

# THE Oklahoma Bar JOURNAL

Volume 87 ♦ No. 2 ♦ Jan. 16, 2016

## Meet Your Bar Association



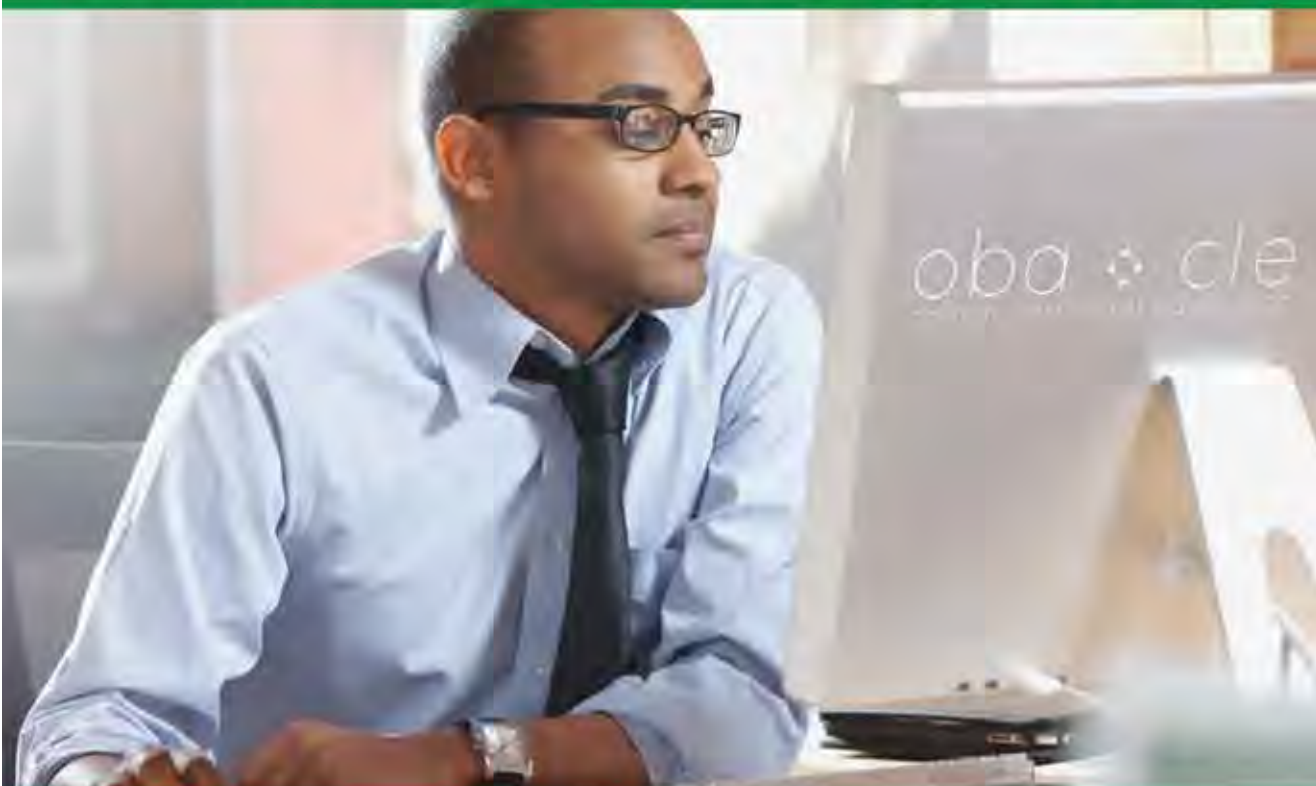
OBA President  
Garvin A. Isaacs

### ALSO INSIDE

Limiting Liability in the Oilfield • Pipeline Right of Way  
Avoiding Sanctions Under Amended Federal Rule of Civil Procedure 37(3)  
Interest on Judgments



# Webinars featuring Sean Carter



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- **JANUARY 20, 2016: NOON – 1 P.M.**

### **Attorney, Heal Thyself: The Detection, Treatment and Prevention of Substance Abuse**

Substance abuse is a huge problem in the legal profession. Lawyers suffer among the highest rates of alcoholism, drug addiction and being shot in the face by the former Vice President. And while Mr. Carter can't do much about Dick Cheney's aim, he can show you how to detect, treat and prevent substance abuse within your organization.

- **JANUARY 23, 2016: NOON – 1 P.M.**

### **The 2016 Ethy Awards**

Each year, Hollywood celebrates the best performances in motion pictures at the Oscars. Well, in this program, we note the worst ethics violations in the legal profession at the Ethys. Humorist Sean Carter will host the festivities and announce the award winners in such categories as: Worst Original Excuse, Best Courtroom Outburst, Most Creative Billing, Least Competent, and much more. In the process of recapping some of the most egregious instances of unethical behavior, Mr. Carter will demonstrate how the rest of us can avoid more common ethical violations.

- **FEBRUARY 9, 2016: NOON – 1 P.M.**

### **Sue Unto Others As You Would Have Them Sue Unto You**

Increasingly, lawyer civility and congeniality is becoming a thing of the past. Yet, it doesn't have to be that way. In this humorous presentation, veteran attorney and legal humorist Sean Carter will remind you that zealous advocacy does not require you to be a zealot.

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THEME:  
MEET YOUR OBA  
EDITOR: CAROL MANNING

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# Will We Let History Repeat Itself?

By Garvin A. Isaacs

The Oklahoma Legislature is now considering abolishing the Judicial Nominating Commission. I think back to my youth and remember when Oklahoma Supreme Court Justice Nelson Corn was sentenced to 18 months in federal prison for income tax evasion for a \$150,000 bribe. It was a shock.

On Oct. 8, 1964, Justice Earl Welch was convicted of five counts of evading income taxes for failure to report money paid to him by Justice Nelson Corn. On May 7, 1965, Justice Napoleon Bonaparte Johnson was impeached. All this came from illegal acts by Supreme Court justices involving bribery and unreported income – tax evasion.

Public confidence in the Oklahoma judicial system was at an all-time low.

Justice William Berry wrote *Justice for Sale: The Shocking Scandal of the Oklahoma Supreme Court*. Justice Berry traces the history of our state through the time where the three justices were bribed. The Supreme Court scandal involved crooked lawyers such as O.A. “Buck” Cargill, who was involved in bribing the justices.

Justice William Berry quotes 1988 OBA President Burck Bailey, in *Justice for Sale*. Bailey says it better than anyone:

The villain in this sordid affair may be the method used in Oklahoma to fill judicial office.... The potential for corruption is

inherent in the system. These payoffs claimed Cargill and Corn, were simply ‘campaign contributions’.

All over the United States, Oklahoma was looked upon as a corrupt government.

In 1967, as a result of these Supreme Court scandals, Oklahoma legislators created the Judicial Nominating Commission for choosing candidates for all appellate court positions and ended elections for those positions. The commission has created an environment in which candidates for judicial appointment are screened and evaluated before their names are sent to the governor.

Since the creation of the JNC, not a single judge has gone to prison for accepting bribes or income tax evasion. It is time for us as lawyers

and members of the Oklahoma Bar Association to stand up for a judicial system free from any influences caused by campaign contributions.

Bob Burke recently wrote a book, *How Bad It Was — How Good It Is: The Value of an Independent Oklahoma Judiciary*. Burke does an excellent job in revisiting the time and place of judicial elections and is able to explain how important it is for us to maintain our Judicial Nominating Commission.

Today, the Oklahoma Legislature wants to pass law that allows appellate judges to be elected. We need to remember what happened when these judges were part of the election process. The bribes that Justices Johnson, Welch and Corn received were disguised as campaign contributions.

With the United States Supreme Court decision in *Citizens United v. Federal Election Committee*, 130 S.Ct. 876 (2010), our whole country has changed. In *Citizens United* the Supreme Court has allowed unlimited campaign contributions by political action committees (PACs). This decision has changed our country forever. We as lawyers and citizens of Oklahoma need to remember what happened in the ‘60s.

We need to remember what Lincoln said at the end of the Gettysburg Address when he described our country as “... a government of the people, by the people, and for the people ....” With the *Citizens United* opinion, PACs unlimited campaign contributions by corporations have changed us to “a government of the corporations, by the bureaucrats, for the money.”

*The bribes that Justices Johnson, Welch and Corn received were disguised as campaign contributions.*



*Garvin A. Isaacs*

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# Meet Your Bar Association

## Meet 2016 OBA President Garvin A. Isaacs

By Mackenzie McDaniel

Anyone who knows Garvin A. Isaacs would agree that he is a master storyteller and extremely passionate. Growing up in Apache he was taught by his father and his surroundings to “never judge a man by the color of his skin, the length of his hair or the clothes he wears.”

“My school and our athletic teams were multiracial at a time when parts of Oklahoma refused to accept integration,” he said. “It opened my eyes to a problem that we continue to deal with as trial lawyers in the courtroom — racism.”

Being an attorney is an intellectual challenge for him each and every day. He enjoys how each case and client is different because it allows him to be creative in his problem solving.

“I like to paint,” he said. “Painting accesses the right side of the brain, which is the creative side of things. Sometimes when I’m trying to figure out how to cross-examine someone or what I want to say in closing arguments, I’ll go paint for half a day and then, I’ve got it.”

In 1993, he, along with several others, helped Gerry Spence start the Trial Lawyers College, which has trained trial lawyers from across the U.S.

“Being a part of TLC made me step out of my shoes and think about what we needed to do and how we needed to do it,” he said. “We would train 50 lawyers every summer for one month and the best part is it was completely free for these lawyers to attend.”

In 2003, after the death of Justice Rose and Justice Cardine, two of the starting members, Garvin decided to take a step back from TLC in

order to spend more time with his two daughters, Jennifer and Eleanor.

### LOVE AND BASKETBALL

Garvin knew at a young age that he wanted to be a lawyer. His grandfather, C.W. Holman, was a justice of the peace in Gotebo. When Garvin was 9 years old, his grandfather took him to the district court of Kiowa County when he was summoned for jury duty. He was called into the jury box, examined by the lawyers and in the afternoon was excused by the prosecution.

“That was the first time I had been to court,” he said. “Afterward we talked about the United States judicial system on many occasions and



*Steve Rench, John Tierney, Judge Robert Rose, Gerry Spence, Garvin Isaacs and Judge Joseph Cardine gather for the planning of TLC in Dubois, Wyoming.*

# Presidential Trivia

## What's the best advice you've ever received?

*Be honest and truthful with the judge, jury and your clients.*

## What's your favorite hole-in-the-wall restaurant?

*Joe T. Garcia's in Fort Worth, Texas. When I was in college on Sunday nights, the football and basketball players were so hungry we would load up and go over there. We would go in there and they would charge us \$2 for all the food we wanted to eat. No one would believe the amount of food we ate.*

## What's your favorite family tradition?

*We used to go fishing every summer in Gunnison, Carbon-dale, Aspen, Crested Butte and Red River.*

## What's your New Year's resolution?

*To stand up for the judicial branch of government and a government "of the people, by the people and for the people" as Lincoln described.*

## What is a goal you have for yourself that's yet to be accomplished?

*I have three books that I'm working on and I want to finish those. One is on closing arguments and the difference between the right word, one is a thesis I started in grad school on Mark Twain and Bram Stoker and the last is on Redbird Smith's Medicine.*

## Do you collect anything?

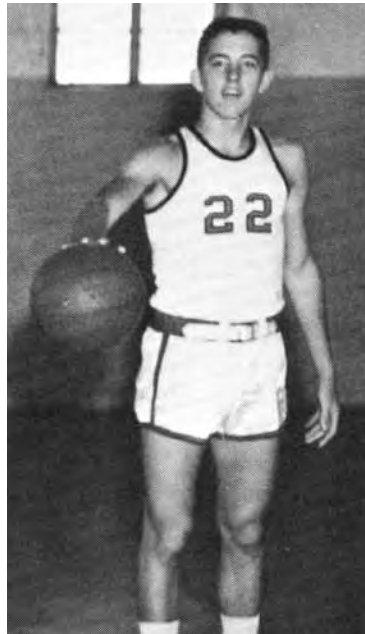
*Not really. I like art and have a lot of paintings and I like to paint.*

his belief that trial by jury protected people from false accusations and a big government. It was at this time in my life I knew I wanted to be a lawyer."

But the U.S. government and legal industry were not the only loves of his life. Garvin grew up with a passion for sports, especially basketball.

His first game was in the sixth grade against a small school south of Carnegie. The game ended with a tied score when the school principal announced it was time for the school buses to run the students home.

As a high school basketball player in Apache, he led his team in scoring all four years and learned the importance of competition. His classmates knew how much he loved the law and basketball and predicted he would be a lawyer for the NBA in the future.



*Garvin as a sophomore basketball player for Apache High School.*

Garvin was recruited to play ball by New York University, Texas Tech, Texas A&M and Texas Christian University. He signed a letter of intent to play basketball for the TCU Horned Frogs and received a scholarship.

"I became obsessed with basketball," he said. "After graduating from TCU with a degree in government, I wanted to play professional basketball."

He attended the camp of the Dallas Chaparrals of the American Basketball Association but was later cut by

coach Cliff Hagan. For the next three years he played in the New England Basketball League for the Bridgeport Savoy.

On April 7, 1968, he was participating in a post-season tournament in Port Chester, New York, when Martin Luther King was assassinated.

"I scored 34 points against a team from the New Jersey Americans ABA team and was named to the All-Star team," he remembered. "But, Martin Luther King's assassination caused me to step out of my basketball shoes and consider what I had planned to do since my trip to Kiowa County courthouse with my grandfather."

Garvin went on to play for two more years while working toward obtaining his master's in English.



"I finished all the course requirements and was writing my thesis on Bram Stoker and Mark Twain," he said. "I never finished my thesis. I went to law school."

## LIFE AS A LAWYER

Garvin attended the OCU School of Law. While in law school, he received his Legal Intern License and worked in the public defender's office in Oklahoma County. Under the supervision of other lawyers and judges, he tried nine jury trials.

"I learned a lot about the fundamentals of trial advocacy during my internship," he said. "I also watched numerous civil and criminal trials."

After graduating in 1975, he worked as an assistant district attorney for Oklahoma County for one year. He then went to work at the Oklahoma County Public Defender's Office, starting as the lowest ranking employee.

"Everybody was asking 'when are you going to get a real job'," he said. "My family, was saying I should go to work for an oil and gas firm where I could make a lot more money."

That's when he received a case that would be a turning point for him and would solidify his decision to continue as a public defender.

"The case was hard and people continued to doubt me along the way," he said. "At 2 p.m. the jury acquitted my client of everything. I went down to the public defender's office to take my things down there, and I walked out of the east side of the Oklahoma County courthouse. When I walked out of that courthouse I knew what I was going to



Garvin's daughters, Eleanor and Jennifer, on a trip to Farmington, New Mexico.

do, I knew where I belonged and what I was going to do for the rest of my time as a lawyer."

He stayed at the public defender's office until 1978 when he entered into private practice and has been there ever since.

He has been involved in general civil and criminal trial cases and



Garvin and his daughter Jennifer at OCU Law School.

## What's your number one rule for work/life balance?

*Clean living and daily prayer.*

## What is your favorite quote?

*I have two. "We learn geology the morning after an earthquake." by Waldo Emerson and "Never give in. Never, never, never give in." by Winston Churchill.*

## If you could meet someone living or dead, who would it be?

*Marcus Tullius Cicero, Abraham Lincoln, John Adams, John Quincy Adams, John F. Kennedy, Martin Luther King, Frederick Douglass, Geronimo and Quanah Parker.*

## What's the best advice you could give a new lawyer?

*Be prepared. Be honest. Never misrepresent the truth to anyone.*

## What's the best thing about living in Oklahoma City?

*It is an environment where there are a lot of good people. Blacks, whites, Native Americans, Hispanics.*

## What was your first car?

*Chevrolet Deluxe. Gary Turner called it a '49 stingray. I bought it from a piano teacher in Apache for \$200.*

## What is a historical event you wish you could have witnessed?

*Cicero's closing arguments in the murder trials to the Roman Senate, Lincoln's Gettysburg Address and John Quincy Adams in the Amistad argument to the U.S. Supreme Court. To me those are huge.*

continued on next page

his practice areas include negligence, wrongful death, nursing home injuries, medical malpractice, products liability against automobile manufacturers, bad faith insurance law, water pollution, oil and gas pipeline fraud and racial discrimination.

"I have never looked back," he said.

## LOOKING TO 2016

Abraham Lincoln has always been someone Garvin admired and considered a role model. Lincoln concluded his Gettysburg Address by saying "that government of the people, by the people and for the people, shall not perish from the earth." It is this quote that has inspired the president's 2016 initiative of defending the independence of the judicial branch.

"I want to stand up for people, lawyers and our judicial branch of government," he said. "My number one goal during my presidency is to fight for the independence of the judiciary."

He is also concerned with other issues concerning our U.S. and Oklahoma governments.



*Garvin in his office working.*

*Citizens United* case. Following her speech, she will also participate in a panel discussion with Renée DeMoss, Roger Stuart and Court of Appeals Judge Keith Rapp.

He is also preparing to speak at a variety of civic organizations and county bars on this topic over the course of the year.

Additional plans are being made to implement a program to show jurors appreciation and to educate the public on the importance of serving on juries. Garvin is working with the Law Day committee to finalize these plans.

Garvin is passionate about each of these issues and is looking forward to what 2016 has to bring.

### **What's the most important quality a lawyer needs to have?**

*Focus, discipline, preparation, honesty and accuracy.*

### **What do you love about being an attorney?**

*It's an intellectual challenge every day. No two cases are alike. No two clients are alike. No two witnesses are alike. The facts of every case are different. It allows you to be creative and think creatively about how you can solve those problems. It's a challenge and there is never a dull moment.*

In *Citizens United v. Federal Election Commission*, the United States Supreme Court held that the First Amendment prohibited the government from restricting independent political expenditures by a nonprofit corporation.

"The *Citizens United* case is the worst thing that has happened to this country," he protested. "If we don't stand up and do something, our country will become a country 'of the corporations, by the bureaucrats, for the money.' We have to stop this."

In an effort to educate Oklahomans on the judicial branch of government and their need for independence, Garvin has invited Zephyr Teachout, a law professor at Fordham University, to speak at the OCU School of Law on April 1, 2016, on the



*An oil on canvas Garvin painted in 2004 of the "Survivors of the Battle of Little Bighorn."*



# **UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA**

## **NOTICE OF PROPOSED LOCAL RULE CHANGES**

Pursuant to Rule 83, Fed. R. Civ. P., and Rule 57, Fed R. Crim. P, the Court hereby gives notice and opportunity for comment on proposed changes to its local rules. The revised rules with brief summaries are as follows:

### **CIVIL RULES:**

- LCvR3.1** Amended to clarify when filing any initiating document, the filer should number plaintiffs and defendants
- LCvR5.2(b)** Amended to require the original only when filing in paper form
- LCvR7.1** Amended to require subsidiaries be included in a corporate statement
- LCvR7.3(a)** Amended to conform to new briefing periods pursuant to Fed. R. Bankr.P 8018
- LCvR38.1** Amended to allow "Jury Demand" placed on front of a pleading, thereby satisfying Rule 38(b) Fed. R. Civ. P.
- LCvR84.1(d)(5)** Amended to conform with new numbering of Fed. R. Bankr.P. 8010

### **CRIMINAL RULES:**

- LCrR58.1** Forfeiture of Collateral rule incorporates General Order 15-6 which enables persons charged with petty offenses to post collateral in lieu of appearance.

Copies of the proposed Local Civil Rules and Local Criminal Rules containing red strike-outs (deletions) and green highlights (additions) are available at the District Court Clerk's Office. Electronic copies with strikeouts and highlights are also available on the court's public website under Announcements at [www.oknd.uscourts.gov](http://www.oknd.uscourts.gov).

The Court invites written comments from any interested person. Send comments to the Court Clerk, Attention: Proposed Rule Changes, 333 W. 4th St., Room 411, Tulsa, OK 74103. Or send email comments to [feedback@oknd.uscourts.gov](mailto:feedback@oknd.uscourts.gov). Please identify Proposed Rule Changes in subject line. Comments will be accepted by the Court until January 29, 2016.

# Meet Your Bar Association

## Volunteers Who Guide Your Association



**Linda S. Thomas**  
PRESIDENT-ELECT  
Bartlesville

◆ **Background:** I was born at Lackland Air Force Base in San Antonio, Texas. I grew up in Tulsa until my family moved to Ashdown, Arkansas, in 1970. After graduating from college, I moved to DeQueen, Arkansas, where I was hired as their first public school speech pathologist. I lived and raised my children there until we moved to Bartlesville in 1990. I continued teaching school during

the day while attending evening classes at the TU College of Law. Upon becoming licensed to practice law, I worked a short time for a local law firm, then started my practice as a sole practitioner, focusing primarily in the area of family law. I have a son, two daughters, two sons-in-law and five grandchildren.

- ◆ **Education:** Graduated from Ashdown High School in 1974; received a B.A. in speech pathology from Ouachita Baptist University in Arkadelphia, Arkansas, in 1977 (*cum laude*); J.D. from TU College of Law, 1994
- ◆ **What inspired you to be a lawyer?** A conversation with my dad
- ◆ **If I wasn't a lawyer, I'd be a ...** Full-time grandmother
- ◆ **If a movie was made of your life, who would play you?** Julianne Moore (because I always wanted to be a redhead)
- ◆ **Best advice you've ever received?** Don't go grocery shopping when you're hungry.
- ◆ **I wish I had invented...** Post-it notes

- ◆ **Favorite hole-in-the-wall restaurant?** Szechuan in Bartlesville
- ◆ **Best family tradition?** Christmas Eve church service with the family
- ◆ **What's your New Year's resolution?** Not to make a New Year's resolution
- ◆ **What is a goal for yourself that's yet to be accomplished?** Retirement
- ◆ **Favorite car feature that's been added during your lifetime?** Heated car seats



**Paul D. Brunton**  
VICE PRESIDENT  
Tulsa

◆ **Background:** Served in the U.S. Army Special Forces during the Vietnam War. My practice focuses on criminal defense in city, state and federal court. I was the Tulsa County chief public defender from 1972-1974, Northern and Eastern District of Oklahoma federal defender from 2001-2006, of counsel for Morrell Saffa Craige PC from 2006-2014 and am currently a sole practitioner.

- ◆ **Education:** Graduated from Cascia Hall in Tulsa in 1962; B.A. from University of Oklahoma in 1966; J.D. from TU College of Law in 1971 and LL.M. from the University of Arkansas School of Law in 1982
- ◆ **What inspired you to be a lawyer?** My Irish grandfather
- ◆ **If I wasn't a lawyer, I'd be a ...** Securities broker, it is legal gambling



- ◆ *If a movie was made of your life, who would play you?* Paul Newman, even though he is no longer with us!
- ◆ *Best advice you've ever received?* Never volunteer (although I have failed to heed)
- ◆ *I wish I had invented...* A way to stop war
- ◆ *Favorite hole-in-the-wall restaurant?* Used to be Denco's in Norman
- ◆ *Best family tradition?* Be your own man.
- ◆ *What's your New Year's resolution?* Attend more parties.
- ◆ *What is a goal for yourself that's yet to be accomplished?* Retirement
- ◆ *Favorite car feature that's been added during your lifetime?* Heated and cooled seats



**David A. Poarch Jr.**  
PAST PRESIDENT  
Norman

- ◆ *Background:* I was born in Oklahoma City but moved with my folks at an early age and grew up in a small town in the San Francisco bay area. I returned to Oklahoma to attend college after being discharged from the Army in 1969.
- ◆ *Education:* University of Central Oklahoma, B.A. 1973; University of Oklahoma College of Law, J.D. 1977

- ◆ *What inspired you to be a lawyer?* My first thought that being a lawyer was a meaningful profession was seeing *To Kill A Mockingbird* with Gregory Peck. After that, I read the book and the idea of becoming a lawyer never left me.
- ◆ *If I wasn't a lawyer, I'd be a ...* No telling. I was drawn to medicine when I was younger, and I was musical, too. I also like to travel. So, but for my law license, I may have had my own traveling medicine show!
- ◆ *If a movie was made of your life, who would play you?* Danny Devito
- ◆ *Best advice you've ever received?* Love is letting go.

- ◆ *I wish I had invented...* Fur-lined Crocs, sweet!
- ◆ *Favorite hole-in-the-wall restaurant?* The Diner on Main Street in Norman
- ◆ *Best family tradition?* Go someplace fun at the holidays.
- ◆ *What's your New Year's resolution?* Get a new tow vehicle for my Airstream
- ◆ *What is a goal for yourself that's yet to be accomplished?* See above
- ◆ *Favorite car feature that's been added during your lifetime?* Blind spot monitors and adaptive cruise control; in pickups pro trailer backup assist



**John M. Weedn**  
GOVERNOR –  
DISTRICT NO. ONE  
Miami

- ◆ *Background:* Grew up on a farm outside of Cyril
- ◆ *Education:* Bachelor's in political science from Missouri Southern, J.D. from OU College of Law
- ◆ *What inspired you to be a lawyer?* My grandpa, John Arney, practiced law for 60 years. I would play in his office and get to visit him at the court houses. I knew nothing about the cases or the law, but I saw the way that people treated him and how he treated people.
- ◆ *If I wasn't a lawyer, I'd be a ...* College professor or coach
- ◆ *If a movie was made of your life, who would play you?* Tom Cruise (in 14-inch lifts?)
- ◆ *Best advice you've ever received?* If you are gonna eat BBQ, you better go eat it. The best BBQ in the world was at Wilson's in Anadarko, which closed many years ago. Not long after, I heard my grandpa and a judge discussing the restaurant closing. My grandpa, as usual, had very wise words for the court. Whether it's "carpe diem" or "Don't put off 'til tomorrow what you can do today," our tomorrows (and tomorrows lunches) aren't guaranteed. So if you are gonna eat BBQ, you better just go eat it.

- ◆ *I wish I had invented...* Diet Dr. Pepper, at least then I would get some return on my daily addiction
- ◆ *Favorite hole-in-the-wall restaurant?* J & W Grill in Chickasha, Taqueria Fresnillo in Clinton, the downtown Tulsa Coney I-Lander, any Del Rancho that still has the booth phones, Eischen's in Okarche, Kendall's in Noble, Charlie's in Gage, Pete's Place in Krebs
- ◆ *Best family tradition?* Christmas pajamas!!
- ◆ *What's your New Year's resolution?* Find more hole-in-the-wall places to add to the list? I really want to work smarter, not harder; listen to some of those tips from Jim Calloway and get my office running like a top — even if it means teaching some old dogs (myself included) new tricks.
- ◆ *What is a goal for yourself that's yet to be accomplished?* I want my sons to be the best men and fathers that they can be.
- ◆ *Favorite car feature that's been added during your lifetime?* Back-up camera



**Kevin T. Sain**

GOVERNOR –  
DISTRICT NO. TWO  
Idabel

- ◆ *Background:* Born in the city of Newport Beach, California; raised on a small farm in Goodwater
- ◆ *Education:* Graduated from OCU School of Law in 1998
- ◆ *What inspired you to be a lawyer?* Enjoyment of helping people
- ◆ *If I wasn't a lawyer, I'd be a ...* Full-time auctioneer

- ◆ *If a movie was made of your life, who would play you?* I would like to think it would be Vince Vaughn, but it would probably be Jim Carrey.
- ◆ *Best advice you've ever received?* Always look them in the eye — this applies to every aspect of life.
- ◆ *I wish I had invented...* Post-it notes
- ◆ *Favorite hole-in-the-wall restaurant?* Van's BBQ in downtown Shawnee

- ◆ *Best family tradition?* Reunion during rifle deer season; others refer to this as Thanksgiving
- ◆ *What's your New Year's resolution?* Don't work as much.
- ◆ *What is a goal for yourself that's yet to be accomplished?* Retire
- ◆ *Favorite car feature that's been added during your lifetime?* Electric windows; however, I miss the headlight dimmer switch on the floor



**John W. Coyle III**

GOVERNOR –  
DISTRICT NO. THREE  
Oklahoma City

- ◆ *Background:* I grew up in Oklahoma City. My father, Bill Coyle, was in the real estate and oil business and my mother, Katie, was a housewife and life master bridge player. I had two brothers who passed away and a sister, Shannon, who is a restaurant manager. I have been married to my wife, Julee, for more than 30 years and have four children. My oldest son, Billy, is a lawyer, Bob is a cell phone tower developer, Park is in the oil business, and my daughter, Ruby, teaches special needs children. While attending law school, I worked as a bailiff for Judge Paul Dudley, who conducted preliminary hearings on the 5th floor of the Oklahoma County Courthouse. After a year and a half, I went to work for Clyde Watts, a civil defense trial lawyer. I learned every day in these jobs how to conduct myself as a lawyer — it was invaluable!

I was employed by James W. "Bill" Berry, a former district attorney, who practiced criminal defense and domestic relations law in the old Cravens Building. I worked for Bill for several years and learned every day. I have been practicing criminal defense law now for 41 years.

- ◆ *Education:* I graduated from Harding High School in Oklahoma City in 1966 and attended OU and OCU, graduating in 1971, with a degree in political science and history. I attended OCU School of Law and graduated in 1974.
- ◆ *What inspired you to be a lawyer?* I like to read and had read books about John Adams, Louis Nizer and my uncle, Oklahoma Supreme Court Justice William A. Berry.

- ◆ *If I wasn't a lawyer, I'd be a ...* An astronaut
- ◆ *If a movie was made of your life, who would play you?* Truman Capote
- ◆ *Best advice you've ever received?* Always tell the truth to the court and to your opponents.
- ◆ *I wish I had invented...* The Internet
- ◆ *Favorite hole-in-the-wall restaurant?* Without a doubt, the Coney Island on Main Street in Oklahoma City
- ◆ *Best family tradition?* Christmas carols
- ◆ *What's your New Year's resolution?* To listen more carefully
- ◆ *What is a goal for yourself that's yet to be accomplished?* To be more organized
- ◆ *Favorite car feature that's been added during your lifetime?* Satellite radio



**Kaleb K. Hennigh**  
GOVERNOR -  
DISTRICT NO. FOUR  
Enid

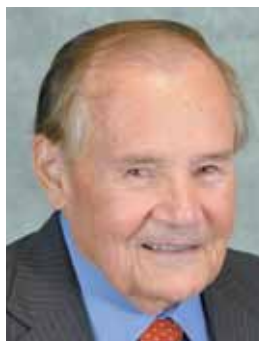
◆ **Background:** I was born and raised in northwest Oklahoma, graduating from Laverne High School in 1996 with strong rural and agricultural roots and interests. I returned to Enid in 2007, where I have been practicing ever since. I have two sons, Karsen (8) and Jase (6).

◆ **Education:** B.S. Agricultural Communications, Oklahoma State University, 2000; J.D.

OU College of Law, 2003; L.L.M. University of Arkansas College of Law, Fayetteville, Arkansas, 2005

- ◆ *What inspired you to be a lawyer?* Being able to help others
- ◆ *If I wasn't a lawyer, I'd be a ...* Farmer
- ◆ *If a movie was made of your life, who would play you?* Jim Carrey
- ◆ *Best advice you've ever received?* Dream big, work hard; stay focused and surround yourself with good people.

- ◆ *I wish I had invented...* The iPhone
- ◆ *Favorite hole-in-the-wall restaurant?* Eischen's, Okarche
- ◆ *Best family tradition?* Going on trips with just the guys
- ◆ *What's your New Year's resolution?* To take my boys on more trips
- ◆ *What is a goal for yourself that's yet to be accomplished?* Completing a full marathon or climbing Mt. Everest
- ◆ *Favorite car feature that's been added during your lifetime?* Cruise control



**James L. Kee**  
GOVERNOR -  
DISTRICT NO. FIVE  
Duncan

◆ **Background:** Born in Drumright, raised in Bartlesville; paratrooper 101st ABN Div.; father of two, grandfather of seven and great grandfather of two with another on the way; practiced law 49+ years; traveled to 60 countries and territories on five continents; took a sabbatical in 1986-87 during which I lived in London working for a Korean company negotiating OPEC contracts in the

Middle East and West Africa; very familiar with politics in the Middle East; have won trials in every decade from the 1960s to present

- ◆ **Education:** B.S. East Central University; J. D. OCU School of Law 1966
- ◆ *What inspired you to be a lawyer?* During a courthouse tour while I was in the eighth grade, I observed a trial in progress. I felt I could do as well as the attorneys were doing in the trial.
- ◆ *If I wasn't a lawyer, I'd be a ...* School teacher
- ◆ *If a movie was made of your life, who would play you?* Daniel Craig
- ◆ *Best advice you've ever received?* Obey the Gospel
- ◆ *I wish I had invented...* A cure for drug addiction



- ◆ *Favorite hole-in-the-wall restaurant?* Phipp's Barbecue in Duncan
- ◆ *Best family tradition?* Christmas together
- ◆ *What's your New Year's resolution?* Help more addicts get into rehab
- ◆ *What is a goal for yourself that's yet to be accomplished?* Improve the lives of children by reducing the number of divorces
- ◆ *Favorite car feature that's been added during your lifetime?* GPS system



**James R. Gotwals**  
GOVERNOR -  
DISTRICT NO. SIX  
Tulsa

- ◆ *Background:* I am a life-long Tulsan. I have been married to my wife, Janet Gotwals, for 33 years, and we have three kids together, who are now all adults.
- ◆ *Education:* I graduated from Tulsa Central High School in 1968; B.B.A. in finance from Oklahoma University in 1972; and law degree from OU College of Law in 1975
- ◆ *What inspired you to be a lawyer?* My father and grandfather were lawyers, and I always admired the integrity and zealousness that my father approached the practice with and the commitment to the community. I have always been competitive.
- ◆ *If I wasn't a lawyer, I'd be a ...* Real estate investor and/or developer
- ◆ *If a movie was made of your life, who would play you?* Harrison Ford (I wish)
- ◆ *Best advice you've ever received?* Yesterday really ended last night and today is a brand new day; focus on what you can change and don't worry about that which you cannot.
- ◆ *I wish I had invented...* The cellular telephone
- ◆ *Favorite hole-in-the-wall restaurant?* Claude's Hamburgers on South Peoria in Tulsa
- ◆ *Best family tradition?* Christmas morning with the kids at our house

- ◆ *What's your New Year's resolution?* Try and relax and enjoy the little things.
- ◆ *What is a goal for yourself that's yet to be accomplished?* More travel
- ◆ *Favorite car feature that's been added during your lifetime?* GPS, I don't have to ask directions (not that I would anyway).



**Roy D. Tucker**  
GOVERNOR -  
DISTRICT NO. SEVEN  
Muskogee

- ◆ *Background:* I was born and raised in Lexington and graduated high school in 1994.
- ◆ *Education:* University of Central Oklahoma, B.A. in English, 1998; TU College of Law, J.D. 2003
- ◆ *What inspired you to be a lawyer?* I didn't know any lawyers growing up, so the courtroom TV dramas of the '80s inspired me.
- ◆ *If I wasn't a lawyer, I'd be a ...* Professor of English literature
- ◆ *If a movie was made of your life, who would play you?* Ryan Reynolds. He could capture my humor.
- ◆ *Best advice you've ever received?* Compartmentalize!
- ◆ *I wish I had invented...* Legos
- ◆ *Favorite hole-in-the-wall restaurant?* Speedway Grille in Muskogee
- ◆ *Best family tradition?* Sunday dinner whenever I'm back home
- ◆ *What's your New Year's resolution?* To learn Spanish fluently
- ◆ *What is a goal for yourself that's yet to be accomplished?* Get my pilot's license
- ◆ *Favorite car feature that's been added during your lifetime?* The ability to Bluetooth music through the car stereo



**Jim Marshall**  
GOVERNOR –  
DISTRICT NO. EIGHT  
Shawnee

- ◆ **Background:** Born in Germany to a military family. Father from Monroe and mother from Czechoslovakia; raised in three countries and several states
- ◆ **Education:** Graduated Baumholder American High School, Baumholder, Germany; B.A. from OU, M.A. in international relations from Creighton University, Nebraska; J.D. from OU College of Law

- ◆ **What inspired you to be a lawyer?** An opportunity to help people
- ◆ **If I wasn't a lawyer, I'd be a ...** Cowboy
- ◆ **If a movie was made of your life, who would play you?** Jack Nicholson, because he can handle the truth
- ◆ **Best advice you've ever received?** Someday never comes, as in "Someday I/we will ..."
- ◆ **I wish I had invented...** Pet rocks
- ◆ **Best family tradition?** Thanksgiving
- ◆ **What's your New Year's resolution?** Set goals, don't make resolutions
- ◆ **What is a goal for yourself that's yet to be accomplished?** Fly over Antarctica
- ◆ **Favorite car feature that's been added during your lifetime?** Air conditioning



**John Kinslow**  
GOVERNOR –  
DISTRICT NO. NINE  
Lawton

- ◆ **Background:** I was born in Okemah and lived with my maternal grandmother and younger sister in a one-woman telephone exchange in Cromwell until I was five, when we moved to Wewoka to join my mother. The four of us lived in Shawnee during my junior and senior high school years. I can't imagine a better place and time to be a teenager than Shawnee in the '50s.

- ◆ **Education:** B.A., Oklahoma Baptist University, 1963; J.D., OU College of Law, 1965
- ◆ **What inspired you to be a lawyer?** To help others
- ◆ **If I wasn't a lawyer, I'd be a ...** Journalist
- ◆ **If a movie was made of your life, who would play you?** James Coburn
- ◆ **Best advice you've ever received?** From my mother: be honest, loyal to family and friends, independent and care about others' well-being
- ◆ **I wish I had invented...** The Internet
- ◆ **Favorite hole-in-the-wall restaurant?** LAR'S Greek Restaurant in Lawton
- ◆ **Best family tradition?** Family dinners
- ◆ **What's your New Year's resolution?** I don't have one.
- ◆ **What is a goal for yourself that's yet to be accomplished?** Car trip through the continental U.S.
- ◆ **Favorite car feature that's been added during your lifetime?** My most unfavorable feature is bucket seats.



**James R. Hicks**  
GOVERNOR –  
AT LARGE  
Tulsa

- ◆ **Background:** Born in Blackwell and raised in Denton, Texas; married 32 years to Nancy Baker with twin children, Stan and Hannah, age 23
- ◆ **Education:** Graduate of OU in 1982 and TU College of Law in 1985
- ◆ **What inspired you to be a lawyer?** My love of history and reading
- ◆ **If I wasn't a lawyer, I'd be a ...** Novelist or editor
- ◆ **If a movie was made of your life, who would play you?** Christopher Reeves

- ◆ *Best advice you've ever received?* To thine own self be true.
- ◆ *I wish I had invented...* The cell phone
- ◆ *Favorite hole-in-the-wall restaurant?* Dena's Lebanese in Tulsa
- ◆ *Best family tradition?* Lounging around the house on Christmas Day
- ◆ *What's your New Year's resolution?* Exercise and eat healthier
- ◆ *What is a goal for yourself that's yet to be accomplished?* Write a story that's published
- ◆ *Favorite car feature that's been added during your lifetime?* Video monitors for kids to watch during car trips



**Alissa Hutter**

GOVERNOR -  
AT LARGE  
Norman

- ◆ *Background:* Born and raised in Norman (Sooner born and Sooner bred)
- ◆ *Education:* Bachelor's in business administration from OU: J.D. from OCU School of Law in 2005
- ◆ *What inspired you to be a lawyer?* I thought it would be nice to make a difference and do something important to help people.

- ◆ *If I wasn't a lawyer, I'd be a ...* Pastry artist. I can bake a mean cake. I once made a 10-foot long snake cake!
- ◆ *If a movie was made of your life, who would play you?* That funny lady from the movie, *My Big Fat Greek Wedding*, Nia Vardalos
- ◆ *Best advice you've ever received?* Treat others as you would like to be treated yourself.
- ◆ *I wish I had invented...* The iPad, or any Apple product would do
- ◆ *Favorite hole-in-the-wall restaurant?* It got shut down, but I loved the Border Crossing Restaurant in Norman.
- ◆ *Best family tradition?* I love matching Christmas pajamas.

- ◆ *What's your New Year's resolution?* Wear more lipstick
- ◆ *What is a goal for yourself that's yet to be accomplished?* I'd like to travel to Asia and Australia.
- ◆ *Favorite car feature that's been added during your lifetime?* I love seat warmers — those are the best!



**Sonja R. Porter**

GOVERNOR -  
AT LARGE  
Oklahoma City

- ◆ *Background:* I was born and raised in the small blue-collar town of Kingsport, Tennessee (that's in the far northeast corner), where most foods are deep fried in fat and smothered in gravy. Kingsport is the headquarters for the Eastman Chemical Manufacturing plant, where my dad worked for almost 30 years before he retired and where I spent two summers working before going to law school. I moved to Oklahoma City upon being accepted to OCU law school in 1996, fully intending to return to Tennessee after I finished. But while here, I reunited with a college friend, who convinced me to marry him in 1997. So I've been a transplanted Okie ever since. We currently live in Yukon with our three children, Jozef (15), Sean (11) and Mikayla (7), plus two cats and a dog.

- ◆ *Education:* 1995 B.A. in pre-law from Bob Jones University, Greenville, South Carolina; 1999 J.D. from OCU School of Law
- ◆ *What inspired you to be a lawyer?* Watching Perry Mason and Matlock
- ◆ *If I wasn't a lawyer, I'd be a ...* Teacher
- ◆ *If a movie was made of your life, who would play you?* Charlize Theron
- ◆ *Best advice you've ever received?* Believe you can win — even when everyone says you can't
- ◆ *I wish I had invented...* Bottled water
- ◆ *Favorite hole-in-the-wall restaurant?* Thai Kitchen in downtown Oklahoma City



- ◆ **Best family tradition?** On Saturdays the entire family enjoys a late-morning pancake, egg and bacon breakfast while watching TV
- ◆ **What's your New Year's resolution?** Get up on time
- ◆ **What is a goal for yourself that's yet to be accomplished?** Black belt in Tae Kwon Do
- ◆ **Favorite car feature that's been added during your lifetime?** Playing music from my iPod/phone through the stereo system



**Bryon J. Will**  
GOVERNOR –  
YLD CHAIR  
Oklahoma City

◆ **Background:** Born and raised in Morrison. My father (Eldon) was a dairy farmer and my mother (Nedra) was a homemaker. The farm my family lives on has been in my family since the 1893 Cherokee Strip Land Run. My wife and I and our children live in Yukon.

◆ **Education:** Oklahoma State University, B.S. in animal science; University of Central Oklahoma, M.B.A.; OCU School of Law, J.D.

- ◆ **What inspired you to be a lawyer?** There are two other lawyers in my family, a cousin on my mother's side and a cousin on my father's side. I thought I would do something different. But

believe it or not in my last year of college I read a John Grisham novel, *The Testament*. Guess I changed my mind.

- ◆ **If I wasn't a lawyer, I'd be a ...** Cattle rancher. When I was working on my M.B.A., about the time I needed to apply to law school I had a decision to make. Either go to law school or go back to farming...both cost the same.
- ◆ **If a movie was made of your life, who would play you?** Gerard Butler. Why not? He's a lawyer.
- ◆ **Best advice you've ever received?** Listen to your mother!
- ◆ **I wish I had invented...** The drone quadcopter. Those things flew off the shelves at Christmas.
- ◆ **Favorite hole-in-the-wall restaurant?** Click's Steakhouse in Pawnee
- ◆ **Best family tradition?** Homemade ice cream and fried chicken for 4th of July meal
- ◆ **What's your New Year's resolution?** Take a vacation with the family
- ◆ **What is a goal for yourself that's yet to be accomplished?** To visit all 50 states (other than being in the airport)
- ◆ **Favorite car feature that's been added during your lifetime?** Power windows and locks. My first three pick-ups had the old crank windows, and I had to lean over to unlock the door.



A black and white photograph of a woman with long dark hair, wearing a light-colored shirt and a dark vest, standing at a podium and speaking into a microphone. She is smiling. In the foreground, the backs of several audience members' heads are visible, looking towards the speaker. The background is slightly blurred, showing what appears to be a stage or conference setting.

# **TAKE ACTION.**

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- **civic organizations**
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# Meet Your Bar Association

## OBA Departments and the Member Services They Provide

**V**olunteer leaders may be the chief engineers who keep any professional association on track, but it is the staff who provides the power to move forward. Member services are an essential part of the Oklahoma Bar Association. Learn more about what each department offers members, and put a name with a face in photos of the employees who work for you — bar association members.

### *Executive Director*

OBA Bylaws, Article IV, Section 4:

(a) The Executive Director shall keep the roster of the members of the Association and of the House of Delegates entitled to vote therein. He or she shall record and be the custodian of the minutes, journal and records of the Association and of the House of Delegates and of the Board of Governors.

(b) The Executive Director shall act as Treasurer, and be the custodian of the funds of the Association. No funds shall be withdrawn except in the manner approved by the Board of Governors.

(1) The expenditures of the Association shall be in accordance with the provisions of the Rules Creating and Controlling the Oklahoma Bar Association as promulgated by the Oklahoma Supreme Court.

(2) The Executive Director shall maintain at all times a fidelity bond executed by a surety company as surety, the amount thereof and the surety to be approved by the Board of Governors.

(c) He shall supervise the office of the Association and its personnel and shall see that the



*Executive Director John Morris Williams and  
Executive Assistant Debbie Brink*

work of the Association is properly performed. He or she shall also perform such other duties as the House of Delegates, the Board of Governors or the President of the Association may direct.

Rules Creating and Controlling the OBA,  
Article VI, Section 4:

The Executive Director shall perform such duties and services as may be required by these Rules or the Bylaws and as may be directed by the Board of Governors or the President of the



Association. He shall also keep a complete and accurate list of the members of the Association; notify delinquent members and certify the names of delinquent members to the Supreme Court as required by these Rules; certify to the Supreme Court records and other matters as provided by these rules.

**Phone: 405-416-7014**



*ADMINISTRATION – (seated) Tracy Sanders, Roberta Yarbrough, Debra Jenkins, (standing) Director Craig Combs, Suzi Hendrix and Durrel Lattimore*

## Administration

The responsibilities of the Administration Department are multi-faceted, but its primary emphasis is handling finances, human resources, Annual Meeting planning, bar center operations and maintaining official membership information. Specific duties include:

- ☐ scheduling bar center meeting rooms
- ☐ coordinating and scheduling meetings utilizing video conference equipment in Oklahoma City and Tulsa
- ☐ assisting committees and sections with mailings to their members
- ☐ providing mailing labels of bar members to committees and sections
- ☐ tracking expenditures for all committees and sections
- ☐ providing monthly committee and section accounting reports upon request
- ☐ ensuring the bar center interior and exterior facilities are maintained so members can take pride in their building
- ☐ maintaining and updating member roster information
- ☐ invoicing senior members and non-members for *Oklahoma Bar Journal* subscriptions
- ☐ managing the Legal Intern Program
- ☐ producing certificates of good standing for our members
- ☐ processing expense claims for OBA officers, YLD officers, and section and committee members
- ☐ staffing bar center reception area
- ☐ selling bar cards
- ☐ processing incoming and outgoing mail

**Phone: 405-416-7000**

**Membership: 405-416-7080**

## Communications

The Communications Department has responsibility for the OBA's member communications and external public relations efforts. Areas of major emphasis are:

- ☐ publishing 34 issues of the *Oklahoma Bar Journal* every year
- ☐ managing social media such as the OBA's official Facebook page and Twitter account
- ☐ contributing stories and information for the OBA website to keep members current
- ☐ assisting the Law Day Committee in accomplishing extensive Law Day statewide activities and community service projects that generate significant positive public recognition for the legal profession
- ☐ publishing the OBA Annual Meeting program and House of Delegates book and promoting award winners, the meeting itself and election results
- ☐ developing and implementing a communications strategy utilizing the medium of videography to inform bar members and the public



*COMMUNICATIONS – Lori Rasmussen, Mackenzie McDaniel and Director Carol Manning*

More specific duties that benefit members are:

- ❑ editing information submitted by and about bar members for the FYI and Bench & Bar Briefs section of the bar journal
- ❑ publishing the semimonthly E-News for OBA members with email addresses
- ❑ expediting information requests from the news media
- ❑ issuing news releases about association events
- ❑ assisting OBA committees, sections and divisions in publicizing their projects to both members and the media
- ❑ working with sections to publish short law articles related to the section's focus
- ❑ assisting sections and committees with placing and designing free ads in the bar journal to promote their activities to other members

The department serves as a liaison for one board and several committees and assists in accomplishing their goals. Responsibilities include:

- ❑ working with the 10-member Board of Editors that reviews articles submitted and plans for future theme-related *Oklahoma Bar Journal* issues; once articles are approved for publication, the staff has charge of editing, proofreading and layout
- ❑ assisting the Communications Committee in its projects including overseeing the publication of 16 brochures on such topics as divorce, landlord/tenant rights and estate planning. Brochures are distributed free as a

community service to individuals, libraries, nonprofit organizations, etc.; and staff handles the continuous demand for those materials to be mailed across the state

- ❑ working with the Law Day Committee to conduct statewide contests for Oklahoma students, provide county Law Day chairpersons with both event and promotion ideas for county celebrations, coordinate the statewide Ask A Lawyer community service project in which volunteer attorneys give free legal advice to people who call in, implement marketing strategies to promote the Ask A Lawyer free legal advice and produce a one-hour, interview-style TV program, in cooperation with OETA (the state's PBS affiliate) that shows how lawyers work to improve the lives of all Oklahomans

The department also assists the Awards Committee, Disaster Response and Relief Committee, Lawyers Helping Lawyers Assistance Program Committee and Young Lawyers Division.

***Phone: 405-416-7004***



*CONTINUING LEGAL EDUCATION – (seated) Marley Harris, Director Susan Damron Krug, (standing) Gary Berger, Renee Montgomery and Mark Schneidewent*

## ***Continuing Legal Education***

OBA/CLE is the state's leading CLE provider. The staff works hard to provide innovative, timely and entertaining programs to meet all our members' needs. Call Director of Educational Programs Susan Damron Krug at 405-416-7028 with your program ideas.

Department services include:

- ❑ developing and producing hundreds of quality live seminars and webcasts
- ❑ offering group replays of the live seminars
- ❑ developing and producing on-demand and audio seminars, including webcast encores
- ❑ offering recent seminar publications in hard copy or electronic format
- ❑ developing and producing CLE at the OBA Annual Meeting
- ❑ coordinating with the Management Assistance Program to plan and facilitate the annual Solo and Small Firm Conference
- ❑ assisting the Women in Law, Diversity and Professionalism committees with conferences
- ❑ working with OBA officers to plan leadership training for OBA members
- ❑ coordinating with various OBA sections in the planning of OBA/CLE section cosponsored CLE seminars
- ❑ securing local and nationally recognized experts to present continuing legal education programming in Oklahoma
- ❑ creating electronic forms to assist members in various areas of law practice
- ❑ providing online OBA/CLE registration and access to materials through MyOKBar
- ❑ timely application of attendance credit to enable members to have an up-to-date view of accumulated OBA/CLE credit on my.okbar.org

**Phone: 405-416-7029**

**Email: cle@okbar.org**

## **Ethics Counsel**

The Office of Ethics Counsel is a membership service available only to OBA members. It was created to assist members with conflict dilemmas, confidentiality questions, communication concerns and other ethical inquiries unique to the profession. The Office of Ethics Counsel is autonomous from and independent of the Office of the General Counsel. Members seeking assistance with ethical questions are afforded an “attorney/client” relationship with the full expectation of confidentiality. Through the Office of Ethics Counsel, Oklahoma Bar Association members can obtain informal guidance



**ETHICS COUNSEL – Ethics Counsel Joe Balkenbush**

and advisory interpretations of the rules of professional conduct. Responsibilities of the Ethics Counsel include:

- ❑ answering ethics questions from members of the Oklahoma Bar Association
- ❑ researching and writing ethics materials for the OBA website, CLE publications, seminars and the *Oklahoma Bar Journal*
- ❑ preparing and presenting CLE programs on the topics of ethics and professionalism
- ❑ acting as a liaison to the Bench and Bar, Professionalism and Lawyers Helping Lawyers committees and the Legal Ethics Advisory Panel
- ❑ monitoring the OBA diversion program and teaching related classes

**Phone: 405-416-7055**

**Email: joeb@okbar.org**



**GENERAL COUNSEL – (Seated) Debbie Maddox, General Counsel Gina Hendryx, Loraine Dillinder Farabow; (back row) Tommy Humphries, Steve Sullins and Katherine Ogden**

## **General Counsel**

The Office of the General Counsel is charged with the responsibility of:

- ❑ reviewing and investigating allegations of lawyer misconduct or incapacity





*SUPPORT STAFF – (seated) Ben Douglas, Dieadra Goss; (standing) Laura Brown and Misty Hill*

- ❑ reviewing and investigating allegations of the unauthorized practice of law
- ❑ prosecuting violations of the Oklahoma Rules of Professional Conduct



*INVESTIGATORS – (seated) Jaime Lane, Sharon Orth, Tanner Condley, (standing) Manni Arzola and Krystal Willis*

- ❑ administering the Clients' Security Fund

In addition to these enumerated duties, the Office of the General Counsel:

- ❑ serves as liaison to the OBA Board of Governors advising the governing group on legal matters

- ❑ processes and approves the registration for attorneys from other jurisdictions
- ❑ administers the trust account overdraft notification program

***Phone: 405-416-7007***



*INFORMATION TECHNOLOGY – Director Robbin Watson, Brandon Haynie, Matt Gayle and Cheryl Corey*

## ***Information Technology***

The Information Technology Department is responsible for desktop computer support to staff, network management of internal servers and externally accessible servers, Web application development and maintenance, mailing list management, development of association management system and database, network security, audio/visual support to staff, monitoring of evolving technologies and assistance to all departments to utilize technology in their departments. The Information Technology Department's functions are mostly of an internal nature; however, services directly benefiting members are:

- ❑ providing a mailing list for each committee and section through the list servers to communicate with members easily and in a cost effective manner
- ❑ maintaining a committee chairperson list and a section chairperson list serve to allow communication between the association and the chairs, as well as between the chairs themselves

- ❑ providing a website to include a members-only section where members can update roster information, pay dues, register for CLE, review MCLE credits, etc.
- ❑ promoting the association's online presence through the OBA website and various social media outlets
- ❑ providing free sign-up for the [www.okbar.org/findalawyer.com](http://www.okbar.org/findalawyer.com) lawyer referral service

**Phone: 405-416-7045**

**Email: [web@okbar.org](mailto:web@okbar.org)**



*LRE — Coordinator Jane McConnell and Wanda Reece*

## ***Law-related Education***

The Law-related Education (LRE) Department of the Oklahoma Bar Association was established in 1989 to further the OBA's goals of increasing public service and enhancing public understanding of the law and the legal system. LRE, now in its 27th year, endeavors to educate citizens in a constitutional democracy and to create an active, responsible citizenry.

LRE conducts programs independently and in partnership with nonprofits, civic organizations and educational groups. Programs include professional development for teachers and others in the civic community via institutions and workshops. Classroom materials are created and distributed for programs administered by LRE at no cost to educators.

LRE aims to join the education and law communities in its mission of fostering civic-mind-

edness. Understanding of law's role in society is essential for democracies. We are now training teachers to engage students in active, participatory citizenship through digital media. LRE is under the direction of Jane McConnell, Law-related Education coordinator and Wanda Reece, administrative assistant. Information about specific LRE programs and resources is available on the OBA website at [www.okbar.org/public/lre](http://www.okbar.org/public/lre).

**Phone: 405-416-7024**

**Email: [janem@okbar.org](mailto:janem@okbar.org)**



*MANAGEMENT ASSISTANCE PROGRAM — Director Jim Calloway and Nickie Day*

## ***Management Assistance Program***

The OBA Management Assistance Program focuses on helping Oklahoma lawyers run their law offices. From "basic training" for the new lawyer to providing management and technology advice for the seasoned professional, the department has a wide array of information to assist every lawyer in every practice setting.

- ❑ **Free Telephone Hotline** — The OBA-MAP staff attempts to answer brief questions about management and technology issues. Our number is 405-416-7008. The toll-free number is 800-522-8065. Advice provided is confidential.
- ❑ **OBA Solo & Small Firm Conference** — Attend great CLE programs with nationally recognized experts, network with other small firm lawyers from across the state and meet with small-firm friendly vendors. Join us for

the Solo & Small Firm Conference June 23-25, 2016, at the Choctaw Casino Resort in Durant.

- ❑ OBA-MAP Lending Library — Attorneys can borrow books on law practice management and technology from the OBA-MAP Lending Library.
- ❑ Discounts on practice management books (and other ABA titles) — If you prefer to own a book rather than borrow it, your OBA membership entitles you to 15 percent off the list price of any of the ABA's more than 300 titles. Simply enter PAB9EOKB in the Discount Code Number field when placing your order on the ABA website.
- ❑ OBA-NET — This is an online community for the legal profession. Oklahoma lawyers post questions and brainstorm with other lawyers online. There are many files and forms available that have been uploaded by other OBA members.
- ❑ Jim Calloway's Law Practice Tips Blog — Regular postings of Internet tips, law practice tips and hot news in law office management and technology are available by visiting the blog website, subscribing to the email alerts or subscribing to the RSS news feed. Visit the blog at <http://jimcalloway.typepad.com>
- ❑ Office "Health Checks" — These consultations take place in the lawyer's office on a fee for services basis. A wide range of management issues can be covered. Typically all staff and attorneys will be involved both in group and individual interviews.
- ❑ Free consultations at the bar center — Any lawyer who is setting up a new practice or has encountered a difficult issue that cannot be comfortably handled over the telephone is welcome to schedule a free 45-minute appointment with the OBA-MAP director.
- ❑ Opening Your Law Practice — This innovative program consists of a one-day seminar, scheduled in Oklahoma City twice a year (spring and fall) and in Tulsa in the fall, to assist attorneys setting up new solo practices. A companion project is the "Starting a Law Practice Web Directory" which is available to any attorney at [www.okbar.org/members/map/StartingALawPractice](http://www.okbar.org/members/map/StartingALawPractice).

- ❑ *Oklahoma Bar Journal* articles — Each theme issue of the *Oklahoma Bar Journal* contains the regular column "Law Practice Tips" by OBA-MAP Director Jim Calloway.
- ❑ Local Bar Presentations — The OBA-MAP director is available to speak at your county bar meetings or other organized lawyer groups at no charge.

**Phone: 405-416-7008**



**MANDATORY CONTINUING LEGAL EDUCATION** – Jan Thompson, Administrator  
Beverly Petry Lewis and Johnny Floyd

## ***Mandatory Continuing Legal Education***

The OBA Mandatory Continuing Legal Education Department is the regulatory office concerned with the accreditation of all continuing legal education programs and the compliance by all Oklahoma bar members with the MCLE requirement. Often confused with the CLE Department, the MCLE Department does not present CLE seminars.

Mandatory Continuing Legal Education, a program adopted by the Oklahoma Supreme Court in 1986, establishes minimum requirements for continuing legal education for Oklahoma attorneys. The program is administered by the OBA Mandatory Continuing Legal Education Commission, which consists of nine members, that has general supervisory authority over the rules and may adopt regulations consistent with the rules.

Member services include:

- ❑ review of seminars for accreditation



- ❑ accreditation of teaching activities
- ❑ responding to requests for clarification of the Rules of the Oklahoma Supreme Court for Mandatory Continuing Legal Education
- ❑ processing the annual reports of compliance
- ❑ helping members receive all the credit to which they are entitled
- ❑ keeping a record of the Oklahoma approved seminars attended by members

**Phone: 405-416-7009**

**Email: [mcle@okbar.org](mailto:mcle@okbar.org)**

## ***Don't Know Whom to Contact?***

If you need more information about which employee in a department to contact, check out the staff list at [www.okbar.org/members/OBAstaff](http://www.okbar.org/members/OBAstaff). You will find a list of OBA staff members, a summary of their responsibilities and their email address.



**OETA**   
**FESTIVAL 2016**

**Call for Volunteers**

**WEDNESDAY, MARCH 9**  
**5:45 P.M. – 10:30 P.M.**  
**OETA STUDIOS**  
**OKLAHOMA CITY**  
RSVP TO  
**[CAROLM@OKBAR.ORG](mailto:CAROLM@OKBAR.ORG)**



# Meet Your Bar Association

## Member Perks: Benefits Your Association Provides

Being a member of the Oklahoma Bar Association has its advantages. There's a variety of free stuff and discounted services and programs available to OBA members only. You're sure to find a benefit that saves you money or enhances your practice.

### ONLINE SERVICES

**E-News** — Current OBA news and information to assist in your law practice that is sent semimonthly to members with an email address as part of their official roster information.

**Fastcase** — The OBA offers online legal research software as a free benefit to all OBA members. The OBA has contracted with Fastcase to provide national coverage, unlimited usage, unlimited customer service and unlimited printing at no cost to bar members as a part of their existing bar membership. Mobile-Sync makes the Fastcase Legal Research mem-

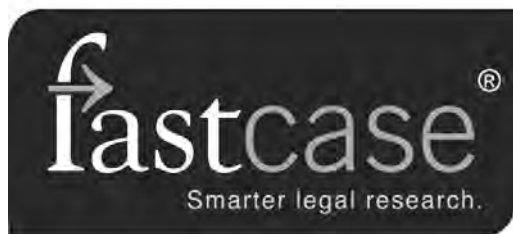
ber benefit even more powerful. It gives you the option to link your Fastcase for the iPhone or iPad app with your desktop account. Mobile Sync automatically syncs your activity history and saved favorites on any of the Fastcase applications, so no work is ever lost. When you log in through [www.okbar.org](http://www.okbar.org), you will see the favorites saved on your iPhone or iPad. To use

Fastcase, sign in with your MyOKBar username (OBA number) and password on the OBA website.

**[www.okbar.org](http://www.okbar.org)** — Main website of the OBA with links to all other OBA web presences. Information is primarily geared for members, but contains a great deal of information for the public.

**MyOKBar** — Big changes are taking place right now to this members-only portion of the website currently in transition. If you've paid your dues online or enrolled in OBA CLE recently, you've seen a sneak peek of the new and improved site that is not fully operational yet — but will be soon! At this time paying dues, enrolling in OBA CLE and searching the member roster can all be accessed by going to [www.okbar.org](http://www.okbar.org) and clicking on the "Pay Your OBA Dues Here" banner. You can also receive electronic communications from the bar by adding your email address to the roster. Plus, a new feature allows you to print a temporary bar card and print receipts from previous dues and CLE payments.

**OBA-NET** — OBA-NET is a message board and file sharing service that allows members to help each other through online participation. You must register for OBA-NET, and your password will be different from your myokbar



account. Find the link at the very bottom of [www.okbar.org](http://www.okbar.org).

**Online CLE** — Members can earn unlimited MCLE credits through our quality live audio programs, webcasts and webcast encores scheduled on a certain date and time. You can also access on-demand programs 24/7 but are limited to earning 6 hours of on-demand MCLE credits each year. Find all options at [www.okbar.org/members/cle](http://www.okbar.org/members/cle).

**Oklahoma Find A Lawyer** — The OBA website where members of the public can find lawyers by practice area and geographical area is [www.oklahomafindalawyer.com](http://www.oklahomafindalawyer.com). OBA members are not automatically listed, but can activate their listing and choose their substantive practice and geographical areas by logging into my.OKBar from the front page of [www.okbar.org](http://www.okbar.org). Click on the "FindALawyer Signup" link. OBA members also use this tool to locate fellow OBA members by substantive practice area for possible referrals.

**Online research links** — A one-page resource to quickly find the Oklahoma Supreme Court website, look up Oklahoma cases and statutes online. Can be used to find the online site of the Court of Criminal Appeals or any of Oklahoma's district courts, locate a state or federal agency, locate a federal court site, find a municipal ordinance, rules from local or federal courts or the current judicial pictorial directory. As a bonus there are many other links to assist in your legal and factual research. Find it at [www.okbar.org/members/LegalResearch.aspx](http://www.okbar.org/members/LegalResearch.aspx).

**OBA Speakers Bureau** — A new, one-of-a-kind, automated online service that connects schools and civic clubs with lawyers who can speak on a number of important topics and issues. Lawyers may indi-

**new!**



cate the county or counties where they are willing to make presentations. Speeches, outlines and handouts prepared by the OBA's Bench and Bar Committee on selected topics for presentation to public groups are available as resources. Go to [speakers.okbar.org](http://speakers.okbar.org) to sign up.



## PUBLICATIONS

**Oklahoma Bar Journal** — 34 issues of the *Oklahoma Bar Journal* are published annually, containing articles, court opinions, substantive law, state bar news, professional changes, member news (moves, kudos, additions to firms, etc.), master calendar of judicial and bar events, free to active members, \$60 annual subscription, discounted rate for senior members and Oklahoma law students. Specially printed binders to keep bar journals organized on a shelf are available at \$15.95 each by contacting the Communications Department. An archive of issues from 2005 to present can be found at [www.okbar.org/members/BarJournal/archive2015](http://www.okbar.org/members/BarJournal/archive2015).

**Continuing Legal Education materials** — Continuing Legal Education books and materials are also available for purchase as an affordable way to get quality, state-specific aids. Electronic forms are also available. A complete list of topics can be found online at [www.okbar.org/members/cle](http://www.okbar.org/members/cle).

**Consumer information brochures** — Pamphlets on 15 topics covering commonly asked questions to give to clients, are sold to OBA members at a minimal cost of \$16 for 100. Brochure topics are: wills, probate, joint tenancy, home buying, tenant rights and duties, landlord rights, divorce, small claims court, employee rights, bankruptcy, trial juror information, lawyers & legal fees, advanced directive, criminal law and resolving conflicts and disputes. As a community service, the OBA distributes the brochures free to courthouses and libraries.



throughout the state. There's an order form online at [www.okbar.org/public/brochures](http://www.okbar.org/public/brochures).

**Title Examination Standards** — Contains all the presently effective Oklahoma Title Examination Standards and reflects all revisions, produced by the OBA Real Property Law Section, \$8 per copy, free to section members.

## PRACTICE MANAGEMENT/ PROFESSIONALISM

**Young Lawyers Division** — The YLD is a professional service network offering the chance to participate in community and bar-related programs. Lawyers of any age who have been in practice less than 10 years are automatically members. No dues are required. There are many YLD programs to become involved in and connect with members on Facebook at [www.facebook.com/OBAYLD](http://www.facebook.com/OBAYLD). Find their website at [www.okbar.org/members/YLD](http://www.okbar.org/members/YLD).

**Continuing Legal Education seminars** — Coming together and networking is still an important part of continuing legal education, and OBA takes pride in offering accredited in-person programs to enhance your practice. We also ensure timely reporting of your credits.



Members also have the option to come to the bar center to watch a video of a previous seminar. Contact Renee Montgomery to schedule viewing in advance. Additionally, five or more attorneys may receive “live” MCLE credit by watching an online or video program at their own location. Renee can also arrange this for you. Reach her by phone at 405-416-7029.

**Practice management/technology hotline service**— OBA members may inquire via email or by phone to the Management Assistance Program (MAP) staff and the OBA director of

technology for brief answers about practical management and technology issues, such as law office software, understanding computer jargon, staff and personnel problems, software training opportunities, time management and trust account management. Call 405-416-7051 or 405-416-7008.

**Office “health checks”** — In-depth personal or group consultations that take place in the lawyer’s office, consultations may focus on technology, office procedures or other areas agreed upon by attorney and MAP director. The fee is \$500 per day for small law firms (five attorneys or less) or \$750 per day for medium or larger firms (more than five attorneys). Call 405-416-7008 to schedule.

**Book purchasing program** — OBA members can receive a discount on American Bar Association books through the OBA Management Assistance Program. Call 405-416-7008 for details.



**Lending library** — Law practice management books, video and audio tapes available for lawyers to check out and review. While there is no fee for checking out materials to take home, there is a \$5 charge to mail the materials to you. The complete list of materials is online at [www.okbar.org/members/map](http://www.okbar.org/members/map).

**Ethics Counsel** — Assists members with ethical questions and inquiries on subjects such as conflicts, confidentiality and client concerns. The ethics counsel also presents continuing education programs on the topics of ethics and professionalism. Call 405-416-7055. Find ethics tips and more information at [www.okbar.org/members/ethicscounsel](http://www.okbar.org/members/ethicscounsel).

**Crisis Counseling Services** — Need help with stress, depression or addiction? Call the Lawyers Helping Lawyers Assistance Program toll-free at 800-364-7886. It's strictly confiden-



tial and available 24 hours a day. The OBA offers all bar members up to six hours of free crisis counseling. Plus, members can take advantage of free lawyer discussion groups that meet monthly in Oklahoma City. Program details and group discussion topics are at [www.okbar.org/members/lawyershelpinglawyers](http://www.okbar.org/members/lawyershelpinglawyers).

**OBA sections** — 26 substantive law sections that offer professional development and interaction. Experience professional growth by learning from colleagues in your practice area and develop new contacts. Benefits vary by section with a growing number of sections holding mid-year or quarterly meetings that offer free or discount CLE to section members, some sections publish member newsletters. You'll find a list of sections, their annual dues and a membership registration form in this issue.

**County bar association and civic group speakers** — OBA officers, Board of Governors members and staff members are available (for the price of a meal) to speak at luncheons and banquets on a wide variety of topics including legislative issues, ethics, law office management and law practice tips. Call 405-416-7000 or 800-522-8065 to schedule.

## NETWORKING

**Leadership opportunities** — Boards, committees, sections and commissions are some of the volunteer opportunities that offer career development and ways to interact with other attorneys and judges. Members may volunteer to serve on a committee at any time during the year. You can sign up for a committee online by going to [www.okbar.org](http://www.okbar.org), scroll down to the bottom and click on "Join a Committee."

**Annual Meeting** — Participate in CLE programs, section and committee meetings, have a

voice in determining the OBA's legislative program and electing future state bar leaders, take advantage of networking opportunities with attorneys and judges from throughout the state. The 2016 Annual Meeting will be Nov. 2-4 at the Sheraton Hotel in Oklahoma City.

**Solo & Small Firm Conference/YLD Midyear Meeting** — Lawyers have the opportunity to get to know one another and to take advantage of a CLE seminar in a relaxed family setting. Mark your calendar for June 23-25, 2016, at the Choctaw Casino Resort in Durant.

## OTHER SERVICES

**Direct dial and 24-hour messaging to OBA staff members** — Bypass waiting for the OBA receptionist to answer your call by dialing a staff person or department directly, a list of phone numbers is published in the *Oklahoma Bar Journal* on the masthead page, leave a voice message anytime (nights and weekends too). After-hour calls to the general phone numbers 405-416-7000 or 800-522-8065 are automated and will list department extension numbers to punch in if you don't know the direct phone number. You can also find online a list of staff members, brief job descriptions and links to their email addresses at [www.okbar.org/members/OBAstaff](http://www.okbar.org/members/OBAstaff).

**Videoconferencing** — Available at OSU Tulsa in downtown Tulsa so committee and section members can participate in meetings without traveling to Oklahoma City.



**Legislative services** — The OBA's executive director works for adoption of legislative issues approved by the House of Delegates, and the Legislative Monitoring Committee provides a periodic legislative report highlighting the status of selected bills during the session. The report is published in the *Oklahoma Bar Journal*.

and on the website while the Legislature is in session.

**Meeting rooms at Bar Center** — Many size rooms to choose from to accommodate small and large group meetings, client conferences and depositions. Free to members during weekday business hours, nominal fee for evenings.

#### OPTIONAL MEMBER SERVICES

**ABA Retirement Funds** — Does your retirement plan offer no out-of-pocket expenses, professional fiduciary services, a broad range of investment options and full-service administration? Ours does! The ABA Retirement Funds Program has been providing affordable 401(k) plans exclusively to the legal community for 50 years. The program's bundled approach allows your firm to keep its focus on the success of the practice. We provide you with trustee, record keeping, tax reporting, compliance testing, investment management, and participant communication services - all from a single source - at no additional cost to your firm. Maybe it's time to find out what's inside your 401(k). Call 866-812-3580 for a free consultation or visit [www.abaretirement.com](http://www.abaretirement.com) for more information.



**OBA-sponsored insurance programs** — Keep rates low through group buying power. For information about OBA programs for life, health (employer-group and individual), individual disability, personal umbrella liability, long-term care and other insurance plans, contact **Beale Professional Services** 405-521-1600, 800-530-4863; [www.3000iG.com](http://www.3000iG.com). For professional liability, **Oklahoma Attorneys Mutual Insurance Co.** is the only insurer owned by OBA members, OAMIC can be reached at 405-471-5380 or 800-318-7505; [www.oamic.com](http://www.oamic.com). They also offer a broad range of court bonds

with more information at [www.oklahoma.onlinecourtbonds.com](http://www.oklahoma.onlinecourtbonds.com).

**Oklahoma Legal Directory** — Official directory of OBA members with addresses and phone numbers, roster alphabetical and by county, includes guide to county, state and federal offices plus departments of the U.S. and Oklahoma government, complete digest of courts, professional associations including OBA officers, committees and sections. Published by Legal Directories Publishing Co. in both hard bound and electronic editions; \$61 + shipping and sales tax. Call 800-447-5375 ext. 2 to request order form or visit their website at [www.legaldirectories.com](http://www.legaldirectories.com).



#### MEMBER DISCOUNTS

**Avis Car Rental** — The Oklahoma Bar Association can offer you the use of its Avis car rental discount rates if you use the reference code A674000. Contact Avis toll-free at 800-831-8000 or [www.avis.com](http://www.avis.com).

**Citrix** – OBA members can receive a 10 percent discount on Citrix technology tools. Among these is the secure cloud-based storage service, Citrix ShareFile. ShareFile provides an easy-to-use email encryption solution, and Sharefile Business and Platinum plans offer Outlook integration for one-touch encryption of either entire emails or email attachments with no need for the recipient to download or install any software. Other Citrix products eligible for the member discount include GoToMeeting, GoToMyPC, GoToTraining, GoToWebinar, Grasshopper and

**new!**





Podio. The website to sign up for these products is coming soon! The link will be added to the Member Benefits page on [www.okbar.org](http://www.okbar.org) when it goes live.

**Colcord Hotel** — A boutique hotel near Bricktown in downtown Oklahoma City, the Colcord Hotel offers OBA members a discounted rate of \$160 per night for a deluxe king or deluxe double room, \$179 per night for a superior corner king and \$279 per night for the Colcord Suite. Call the hotel at 866-781-3800 to make your reservation and mention that you are an OBA member for the special discount or make your reservation online at [www.colcord-hotel.com](http://www.colcord-hotel.com) utilizing the corporate rate; access code is OKBR.

**Hertz Car Rental** — The OBA's discount number for Hertz car rental is CDP 0164851. Hertz toll-free is 800-654-3131 or [www.hertz.com](http://www.hertz.com).

**International Travel** — Go Next has been in business for 40 years. They provide high quality, recreational travel to destinations around the globe. Group rates on trips are available to you, your family and your friends. All trips include airfare from either Oklahoma City or Tulsa, accommodations, transfers, breakfast buffet and other amenities. See highlights of the current trip offerings at [www.GoNext.com](http://www.GoNext.com). Call Go Next toll-free at 800-842-9023 for more information and/or reservations.

## LAWPAY®

CREDIT CARD PROCESSING

**LawPay** — The OBA endorses the LawPay credit card processing services programs designed for attorneys. Funds from each client credit card transaction may be either deposited into client trust or operating account as the lawyer designates. All transaction fees are deducted from the law firm operating account to simplify the trust account record-keeping. Credit cards attract clients, win business, improve cash flow and reduce collections. To learn more call 866-376-0950 or visit [www.law-pay.com/oba](http://www.law-pay.com/oba).

**LawWare** — Bar members may subscribe to the document assembly, document management and client management software program at a discounted group rate. Created by Oklahoma attorneys in 1991, LawWare stream-

lines the process of organizing and generating legal forms and related documents for law offices of any size. With the OBA endorsement, members may subscribe to LawWare at a discounted rate of \$49 per month for the first copy and \$10 per month for each additional office copy. To inquire about LawWare or to order a subscription, call 866-LAW-WARE or visit [www.LawWare.com](http://www.LawWare.com).

**Mobile Dictation Service** — Mobile Assistant is designed to document your critical client meeting information through on-the-go transcription over the phone. It's an easy, fast, secure and accurate way of documenting client interaction, drafting letters and capturing important meeting details. OBA members are eligible for a 25 percent discount by using the coupon code OKBAR. OBA member cost is \$54.37 a month for up to 500 lines (line equals 65 characters including spaces). Exceed that limit and pay 12 cents per line above 500 lines. Using Mobile Assistant is easy: 1) call the service from any phone, 2) dictate your notes (no time limit) and 3) your notes are emailed to you the same day after being transcribed by a real, live person located within the U.S. Instead of email, notes can also be made available through secure download. Sign up at [www.mobileassistant.us](http://www.mobileassistant.us).

**Ruby Receptionists Virtual Reception Service** — Looking for a full-time receptionist for your law practice but worried about the expense? Ruby Receptionists may be the answer. Ruby Receptionists is a virtual reception service based in Portland, Ore. You can use their services full-time, or you can get temporary help a few hours a day when you want to close for lunch or need someone to fill in when someone is out sick. It's a great solution for solo and small firms; the service will screen, announce and transfer calls, take messages, place outgoing calls and more. To learn more, call 866-611-7829 or visit [www.callruby.com/okbar](http://www.callruby.com/okbar). Mention your OBA membership and receive a 21-day money back guarantee, free activation and special pricing on your monthly plan.



**Shipping** — OBA members can use the UPS® Savings Program. Make the most out of your membership and take advantage of some of the

most competitive rates available on shipping services with UPS. Whether you need your documents or packages to arrive the next day or are looking for the most affordable shipping option, UPS understands the importance of reliability, speed and cost. See how UPS discounts can help your bottom line.

- Up to 34 percent on UPS Air letters including UPS Next Day Air®\*
- Up to 30 percent on UPS Air packages (1 lb.+)\*
- Up to 32 percent on UPS International imports and exports
- Up to 16 percent on UPS Ground shipments
- Savings begin at 70 percent on UPS Freight shipments over 150 lbs.



You can receive these discounts even if you already have a UPS account. Plus, the more you ship, the more you can save with UPS. To enroll and start saving, visit [savewithups.com/oba](http://savewithups.com/oba).

*\*Discounts exclude UPS Express Critical® and UPS Next Day Air® Early A.M.®*



**Thomson Reuters Westlaw Discounts** — Thomson Reuters offers OBA members a variety of discounts on its products and services. For information on other offers available call 405-308-0320.

**WordPerfect Licensing Program** — OBA members can purchase a WordPerfect Office X7 (office suite for legal professionals) license at a reduced price; go to <http://goo.gl/f5lfz4>.



**WordRake** — Is your writing too “wordy” or reliant on “legalese?” WordRake may be the solution for you. Developed for lawyers, the software provides editing suggestions for clarity and brevity. WordRake instantly edits documents right in Microsoft Word, suggesting changes that eliminate unnecessary words and phrases. OBA members receive a 10 percent discount on the product. Download a free seven-day trial to check it out. The MS Word add-in is easy to install, and annual licensing plans offer increased saving based on subscription duration. When you purchase, enter coupon code OKBAR on the final purchase page to receive the special OBA member discount; [www.wordrake.com](http://www.wordrake.com).

# Meet Your Bar Association

## Connect with the OBA Through Social Media

Grow your network.



Grow your law practice.



**Like** us on Facebook

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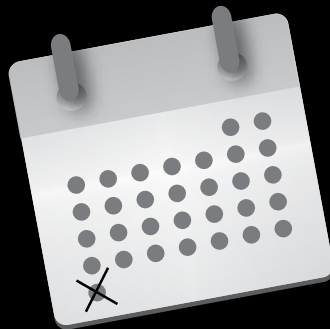
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# Limiting Liability in the Oilfield

*By Catherine L. Campbell and Thomas G. Wolfe*

Parties are free to contract in any way they see fit so long as their contract does not violate public policy. Likewise, the parties to a contract may agree to allocate the risks of loss between them — including pre-performance exoneration of a negligent service provider from the consequences of its own negligence — if their consent to such risk allocation is mutual.

Oklahoma courts judge the existence of mutuality of consent, in part, by determining whether the parties enjoy sufficiently-equal bargaining power. This inquiry depends on the importance of the requested service to the economic well-being of the party seeking the service, and the nature of the market providing that service. On the one hand, courts are more likely to conclude that a customer seeking a service it wants but does not need in a market with numerous providers is on equal footing with the service provider. On the other, a customer seeking a necessary service offered by few providers, or offered by many providers that demand similarly onerous contract terms, has no power to allocate risks in a way more beneficial to it. The choice between accepting unfavorable terms hoping nothing goes wrong or declining the necessary service altogether is no choice at all.

These principles apply to oilfield service contracts. Undoubtedly, the economic risks in the oilfield are high. Although pre-service allocation of the risks is preferable, only a negotiated — and thus mutually agreed allocation of risks based upon equality of bargaining power — will pass judicial muster.

## THE OKLAHOMA LAW IN GENERAL

A basic premise of Oklahoma law, and indeed contract law in general, is that parties are free to contract as they see fit,<sup>1</sup> as long as the contract is not contrary to law or violative of public policy.<sup>2</sup> However, Oklahoma prohibits contracts that attempt to exempt a contracting party from responsibility for its own fraud, willful injury to persons or property, gross negligence or that otherwise violate public policy.<sup>3</sup>

Oklahoma distinguishes between various risk-shifting tools — broadly characterized as “exculpatory provisions,”<sup>4</sup> — including limitation of liability clauses, indemnity provisions and exculpatory clauses. Because under certain circumstances exculpatory provisions are valid and enforceable, they are ubiquitous in modern commercial life. Oklahoma courts enforce exculpatory clauses only if: 1) they “clearly and unambiguously” exonerate the defendant with respect to the claim; 2) there exists no significant difference in the bargaining power between the contracting parties; and 3) enforcement will not otherwise violate public policy.<sup>5</sup> While an exculpatory provision need not mention the word “negligence” to be valid,<sup>6</sup> the agreement to exculpate must be clear from an examination of

the entire contract.<sup>7</sup> An exculpatory clause is sufficiently clear and unambiguous when it identifies the party to be indemnified and the nature and extent of damages.<sup>8</sup>

As for equality in bargaining, courts have traditionally concluded that public policy forbids enforcement of exculpatory provisions in 1) bailment contracts, 2) employment contracts, 3) contracts with common carriers, 4) contracts with innkeepers and 5) utilities contracts.<sup>9</sup> In these instances, courts perceive that the service provider enjoys vastly superior bargaining power over the consumer. Not incidentally, these service providers often use adhesion contracts — “standardized contract[s] prepared entirely by one party to the transaction for the acceptance of the other.”<sup>10</sup> Adhesion contracts are take-it-or-leave-it since “the services that are the subject of the contract cannot be obtained except by acquiescing to the form agreement.”<sup>11</sup> By definition, the parties to an adhesion contract do not share equal bargaining positions.<sup>12</sup>

That a contract is one of adhesion (with the consequent presumption of lack of equal bargaining power) is not sufficient, standing alone, to invalidate an exculpatory provision. Instead, Oklahoma courts require evidence of something more than a slight disparity in bargaining power between the parties to nullify an exculpatory provision. When the disparity of bargaining power renders the freedom to contract illusory, an exculpatory clause is unenforceable.

In *Trumbower v. Sports Car Club of America, Inc.*,<sup>13</sup> the court recognized guidelines for determining whether the contracting parties enjoy relatively equal bargaining positions. First, courts should “generally consider categories of individuals rather than a particular individual.”<sup>14</sup> Second, courts must weigh “the importance which the subject matter of the contract has for the physical or economic well-being of the party agreeing to release the other party.”<sup>15</sup> And, the court must consider “the existence and extent of competition among [service providers] measured by the amount of free choice the [consumer].”<sup>16</sup>

Applying *Trumbower*, Oklahoma courts have enforced exculpatory provisions when the

activity at issue is a hobby or sport.<sup>17</sup> Moreover, the releasing party is not forced to use a particular vendor or, ultimately, to engage in the activity.<sup>18</sup> Correspondingly, Oklahoma courts have approved exculpatory provisions where the contracting party presumably had wide choice in service providers.<sup>19</sup>

Some jurisdictions presume that commercial parties generally enjoy equal bargaining power while assuming that ordinary consumers do not.<sup>20</sup> However, Oklahoma law mandates that courts consider the economic realities of the transaction, not the parties’ relative sophistication. Each case stands on its own facts.<sup>21</sup>

## OKLAHOMA LAW AS APPLIED TO OILFIELD SERVICE CONTRACTS

All or some variation of the recognized risk-shifting mechanisms — releases, limitation of liability clauses, and indemnity provisions — “are widespread in oilfield contracts” since, like most businesses, providers and consumers of oilfield services benefit from assuring clear allocation of risks at the outset of the contractual relationship.<sup>22</sup> Some oilfield contracts contain indemnity provisions (also known as knock-for-knock provisions) that require each

party to assume all risk associated with its equipment and personnel regardless of fault.<sup>23</sup> Often, the parties contemplate that they will insure their respective contractual obligations.<sup>24</sup> Other oilfield contracts treat service providers more favorably.<sup>25</sup> Finally, operators may use master service agreements with contractual terms favorable to them and which allow them to contract with service providers before any work is performed, ideally permitting the parties to negotiate terms in a lower pressure environment.<sup>26</sup>

Oilfield exculpatory clauses are typically clearly delineated and, in any case, are well known in the industry.<sup>27</sup> Therefore, courts may conclude that such agreements “clearly and unambiguously” exonerate the intended party. Nonetheless, as three cases applying Oklahoma law demonstrate, because pre-work risk allocation in the oilfield is legally appropriate only when it results from relative arm’s length bargaining, the economic reality of the bargain-

“Oilfield exculpatory clauses are typically clearly delineated and, in any case, are well known in the industry.”

ing positions between the parties is the paramount consideration.

In *Mohawk Drilling Co. v. McCullough Tool Co.*,<sup>28</sup> while performing “specialized” work on Mohawk’s well, McCullough lost equipment downhole requiring Mohawk to rework the well. The purchase order stated that McCullough “shall not be held liable or responsible for any loss, damage or injury” to the well resulting from the work it performed.<sup>29</sup> The evidence showed that, because other companies that could have performed the same specialized work used contracts containing similar exculpatory language, the well owner could not obtain the necessary service without exculpating the service provider.<sup>30</sup> Although *Mohawk* predates *Schmidt*,<sup>31</sup> the *Mohawk* court employed the same factors — economic necessity of the requested service and availability of the service in the market free of exculpatory provisions — in determining that McCullough “enjoyed much greater bargaining strength” so that the exculpatory contract was “against [Oklahoma] public policy.”<sup>32</sup>

More than 30 years later, in *Kinthead v. W. Atlas Int’l, Inc.*,<sup>33</sup> Kinthead orally contracted with Western to remove the drill string when it became impacted in the borehole. Before Kinthead executed a written work order, Western lost the drill string in the casing which ultimately resulted in abandonment of the well. First, since the evidence showed that the exculpatory language at issue was common in the industry, the court rejected Kinthead’s argument that the oral agreement with Western did not contain the same exculpatory language as the written agreement.<sup>34</sup> Second, Western offered evidence that Kinthead could have contracted with other companies that either did not require, or would have negotiated to remove or modify, similar exculpatory language. Consequently, impliedly weighing the same factors as the *Mohawk* court, the court concluded that the evidence was sufficient to sustain the jury verdict for Western.<sup>35</sup>

Finally, in *Arnold Oil Props., LLC v. Schlumberger Tech. Corp.*,<sup>36</sup> Arnold contracted with Schlumberger, whose contract contained both a knock-for-knock indemnity provision and a limitation of liability clause. The court concluded that the evidence at trial was sufficient to support the jury’s determination that Arnold and Schlumberger were in unequal bargaining posi-

tions because: 1) the service was “critical” to Arnold’s operations; 2) a limited number of providers could perform the services and/or most if not all providers used similar exculpatory language; and 3) the exculpatory terms of three other providers’ contracts were non-negotiable.<sup>37</sup> The court further noted that Schlumberger’s contract did not permit the customer to bargain for a higher limit on liability.<sup>38</sup>

A review of cases applying Oklahoma law reveals that chief among the factors to be resolved in determining whether to enforce an exculpatory provision in an oilfield contract is the number of service providers and whether most, if not all, service providers demand inclusion of similarly burdensome exculpatory provisions. If providers in the market insist on the same contractual provisions, without meaningful negotiation and as a pre-condition to performing economically essential services, the contract clause is unenforceable. The size and sophistication of the provider relative to the customer is not pertinent to the inquiry. Though the customer may eventually opt to accept the offered terms from the provider rather than pay a higher contract price, it must be given a meaningful opportunity to do so. In the absence of the opportunity to negotiate terms, there is no mutual consent.

Oklahoma is not alone in recognizing the fundamental importance of economic reality in oilfield risk allocation. According to *USA Today*, as of Dec. 31, 2011, Texas had the most oil reserves of any state in the country while Louisiana had the 10th highest.<sup>39</sup> To level the playing field between powerful producers and the less powerful contractors who, though forced to indemnify the producers against their own negligence could not procure insurance to adequately cover the risk, both states enacted statutes that generally void oilfield indemnity clauses.<sup>40</sup> Louisiana and Texas made public policy choices based not on the contracting parties’ knowledge and sophistication, but on the perceived inequality of bargaining between equally sophisticated commercial entities. Though not codified in statute, Oklahoma law is similar.

## CONCLUSION

Undoubtedly, form contracts and industry custom reflect past economic conditions in the oilfield; but, the market for oilfield services is far from static. In recent years, oil and gas pro-



duction in the United States has markedly increased. During periods of lower production service providers may be more willing to compete for work and more willing to accept greater risk. It is equally true that, during periods of higher production, demand for services outstrips supply, increasing competition for scarce resources. These market factors are magnified when the services provided are highly specialized — which means a decreased number of available service providers.

Oklahoma case law prudently elevates economic realities over industry custom. Where the service purchaser's ability to obtain an essential service is limited either because there are few providers and/or because most providers require acceptance of the same non-negotiable exculpatory language, exculpatory agreements may be unenforceable. Thus, in terms of commercial entities, knowledgeable in the field, the decisive factor is not whether the exculpatory language is unequivocally clear. Instead, at issue is the economic reality underlying the presumed freedom of the parties to strike a deal.

In Oklahoma no party is forced to insure against risks for which it was not afforded a chance to bargain. It is unfair to shift the burden of loss to the operator when it has no power to protect itself. Oklahoma case law is clear: each party to a contract must be allowed to balance the risks against the cost of the service provided. A contract which deprives the party of its freedom to negotiate risk allocation likely violates Oklahoma law.

1. *E. Cent. Elec. Coop. v. Pub. Serv. Co.*, 1970 OK 80, 469 P.2d 662, 664.
2. *Ball v. Wilshire Ins. Co.*, 2009 OK 38, 221 P.3d 717, 724, 726.
3. OKLA. STAT. tit. 15, §212.
4. *Schmidt v. United States*, 1996 OK 29, 912 P.2d 871, 874.
5. *Kinthead v. W. Alliance Int'l*, 1993 OK CIV APP 132, 894 P.2d 1123, 1128.
6. See *Estate of King v. Wagoner County Bd. of County Comm'rs*, 2006 OK CIV APP 118, 146 P.3d 833, 844.
7. *Otis Elevator Co. v. Midland Red Oak Realty, Inc.*, 483 F.3d 1095, 1105 (10th Cir. 2007).
8. *Mercury Inv. Co. v. F.W. Woolworth Co.*, 1985 OK 38, 706 P.2d 523, 530.
9. Stacy A. Silkworth, Note: *The Pilotage Clause: Albatross of Admiralty Law*, 64 B.U. L. Rev. 823, 848-49 (July 1984); see, e.g., *Sun Oil Co. v. Dalzell Towing Co.*, 287 U.S. 291, 294 (1932); *Bisso v. Island Waterways Corp.*, 349 U.S. 85, 90-91 (1955).
10. *Bilbrey v. Cingular Wireless, L.L.C.*, 2007 OK 54, 164 P.3d 131, 135.
11. *Wilson v. Travelers Ins. Co.*, 1980 OK 9, 605 P.2d 1327, 1329.
12. See, e.g., *Max True Plastering Co. v. U.S. Fid. & Guar. Co.*, 1996 OK 28, 912 P.2d 861, 864.
13. 428 F. Supp. 1113, 1117 (W.D. Okla. 1976).
14. *Id.* (citation omitted).
15. *Id.* See also 57A Am. Jur. 2d Negligence §62 (noting that "a seller must offer a service that is usually deemed essential in nature").
16. *Id.* See also *Allen v. Michigan Bell Tele. Co.*, 171 S.W.2d 689, 692 (Mich. App. 1969) ("[W]here goods and services can only be obtained from one source, or several sources on non-competitive terms, the choices of one who desires to purchase are limited to acceptance of the

terms offered or doing without. Depending on that nature of the goods or services and the purchaser's needs, doing without may or may not be a realistic alternative.").

Additionally, the *Trombower* approach is consistent with the RESTATEMENT (SECOND) OF TORTS §496B. Comment j states that "disparity in bargaining power may arise from the defendant's monopoly of a particular field of service, from the generality of the use of contract clauses insisting upon assumption of the risk by all those engaged in such a field, so that the plaintiff has no alternative possibility of obtaining the service without the clause; or it may arise from the exigencies of the needs of the plaintiff himself, which leave him no reasonable alternative to the acceptance of the offered term."

17. See *Schmidt*, *supra* at n. 4, 912 P.2d at 873 n. 7, 874 n. 18 (recreational horseback riding); *Manning v. Brannon*, 1998 OK CIV APP 17, 956 P.2d 156, 159 (parachuting); *Martin v. A.C.G., Inc.*, 1998 OK CIV APP 148, 965 P.2d 995, 997 (health club). These activities are not "necessary or important to [the contracting party's] physical or emotional well-being," *Manning*, 956 P.2d at 159.

18. *Martin*, 965 P.2d at 997.

19. *Rodgers v. Tecumseh Bank*, 1988 OK 36, 756 P.2d 1223, 1226 (noting that a commercial loan agreement was not an adhesion contract since borrowers have a choice of loan providers, and the evidence showed that the parties actually negotiated the terms of the agreement in an arms-length transaction).

20. See, e.g., *Henry Heide, Inc. v. WRH Prods. Co., Inc.*, 766 F.2d 105, 109 (3d Cir. 1985).

21. *Elsken v. Network Multi-Family Security Corp.*, 1992 OK 136, 838 P.2d 1007, 1010; *Thompson v. Peters*, 1994 OK CIV APP 97, 885 P.2d 686, 688; *Trumbower*, *supra* at n. 13, 428 F. Supp. at 1117; *Kinthead*, *supra* at n. 5, 894 P.2d at 1128.

22. *Chesapeake Operating, Inc. v. Nabors Indus., USA, Inc.*, 94 S.W.3d 163, 167-68, 180 (Tex. App. 2002).

23. *Id.* at 167. The Association of International Petroleum Negotiators (AIPN) 2002 International Model Well Services Contract indemnity provisions state that the indemnities are non-fault. See Chidi Egbochue & Herbert Smith, "Reviewing 'Knock for Knock' Indemnities Following the Macondo Well Blowout," <http://goo.gl/yJY9SG>.

24. The AIPN 2002 International Model Well Services Contract allows the parties to arrange for self-insurance or insurance. See Egbochue & Smith, *supra* n. 23. Similarly, the IADC form drilling contract recognizes that the parties may allocate risk via the purchase of insurance; Andrew R. Thomas, "Service Contracts in the Oil and Gas Industry," Energy Policy Center, Levin College of Urban Affairs Cleveland State University, December 2013, at 4. <http://goo.gl/1be1EN>.

As the court, in *Appalachian Ins. Co. v. McDonnell Douglas Corp.*, 262 Cal. Rptr. 716, 731 (Cal. Ct. App. 1989), noted in a complex commercial case:

[I]t was not commercially unreasonable for the parties to agree [Customer] would obtain insurance to protect it against the risk of loss rather than to have [Contractor] warrant performance.... As a practical matter, it was a question of whether [Customer] wanted to directly pay for insurance by obtaining insurance itself or indirectly pay for insurance by requiring [Contractor] obtain the insurance and give a warranty.

In *Appalachian Ins. Co.*, Western Union hired McDonnell Douglas, one of two companies providing the service, to launch a communications satellite. Western Union chose McDonnell Douglas as the cheaper and more reliable option though both companies were available to launch on Western Union's schedule. *Id.* at 729. Importantly, despite the limited number of service providers in the highly specialized market, the parties negotiated the terms of their contract including the exculpatory language. *Id.* The evidence showed that the contract resulted from an arms-length transaction between equals. See also *Chi. Steel Rule & Die Fabricators Co. v. ADT Security Sys.*, 763 N.E.2d 839, 845 (Ill. Ct. App. 2002) (observing that there existed no evidence of disparate bargaining power between the commercial entities when 1) the provider was not the only alarm system provider in the market, and 2) the parties' contract allowed the customer to pay more so that the provider would assume more risk indicating that the customer had the opportunity to negotiate to shift the risk).

25. See Thomas, *supra* at n. 24, at 4 (noting that the International Association of Drilling Contractors form drilling contract generally favors drillers by placing responsibility for damages to the rig on the operator).

26. See William W. Pugh & Harold J. Flanagan, "Master Service Agreements and Risk Allocation: In Whose Good Hands Are You?" <https://goo.gl/2QW901>; Thomas, *supra* at n. 24, at 1.

27. *Kinthead*, *supra* at n. 5, 894 P.2d at 1126.

28. 271 F.2d 627, 632 (10th Cir. 1959).

29. *Id.* at 629.

30. *Id.* at 632.

31. *Schmidt*, *supra* at n. 4, 912 P.2d at 874.
32. *Id.* (citing an unpublished Oklahoma Supreme Court case in predicting how the Oklahoma courts would rule on the issue).
33. 1993 OK CIV APP 132, 894 P.2d 1123.
34. *Id.* at 1127-28.
35. *Id.* at 1128.
36. 672 F.3d 1202 (10th Cir. 2012).
37. *Id.* at 1208.
38. *Id.* at 1209.
39. Paul Ausick & Michael B. Sauter, "The 10 Most Oil-Rich States," *USA Today*, Aug. 3, 2013, <http://goo.gl/zBHfTW>.
40. See Louisiana Oilfield Indemnity Act, LA REV. STAT. ANN. §9:2780 and Texas Oilfield Anti-Indemnity Act, TEX. CIV. PRAC. & REM. CODE ANN. §127.001, *et seq.* See also *Fontenot v. Chevron U.S.A.*, 676 So.2d 557, 562 (La. 1996) and *Ken Petroleum Corp. v. Questor Drilling Corp.*, 24 S.W.3d 344, 348 (Tex. 2000). While top-10 producers New Mexico and Wyoming also enacted similar statutes (New Mexico Oilfield Anti-Indemnity Act, N.M. STAT. ANN. §56-7-2 and Wyoming Oilfield Anti-Indemnity Act, WYO. STAT. §30-1-131 *et seq.*), both did so to promote worker safety. *Pina v. Gruy Petroleum Mgmt. Co.*, 136 P.3d 1029, 1033 (N.M. 2006) *Union Pac. Res. Co. v. Dolenc*, 86 P.3d 1287, 1292 (Wyo. 2004).

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

# Digging in the Pipeline Right of Way

## The End of 'No Harm, No Foul'

By Curtis M. Long

**I**t's been said that you can't dig a hole anywhere in Oklahoma without striking a pipeline. New laws should help deter pipeline excavation damage.

The Oklahoma Underground Facilities Damage Prevention Act (Damage Prevention Act)<sup>1</sup> has worked reasonably well to define responsibility for damage to underground utility lines<sup>2</sup> by those who excavate<sup>3</sup> with mechanized equipment. The act imposes strict liability on excavators who fail to follow the procedures of the act<sup>4</sup> and who damage underground lines in the process. A notification of impending excavation triggers the familiar display of brightly colored spray paint and plastic flags<sup>5</sup> marking the location of underground utility lines in the target construction area. Under the auspices of the act, the Oklahoma One-Call System Inc. has been established as a convenient statewide notification center to receive notifications about mechanized digging and to coordinate the marking of all utility lines accordingly.<sup>6</sup> The act imposes liability for damages on an excavator who fails to give the required notice or who excavates with mechanized equipment in disregard for locations marked as covering buried utility lines.<sup>7</sup>

The principal means of enforcement under the Damage Prevention Act has been civil suits against excavators causing damage.<sup>8</sup> When a utility line is damaged in connection with a violation of the act, an operator of the damaged line is motivated to seek and collect the cost of repair from the offending excavator. This process has not been entirely effective to deter and remedy violations. Some excavators choose to ignore the act completely, apparently on the theory it will be faster and cheaper to blindly operate their machinery, risk damage to any underground facilities and if any occurs, take

their chances with the operator or in court. This approach incorporates the inherent gamble that no lines will be struck at all, in which case the excavator will likely escape any sanction for his violations.

Until recent Oklahoma legislation and implementing rules of the Oklahoma Corporation Commission were established, no process existed to fill this gap in enforcement remedies against excavators who violate the act but who cause little or no damage. An operator is entitled to injunctive relief against a repeat offender, but that relief related only to repeated instances of past damage coupled with the expectation of future damage, all by the same excavator.<sup>9</sup> Injunction has thus been of limited usefulness except in egregious and rare cases.

Violations of the act can be particularly critical where pipelines carrying petroleum products or natural gas are present. Rupturing such a pipeline can result not only in service outages and repair cost, but also the loss of valuable product, environmental contamination, explosion, fire, property damage, personal injury and death. For decades, the Oklahoma Corporation Commission has exercised statutory jurisdiction to maintain and enforce pipeline safety standards for oil and gas pipelines.<sup>10</sup> Those regulations focus on pipeline owners and operators and on safe pipeline operations, and the process is designed fundamentally to "correct a violation" of the pipeline safety requirements.<sup>11</sup> The commission has expressly included in its regulations the obligation for pipeline operators to comply with the Damage Prevention Act,<sup>12</sup> but the commission's jurisdic-

tion over pipeline safety has not heretofore extended to excavators.

That changed in 2014 — at least with respect to pipelines carrying hydrocarbons. The journey to this point began with Congress' enactment of the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (PIPES).<sup>13</sup> PIPES extended federal jurisdiction to excavators so as to prohibit "demolition, excavation, tunneling or construction" without first using the state's one-call notification system to establish the location of any underground pipelines and to prohibit such "activity in disregard of location information or markings established" by a pipeline operator.<sup>14</sup> PIPES also imposed a requirement on excavators to "promptly notify" the pipeline operator of serious damage and to call "the 911 emergency telephone number" where "flammable, toxic, or corrosive gas or liquid" is released.<sup>15</sup> Congress expressly limited this federal jurisdiction over excavators to those instances where the secretary of transportation "determined that the State's enforcement is inadequate" according to procedures to be established by a federal rule-making proceeding.<sup>16</sup>

In response, the Pipeline and Hazardous Material Safety Administration (PHMSA), an agency of the federal Department of Transportation, initiated a rule-making to determine the process by which state laws would be examined for adequacy. On April 2, 2012, PHMSA issued a Notice of Proposed Rulemaking (NPRM) for this purpose, as a "prerequisite should PHMSA find it necessary to conduct an administrative enforcement proceeding against an excavator."<sup>17</sup> In its notice, PHMSA cast a particularly skeptical eye toward states that had no government agency responsible for enforcement of state one-call laws, no civil penalties for violations and no requirement for reporting excavation damage and notifying emergency authorities.<sup>18</sup>

In response to the expected federal review of state law, the Oklahoma Legislature enacted House Bill 2533<sup>19</sup> in May 2014 to fill the enforcement gap in the Damage Prevention Act: the pipeline safety jurisdiction of the Oklahoma Corporation Commission was extended to include authority to enforce the act against exca-

vators. This new jurisdiction applies only in the context of those pipelines identified in the statute by reference to federal pipeline safety jurisdiction: pipelines and pipeline systems as those terms are defined "by the currently effective definition[s] ... in 49 CFR Part 192.3 and ... 49 CFR Part 195.2."<sup>20</sup> Consequently, the commission's new enforcement authority over excavators does not extend to instances involving oil and gas gathering lines or to other types of utility lines, such as telephone, electric or water lines.

Significantly, House Bill 2533 expressly preserves private rights of action to recover damages against excavators: "Enforcement authority granted in this section shall be concurrent with and shall not be construed to modify or limit any private right of action, including those available pursuant to Section 142.9a of Title 63 of the Oklahoma Statutes."<sup>21</sup> According to this provision, operators remain free to file suit against excavators for damages and for injunctive relief as before, without regard to whether the commission has or may proceed against the same excavator regarding the same violation(s).

Section 2 of House Bill 2533 directed the commission to open a notice of inquiry process to explore its new enforcement authority, including the "implementation of a complaint process under the regulatory authority of the Commission." The commission did open such a process, as well as a subsequent rule-making proceeding.<sup>22</sup> As a result, the commission promulgated new regulations in Chapter 5 (Rules of Practice)<sup>23</sup> and in Chapter 20 (Pipeline Safety)<sup>24</sup> of its rules. In promulgating these new regulations, the commission took into consideration the then-expected federal criteria for determining adequacy of state laws to prevent excavation damage.<sup>25</sup>

The new rules in Chapter 20 accomplish several purposes. First, these rules require excavators to comply with the provisions of the Damage Prevention Act and assert the commission's authority to enforce any violation against excavators as well as pipeline operators subject to the act.<sup>26</sup> Second, the rules impose on excavators the duty to notify local 911 authorities of an incident that results in a

**“The journey to this point began with Congress’ enactment of the Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006 (PIPES).”**



release of product from the pipeline.<sup>27</sup> Third, the rules confirm their applicability only in the context of a “pipeline” or “pipeline system” as those terms are defined by federal regulations in 49 C.F.R. §§192.3 and 195.2.<sup>28</sup> Fourth, the rules confirm that they do not modify or limit private rights of action.<sup>29</sup>

The new rules in Chapter 5 establish a specific complaint-driven procedure for enforcement of violations by excavators. The commission’s Pipeline Safety Department (PSD) is authorized to commence a cause “to enforce the [Damage Prevention] Act” and for “contempt for disobedience to or violation of an order or judgment of the Commission.”<sup>30</sup> A cause is commenced when the PSD files a verified complaint containing specifics about the violation alleged.<sup>31</sup> A pipeline operator or other “aggrieved person” may submit information to the PSD about a violation and request an investigation.<sup>32</sup> After the notice and hearing specified in the rules, the commission may apply a variety of enforcement remedies, including an order to correct a violation, an order requiring a party to attend damage prevention training, or the imposition of a monetary penalty.<sup>33</sup> House Bill 2533 did not prescribe the penalties that the commission might apply to violators, so in its rules the commission simply incorporated existing statutory authority to impose penalties for violating a commission rule.<sup>34</sup>

Significantly, the enforcement authority of the commission is not conditioned on any finding that damage to a pipeline has actually occurred. This means that the previous “no harm, no foul” approach to enforcement should no longer be a safe harbor for excavators. Accordingly, the rules could be quite helpful to enforce the act and to deter violations. Whether they satisfy the federal government in its review of the “adequacy” of state law is another matter. A likely scenario is that the PHMSA will look closely at the many exemptions<sup>35</sup> to Oklahoma’s Damage Prevention Act, but that is a topic for another day.

1. 63 OKLA STAT. §§142.1 – 142.13

2. Covered by the act are a broad array of underground oil and gas pipelines, telecommunications lines, electric power lines, and water and sewer lines. 63 OKLA STAT. §142.2(15).

3. To “excavate” means “to dig, compress or remove earth, rock or other materials in or on the ground by use of mechanized equipment or blasting, including, but not necessarily limited to, augering, boring, backfilling, drilling, grading, pile driving, plowing in, pulling in, trenching, tunneling and plowing,” subject to several enumerated exclusions. 63 OKLA STAT. §142.2(5).

4. 63 OKLA STAT. §§142.5 and 142.9a.

5. The different colors designate different types of underground facilities, as specified by the Act. 63 OKLA STAT. §142.6(E).

6. 63 OKLA STAT. §142.2(8), 142.3 and 142.10; www.callokie.com.

7. 63 OKLA STAT. §142.9a.

8. See, 63 OKLA STAT. §142.9a. The offending excavator is liable to the operator of the damaged line for repair of the damage.

9. 63 OKLA STAT. §142.9a(C). An operator may seek injunctive relief against an excavator who “by willful act or by reckless disregard of the rights of others, repeatedly violates the provisions of the [Act] ... and repeatedly damages underground facilities, thereby threatening the public health, safety, and welfare.”

10. 52 OKLA STAT. §§5 and 47.3(4); OAC 165:20-5-21, 20-7-1. Gathering lines are subject to certain regulations for reporting of incidents. OAC 165:20-10-1.

11. See, e.g., OAC 165:20-13-14 (1) and (2); OAC 165:20-13-15(a) and OAC 165:20-13-16(a).

12. OAC 165:20-5-41 and 20-7-3. The act imposes on a pipeline operator the principle obligations to locate its facilities and participate in the state-wide one-call notification center. 63 OKLA STAT. §142.3.

13. Pipeline Inspection, Protection, Enforcement, and Safety Act of 2006, Pub. L. 109-468 (2006).

14. 49 U.S.C. §60114(d).

15. *Id.* at §60114(d)(3).

16. 49 U.S.C. §60114(f).

17. 77 Fed. Reg. 19800 and 19803 (April 2, 2012).

18. *Id.* at 19803-19804 and 19834.

19. Section 1 of H.B. 2533 has been codified at 63 OKLA STAT. §§142.13.

20. 63 OKLA STAT. §§142.13.

21. *Id.*

22. *In Re: Inquiry of the Oklahoma Corporation Commission to Examine Pipeline Safety, Prevention of Excavation Damage, and Processes Related to Enforcement and Complaints*, Cause No. TD 201400031; *In the Matter of a Permanent Rulemaking of the Oklahoma Corporation Commission Amending OAC 165:20, Gas & Hazardous Liquid Pipeline Safety*, Cause No. RM 201500003.

23. OAC 165:5-27-1 through 5-27-14 (effective Aug. 27, 2015).

24. OAC 165:20-17-1 through 20-17-5 (effective Aug. 27, 2015).

25. After the commission promulgated its new rules, but before they went into effect, PHMSA issued its final rules, which are in most respects identical to its proposed rules. 80 Fed. Reg. 43836 *et seq.* (July 23, 2015).

26. OAC 165:20-17-1(a) and 20-17-4.

27. OAC 165:20-17-5.

28. OAC 165:20-17-2.

29. OAC 165:20-17-1(c).

30. OAC 165:5-27-10.

31. OAC 165:5-27-10(a,b).

32. OAC 165:5-27-14.

33. OAC 165:5-27-11(a).

34. OAC 165:5-27-11(b); 17 OKLA. STAT. §6.1.

35. The federal criteria for review of state laws include this: “Does the State limit exemptions for excavators from its excavation damage prevention law? A State must provide to PHMSA a written justification for any exemptions for excavators ....” 80 Fed. Reg. 43836 at 43868 (July 23, 2015), to be codified at 49 C.F.R. §198.55(a)(7).

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# Avoiding Sanctions Under Amended Federal Rule of Civil Procedure 37(e): Issue a Litigation Hold, Especially When ESI is Involved

By Amii N. Castle

Newly amended Federal Rule of Civil Procedure 37(e) should send a clear message: take care to instruct your client to preserve all documents and electronically stored information (ESI) that may be relevant and proportional<sup>1</sup> to the needs of the case. To that end, as practitioners anticipating either a lawsuit being filed or an official investigation being commenced, a litigation hold is a must. Careful attention should be paid to the litigation hold, including when the duty to preserve arises, and what should be included in a defensible litigation hold.

## WHY IS AMENDED RULE 37(E) A BIG DEAL?

Newly amended Rule 37(e) authorizes and specifies measures courts may utilize if information that should have been preserved is lost or destroyed, and specifies the findings necessary to justify the measures. Amended Rule 37(e) provides:

### **Rule 37. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions**

- e) If electronically stored information that should have been preserved in the anticipation or conduct of litigation is lost because a party failed to take reasonable steps to preserve it, and it cannot be restored or replaced through additional discovery, the court:
  - 1) upon finding prejudice to another party from loss of the information, may order

measures no greater than necessary to cure the prejudice; or

- 2) only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation may:
  - A) presume that the lost information was unfavorable to the party;
  - B) instruct the jury that it may or must presume the information was unfavorable to the party; or
  - C) dismiss the action or enter a default judgment.<sup>2</sup>

As such, amended Rule 37 calls for "reasonable steps" to preserve electronically stored information and permits sanctions for the loss or destruction of ESI.<sup>3</sup> Note that the new rule applies only to electronically stored informa-

tion, and only when such information is lost or destroyed.

Subsection (e)(1) governs when ESI is lost or destroyed when the party did not intend to destroy the ESI. In that circumstance, if a party's loss or destruction of ESI results in prejudice to the opposing party, a court is authorized to impose measures no greater than necessary to cure the prejudice, or "curative measures." Thus, a court can impose curative measures even where the loss or destruction of ESI was accidental or otherwise unintentional. These curative measures could include the preclusion of certain evidence and the presentment of evidence about the party's failure to preserve the evidence.<sup>4</sup> So great care must be taken to avoid inadvertent loss or destruction of ESI.

Subsection (e)(2) governs when a party has acted with the intent to deprive a party of ESI. Upon a finding that a party has acted intentionally, a court is authorized to impose spoliation sanctions, including presuming for itself or instructing the jury that the electronic information was unfavorable, dismissing the action or entering default judgment.

To avoid the imposition of curative measures or spoliation sanctions, practitioners should most always issue a litigation hold as soon as the duty of preservation is triggered.

#### **WHEN IS THE DUTY TO PRESERVE TRIGGERED?**

A legal duty to preserve ESI arises when a party knows, or reasonably should know, of future litigation or an official investigation.<sup>5</sup> For example, when a client is served with a lawsuit, or if the client receives notice that an official investigation is commencing, a legal duty arises, and the duty of preservation is triggered. At that point, the client is legally on notice to preserve all potentially relevant ESI.

However, determining the point at which the legal duty of preservation arises can be tricky when litigation is not certain. For instance, if an employee walks off the job yelling she intends to sue her employer, is litigation reasonably anticipated? Is litigation possible? Yes. Is litigation probable? That depends on the facts of the case.

Indeed, when a party "should know" of future litigation is a fact-specific inquiry and beyond the scope of this article. However, assuming the duty of preservation is triggered, what is the next step for the practitioner? Craft

a litigation hold, and monitor compliance with the preservation effort.

#### **WHAT IS A LITIGATION HOLD, AND HOW SHOULD THE HOLD BE COMMUNICATED TO THE CLIENT?**

As a general proposition, ESI must be preserved if it is relevant and proportional to the subject matter involved in the litigation. Thus, once a party reasonably anticipates litigation, the party must suspend routine document retention and destruction policies and put in place a litigation hold.<sup>6</sup>

Put simply, a litigation hold is a directive advising custodians of certain documents and ESI to preserve potentially relevant evidence in anticipation of litigation. In other words, a litigation hold is a communication informing employees that they must preserve certain information for potential later use in litigation. The hold identifies which documents and ESI should be preserved and directs document custodians and IT personnel to suspend normal deletion or destruction of any relevant documents and ESI.

A litigation hold should *always* be in writing, whether communicated via written document or by email. Point being — give preservation instructions in writing. Written instructions — whether by letter or by email — will impress upon employees that preserving ESI is serious business. The client will be able to follow preservation directions better if the litigation hold is reduced to writing.

Also, written instructions will help practitioners avoid sanctions later if the client fails to preserve relevant ESI. Although practitioners have a continuing duty to monitor a client's preservation efforts,<sup>7</sup> a written litigation hold will go a long way in convincing a court that the *practitioner* has complied with his or her own duties when preservation is triggered. No matter the size of the client, practitioners should convey a litigation hold in writing, and in a manner that the client clearly understands what ESI should be preserved.

**To Whom?** A litigation hold should be directed to the relevant data-generating, data-receiving and data-storing custodians. If the client is a larger company, the litigation hold should also be issued to records management and information technology personnel who understand how the data is stored on the backend.

### *What Should Be Included in a Litigation Hold?*

**Describe the Subject Matter of the Litigation:** The litigation hold should generally describe the dispute, referencing relevant pleadings if litigation has commenced. Describe the litigation in a way that will be understood by those with responsibility for preserving the ESI, and provide specific examples of the types of information that should be preserved.

**Identify Potential Sources of ESI:** In the litigation hold, instruct employees to consider whether they have responsive ESI on their office or home computer, iPhones, PDAs, disks, memory sticks or any other electronic storage device.

**Include Relevant Time-Period:** Include the relevant time period(s) the data and documents would have been created and stored.

**Warn of the Legal Consequences:** A litigation hold should inform recipients of their legal obligations to preserve information, including referencing the potential consequences of noncompliance. For example, consider including a statement that a failure to abide by the instructions could be detrimental to the litigation and may result in certain penalties to the company.

**Describe the Collection Procedure and Contact Person:** A litigation hold should instruct employees to turn over any documents or ESI that are identified in the hold as potentially relevant. To that end, the issuer of the hold should be clearly identified, and the litigation hold should instruct employees that, if they are aware that potentially relevant documents or ESI exist, those employees must get that information to the issuer of the hold. The litigation hold should also inform recipients who they should contact if they have questions or need additional information.

**Confirmation?:** Depending on the scope of the hold, consider requiring a confirmation of compliance from each employee to whom the litigation hold is sent. This means each recipient signs a short statement confirming that he or she is aware of the hold and will comply

with the hold requirements. For the practitioner, a confirmation may help verify that recipients understood their preservation duties and obligations, and a signed confirmation may add an extra layer of protection that employees will, in fact, follow the litigation hold instructions.

To summarize, a litigation hold should contain information explaining the legal duty to preserve, a summary of the matter, examples of information to be preserved, possible data sources, the time period covered, contact person and confirmation receipt of the hold.

### **REMINDER LITIGATION HOLDS**

The wheels of justice turn slowly, so calendar dates to issue updated litigation holds if the litigation spans more than a few months. People forget, and employees may both leave or join the company, so it is important to get the notice to new employees. Also, sometimes relevant records continue to be created *after* the initial hold was put in place, so those data custodians should be periodically reminded of their preservation duties.

#### *Document, Document and Document*

In issuing a hold, document both the policy of the hold as well as your analysis in implementing the hold. Both the policy and what you are instructing should be preserved, as well as the process — how you are disseminating and monitoring the hold — may be subject to scrutiny later by opposing counsel and the court. Document

your steps to show the court the legal hold was implemented in a reasonable, consistent and good faith manner.

#### *What Should You Document?*

Create a memo to the file, documenting the date and by whom the hold was initiated. Explain your analysis of the triggering event, if that is questionable. Record subsequent changes in the scope of the hold as new custodians and data are identified.

Think of a litigation hold as iterative — the scope of the hold should be revisited and revised, if necessary.

“The wheels of justice turn slowly, so calendar dates to issue updated litigation holds if the litigation spans more than a few months.”



### *Who Should Issue the Litigation Hold?*

Depends. Some say the hold should always come from senior management – never from outside counsel. This rationale is based on the scenario that, if the hold itself becomes the subject of litigation, outside counsel could risk waiving the attorney-client privilege with respect to the subject matter of the documents described in the hold.

A good practice is to have outside or in-house counsel draft the hold, and senior management issue the hold.

### *Remember to Send a Litigation Hold to the Other Side*

If litigation has commenced, or is reasonably anticipated, send the opposing party a litigation hold. Either via email or written letter, put the other side on notice that the duty of preservation has been triggered, and describe the ESI you believe is relevant to the case that should be preserved. Notifying the other side that its preservation obligations are triggered can go a long way if the other side destroys relevant ESI, even if by accident, and can be strong evidence if a motion for sanctions becomes necessary.

### *What If You Receive a Litigation Hold from the Other Side?*

If you receive a litigation hold from an adversary, respond in writing, and state the measures you and your client are taking to identify and preserve relevant evidence. If you disagree with the scope of the preservation request as articulated by the adverse party, say so, and offer to consider taking additional measures if the adverse party can show the measures are legitimately warranted under the circumstances. Or, if the circumstances warrant, meet and confer on the subject.

### **TAKEAWAY**

With the December 2015 amendments to the Federal Rules of Civil Procedure, particularly

the new rule 37(e) sanctions, a litigation hold should always be considered, and should usually be issued if electronic information is relevant and proportional to the needs of the case. When doing so, issue a carefully crafted litigation hold and monitor your client's preservation efforts. If ESI is inadvertently lost or otherwise destroyed after the preservation duty is triggered, a litigation hold will go a long way to avoiding sanctions down the road.

*Note: This article originally appeared in The Journal of The Missouri Bar, November-December 2015. Reprinted with permission.*

1. Fed. R. Civ. P. 26(b)(1) (Dec. 2015).

2. Fed. R. Civ. P. 37(e) (Dec. 2015).

3. The amendment was intended to address the differing standards among the federal circuits for imposing sanctions or curative measures on parties who fail to preserve electronically stored information. Fed. R. Civ. P. 37(e), advisory committee notes to 2015 amendments.

4. Summary of the Report of the Judicial Conference Committee on Rules of Practice and Procedure, September 2014, Rules Appendix, at B-64.

5. *Zubulake v. UBS Warburg LLC*, 220 F.R.D. 212 (S.D.N.Y. 2003) (*Zubulake IV*).

6. As a general proposition, practitioners should advise clients to have in place a records retention policy that requires the destruction of ESI at appropriate intervals. As long as destruction of ESI does not occur when a legal duty to preserve has arisen, *Arthur Anderson LLP v. United States*, 544 U.S. 696 (2005), the client can, and *should*, consistently follow its records retention and destruction policy.

7. *Zubulake v. UBS Warburg LLC*, 229 F.R.D. 422 (S.D.N.Y. 2004) (*Zubulake V*).

### **ABOUT THE AUTHOR**



Amii N. Castle teaches electronic discovery and serves as a law clerk to Judge Carlos Murguia, U.S. District Court for the District of Kansas. Ms. Castle graduated from the University of Kansas School of Law in 1997, after which she clerked for Judge

Pasco Bowman, United States 8th Circuit Court of Appeals, and practiced commercial and class-action litigation in the Kansas City metropolitan area.

# NOTICE

## INTEREST ON JUDGMENTS

January 4, 2016

**2016 Interest Rates:** In accordance with 12 O.S. 2013 Supp. §727.1 (I), the postjudgment interest rate to be charged on judgments for calendar year 2016 shall be 5.50 percent. Also, the prejudgment interest rate for calendar year 2016 shall be 0.06 percent (applicable to actions filed on or after January 1, 2010). These interest rates will be in effect from January 1, 2016, through December 31, 2016.

**Interest Rates by Year:** Interest rates from November 1, 1986, through December 31, 2016, are as follows (interest rates listed below were calculated in accordance with the statute in effect for that period).

Date	Postjudgment Interest Rate	Prejudgment Interest Rate
2016	5.50%	0.06%
2015	5.25%	0.03%
2014	5.25%	0.05%
November 1, 2013 through first regular business day of January, 2014 (12 O.S. 2013 Supp. §727.1)	5.25%	0.09%
July 1, 2013 through October 31, 2013 (12 O.S. 2004 Supp. §727.1)	5.25%	5.25%
January 1, 2013 through June 30, 2013 (12 O.S. 2009 Supp. §727.1)	5.25%	0.09%
2012	5.25%	0.05%
2011	5.25%	0.13%
2010	5.25%	0.14%
2009	5.25%	5.25%
2008	9.25%	9.25%
2007	10.25%	10.25%
2006	9.25%	9.25%
2005	7.25%	7.25%
2004	5.01%	5.01%
2003	5.63%	5.63%
2002	7.48%	7.48%
2001	9.95%	9.95%
2000	8.73%	8.73%
1999	8.87%	8.87%
1998	9.22%	9.22%
1997	9.15%	9.15%
1996	9.55%	9.55%
1995	8.31%	8.31%
1994	6.99%	6.99%
1993	7.42%	7.42%
1992	9.58%	9.58%
1991	11.71%	11.71%
1990	12.35%	12.35%
1989	10.92%	10.92%
1988	9.95%	9.95%
1987	10.03%	10.03%
1986	11.65%	11.65%

/s/ Jari Askins  
Administrative Director of the Courts

# Everything You Touch

By John Morris Williams

More than once I have been told, “That’s going to make a bruise” or “That’s going to leave a scar” after some self-created disaster in which I got touched the wrong way. I recall a time after a significant injury and hand surgery I seemed to drop everything I touched.

There have been some days that everything I touched seemed to turn to dust. (The word “dust” is printable.)

Although I have not been in the public practice of law for more than 20 years, this fall I was reminded I still had a large number of files in boxes from my years in public practice. I finally decided to have the files scanned and the paper version destroyed, where it was proper to do so. It had been years since I had touched the individual files. In order to feel comfortable with the file destruction, I wanted to look at everything in the files.

The review process was a walk down memory lane and a couple of detours on to Elm Street. As I turned the pages of old pleadings and read corre-

spondence that dated back as far as 1983, the pages came alive with vivid images of old clients and people I met along the way. My recollections made me wonder what had happened to all of them after all these years. I googled.



I found that a number of my previous clients are deceased. On the other hand, children from adoption cases are now grown and some have children of their own. It seems that while those files laid untouched, not much changed. As soon as I touched them, I began to wonder and search for how the people associated with the

files were doing. The files came to life!

The truth is that touching all those files reminded me of people and events long ago lodged away in the back closet of my memory. People who I lost sleep over and on occasion even cried

about. The client who had his children taken away and another client who had AIDS when it was a certain death sentence. I remember being there when the children were returned, and I remember being there when the client died. I remember picking up a newborn from the hospital and placing it in its adoptive mother’s arms for the first time. I remember...

In the end everything you touch as a lawyer lives on. It lives as a memory. Sometimes it lives on as a result that profoundly changed the life of your client. Sometimes it even lives on as a reminder that your best efforts were not enough. Regardless of its outcome, every file contains the story of people who were touched by the advice, counsel and skill you contributed on their behalf. Your

client files are a record of your professional life.

As we begin this new year, let us be mindful that everything we touch lives on. As you review the files of 2015, both literally and figuratively, how significantly did you touch the people involved? Was your correspondence precise and professional? Heaven forbid that you filled up your files with unprofessional and meaningless communications. Do your files reveal you were representing a client or that you were engaged in mortal combat with opposing counsel? Do your files reveal professional, competent legal work that made a positive impact on the life of your client?

“In the end  
everything you  
touch as a lawyer  
lives on.”

I believe that everything we professionally touch forever bears our professional fingerprints, our professional DNA and can be retina scanned to expose our best efforts and even our shortcomings. As I went back over my old files and touched each of them, I saw some good work and good results. I also saw a couple of

poorly written letters that I sure wish I had not sent. There were other things I would do differently now. The final analysis is that not everything I touched turned to gold, but everything I touched — touched me back.

I want to challenge you to have every file of 2016 be a source of good memories and professional pride when you touch it — and it touches back 20 or 30 years from now.



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



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# Thoughts on Social Media: Risks, Rewards and Uncertainties

By Jim Calloway

As I was finalizing this column, there were news reports that the so-called “affluenza teen” Ethan Couch and his mother had been arrested in Puerto Vallarta, Mexico. Readers will recall this young man stole beer from a Walmart and crashed his father’s truck into some stopped vehicles on a country road. Four were killed and another is paralyzed. His blood alcohol level three hours after the crash tested at three times the legal limit for adults.

There was nationwide outrage when the judge sentenced him to 10 years on probation. But I have to wonder how many of us would be as familiar with this case if not for that word — “affluenza.” The idea that being raised in an incredibly wealthy background, with all of the privileges and educational opportunities that brings, would be compared to some sort of disease that impairs one to such an extent that favorable treatment should be given in the criminal justice system is pretty stunning. You don’t have to be a lawyer to have a strong opinion about that concept that you might want to share. Today we all have the ability to share our opinions worldwide through the use of social media.

This matter was likely destined for some national publici-

ty because of the number of people killed. But these types of deaths are not uncommon. According to the Centers for Disease Control and Prevention, every day almost 30 people in the United States die in motor vehicle crashes that involve an alcohol-impaired driver. That is one death every 51 minutes. This is a very regrettable statistic.

**“There was nationwide outrage when the judge sentenced him to 10 years on probation.”**

But, affluenza, who has ever heard of that? It was something new and controversial. In other words, it was a perfect topic to share your opinion about on social media. And today the mainstream media often follows the lead of social media. But clearly the online discussion over that affluenza “went viral.” Most of you know that going viral means that some-

thing online gains increasing attention because Internet users, through their social media accounts, are sharing the content within their network, prompting others to share the content just like a virus spreads. The phrase started by referring to viral videos on YouTube that gained a wide audience.

I am certainly not about to criticize the lawyer whose client received this incredibly generous sentence. But if the expert witness had used another term instead, it is fair to wonder if there would have been less national focus on this particular case.

So in addition to everything else a trial lawyer in a high profile case has to consider, there is now social media coverage as well as traditional media coverage, with the main difference being social media commentators are not bound by any journalistic standards of fairness and accuracy.

## THE POWER OF SOCIAL MEDIA

Social media has really changed a lot of things, particularly what can be kept quiet in a local community. Many family lawyers have a negative view of Facebook because they

see the pain and difficulties that unwise postings generate.

The power of social media cannot be overstated. Whether this seems like a positive development empowering citizen journalism or online mob rule often depends on your interpretation of a particular situation.

Just ask Justine Sacco, the former senior director of corporate communications at IAC, an American media and Internet company. She made one stupid tweet about AIDS before boarding her plane to Cape Town, South Africa. Even though she only had 170 Twitter followers, by the time her 11-hour flight landed she was a focus of online rage from tens of thousands. There was even a hashtag circulating #HasJustineLandedYet and someone took her photo as she disembarked and tweeted the picture. She was immediately fired and went into hiding for a time. (See "How One Stupid Tweet Blew up Justine Sacco's Life" *The New York Times Magazine* for more details.)<sup>1</sup>

The lesson is that lawyers using social media should be careful about what they post and extra cautious if they allow others to post for them.

This fall I was asked to teach a CLE program on social media for the OBA and volunteered to teach another. The program at the OBA Annual Meeting was on marketing your law practice via social media.

Most lawyers appreciate that an online presence is required for law firms today. A law firm should first have a mobile-friendly traditional website before moving into social media because the goal of much social media marketing will be getting people to click on the link to the law firm

website or to call the law firm. (But I am aware that some solo practitioners have a Facebook page for their primary online presence and do not have a website.)

I have also heard from lawyers who actively market their practice online through Google AdWords. They say that the price on these has moved so high that they seem unaffordable. These are the ads that appear next to Google search results. A recent publication<sup>2</sup> noted that the most expensive words of all are those related to legal marketing. For example, a click on the ad for "San Antonio car wreck attorney" cost the advertiser \$670.44, with second place going to "Accident attorney Riverside VA" at \$626.90.

Likewise search engine optimization (SEO) is often quite pricey. This is used with the goal that your law firm's website appear in the top of search results naturally and avoid the "pay per click." On one of our recent Digital Edge podcasts, "Website Wizardry: The Right SEO for Your Law Firm,"<sup>3</sup> Pennsylvania lawyer Jennifer Ellis estimated that high-quality SEO should cost between \$3,000 and \$10,000 per month, with the higher end of the range being more likely. That is a substantial investment that will be viewed as too big a business risk for many law firms.

It is also sometimes difficult to determine how much of the traffic to your site is generated by the SEO.

## **SOCIAL MEDIA MARKETING**

I have been saying for quite some time that every law firm, even a solo practice, should have a traditional Web page.

The last few years have made it apparent that your website must be "mobile friendly" because more and more searches are done on smart phones and mobile devices.

I think it is now the time to say every law firm should have a Facebook page. This is not the same thing as an individual lawyer having a personal Facebook page. An easy distinction is to note that with a personal Facebook page, all of your friends can post to your timeline, where with a business page the business controls the content, except for reviews and Facebook design restraints.

Let me attempt to prove this last point with one statistic.

According to a recent Pew Research Center study on social media users, 72 percent of adult American Internet users now use Facebook which translates to 62 percent of the entire adult population.<sup>4</sup> If you factor in that some American adults cannot use Facebook due to factors such as disability, incarceration, or lack of Internet access, that statistic becomes even more compelling.

What do people do on Facebook and other social media? They post their content and read/view content from others. But they also share, comment on and like the social media content posted by others. So while it might be possible that someone seeking to refer a friend to you might go to your website, copy the URL and then text or email it to their friend, it requires a real commitment. With social media, they are reading and liking and sharing all the time. So having a Facebook page increases the possibility that other Internet users will share your content within their network.

It is the social sharing that has made social media so popular.

I've noted that a Facebook business page is different from the personal pages that many of you now use to communicate with friends or family. Setting up a business page is not difficult, but some thought should be given to this in advance and there are some challenges because of the nature of our profession.

A lot of thought should definitely be given to the graphics that will be used on the homepage. The Internet is a graphical medium and pictures are important. Law books on a shelf or a gavel do not make interesting visual content.

One should review in advance the Facebook for Business pages provided by Facebook. These have a very good overview of the process and include information on setting up your page, marketing/advertising, etc. Start at [www.facebook.com/business/overview](http://www.facebook.com/business/overview).

The first thing to do in setting up a business Facebook page is to choose a classification of your business. Lawyers may be tempted to choose the "Local Business" option. **However, finish reading this article before you select local business because, believe it or not, you may want to select "Websites & Blogs" as your type of business.** You will then need to enter some general information including the standard hours of operation, the address and, if appropriate, parking instructions.

Be very careful when selecting an official name for your business page. This will generate the URL for your business page, and, while it can be



changed once, it is not an easy process. The most significant issue is the challenge of setting up a firm name listing three or four lawyers and what happens when a lawyer leaves the firm. If a partner leaves the firm to take the bench then it will be absolutely necessary to remove the name from the page. One may be tempted to set up some other firm name like Green Country Law that would not need to be changed if there is a change of lawyers. But having different firm names between the law firm website and law firm Facebook page could be confusing to consumers.

The setup process should not be initiated until you have several photographs that you plan to use available. The profile picture in particular serves as the visual representing the firm that everyone will frequently see. Although it is not especially creative, many law firms will want to go with a picture of their office building or perhaps the front door that has the name of the firm. Give some thought to this. Facebook is a visual medium. Also note that

the profile picture needs to be square and the recommended size is 180 x 180 pixels.

The lawyers in the firm who have individual Facebook pages may want to add the business page as one of their favorites. But be cautious about publicizing your page too much in the early stages of its development as there will not be any compelling content that will encourage a user to return.

## REVIEWS

One thing to appreciate and understand is that a Facebook for Business page will normally include consumer reviews. While these are often great for most types of businesses, they are often a challenge for lawyers. Because of the nature of reviews, it is not possible to get a review taken down just because a reviewer had something negative to say about the business.

Here are some potentially problematic reviews a client (or a complete stranger) might post.

- ✓ My lawyer is the greatest ever. He is smarter than all of the other lawyers and specializes in family law. We won our case and it was obvious that the lawyer for my ex-wife had no idea what he was doing.
- ✓ We won our trial and my lawyer did a great job. It probably helped that she went to law school with the judge.
- ✓ My lawyer did a terrible job and never returned my phone calls. He never listened to me. (Posted by someone you have never represented. Of course, this is a different kind of problem if posted by a former client.)

An ethics problem results when an improper endorsement appears on your website.

After all, you have limited ability to persuade a client to remove something from their personal social media sites. But others might assume that you can control what is on your Facebook page and proving that Facebook will not let you remove a laudatory review is a challenge most lawyers would not want to handle.

When I taught the CLE program in November, I told the audience that reviews were problematic and a lawyer should be cautious with allowing them. The more I have considered this issue, I have decided that a law firm may not want to enable reviews at all — at least when the firm's new Facebook page is being launched. This is not to imply anything is wrong about the reviews.

But it turns out disabling reviews isn't as simple as it should be. Between the time I did my initial research and the time I finalized this column, Facebook changed the rules again. Not only did the instructions posted by third parties no longer work, but pages that Facebook published on this subject I could locate through Google were mysteriously offline. Hopefully Facebook just rearranged things and is writing new Help pages, but with Facebook you never know.

So here is one way to turn off reviews on an existing Facebook business page today, with the disclaimer that Facebook may change things tomorrow.

1. Go to "About"

2. In the dropdown box where you select your page "Category," choose "Websites & Blogs"
3. Second-level dropdown needs to be chosen as to what type of "Website & Blog." (On the OBA's Facebook page, we chose government.)
4. Save changes.

## PAID SOCIAL MEDIA ADVERTISING

So why, given these complications, would a lawyer still want a Facebook business page?

One reason is paid advertising. All of those promoted posts you scroll by on Facebook are there because someone paid for that placement. Facebook and Twitter know a lot about their users so you can design a precisely targeted campaign — by geographical area, gender and many other factors. Yes ladies and gentlemen, this is why many of the promoted posts you see on Facebook are things you have an interest in. Facebook knows. And you can limit the maximum campaign cost.

I did a \$50 maximum Twitter campaign just to see how it worked and over several days, I got over 8,000 impressions and a handful of new followers. The total cost was under \$45.

The verdict is still out on how useful this will be for lawyers. But most of us are more comfortable spending \$50 or \$100 here and there while we measure results, both in terms of new clients and increased website traffic. It takes more faith to sign up to pay \$3,000 - \$10,000 per month for SEO.

## CONCLUSION — LISTEN TO THIS

I do not mean to suggest that all SEO doesn't work or the many experts in that field are all overpriced.

In fact, in December we did a Digital Edge podcast where an Internet marketing expert shared his thoughts on "The Internet's Role in Client Development."<sup>5</sup> He is Gyi Tsakalakis, who is a non-practicing lawyer and the founder of Attorney-Sync, an online legal marketing agency.

Gyi says it is still true today that people often seek recommendations for products or services from people they know, like and trust. But the difference today is that they are often communicating with those people via social media. Gyi's advice is not limited to social media. He covers much more, including why the traditional law firm website is still important. This is a very good podcast.

And on the podcast site, Gyi has provided us with many links to great resources. I strongly encourage you to listen to this podcast.

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

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# A Guide to File Retention

By Gina Hendryx

*Out with the old and in with the new...* a mantra for New Year's revelers, but probably not the sagest of advice for determining when and how to discard those closed client files. With the new year comes renewed purpose and resolution to purge boxes of stale pleadings and letters that have been relegated to the corners of copy rooms, hallways and storage closets. Unfortunately, such good intentions are oftentimes thwarted by the persistent worries of how long must I keep the file, what should I keep from the file and how do I dispose of the file?

## HOW LONG MUST I RETAIN CLOSED FILES?

Unfortunately, there is no hard and fast answer to this question. Most state ethics committees agree that lawyers are not obligated to keep client files indefinitely. However, most jurisdictions concur that "clients and former clients reasonably expect from their lawyers that valuable and useful information in the lawyer's files, and not otherwise readily available to the clients, will not be prematurely and carelessly destroyed."<sup>1</sup>



The Oklahoma Rules of Professional Conduct (ORPC) does not provide specific direction or guidelines on the subject of file retention. However, ORPC 1.15(a) does require that complete records of client account funds and other client property be kept for five years after termination of the representation. A good general office policy for file retention would be the five-year rule imposed on trust account records. However, the length of time that a file should be retained may depend on the type of case and/or the contents of the file. For example:

- Files pertaining to claims of minors should be maintained until the child is beyond the age of majority

and any statutes of limitations have expired.

- Some probate, estate and/or guardianship matters may require an indeterminate retention period.
- Real estate title opinions and title insurance work may require a far more lengthy retention of work product.

Ultimately, the decision should be based on factors such as statutes of limitations, substantive law, the nature of the particular case and the client's needs. A lawyer should also consult his or her malpractice carrier for any specific requirements it has on document retention.

## WHAT SHOULD I RETAIN FROM A CLIENT'S FILE?

All lawyers and law firms should implement a written file storage, management and retention policy and should follow the policy uniformly. Considerations for the retention policy would include:

- Files will be maintained only for a specified period of time.



- Original documents will be returned to the client upon conclusion of the representation.
- The client may have the file upon expiration of the time period.
- If not retrieved by the client, the file will be destroyed once the time period passes.
- Clients should be sent a closing letter notifying them of their right to take any documents not previously furnished to them and advising them of the date that the file documents will be destroyed.

- The law firm's file retention policy should be set out in the retainer agreement.

### HOW SHOULD I DISPOSE OF A CLIENT'S FILE MATERIAL?

A lawyer must protect a client's confidences when disposing of file contents. This generally means that the file must be shredded or incinerated. Care should be taken if these tasks are contracted to outside companies. The lawyer should ensure that documents are disposed of without review by the contractor's employees or others. You should consider retaining an

index of destroyed files, copies of your retainer agreement as well as a closing letter or other correspondence that notifies the client of your file retention policy.

With office space at a premium and off-site storage costs ever increasing, a good document retention and destruction policy is a must for today's practitioner. Uniformity and good common sense should provide answers to most dilemmas that arise.

*Ms. Hendryx is the OBA general counsel.*

1. ABA Standing Committee on Ethics and Professional Responsibility, Informal Op. 1384 (1977).



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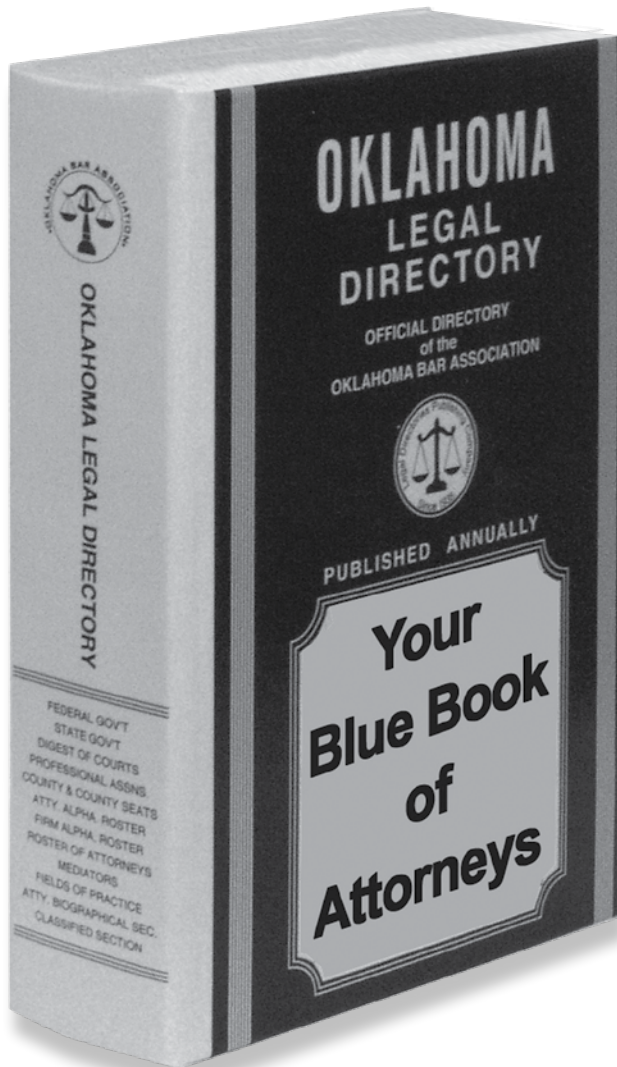
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# Meeting Summary

*The Oklahoma Bar Association Board of Governors met at the Sheraton Hotel in Oklahoma City on Nov. 4, 2015, in conjunction with the OBA Annual Meeting.*

## REPORT OF THE PRESIDENT

President Poarch reported he wrote an opinion piece that addressed issues raised at the legislative interim study on judicial reform, and the article was sent to newspapers statewide.

## REPORT OF THE VICE PRESIDENT

Vice President Devoll reported he attended the Garfield County Bar Association meeting and presented the OBA Outstanding Senior Law Student Award at the OCU School of Law luncheon.

## REPORT OF THE PRESIDENT-ELECT

President-Elect Isaacs reported he presented a CLE program on "The Right to Trial by Jury" to Stillwater Legal Aid Services for pro bono attorneys.

## REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he participated in a conference call with the Annual Meeting speaker and President Poarch in addition to a planning conference with staff and President Poarch. He attended the pre-Annual Meeting briefing for staff members and a pre-convention meeting with hotel staff. He spoke to Oklahoma County Bar Association delegates about Resolution One.

## BOARD MEMBER REPORTS

**Governor Gifford** reported he presented the OBA Outstanding Senior Law Student Award at the OU College of Law luncheon. **Governor Gotwals** reported he attended the funeral of former Judge Thomas Crewson, Tulsa County Bar Association Golf Committee meeting and OU College of Law luncheon. **Governor Hicks** reported he attended the funeral of Tulsa attorney Bill Waller, Tulsa County Bar Association Golf Committee meeting and Episcopal Diocesan Convention. He discussed jury appreciation concepts with President-Elect Isaacs and presented the OBA Outstanding Senior Law Student Award at the TU College of Law luncheon. **Governor Knighton** reported he listened to the audio webcast of the interim study on judicial reform that took place at the Oklahoma Capitol. **Governor Porter** reported she served as a judge for both OU law school's Moot Court competition and the Oklahoma Ethics Commission's Ethics Bowl competition. She attended the Criminal Law Section's annual luncheon and meeting. **Governor Tucker** reported he attended the Rogers County Bar Association meeting and presented a CLE program on "The Open Meeting Act: What the Practitioner Needs to Know" to the county bar.

## BOARD LIAISON REPORTS

Governor Gotwals reported the Professionalism Committee is sponsoring a CLE program at

the Annual Meeting on professionalism, and he will be one of the panelists. He said the committee has completed work on its mission statement.

## REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported the Professional Responsibility Commission will have one more meeting in December with its current members.

## REAL ESTATE COMMISSION APPOINTMENT

The board approved President Poarch's recommendation to appoint Robert Bailey II, Norman, to the Real Estate Commission's Contract Forms Committee.

## CITRIX AGREEMENT APPROVAL

The board voted to ratify the email vote to approve the agreement with Citrix to provide a member discount to a variety of its products and services.

## NEXT MEETING

The Board of Governors met Dec. 11, 2015, at the Oklahoma Bar Center in Oklahoma City and on Jan. 14, 2016, 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, Feb. 19, 2016, at the Oklahoma Bar Center in Oklahoma City.

# Grantee Spotlight: William W. Barnes Children's Advocacy Center

By Candice Jones

As we begin the new year full of resolutions and new beginnings, we want to highlight one of our grantees who helps child abuse victims find a hopeful new beginning. This month's spotlight grantee is the William W. Barnes Children's Advocacy Center serving Rogers, Craig and Mayes counties.

Experts estimate that one in four girls and one in six boys are sexually abused by their 18th birthdays. This means that in any classroom and in every school, there are children silently bearing the burden of sexual abuse.

The mission of the William W. Barnes Children's Advocacy Center "is to reduce trauma to child abuse victims. We coordinate a professional, multidisciplinary team approach that provides assessment, treatment and education in a safe, child-friendly environment. Our help is their hope."

When children visit the center, they are greeted by a bright and colorful waiting room filled with toys. This room serves as the first step to help put the child at ease as they enter a place where they will talk openly about their traumatic experiences. Colorful handprints of all shapes and



*The center, located in Claremore, serves three counties and is dedicated to reducing trauma to child abuse victims.*

sizes cover the walls representing each abused child who has visited the center.

"On average we see almost 350 children each year," said Holly Webb, the center's executive director. "Eighty percent of our cases are sexual abuse, and the other 20 percent are severe neglect and physical abuse cases."

Child victims are greeted in the waiting area by their forensic interviewer and medical examiner. They first stop by the snack room where they choose a snack and drink before the interview process begins. Jodie Hunt, the center's forensic interviewer, explains the pro-

cess. Her goal is to gain the their trust by being transparent about the process. She lets them know the interview room is equipped with recording devices and important and trusted adults are listening. Once they are one on one in the interview room, she says to the child, "Tell me about yourself."

In the next room is a team of appropriate law enforcement and child protective service personnel watching and listening to the interview live from a flat screen TV. This is critical. This means the child only has to tell their story once. Before children's advocacy centers (CAC), a child might have to





*Each handprint on the walls represents a child who has visited the center.*

tell their story up to eight times and testify in court with their abuser present. Any discrepancies in the stories could lead to the case being thrown out. Now CACs across the nation use technology to record interviews, and these recordings are used to provide forensic evidence for court proceedings. Most often there is no physical evidence, and cases can be tough to prosecute. These recorded interviews become imperative to placing the abuser behind bars.

This forensic interview is just one of the services the William W. Barnes Children's Advocacy Center provides. Other services include forensic medical examinations, crisis intervention, victim advocacy, mental health treatment, non-offending caregiver education and support, and prevention training programs. Ongoing therapy is included at no cost for victims, and many come back to the center years later often during puberty. This is a place they trust and a place they need desperately to heal emotional scars at different points in their lives.

The Oklahoma Bar Foundation, through its grants and awards program, has provided

\$30,000 in funding over the past seven years to the center's prevention training program for child care workers, law enforcement, child welfare workers and educators on the most effective ways to recognize, respond and report child abuse. A teacher or child care provider is often the first person a child will tell. The immediate response from this trusted person is fundamental to the child. Oklahoma educators are required by law to report to law enforcement and/or the Oklahoma Department of Human Services any suspected abuse or

neglect of a child under the age of 18.

William W. Barnes Children's Advocacy Center is one of 785 CACs in the nation according to the National Children's Alliance. The center is named after Dr. William W. Barnes, in appreciation for his commitment to child victims of trauma. Dr. Barnes has served as a pediatrician in Rogers County since 1974. His expertise as a medical professional in child abuse cases continues to play a role in the protection of children.

New beginnings of healing and hope for child abuse victims begin when they visit William W. Barnes Children's Advocacy Center. We are thankful for this organization and proud to call them one of our grantees.

#### ABOUT THE AUTHOR



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



*The center helps nearly 350 children each year, and each child gets to pick out their own stuffed animal before leaving.*



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*Community Fellows - law firms and other organizations*

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

# Why Did I Get Involved With the YLD? Why Should You?

By Bryon Will

Happy New Year Oklahoma young lawyers and welcome to 2016! Zig Zigler once said, "Yesterday ended last night. Today is a brand new day and it's yours."

For me the purpose of being active in the OBA Young Lawyers Division is that my membership with the OBA is bigger than my practice of law. It's also about serving our community, whether locally or throughout the state of Oklahoma. It is my firm belief that we as lawyers should give back to our communities outside of the courtroom.

## COMMUNITY SERVICE

When I was first elected to the board in 2010, I was asked by Chairwoman Molly Aspen to take on the challenging task of revising the OBA Seniors Handbook, a publication written and sponsored by the YLD. The materials provided Oklahoma senior citizens with resources for common matters that may arise in their lives, i.e. government assistance, estate planning, estate administration, etc. When the handbooks were distributed, it was then I realized the impact it had on people around the state. This was not a local project, it was a statewide project. Other great projects headed by the YLD include Bar Exam Survival Kits, Serving our Seniors, Young

Adult Guide, Day of Service and many more.

In 2015 the YLD began a new project called Kick It Forward coming to the aid of Oklahoma attorneys unable to pay their annual bar dues. The YLD became aware that there were attorneys in this state going through financial strain with no

**“It is my firm belief that we as lawyers should give back to our communities outside of the courtroom.”**

means of relief from losing their bar license. 2015 YLD Chair LeAnne McGill coordinated this new program to raise funds to be able to provide such relief. An account was established and is funded by donations, and those seeking relief must submit an application to establish qualification. In August we held a kickball tournament that brought in young lawyers from around the state and raised more than

\$10,000 for the fund. Be sure to apply for the program if you have a need. The deadline is Jan. 31, and you'll find information at [www.okbar.org](http://www.okbar.org).

Also in 2015 for the YLD's annual Day of Service project YLD members packed Oklahoma City Thunder backpacks with five days of food for children struggling with hunger. Headed by YLD board member Brandi Nowakowski, this project reached children around the state.

In addition to community service, there is also service to our bar association. For example, we are given tremendous opportunities by the OBA throughout the year to attend CLE courses; however, we are also given the opportunity to teach as well. I know several young lawyers who have taught CLEs, including myself, for years. In other words, we are not too young to educate others on what we know. Of our many committees within the YLD, the CLE Committee coordinates and holds various CLEs throughout the year. Many times YLD members have been part of the CLE faculty.

## YLD CONNECTIONS HELPED GROW MY PRACTICE

Networking! Networking! Networking! We have all heard

the old phrase, “It’s not what you know — but who you know.” Being active in the YLD not only opens your network to others around the state but also to others in your same practice area, or others who may need to send a referral your way. When I began practice in 2008, I started out on my own...yes, I hung out my own shingle. In seven years of practice, the majority of my network is within the OBA, which stemmed from the YLD.

Other than the direct contact we have at our monthly meetings and YLD projects, we have our June YLD Midyear Meeting in conjunction with the OBA Solo & Small Firm Conference and our November meeting in conjunction with the OBA Annual Meeting. Not only do we intermingle with fellow YLD members at these events,

but also we have the opportunity of meeting seasoned lawyers from all over the state.

### **BENEFITS TO YOU**

Enough about me. Let’s talk about you. So why should you be involved? What is it about the YLD that would make you want to become an active part of it? If you have practiced for less than 10 years, you are already a member — so I challenge you to make the most of it. Is it community service? Do you have a specialty in your practice and you want the opportunity to teach others in CLE courses? Or is it you want more opportunities to network with other lawyers throughout Oklahoma? Or is there something else that we are not thinking of that you would like to see happen within the YLD? We are always open to suggestions.

YLD board meetings are open to everyone, and I invite you to come and see what’s happening. Our first meeting will be held in Stillwater on Jan. 30. Our February meeting will be held Feb. 20 at which we will be preparing the law exam survival kits. Please be on the lookout as to location.

Till next month. If there is anything you would like to discuss, please feel free to contact me.

### **ABOUT THE AUTHOR**



Bryon Will practices in Oklahoma City and serves as the YLD chairperson. He may be contacted at [bryon@bjwilllaw.com](mailto:bryon@bjwilllaw.com).

## **OBA Practice Management Advisor**

Applications are being accepted for a full-time Practice Management Advisor for the Oklahoma Bar Association. This position shall report to the Director of the Oklahoma Bar Association Management Assistance Program (MAP). Responsibilities of the Practice Management Advisor shall include:

- Providing training on law office technology tools and practice management techniques for OBA members.
- Teaching continuing legal education classes around the state.
- Researching, both legal and general, and writing articles and papers for the OBA Management Assistance Program.
- Serving as a resource for the OBA and others on Access to Justice issues.
- Cross-training to provide backup coverage for the MAP Director and Ethics Counsel.
- Assisting with the OBA Diversion Program as needed.
- Working with the MAP Director to provide improved practice management tools and resources for Oklahoma lawyers.

Candidates shall be a member of the Oklahoma Bar Association or eligible for such membership, with preference given to one who has been a licensed attorney for at least five years. Prior experience in private practice, law firm management or as a practice management advisor is preferred. Applicants should have excellent research and writing skills. Salary is negotiable, depending on experience. Excellent benefits include retirement, health and life insurance.

Resumes, together with a cover letter and references, should be submitted no later than February 5, 2016 to Jim Calloway, Director, OBA-MAP, Oklahoma Bar Association, PO Box 53036, Oklahoma City, OK 73152 or emailed to [JimC@okbar.org](mailto:JimC@okbar.org) with PMA Position in the subject line. Initial screening may be conducted via email, so please provide an appropriate email address. All applications will be treated confidentially.

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# Facing financial challenges?

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

## Apply for assistance.

**Application deadline: Jan. 31, 2016**

See website for eligibility requirements and application form.

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

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

## Donate.

**Help lawyers needing financial assistance to pay their dues.**

Options:

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



## January

- 18 OBA Closed** - Martin Luther King Day
- 19 OBA Communications Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact David A. Poarch 405-329-6600
- OBA Women in Law Committee meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Ann E. Keele 918-592-1144 or Reign Grace Sikes 405-419-2657
- 20 OBA Indian Law Section meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Deborah Reed 918-348-1789
- 21 OBA Bench and Bar Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact David B. Lewis 405-556-9611 or David Swank 405-325-5254
- OBA Solo and Small Firm Committee meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Ronald Paul Lander 918-931-2681 or Noel Tucker 405-348-1789
- 22 OBA Professional Responsibility Commission meeting;** 9:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Gina Hendryx 405-416-7007
- OBA Lawyers Helping Lawyers Committee meeting;** 12 p.m.; 406 S. Boulder, Ste. 432, Tulsa, Office of Hugh Hood; Contact Jeanne Snider 405-366-5423 or Hugh Hood 918-747-4357
- 28 OBA Professionalism Committee meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Patricia Podolec 405-760-3358



- 4 OBA Mock Trial Committee meeting;** 5:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Judy Spencer 405-755-1066
- Lawyers Helping Lawyers discussion group;** 6 p.m.; 701 NW 13th St., Office of Tom Cummings, Oklahoma City; Contact Jeanne Snider 405-366-5423 or Hugh Hood 918-747-4357
- 5 OBA Alternative Dispute Resolution Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact John H. Graves 405-684-6735
- 11 OBA Master Lawyers Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact Ronald Main 918-742-1990
- 12 OBA Law-related Education Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Professor Paul Clark 405-208-6303 or Brady Henderson 405-524-8511
- OBA Board of Editors meeting;** 1:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Melissa DeLacerda 405-624-8383
- OBA Family Law Section meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact Luke Barteaux 918-585-1107

## February

- 2 OBA Government and Administrative Law Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Michael Mannes 405-473-0352

- 15 OBA Closed** - President's Day



## March

- 1 OBA Government and Administrative Law Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Michael Mannes 405-473-0352
- 4 OBA Alternative Dispute Resolution Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with video conference; Contact John H. Graves 405-684-6735
- 11 OBA Law-related Education Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Professor Paul Clark 405-208-6303 or Brady Henderson 405-524-8511
- 16 OBA Women in Law Committee meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Ann E. Keele 918-592-1144 or Reign Grace Sikes 405-419-2657
- 17 OBA Indian Law Section meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Deborah Reed 918-348-1789
- 18 OBA Mock Trial Committee meeting;** 5:30 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Judy Spencer 405-755-1066
- 19 OBA Board of Governors meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City; Contact John Morris Williams 405-416-7000
- 23 OBA Licensed Legal Intern Committee meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact H. Terrell Monks 405-733-8686
- 25 OBA Professionalism Committee meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Patricia Podolec 405-760-3358
- 26 OBA Professional Responsibility Commission meeting;** 9:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Gina Hendryx 405-416-7007
- OBA Family Law Section meeting;** 3 p.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact Luke Barteaux 918-585-1107
- 15 OBA Women in Law Committee meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Ann E. Keele 918-592-1144 or Reign Grace Sikes 405-419-2657
- 16 OBA Indian Law Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Deborah Reed 918-348-1789
- 17 OBA Bench and Bar Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact David B. Lewis 405-556-9611 or David Swank 405-325-5254
- 24 OBA Professionalism Committee meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Patricia Podolec 405-760-3358
- 25 OBA Professional Responsibility Commission meeting;** 9:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Gina Hendryx 405-416-7007

### **OBA Members Take Key Role in Community's Holiday Parade**

Several Oklahoma lawyers and judges had a hand in making Norman's annual Main Street Christmas Holiday Parade one of the most successful parades in the event's history. OBA member Karen Rieger, a long-time Norman resident, and her husband, Andy, served as the parade's grand marshals. The parade's five judges were Judge Stephen Bonner, Judge Thad Balkman, Judge Jeff Virgin, OBA Past President David Poarch and lawyer Drew Nichols. The theme for the event was "A Charlie Brown Christmas," drawing more than 90 entries and some of the largest crowds ever to attend the event.



*OBA member Karen Rieger and her husband, Andy, wave to the crowd while serving as grand marshals for Norman's recent holiday parade. Photo Credit: Kyle Phillips/The Norman Transcript.*

### **New Board Members Take Oath**

Nine new members of the OBA Board of Governors were sworn into their positions Jan. 15 in the Supreme Court Ceremonial Courtroom at the State Capitol.



*OBA President  
Garvin A. Isaacs*

Officers taking the oath were Garvin A. Isaacs, Oklahoma City, president; Linda S. Thomas, Bartlesville, president-elect; and Paul D. Brunton, Tulsa, vice president. Sworn into the Board of Governors to represent their judicial districts for three-year terms were John W. Coyle III, Oklahoma City; Kaleb K. Hennigh, Enid; James L. Kee, Duncan; and Alissa Hutter, at large, Norman. Sworn into one-year terms on the board were David A. Poarch, Norman, immediate past president; and Bryon Will, Oklahoma City, Young Lawyers Division chairperson.

### **Jan. 30, 2016 - OBA Legislative Reading Day**

The Oklahoma Legislature reconvenes next month, and hundreds of bills have been pre-filed. Much of that proposed legislation could affect the administration of justice, and some will undoubtedly affect your practice. Join the OBA Legislative Monitoring Committee at 10 a.m. on Saturday, Jan. 30, 2016, at the Oklahoma Bar Center as they identify top bills of interest to the OBA and your practice area. Plus, earn 2 hours of MCLE credit. Lunch will be provided. RSVP to the Office of OBA Executive Director John Morris Williams, at [debraj@okbar.org](mailto:debraj@okbar.org), if you'd like to attend.

### **Save the Date - OBA Day at the Capitol March 8**

Oklahoma lawyers, let your voices be heard! OBA will host its annual Day at the Capitol on Tuesday, March 8. Registration begins at 10 a.m. at the Oklahoma Bar Center, 1901 N. Lincoln Blvd., and the agenda will feature speakers commenting on legislation affecting various practice areas. We also will have remarks from the judiciary and bar leaders, and lunch will be provided before we go over to the capitol for the afternoon. Check [www.okbar.org](http://www.okbar.org) for more updates.

## LHL Discussion Group Hosts January Meeting

"Practicing Forgiveness in the Practice of Law" will be the topic of the Feb. 4 meeting of the Lawyers Helping Lawyers monthly discussion group. Each meeting, always the first Thursday of the month, is facilitated by committee members and a licensed mental health professional. The group meets from 6 to 7:30 p.m. at the office of Tom Cummings, 701 N.W. 13th St. Oklahoma City. There is no cost to attend and snacks will be provided. RSVPs to Kim Reber, kimreber@cabainc.com, are encouraged to ensure there is food for all.

### LAWYERS HELPING LAWYERS ASSISTANCE PROGRAM

**Call 24/7 — 800-364-7886**



## Aspiring Writers Take Note

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



## Connect With the OBA Through Social Media

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



## OBA Member Resignations

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

Ward N. Adkins Jr.  
OBA No. 30958  
5519 Tupper Lake  
Houston, TX 77056

Rajpreet Singh Basi  
OBA No. 22375  
707 17th St., Suite 2250  
Denver, CO 80202

Daniel Richard Burstein  
OBA No. 31007  
200 E. Chestnut St., Apt. 1708  
Chicago, IL 60611

J. Bradford Griffith  
OBA No. 3618  
519 E. Jackson Road  
Webster Groves, MO 63119

Steven F. Meadows  
OBA No. 6107  
24818 N. Point Place  
Katy, TX 77494



## Kudos

**Jenna Brown**, assistant district attorney in Canadian County, received the Prosecutor of the Year award at the recent Criminal Law Section Awards luncheon in Oklahoma City. **William P. Early**, chief assistant federal public defender for the Western District of Oklahoma, received the Defense Attorney of the Year award. Both award recipients were selected for exhibiting the highest standards of competency and ethics.

**Stephanie Conduff**, attorney with Procopio, Cory, Hargreaves & Savitch LLP, was recently named a TED-MED front line scholar. The scholarship recognizes those who are innovators and collaborators from across society to participate in an inclusive conversation about how to achieve a healthier future. She earned her J.D. from the OU College of Law in 2014.

**Crowe & Dunlevy** attorney **Karen S. Rieger** was recently named chairman of the board of the Oklahoma Cerebral Palsy Commission. The commission, appointed by Gov. Mary Fallin, oversees the operations of the J.D. McCarty Center for children with developmental disabilities located in Norman. Ms. Rieger has served on the com-

mission for 10 years and graduated from the OU College of Law in 1981.

## On The Move

**McAfee & Taft** has announced that ERISA attorney **Judy Burdg** has joined its employee benefits and executive compensation group. As part of her counseling practice, Ms. Burdg advises clients on compliance issues with the Internal Revenue Service and Department of Labor as well as complex compliance matters related to the implementation of health care reform. She graduated from the OCU School of Law in 2012.

**Thomas Ishmael** was recently named general attorney of AT&T Mobility in Dallas, where he will provide legal support to AT&T Mobility's International Services. He served in Oklahoma City as AT&T's in-house litigation counsel handling matters in Oklahoma and Arkansas for the past two years and prior to that served as a litigator at Hornbeek Vitali & Braun. He is a 2008 graduate of the OCU School of Law.

**Mattax Law Firm** and **Mediation** announces the opening of their new

office located at 9500 Westgate Road, Suite 150, Oklahoma City, 73162. **Kevyn Gray Mattax** has focused primarily on family law since 1992 and mediation since 1994. Please continue to send correspondence to P.O. Box 23676, Oklahoma City, 73123, 405-943-1965 or kmattax@aol.com. The website is icostlessmoney.com.

**Winningham Stein & Basey** announces the federal government of Mexico has appointed **Kelly Basey** as the legal consultant for their consular field offices in Oklahoma City and Tulsa. She graduated from the OU College of Law in 1995. The firm also announces **Ken R. Feagins**, of counsel to the firm, has been appointed an honorary consul of Uruguay. He graduated from the Vanderbilt University Law School in 1989.

**Gov. Mary Fallin** has named **Tom Bates**, former Oklahoma first assistant attorney general, as her special adviser on child welfare and Pinnacle Plan implementation. He will primarily be responsible for overseeing implementation of the Pinnacle Plan, the Oklahoma Department of Human Services' ongoing effort to reform the state's child welfare operations. Mr. Bates earned his J.D. from the OCU School of Law in 1994.



## At The Podium

**Mark Christiansen** spoke at two recent energy industry legal conferences in Houston. He presented “2015 Energy Litigation Update for the U.S.” at the 14th Annual Energy Litigation Conference and spoke on the topic of “Select Oil and Gas Industry Lawsuits Over Alleged Contracts Formed Through Casual Email Negotiations” at the Contracting by Email program. He graduated from the OU College of Law.

**Rick Goralewicz** delivered the keynote address, “Wounds of Silence: An LGBTQ Perspective on Elder Abuse,” at the 2015 Canadian Elder Law Institute in Van-

couver, Canada. The CELI is an international conference on elder law attended by lawyers, judges and law enforcement officers from a number of countries including the United States, Canada, Israel, The United Kingdom and Australia. He received his J.D. from the OCU School of Law in 1982.

**Warren E. Mouledoux III** recently spoke about Title 85A, Section 7, Prohibition of Discrimination or Retaliation Against an Employee Acting in Good Faith at the 2015 Metropolitan Healthcare Annual Meeting in Norman. He is a 2001 graduate of the Loyola University Chicago School of Law.

**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:

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

*Articles for the March 12 issue must be received by Feb. 8.*

## IN MEMORIAM

**Richard Mack Bettis** of Tulsa died Sept. 27. He was born March 15, 1934, in Spiro. Mr. Bettis graduated from Northeastern State University and received his J.D. from the OCU School of Law in 1967. He was a 32nd Degree Mason, a member of the Oklahoma Bar Association and a member of the United Keetoowah Band of Cherokee Indians in Oklahoma. He was a longtime member and very active in The Church of Jesus Christ of Latter-Day Saints. Memorial contributions may be made in his name to the LDS Perpetual Education Fund online at ldsphilan-

thropies.org or LDS Philanthropies, 1450 N. University Ave. Provo, Utah, 84604.

**Paul Eugene DeGraffenreid** of Oklahoma City died Dec. 3. He was born Aug. 10, 1931, in Oklahoma City. He graduated from Northeast High School in 1949. He attended OU and **joined the Air Force in 1951**. In 1959, he completed law school at OCU and passed the bar, but instead of practicing law, he partnered with his mother and entered the bakery business. He closed his bakery business in 1966 and went to work for Allstate Insurance Co., where he worked for six

years. In 1973, he went to work as a trial attorney for the Commissioners of the Land Office and in 1991 he became general counsel. On July 22, 1988, he was duly admitted and qualified as an attorney and counselor of the Supreme Court of the United States. He was an avid golfer, loved cooking, music, reading and playing his ukulele. Donations may be made in his name to ZERO – The End of Prostate Cancer, 515 King Street, Suite 420, Alexandria, Virginia, 22314.

**David James Erwin** of Indian Wells, California, died Nov. 7. He was born

Oct. 6, 1934, in Oklahoma City and grew up in Chandler, Oklahoma. He graduated from OU with a bachelor's degree in government in 1957 and from the OU College of Law in 1958. **He served two years in the U.S. Army, stationed at Fort Sill, Oklahoma, and Fort Benning, Georgia, where he trained troops.** He left the service as first lieutenant. He later moved to Palm Desert, California, where he began working for Marsh, Moore & Cologne. His law career continued at Erwin, Andelson & Eldred for many years. In 1986 he merged with Best Best & Krieger LLP. He practiced estate planning, as well as municipal law, since 1962. He was a partner in the municipal law and trust & estate planning, administration & litigation practice groups at BB&K's Indian Wells office. Mr. Erwin represented public agencies in all types of matters, including zoning, land use and municipal government advisement. Over the years, he was city attorney for the California cities of Indio, Indian Wells, Rancho Mirage, Desert Hot Springs and Cathedral City. He served as Palm Desert's only city attorney for more than 40 years. He was also general counsel for Desert Community College District and Anza Electric Cooperative. He was a charter member of the Desert Estate Planning Council, a member of the public law section of the California Bar Association and a past member of the executive committee of that organization. Mr. Erwin was a board member and active with the Boys and Girls Club. He was past president and a board member of the Bob

Hope Classic Golf Tournament for many years. He loved to travel. Memorial donations may be sent to Boys and Girls Club or College of the Desert.

**Elliott Fenton** of Oklahoma City died Dec. 14. He was born Nov. 26, 1914, in Oklahoma City. He attended junior college for two years, then returned to Oklahoma and received a law degree from the OU College of Law in 1937. **He served in the Navy during WWII on an attack transport, the U.S.S. Sheridan, as an ensign. His ship participated in six different invasion campaigns. Mr. Fenton received the Bronze Star with Combat V and retired from the Navy Reserve with the rank of commander.** After the war, he and his father, Edgar Fenton, started a law firm in Oklahoma City. They practiced law together for more than 30 years, growing their practice to more than 50 employees as the firm Fenton, Fenton, Smith, Reneau and Moon. He retired after practicing law for 63 years and remained of counsel for several years after. In the 1950s, he was one of eight attorneys in the state to organize the Oklahoma Association of Defense Counsel and was its second president. He was also a fellow of the American Bar Foundation and received the *Journal Record* Award in 1999 for service to the community and to the legal profession. He was a member and former president of the Downtown Optimist Club and worked with the Legal Aid of Western Oklahoma and served on its Board of Directors. Mr. Fenton was a trustee of the Oklahoma United Methodist Foundation, serving as chancellor, vice-

chairman and chairman. He was also a founder and former member of the Board of Directors of Epworth Villa and worked with the Alzheimer's Care and Study Center there. He was a member of Church of the Servant for the past several years. Memorial contributions may be made in his name to the Servant Foundation at Church of the Servant, 14343 N. MacArthur Blvd., Oklahoma City, 73142.

**Carl Edmond Moslander** of Oklahoma City died Dec. 10. He was born Dec. 30, 1925, in Bartlesville. Mr. Moslander graduated from Capitol Hill High School in 1944. **After serving in the U.S. Army during WWII in the Pacific Theater,** he returned to attend OU, graduating with his bachelor of laws and J.D. in 1951. He opened a private law firm and practiced law in Oklahoma City for more than 40 years helping innumerable people in the course of his practice.

**John W. Russell Jr.** of Ponca City died Dec. 5. He was born Jan. 8, 1923, in Okmulgee. He graduated from high school in 1941 and junior college in 1943 at the Oklahoma Military Academy in Claremore where he was named outstanding graduate. **Mr. Russell enlisted in 1939 in Ordnance Company, Oklahoma 45th Division in Claremore. During WWII, he served as platoon leader, Reconnaissance Company serving in the European Theater of Operations (England, France, Germany and Austria.)** He graduated from the OU College of Law in 1949 and was admitted to the Oklahoma Bar Association the

same year. He was a member of the Oklahoma House of Representatives from 1946 to 1952, serving as speaker pro tempore in 1949. **From 1950 to 1952, he served with the 45th Division until his retirement in 1976 as a full colonel.** Mr. Russell was a member of the Oklahoma State Senate from 1952-1956. From 1958-1972 he served as the Wagoner County attorney, assistant district attorney from 1972-1976 and district attorney for District #27 from 1976-1983 for Adair,

Cherokee, Sequoyah and Wagoner counties. He was a member of the Wagoner Masonic Lodge #98, Scottish Rite of Freemasonry, Valley of Tulsa and Bedouin Shrine Temple serving as Potentate in 1972. He was also a member of the Captain Bedouin Temple Mounted Patrol and Royal Order of Jesters Court #99. He served as past president for the Wagoner County Shrine Club, Wagoner Lions Club and Wagoner County Bar Association. He was a

member of the American Legion and Veterans of Foreign Wars and a former trustee of First United Methodist Church in Wagoner, as well as a former board member of the Wagoner Chamber of Commerce. Memorial contributions can be made in his name to the Transportation Fund Bedouin Temple, P.O. Box 1667, Muskogee, Oklahoma, or the First United Methodist Church, P.O. Box 394, Wagoner, Oklahoma, 74477.



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# I Thought I'd Feel Older

By Lisbeth L. McCarty

*Crossing the rubicon of age 50  
With all the strange past that I shed  
My body's a bit like aged whiskey  
But I'm still 27 in my head.*

*My leg cramps cause extreme pain  
I'm slower getting out of bed  
My ankles now predict rain  
But I'm still 27 in my head.*

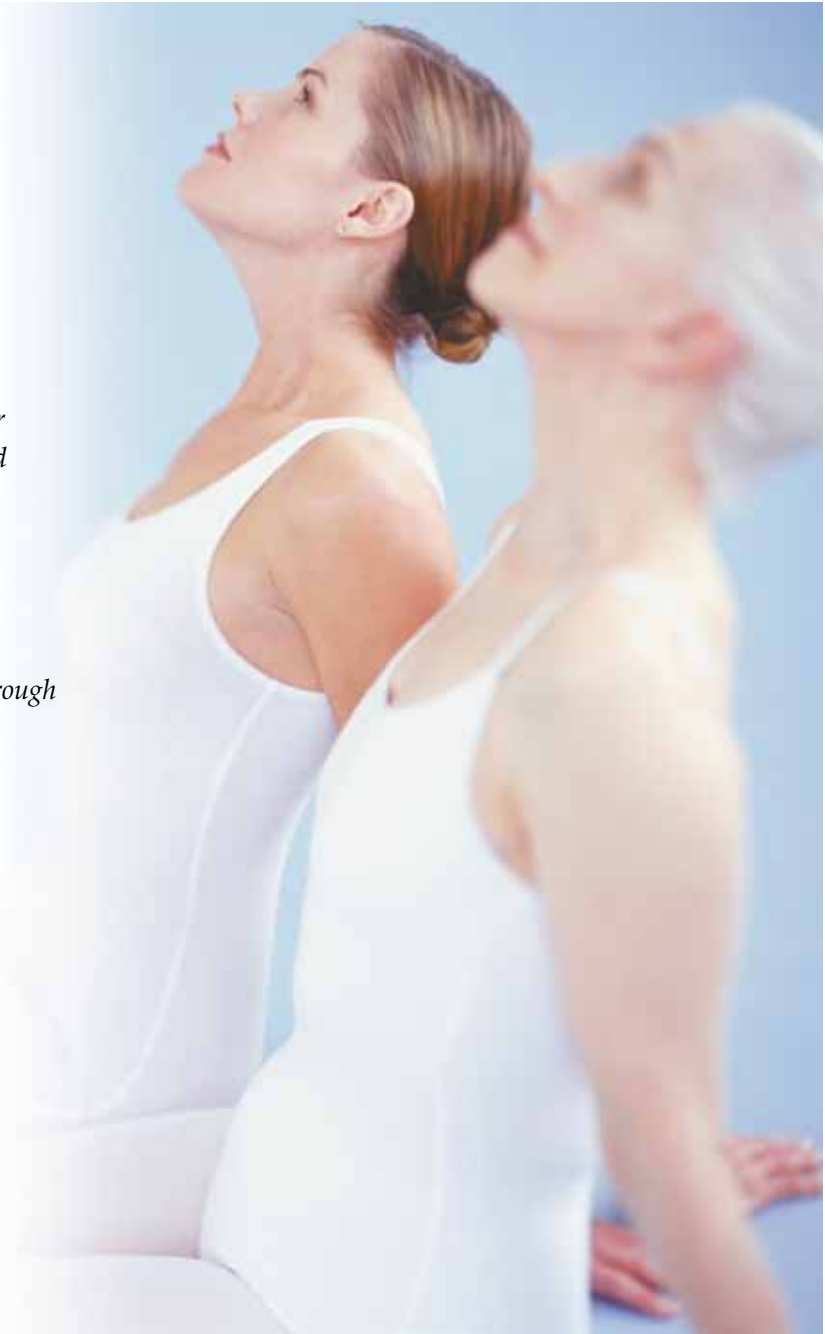
*The crow's feet are longer and deeper  
And my bottom has started to spread  
I've become an irregular sleeper  
But I'm still 27 in my head.*

*On Monday, my stamina's askew  
By Sunday, I hang on by a thread  
Yet, I'm scrappy and always pull through  
'Cause I'm still 27 in my head.*

*Each trip to the doctor now ends  
With a script for a new type of med  
My pill count each day is at ten  
But I'm still 27 in my head.*

*Cataract surgery is scheduled  
My arthritis is starting to smart  
My mind is a bit more bedeviled  
Oh, but I'm 27 in my heart.*

*I refuse to let my age defeat me  
I'll fight every day 'til I've bled  
I'll always be all that I can be  
And that's 27 in my head.*



*Ms. McCarty, an attorney with OIDS, practices in Norman.*



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