, 175 F.3d 796, 806 (10th Cir. 1999).

11. *Barnhill v. Johnson*, 503 U.S. 393, 401, 112 S.Ct. 1386, 118 L.Ed.2d 39 (1992).

ABOUT THE AUTHOR



Jeffrey Tate is the Christensen Law Group PLLC's Reorganization, Bankruptcy Litigation and Creditors' Rights Department chair. He has served on the Oklahoma Bar Association Bankruptcy and Reorganization Section board since 2007, including tenure as past chair of the section. He is also a member of the American Bankruptcy Institute (Business Reorganization Committee and Bankruptcy Litigation Committee).

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A Practical Guide to Consumer Bankruptcy Law for the Nonbankruptcy Lawyer

By Jimmy L. Veith

There were 7,817 bankruptcy cases filed by attorneys licensed to practice law in Oklahoma in 2015. An examination of statistics from all three judicial districts in Oklahoma reveals that there were approximately 300 attorneys who represent debtors that filed bankruptcy cases on a regular basis. According to the Oklahoma Bar Association, there are currently 11,911 active licensed attorneys in the state of Oklahoma. This means that approximately 96 percent of the licensed attorneys in the state of Oklahoma do not practice bankruptcy law (representing the debtor) on a regular basis. This article is for those attorneys.

Attorneys that represent creditors and trustees also play an important and vital role in the administration of the bankruptcy laws. However, a study of their practice is beyond the scope of this article which will only focus on attorneys that represent debtors.

This article will provide evidence that the practice of bankruptcy has become a highly specialized area of the law. It will also discuss the reasons why bankruptcy has become a specialty as well as the practical consequences this has for the nonbankruptcy lawyer.

The second part of the article will discuss some of the most significant changes in substantive law with the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (2005 amendments), which went into effect on Oct. 17, 2005. The article will discuss what the nonbankruptcy lawyer needs to know

about the 2005 amendments, and how the amendments could have an impact on other areas of practice.

BANKRUPTCY LAW AS A SPECIALTY

After examining statistics from all three judicial districts in Oklahoma for 2015, the following observations could be made:

- There were approximately 300 attorneys that represented debtors in bankruptcy court on a regular basis.
- The vast majority of the cases that were filed (more than 75 percent) were filed by attorneys who filed over 20 cases per year.
- The vast majority of the Chapter 13 cases were filed by attorneys who have a high-volume practice.

- Attorneys who have a high-volume practice and file the vast majority of Chapter 7 and 13 cases do not (for the most part) file Chapter 11 and Chapter 12 cases. There were 29 Chapter 11 cases filed in Oklahoma in 2015. Only five of those cases were filed by attorneys who filed over 20 other cases in 2015. The other 24 cases were filed by attorneys who filed less than nine other cases for the entire year. The vast majority of attorneys who file Chapter 11 cases do not have a high volume of Chapter 7 or Chapter 13 cases. Likewise, there were five Chapter 12 cases filed in 2015. All of these cases were filed by attorneys who filed less than nine other cases during the year. Within the general specialty of bankruptcy law, there is a clear division and distinction between those attorneys who practice business bankruptcy who file Chapter 11 and 12 cases, and those who practice consumer bankruptcy who file mostly Chapter 7 and 13 cases.

There are several reasons why consumer bankruptcy has become a specialty with a relative small number of practitioners.

First, the bankruptcy practitioner must study and keep up to date on the federal bankruptcy code and other related statutes. The complexity of the law was increased significantly with the passage of the 2005 amendments, which will be shown in the later part of this article. A bankruptcy practitioner must learn to apply his knowledge of these laws to the real-life situations that are faced by their clients. It takes time and experience before one can learn to think like a bankruptcy lawyer.

Second, there are limits on the fees that can be charged for a typical Chapter 7 or Chapter 13 bankruptcy. These limits are imposed by the court, as well as the invisible hand of the free market. The proliferation of attorney advertising has allowed these market forces to operate. Almost all consumer bankruptcy attorneys charge a flat or standard fee rather than an hourly fee. All of these economic factors require the consumer bankruptcy attorney to be efficient in the delivery of services. The need to become efficient in the delivery of legal services has forced the bankruptcy attorney to employ the latest in computer technology, as it is virtually impossible to prepare the schedules without the aid of commercial bankruptcy software. (The most popular bankruptcy software costs between \$1,195 to \$1,695 for the first year,

with yearly maintenance fees of \$460 to \$700.) The most important factor in becoming efficient in delivery of your services is to employ competent and well-trained legal assistants that can use the software and file pleadings online, which is now a requirement in all three judicial districts. In summary, it is simply not cost effective for the general practitioner to file one or two Chapter 7 or Chapter 13 cases per year. An attorney needs to have a relatively high-volume practice to justify the costs of advertising, automation and the employment of well-trained legal assistants.

So what does all this mean to the nonbankruptcy lawyer? It means that it makes more sense to refer clients that need to file bankruptcy to an attorney that already has an active bankruptcy practice rather than to represent the client yourself. It is simply not cost effective to do otherwise. Perhaps the legal profession should adopt the model of the medical profession, where general practitioners will consult with a specialist if the client needs a medical service or procedure which is beyond the general practitioner's area of expertise.

THE 2005 AMENDMENTS

The vast majority of the nonbankruptcy lawyers probably learned the basics of bankruptcy in law school prior to the 2005 amendments. Some of the basic concepts such as the automatic stay and the types of bankruptcy available remained essentially the same. However, the 2005 amendments did make some significant changes with respect to an individual's eligibility to file as well as the application of the exemption laws.

The Means Test

The most significant change in the law is the requirement that in every Chapter 7 and Chapter 13 case where the debts are primarily consumer debts, the debtor must file a document called the means test. There are two parts to the means test. The first part requires that the debtor reveal all their gross income from all sources other than social security that they received in the six months prior to the month the case was filed. The debtor is required to include income from a nonfiling spouse in the means test. The total income is then divided by six to get the monthly average. The first part of the means test compares that monthly average to the median income for the debtor's household size in the particular state in which the case is filed. As of the date this article was writ-

ten, the median income for a household in Oklahoma was as follows:

SIZE OF HOUSEHOLD	YEARLY INCOME	MONTHLY INCOME
1	\$43,109.00	\$3,592.41
2	\$54,922.00	\$4,576.83
3	\$58,260.00	\$4,855.00
4	\$67,299.00	\$5,608.25

Each additional individual over four gets \$8,400 per year or \$700 per month.

If a debtor's average income over the previous six months is less than the median income, then they qualify to file a Chapter 7. If a debtor needs to file a Chapter 13 plan, and the average income is below the median income, then the debtor has the option of filing a 36-month payment plan as opposed to a 60-month plan. In addition, the debtor will not be required to pay anything to general unsecured creditors under the means test, although they may have to pay some to unsecured creditors to meet the Chapter 7 liquidation test.

If a debtor's average income over the previous six months is greater than the median income, the debtor will have to do the second half of the means test. The second half of the means test starts with the average gross income for the previous six months. From the gross income, a debtor may deduct the actual amount that he or she is required to pay for taxes, health insurance, child support, as well as various standard deductions for food and clothing, medical expenses, travel expenses and payments on secured debts. The disposable income is calculated by subtracting the allowable deductions from the gross income. If that amount is less than \$124.58 per month, the debtor qualifies to file a Chapter 7 case. If that amount is more than \$207.91, the debtor does not qualify to file a Chapter 7. If the disposable income is between these numbers, the debtor will qualify for a Chapter 7 if payment of the disposable income over 60 months would result in a payment of less than 25 percent of the debtor's nonpriority unsecured claims.

The second half of the means test in a Chapter 13 case is slightly different than the second half of the means test in a Chapter 7 case. However, the end result is the calculation of the disposable income, which is the minimum monthly amount the debtor is required to pay

to general unsecured creditors over a 60-month plan.

The means test was intended to be an objective test that would eliminate the need for subjective judgments by attorneys and judges in determining whether a person should be allowed to obtain a discharge in a Chapter 7, or be required to pay some or all their debts in a Chapter 13 case. However, the means test leaves many unanswered questions in the interpretation and application of the law which has resulted in a great deal of litigation and case law. In addition, it is almost impossible to create an objective test that could address the many varied and complex factual situations of real life clients. For example, what is the household size when a parent has joint custody of a child who spends half the time with each parent? There is no allowance for a household of size of one and one-half. This is just one example of the various grey areas in the law. As a result of the complexity and varied interpretations of the law, it is likely that if two or more experienced bankruptcy attorneys prepared a means test for the same family and fact situation, the attorneys would calculate a different disposable income.

For the nonbankruptcy attorney, this means that before advising a client that they can resolve their financial problems by filing bankruptcy, it will be necessary to refer them to a bankruptcy specialist for a consultation. The best way to demonstrate the necessity of this practice is with a hypothetical situation.

Suppose that an attorney represents the husband in a divorce. The husband has a gross income of \$4,000 per month and his wife makes \$1,500 per month. They have two children and he agrees that she should have custody. They have \$50,000 in unsecured credit card debt that has been a source of marital stress. They are still living together in their marital home. He wants to file for divorce and will deal with his financial problems later.

If the attorney simply performs the legal services requested by the client by immediately filing for divorce, without consulting a bankruptcy lawyer, the attorney could be making a big mistake. Once the divorce is granted, he will be a household of one. The median income for a household of one is \$3,592.41. Therefore, he does not automatically qualify for a Chapter 7 under the first half of the means test. The client may qualify for a Chapter 7 if the bank-

ruptcy attorney calculates the second half of the means test because the amount that is paid for child support is one of the many deductions that is available under the means test. However, that can only be determined by an experienced bankruptcy attorney who has the knowledge and bankruptcy software to calculate the second half of the means test. If the client does not qualify for a Chapter 7, the client may have to file a Chapter 13 and have to pay some or all of the \$50,000 in unsecured debt over a period of 60 months.

Perhaps the best advice in this situation would be for the couple to deal with their financial problems first by filing a joint Chapter 7 bankruptcy case before the divorce. The median income for a household of four is \$5,608.25 and they are below the median income as their combined income is only \$5,500. By removing this major source of stress, the parties may reconcile and the family unit can be preserved. An attorney may have lost a divorce client but has done the right thing as a professional. The divorce attorney can use his skills to represent other parties who really do have irreconcilable differences. If the parties do not reconcile, the divorce would be easier by removing the issue as to who should pay the marital debt. In addition, by removing the possibility that the noncustodial parent could have 25 percent of his check garnished by a future judgment creditor, one increases the likelihood that the noncustodial parent will be able to meet his child support obligations and have sufficient income to pay his own living expenses.

A word of caution to the bankruptcy attorney: A bankruptcy attorney should be very careful about representing both parties in a joint bankruptcy case where the parties are contemplating a divorce. The attorney should make sure that their objectives in filing bankruptcy are the same in order to avoid a potential conflict of interest. The attorney will need to explain that if a conflict does arise during the course of the bankruptcy case, the attorney will have to withdraw as the attorney for both clients. In addition, a case may be dismissed if the court finds that the “debtors filed the petition in bad faith” or the “totality of the circumstances ... of the debtor’s financial situations

demonstrates abuse.”¹ It would also be unethical for an attorney to advise their client to artificially manipulate the size of their family for the sole reason of becoming eligible to qualify for a Chapter 7 under the means test. Obviously, any attempt to reconcile and remain as a family unit for the foreseeable future should be genuine and not done simply to qualify to file a Chapter 7 bankruptcy case. A complete and more detailed discussion of these issues is beyond the scope of this article.

The Exemptions Laws

As stated earlier in this article, once an attorney gains some experience in practicing bankruptcy law, they eventually learn to think like a bankruptcy lawyer. This is how we think:

Creditors are like the Big Bad Wolf, knocking at the client’s door with ferocious demands. It is the job of bankruptcy attorneys to apply the bankruptcy code and the state homestead exemption laws to prevent the house from being blown down. Some of the homestead exemption laws are strong, like the house made of bricks. Other exemptions are weak, like the house made of straw. Most exemption laws are somewhere in between, like the house made of sticks.

Fortunately, Oklahoma has fairly generous homestead exemption laws. Property owners may exempt their principal place of residence up to one acre if it is located within a city limit and up to 160 acres if it is outside the city limits. There is no dollar limit on the value of the homestead located within a city limit, unless over 25 percent of the principle place of residence is used for business purpose, in which case the limit is \$5,000.²

Some states have very weak homestead exemptions. For example, Missouri, Indiana and Illinois all have homestead exemptions limited in value to \$15,000 for an individual debtor.³

There is also a set of federal exemption statutes⁴ that provides a homestead exemption for an individual of \$22,975 in value. Debtors who file bankruptcy may use the federal exemptions rather than the state exemptions, unless the state has opted out of the federal exemptions. Most states, including Oklahoma, have

“Creditors are like the Big Bad Wolf, knocking at the client’s door with ferocious demands.”

opted out of the federal exemptions and individuals who file in Oklahoma can use only the exemptions provided under state law.

So why should an attorney who practices in Oklahoma care about the exemptions from other states? Prior to the 2005 amendments, if you filed in Oklahoma, you would use Oklahoma exemptions and there was no reason to concern yourself with the exemptions from other states. That all changed with the passage of the 2005 amendments.

In the years preceding the passage of the 2005 amendments, the lobbyists for the credit industry were able to convince our lawmakers in Washington that there were many debtors acting more like fat, greedy hogs than innocent, little pigs. There was the perception that debtors were deliberately incurring a massive amount of debt in the states with minimum exemptions and then moving to states with generous exemptions and using their money to purchase big brick houses rather than paying the poor starving wolves. The debtors would then file bankruptcy and receive the benefit of their ill-gotten gain.

One way Congress attempted to prevent this type of forum shopping is by the enactment of 11 USC 522(b)(3)(A), which provides that a debtor may exempt:

... any property that is exempt under Federal law, other than subsection (d) of this section, or state or local law that is applicable on the date of the filing of the petition to the place in which the debtors domicile has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtors' domicile has not been located in a single state for such 730-day period, the place in which the debtors' domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place; ...

If the effect of the domiciliary requirement under subparagraph (A) is to render the debtors ineligible for any exemption, the debtors may elect to exempt property that is specified under subsection (d).⁵

For example, suppose that a client recently moved from Missouri and used her life savings of \$250,000 to purchase a home in Oklahoma. If she filed bankruptcy before she had lived in Oklahoma for 730 days, she would have to use

the Missouri exemptions. The Chapter 7 trustee could sell her home and would give her only the exemption amount of \$15,000 from the proceeds of the sale.

If one applies the same factual situation but changes the state to Indiana which also has a \$15,000 exemption, then you would think you would have the same result. Not true. The Indiana exemptions contain language that limits the exemptions only to residents of Indiana, so the client would be left with the federal exemptions which limit the exemption to \$22,975 in value.

If one applies the same factual situation but changes the state to Illinois, which also has a \$15,000 exemption, then you would think you would have the same result. Well, maybe. The law in Illinois is not very clear. So the Oklahoma attorney now has the privilege of litigating in federal bankruptcy court the meaning of an Illinois state law. How is the court supposed to determine the legislative intent of the Illinois Legislature on whether or not their law applies to nonresidents when the Legislature had no foreseeable reason to think that their laws would ever be applied to people other than the citizens of Illinois?

Norton Bankruptcy Law and Practice has a chart⁶ that summarizes the exemption options for nonresidents of 53 states and U.S. territories, which include Washington D.C., Puerto Rico and the Virgin Islands. Of the 53 states or territories, 22 allow nonresidents to use their exemptions and 22 do not, and the rest allow some or the law is not clear. Of the 22 jurisdictions that allow nonresidents to use their exemptions, eight allow the exemption of personal property but not real estate located outside their jurisdiction. The rest are unclear. If this sounds like a mess, you are correct.

One would think that all a client would have to do to avoid these problems is to wait two years before filing bankruptcy. However, it is possible that your client's homestead exemption could be limited by another provision contained at 11 USC 522(p) which provides:

Except as provided in paragraph (2) of this subsection and sections 544 and 548, as a result of electing under subsection (b)(3)(A) to exempt property under state or local law, a debtor may not exempt any amount of interest that was acquired by the debtors during the 1215-day period preceding the

date of the filing of the petition that exceeds in the aggregate \$155,675 in value –

- A) real or personal property that the debtors or a dependent of the debtors uses as a residence;
- D) real or personal property that the debtors or a dependent of the debtors claims as a homestead.

In applying the described example, suppose the client moved from Missouri and purchased a house in Oklahoma for \$250,000. If she waited more than two years before filing, but less than 1215 days, she would use the Oklahoma exemptions but the dollar limit would be limited to \$155,675. A Chapter 7 trustee could sell her home for \$250,000 and would only have to give her the exemption amount of \$155,675, and would use the rest of the money to feed the hungry wolves.

Now one would think that all a client would have to do to avoid any problem with a dollar limit on the homestead exemption would be to wait at least 1215 days before filing bankruptcy. However, it is possible that a debtor's homestead exemption could be limited by yet another provision contained at 11 USC 522(o) which provides:

For purposes of subsection (b)(3)(A), and notwithstanding subsection (a), the value of an interest in –

- 1) real or personal property that the debtors or a dependent of the debtors uses as a residence; ...
- 4) real or personal property that the debtors or a dependent of the debtors claims as a homestead;

shall be reduced to the extent that such value is attributed to any portion of any property that the debtors disposed of in the 10-year period ending on the date of the filing of the petition with the intent to hinder, delay, or defraud a creditor and that the debtors could not exempt, or that portion that the debtors could exempt, under subsection (b), if on such date the debtors had held the property so disposed of.”

By applying the above described example where a debtor moved from Missouri and purchased a house in Oklahoma for \$250,000, suppose that part of the life savings that she used to purchase her home in Oklahoma was \$80,000 from a regular savings account (which is not exempt under Missouri law). If the trustee can prove that she used her savings to purchase property with the “intent to hinder, delay, or defraud a creditor,” then the value of her homestead in Oklahoma would be limited to \$170,000. The trustee could sell her home to get the \$80,000 back to pay her creditors.

CONCLUSION

This article has demonstrated that the practice of consumer bankruptcy law has become a specialized area of practice. For the nonbankruptcy attorney, it is important to know the basics of bankruptcy law and to realize that the complexity of the law has increased tremendously with the passage of the 2005 amendments. If a client has serious financial problems, it is more important than ever to refer the client to an experienced bankruptcy lawyer for a thorough consultation.

- 1. 11 USC 707(b)(3).
- 2. 31 O.S. §2
- 3. See Mo. Ann. Stat. §513.475, Ind. Code §34-55-10-2(c)(1) and 735 Ill. Comp. Stat. 5/12-901.
- 4. 11 U.S.C. §522(d)
- 5. Author's note: subsection (d) is the list of the federal exemptions.
- 6. See Appendix 56-B.

ABOUT THE AUTHOR



Jimmy L. Veith received his J.D. from the OU College of Law in 1980. He was admitted to practice before the Supreme Court of Oklahoma and U.S. Court of Appeals for the 10th Circuit in 1980 and the in U.S. District Court for the Eastern and Western Districts of Oklahoma in 1983. He was a staff attorney for Legal Services of Western Oklahoma from 1980-83, when he began private practice in Ardmore. He is a member of the Oklahoma Bar Association, Carter County Bar Association and the National Association of Consumer Bankruptcy Attorneys.

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ABOUT THE AUTHOR

Darla Jackson's work and research is focused on international human rights, military law, international commercial arbitration, empirical research, and the impact of technology on legal research and the legal profession. She has published articles and book chapters on these topics. She frequently teaches advanced legal research classes. She is member of the Oklahoma Bar Association and is active in professional organizations including the American Bar Association and the American Association of Law Libraries. She served as the Director of the University of South Carolina Law Library from 2013-2015. She also served as the Associate Director of the Oklahoma City University Law Library. She was a Judge Advocate in the United States Air Force. Darla Jackson earned her M.L.S., and a J.D. degrees from the University of Oklahoma (graduate at Queen's College, Oxford University, England). She also holds an LL.M. in International Law from the University of Georgia, School of Law and a Master of Military Operational Art and Science from Air University.

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ABOUT THE AUTHOR



Darla Jackson is the OBA Management Assistance Program practice management advisor. Email her at darlaj@okbar.org.

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Oklahoma Access to Justice Commission
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Volunteer Lawyers Needed for Oklahoma Free Legal Answers Project

By M. David Riggs

Why did we become lawyers? I would like to believe for most of us it was because we have a strong moral sense of justice and want to do our part to see that justice is done, especially for people who need it most. Let me tell you about a great opportunity to do just that.

As one of several initiatives undertaken by Oklahoma's Access to Justice Commission, which was established by order of our Supreme Court on March 13, 2014, we will soon be launching an interactive website to provide free legal information to needy Oklahoma citizens. We need your help to make it happen.

Those of us on the commission have learned that a large percentage of the population in our state and nation (with some estimates as high as 80 percent) have unmet legal needs because they are unable to find or afford legal assistance. Due to years of cuts in federal funding, Legal Aid Services of Oklahoma must turn away more than 50 percent of those who qualify for its services. As a result, many low-income Oklahomans face a stark choice: try to represent themselves, or simply walk away from the relief and justice to which they would otherwise be entitled.

The Oklahoma Access to Justice Commission is joining with the American Bar Association, the OBA and many other lawyers across the country to fill the gap. The help of Oklahoma lawyers is essential! Oklahoma.freelegalanswers.org will launch Aug. 22 at the same time many other states will launch similar sites. The concept is simple. The free legal answers websites will screen those needing a legal answer. Screening will include location (state) and income eligibil-

ity. After completing the unverified income screening process, users will submit questions to a secure website. Those not eligible will be directed to resources where they may gain assistance in locating a lawyer or other aid.

We need Oklahoma volunteer lawyers to register to anonymously answer the questions submitted to the website. Many of you may have wanted to help those less fortunate, but had concerns about time commitments, possible liability or subject matter expertise.

"The answers I give may be simple but they really help. Don't ignore the debt collection letters, pay attention and be proactive. I have been able to give great tips about representing yourself in court."

Katheryn Bell

Aries Law Firm PLLC

Oklahoma.freelegalanswers.org allows you to select the areas of law you provide legal assistance for and help those whose needs are greatest. You can choose to accept only the questions where you feel comfortable providing help and then have 24 hours to post an answer. Most attorneys will be able to compose a well-formulated response in less than half an hour. Often, you will be able to simply direct an individual to helpful resources. All attorney volunteers will be covered

by a professional liability insurance policy purchased by the ABA. Individuals posting questions will not be provided the lawyer's name or contact information.

Please sign up now.

For more information and a link to sign up, go to www.okbar.org. There you can find a video demonstrating how the site works.

M. David Riggs serves as chair of the Oklahoma Access to Justice Committee. Mr. Riggs practices law at Riggs, Abney, Neal, Turpen, Orbison & Lewis in Tulsa.

SOVEREIGNTY SYMPOSIUM XXIX

OKLAHOMA CITY • JUNE 8-9, 2016



Economic Development panel members: (from left) Dr. Jim Collard, director of Planning and Economic Development, Citizen Potawatomi Nation; Jonna Kirschner, senior vice president of Economic Development, Chickasaw Nation Industries; former Oklahoma Gov. David Walters; Bryan Mitchell; Gavin Clarkson, associate professor, New Mexico State University; Robert B. Andrew, U.S. Department of State diplomat in residence, OU; Dr. Terry Neese, Institute for Economic Development; Lauren J. King, Foster Pepper LLC; Michael Neal, president and CEO of Tulsa Regional Chamber



Oklahoma Supreme Court Justice James Edmondson with his granddaughter Essie Garde



Keynote speaker Suzan Shown Harjo and Oklahoma Supreme Court Vice Chief Justice Douglas Combs



(From left) former Oklahoma State Sen. Kelly Haney; Eric Tippeconnic, historian and artist; Kenneth Johnson, jeweler and silversmith; Winston Scambler



Jeweler and artist Kenneth Johnson awards keynote speaker Suzan Shown Harjo; Oklahoma Supreme Court Justice Steven Taylor (far left), Chief Justice John Reif (background) and Vice Chief Justice Douglas Combs looking on



British Consul-General Karen Bell with Oklahoma Supreme Court Chief Justice John Reif



Juvenile Law and Children's Issues panel members: (from left) Oklahoma Court of Civil Appeals Judge William Hetherington; Sue D. Tate, court improvement project director, Administrative Office of the Courts; New Mexico District Court Judge John Romero; Assistant U.S. Attorney Robert Don Gifford; Whitney Anderson, executive director, The Dragonfly Home; C. Steven Hager, director of litigation, Oklahoma Indian Legal Services; Blaine Phillips, Oklahoma State Bureau of Narcotics



OBA President Garvin Isaacs (left) and Oklahoma Supreme Court Chief Justice John Reif



Dan Little, attorney, (left) and Phillip Gover, founding director, Sovereign Schools Project



Oklahoma Supreme Court Chief Justice John Reif (left) and Dr. Bob Blackburn, executive director, Oklahoma Historical Society



Chairman of the National Indian Gaming Commission Jonodev Osceola Chaudhuri with Oklahoma Supreme Court Justice Yvonne Kauger



Concerns of the Judiciary panel members: (standing, from left) Patrick McGuigan, Oklahoma Sentinel; Dianne Barker Harold; Judge Tom Walker; Chad Smith; (seated, from left) Judge William Hetherington; Administrative Director of the Courts Jari Askins; Casey Ross, professor, OCU School of Law; Muscogee District Court Judge Greg Bigler; Washington State Tribal Court Judge Lauren King

continued on next page



New Voices in Native American Literature panel members: (standing, from left) Jeanne Devlin, editor, Roadrunner Press; Oklahoma Supreme Court Justice James Edmondson; Gayleen Rabakukk, author; Tim Tingle, author; (seated, from left) Sandy Tharp-Thee, author; Wiley Barnes, director, Chickasaw Press; Joshua Hinson, author



Ralph B. Hodges and Robert E. Lavender Award winner Court of Civil Appeals Judge W. Keith Rapp (left) with Oklahoma Supreme Court Chief Justice John Reif



Oklahoma Supreme Court Attorney Kyle Shifflett with Oklahoma Supreme Court Justice Noma Gurich



Carol Floyd, Rep. Jerry McPeak (center) and Muscogee Nation Principal Chief James Floyd



Rodger Randle, founder and director, OU Center for Studies in Democracy and Culture (left) with Former Cherokee Nation Principal Chief Chad Smith

**All photos by
Stu Ostler**

2017 OBA Board of Governors Vacancies

Nominating Petition deadline: 5 p.m. Friday, Sept. 2, 2016

OFFICERS

President-Elect

Current: Linda S. Thomas, Bartlesville
 Ms. Thomas automatically becomes
 OBA president Jan. 1, 2017
 (One-year term: 2017)
 Nominees: **Vacant**

Vice President

Current: Paul D. Brunton, Tulsa
 (One-year term: 2017)
 Nominee: **Jennifer Castillo, Oklahoma City**

BOARD OF GOVERNORS

Supreme Court Judicial District Two

Current: Kevin T. Sain, Idabel
 Atoka, Bryan, Choctaw, Haskell, Johnston, Latimer,
 LeFlore, McCurtain, McIntosh, Marshall, Pittsburg,
 Pushmataha and Sequoyah counties
 (Three-year term: 2017-2019)
 Nominee: **Mark E. Fields, McAlester**

Supreme Court Judicial District Eight

Current: James R. Marshall, Shawnee
 Coal, Hughes, Lincoln, Logan, Noble, Okfuskee,
 Payne, Pontotoc, Pottawatomie and Seminole
 counties
 (Three-year term: 2017-2019)
 Nominee: **Vacant**

Supreme Court Judicial District Nine

Current: John W. Kinslow, Lawton
 Caddo, Canadian, Comanche, Cotton, Greer,
 Harmon, Jackson, Kiowa and Tillman
 (Three-year term: 2017-2019)
 Nominee: **Vacant**

Member At Large

Current: James R. Hicks, Tulsa
 (Three-year term: 2017-2019)
 Nominee: **Vacant**

Summary of Nominations Rules

Not less than 60 days prior to the annual meeting, 25 or more voting members of the OBA within the Supreme Court Judicial District from which the member of the Board of Governors is to be elected that year, shall file with the executive director, a signed petition (which may be in parts) nominating a candidate for the office of member of the Board of Governors for and from such judicial district, or one or more county bar associations within the judicial district may file a nominating resolution nominating such a candidate.

Not less than 60 days prior to the annual meeting, 50 or more voting members of the OBA from any or all judicial districts shall file with the executive director a signed petition nominating a candidate to the office of member at large on the Board of Governors, or three or more county bars may file appropriate resolutions nominating a candidate for this office.

Not less than 60 days before the opening of the annual meeting, 50 or more voting members of the association may file with the executive director a signed petition nominating a candidate for the office of president elect or vice president, or three or more county bar associations may file appropriate resolutions nominating a candidate for the office.

If no one has filed for one of the vacancies, nominations to any of the above offices shall be received from the House of Delegates on a petition signed by not less than 30 delegates certified to and in attendance at the session at which the election is held.

See Article II and Article III of OBA Bylaws for complete information regarding offices, positions, nominations and election procedure

Elections for contested positions will be held at the House of Delegates meeting Nov. 4, during the Nov. 2-4 OBA Annual Meeting.

Terms of the present OBA officers and governors will terminate Dec. 31, 2016.

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

OBA Nominating Petitions

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

OFFICERS

VICE PRESIDENT

JENNIFER M. CASTILLO, OKLAHOMA CITY

Nominating Petitions have been filed nominating Jennifer M. Castillo for Vice President of the Oklahoma Bar Association Board of Governors for a one-year term beginning Jan. 1, 2017. Fifty of the names thereon are set forth below:

William R. Grimm, Stephen Beam, M. Joe Crosthwait, Gary C. Clark, Harry A. Woods Jr., Charles D. Neal Jr., Andrew M. Coats, Deborah Reheard, Cathy Christensen, James T. Stuart, Renée DeMoss, Susan Shields, Dietmar Caudle, Garvin Isaacs, Jack L. Brown, Alan Souter, Kimberly Hays, Peggy Stockwell, Richard Stevens, Roy Tucker, Martin Stringer, Kaleb Hennigh, Sonja R. Porter, James R. Gotwals, Kevin T. Sain, Gerald Neuwirth, Sid Swinson, John Kinslow, James Hicks, Bryon J. Will, Alissa Hutter, Joseph M. Vorndran, Briana J. Ross, Amber Garrett, Martha Cordell, Nathan D. Richter, Blake Lynch, Robert K. Bailey II, April Manning, Sarah C. Stewart, Fred Cornish, Allen E. Barrow Jr., William E. Farrior, Steven Adams, Stephen A. Schuller, Brad Heckenkemper, Bradley K. Beasley, Elizabeth Tyrell, Randolph S. Meacham and Debra Loeffelholz.

A total of 123 signatures appear on the petitions.

Nominating Resolutions have been received from the following counties: Muskogee

BOARD OF GOVERNORS

SUPREME COURT

JUDICIAL DISTRICT No. 2

MARK E. FIELDS, MCALESTER

Nominating Petitions have been filed nominating Mark E. Fields for election of Supreme Court Judicial District No. 2 of the Oklahoma Bar Association Board of Governors for a three-year term beginning Jan. 1, 2017. Twenty-five of the names thereon are set forth below:

Kevin Sain, Deborah Reheard, W. G. "Gil" Steidley Jr., Jacqueline Jo Perrin, Monte Brown, J. Christopher Bone, F. Nils Raunikar, Jeremy Beaver, Richard P. Cornish, Paul Northcutt, Eddie Harper, Eddie Foraker, Tim Maxcey, Heather Burrage, David Burrage, Thomas Marcum, Pat Phelps, Pat Layden, William J. Ervin Jr., Brett D. Cable, Sean McKelvey, Warren Gotcher, Ellen Quinton, Elaine Green and Roger Wiley.

A total of 61 signatures appear on the petitions.

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knew Standing Bear and respected him as the leader of a tribe that had never had conflicts with the federal government. General Crook was worried about Standing Bear and the Poncas. But General Crook followed his orders and arrested Standing Bear and the Poncas, putting them in custody at Fort Omaha.

General Crook called one of his friends, Thomas Tibbles, a journalist for the *Omaha Herald*, who went to Fort Omaha, interviewed Standing Bear and shared his story of leaving Oklahoma to bring his dead son back to the Niobrara River area and bury him on the old tribal land.



A.J. Poppleton

Photo credit: Nebraska State Historical Society. RG2411.PH-4419. Copy and reuse restrictions apply.

After interviewing Standing Bear, Tibbles wrote articles for the *Omaha Herald* that told Standing Bear's story and enlisted the support of the ministers of the leading churches in Omaha. General Crook sent a telegraph to Secretary of the Interior Carl Schurz requesting that he reverse the order of removal.

Tibbles spent his afternoons in a law library doing legal research hoping to find a way he could help obtain the release of Standing Bear and the Poncas. Tibbles was encouraged when he read the 14th Amendment and showed it to his friend, John L. Webster, a young lawyer in Omaha and to another lawyer, A.J. Poppleton, who was the attorney for Union Pacific Railroad.

Both Poppleton and Webster agreed to represent Standing Bear and the Poncas without a fee.

The lawyers drafted a petition for the writ of *habeas corpus* and filed it in the United States District Court for Nebraska. The case was assigned to U.S. District Judge Elmer S. Dundy. Judge Dundy was a judge who followed the law and was not intimidated.

U.S. Attorney G.M. Lambertson objected to the writ making the argument, "Indians were neither a person nor a citizen within the meaning of the law, and therefore could not bring suit against the government," and therefore Indians had no constitutional due process rights.

The trial of *Standing Bear v. Crook* began on Aug. 18, 1879. Webster and Poppleton argued that Indians were people, too and were entitled to be treated like people. They argued that Indians were entitled to the same constitutional rights as anybody else.

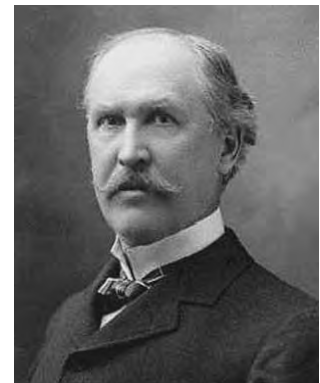
Judge Dundy allowed Webster, Poppleton and Standing Bear to argue for his tribal brothers' freedom. The trial lasted two days.

Judge Dundy ordered Standing Bear and the Poncas to be released upon the grounds and for the reasons that Indians were people and entitled to the protection of *habeas corpus*. Judge Dundy's order represents a great moment in American history. It was the first time in the history of our country Indians were recognized as people.

Of great significance in the history of American jurisprudence are the two lawyers, John L. Webster and A.J. Poppleton, who gave back to the judicial system and became role models for all of us as lawyers.

At the end of his life, Poppleton was blind, and his health was taking him down. When asked about the Standing Bear case, Poppleton talked about the two hours of closing arguments and said, "I cannot recall any two hours' work of my life with which I feel better satisfied."

Might you make time to do more pro bono work?



John Webster

Photo credit: Nebraska State Historical Society. RG2141-2350. Copy and reuse restrictions apply.

Old Dogs... New Tricks

By John Morris Williams

This year I have been invited to a close friend's family dinner every Sunday. Various family members bring, cook, prepare or otherwise provide something every week. I volunteered for dessert. That was not a good choice for me. While I can cook a bit, I have never been a dessert person. It was one of those deals I volunteered for that was way over my ability.

Having made the commitment, I felt duty-bound to try and do more than the bakery at the grocery store. Although that stuff looks good, everyone else was doing "earth up." So, off to the net I went to find recipes. Quickly, I found there are recipes that are just a list of instructions and then there are recipes that really tell you how to make stuff. I found recipes that tell you to remember all ovens cook differently, helpful comments from others who have made the recipe with suggestions on techniques, variations, substitutes and different cooking times depending on whether you are using dark non-stick versus shiny baking pans. Who knew? I must confess with some good instruction I have surprised myself and my friends.

I am an old dog learning new tricks. That homemade Snickers-bar recipe could be my key to marrying money. I swear even I was impressed with how those turned out. The fact is that a good recipe from someone who knows what they are doing and has done it before is essential to learning a new skill and producing a good product.

This year we added a new staff member to the OBA Management Assistance Program. It is our belief that the greatest value we can give to our members is the ability to master new skills and to stay current with law office management. The role that technology is playing in the practice of law has reached the point of being astounding. The American Bar Association Model Rules of Professional Conduct make competency in technology mandatory. That concept is being debated and looked at closely here in Oklahoma. Regardless of the disciplinary component, both competency and marketplace standards are making technology mastery mandatory.

Like learning a new recipe, these new technology demands require more than a list of ingredients. In fact, they are a lot more complex because of the myriad of features — and often the descriptions and functions are written in techno speak. Any more you need a trusted consultant who has studied the technology, has tested the functions and knows the needs of your individual practice. No other bar association does more than the OBA to try and fill that need of a trusted partner to assist and recommend the best tools for your practice.

I have to admit not being in the day-to-day practice of law, my knowledge and skill set are deficient in this area. Being busy with the everyday challenges of the substantive work of the bar association, I have not kept cur-

rent in this area. This year, as in years past, our Solo & Small Firm Conference vendors opened my eyes to the tremendous need to have the right technology working for you in your law office. Most of our members belong to small firms or are solo practitioners. Lawyers in smaller firms or in solo practice have little time to devote countless hours to running the technology race. We have some pretty good cooks here at the OBA to help you. The OBA MAP Department cannot only help your practice habits, but often can help you with the bottom line. Even the bigger firms with full-time management staff find value with this consulting opportunity. Having someone to verify information is often as valuable as discovering new information.

A new offering in the OBA cookbook this fall will be an OBA business school for lawyers. This new Essential Business Skills for Lawyers program will be unveiled at the Annual Meeting. The cost is a bargain, and learning some new tricks will be invaluable to servicing your clients and improving the overall business side of your practice. I feel duty-bound to learn about this brave new world, and I hope you will join me in learning from the masters.



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

Some Post-Summer Law Practice Tips

By Jim Calloway

Summer is coming to a close and hopefully you have enjoyed some vacation and family time. Several of us enjoyed the OBA Solo & Small Firm Conference in June. We had one of the largest turnouts in recent memory. Our conference is only possible because of the support of a number of sponsors. This year we had several vendors with products and services to help lawyers practice law more efficiently.

The traditional opening session for the conference is called “60 Tips in 60 Minutes,” a fast-paced program that covers a wide range of material. This year I was joined by experts Ben Schorr and Tom Mighell for our tips session. I often hear from attendees that this is their favorite session of the conference.

In this article, let’s recap some popular law practice tips that were shared during our “60 Tips in 60 Minutes” session.

PRODUCTIVITY

Speech recognition software now makes sense for even faster lawyer typists. After all, most of us can talk faster than we can type. Dictating documents can remain an important part of law office operations without having to pay an individual to listen to the dictation and transcribe it. I use Dragon Dictate NaturallySpeaking Professional

Individual, which was released last fall and retails for \$300. Dragon Dictate NaturallySpeaking Legal Individual was released earlier this year and starts at \$500. Another alternative is purchasing a subscription to Dragon Anywhere for Android or iOS. This allows you to use your smartphone as a dictation device. The price on this ranges from \$15 for one month’s service to

“You probably aren’t using Google and YouTube enough these days.”

\$150 for a year’s subscription. I generally don’t like headsets and am currently using the MXL AC404 USB conference microphone which I purchased for around \$80.

Ben Schorr also reminded us that the 2016 version of Microsoft Office has a new feature, a text box on the ribbon in Office 2016 apps that says “Tell me what you want to do.” This is a field where you can enter words and phrases about what you want to do next and quickly get access to features you

want to use or actions you want to perform. This is much faster than the previous methods of obtaining help within Microsoft Word.

Lawyers live by their calendar and their task lists. If you’re looking for a task list application Tom Mighell says look to The Ultimate To-Do List Comparison Chart. This compares the features of more than 30 task list programs and apps.¹

INTERNET

Tom Mighell also said one of his favorite technology upgrades has been installing eero routers.² If you have certain areas in your home and office where you cannot get a Wi-Fi signal, these premium-priced routers will likely solve your problem and can be managed from your smartphone.

You probably aren’t using Google and YouTube enough these days. You can locate a YouTube video on how to accomplish almost any task from software tools to fence building. If you will train yourself to put a lot of words into a Google search instead of just a few, you will find you can get an answer to almost any factual query instantly.

Have you ever accidentally closed a tab in your browser and then wished you could have it back again? To reopen that browser tab you just acci-

dentally closed, use the key combination CTRL+SHIFT+T. This works in all major browsers. (If you cannot remember this key stroke combination when you need it, a quick Google search will locate it for you.)

SECURITY

Protecting your office against digital disasters like a data breach or a malware infection is serious business today.

Remember, staff training on security is essential and must be repeated periodically. You should talk to your staff about how to recognize questionable email attachments and encourage them not to click when they are unsure. Today a lawyer's duty to supervise nonlawyer assistants under Oklahoma Rule of Professional Conduct 5.3 likely includes some training on digital security.

Despite your best efforts, there is always a chance of a security breach, especially with the advent of "ransomware" programs that can invade your system and encrypt all of your data files. It is important to have regular backups so you can restore your system if this happens without being forced to pay the ransom.

You have heard or read this one before, but it bears repeating. Long unique passwords are very important today and

you should never use the same password for multiple websites. But how do you remember them all? The best solution is to use a password manager like Lastpass, Dashlane, 1password or Roboform.

Email attachments are not secure. If you need to send something out by email that contains personal information such as Social Security numbers, the "quick and dirty" way to protect the information is to password protect a Word document or PDF file and then call the recipient to give them the password over the telephone.

Citrix ShareFile is now an OBA member benefit. Some ShareFile plans include a plugin for Microsoft Outlook that allows you to encrypt when you need it and not use encryption when you don't need it. There is also a feature that allows you to do the same thing with Gmail.

CONCLUSION

In my opinion, the most important law practice management tip, particularly for solo and small firm lawyers, is to use practice management software tools to set up a digital workflow (sometimes called the "paperless office") where every document that comes in to the office is scanned and placed in a digital client file. You will be hearing more about this in the

future from the OBA Management Assistance Program. (As if you haven't already heard it from us several times before.) You can find links to the practice management solution providers that exhibited at our Solo & Small Firm Conference at www.okbar.net/solo. You can also download the materials from the Practice Management Shootout at the 2015 Solo & Small Firm Conference by logging into MyOKBar.

We always like to end our 60 tips session with a humorous tip or two. One that is perfect for our current election season is the SnuzNLuz from *ThinkGeek.com*. If you have a problem with hitting the snooze button on your alarm too often in the morning, this Wi-Fi connected alarm clock can be set up to donate a small contribution to an organization or candidate that you detest every time you hit the snooze button. That thought should get you out of bed in the morning!

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

1. bit.ly/1ScLLVr
2. eero.com

Ethics and the Benefits of the Lawyers Helping Lawyers Program

By Joe Balkenbush

Lawyers Helping Lawyers (LHL) is a program created by the Oklahoma Bar Association decades ago when it became clear that our profession was plagued by addiction and mental health issues. A recent study by the American Bar Association (ABA) in conjunction with the Hazelden Betty Ford Foundation found that almost one-third of lawyers presently suffer from addiction (drug, alcohol, etc.) or mental health (anxiety, depression, etc.) issues. A similar study was done 20 years ago. Unfortunately, the percentage of lawyers experiencing issues has not changed.

Think about that. One-third of us are not doing well. That doesn't necessarily mean that those affected are incapacitated, but it does mean that those suffering are not performing as well as we could be. I would offer to you that the rate of addiction or mental health issues is in reality higher. Because the stigma attached to addiction and mental health illness is significant, many lawyers will not admit to needing assistance, even with the assurance that the information provided is confidential and privileged.

The ABA recently stated that health and wellness are every lawyer's ethical and profes-

sional responsibility. So, what does that mean? It means that we **must** make time to ensure that we are physically, mentally, emotionally and spiritually healthy. These characteristics are basic to our well-being health. If you are stressed or overwhelmed, if you are depressed, anxious, suffering from addiction, if your personal relationships are suffering or you are in need of help in any other way, the OBA provides you with a place to go for help. You are not alone!

LHL is administered by the LHL Assistance Program Committee and funded by OBA member dues. The program provides confidential help to all OBA members. Per the Oklahoma Rules of Professional Conduct, Title 5 O.S. Appendix 3A, Rule 8.3(d), all contact with LHL, its committee members, mentors and information received is confidential. This ensures any OBA member wishing to reach out can do so knowing they are protected.

Lawyers Helping Lawyers is designed to offer support to OBA members on several different levels. To engage your benefit, simply call 800-364-7886. **It does not have to be a time of crisis.** In fact, it is better for you to deal with

any issue before it reaches the level of crisis!

Lawyers may call to request peer support or mentoring offered by the LHL Committee members. The committee consists of a team of dedicated attorneys and mental health professionals who volunteer to offer guidance and encouragement. This can and often is very beneficial for attorneys that may be isolated in solo practice or young individuals just starting out, looking for guidance. Working in a career that can be adversarial in

**Access this Free
Member Benefit
by calling
800-364-7886**

**Peer Support and
Mentoring**

**Counseling with a
Licensed Therapist**

**Opportunity to Apply
for Grant**

nature, making a connection with another attorney who will listen can be a way of building a support system. Again, peer support and mentoring is offered by LHL Committee members who are exempt from reporting.

Another level of support offered through LHL is **six free counseling sessions per year** with a licensed therapist. These sessions can be used if someone simply wants to talk through a particular situation, when work stress is particularly high, to get guidance about relationships or to assist in getting appropriate levels of care for depression or substance abuse. Again, please don't wait until you are in crisis to access the services. Calling and getting engaged in counseling and or peer support early is a measure in maintaining well-being and managing stress.

A third level of support is offered through the LHL Foundation. OBA members who need or want treatment for addiction, depression or other mental health issues, can apply for a grant through the LHL Foundation. The grant is intended to assist in getting treatment. This can be inpatient or outpatient treatment, as well as expenses that may come up while in treat-

ment. The application for the grant can be found on the OBA LHL website.

All the services listed can be accessed by calling 800-364-7886. You can call anytime, 24 hours a day, seven days a week. Questions are answered and an intake is performed to assist in determining which services would be of greatest

“...please don't wait until you are in crisis to access the services.”

benefit to the caller. Again, all contact with LHL, its mentors and/or providers is completely confidential per Oklahoma law.

The bottom line is that we must take care of ourselves if we want to be the best we can be, whether it's in our business or personal lives. No one else is going to do it for you. You are the only one who can control what you do.

I recently heard a presentation on being the best that you can be, and the speaker gave what he called, the “heart analogy,” it goes like this:

The heart is the most selfish organ in the body,

it takes the best of everything for itself,

the best blood with the best nutrients and the best oxygen.

But if the heart didn't do that, it couldn't do what it does for the rest of the body.

If the heart begins to fail, the rest the body will begin to fail.

The analogy is simple. You can't be the best you can be unless you take the best care of yourself. So, take responsibility for every aspect of your life! You are worth it! You matter!

Author's Note: Thank you to Caba Director of Employee Assistance Deanna L. Harris for her instrumental help in this article.

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



Meeting Summaries

The Oklahoma Bar Association Board of Governors met at the Oklahoma Bar Center in Oklahoma City on Friday, April 22.

REPORT OF THE PRESIDENT

President Isaacs reported he spoke at the Oklahoma City Rotary Club, NW Oklahoma City Lions Club, Norman Kiwanis Club, Edmond Rotary Club, Elk City Rotary Club, Zephyr Teachout CLE seminar at the OCU School of Law, Logan County Bar Association meeting, SWOSU Pharmacy School and Pauls Valley Rotary Club. He attended OBA Day at the Capitol, OETA Festival OBA volunteer night, OBF Silver & White Party at the Myriad Gardens and "Movie Night With the Justices" CLE seminar.

REPORT OF THE PRESIDENT-ELECT

President-Elect Thomas reported she attended OBA Day at the Capitol, OBA fundraiser for OETA, ABA Bar Leadership Institute in Chicago, Zephyr Teachout seminar at the OCU School of Law, OBF Silver & White Party and the Washington County Bar Association meeting. She had meetings with Executive Director Williams and Executive Assistant Brink regarding planning, appointments and other bar business, with Vice Chief Justice Combs about access to justice and a future OBA project, with Executive Director Williams and CLE Director Damon for a planning session and with Executive Director Wil-

liams regarding the Financial Planning Subcommittee and Budget Committee. She drafted recommendations for Budget Committee appointments and reviewed 2015 OBA committee reports.

REPORT OF THE PAST PRESIDENT

Past President Poarch reported he attended OBA Day at the Capitol and the Silver & White OBF celebration. He also sent emails and made phone calls to legislators regarding the pending JNC legislation.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he spoke to the Oklahoma College of Trial Advocates in Tulsa and to the Central Oklahoma Legal Assistants Association. He spent time at the Capitol including OBA Day at the Capitol, Senate Rules Committee meeting and Law Day Awards Ceremony for first-place contest winners at the Supreme Court Ceremonial Courtroom. He attended the Custer County Bar Association Law Day event in Weatherford, staff celebration directors meeting, Stonewall McLish Foundation meeting, OETA Foundation gala planning meetings, OBF Silver & White Party, CLE event at OCU with Professor Teachout, Access to Justice Committee meeting, Bar Association Technology Committee preview of a new videoconferencing service, Section Leaders Council meeting, Bar Leadership Development Institute in

Chicago, Law Schools Committee visit to OCU, Custer County Bar Association 50-year membership event in Clinton, new admittee ceremony and OBA Leadership Academy graduation. He met with leadership of the Oklahoma Center for Nonprofits, made a couple of appearances on KOKC radio and met with President-Elect Thomas and Vice Chief Justice Combs.

BOARD MEMBER REPORTS

Governor Coyle reported he attended OBA Day at the Capitol, Oklahoma County Bar Association meeting and the Oklahoma County Criminal Defense Lawyers meeting. **Governor Gotwals** reported he attended OBA Day at the Capitol, an Inns of Court presentation on "Cameras in the Courtroom: Why and When," Tulsa County Bar Association March Board of Directors meeting, TCBF Golf Committee meeting, TCBF March meeting, March OBA Professionalism Committee meeting by phone, April Alternative Dispute Resolution Section meeting by phone, OBF Silver & White Party in Oklahoma City celebrating the foundation's 70th anniversary, swearing-in ceremony for Judge Kelly Greenough at the Tulsa County Courthouse and TCBA Family Law Section meeting. He gave a presentation on the Quality Assurance Panel at the TCBA April board meeting. **Governor Hennigh** reported he attended OBA Day at the Capitol and the Garfield County Bar Association board

meeting. **Governor Hicks** reported he participated in the Access to Justice teleconference, Metropolitan Bar Conference teleconference, OBA Section Leaders meeting at OSU/Tulsa, Zephyr Teachout seminar at the OCU School of Law, Oklahoma Bar Foundation Silver & White Party at the Myriad Gardens, Statutory Construction CLE presented by Chief Justice Reif, Tulsa County Bar Association Golf Committee meetings and TCBF Executive Committee meeting. **Governor Hutter** reported she attended OBA Day at the Capitol and the Cleveland County Bar Association Executive Committee meeting. **Governor Kee** reported he travelled with the Law Schools Committee on its site visit to Oklahoma City University School of Law. He also contacted Sens. Justice, Simpson and Standridge on the Rules Committee regarding the Judicial Nominating Commission issue. **Governor Marshall** reported he attended OBA Day at the Capitol and made calls regarding pending legislation. **Governor Porter** reported she attended OBA Day at the Capitol, OBA Section Leaders Council meeting, two Women in Law Committee meetings, Solo & Small Firm Conference Planning Committee meeting, Board of Tests for Drug and Alcohol Influence special meeting, swearing-in of newly appointed Oklahoma County District Judge Michelle McElwee and OBA Law-related Education Committee meeting. She went to the Capitol with Past President Cathy Christensen and Executive Director Williams and others to meet with legislators regarding bills related to the bar, accompanied Boy Scout Troop 30 to the Oklahoma County Courthouse and served as merit badge counselor for the law merit badge, chaired

the General Practice/Solo & Small Firm Section meeting and judged both the OU Law 1L Moot Court Competition and the OCU Law 1L Moot Court Competition. **Governor Tucker** reported he spoke to the Rogers County Bar Association and presented the CLE program "Oklahoma Open Records Act: A Primer." He attended the monthly YLD meeting that featured FBI Special Agent Mike Beavers, who spoke on the issues of human trafficking and child abduction and attended the International Municipal Lawyers Association annual meeting in Washington, D.C. He also organized a Lawyers in the Classroom program for a Muskogee County Law Day event. **Governor Weedn** reported he attended OBA Day at the Capitol and the Ottawa County Bar Association monthly meeting.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Will reported he attended OBA Day at the Capitol and the Bar Association Technology Committee meeting that utilized Blue Jeans videoconferencing. He also chaired the YLD monthly meeting that featured special guest Mike Beavers with the FBI, who spoke on human trafficking, child abduction and the Safe Streets initiative. Governor Will spoke at the swearing-in ceremony, and the YLD held a reception following the event at the Capitol.

LEGISLATIVE REPORT

Legislative Liaison Clay Taylor briefed board members on recent actions involving bills the OBA is monitoring. Executive Director Williams supplemented the report. It was noted the second regular session of the 55th Legislature will

adjourn *sine die* no later than 5 p.m. on Friday, May 27.

BOARD LIAISON REPORTS

Governor Kee reported the Law Schools Committee visited OCU School of Law, and he reviewed the statistics shared at that visit, including average student debt when leaving law school is \$80,000-\$100,000. Governor Kinslow reported the Clients' Security Fund Committee met to consider claims. Governor Gotwals reported the Professionalism Committee appreciated help from Administration Director Combs and Ethics Counsel Balkenbush to get funds to give an ethics book to new lawyers being sworn in. He said they are still searching for a symposium speaker. Governor Will reported the Bar Association Technology Committee conducted its meeting using Blue Jeans videoconferencing, and the test was very successful. Governor Porter reported the Women in Law Committee is making progress on its conference planning. The keynote speaker will be jury consultant Jo-Ellan Dimitrius, noted for her jury selection work in the O.J. Simpson trial. The committee is seeking sponsors. She also reported the Law-related Education Program recently co-sponsored Oklahoma Close Up, a four-day government studies program designed to strengthen knowledge of the political process. The committee is continuing to work on the legal guide for young adults. A question was asked if the committee had any student feedback on the guide. Former LRE Committee member Cathy Christensen said research was done in 2011, and feedback was very positive. Former YLD Chair Jennifer Castillo said during 2012 speaking to schools on the legal guide topics was a YLD project,

and she confirmed reactions were very positive. It was noted the information is helpful for all adults, not just those who are 18 years old. Governor Marshall reported the ABA is making a push for uniform bar exam testing. Governor Tucker reported the Law Day Committee held its final meeting last week before the Ask A Lawyer event to film the final panel segments for the TV show and to review final details for the free statewide legal advice. They will soon focus on Juror Appreciation Month.

REPORT OF THE GENERAL COUNSEL

A written report of PRC actions and OBA disciplinary matters for March was submitted to the board for its review.

AWARDS COMMITTEE RECOMMENDATIONS

Awards Committee Chair Jennifer Castillo reported the committee considered a new award proposed by the ADR Section, recognizing a lawyer who has distinguished himself or herself in the alternative dispute resolution practice area. The committee thought it was more appropriate for the section to bestow the award instead of the OBA. She said the Awards Committee recommends the OBA continue its tradition and present the same awards given last year. The call for nominations will take place in May. The board approved the Awards Committee recommendations for 2016 OBA Awards.

PROFESSIONAL RESPONSIBILITY TRIBUNAL APPOINTMENTS

The board approved President Isaacs' recommendations to appoint Theodore P. Roberts,

Norman; Murray Abowitz, Oklahoma City; Rod Ring, Norman; and to reappoint John Heatly, Oklahoma City, and Noel Tucker, Edmond, to the PRT with terms expiring June 30, 2019.

DISTRICT ATTORNEYS COUNCIL APPOINTMENT

The board approved President Isaacs' recommendations to appoint J. Gregory Mashburn, Norman, to the District Attorneys Council to complete the unexpired term of John Wampler, which ends June 30, 2018.

BUDGET COMMITTEE APPOINTMENTS

The board approved President-Elect Thomas' recommendations to appoint to the Budget Committee:

House of Delegates members – David Poarch, Norman; Brandi Nowakowski, Shawnee; Sheila Stinson, Edmond; Jesse Worten, Bartlesville; and Jimmy Oliver, Stillwater

Board of Governors – John Coyle III, Oklahoma City; Jim Gotwals, Tulsa; James Marshall, Shawnee

Attorney members – Judge Rick Bozarth, Taloga; Kim Hays, Tulsa; and Neil Lane, Oklahoma City

REQUEST FOR FUNDS FOR PUBLIC EDUCATION

Past President Cathy Christensen described to the board the need to add videos to the www.courtfacts.org website, designed to provide facts about the third branch of government and accurate nonpartisan information to Oklahoma voters. A list of former Judicial Nominating Commission members will be added to the site, and she would like to work with Red Rock Video, the company the

OBA works with to produce the *Ask A Lawyer* TV show, to film past lay JNC members about their experience. Five interviews were filmed but not completed. Board members viewed a video of Kimberly Fobbs, Tulsa. The target length for each video is 2 – 2 ½ minutes, and cost is estimated at \$500 each. She asked for up to \$10,000 to produce as many videos as possible. The goal would be to have the videos on the website by August or September. The board approved funding of up to \$10,000.

DISCIPLINE REPORTS

Copies of the 2015 Professional Responsibility Tribunal and Professional Responsibility Commission reports filed with the Supreme Court were provided to board members for their information.

FINANCIAL PLANNING SUBCOMMITTEE APPOINTMENTS

President-Elect Thomas announced her appointments to the Financial Planning Subcommittee of the Strategic Planning Committee are Courtney Briggs, Oklahoma City; Dustin Hopson, Norman; Dakota Low, Oklahoma City; Michael May, Oklahoma City; Chris Meyers, Lawton; David Poarch, Norman; Jonathan Truong, Oklahoma City; Jennifer Castillo, Oklahoma City; and Kim Hays, Tulsa. They will serve three-year terms ending Dec. 31, 2019.

2017 CLE CRUISE

President-Elect Thomas described an idea for a CLE cruise in September 2017 that is being researched. She said more information will be shared when arrangements are confirmed.

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The Oklahoma Bar Association Board of Governors met at the Oklahoma Bar Center in Oklahoma City on Friday, May 20.

REPORT OF THE PRESIDENT

President Isaacs reported he spoke at the Stephens County Bar Association Law Day event and to the South OKC Lawyers Association. He also helped give free legal advice at the OBA/Oklahoma County Bar Association Ask A Lawyer phone bank as part of Law Day activities.

REPORT OF THE PRESIDENT-ELECT

President-Elect Thomas reported she attended the Seminole County Law Day event in Wewoka, Pittsburg County Law Day event in McAlester, Law Day reception at Steidley and Neal in McAlester, Tulsa County Law Day luncheon in Tulsa, Tri-County Law Day in Idabel and Washington County Bar Association May monthly meeting. She also communicated with various lawyers, judges and legislators regarding proposed legislation and possible ballot initiatives.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he spoke at the CLE seminar in conjunction with the Seminole County Bar Association Law Day luncheon and spoke to the Downtown Tulsa Lions. He also attended the Pittsburg County Bar Association Law Day dinner, Oklahoma County Bar Association Law Day luncheon, Tri-County Bar Association Law Day dinner, Payne County Bar Association Law Day dinner, OETA 60th Anniversary Planning Committee meeting, OBA monthly staff celebration, meet-

ing at the state Capitol on pending legislation and *Journal Record* 40 Achievers Under 40 event.

BOARD MEMBER REPORTS

Governor Gotwals reported he attended the presentation by Hallie Love regarding positive psychology for lawyers at the Oklahoma Bar Center following the last board meeting, Professionalism Committee meeting (through his legal assistant), reception for and dinner with Laura H. Nirider, guest speaker at the Tulsa County Bar Foundation/ Tulsa County Bar Association Law Week luncheon, TCBF/TCBA Law Week luncheon as TCBF chairman and TCBA Board of Directors meeting. **Governor Hennigh** reported he attended the Garfield County Bar Association monthly meeting. **Governor Hicks** reported he attended the Tulsa County Bar Association Law Day luncheon as foundation vice president, Tulsa Lawyers BSA luncheon and TCBA YLD Trivia Night. He participated in the Leadership Tulsa golf event and TCBF golf tournament.

Governor Hutter reported she attended several Cleveland County Bar Association events – executive meeting, Bench and Bar meeting, legislative update by Judge Balkman and 50-year pin presentation. She attended the CLE seminar on domestic violence for guardian *ad litem*s at the bar center and also participated in the county bar's Ask A Lawyer free legal advice event. **Governor Kee** reported he attended the Stephens County Bar Association Law Day event at which he introduced President Isaacs as the speaker. He received his OBA 50-year membership pin and certificate at the event. **Governor Kinslow** reported he attended the Seminole County and Comanche County Bar Association

Law Day celebrations. **Governor Marshall** reported he attended the Seminole County Bar Association CLE seminar and luncheon and the Pittsburg County Bar Association Law Day dinner. **Governor Porter** reported she judged the High School Ethics Bowl hosted by OU and chaired the General Practice/Solo & Small Firm Section meeting at which she helped present CLE. She attended the Oklahoma County Law Day luncheon, Tri-County Bar Law Day banquet, Oklahoma Board of Tests for Alcohol and Drug Influence meeting and Law-related Education Committee meeting (via phone). **Governor Sain** reported he attended the McCurtain County Bar Association Law Day banquet. **Governor Tucker** reported he gave a presentation on the Open Meeting and Open Records Act to the Oklahoma Municipal League clerk and treasurers conference in McAlester. He also attended the Muskogee County Bar Association meeting. **Governor Weedn** reported he attended the Ottawa County Bar Association meeting and participated in the county bar's Law Day activities.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Will reported he attended the ABA YLD Affiliates Spring Meeting in St. Louis, Missouri, and was interviewed for a video promoting the OBA Solo & Small Firm Conference and YLD Midyear Meeting.

BOARD LIAISON REPORTS

Governor Gotwals reported the Professionalism Committee received funds to purchase ethics books written by Tulsa attorney Fred Slicker to give to new lawyers being sworn in.

The committee will work with the Criminal Law and Family Law Sections to plan a symposium. They also discussed creating a presentation to give to county bar associations, writing articles for the bar journal and Lawyers Helping Lawyers issues. Governor Porter reported the Law-related Education Committee is reviewing the legal guide for young adults publication for needed updates. She said the Women in Law Committee continues to work on its fall conference, and some members are attending ReMerge Oklahoma meetings, a female diversion program designed to transform pregnant women and others facing incarceration into productive citizens. Social mixers are planned. It was noted the Diversity Committee is asking for nominations for its awards. Deadline for submission is July 15.

REPORT OF THE GENERAL COUNSEL

A written report of Professional Responsibility Commission actions and OBA disciplinary matters for April was submitted to the board for its review. General Counsel Hendryx reported no PRC meeting was held in April because a quorum was not available so agenda items were moved to the May meeting.

APPLICATIONS TO SUSPEND AND STRIKE BAR MEMBERS

Executive Director Williams explained to board members the names of bar members on the lists to suspend or strike will continue to be removed as members comply with requirements until the applications are formally filed. The board authorized Executive Director Williams to submit applications to suspend bar members for failure to pay 2016 dues or fail-

ure to comply with 2015 MCLE requirements and to strike bar members for failure to reinstate after suspension for nonpayment of 2015 dues or for non-compliance with 2014 MCLE requirements.

LAW DAY 2016 REPORT

Using a PowerPoint presentation, Law Day Committee Co-Chairs Richard Vreeland and Albert Hoch Jr. reviewed the results from the committee's statewide Law Day efforts, which had three components – contests for grades pre-K through 12, Ask A Lawyer free legal advice and *Ask A Lawyer* TV show. The contests this year had 698 entries. The TV show, aired statewide on OETA, featured segments on female incarceration and alternative Oklahoma programs, legal impact of same-sex marriage cases and the importance of juries.

This was the OBA's 38th year to offer free legal advice. A total of 32 counties participated with 272 lawyers volunteering \$72,450 worth of legal services that helped 1,721 Oklahomans. A wide variety of promotion efforts were utilized with the Law Day message estimated to have reached 4.3 million people. The committee worked in conjunction with the OBA Communications Department to achieve these results. As part of the report, the committee leaders described several goals for improvements for next year. Board members commended the Law Day Committee for its work and successful efforts. Governor Marshall suggested the report be shared with the Supreme Court, and Executive Director Williams said he would do so.

JUROR APPRECIATION PROJECT

Albert Hoch Jr. briefed the board on the recommendations of the Law Day Committee's Juror Appreciation Subcommittee, which is commissioned to create ways to express appreciation to citizens who serve on juries and to call attention to the importance of jury trials in administering justice, as requested by President Isaacs. The subcommittee recommends that a large certificate of appreciation mounted on a 12 x 15" plaque be presented by the OBA president to each presiding judge or his/her designee at every Oklahoma courthouse. It also recommends an 18 x 24" poster be created that courthouses will be asked to display in their jury rooms or in places of high visibility. Two posters will be offered to each courthouse. For courthouses with digital display monitors in hallways for general information, a juror appreciation graphic will be created that can be used throughout the year. He showed board members samples of both the certificate and the posters. President Isaacs will make as many presentations as possible, but board members may be asked to help if needed. The board thought the samples were excellent. President Isaacs shared that Judge Rick Bozarth sent him a sample of an old certificate previously presented to jurors upon completion of their jury service. President Isaacs asked if that might be added to the juror appreciation activities planned.

INDIAN LAW SECTION REQUEST TO INCREASE DUES

The board approved the Indian Law Section's request to increase its annual section dues from \$15 to \$20.

LEGISLATIVE REPORT

Executive Director Williams briefed the board on recent legislative activities.

SOLO & SMALL FIRM CONFERENCE

Executive Director Williams said the reception will still take place on Thursday evening even though the board meeting has been moved to Saturday since President Isaacs will be in trial late that week. MAP Director Calloway reviewed the programming planned for the conference.



The Oklahoma Bar Association Board of Governors met at the Choctaw Casino Resort as part of the Solo & Small Firm Conference in Durant on Saturday, June 25.

REPORT OF THE PRESIDENT

President Isaacs reported he gave the welcome speech at the Sovereignty Symposium, presented 50- and 60-year membership pins at the Oklahoma County Bar Association annual awards luncheon and spoke on the history of trial by jury at the Washington County Bar Association meeting.

REPORT OF THE PRESIDENT-ELECT

President-Elect Thomas reported she attended the Oklahoma Attorneys Mutual Insurance Co. board dinner, annual meeting and Board of Directors meeting. She reviewed numerous emails and letters regarding confidential disciplinary proceedings and general counsel's response in addition to meeting with Susan Damron to finalize details for the OBA cruise to Cuba in July 2017.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he participated in an Access to Justice Commission conference call, legislative wrap up meeting, staff technology meetings and purge day at the OBA. He conducted staff evaluations and did a TV interview about the attorney discipline process for an *In Your Corner* segment on KFOR. He attended the monthly staff celebration, a state, federal, tribal coalition meeting, Oklahoma County Bar Association awards luncheon and meeting with a Law-related Education Committee co-chair.

BOARD MEMBER REPORTS

Governor Coyle reported he attended the Oklahoma County Bar Association meeting and Oklahoma County Criminal Lawyers meeting. **Governor Gotwals** reported he attended the Tulsa County Bar Association Family Law Section meeting/CLE, TCBA Board of Directors meeting, TCBA Litigation Section meeting, OBA Solo & Small Firm Conference and OBA Family Law Section business meeting. He chaired the Tulsa County Bar Foundation meeting and attended the TCBF Golf Committee meeting. **Governor Hennigh** reported he attended the Garfield County Bar Association meeting. **Governor Hicks** reported he attended the Tulsa County Bar Foundation Board of Trustees meeting and OBA YLD reception at the Solo & Small Firm Conference. He also reviewed multiple letters addressed to board members regarding confidential disciplinary proceedings and the general counsel's response. **Governor Hutter** reported she spoke at the OBA Solo & Small Conference session on divorce. She also attended the Cleveland

County Bar Association executive meeting, regular meeting that included 50-year pin presentations and the officer slating meeting. **Governor Kin-slow** reported he attended the Comanche County Bar Association meeting and participated by phone in the Member Services Committee meeting. **Governor Marshall** reported he attended the OBA Solo & Small Firm Conference and participated in the Legal Intern Committee meeting. **Governor Porter** reported she attended the OBA Solo & Small Conference and Cleveland County Bar Association Law Day event which was a CLE on the Scopes Monkey Trial. She also chaired the OBA General Practice/Solo & Small Firm Section annual meeting. **Governor Sain**, unable to attend the meeting, reported via email he attended the monthly McCurtain County Bar Association meeting. **Governor Tucker** reported he attended the Law Day Committee meeting. **Governor Weedn**, unable to attend the meeting, reported via email he attended the Ottawa County Bar Association meeting and planning meeting for an upcoming July 12 judicial reception. He invited board members to attend. He also announced with the retirement of his law partner he has accepted a position in a new firm, Morrow Watson James & Weedn.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Will reported he chaired the OBA YLD meeting held in Enid. After the meeting, board members did a community service project at Loaves and Fishes, a neighborhood food pantry that grows vegetables and fruit for needy and homeless people in the Enid area. They cleaned the premises and weeded the gardens. The

division held its midyear meeting in conjunction with the Solo & Small Firm Conference and held a YLD networking event. He thanked board members who attended the networking event and was happy to report nearly 30 young lawyers, in addition to board members, attended the conference, which surpassed his goal. Governors Hicks and Porter said they heard many good things about the fun reception hosted by the YLD.

BOARD LIAISON REPORTS

Governor Marshall reviewed the discussions of the Legal Intern Committee. Governor Gotwals reported the Professionalism Committee is working on its symposium. Governor Kinslow reported the Member Services Committee met but has nothing to report. Governor Tucker reported the Law Day Committee did a wrap up of this year's event, reviewed final statistics and discussed improvements for next year. The Juror Appreciation Subcommittee will survey court clerks soon regarding the best format for posters in each courthouse. Executive Director Williams reported the Military Law Committee met and discussed a new statute regarding post traumatic distress syndrome. Governor Porter report-

ed the Women in Law Committee is moving forward in the planning of its fall conference and is seeking sponsorships. They held a social following the meeting.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx spoke briefly regarding an email from a disgruntled complainant. A written report of Professional Responsibility Commission actions and OBA disciplinary matters for May was submitted to the board for its review.

CLE ANNUAL REPORT

Educational Program Director Damron reported the numbers in the 2015 report are not 100 percent accurate because there was a switch from one software to another, which affected the ability to generate reports. She said the sales of CLE programming was down, but expenses had been reduced. Because of the availability of free CLE provided by the Tulsa County Bar Association for its members, the OBA has greatly reduced the live OBA seminars conducted there. She reported CLE revenue remains solid, and many members are taking advantage of the free movie night CLEs in Oklahoma City.

JUROR APPRECIATION CERTIFICATE

A sample of the certificate that will be presented to presiding judges for each county courthouse was shown to board members. The board approved the certificate.

STAFF REPORT

Executive Director Williams praised General Counsel Hendryx for the work she does that is often behind the scenes and called attention to the excellent work done by staff members at the Solo & Small Firm Conference. Board members expressed their appreciation. Executive Director Williams announced two Law-related Education employees will retire on July 8, and the intent is not to fill the positions. The LRE programs have changed and grants funding the programs are no longer available. A new emphasis on access to justice is planned. A going-away luncheon will be held soon at the bar center.

NEXT MEETING

The Board of Governors met on July 22 via telephone conference. A summary of those actions will be published after the minutes are approved. The next board meeting will be at 10 a.m. Friday, Aug. 26 at the Oklahoma Bar Center in Oklahoma City.

Grantee Spotlight: Oklahoma Lawyers for Children

A Walk in A Child's Shoes

By Candice Jones

Almost every single day in Oklahoma County, a child is removed from their home due to neglect or abuse. Often times multiple children are removed from the same home. This is the story of three sisters, Marta, Paula and Deena. At ages 10, 7 and 5 these girls were taken into DHS custody due to severe neglect, physical abuse and sexual abuse. Marta, age 10, would not make eye contact with anyone. She was dramatically malnourished, approximately 4 feet tall and less than 50 pounds.

Paula, age 7, was experiencing organ failure, and when she was placed in shelter she would hoard food under her bed. Deena, age 5, was still in diapers and barely able to talk. All three girls had been raped by two of their mother's partners – Deena beginning at age 2, Marta at 6 and Paula at 3. Neighbors who were supposedly "care-givers" would physically and sexually abuse the girls. An Oklahoma Lawyers for Children attorney was assigned to their case.

When there are reports of abuse and/or neglect, DHS will remove children from their home. If a child cannot

be placed with a suitable relative or in an emergency foster home, sometimes the child has to remain with the DHS worker, often sleeping on a cot in the worker's office until placement can be located. The emergency show cause hearing takes place within two days of the child being picked up by DHS. At this hearing, the parent, the OLFC attorney, the assistant district attorney and the social worker assigned to the case all come before the judge. After the hearing, the parent is often allowed to visit their child for the first time since DHS intervention. The supervised visit



**Oklahoma
Lawyers
for Children**

takes place just floors above the judge's chambers in the Oklahoma County Juvenile Justice Center.

At any given time, there are about 2,500 children in the foster care system in Oklahoma County. The majority of kids are only 3-6 years old.



(From left) OLFC President Tsinena Thompson; Judge Lisa Tipping Davis, presiding judge Oklahoma County Juvenile Justice Center; Jim Larimore, OLFC board member; and Don Nicholson, OLFC co-founder

This is a confusing, scary and uncertain time for these young children making it crucial for them to have an OLFC attorney with them every step of the way.

In the case of Marta, Paula and Deena, the sisters were placed with a foster family who loved and cared for the girls and wished to adopt them. However, their mother wanted them back, claiming that the men were no longer in her life and that the abuse did not happen while in her care. Previous DHS workers had moved, witnesses were scattered, but OLFC lawyers, private investigators and court reporters traveled out of state to find the evidence needed.

Over the month-long trial, they were able to save the girls from their abusers and prepare the adoption for the foster parents. Marta is now a junior in high school and a soccer star. She is making plans for college. Paula is happy, healthy and loves basketball. Deena is thriving, loves to sing and adores the color yellow.

In this particular case, it was in the best interest of the children to be permanently removed from their home. Lance Phillips, a part-time on-site attorney for OLFC says, "If a parent is willing to work and take the appropriate steps to prove they will care for their child, I will help them all day long. If they are not willing to do this, then I become their worst enemy." Statistics show it is best for a child to remain with their birthparents if possible. Unfortunately, not all cases end up this way. OLFC attorneys continue to defend each child until they

reach an outcome that ensures their safety, health and well-being.

There is always a need for attorney volunteers to represent children in legal proceedings. Tsinena Thompson, who was introduced to the program as a volunteer, says, "Before I got involved with Oklahoma Lawyers for Children, it was very hard to understand exactly this need,

“Statistics show it is best for a child to remain with their birthparents if possible. Unfortunately, not all cases end up this way.”

but as I have worked with the organization, the people, the children, the families, it has probably been the very best thing of my life. I would encourage anybody else to, because the life you change may be your own." Ms. Thompson is currently president of the organization.

OLFC represents children at show cause hearings, serves as the attorney for children in further stages of deprived case proceedings, represents as best-interest attorney for children and provides other legal services such as friendly suits, adoptions, guardianships, name changes and more. They also provide non-legal services including child intake processing, foster home

reassessments, a mentorship program for teens and an annual tennis clinic for children in foster care.

Oklahoma Lawyers for Children was founded in 1997 by attorneys Don Nicholson and Kent Myers. Since the organization's inception, they have never turned down a case. OLFC operates without any tax dollars relying on funding from private grants, fundraisers and the Oklahoma Bar Foundation.

Learn more about OLFC and how to get involved by attending a Walk in a Child's Shoes tour, presented by Oklahoma Lawyers for Children. Tours are held twice a month at the Oklahoma County Juvenile Justice Center in Oklahoma City. To sign up for a tour or to learn more about pro bono opportunities, contact Matt Epting, OLFC's director of development at mepting@olfc.org or by phone at 405-232-4453.

Your support of the Oklahoma Bar Foundation provides funding for organizations like OLFC. The Fellows Program is the driving force that makes real change in children's lives. Join the Fellows Program by making a yearly contribution of \$100 or more. If you are already a fellow, consider increasing your yearly donation. Sign up online at www.okbarfoundation.org/donate.

ABOUT THE AUTHOR



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



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Fellows Program – individuals

Community Fellows Program:

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_____ \$5,000/year *Community Champion*
_____ \$7,500/year *Community Pillar*
_____ \$10,000/year *Community Cornerstone*

Community Fellow – law firms, companies, organizations

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Thank you for your contribution. Your gift is tax deductible.

Kick It Forward – Helping Our Struggling Colleagues With Their Bar Dues

By Bryon J. Will

In 2014, the OBA Young Lawyers Division (YLD) established “Kick It Forward” (KIF) to help struggling attorneys with their bar dues. Our 2015 YLD Chair, LeAnne McGill, established and introduced KIF after the YLD realized there was a need for a financial assistance program for attorneys of all ages who are struggling to pay their annual bar dues. In 2014 a young lawyer wrote a letter to the YLD asking if the OBA provided relief for those struggling to pay their annual dues. Come to find out there was no such assistance provided. After a year of organization, the KIF program was established.

The lawyers we are helping are those who are facing an array of difficulties such as medical crises, family matters and lack of job opportunities, all of which contribute to their inability to earn an income and pay for one of our most important expenses as Oklahoma lawyers, our bar dues. When establishing the KIF program it was our belief that our colleagues should not be susceptible to losing their license to practice law because they are unable to afford their annual dues. As part of the application



The Pitts was among 17 teams competing in the first KIF tournament.

process, recipients must be willing to give back to KIF when they get back on their feet.

In August of 2015 the YLD organized a kickball tournament to kick off the new program and to bring in the initial funds. The kickball tournament raised over \$13,000. We also received an additional \$1,700 in donations by fellow OBA members who contributed with their annual bar dues.

Information on those receiving help in 2016 is confidential. The applications we read were heartbreaking. These attorneys had to make a choice of either feeding their families or paying their bar dues. No one who makes an effort in trying to

WHO QUALIFIES

Eligible recipients will be attorneys who:

1. Are currently licensed and in good standing with the OBA
2. Reside primarily in Oklahoma
3. Are actively engaged in the practice of law or searching for legal employment
4. Are earning less than \$1,500 gross each month
5. Are willing to “Kick It Forward” and pay at least the amount paid on the attorney’s behalf back into the program at a future date

HOW TO DONATE

1. Mail a check payable to the OBA, P.O. Box 53036, Oklahoma City, OK 73152. Include the name "Kick It Forward" on the lower left corner of the check.
2. Look for the donation line on the paper version of your dues statement. Mark and include with your dues payment.
3. Donate online when paying your dues electronically.

maintain a law practice while facing dire personal matters should have to make that decision, especially when there is help out there for them. That is where KIF comes in. This year we were able to help 10 members. As this program gains awareness we believe that every year the number of applications will rise.

For those in need of this assistance you can find the application on the OBA website at www.okbar.org/members/

YLD/kickitforward. We are on your side and here to help.

For those of you who have contributed, we thank you for your support and donation.

A PREMISE ON THE MIDYEAR MEETING

On June 24 the YLD met for our annual Midyear Meeting that was in conjunction with the OBA Solo & Small Firm Conference. We had a great turn out of young lawyers! Our goal this year was 20 young lawyers. We completely surpassed that number. Thank you to all of you who attended.

At the meeting, we hosted and introduced our fellow young lawyers to the functionality of the YLD and included input from all members. After the meeting, the YLD hosted a networking session where the young lawyers had the opportunity to network with veteran lawyers from across the state. Thank you to President Isaacs, the OBA Board of Governors, as well as the several other veteran OBA members who attended. We appreciate your support.

A PREMISE ON THE JULY MEETING

On July 23 the YLD met for our July meeting. Each year at the July meeting the YLD members stuff bar exam survival kits with snacks, candy and stress balls. All items were geared toward making the bar exam a little more comfortable. Remember, we have all been there. On Tuesday, July 26, we passed out the kits to examinees in both Oklahoma City and in Tulsa.

Our next YLD monthly meeting will be on Aug. 27 in Grove. We will be doing a community service project in conjunction with the meeting. If interested in attending and helping with the community service project, please contact me, and I can provide the details.

Till next time.

ABOUT THE AUTHOR



Bryon Will practices in Oklahoma City and serves as the YLD chairperson. He may be contacted at bryon@bjwilllaw.com.



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Supreme Court Justice Steven Taylor to Retire

Supreme Court Justice Steven Taylor submitted a letter stating his intention to retire at year's end. Justice Taylor has served on the bench for nearly 33 years, and his retirement will take effect Dec. 31.

"It has been my honor to serve this great state and my hope is that I leave a legacy of a firm dedication to the rule of law," Justice Taylor wrote.

He was appointed to the Supreme Court in 2004 by then-Gov. Brad Henry. He served as chief justice from 2011 until 2013.

Before his appointment to the Supreme Court, he spent more than 20 years as a trial judge in various state courts. He conducted more than 500 jury trials, gaining prominence when he presided over the trial of convicted Oklahoma City bombing conspirator Terry Nichols. Many in the legal community at the time said no other judge in Oklahoma could have handled the case as well as Justice Taylor.

Justice Taylor was the recipient of the OBA Award of Judicial Excellence in 2003 and OBA President's Award in 2011.



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OBA Member Reinstatements

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

Brian Dean Dill
OBA No. 15989
4425 Wieuca Rd., N.E.
Atlanta, GA 30342

Mary Jean Little
OBA No. 15804
395590 W. 3900 Road
Skiatook, OK 74070

Important Upcoming Dates

Don't forget the Oklahoma Bar Center will be closed Monday, Sept. 5, in observance of Labor Day. Be sure to docket the OBA Annual Meeting to be held in Oklahoma City Nov. 2-4.



Kudos

Gary W. Farabough of the Law Firm of Pasley Farabough & Mouledoux in Ardmore was recently appointed by the Carter County Commissioners to the Board of Trustees for the Southern Oklahoma Library System to represent Carter County. The appointment to the board is for a three-year term.

The Institute for Divorce Financial Analysts (IDFA) announced **James C. Peck** of the Peck and Morgan Law Firm in Oklahoma City recently completed a program in professional divorce analysis and is now a certified divorce financial analyst (CDEA). IDFA trains professional financial planners, accountants and lawyers to determine the financial needs and outcomes for divorcing individuals and couples.

The National Black Lawyers (NBL) recently named Crowe & Dunlevy attorneys **André B. Caldwell** and **Anthony Hendricks** to its list of Top 40 Under 40 Black Lawyers in Oklahoma City. This honor is given to a select group of lawyers for their superior leadership skills and qualifications in the field.

Jose L. Blanco of Legal Aid Services of Oklahoma has been recognized as the 2016 Public Servant of the Year by the National Association of Social Workers Oklahoma

Chapter. Mr. Blanco focuses his practice at Legal Aid on protecting the rights of persons with disabilities. He is a 2006 graduate of Western Michigan University Cooley Law School.

Ronald C. McCallum with Simon Greenstone Panatier Bartlett PC has been elected to membership in the fellows of the Texas Bar Foundation. Fellows of the Texas Bar Foundation are selected for their outstanding professional achievements and their demonstrated commitment to the improvement of the justice system throughout the state of Texas.

The American Arbitration Association (AAA) has named **Chris S. Thrutchley** as Oklahoma's AAA Employment Arbitrator. Mr. Thrutchley is a shareholder with the law firm of GableGotwals. A nonprofit organization, AAA provides alternative dispute resolution services to parties, including individuals and organizations, who wish to resolve legal conflicts outside of the courtroom.

Phillips Murrah Attorney **Steven J. Goetzinger** is beginning his second term as mayor of Nichols Hills. Mr. Goetzinger joined the Nichols Hills City Council in May 2011 and was first elected mayor in 2013. He represents Ward 3. His law practice centers on oil, gas and real estate law.

Munsch Hardt Kopf & Harr shareholder **Benton Wheatley** has been selected to join the Editorial Board

for the *Construction Law Journal*. Having previously written for the journal and spoken at the Texas Construction Law Section's annual conference, Mr. Wheatley will be a valuable member to the board.

James M. Branum graduated May 21 with a certificate in theological studies from Anabaptist Mennonite Biblical Seminary in Elkhart, Indiana. Mr. Branum will continue to serve with Joy Mennonite Church of Oklahoma City as minister of peace and justice. He received his J.D. from the OCU School of Law.

Michael Burrage will be inducted into the Oklahoma Hall of Fame this year. Mr. Burrage earned a J.D. from the OU College of Law in 1974. He was in private practice in Antlers from 1974 to 1994 and was named Outstanding Young Lawyer in Oklahoma in 1977. He also served as president of the Oklahoma Bar Association in 1990.

St. Gregory's University announced the appointment of **Michael A. Scaperlanda** as the university's 16th president. Mr. Scaperlanda also serves as a scholar participant in the Fr. Stanley Rother Hispanic Cultural Institute of Oklahoma City and Norman, and teaches in OU's Visions of America Summer Institute for high school teachers and OU's Warrior-Scholar Project.

Tulsa County Assistant Public Defender and mental health team leader **Stanford Clayton Lane** received

the Patrick A. Williams Outstanding Indigent Defense Attorney Award for the Oklahoma Criminal Defense Institute. Mr. Lane started working with the Tulsa County Public Defender's Office in 1988 as a public defender.

Donna J. Jackson was featured in the *National Academy of Elder Law Attorneys News* (NAELA News) for her expertise in tax and elder law. Ms. Jackson received her J.D. from the OCU School of Law in 1988 and an LL.M. in elder law from Stetson College of Law in 2010. She opened a practice to help people protect their family businesses and wealth.

Robert Murphy, an administrative law judge in Spokane Valley, Washington, is the subject of a feature article by the ABA Center on Children and the Law. Judge Murphy was nominated by Ms. Pimley as a Reunification Hero for his work as an associate district judge in Payne County.

Monty B. Bottom of FolioMart, Huff, Ottaway & Bottom has been elected a fellow in the American College of Trial Lawyers. This follows his recent election to membership in the International Society of Barristers.

McAfee & Taft labor and employment attorneys **Joshua Solberg** and **Paul Ross** have been named members of the Employers Counsel Network (ECN), an affiliation of leading lawyers and law firms across the U.S. and Canada. Mr. Solberg represents businesses in all areas of labor and employment law, including litigation in both federal and state courts and in mediation and arbitration.

Mr. Ross also represents employers exclusively in labor and employment and previously served as leader of the firm's labor and employment group.



Durbin, Larimore, Bialick announced that **David L. Kearney** has joined the law firm's energy and environmental practice. Mr. Kearney brings 31 years of legal experience in oil and gas, environmental and insurance litigation. He earned his J.D. from the OU College of Law in 1985.

Nisha Moreau announced the opening of her law practice, Moreau Law Firm PLLC, with offices at 119 N. Robinson, Ste. 320, Oklahoma City, 73102. Ms. Moreau received her J.D. with honors from SMU Dedman School of Law in 2006. Her practice emphasizes the areas of insurance and commercial litigation, business transactions and family and immigration law.

The firm of Baer & Timberlake PC announced that **Chynna G. Scruggs** has joined the firm as an associate. Ms. Scruggs is a 2015 graduate of the OCU School of Law.

The Floyd Law Firm announced **David Clay Floyd** has rejoined the firm after earning his LL.M. in taxation from the Northwestern University Pritzker School of Law in Chicago, with a certi-

fication in tax controversies. Mr. Floyd earned his J.D. from the OU College of Law in 2013. He represents county and municipal political subdivisions, in the capacity of bond counsel, with a focus on the tax implications faced by those entities in conjunction with the financing of their capital improvement projects.

Spencer Fane announced former Oklahoma Gov. **Brad Henry** has joined the firm. Gov. Henry's legal career includes experience representing both public and private sector clients in government and administrative law. He earned his J.D. from the OU College of Law, where he served as managing editor of the *Law Review*.

Shelton Walkley Mackey announces the addition of attorney **Mary P. Tate Westman**. Ms. Westman graduated with honors with her J.D. from the OCU School of Law in 2015. Her areas of practice include healthcare fraud and abuse (*qui tam*), medical and nursing licensure defense, general healthcare law issues, nursing home abuse, civil appellate practice and estate planning.

Steve Litke has joined Blaies & Hightower LLP as a partner in Fort Worth. Mr. Litke's practice areas include business and corporate mergers and acquisitions and intellectual property and technology. He received his J.D. with honors from the TU College of Law in 1996.

Morgan Dodd joined Andrews Davis in May 2016. His practice focuses on oil and gas law and the rendering of title opinions. Mr. Dodd is admitted to practice in the Oklahoma Supreme

Court, all Oklahoma district courts and in the state of Illinois. He received his J.D. from Washington University in St. Louis in 2011.

Michael J. Davis has been promoted to director of compliance and safety at Southeastern Oklahoma State University. Mr. Davis previously served as the coordinator of disability services. He received his J.D. in 2010 from the OU College of Law.

Nick Merkley has joined GableGotwals as a new shareholder in the firm's Oklahoma City office. Mr. Merkley's primary practice will focus on litigation in the areas of energy and products liability. He received his J.D. from the OU College of Law.

National Litigation Law Group (NLLG) welcomes **Solola Webb** as its newest attorney. Ms. Webb earned her J.D. from OCU in 2007 and was admitted to practice before the state courts of Oklahoma in 2008. At NLLG, she will be joining its national consumer debt litigation team.

Moyers Martin announces **MD. Faith Orłowski** is now an attorney with the firm. Ms. Orłowski focuses her practice on oil and gas matters, commercial real estate and related business issues, and she also maintains an active practice in estate planning, probate and trusts. She received her J.D. from the University of Texas at Austin in 1978.

Crowe & Dunlevy has named **Elizabeth "Libby" Scott** as chair of the firm's administrative and regulatory practice group. **André B. Caldwell, Jordan K. Field, Donald K. Shandy** and **Evan**

G.E. Vincent were named as directors in the firm's Oklahoma City office. The firm also named **Sanford C. Coats** and **Thomas B. Snyder** as co-chairs of the firm's established criminal defense, compliance and investigations practice group.

Tom R. Russell accepted a position as senior attorney with the law firm of Evans & Davis where he will serve as head of their corporate and transactional divisions. Mr. Russell's primary areas of practice are business and commercial transactions, including oil and gas law, mergers and acquisitions, contract drafting and negotiations, corporate governance and business entity selection and formation. Mr. Russell is a 2006 graduate of the OU College of Law.

Hall Estill announced **Michael Keester** has been elected to the firm's Executive Committee. Mr. Keester joined the firm in 1993 and has served for many years on the firm's Board of Directors. He has been practicing litigation in Tulsa for over 30 years.

McAfee & Taft announced the addition of **Tracy A. Poole** and **Tyler P. Evans** to the firm. The firm also announced the move of their Tulsa team to new, expanded offices in Williams Center Tower II, effective July 1. Phone numbers and other contact information remain the same. The new address is Williams Center Tower II Two W Second Street, Suite 1100, Tulsa, 74103.

Dawn M. Goeres has been named a partner at the law firm of Pignato, Cooper, Kolker & Roberson. Ms.

Goeres practices in the area of complex insurance litigation, coverage analysis and bad faith law.

Jon Pitcher has joined the Oklahoma City-based firm of Smith Simmons PLLC as of counsel attorney. Mr. Pitcher advises clients in Oklahoma and Texas on corporate and transactional matters.

Tulsa County Bar Association has released the names of its 2016-2017 officers. **Matt Farris**, an attorney with Rogers and Bell, will serve as president of the Tulsa County Bar Association. **Christina Vaughn** with Crowe & Dunlevy is president-elect, and **Zach Smith** of Gorospe & Smith will be past president. **Ann Keele** with Monroe & Keele was elected vice president; **Kara Greuel**, Greuel Law Firm, will be treasurer; **Richard D. White**, Barber & Bartz, will be secretary; **Eric Clark**, Edmonds Cole Law Firm, and **Kara Pratt**, Barber & Bartz, will serve as director at large; **Julie A. Evans**, Julie A. Evans PC, will be library trustee; and **Molly Aspan**, Hall Estill, will be American Bar Association delegate.



Linda Samuel-Jaha recently co-presented during the Oklahoma Association of Municipal Attorneys' Annual Spring Conference. The topic was "The Use of Body Worn Cameras and The Oklahoma Open Records Act."

A. L. Haizlip was recently a featured speaker at the National Business Aviation Association Business Aircraft Finance, Registration & Legal Conference in Boca Raton, Florida. Mr. Haizlip's presentation included information and supporting metrics relative to the FAA chief counsel's restructuring and reorganization of FAA field and headquarters legal organizations and operations; the exponential growth of the Central Region-Aeronautical Center counsel's legal practice portfolio that includes drafting and issuance of FAA aircraft opinions for both internal and external stakeholders who utilize noncitizen trusts; and the FAA Aircraft Registry's acceptance of digital signatures on U.S. civil aircraft registration forms and supporting transactional doc-

uments in accordance with the recently published Federal Register Policy Clarification letter and FAA Orders.

Amir Farzaneh presented "Intro to Family & Humanitarian Immigration Law" at the 19th Annual Federal Bar Association Immigration Conference in New Orleans on May 12. He also held a CLE at the OCU School of Law titled "Immigration Family Based & Asylum" on April 21, and presented a citizenship event at Norman Public Library on May 24. Mr. Farzaneh graduated from the OCU School of Law in 1995.

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 part-

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

Submit news items via email to:
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Articles for the Oct. 15 issues must be received by Sept. 12.

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Charles C. "Chuck" Baker of Cheyenne, Wyoming, died May 22 in Amarillo, Texas. As an all-state Wyoming high school athlete, Mr. Baker was recruited to play football for OU. While at OU, he was a member of Kappa Sigma Fraternity. For his senior year, he chose early admittance to law school over football, and graduated second in his class from the OU College of Law in 1957. He graduated Order of the Coif. He practiced law in Oklahoma until 1988, retiring as head of the litigation department at GableGotwals. Mr. Baker practiced in complex commercial litigation. He was a member of several bar associations and was inducted into the American College of Trial Lawyers in 1979.

William L. "Bill" Brock of Durant died Sept. 14, 2015, in Norman. Mr. Brock was born Aug. 9, 1936, in Durant. He graduated from Durant High School in 1954, where he participated in FFA. Mr. Brock attended OSU receiving a B.S. in animal husbandry in 1958. He completed the coursework for a M.S. in animal nutrition in 1959 but **was drafted into the Army before his research project could be submitted.** In 1964 Mr. Brock began studying at the OU College of Law while working as legislative assistant for the Oklahoma Department of Agriculture. He continued in private practice in Norman from 1967 to 1991. He served on the Norman Civic Improvement Council and helped establish the Norman Tennis League. He was a long-time member of Sooner Lions Club. An avid

tennis player, Mr. Brock's hobbies also included his auction company, Brock Auctioneers, boating and traveling.

John L. Bryant Jr. of Tulsa died Feb. 17. Mr. Bryant was born on June 2, 1952, in Hot Springs, Arkansas. He attended the University of Arkansas for his undergraduate degree and later obtained his J.D. from the University of Arkansas School of Law in 1978. He was admitted to practice law in Oklahoma in 1981. He was an avid collector of comic books and old movies.

Donald Keith Groom of Slick died June 22. He was born Dec. 1, 1920, in Slick. Mr. Groom graduated from Slick High School and went on to receive a B.S. in business in 1942. He worked for Phillips Petroleum in Bartlesville until **he joined the U.S. Navy in October of 1942.** He returned to work in 1946 for Phillips Petroleum until he passed the CPA exam and opened his first office in Ada. Mr. Groom received a J.D. from the OCU School of Law and established his practice in Oklahoma City. He practiced until the age of 93 when he retired to the Groom Ranch. He enjoyed watching the cows at the ranch, hoeing weeds and scooting down the rows in the garden on his bottom, picking green beans and eating hot tomatoes off the vine.

Carlyle Ronald Hatfield of Oklahoma City died July 2 in Middlefield, Ohio. He spent his life in Oklahoma City as an attorney who dedicated his career to helping people, especially those who were under represented. **Mr.**

Hatfield was a U.S. Army veteran. Contributions in Mr. Hatfield's memory are suggested to the charity of choice.

Mary Ellen Lee of Enid died July 11 in Oklahoma City. She was born Jan. 2, 1927, in Enid. Mrs. Lee was a life-long advocate of education. She taught English at U.S. Grant and John Marshall High School, was instrumental in the formation of advanced placement programs in the OKC school systems and earned several degrees of her own. She has a B.S. in English from OU and earned her J.D. from the OCU School of Law as one of the school's oldest graduates. She also studied at Cambridge University in England. Ms. Lee served the community in the practice of employment law for a few years in the 1980s and early 1990s. She did not desire formal services but the family welcomes communication from those who knew her and may consider an informal gathering at some time in the future.

Derril Wayne McGuire of Ardmore died June 11. He was born May 19, 1940, in Ardmore. Mr. McGuire graduated from Ardmore High School in 1958, received his B.S. from Southeastern Oklahoma State University in 1961 and earned his J.D. from the OU College of Law in 1964. He moved back to Ardmore to practice law with Frank Thomas, Charles Milor and Gene Ritter. He began a private practice in 1977. He was an ardent Ardmore Tiger football fan and an OU Sooner fan. Mr. McGuire served his community as the Ardmore

municipal court justice for over 17 years. In lieu of flowers, donations can be made to Oklahoma Baptist Home for Girls in Madill, Hope Pregnancy Center of Ardmore or First Baptist Church of Ardmore.

Charles Gurner Ming of Edmond died July 9. Mr. Ming was born Sept. 6, 1929, in Okmulgee. He graduated high school from Battle-ground Academy in Franklin, Tennessee. **He served in the Army at Fort Hood.** In 1953 Mr. Ming graduated from OU with a B.A. in business administration. He completed his J.D. at the OCU School of Law in 1967 and began practicing law privately. He served as a municipal judge for the City of Edmond and taught classes as a tenured professor at UCO. In 1984, he was appointed manager of the Oklahoma City Office of Housing and Urban Development. After six years in the Murrah Federal Building, he was transferred to Los Angeles, and then to the District of Columbia, to serve as advisor to the assistant secretary for administration of HUD. He

retired in 1997. Mr. Ming was a member of the Oklahoma City Gun Club, Quiet Birdman and was governor of Oklahoma City QB Hangar. In lieu of flowers, the family suggests contributions to Habitat for Humanity of Oklahoma or to St. Augustine Episcopal Church in Oklahoma City.

Nellie Catherine Perry of Kiowa County died May 28. She was born April 16, 1929, in Kiowa County and graduated from Hobart High School in 1946. She earned a bachelor's degree from OSU in 1950. She was a newspaper reporter and then taught junior high in Midwest City and Hobart. At age 50, she started law school and earned her J.D. from the OU College of Law in 1982. After graduation she joined her husband in the offices of Perry Gentry Perry & Marsh in Hobart. She retired in 2007. She was an acclaimed bankruptcy attorney and was chosen as a trustee on the Oklahoma Bar Foundation. She also served on the Oklahoma Board of Bar Examiners and helped organize Women's Law Day at

OU. She provided legal services pro bono for Girl Scouts of America, Youth Commission in Hobart and Great Plains Youth and Family Services. She received the Mary Emma Wilson Award for outstanding work in the prevention of child abuse in Oklahoma. In lieu of flowers, donations may be sent to Great Plains Youth and Family Services, Hobart Public Library, Kiowa County Historical Society in Hobart or your favorite charity.

**This memorial has been corrected from a previous version.*

Harold Lee Witcher of Tushka died July 6 in Oklahoma City. Mr. Witcher was born Jan. 7, 1929, in Rocky. He went to high school in Rocky and graduated from the OCU School of Law in 1955. He served as an attorney and a judge. **He proudly served in the U.S. Army during WWII.** Mr. Witcher enjoyed hunting deer, turkey, coyotes and fishing especially for stripers. He also enjoyed telling a good story, family time, evenings on the porch and listening to bluegrass music.

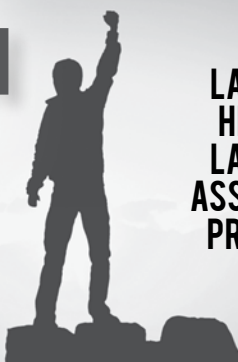
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8 Mobile Apps for Paperless Depositions

If you're taking the deposition, you're likely at the opposing counsel's office. Thankfully the world of mobile apps has grown, making working away from your office possible. Here are eight deposition apps for the mobile lawyer.

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How to Write Salutations and Signatures

One problem lawyers frequently face is how to address an unknown person. In this article, Bryan Garner gives suggestions on how to handle writing salutations and signatures.

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7 Shortcuts to Work Smarter, Not Harder

People say you can accomplish anything with hard work. But is that really true? Here are seven tips to help you work more efficiently and productively without expending any additional effort.

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POSITIONS AVAILABLE

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

MID-SIZED REGIONAL LAW FIRM HEADQUARTERED IN OKLAHOMA CITY SEEKS AN EXPERIENCED TAX AND/OR ERISA ATTORNEY. The qualified individual will: be able to advise firm clients on tax matters, including those facing corporations, partnerships and closely held businesses; ERISA; have significant tax experience with sophisticated/complex transactions; have a comprehensive understanding of, and experience with, issues involved in excise, income and employment tax matters, tax litigation, charitable organization and exemption issues; bring a solid understanding of state tax matters to the table; work closely with real estate, corporate, litigation and estate planning professionals within the firm on tax-related matters and be a mentor for junior tax attorneys. Further, the individual will have the following experience and education: at least 15 years of sophisticated transactional tax and/or ERISA experience and expertise in the tax-related issues involved in corporate transactions; outstanding academic credentials; an LL.M. will be viewed as positive, but is not required and highly developed communication skills, strong leadership abilities and an interest in being part of a dynamic and collaborative team. The firm will offer a competitive compensation and benefits package based on experience and qualifications as well as a relocation package if necessary. Interested individuals should contact send their resume to "Box B," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

AV RATED OKLAHOMA CITY LAW FIRM is seeking an attorney with 2-9 years of civil litigation experience. Emphasis on insurance defense, civil rights and employment law. The ideal candidate will be a self-starter with a strong work ethic, solid litigation experience and excellent communication and organizational skills. The compensation package is commensurate with level of experience and qualifications. Benefits include health insurance, life insurance and 401(k) with match. Applications will be kept in strict confidence. Please submit resume and salary requirements to Box Y, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

A MEDIUM SIZED AV RATED, WELL ESTABLISHED OKLAHOMA CITY LAW FIRM WITH A DIVERSIFIED PRACTICE IS SEEKING TO EXPAND. We are looking for an attorney with an established client base to join our law firm. Please send resumes to "Box X," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

POSITIONS AVAILABLE

SOUTH TULSA LAW FIRM HAS AN OPENING FOR A PARALEGAL. We are looking for a candidate that has background experience in insurance defense; trucking experience would be a plus. The duties involve the management of all of the documents related to the defense of personal injury cases. The ability to request, organize and review medical records is a must. The duties also include preparing matters for significant events such as a deposition, mediation or trial. Candidate should have excellent organization skills. Please send your resume to amy@csmlawgroup.com.

HOBBS STRAUS DEAN & WALKER, LLP, a national law firm with offices in Washington D.C., Portland, Oklahoma City, Sacramento and Anchorage SEEKS TO ADD BOTH A NEW ASSOCIATE ATTORNEY AND AN EXPERIENCED ATTORNEY TO ITS OKLAHOMA CITY OFFICE. Hobbs Straus specializes in Native American and Alaskan Native law, and has worked for over 30 years to realize positive change in Indian Country. Our attorneys are dedicated to promoting and defending sovereign rights, expanding opportunities for tribes and improving the lives of American Indians and Alaska Natives. Qualifications for candidates for both positions include: 1) superior research and writing skills; 2) strong academic performance; 3) strong communication skills; and 4) a commitment to tribal representation. The firm requests candidates for the associate attorney position have a minimum of 0-4 years' legal experience. Candidates for the experienced attorney position should have 5+ years' legal experience. Interested candidates should submit a cover letter, resume, law school transcript and writing sample to Ms. Cindy Bonewitz at cbonewitz@hobbsstraus.com. Thank you for your interest in Hobbs, Straus, Dean & Walker, LLP. www.hobbsstraus.com.

THE MUSCOGEE (CREEK) NATION IS SEEKING APPLICATIONS FOR THE POSITION OF ASSISTANT ATTORNEY GENERAL. The assistant attorney general is directly responsible to the attorney general and will assist in carrying out any function, duty or responsibility delegated to the attorney general. The assistant attorney general will provide assistance, advice and counsel to national council representatives, officers and employees of the Muscogee (Creek) Nation and boards and committees on matters of official interest. Applicant must be a graduate of an accredited law school, knowledgeable and/or have experience of federal Indian law, licensed to practice law in any state and must be in good standing with that jurisdiction, willing to become licensed to practice law in Oklahoma, must be a member of the Muscogee Nation Bar Association in good standing or be eligible to become a member. Applicant must also have 2-5 years civil litigation experience. Submit resume, job application, salary requirement, list of references and writing sample no later than Sept. 2, 2016, to Muscogee (Creek) Nation Personnel Services, P.O. Box 580, Okmulgee, OK 74447. Please visit www.muscogeenation-nsn.gov for the job application.

POSITIONS AVAILABLE

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

HILTMAN & BREWER, PC IS ACCEPTING RESUMES FOR AN ASSOCIATE ATTORNEY position with 4+ years' experience. Primary skills would include brief writing in the areas of civil, commercial, personal injury, product liability and defense litigation. Offering a competitive salary with excellent benefits. Send resume, writing sample, salary requirements and references to stodd@hbokc.law.

ESTABLISHED STATEWIDE LAW FIRM SEEKS WORKERS' COMPENSATION ATTORNEY with 0 experience needed. Salary Negotiable. Will consider those sitting for July Bar. Send resumes to jobs@lawterlaw.com.

CURRENT OPENING FOR AN ASSISTANT DISTRICT ATTORNEY FOR DISTRICT 27 which includes Adair, Wagoner, Cherokee and Sequoyah Counties. State benefits and salary commensurate with experience. Some travel required. Please email a resume to the First Assistant, Jack Thorp, at jack.thorp@dac.state.ok.us.

THE LITIGATION UNIT OF THE OFFICE OF THE OKLAHOMA ATTORNEY GENERAL IS SEEKING A LICENSED ATTORNEY with a minimum of 5 years of experience to handle civil actions and proceedings in state, federal and appellate courts, in the areas of employment law and civil rights. Excellent research, writing and advocacy skills are required. A writing sample must accompany resume to be considered. Occasional travel is required. Salary is commensurate with experience in accordance with office pay scale. Resume and writing sample should be submitted by Aug. 31, 2016. The Office of the Attorney General is an equal employment opportunity employer. All individuals are welcome to seek employment with the Office of the Attorney General of Oklahoma regardless of race, color, sex, age, national origin, creed, political affiliation, religion or disability, so long as the disability does not render the person unable to do the work for which employed. Applicants will not be discriminated against before or during their employment. Send resume and writing sample to resumes@oag.ok.gov or mail to Oklahoma Attorney General, 313 NE 21st Street, Oklahoma City, OK 73105.

THREE TO 5 YEAR LAWYER WITH WORKERS' COMPENSATION, PERSONAL INJURY AND SOCIAL SECURITY EXPERIENCE. Send writing sample with resume to "Box CD," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

POSITIONS AVAILABLE

THE BUREAU OF INDIAN AFFAIRS, EASTERN OKLAHOMA REGION, MIAMI AGENCY, IS ACCEPTING PROPOSALS FOR A PUBLIC DEFENDER for fiscal year 2017. The public defender is responsible for the defense of criminal cases when the defendant is an indigent person and the representation of indigent Indian parents in cases where custody has been removed. A potential contractor must be a member of the Oklahoma Bar Association with at least five years criminal law and/or Indian law experience. The public defender works one day a month, which is to attend court on the third Thursday of every month in Miami, Oklahoma. This is not a full-time position. This opportunity is a firm fixed price contract with one base year and 4 option years. If you are interested in possibly fulfilling this requirement please go to [FedBizOpps at FBO.gov](http://FedBizOpps.at.fbo.gov) or [FedConnect at Fedconnect.net](http://FedConnect.net) and search reference/solicitation number A16PS01075.

WELL-ESTABLISHED MIDTOWN OKC AV-RATED FIRM SEEKS TO EXPAND ITS COMMERCIAL PRACTICE by retaining established lawyer with experience in business transactional work, real estate acquisitions, financing, sales and leasing, entity formation and maintenance and commercial litigation experience. All responses will be held in confidence. Salary commensurate with experience. Please submit resumes to "Box JJ," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

THE OKLAHOMA INDIGENT DEFENSE SYSTEM HAS AN OPENING FOR 2 DEFENSE COUNSEL POSITIONS IN OUR CLINTON OFFICE AND 1 DEFENSE COUNSEL POSITION IN OUR MANGUM OFFICE. Salaries for these positions are commensurate with qualifications and within agency salary schedule range. Excellent benefits. Any interested applicant should submit a letter of interest and resume by August 31, 2016 to the attention of Angie L. Cole, Chief Administrative Officer, P.O. Box 926, Norman, OK 73070 or to Jobs@oids.ok.gov. OIDS is an Equal Opportunity Employer.

POSITIONS WANTED

AV PREEMINENT RATED ATTORNEY WITH OVER 30 YEARS' LITIGATION EXPERIENCE SEEKS POSITION with intellectual property or commercial litigation firm. Resume, references and listing of representative cases available upon request. Send inquiries to ok.iplaw@gmail.com.

FOR SALE

FOR SALE FOB TULSA, PACIFIC REPORTER AND PACIFIC SECOND to about 440, Oklahoma Decisions thereafter to date. Excellent condition. Buy all for \$15 per volume. Andrew T. Dalton Jr., 918-576-4806, 918-581-2711 (w), td1083@cox.net.

Why I Am Walking Away From the Practice of Law

By Paige Lee

Don't feel sorry for me. I am blessed beyond measure. I have practiced law for more than 20 years; I can't do it anymore.

I had my first child one month before I started law school, my second during spring break of my 2L year and my third just weeks after taking the bar exam. I have almost always been in private practice. Starting your own firm straight out of law school is hard. You did not learn how to actually practice law in law school, and you have no contacts. It is a DIY job and, at least 20 years ago, there was no internet upon which to rely.

However, during both law school and my early practice, I was supported. My law school class rallied around my husband and me. They knew how difficult our circumstances must be and they helped me. After graduation when I began practicing in Oklahoma County, other lawyers wanted me to learn. They seemed to understand the profession is bettered by creating better lawyers. Judges were polite, people worked together. Without a doubt I learned how to do my job well. I learned what it took to *win*. No one took it easy on the newbie, but no one was mean either.

When did that change? Why did that change?

In my current practice the stress level is indescribable. It is not the stress related to the clients or the cases — it is the stress associated with working with colleagues and others associated with the practice of law. It seems that the goal of

many lawyers now is to put others down.

Many attorneys want to build themselves up by talking badly about other lawyers. Many judges treat attorneys with little respect in court. Clerks are angry and rude. People are mean — making personal attacks that are intended to do nothing but be hurtful.



We are a profession of advocates. We stand up for the underdog. We fight for issues no one else will fight for. We argue and push and defend. Yet, when we hear or see someone berating or belittling a colleague, we are content to stand silently. We stand up for litigants, yet either participate in, or allow, horrible treatment to those who share our profession.

We have a profession that ranks high in suicide rates, drug and alcohol addiction, divorce and

other negative statistics. Every single lawyer out there should be alarmed that we are not interested in helping our fellow man — if he is a lawyer and we are “in competition” with him. What does that say about us? In our eagerness to be aggressive have we lost our compassion and concern for others?

As a whole we wonder why our profession is not respected. As a whole we wonder why attacks exist on our judicial system. As a whole we wonder why we are being “picked on” from the outside. What can we possibly expect when we either treat others with disrespect or allow our fellow attorneys to be treated that way?

We have lost the concept that you do not have to like a person to *be nice*. You do not have to address a person's appearance, demeanor, sex, nationality, etc. to be a zealous advocate. We have forgotten we are human and that when we are mean, we hurt others. That is a sad testament on our profession.

In my 20 years of practice I have learned there are not enough good lawyers out there to do the work that needs to be done. It is sad that many are walking away. Every good lawyer that stops practicing leaves a void. Until we all stand up and create an atmosphere of equality and respect, we will lose more than a few good men and women.

Ms. Lee practices law part time and is a municipal judge in Ponca City.

JUSTICE AT DACHAU:

The Trials of an American Prosecutor

**A copy of Professor Green's book,
"Justice at Dachau" is included with registration.**



September 23, 9 - 10:50 a.m.

Oklahoma Bar Center, OKC - WEBCAST AVAILABLE

2/0

Program Planner: Joshua M. Greene, Professor Emeritus, Hofstra University

"Justice at Dachau" is a talk and power point that will explore a critical event in the post-Holocaust period: the largest yet least known war crimes trials in history. The story is told through the eyes of Col. William Denson, chief prosecutor, a Southern lawyer and officer determined to achieve righteous judgments against Nazi murderers but unprepared for the procedural and psychic obstacles he would encounter during more than two years of exposure to the horrors of the Holocaust.

Denson led his team through masterful prosecutions, basing his strategies on recognized conventions of international law. Yet in 1948, when America's priorities shifted from punishing Nazis to winning Germany's support against Soviet Russia, Denson's convictions were overturned in clandestine reversals of sentence. The scandal of those reversals erupted in headlines nationwide and led to a Senate subcommittee hearing that exonerated Denson and condemned the commutations. But the subcommittee's determinations came too late to salvage the harm done to Denson's reputation. Devastated by what he called "betrayal of justice at its worst," Denson quit the Army and never set foot in a criminal courtroom again.

\$125 for early-bird registrations with payment received at least four full business days prior to the seminar date; \$150 for registrations with payment received within four full business days of the seminar date. No discounts. Registration for the live webcast is \$150. Seniors may register for \$50 on in-person programs and \$75 for webcasts, and members licensed 2 years or less may register for \$75 for in-person programs and \$100 for webcasts.

Hollywood and the Holocaust Luncheon

September 23

Noon - 1:30 p.m.

**Oklahoma City University
School of Law
Room 502
800 N. Harvey, OKC 73102**

What is gained and what is lost when history is appropriated, and misappropriated, by filmmakers, novelists, and other creative interpreters? In this presentation, Emmy Award-winning producer Joshua M. Greene explores existential and pedagogical issues surrounding the transmission of Holocaust memory and their impact on the law. The discussion challenges participants to reconsider concepts such as heroism and courage, and to examine the differences between history as it was and history as we might have wanted it to be. The discussion reveals complex and often contradictory reactions to the Holocaust—reactions that defy Hollywood's romanticized depictions of defiance and survival.

What, then, are the consequences of putting a redemptive spin on history's darkest hour? What is the impact of trivializing the enormity of events with vaulted sentiments and happy-ever-after endings, however well intended? Do the challenges to accurately portray Holocaust history tell us something about the practice of law today?

\$40 for early-bird registrations with payment received at least four full business days prior to the seminar date; \$50 for registrations with payment received within four full business days of the seminar date. No discounts.

1/1

For more information go to: www.okbar.org/members/CLE

Online scheduling has arrived.



When it's time for your case to go to mediation, wouldn't it be nice to immediately know which mediators and what dates are available?

DRC is proud to announce the addition of an interactive scheduling calendar to drc-ok.com.

It's now possible to see each mediator's calendar or look at a specific date to see which mediators are available, then schedule your case right from your computer or smart phone.

Our goal continues to be the same – to provide you with the best scheduling and mediation experience possible so you can concentrate on what you do best.



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