

THE Oklahoma Bar JOURNAL

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Juror Appreciation Project to Emphasize Importance of Trial by Jury

By Garvin A. Isaacs

All over the United States there has been a decline of civil jury trials.

In a *Yale Law Journal* article written by John Langbein, Sterling Professor of legal history at Yale Law School, he observes:

A striking trend in the administration of civil justice in the United States in recent decades has been the virtual abandonment of the centuries-old institution of trial...in American Civil Justice, we have gone from a world in which trials, typically jury trials were routine to a world in which trials have become 'vanishingly rare.'

In 1774 John Adams said, "Representative government and trial by jury are the heart and lungs of liberty." Thomas Jefferson said on July 4, 1776, "I consider trial by jury as the only anchor ever yet imaged by man by which government can be held to the principles of its constitution."

In 1929 American legal scholar John Henry Wigmore said, "Trial by jury must be preserved. It is the best system ever invented for a free people in the world's history." In his first inaugural address in 1801, Thomas Jefferson said, "The wisdom of our sages and the blood of our heroes has been devoted to the attainment of trial by jury. It should be the creed of our political faith."



Garvin A. Isaacs

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Let us as lawyers and officers of the court educate the public and recognize jurors for their contribution to the judicial branch of government. As a way to achieve this objective, I am launching a Juror Appreciation Project, which has three components.

To let every juror know how much we appreciate their involvement in the judicial process, I will deliver and present to each presiding judge in Oklahoma's nine districts a large plaque expressing appreciation, which reads, "In recognition of your time and effort

given to the Judicial Branch of Government. Without you, there would be no trial by jury to protect justice in our country."



A plaque for each county courthouse has been created so jurors can walk by it for years to come and see the bar association and its members value their contribution to the judicial branch of government. Expressing our appreciation for jury service emphasizes that America is a government, "of the people, by the people, and for the people," as Lincoln said in the Gettysburg Address.

Another way we will show our appreciation to jurors is to provide posters for each courthouse with a photo of a jury box with large text at the top, "Justice, it begins and ends with you." The quotes of John Adams and Thomas Jefferson mentioned above will also appear on the poster.

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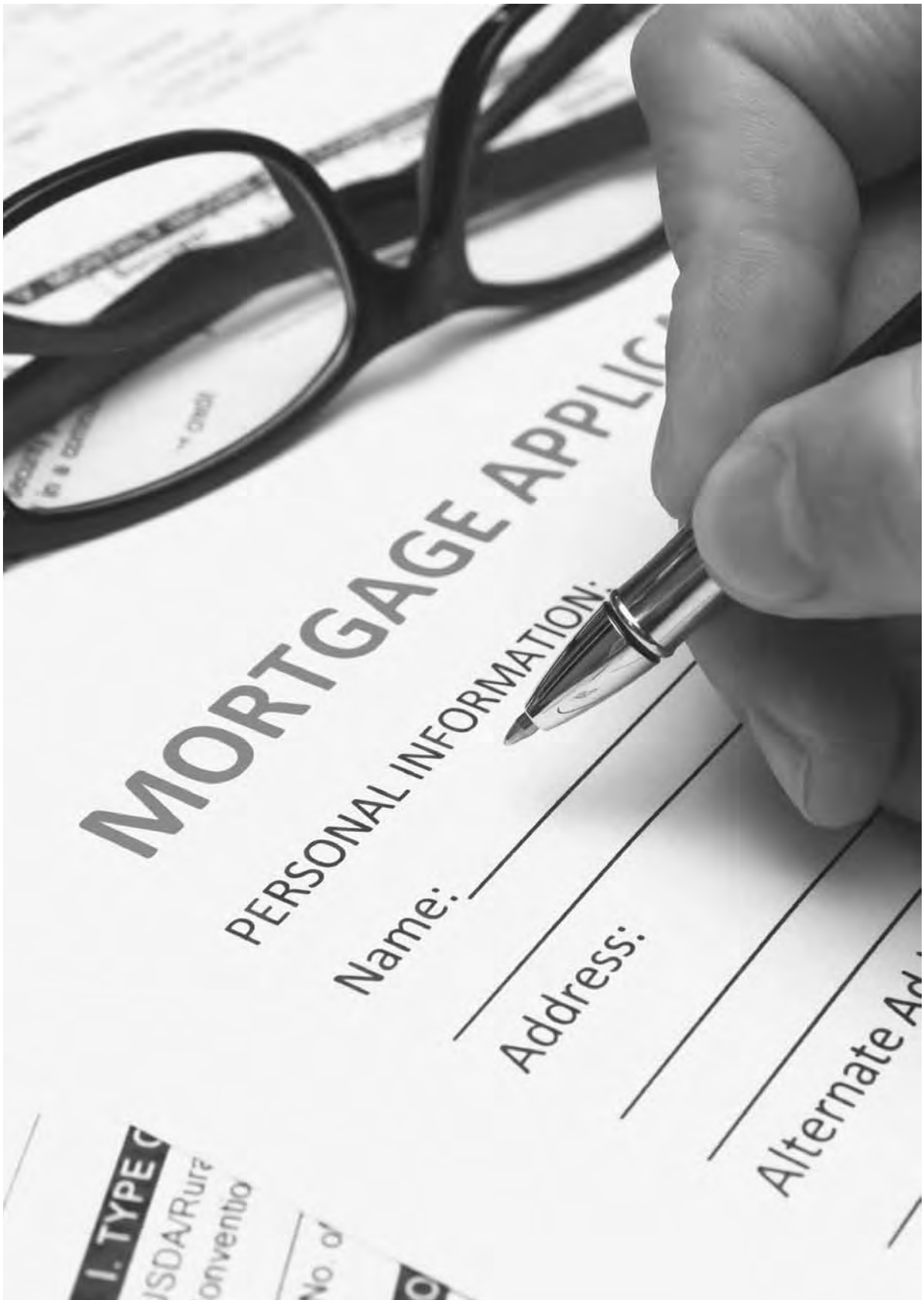
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The Oklahoma Marketable Record Title Act: An Argument That This 30-Year Curative Act Can Extinguish Co-Tenancies

By Kraettli Q. Epperson

Oklahoma has an extremely powerful title curative tool — the 30-year Marketable Record Title Act (MRTA or the act).¹ To understand both the purpose and the operation of the MRTA, a title examiner must first realize that any person who desires to give the world notice of their claim of interest to a tract of real property situated in Oklahoma must record the conveyance to them in the local county land records.² After this initial recording, if a third party records a conveyance, such as a deed, purporting to convey to some other person the real property interest held by the initial grantee, then the act requires the initial grantee to record some additional conveyance (such as a deed, mortgage, probate decree or statutory notice of claim) within 30 years of the recording of the conveyance by the third party which succeeds his own initially recorded conveyance, or he will lose such initially recorded interest to the subsequent claimant.³ Consequently, the MRTA could also be known as the Re-recording Act.

While Oklahoma title examiners regularly rely upon the curative aspects of the MRTA, they are divided on whether or not the MRTA is intended to be used to extinguish the interests of a co-tenant whose claim arises before the root of title and which is therefore subject to being extinguished after 30 years by the root instrument. Co-tenancies comprise tenancies in common, joint tenancies and tenancies by the entirety.⁴ For instance, if a deceased husband devises real property equally to his wife and his two children, and, thereafter, the wife deeds the entire interest to one of her two chil-

dren and records the deed, does such over conveyance ripen into marketable title in the grantee for the entire interest after 30 years (absent a recording by the other child)?

During recent discussions of this issue, both sides have looked for Oklahoma cases concerning the application of the MRTA to co-tenancies. While there are many reported cases on the relations between co-tenants, such as the inability of proving adverse possession in the absence of an action amounting to an ouster, there appears to be no Oklahoma appellate

case ruling directly on the application of the MRTA to co-tenancies. Apparently, until there is an Oklahoma Supreme Court decision on point, this issue will continue to generate disagreement. This article is intended to put forth an argument supporting the use of the MRTA in this instance.

A usual motto for beginning the analysis of almost any legal issue is “read the statute.” It is often true that we think we know what the statute or constitutional provision says, but our recollection is often distorted by wishful thinking compounded by inaccurate memories, and, consequently, such memories are often faulty. A review of the current issue in light of the purpose of the act and its specific provisions should make the answer to this question about co-tenancies rise to the surface of the sometimes murky lake of title examination.

The short answer presented by this author in this article is: “of course co-tenancies are extinguished,” or, put another way, “why not?” since neither a co-tenancy interest nor a co-tenant is expressly excluded from the broad coverage of the act.

This conclusion results from a review of a) the exhaustive list of the types of interests that are extinguished, including legal or equitable, present or future, and the categories of interest holders who are affected, including “person sui juris or under a disability ... whether such person is within or without the state, whether such person is natural or corporate, or is private or governmental,”⁵ and b) the limited list of the interests and their holders who are expressly excepted from such extinguishment.⁶

As will be explored further below, title examiners need to constantly remind themselves they are looking for marketable *record* title and that rights of parties in possession are not evidenced on the record (unless and until such claimant files some claim or notice of a lawsuit on the record). Such possessory claims are expressly outside the effect of the MRTA and are consequently outside the scope of the examiner’s opinion.⁷

LEGISLATIVE INTENT

To fully explore this co-tenancy question, it is helpful to be aware of the reason given by the Oklahoma Legislature for the adoption of the MRTA.

Section 80 of the MRTA states:

This act shall be *liberally construed* to effect the legislative purpose of *simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title as described in Section 1 of this act*, subject only to such limitations as appear in Section 2 of this act. [Note: Section 2 is 16 O.S. §72, which is discussed below.] (emphasis added)

Also, as explained in one Florida Court of Appeals case:

There has been growing recognition that a worthy and important public purpose is the *simplification of the land title examination and enhancement of the marketability of land titles*. Ever-lengthening chains of title have threatened to make the system of determining land ownership break down from its own weight, with increasing delay, expensive quiet title suits and, more importantly, the uncertainty of marketability. An increasing number of states have enacted marketable title statutes within the past fifty years, and their constitutionality has been upheld.⁸ (emphasis added)

And as stated similarly in another Florida Supreme Court case:

As we answer the questions which concern statutory construction of the Marketable Record Title Act we keep in mind the legislative intent that the Act be *liberally construed* to effectuate its purpose. That purpose, expressed within the Act, is to *simplify and facilitate land title transactions*. It does so in two ways. First, it gives to a person marketable title when public records disclose a title transaction, of record for at least thirty years, which purports to create the estate either in that person or in someone else from whom the estate has passed to that person. Second, subject to six exceptions, it extinguishes all interests in the estate which predate the “root of title.”⁹ (emphasis added)

As noted above, the MRTA extinguishes a comprehensive list of interests, which would clearly include any kind of interest which might be held by a co-tenant.¹⁰ In addition, because the list of exceptions to the cleansing effect of the act does not expressly remove a co-tenancy interest (as such) from the act’s effect, it is a necessary conclusion that the act does not — simply because an interest is a co-

tenancy — exempt such interest from extinguishment.¹¹

The primary arguments advanced to challenge the extinguishment of co-tenancies are: 1) it isn't fair and 2) one co-tenant cannot adversely possess against another co-tenant.

FAIRNESS AND CONSTITUTIONALITY

The first issue concerning fairness can be dealt with quickly. The challenger seems to expect curative acts to be fair. The complainer is expressing personal and professional distaste for the idea that a record title holder will lose his interest if he fails to follow the legislative directive to re-record some instrument or a claim concerning his real property within a specified period of time (*i.e.*, three decades).¹² This concern shows the complainer is either unaware of, or disagrees with, the public policy behind the intentional cleansing effect of this act (discussed above), or behind any curative act for that matter. This legislative action of eliminating a prior valid claim, which is now stale, is, as explained below, constitutional.

The Oklahoma attorney general, in 1967, shortly after the adoption of the MRTA in 1963, declared this curative act was constitutional.¹³

In addition, the legality of the MRTA has been tested in an Oklahoma federal district court which considered whether 1) the act is constitutional, 2) advance notice to the losing party is required and 3) the act is self-executing (*i.e.*, does it need a court decree before it is effective).

In *Bennett v. Whitehouse*,¹⁴ these questions were all raised and answered. This case involved a challenge to a void tax deed which was being offered as a root of title under the MRTA. The court upheld the title established by the MRTA in reliance on the void tax deed as the root, and specifically stated two principles:

- 1) Relying primarily on *Texaco, Inc. v. Short*, 454 U.S. 516 (1982) [holding the Indiana Mineral Lapse Act constitutional], this Court holds that the Oklahoma Marketable Record Title Act does not deprive the Beals heirs of property without due process of law.
- 2) The lack of specific notice prior to the lapse of the thirty-year period does not render ineffective the self-executing feature of the Act [MRTA].

The federal court in *Bennett* also agreed with the holding by the Oklahoma Supreme Court in *Mobbs v. City of Lehigh* by holding “even a void tax deed may constitute a valid root of title within the meaning of the act.”¹⁵ The court in *Mobbs*,¹⁶ had expressly held, “Although the tax deed initiating Mobbs’ chain of title was doubtless void, it does nevertheless form an effective root of title.”

Some concern about the self-executing nature of the MRTA was aroused by the holding in *Anderson v. Pickering*.¹⁷ In the *Anderson* case a buyer sought an order for specific performance requiring the seller to quiet the title to two of 17 tracts to establish merchantable title (meaning marketable title), so the seller could convey marketable title to the buyer, as required by the purchase contract. The court rejected the seller’s assertion that the subject title had already been cured by the application of the MRTA. However, the outstanding defect in title was never specified by the Court of Appeals. Therefore, it is impossible to know from the face of the decision in *Anderson* whether the defect was one that was ever intended to be remedied by the provisions of the MRTA. However, the *Bennett* court explains “The cases cited by the Beals deal with 12 O.S. §93 [statutes of limitation for the recovery of real property, *i.e.*, adverse possession], rather than with the Marketable Record Title Act, and thus are not applicable.”¹⁸

Also, according to the article titled “*Anderson v. Pickering* and the Marketable Record Title Act,” by H. Henley Blair and Henry Rheinberger,¹⁹ “The examiner stated, however, that the Andersons could successfully claim title to both tracts by adverse possession.” The article explains the seller did file, but did not complete, the requested adverse possession quiet title lawsuit, and, subsequently, the buyer (who, according to the Court of Appeals opinion, “took possession at that time and proceeded to develop the land” with improvements on the property) filed the subject lawsuit against the seller for specific performance. The seller asserted the subject title was already marketable, but the buyer and, more importantly, the court, disagreed.

The court held that in the absence of the completion of the pending adverse possession quiet title action initiated by the seller to make the title marketable, the title was not yet marketable. The buyer could not be forced to accept such defective title by the seller simply

declaring that, in the seller's opinion, it was marketable. In other words, the seller is not allowed to pronounce the title is marketable based on the seller's belief that the seller will win the incomplete quiet title lawsuit for adverse possession. Consequently, this holding by the Court of Appeals in *Anderson* was not necessarily a declaration that the MRTA itself was not self-executing by its basic nature, but it should be interpreted as holding that a self-serving assertion — an assertion without adequate supporting facts in the record title — does not, by itself, make the title marketable.

The Oklahoma Title Examination Standards (OK TES), which have been declared persuasive by the Oklahoma Supreme Court (*i.e.*, equivalent to an Oklahoma Court of Appeals opinion) by *Knowles v. Freeman*,²⁰ clearly require all title examiners to treat any legislative curative act as constitutional, including specifically the MRTA.²¹ In addition, OK TES §30.1 (1999), which specifically concerns the MRTA, stated:

The Marketable Record Title Act is remedial in character and should be relied upon as a cure or remedy for such imperfections of title as fall within its scope.

In other words, the individual title examiner does not have the discretion to selectively pick and choose which legislative acts seem fair or constitutional to them.

ADVERSE POSSESSION

The answer to the second challenge, concerning adverse possession, is that this act only claims to deal with record title, meaning title as disclosed in the instruments (*e.g.*, deeds, mortgages and decrees) filed in the county land records, pursuant to the state's recording acts [primarily 16 O.S. §§15 and 16] and the MRTA itself [§78(b)].

The MRTA expressly recognizes and incorporates in its provisions the old adage that "possession is nine-tenths of the law." Two separate provisions of the act expressly make a person's claim of interest through possession unaffected by the act if it is based on certain types of continuing possession that fit certain strict param-

eters.²² However, in order for anyone dealing with the record title to ever have notice of the claim being made based by such possessors, such claimants must, at some point, assert and establish such claims of possession in a court of law, to confirm the existence of the facts supporting such interest. Such decrees must then be recorded to give constructive notice.²³

It should be noted that the Legislature enacted as later amendments to the MRTA certain protections for parties who appear to hold record title and who are in possession of a tract of land, but who are facing the extinguishment of their title due to the action of a stranger-to-title filing a stray instrument (aka a wild deed or stray deed) which might ripen, under the MRTA, into a root of title after being of record for 30 years (if unchallenged). The true owner is given, under the express provisions of the act, the ability to preserve their interest. The enactment in 1995 of the amendments to 16 O.S. §76(b) allows the real record owner to file an affidavit of possession to rebut the apparent root.

However, when determining marketable record title under the MRTA, rights arising due to possession are irrelevant because the act does not rely upon adverse possession (which is based on the 15-year statute of limitation²⁴) as a necessary component for its application and effectiveness. The act has been declared to be a statute of repose and not a statute of limitation; thereby extinguishing the right.²⁵ Due to the inability of a title examiner to ascertain, based solely on the record, who is in possession, most surface and mineral title examiners expressly restrict their title examination to only those instruments which are of record. They achieve this goal by including in their opinions an exception or advisory comment excluding rights of parties in possession. In addition, oil and gas title examiners regularly call for an affidavit of possession in their requirements. Title examiners are not expected or even allowed to speculate or rely on matters outside the record.²⁶

While it is true that co-tenants have a heightened burden to meet to establish adverse possession against a fellow co-tenant, this burden is irrelevant when dealing with determining

“The MRTA expressly recognizes and incorporates in its provisions the old adage that ‘possession is nine-tenths of the law.’”

marketable record title under the MRTA for several reasons.

First, as previously mentioned, the act is a statute of repose which extinguishes the right and does not rely on the statute of limitations concept known as adverse possession (or prescriptive title) to extinguish pre-root interests.²⁷

Second, both the Model Title Examination Standards and the Oklahoma Title Examination Title Standards, that explain how to implement the MRTA, have, since their inception in the 1960s, included an official comment expressly reflecting 1) co-tenancies are extinguished by the act and 2) such interests cannot be revived by the filing of a claim outside the 30-year window.

The applicable Model Title Examination Standard 4.10 provides:

2) Suppose a tract of land was conveyed to A, B, and C as tenants in common, the deed being recorded in 1900. Then in 1905, A and B conveyed the entire tract in fee simple to D and the deed was at once recorded. In 1935 D conveyed to E in fee simple, and the deed was at once recorded. Nothing further appearing of record, E had a marketable record title to the entire tract in 1945. This extinguished C's undivided one-third interest. In a sense, we could say that C has a marketable record title to an undivided one-third of the land. But this is subject to the conveyances of 1905 and 1935, the effect of which is to extinguish C's title. Suppose the same facts, but assume also that in 1946 C conveyed his one-third interest to X in fee simple the deed being at once recorded. This does not help him any. His interest, being extinguished in 1945, is not revived by this conveyance; and the effect of the recorded conveyance to him is 'no more than that of a "wild" deed'.

Even more applicable here, is OK TES §30.9 which provides essentially the same example:

2) Suppose a tract of land was conveyed to "A," "B" and "C" as tenants in common, the deed being recorded in 1960. Then in 1965, "A" and "B" conveyed the entire tract in fee simple to "D" and the deed was at once recorded. In 1985, "D" conveyed to "E" in fee simple, and the deed was at once recorded. No mention of "C's" interest was made in either the 1965 or 1985 deeds. Nothing further appearing of record, "E"

had a marketable record title to the entire tract in 1995. This extinguished "C's" undivided one-third (1/3) interest.

3) Suppose the same facts, but assume also that in 1996, "C" conveyed "C's" one-third (1/3) interest to "X" in fee simple, the deed being at once recorded. This does not help "C" any. "C's" interest, having been extinguished in 1995, is not revived by this conveyance.

Such examples show 1) the MRTA has always been intended to extinguish co-tenancies and 2) such co-tenancy interest cannot be revived after the passage of the required 30 years by the filing of a claim by a losing co-tenant.

Third, it is true — but irrelevant — that it is explained in early Oklahoma appellate cases that "the occupation by one co-tenant is *prima facie* an occupation by all."²⁸

Such Oklahoma cases make it clear that a co-tenant who is seeking to assert title by adverse possession against other co-tenants must take additional actions beyond the usual elements of adverse possession (*i.e.*, actual, open, hostile, notorious, continuous and exclusive), sufficient to amount to an ouster of the other co-tenants. This extra effort is required to overcome the *prima facie* assumption that such occupation by one co-tenant is for the benefit of all co-tenants.

This additional element (ouster) has been characterized as 1) the "denial or repudiation of his co-tenant's rights,"²⁹ or 2) "one co-tenant may not hold adversely to the other co-tenant until notice of such holding is brought home,"³⁰ or 3) "The statute of limitations does not begin to run in favor of one co-tenant of land in possession, against another co-tenant thereof until actual ouster by the former or some other act or acts on his part amounting to a total denial of the right of the latter, and until notice or knowledge of the act or acts relied on as an ouster is brought home to him."³¹

However, at least one Oklahoma case which discusses such ouster requirement also makes it clear that if a co-tenant enters into possession and records a conveyance of the entire interest, such possession and recording is notice of an adverse claim to the other co-tenants.³² Consequently, the recorded title transaction which serves as the root of title under the MRTA can also serve as the deed whereby a co-tenant ousts their co-tenants.

By way of example, concerning the concept that one co-tenant holds possession for all, a Florida appeals court opinion concluded their version of the MRTA extinguished pre-root remainder interests when the life tenant deeded the land to a third party and gave up possession.³³ In other words, when a party who allegedly holds constructive possession for other co-owners gives up such possession and provides a conveyance of the entire interest (i.e., simply conveying Blackacre, rather than some portion thereof) the new grantee who goes into possession is not converted into a co-tenant holding such possession for the benefit of the other co-tenants. This rule means the new grantee does not provide constructive possession for a co-owner whose interest is being cut off by the root.

Fourth, some examiners focus on the provision of the act which makes the title under examination subject to any claims or defects visible on the face of the muniments of title forming the chain of title. They argue a review of the pre-root muniments of title creating or recognizing the co-tenancy interest discloses the root (which describes and therefore conveys the entire interest) is defective and subject to the pre-root co-tenancy interests. In a general sense, it is true that a muniment of title is simply any title transaction. However, in the context of the MRTA, the only muniments which are of concern to the title examiner are the root instrument itself and the instruments recorded *after* the root, not before.

In order to understand the relevant muniments do not include any pre-root instruments, let us start with explaining how a title examiner identifies the particular conveyance or other title transaction (conveyance) which serves as the root of title.

According to 16 O.S. Section 78(e):

*"Root of title" means that conveyance or other title transaction in the chain of title of a person, purporting to create the interest claimed by such person, upon which he relies as a basis for the marketability of his title, and which was the most recent to be recorded as of a date thirty (30) years prior to the time when marketability is being determined.*³⁴ (emphasis added)

16 O.S. Section 78(f) provides:

"Title transaction" means any transaction affecting title to any interest in land, including

title by will or descent, title by tax deed, mineral deed, lease or reservation, or by trustee's, referee's, guardian's, executor's, administrator's, master in chancery's, sheriff's or marshal's deed, or decree of any court, as well as warranty deed, quitclaim deed, or mortgage. (emphasis added)

Even a void conveyance of record affects the title.³⁵

What does it mean when the statute says the root needs to be a conveyance which "purports to create such interest?"

The word purports is not expressly defined in the MRTA. However, according to *Black's Law Dictionary* (5th ed., abridged): "Purport, verb. To convey, imply, or profess outwardly, to have the appearance of being, intending, claiming, etc."

In addition, the instrument expressly provided in §78(e) of the MRTA for "purporting to create such interest" is a "conveyance or other title transaction." According to §78(f) a "title transaction means any transaction affecting title to any interest in land, including title by will or descent, title by *tax deed, mineral deed, lease or reservation, or by trustee's, referee's, guardian's, executor's, administrator's, master in chancery's, sheriff's or marshal's deed, or decree of any court, as well as warranty deed, quitclaim deed, or mortgage.*" (emphasis added)

16 O.S. §29 provides: "Every estate in land which shall be granted, conveyed or demised by deed or will shall be deemed an estate in fee simple and of inheritance, unless limited by express words."

In other words, when Smith executes and delivers a deed to Jones describing Blackacre (whether a quit claim deed, a mineral deed or a probate decree) then, regardless of whether Smith held valid or marketable title to Blackacre, such conveyance "purports to create such interest" meaning a fee simple interest.

Now let's turn to the specific section found in the MRTA discussing muniments of title.

16 O.S. §72 states:

Such marketable record title shall be subject to:

a) All interests and defects which are inherent in the muniments of which such chain of record title is formed; provided, however, that a general reference in such muniments, or any of them, to interests created prior to the root of

title shall not be sufficient to preserve them, unless specific identification be made therein of a recorded title transaction which creates such interest. (emphasis added)

This sentence makes it clear that a post-root instrument is not adequate to preserve a pre-root claim, if the post-root instrument includes only a general reference to such pre-root claim. The post-root instrument will preserve a pre-root claim only if a “specific identification be made therein of a recorded title transaction which creates such interest.”

The term chain of title is discussed in 16 O.S. §71 and consists of either a single conveyance or other title transaction which is at least 30 years old, or a series of conveyances or other title transactions culminating in the most recent grantee, in such 30-year chain, being the holder of marketable title.

More specifically, §71 provides:

Any person having the legal capacity to own land in this state, who has an unbroken chain of title of record to any interest in land for thirty (30) years or more, shall be deemed to have a marketable record title to such interest as defined in Section 78 of this title, subject only to the matters stated in Section 72 of this title. A person shall be deemed to have such an unbroken chain of title when the official public records disclose a conveyance or other title transaction, of record not less than thirty (30) years at the time the marketability is to be determined, which said conveyance or other title transaction purports to create such interest, either in

- a) the person claiming such interest, or
- b) some other person from whom, by one or more conveyances or other title transactions of record, such purported interest has become vested in the person claiming such interest; with nothing appearing of record, in either case, purporting to divest such claimant of such purported interest.

Therefore, the exception from the cleansing effect of the MRTA, which exception includes “All interests or defects which are *inherent in the muniments of which such chain of title is formed*,” is expressly limited to those interests which are specifically identified (not just vaguely noted by a general reference) in those chain-of-title instruments which make up the

series of conveyances or other title transactions that compose and reside *within* the 30-year chain of title. Such muniments must be filed after the filing of the root of title, in order to be *in* the chain of title, and *not before* the filing of such root. For instance, only an express reference (such as a specifically identified remainder interest) in an instrument which composes a link in the 30-year chain of title can act to preserve a pre-root claim.

As explained in *Black's Law Dictionary* (5th ed., abridged), muniments of title mean: “The records of title transactions in the chain of title of a person purporting to create the interest in land claimed by such person and upon which he relies as a basis for the marketability of his title, commencing with the root of title and including all subsequent transactions.”

As discussed in a Florida appellate case:

The terms “defects inherent in the muniments of title” do not refer to defects or failures in the transmission of title, as the plaintiff’s argument suggests, but refer to defects in the make up or constitution of the deed or other muniments of title on which such transmission depends. *To accept the plaintiff’s proposition would virtually nullify the act because it would preserve from extinction all claims arising out of defective deeds — no matter how far antecedent to the root of title.* We accept as sound the view of Professor Barnett who wrote with respect to the exemption now under consideration....

*The provision means only those links subsequent to and including the root of title itself, ****

Barnett, “Marketable Title Acts - Panacea or Pandemonium,” 53 *Cornell L.Q.* 45, 67 (1967). The factual allegations of the complaint demonstrate no defect in the make-up or constitution of the deeds previously identified as roots of title or in the subsequent muniments of title. The exemption, therefore, is inapplicable here.”³⁶ (emphasis added)

Some proponents of excluding co-tenancy interests from the cleansing impact of the MRTA offer the case of *Allen v. Farmers Union Co-operative Royalty Co.*³⁷ and assert (erroneously) that it is dispositive. However, in that case the court concluded that the muniment of title which was being offered as the root (*i.e.*, a deed from Farmer to Flagg) expressly made it

clear that it did not convey and, therefore, did not include title to the hard minerals.³⁸

The reason given by the court — that the hard minerals were not conveyed to Flagg — was that, while the legal description in the root deed from Farmer to Flagg listed “oil, gas, coal, iron and other minerals,” the same root deed included language which *expressly* limited the interest being conveyed by 1) specifically identifying the prior deed to the grantor Farmer (listing date, and book and page of recording for the Spears-to-Farmer pre-root deed) as Farmer’s source of title and 2) limiting this conveyance (Farmer-to-Flagg) to the interest covered in the earlier Spears-to-Farmer pre-root deed which only covered “oil, gas and other minerals and mineral royalty.”³⁹ In other words, the root deed (Farmer-to-Flagg) was controlled by the language of the pre-root deed (Spears-to-Farmer), which granting language in the pre-root deed omitted the reference to “coal, iron,” and, consequently, the pre-root Spears-to-Farmer deed was held by the *Allen* court to be limited by the rule of *ejusdem generis* to omit “coal, iron.” Therefore, the second deed which was the root (Farmer-to-Flagg) was also held to only cover the usual “oil, gas and other minerals produced as a component or constituent thereof, whether hydrocarbon or non-hydrocarbon, and does not convey any other mineral or the right to produce any other mineral including copper, silver, gold or any other types of metallic ores or metallic minerals.”⁴⁰

In other words, there was never any mention in the *Allen* case that there was a co-tenancy, as to the hard minerals “coal, iron.”

CONCLUSION

The argument asserting the MRTA does not extinguish pre-root co-tenants’ claims is based on two false premises:

1) Pre-root co-tenants’ claims cannot be extinguished because it would not be fair or would be unconstitutional. Fairness was not the public policy being implemented through this act. Instead the stated legislative purpose expressed in §80 of the act was “simplifying and facilitating land title transactions by allowing persons to rely on a [30-year] record chain of

title as described in Section 1 of this act.” Extinguishing pre-root claims, including co-tenants’ claims, accomplishes this public purpose. The act, which demands periodic re-recording (every 30 years), has been declared to be constitutional.

2) Co-tenants can never adversely possess title against other co-tenants because possession by one co-tenant is possession by all, and because any new grantee automatically becomes a co-tenant with any prior co-tenants. Adverse possession depends on the passage of the 15-year statute of limitations. However, the MRTA is a statute of repose rather than a statute of limitations; it does not rely on adverse possession. In addition, the MRTA expressly preserves rights of parties in possession who meet certain strict conditions.

In summary, co-tenants’ interests can be extinguished by the MRTA, just as anyone else’s stale interest can be eliminated. This result will “effect the Legislative purpose of simplifying and facilitating land title transactions by allowing persons to rely on a record chain of title...”⁴¹

As noted in the introduction to this article, until there is an Oklahoma Supreme Court decision resolving this question, it appears that title examiners will continue to disagree on this issue. This article is presented to explain why the MRTA should be interpreted to allow co-tenancy interests to be extinguished.

“Co-tenants can never adversely possess title against other co-tenants because possession by one co-tenant is possession by all...”

1. 16 O.S. §§71–80 (adopted in 1963).

2. 25 O.S. §12 (constructive notice definition); 16 O.S. §§15 and 16 (recording act for conveyances); 46 O.S. §7 (recording act for mortgages); 16 O.S. §31 (recording for real property judgments and decrees).

3. 16 O.S. §§71, 74 & 75 (title transaction or claim may be re-recorded every 30 years; otherwise, the claim may be lost).

4. 60 O.S. §74.

5. 16 O.S. §73: All such interests, claims or charges, however denominated, whether legal or equitable, present or future, whether such interests, claims or charges are asserted by a person sui juris or under a disability, whether such person is within or without the state, whether such person is natural or corporate, or is private or governmental, are hereby declared to be null and void.

6. 16 O.S. §§72 and 76 exclude 1) preserved interests expressly referred to and identified in the 30-year chain of title; 2) holders through adverse possession occurring in part or in whole after the root; 3) the instruments in the 30-year chain and 4) lessors’ reversionary interests, severed mineral or royalty interests, easements, subdivision restrictions and interests of the United States.

7. OK TES 1.1 provides: “A marketable title is one free from apparent defects, grave doubts and litigious uncertainty, and consists of both legal and equitable title fairly deducible of record.”

8. *Wilson v. Kelley*, 226 So.2d 123, 126 (Fla. Dist. Ct. App. 1969).

9. *ITT Rayonier, Inc. v. Wadsworth*, 346 So.2d 1004, 1008-09 (Fla. 1977).

10. The pre-root interests which are extinguished are specified in 16 O.S. §73, which provides: Subject to matters stated in Section 2 [§72] hereof, such marketable record title shall be held by its owner and shall be taken by any person dealing with the land free and clear of all interests, claims or charges whatsoever, the existence of which depends upon any act, transaction, event or omission that occurred prior to the effective date of the root of title. All such interests, claims or charges, however denominated, whether legal or equitable, present or future, whether such interests, claims or charges are asserted by a person sui juris or under a disability, whether such person is within or without the state, whether such person is natural or corporate, or is private or governmental, are hereby declared to be null and void.

11. The types of interests which are excluded from extinguishment are specified in 16 O.S. §72, which are listed above.

12. In lieu of an instrument, such as a deed, mortgage or decree, all that 16 O.S. §74 requires is the filing of a "notice in writing, duly verified by oath, setting forth the nature of the claim" within the 30-year period after the last recorded instrument.

13. Op. No. 67-444, 1967 OK AG 444.

14. 690 F. Supp. 955 (W.D. Okla. 1988).

15. *Bennett*, 690 F. Supp. at 959.

16. 1982 OK 149, ¶25, 655 P.2d 547, 553.

17. 1975 OK CIV APP 42, 541 P.2d 1361.

18. *Bennett*, 690 F. Supp. at 958.

19. 51 Okla. B.J. 2517 (1980) (criticizing the *Anderson* decision and supporting the *Bennett* court).

20. 1982 OK 89, ¶16, 649 P.2d 532, 535.

21. 16 O.S. app. §1.4 (1999): Statutes enacted for the purpose of curing irregularities or defects in titles are valid and effective from the effective date of each statute; and in particular a) Every statute is presumed to be valid and constitutional and binding on all parties as of the effective date of each statute. This presumption continues until there is a judicial determination to the contrary. 16 C.J.S. *Constitutional Law* §99; *Tate v. Logan*, 1961 OK 136, ¶17, 362 P.2d 670, 674; *Svanda v. Svanda*, 1952 OK 268, ¶¶12, 16, 248 P.2d 575, 577. b) Curative statutes that complete imperfect transactions, and statutes of limitation and adverse possession that bar stale demands or ancient rights, are also presumed to be constitutional. 53 C.J.S. *Limitation of Actions* §2; *Shanks v. Sullivan*, 1949 OK 194, ¶5, 210 P.2d 361, 362. c) The presumption of constitutionality extends to and includes the Simplification of Land Titles Act, the Marketable Record Title Act, the Limitations on Power of Foreclosure Act and legislation of like purpose. 16 O.S. §§61-63, 66, 71-80; 46 O.S. §301; Op. No. 67-444, 1967 OK AG 444, reprinted in 39 Okla. B.J. 593 (1968); Lewis M. Simes, "The Improvement of Conveyancing: Recent Developments," 34 Okla. B.J. 2357 (1963).

22. 16 O.S. §§72(c) and 74(b).

23. 58 O.S. §§31, 703 and 711.

24. 12 O.S. §93(4); 60 O.S. §333 (prescriptive title).

25. *Mobbs v. City of Lehigh*, 1982 OK 149; 655 P.2d 547; 16 O.S. app. §30.1 caveat: The Oklahoma Supreme Court held in *Mobbs v. City of Lehigh*, 655 P.2d 547, 551 (Okla. 1982) that the Marketable Record Title Act was not a statute of limitations. The court said that, unlike a statute of limitations which barred the remedy, the Marketable Record Title Act had, as its target, the right itself.

26. However, if a recorded instrument sufficiently identifies and incorporates an unrecorded instrument, the examiner should take exception to the rights dealt with in such instrument, and require such instrument to be reviewed. See *Walker v. Builddirect.com Technologies, Inc.*, 2015 OK 30, 349 P.3d 549.

27. Also note that even if a deed constituted an over conveyance, such as conveying a fee instead of a surface-only interest, the recording of such deed starts the running of a 5-year statute of limitation to reform such deed for mutual mistake. *Pangaea v. Ryland*, 2010 OK CIV APP 66, 239 P.3d 160.

28. *Howard v. Manning*, 1920 OK 292, ¶10, 192 P. 358, 361.

29. *Pan Mut. Royalties v. Williams*, 1961 OK 165, ¶9, 365 P.2d 138, 140 (quoting *Preston v. Preston*, 1949 OK 59, ¶21, 207 P.2d 313, 318).

30. *Pan Mut. Royalties*, 1961 OK 165, ¶8, 365 P.2d at 140.

31. *Westheimer v. Neustadt*, 1961 OK 121, ¶10, 362 P.2d 110, 111.

32. *Moore v. Slade*, 1944 OK 184, ¶10, 147 P.2d 1006, 1008: If a person enters into the possession of real property under a conveyance purporting to be of the entirety, co-tenants of the grantor must regard such possession as adverse to them from the time they have actual notice thereof, or from the time when, as prudent men reasonably attentive to their own business, they ought to have known that the co-tenant in possession was asserting an exclusive right to the land. *Tatum v. Jones*,

1971 OK 147, ¶9, 491 P.2d 283, 285: A co-tenant and his successors acquired the interest of their co-tenants by adverse possession in *Beaver v. Wilson supra*. However, in addition to leasing the land, collecting rents, fencing the property, paying taxes, and exercising exclusive possession and control, two predecessors of the co-tenant claiming title by adverse possession had executed warranty deeds purporting to convey the entire tract. Execution and recordation of these deeds together with the other acts of ownership were held to be enough to give co-tenants residing in the neighborhood notice of repudiation of their title.

33. *ITT Rayonier, Inc. v. Wadsworth*, 346 So.2d 1004, 1011 (Fla. 1977): Section 712.03(3) provides that the rights of any person in possession of the lands are not extinguished or affected by the Marketable Record Title Act, so long as such person is in possession. The children argue that possession under a life estate is possession in recognition of the whole fee, so it is in effect possession for the vested remaindermen, as well as for the life tenants. They present no firm authority for their "constructive" possession theory. Even were we to accept it, it has no application here. Subsection (3) applies only so long "as the person remains in possession." Lotta, through whom the children had constructive possession under the theory, gave up her possession to the property after she and Lewis deeded the property to Rayonier.

34. Marketable Title, pursuant to the MRTA, is defined under 16 O.S. §71 as follows: Any person having the legal capacity to own land in this state, who has an unbroken chain of title of record to any interest in land for thirty (30) years or more, shall be deemed to have a marketable record title to such interest as defined in Section 78 of this title, subject only to the matters stated in Section 72 of this title. A person shall be deemed to have such an unbroken chain of title when the official public records disclose a conveyance or other title transaction, of record not less than thirty (30) years at the time the marketability is to be determined, which said conveyance or other title transaction purports to create such interest, either in a) the person claiming such interest, or b) some other person from whom, by one or more conveyances or other title transactions of record, such purported interest has become vested in the person claiming such interest; with nothing appearing of record, in either case, purporting to divest such claimant of such purported interest.

35. *ITT Rayonier, Inc. v. Wadsworth*, 346 So.2d 1004, 1010 (Fla. 1977) (quoting *Marshall v. Hollywood, Inc.*, 224 So.2d 743, 749 (Fla. Dist. Ct. App. 1969): "The word 'affecting' as it is used in the second sentence of Section 712.02 in the clause 'affecting the title to the land' does not carry the narrow meaning of 'changing or altering.' The word is used in the broader sense meaning 'concerning' or 'producing an effect upon.' In this broad sense, even a void instrument of record 'affects' land titles by casting a cloud or a doubt thereon. *Clements v. Henderson*, 1915, 70 Fla. 260, 70 So. 439; *Brown v. Solary*, 1896, 37 Fla. 102, 19 So. 161." Also, see *Mobbs v. City of Lehigh*, 1982 OK 149, 655 P.2d 547, where a void tax deed was treated as a valid root of title.

36. *Marshall v. Hollywood, Inc.*, 224 So.2d 743, 752 (Fla. Dist. Ct. App. 1969).

37. 1975 OK 102, 538 P.2d 204.

38. *Allen*, 1975 OK 102, ¶19, 538 P.2d at 208.

39. *Id.* at ¶7, 538 P.2d at 206.

40. *Id.* ¶¶15-16, 539 P.2d at 207-08.

41. §80.

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Adverse Possession: No, It Has Not Come and Gone

By Malcolm E. Rosser IV and Benjamin K. Davis

In 2001, the *Oklahoma Bar Journal* published a scholarly article titled “Adverse Possession in Oklahoma: An Idea Whose Time Has Come and Gone?”¹ Despite the intimation in the title of that article that the doctrine of adverse possession might soon disappear from the face of the earth, the doctrine is still around, strong as ever. Some of the unanswered questions in the article have now been answered, if not completely clearly. There is now additional information on some of the areas covered by the article. And, despite its attempt to be comprehensive, the article failed to address some areas of law which merit discussion.²

WHEN DOES TITLE REALLY VEST?

One of the questions raised in the article was when title acquired by adverse possession actually “vests”; that is, when does an adverse possessor actually acquire a title which he may convey to someone else? Put another way, at what point does the law transform a trespasser into a property owner?

In a 1999 Oklahoma Court of Civil Appeals case *Cloer Land Company v. Wright*,³ the Wrights and their predecessors owned valid record title to a 20-acre parcel and had adversely possessed an adjoining 1-acre parcel for longer than the 15-year adverse possession time period. The Wrights were forced to give a deed in lieu of foreclosure to their bank. The deed in lieu covered only the 20-acre parcel and said nothing about the adjoining 1-acre parcel. The Wrights then went out of possession of both parcels. The opinion does not state specifically whether the bank went into possession of either parcel, but it seems clear from the language that in fact the bank did not.

At that point, having conveyed away the 20-acre parcel but not the 1-acre parcel — and having occupied the 1-acre parcel for more than the required 15 years — wouldn’t the Wrights have good title to the 1-acre parcel? The court in *Cloer* said no. After the deed in lieu, the bank conveyed the 20-acre parcel (but not the 1-acre parcel) to the plaintiff, Cloer Land. Shortly thereafter, Cloer Land was fortunate enough to be able to obtain a quit claim deed from the record owner of the adjoining 1-acre parcel.

The court quieted title to the 1-acre parcel in *Cloer* as against the Wrights. Interestingly, en route to that decision, the court stated flatly, “[the Wrights] acquired title to [the 1-acre parcel] by adverse possession.”⁴ Nevertheless the court agreed with Cloer Land’s contention that the Wrights’ adverse possession claims ended, as a matter of law, when they relinquished possession of the 1-acre parcel. The *Cloer* case leaves the reader with the clear impression that claimants must take some action to establish their title after the 15-year period has run. If the

claimants relinquish possession, they no longer have title.

The Oklahoma Court of Civil Appeals recently addressed a similar situation — but with an arguably different result — in *Bank of America v. The Unknown Successors of Sarah Jane Lewis*.⁵

The geography in *Lewis* was remarkably similar to that in *Cloer*. Woodliff and his predecessors owned valid record title to a 150-acre parcel and had adversely possessed an adjoining parcel for the requisite 15 years. Woodliff sold all the land to Padgett Development Co. LLC (PDC) and in the process obtained a quit claim deed from the record owner of the adjoining parcel. However, two days later, the record owner mortgaged the same parcel to Bank of America's predecessor.⁶

Bank of America foreclosed its mortgage and joined PDC as a defendant. Bank of America argued that PDC was required to show that it was still adversely possessing the property. The court said that position was not legally correct, "If possession under color of title ripened into prescriptive title pursuant to 60 O.S. 2011, §333, it did so *before* PDC obtained the [disputed] property."⁷

The court evaluated the facts underlying the possession of the property by Woodliff and determined that it met all of the requirements for adverse possession in Oklahoma. The court went on to say:

Bank's argument appears based on its theory that adverse possession does not ripen until a court declares it to have occurred (and thus PDC was required to show that it had performed acts of adverse possession after it purchased the property in order to "tack" to Woodliff's ownership.) As previously noted, "Adverse possession of real estate for the period of time prescribed by the statute ripens into title by prescription," *Choate*, 1956 OK 107 at ¶10, and 60 O.S. 2011 §333 states:

Occupancy for the period prescribed by civil procedure, or any law of this state as sufficient to bar an action for the recovery of the property, *confers a title thereto*, denominated a title by prescription, which is sufficient against all. (Emphasis added.)

Therefore, if Woodliff's possession ripened into prescriptive title before the transfer by

warranty deed to PDC, PDC does not need to show that it performed acts of adverse possession.⁸

On its face, this holding seems almost directly contrary to that in *Cloer*. In *Cloer*, despite having met all the statutory requirements of adverse possession and having possessed the property for more than 15 years, the claimant was adjudged not to have a fully-vested title. It lost title because it went out of possession. But in *Lewis*, the Court of Civil Appeals held that if adverse possession has ripened into prescriptive title, a party who takes by deed from the adverse possessor need not continue that possession.

There are a couple of differences. In *Lewis*, after the 15 years had run, the adverse possessor deeded the property to PDC. Of course the adverse possessor did not have clear record title; it was, after all, claiming title by adverse possession so the existence of the deed should be irrelevant on the issue of whether its title had vested. In *Cloer*, the adverse possessor did not deed the property — effectively or otherwise. It went out of possession but claimed that its title had vested before it gave up possession. The deed by the adverse possessor is a distinction without a difference.

A more significant difference between the two cases appears to involve the concept of "color of title." As a general rule, entry on property for purposes of adverse possession is either under color of title or claim of right.⁹ In *Lewis* the adverse possessor had been given a deed to the property when he first went into possession. Of course that deed was no good because the grantor did not have record title and the court did not base its ruling on title under that deed. Its ruling was that title was acquired by adverse possession, but the court did say that the defective deed "provides the claim of title required for adverse possession under color of title."¹⁰

The reference to "color of title" appears to be the only significant difference between the facts in *Cloer* and the facts in *Lewis*. There does not seem to be much justification for the difference; an adverse possessor's title would either vest or not vest after 15 years, regardless of whether he entered under "color of title" or "claim of right." The court in *Lewis* evaluated all the requirements of adverse possession without regard to any effect that "color of title" might have on them. To make things even more frustrating, the *Lewis* court did not even

mention the *Cloer* case, although *Cloer* certainly seems to be similar, or at least so close as to merit discussion.

IS THERE SUCH A THING AS A 'PRESCRIPTIVE GRAZING EASEMENT'?

A prescriptive easement, while it requires satisfaction of the same basic elements as adverse possession, is different in one crucial respect: the nature and extent of the use and occupancy of the property by the adverse possessor. As stated in the 2001 article, "As a result of the factual differences between a fee versus easement situation, it is factually much more difficult to establish a prescriptive easement than fee title by adverse possession."¹¹

This difficulty was turned on its head in *Weyerhaeuser Company v. Brantley*.¹² In that case the claimant, Brantley, had been grazing livestock on the disputed property without permission of the landowner, Weyerhaeuser, for close to 25 years. He also claimed that he built corrals, feed troughs and fences, and engaged in all types of agricultural activities on the disputed property.

There were problems with Brantley's claim. For one thing, his possession was not exclusive. The property owner, Weyerhaeuser, granted grazing licenses to other parties and leased parts of the property to Oklahoma State University and to the Oklahoma Department of Wildlife Conservation. Because of the activities of all these other parties on the property, the district court found that Bradley's adverse possession claim failed because his use was not exclusive for the 15-year period.

But Brantley was not done. He claimed in the alternative that he had acquired an easement by prescription for grazing.

The 10th Circuit first discussed the rather obvious point that a "grazing easement" is essentially the same as full-fee ownership of the land. It is not an easement at all, at least when it is acquired by adverse possession. *Fadem v. Kimball*, which was approved for publication by the Oklahoma Supreme Court, specifically held that the grazing of cattle on property is sufficient to acquire fee title by adverse possession.¹³ As the 10th Circuit itself admitted, "[M]any courts have been wary of granting prescriptive property rights for an easement for profit amounting to total possession of a parcel."¹⁴ The court seems to indicate that because a grazing easement could be created voluntarily by agreement between

two consenting parties, it could also be acquired by prescription. But the adverse possession world is different from the agreement world. Title by adverse possession is not created voluntarily or by agreement; it is simply the result of the running of the statute of limitations, which prevents the true owner from exercising its legal remedies. Nevertheless, the court decided that it would "assume the possibility that a prescriptive easement could be obtained for grazing under Oklahoma law."¹⁵

Under the prescriptive easement analysis, the other uses that were being made of the property became more important. The court stated that the use by the adverse possessor "must at least be sufficiently distinct from the uses made by authorized users to give the owner notice of a potential claim."¹⁶ The court then decided that because Weyerhaeuser had granted a grazing license to someone else during the time period in question, Brantley's use of the property was not sufficiently exclusive to establish a prescriptive easement.

The 10th Circuit reached the right result, but its recognition of a "grazing easement" under Oklahoma law is troubling; it seems to open the door to what would otherwise be improper claims. The grazing of cattle on ranch land is, for all intents and purposes, full and complete use of the property. Thus for ranch property, the acquisition of a "grazing easement" allows full and complete use of the property, just as if fee title had been acquired. In another recognition of the potential problems of its holding, the 10th Circuit acknowledged that many courts see such an easement as a "thinly veiled attempt to circumvent the requirements for adverse possession."¹⁷ An adverse possessor should not be allowed to acquire the equivalent of fee title where it has not met all of the requirements for adverse possession.

ADVERSE POSSESSION AND RAILROADS

The Oklahoma Constitution provides that "[r]ailroads heretofore constructed, or which may hereafter be constructed in this State, are hereby declared public highways."¹⁸ As such, railroads are not subject to adverse possession. The Oklahoma Supreme Court has interpreted this provision as "merely declaratory" of the widely held and long-established principle that even as to privately owned railways, "the public are entitled to reasonable use and service for [just] compensation without any discrimination."¹⁹

The consequence of this characterization as a public highway, the court has explained, is that such property cannot be acquired by adverse possession as a matter of law:

Oklahoma is one of those states which has provided against the acquisition of title by adverse possession. It has declared the railroad right of way to be a public highway, and it is an elementary proposition that adverse possession will not run against a public highway. In other words, adverse possession does not run against the government, or its various agencies.²⁰

ADVERSE POSSESSION AND PROPERTY HELD BY PUBLIC TRUSTS

It has long been the general rule that the statute of limitations does not operate against the state or its subdivisions where public rights are involved. Therefore one cannot obtain title by adverse possession against city-owned property which is held for and dedicated to public use, "...no matter how lax the municipal authorities have been in asserting the rights of the public."²¹

In applying this general rule, the Oklahoma Supreme Court uses the "public rights" test to determine whether the rights involved are public or private in nature.²² In *Sears* the court addressed the application of this rule to a city and held that the city is "an arm of the State," which is slightly different terminology from "subdivision" of the state. The *Sears* court stated that one must ask whether the affected right is public or private. A public right will "affect the public generally" whereas a private right "merely affects a class of individuals within the political subdivision."²³ Even though *Sears* reaffirmed the general rule that one cannot obtain title by adverse possession against a state or its subdivisions, there still remains some speculation as to which "subdivisions" are afforded this protection. Do such protections extend to a statutory public trust whose beneficiary is a municipality?

In 2014, this issue was addressed in *Waldrop v. Hennessey*. In *Waldrop* a claim of adverse possession was brought against the Hennessey Utilities Authority, a public trust. The claimant

first made a rather novel argument: the bar to a claim of adverse possession against a political subdivision is based on the common law doctrine of sovereign immunity, but sovereign immunity has been abandoned in Oklahoma and "government immunity must now be established statutorily."²⁴ Not only was the *Waldrop* court faced with the opportunity to analyze the extension of the general rule to a public trust, but it would also address a direct challenge to the general rule itself.

The court reaffirmed the general rule and stated that while the common law doctrine of sovereign immunity from liability has been substantially eroded and replaced by statutory enactments, the bar to claims of prescriptive title to property held for the public benefit by the political subdivisions of this state is based, *not* upon the immunity from tort liability enjoyed at common law, but rather on the rights of the public to the property.²⁵ The *Waldrop* court then went on to apply the public rights test from *Sears* in its analysis, and held, "So, as long as real property is impressed with, held for or dedicated to a valid public use by a *public trust* or political subdivision, a claim of prescriptive title will not lie..."²⁶ The implication is clear: a statutory public trust is entitled to the same protection as its municipal-ity beneficiary.

HOW DO YOU STOP IT?

As discussed in the original article, adverse possession is not interrupted by merely giving notice to an occupant that true title is in someone else unless the land owner, or someone on his behalf, acts overtly to oust the adverse claimant.²⁷ If merely giving notice is not sufficient, will the filing of a lawsuit do the trick? This becomes important where the encroachment or adverse possession is discovered at a time close to the end of the 15-year period. The landowner's attorney needs to decide quickly what action to take.

In 2011, the Oklahoma Court of Civil Appeals addressed the issue of interruption of the continuity of adverse possession in *Flagg v. Faudree*.²⁸ In *Flagg*, the court reiterated that for an adverse possession claim to be successful, "there must be a continuous and uninterrupted 15-year period of adverse possession. By 'continuous and uninterrupted use' is meant use

“...adverse possession is not interrupted by merely giving notice to an occupant that true title is in someone else...”

that is not interrupted by the act of the owner of the land, or by abandonment by the party claiming the easement.”²⁹ After holding that the plaintiff’s adverse possession claim was not defeated due to mere written notification, the *Flagg* court went on to state that, “[g]enerally, an interference constituting an interruption must be physical, or *by suit*, or by unequivocal acts of ownership...”³⁰

Although the *Flagg* court was not addressing the specific issue of whether the mere filing of a lawsuit, without more, is sufficient to interrupt the claim, it certainly implied that such an assumption is well-founded. The rule makes sense. If something more than the filing of a lawsuit were required — such as a favorable final judgment in the lawsuit or the physical removal of the adverse possessor — the adverse possessor could simply drag out the proceedings and refuse to vacate without a court order until the 15-year period had run.

CONCLUSION

Adverse possession continues to vex and frustrate attorneys, not to mention property owners, in Oklahoma. Its merits will be debated and no doubt we will continue to see further refinements in the law, but it is definitely here to stay.

1. Malcolm E. Rosser IV and Elizabeth Moseley Guse, “Adverse Possession in Oklahoma: An Idea Whose Time Has Come and Gone?,” 72 *Oklahoma Bar Journal* 713 (March 10, 2001).

2. Full Disclosure: One of the co-authors of this article was also one of the co-authors of the 2001 article.

3. 1993 OK CIV APP 56, 858 P.2d 110.

4. *Id.* at 112. (emphasis added)

5. 2014 OK CIV APP 78, 336 P.3d 1034.

6. The opinion does not state whether the lender took its mortgage with notice of the prior-in-time quit claim deed. We must presume that it did not have notice; otherwise, its quest would have been futile from the beginning.

7. *Id.* at ¶19. (Emphasis added)

8. *Id.* at ¶29.

9. *Krosmico v. Pettit*, 1998 OK 90, ¶15, 968 P.2d 345, 349.

10. 2014 OK CIV APP 78, at ¶20.

11. Rosser, *supra* at 721.

12. 510 F.3d 1256 (10th Cir. 2007).

13. See *Fadem v. Kimball*, 1979 OK CIV APP 40, 612 P.2d 287.

14. *Weyerhaeuser*, 510 F.3d at 1264.

15. *Id.* No reason is given for why this question was not certified to the Oklahoma Supreme Court.

16. *Id.* at 1266. (Emphasis in original)

17. *Id.* at 1263.

18. Okla. Const. Art. 9, §6.

19. *St. Louis San Francisco Ry. Co. v. McBride*, 1924 OK 1066, ¶10, 231 P. 284 (quoting *ATSF RR Co. v. State*, 1909 OK 74, ¶2, 101 P. 262).

20. *Id.* at ¶11.

21. *Waldrop v. Hennessy Util. Auth.*, 2014 OK CIV APP 106, ¶8, 348 P.3d 213, 215.

22. See *Sears v. Fair*, 1964 OK 239, 397 P.2d 134.

23. *Id.* at ¶10.

24. *Waldrop*, at ¶4.

25. *Id.* ¶9.

26. *Id.* at ¶10. (Emphasis added)

27. See *Macias v. Guymon Industrial Foundation*, 1979 OK 70, 595 P.2d 430, n. 6.

28. 2012 OK CIV APP 4, 269 P.3d 45.

29. *Id.* at ¶14.

30. *Id.* at n. 18. (Emphasis added)

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An Examiner's Dozen: 13 Tips to Avoid a Call From a Title Attorney

By Ryan W. Schaller

As an Oklahoma lawyer, you will probably end up helping a client with a piece of real property at some point regardless of your specialty. Your business clients are buying property for investment or development, your estate planning clients need to put their house in a trust, your creditor clients need to secure or foreclose a lien on real property, your debtor clients need to fight for property in foreclosure or need your help in a bankruptcy, or your divorce clients have a house to fight over. Whether you consider yourself a real estate attorney or not, you are probably preparing documents that will impact title to real property.

Title examination rarely happens in a vacuum. When an examiner looks at property, it is normally because the owner is selling or mortgaging the property. Often by the time a title opinion or commitment for title insurance has been issued, the parties to a transaction are up against a closing deadline. Because of this, title curative work comes with a lot of urgency. Perhaps one of the most frustrating experiences you can have as an attorney who does not specialize in real property or title law is getting a phone call from a title attorney explaining why a transaction is on hold because of something you filed. It may cost you time or money to address the issue, and it may lead to uncomfortable conversations with a client. With that in mind, here are 13 tips for avoiding some of the most common title issues.

MAKE SURE YOUR LEGAL DESCRIPTION IS CORRECT

Most practitioners are probably familiar with proof-reading a legal description by reading it aloud to a second person to make sure it has been copied correctly, but go further: make sure your legal description is actually correct. Don't just rely on what your client tells you. Check the county records or order a title search

from an abstract company. Clients sometimes forget that they sold off a piece of the property. You also want to make sure your metes and bounds legal descriptions close. When the metes and bounds of a legal description are plotted out by a surveyor, abstractor or examiner, the description needs to come to a close at the point of beginning. A mistake in any one directional call can drastically change what property is being described. If descriptions do not close, there may be a requirement to get a correction deed or to reform the deed in court, both of which take time and money. You do not want to be the reason a client's closing is postponed.

DON'T RELY ON THE COUNTY ASSESSOR WEBSITE

If you are not familiar with real property, you might be confused where to go for a legal description. You want to look at deeds, surveys or title insurance policies. Do not just copy and paste your legal description from the county assessor's website. County assessors are a great resource but the legal descriptions on their websites are often heavily abbreviated for space and those abbreviations may distort or omit crucial information.

ALWAYS INCLUDE MARITAL STATUS

When drafting a deed, you always need to include the marital status of the *grantor*. If the grantor is married, the grantor's spouse needs to join in executing the deed even if the spouse is not in title. Under Oklahoma law, "No deed, mortgage, or contract affecting the homestead...shall be valid unless in writing and subscribed by both husband and wife."¹ We are required to presume that all property is homestead property.² Although the statute specifically refers to "husband and wife," practitioners should apply the same rule to same-sex couples following the 10th Circuit ruling in *Bishop v. United States*³ and the Supreme Court ruling in *Obergefell v. Hodges*.⁴

IF YOU'RE DEALING WITH MINERALS, THEN CONVEY ONLY THE MINERALS

Under Oklahoma's Marketable Record Title Act, a deed is a root of title. If you intend to only convey oil, gas and other minerals, then the deed must recite that intent. Overly broad deeds that do not explicitly limit themselves to mineral transactions may require curative action if the conveyance is interpreted to include the surface estate.

TAKE CARE OF YOUR SURVIVING JOINT TENANTS PROPERLY

The affidavit of a surviving joint tenant must contain a certified copy of the deceased joint tenant's death certificate, a legal description of the property, recite that the person in the death certificate and on the deed are one and the same, and recite the recording information of the deed creating the joint tenancy.⁵ Before filing this affidavit, do your due diligence to determine whether any record title holder recorded any instruments that might have severed the joint tenancy. It is not uncommon to see a series of immaculate deeds or estate planning documents prepared by a lawyer, and then the next instrument in the abstract is a hand-written quit claim deed undoing all of that good work.

SCHEDULE PROPERTY CORRECTLY IN BANKRUPTCY

Even if the property is going to be exempt, it still must be scheduled. Abstractors will check state and federal court records of everyone in title and will find any and all bankruptcies filed by parties who were in title. Remember, your joint tenants and co-tenants also need to schedule property. There have been a number

of instances where a parent will convey property to himself and his adult children as joint tenants. One of the children will go through a bankruptcy and not schedule that property. Even though the parties may be treating that joint tenancy as an estate planning strategy, the children have an ownership interest in that real property which needs to be scheduled.

USING POWERS OF ATTORNEY – PART 1

If a person is going to use a power of attorney (POA) to convey an interest in real property, that POA needs to be recorded in the records of the county clerk where the property is located. This means the POA should include the legal description of the property so that it can be properly indexed by the county clerk. Not having a legal description may not be fatal for the POA, but it may lead to additional questions by the title examiner. In general, because of greater awareness of elder fraud, POAs are going to be more closely scrutinized when used in a current transaction.

USING POWERS OF ATTORNEY – PART 2

It is not uncommon for people to try to use various forms for POAs that are not necessarily designed to allow the holder to sell property. Many of these documents are intended to allow the holder to make medical decisions, get access to bank accounts, pay bills, etc., but they don't specifically address property rights. When preparing these documents, talk with your clients and make sure the resulting document is suited to your clients' needs. If a POA does not explicitly give the authority to sell, buy, mortgage, convey, etc., property that is specifically identified by legal description, it could create title problems.

MAKE SURE YOUR CLIENTS UNDERSTAND THEIR TRUSTS

As you draft trusts for your clients, make sure they understand the rules of the trusts. If a trust has more than one trustee, the trust document should state whether trustees can act independently or what percentage must sign any conveyance. If a trustee who is not the trustor wants to convey the property to himself in his individual capacity, an examiner is going to look to see if the trust agreement allows for self-dealing transactions. Same thing if the trust is going to be a mortgagor or a mortgagee in a transaction with a related entity. If your memorandum of trust only contains the bare minimum of information, an examiner may

insist on seeing additional documentation to ensure the contemplated transaction is authorized by the trust agreement.

PROPERLY PAPER SUCCESSOR TRUSTEES

When the original trustee dies or steps down, there needs to be evidence supporting the change in trustee. If the record shows that title to the property is held by Jane Doe, trustee of the Doe family trust, but is then conveyed out by Julie Doe, successor trustee of the Doe family trust, there must be something in the record establishing that Julie Doe is the valid successor trustee. If the trustee has simply stepped down for health reasons, an easy way to do this is to file a new memorandum of trust that recites the identity of the successor trustee and cites to the portions of the trust agreement that show that person's nomination as a successor trustee. However in the event of the death of the settlor of a revocable trust, an affidavit of successor trustee must be filed.

UNDERSTAND HOW TITLE IS HELD IN ENTITIES

Your clients need to respect the structure of the entities they are using. If they form a limited liability company (LLC) and state both members are managers and both managers must sign all conveyances of property, then the title attorney is going to require that your clients comply with their own operating agreement. In other cases, membership or management of a LLC will change without any documentation or amendments to the organizational papers. The remaining members are going to have to properly document all of those changes before an examiner is satisfied that the proper people are signing any conveyances. As you are advising your clients, it is important you help them to respect the form of the entities they have chosen and to follow their own operating agreements, bylaws, articles of incorporation, etc.

STATUTES, STATUTES, STATUTES!

Probates, guardianships and foreclosures are all governed by statutes in Oklahoma. There are no short cuts around the steps spelled out in those statutes. Take your time and do it right the first time. No matter how much clients want to rush you to get something done, it will always be better in the long run to do these proceedings correctly than to have to go back and redo something if you miss or skip a step.

STATUTES, STATUTES, STATUTES! — NOTICE EDITION

Follow all notice requirements. If you are foreclosing or quieting out someone's interest in real property, due process rights are at issue. Courts will overturn cases for failure to follow proper notice requirements. As title examiners, if we see a problem with notice, we send it back. Do not simply publish notice when due diligence will locate an individual who has moved.

CONCLUSION

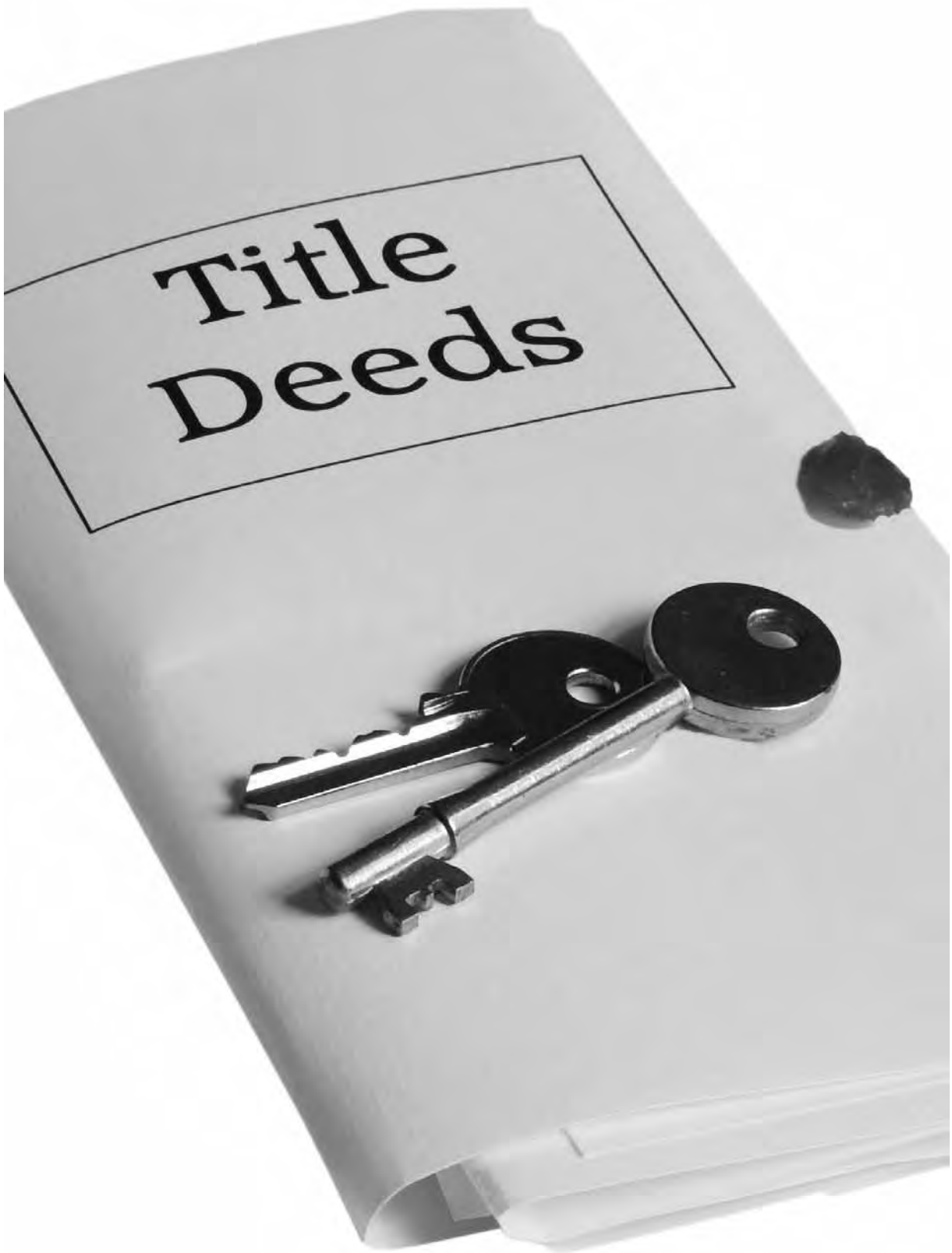
In addition to all of these specific tips about different situations and types of legal instruments affecting title, the best general tip is to ask for help if you are not sure how to handle an unfamiliar real property transaction. For attorneys in firms this could be as simple as walking down the hall to talk with an experienced real property attorney. For those who do not have that resource, get to know the title attorneys, abstractors and title insurance agents in your county. Title attorneys do not enjoy coming across these problems either. They do not enjoy calling an attorney to point out defects or errors in that attorney's work. Title attorneys and title insurers have an interest in seeing a clean record that allows transactions to close as smoothly as possible and will often be willing to offer advice to prevent future problems.

1. 16 O.S. §4.
2. Comment 1 to Title Standard 7.2.
3. 760 F.3d 1070 (2014).
4. 576 U.S. ___, 135 S. Ct. 2584 (2015), www.supremecourt.gov/opinions/14pdf/14-556_3204.pdf.
5. 58 O.S. §912(C).
6. Title Standard 15.4.

ABOUT THE AUTHOR



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A Title Examiner's Guide to Probate and Guardianship Sales

By Jennifer S. Jones

Probate proceedings are purely statutory. Since probates are governed by statutes, title examiners require strict adherence to them. There are many complaints about how archaic and outdated the probate statutes are; but, at the present time, the statutes are what they are and sales must be conducted accordingly. There are three separate methods to sell property out of a probate estate and one method to sell property out of a guardianship estate (real property in which the ward has more than just a homestead interest) that will be discussed. Real property sales out of probate estate have many steps that can be tedious but are not difficult. Each step must be completed properly to avoid receiving the dreaded call from a title examiner or worse an upset client.

It is important to remember that the purpose of the statutory sales process is to achieve the highest and best price for the real property being sold unless a personal representative is given the power of sale in a will or all of the heirs, devisees and legatees consent to the sale. Many times this overarching goal is overlooked because the parties have entered into a contract to sell prior to beginning a sales process in the probate proceeding. The temptation is strong to ask the court for a confirmation of the sale while omitting the other necessary steps required for legitimate confirmation. If the sale is to be conducted using 58 O.S. §239, typically there is little delay in completing the transaction. However, if there are missing or uncooperative heirs, devisees or legatees, a sale pursuant to §239 is not possible, and the sales process will take longer than anticipated.

LONG SALE OR THREE-STEP SALE

The long sale (or three-step sale) consists of three steps: securing the order to sell, selling the property and confirming the sale. This process is the most time consuming and expensive method. It includes three publications with three notice periods. The process usually takes 45 to 60 days provided there are no objections to the sale and is typically used when heirs, devisees or legatees cannot be located, there is no power of sale in the will or the §239 procedure is not achievable.

STEP 1 – ORDER ALLOWING THE SALE 58 O.S. §411-420

First, the order allowing the sale from the probate court must be obtained. The verified petition must contain specific information and averments, including: 1) the sale of the real

property will be in the best interest of the estate; 2) an accurate description of the real property; 3) the value of the real property; 4) the names of the known heirs, devisees and legatees of decedent and 5) whether the sale will be public or private. While the title examiner may not scrutinize the pleading for every detail, the listed information, specifically the legal description, is required by statute and will receive the title examiner's careful review.

This is the first notice period required in the long sales process. The notice of hearing the petition to sell real property is required to be published and mailed to all interested parties. The hearing must be held not less than 10 days from the date of publication and the mailing of notice to interested parties. The statutory intent is to put the world on notice that a sales process is underway.

It is critical to point out that the order of sale must state whether the sale is to be private or public. This detail is often overlooked since most sales are private, but it is a statutory requirement that the order of sale set forth the type of sale. The type of sale is an important fact that must be included in the notice since 58 O.S. §419 requires the court to order the property sold at public auction, unless the petition requests and the court determines that a private sale would be more beneficial. It is the unhappy attorney who receives the phone call explaining that the order allowing sale did not specify what type of sale was ordered or that the legal description of the property was inaccurate or omitted entirely.

When the petition and order fail to include the necessary information, the attorney must then file an amended or supplemental petition, publish and mail a new notice and obtain a corrected order. This order from the court allows the personal representative to undertake step two in selling the real property. The way the sale procedure is conducted will differ depending on the sale type.

STEP 2 – SALE OF REAL PROPERTY – 58 O.S. §419-424

Step two begins with the notice of sale. The notice must state whether the sale is private or public along with the correct legal description of the property being sold. The second notice period is the publication of the notice of sale in a legal newspaper once a week for two consecutive weeks in the county where the real property is located. Mailing to all interested

parties is once again required. The argument is often made that there is no reason to publish and mail the notice of sale because the personal representative has already executed a purchase contract. There are two critical reasons title examiners require the second step be completed. First, the statutes require it; and second, this step is necessary to satisfy the overarching goal of achieving the highest and best price for the benefit of the estate.

If the sale is public, the public auction notice should contain the time and location of the sale. If the sale is private, the notice should include who accepts the bid and when and where the bids will be accepted. Typically, it is the attorney for the estate who accepts the bid at his or her office. The notice of sale is required to be published even if the sale is private. The bid process allows a third party to submit a written bid that may be higher than the initially accepted bid. This again is an attempt to achieve the highest and best price for the property.

STEP 3 – CONFIRMATION OF SALE – 58 O.S. §424, 428-430

Step three is the confirmation of sale. Once the sale by bid or by auction is completed, the personal representative is required to submit a return of the sale. The return gives the court the particulars of the transaction — the who, what, where and how much. Although this has been stressed before, the legal description must be accurate. Notice of the confirmation hearing must be published and mailed to appropriate parties at least 10 days prior to the hearing date. If the court finds the sale proceeding acceptable, the order confirming sale will authorize the personal representative to execute a deed in favor of the purchaser.

The statute requires that when real property is sold by private sale the sales price be at least 90 percent of the appraised value of the property.¹ This is the only probate sales proceeding where a minimum sales price is required. In order for this minimum price to be determined, it is necessary that there be a current appraisal which is within one year of the sale date.² If there is no appraisal or the appraisal seems too high or low, the court is required to appoint appraisers to appraise the property. The appraisement can be done any time prior to the confirmation of the sale.³ Although there is no specific requirement that the appraisal be filed in the court case, there is no way for a title examiner reviewing the court file to know the

appraised value of the property unless the appraisal is filed in the case.

It may seem counterintuitive that a title insurance company will not close the transaction until the sale has been confirmed by the court. But, it is important to remember that at the confirmation hearing, a third party can submit a written bid that is 10 percent more than the returned bid and the court has the authority and discretion to decide which bid to accept.⁴ Title to the real property cannot vest in the purchaser until the sale has been confirmed and the court has authorized the conveyance. Once the order confirming the sale has been issued, a certified copy must be recorded with the county clerk's office in which the property is located.⁵

SALES PROCEEDING BY POWER OF SALE IN LAST WILL AND TESTAMENT – 58 O.S. §462

Often the last will and testament of the decedent provides for a power of sale of real property to the personal representative. In this situation, the personal representative is given wide discretion as to the terms of the sale and enjoys having to only complete the confirmation process.⁶ Since the last will and testament grants authority to sell real property, there is no need for the court to grant the authority; and there is no requirement for a notice of sale since the decedent has given the personal representative the discretion to sell the property. Therefore, the first two steps of the long sale process can be eliminated. The personal representative simply files the return of sale and gives published and mailed notice of the hearing.

However, as in the long sale process, a third party can attend the confirmation hearing and submit a written bid in an amount at least 10 percent more than the returned bid. The court will then have the discretion to determine which bid to accept. Once again, the transaction will not be closed until the order confirming sale has been issued and filed in the case with a certified copy recorded with the county clerk's office.

SALES PROCEEDINGS PURSUANT TO 58 O.S. §239

After the personal representative is appointed and the heirs, devisees and legatees have been initially determined, a sale pursuant to §239 is by far the quickest and easiest process

to sell real property out of probate. Again, this shortened process is only available if all of the heirs, devisees and legatees as determined by 58 O.S. §240 are willing to execute acknowledged consents. Assuming the heirs, devisees and legatees have been properly determined by the court, three basic pleadings compose the §239 process: a petition requesting a §239 sale, acknowledged consents from all required heirs, devisees and legatees and an order approving such sale. Unlike the other sale proceedings, the §239 sale can be completed within days. This proceeding has a unique set of requirements that must be satisfied.

The petition requesting a §239 sale should *not* be included in the petition to commence the probate, appoint the personal representative and initially determine the heirs, devisees and legatees. Title 58 O.S. §239 specifically states that *after* the appointment of the personal representative and the initial determination of heirs, devisees and legatees and then upon the filing of the petition and consents, the §239 order will be granted. Whether the heirs are determined when the personal representative is appointed (with at least a 10-day notice) or at a separate subsequent hearing (with at least a 10-day notice), the heirs, devisees and legatees cannot execute a consent until determined. Again, small details, but at the time of commencing the probate, the person requesting appointment is not yet the personal representative and does not have the authority to ask the court for §239 approval. In addition, heirs, devisees and legatees must first be initially determined before they can execute their consents.

All heirs, devisees and legatees are required to execute consents. It seems like a stretch that the cousin who is only receiving a ring or two season football tickets has to consent, but there is no consent exception for devisees and legatees that are only bequeathed personal property. There is also no exception for a personal representative who is also an heir to not sign a formal consent. So, if a personal representative is also an heir, devisee or legatee, a consent in his or her individual capacity must be executed and filed in the proceeding. If a will has been submitted to probate, there is no objection to the will and there is a residuary clause, only heirs who are also devisees and legatees are required to sign consents.⁷ Each consent requires an acknowledgement. A jurat in place of an acknowledgement is unacceptable. This is another small detail, but the language of the

statute specifically requires an acknowledged consent and will be required by a competent title examiner.⁸

The safest way to have consents and an order that grant the personal representative all of the necessary authority to sell real property is to mirror the language in the statute which provides that the personal representative is authorized "...to sell, grant, lease, mortgage or encumber any real or personal property including mineral interests and to execute and issue deeds, leases, bills of sale, notes, mortgages, easements and other documents of conveyance, without further judicial authorization or a return of sale or confirmation of such sale or transaction ...".⁹ Proceedings have occurred where the language was shortened and the critical authority to undertake the transaction was omitted. In such cases, the title examiner will require that the application, consents and order be corrected and re-filed in the probate action before approving the transaction.

A couple of unusual circumstances arise for consents. If an heir, devisee or legatee is under a legal disability, a person authorized to act on his or her behalf by the order initially determining heirs, devisees and legatees can execute the consent. If a guardian executes the consent, the certified copy of the instrument authorizing him to execute the consent "shall" be attached to the consent.¹⁰ If an heir, devisee or legatee is deceased, a personal representative for the deceased person must be appointed and must then be designated in the initial order as the person to execute the consent on the deceased person's behalf.

SALES OUT OF GUARDIANSHIPS – 30 O.S. §4-751 - 4-765

If the ward is an owner of real property, it may become necessary to sell his or her real property. There is no shortcut for the sale of real property out of a guardianship. There is no §239 procedure available. In order to begin the process, the guardian files a petition with the court to sell the real property. This verified petition to sell real property must include similar information to the petition to sell in probates. The petition must include facts that show the sale is for the benefit of the ward, gives a correct legal description of the property and states whether the sale is to be public or private. Carefully following the statutory language in the petition is prudent.

After obtaining the order allowing the sale, 30 O.S. §4-764 requires that, unless specifically provided by the Oklahoma Guardianship and Conservatorship Act, all proceedings shall be conducted as required by the statutes concerning the estates of decedents. With this in mind, the only way to sell real property out of a guardianship is through the long sale process. The power of sale proceeding is not available because there is no last will and testament submitted for probate, as the ward is still living and not ready to have his or her estate probated. Neither will a §239 sale proceeding be available since the ward is still living; and a living person cannot have his or her heirs determined. Therefore, after obtaining the order allowing the sale, steps two and three of the long sale process must be completed to transfer real property owned by the ward.

“The safest way to have consents and an order that grant the personal representative all of the necessary authority to sell real property is to mirror the language in the statute...”

A sale out of a guardianship requires an appraisal just like the probate long sale. It has the same 90 percent requirement.¹¹ Therefore, an appraisal must be placed in the court file in order for a title examiner to verify that the sales price satisfies the statutory requirement.

TIPS AND TRICKS

There are few tips and tricks worth mentioning that will help avoid a requirement from a title examiner.

Notice Periods Must Be Strictly Observed

As a general note, most of the notice periods in probate are for 10 days from the date of mailing or publication. If you are wondering, yes, title examiners do count the days to make sure the proper notice period was given. If the notice times are not properly observed, the result will be the dreaded call for a do-over.

The legislative intent seems to be notice, notice and more notice.

Affidavits of Mailing Are Necessary

Even though there is no statute which specifically states that affidavits of mailing notices are required, there is no way for a title examiner to know whether notices were timely mailed unless an affidavit of mailing is filed. Since this is the case, the best practice is to file affidavits of mailing to prevent later questions.

§245 Summary Proceedings

Sometimes a determination will be made to sell property out of a probate filed as a summary proceeding pursuant to 58 O.S. §245. In order to sell property out of this type of probate proceeding, the requirements for whichever process is being utilized must be satisfied. This means that even though the §245 summary proceeding does not require a determination of heirs pursuant to §240, the requirements to determine the heirs have to be met if a §239 sale is to be conducted. Regardless of the type of proceeding, if a special administrator is appointed, it is necessary for the court specifically to authorize the special administrator to sell the real property and to execute documents on behalf of the estate.

A summary probate pursuant to §245 may seem like a fast way to complete a probate. However, if there is real property to be sold out of a probate, instead of filing a summary probate pursuant to §245, a better option would be to open a “regular” probate; appoint the personal representative and initially determine the heirs, devisees and legatees; conduct the sales proceedings and then file the petition for summary proceedings pursuant to §241. This eliminates questions concerning the authority of the personal representative to sell the real property and still accomplishes a shortened probate.

Legal Descriptions

An inaccurate or missing legal description will always result in a phone call from a title examiner. Title examiners do not enjoy making

such calls to explain why a sale proceeding does not pass muster, especially when a little extra effort will prevent the error. Therefore, the best practice is to obtain copies of the deeds whereby the decedent took title to determine the legal description. Check the county clerk’s records to verify that other documents have not been filed which may affect the legal description. Create and save the final, definitive legal description on your computer and re-use such saved legal description when called for. Recreating or retyping the legal description on each document merely increases the chance for a fatal error.

Guardianship Order of Sale

Title 30 O.S. §4-765 provides a special wrinkle for the order of sale in guardianships. The order of sale is only enforceable for one year from the date of the order. If the property is not sold within one year of the order date, a new order must be obtained.

Probate Notice of Sale

The date of the sale is required to be within one year of the date of publication.¹²

1. 58 O.S. §424.
2. *Id.*
3. *Id.*
4. 58 O.S. §426.
5. 58 O.S. §428.
6. 58 O.S. §462.
7. 58 O.S. §239(c).
8. 58 O.S. §239.
9. 58 O.S. §239 A.1.
10. 30 O.S. §4-707.
11. 58 O.S. §424.
12. 58 O.S. §423.

ABOUT THE AUTHOR



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Oklahoma Community Association Assessments

Funding the Unit Ownership Estate and Real Estate Development/Homeowners Association

By Matthew L. Winton

If you've purchased a home in the last 20 years constructed within the boundaries of a municipality or access your home by means of a privately maintained road, then you could be familiar with the peculiar entity known as a community association. Part private government, part corporation, some 68 million Americans (approximately 21 percent of the U.S. population) live within one of the estimated 338,000 community associations within the United States.¹ Many Oklahoma municipalities require the creation of a community association by regulation or ordinance so as to provide for the orderly maintenance of common areas, which could include storm water detention/retention facilities.² Unlike some states with established networks of professional community association managers, most Oklahoma community associations operate and are managed by noncompensated, volunteer board and committee members.³

Whether the association's common areas include private streets, clubhouses or drainage facilities vital to the overall storm water plan of a city, the community association must be adequately funded to meet the association's operational and administrative obligations. This article discusses the common funding mechanism for community associations termed "assessments" or more commonly referred to as "dues."

OVERVIEW OF OKLAHOMA COMMUNITY ASSOCIATIONS

Generally, one defines a community association as a real estate development containing three basic qualities:

- 1) Ownership of real estate within a particular development requires membership in that association.
- 2) Certain documents such as real property covenants and bylaws, commonly referred to collectively as governing documents, govern the rules and relationships within the association and among its members.
- 3) Expenses of the community association and capital improvement expenses for property owned by the community association are funded by member assessments. These assessments may take various forms to cover a multitude of funding needs.

The two primary Oklahoma community associations are 1) unit ownership estate (UOE) associations, commonly referred to as condominium associations and 2) real estate development associations, commonly referred to as HOA or homeowner associations.

Title 60, Section 501 et seq. governs Oklahoma condominium associations, with Section 512 providing the statutory authority for the UOE association's assessment of dues within that real estate framework.⁴ Title 60, Section 851 et seq. (commonly referred to as REDA) governs Oklahoma homeowner associations, with Section 852 providing for the assessment of dues and filing and foreclosure of HOA liens. One should note that for HOAs created before 1975, REDA would not automatically apply, so those associations would rest on their recorded covenants for governing language.⁵

To require membership in an association and the resulting obligation to remit assessments to the association, a covenant must be recorded within the real property records either at the outset of the development and prior to transfer of units/lots, or an owner of a unit/lot must expressly commit to membership. Either way, once a declarant subjects a unit/lot to the association servitude, all subsequent owners of that unit/lot must participate in the funding of the community association.

OVERVIEW OF ASSESSMENTS

For community associations, assessments represent the funding mechanism for the regular and special operating needs of the association. These various forms of assessments pay for the ongoing maintenance, repair and improvement expenses of the association's common areas, which may consist of private roads, recreational facilities and drainage areas. Multiple types of assessments have developed over the years to address specific funding and covenant enforcement needs within a community association.

ANNUAL OR BASE ASSESSMENTS

The most common form of assessment within a community association comes in the form of the regular, base or annual assessment.

Annual assessments typically bear the characteristics of 1) uniformity in amount among all association members, 2) go to fund the general operating budget of the association and 3) are established pursuant to a budget adopted by the association board or are an amount fixed initially by the creator of the association.

“...the annual assessment amount typically increases or decreases upon a change in budget or on a flat percentage...”

Depending on the language of the covenant providing for the annual assessment, the annual assessment amount typically increases or decreases upon a change in budget or on a flat percentage, such as 10 or 20 percent. Often, the decision for any increase or decrease rests with the community association board, although a covenant could provide for certain annual assessment increases being voted on by the general membership. Some covenant drafters use a Consumer Price Index (CPI) escalation clause for assessment increases. While such clauses can be functional, it is important to note

that many CPI clauses within recorded covenants are incomplete and do not actually provide a workable escalation formula.

SPECIAL ASSESSMENTS

Special assessments refer to a common funding mechanism within community associations beyond regular or annual assessments. Neither Oklahoma's condominium nor homeowners association statutes reference or expressly authorize special assessments apart from a general authority for community association funding mechanisms.⁶ Thus, the language of the governing document providing for a special assessment becomes vitally important when answering questions relating to the adoption, payment and collection of special assessments.

The governing document could provide that special assessments may be adopted by a board itself, but most covenants require a vote of the general membership for the adoption of a special assessment. This is because special assessments typically go to fund unanticipated or nonbudgeted items, such as repairs or improvements that could not be funded out of the general fund and could amount to several thousand dollars per unit/lot. One common characteristic among special assessment covenants is the requirement that all special assess-

ments are uniform as to all owners who would benefit from the special assessment. For example, the members of a gated community whose association is a subassociation of an umbrella community association would likely fund a special assessment for their private street without participation from the other subassociation members.

A special assessment covenant may also expressly limit the timing, amount and purpose of an assessment. For instance, some covenants limit special assessments to once per year, meaning the association may not adopt multiple special assessments within the same year. The existence of such a restriction could also prevent the adoption of a multiyear special assessment with one vote. Further, a covenant could limit the amount of the assessment, meaning a special assessment may not be in excess of the annual assessment by a stated sum or percentage. Finally, some special assessment covenants limit the assessment to fund only capital improvement projects, which would prohibit the use of a special assessment to fund budget shortfalls not related to a capital improvement expense.

SPECIFIC ASSESSMENTS

A third type of assessments one may encounter in a community association setting are specific assessments. Specific assessments may refer to covenant language providing for monetary penalties or funding for special services offered to less than all association members. As with special assessments, Oklahoma's community association statutes say nothing specific regarding specific assessments, so guidance must come from particular covenant language applicable to a given association.

For the monetary penalty version of specific assessments, the covenant language will provide for certain monetary penalties applicable to unit/lot owners, occupants and the like for violations of the governing documents. Experience has shown that specific assessment enforcement of real property covenants can dramatically reduce covenant enforcement litigation expense and duration. Specific assessments likewise provide a commonly understood framework for resolving disputes — money — as opposed to the somewhat esoteric and frowned upon remedy of an injunction.

To ensure fairness, penalty form specific assessment covenants often provide for a version of due process prior to the application and

enforcement of a monetary fine. Various aspects of due process one finds with specific assessment covenants include written notice of the violation, opportunity to cure and a meeting with the full association board. Specific assessments are often collected in like manner as regular assessments, meaning the filing of a lien against the unit/lot, and collection in court.

A second form of specific assessment exists. This form provides a funding mechanism to the association where an association provides services to some but not all of its members. For example, a community association may include members living in detached, single-family homes as well as members occupying duplex or shared-wall structures. If the association provides specific services to the duplex members, such as exterior dwelling maintenance or lawn service and does not provide those services to the detached structure members then the funding mechanism for such services could be a specific assessment.⁷ Given the nature of the expense, these types of specific assessment covenants would not need due process language.

RESERVE ASSESSMENTS

Some governing documents require the community association to establish financial savings, also known as a reserve, for capital improvements and repairs. All physical improvements wear out, need resurfacing or require substantive repairs beyond routine maintenance. One way an association may approach funding these expenses is to conduct a reserve study. The reserve study reduces an estimated future common expense to a present per unit/lot assessment amount.⁸ Reserve assessment describes the common funding mechanism for reserve expenses. Astoundingly, Oklahoma law requires no reserve funding either within a condominium or homeowners association, despite the fact that Oklahoma community associations bear the maintenance responsibility for thousands of acres of crucial infrastructure. Accordingly, any requirements for reserve studies and reserve funding fall to the language found in the association's governing documents, which is often woefully inadequate or most often nonexistent.⁹

Even if a community association lacks reserve language within its governing documents, the association should still work to reserve if that association owns, maintains or administers common areas such as private roads, storm

water detention/retention, common element buildings containing units, or has a high deductible insurance policy. The process for determining a reserve is straightforward. A reserve fund is a dedicated source of assets, usually liquid, from which a community association would fund necessary capital improvements or to gain access to insurance proceeds. To guide decisions on how the association should spend or accumulate a reserve, the board typically conducts a reserve study. A reserve study provides a current estimate of capital improvement expenses for a given period of time, usually five, 10 or 20 years. The board then allocates the reserve assessment to the members of the association according to their pro-rata share. A proper reserve study will include a list of capital improvements, their current age and their remaining useful lives.

RESALE ASSESSMENTS

While not as common as other assessments, resale assessments represent charges incurred at the time title to a unit/lot transfers from one owner to the next. One finds resale assessments most commonly when a community association operates a quasi-public common element such as a swimming pool, clubhouse or golf course that is available for rent or use by the general public. The association often uses resale assessments to market the amenity and fund budget shortfalls and repair expenses. Note that if a resale assessment (actually any assessment) is payable to a party other than the community association, the assessment could represent an impermissible transfer fee under 60 O.S. §350. If any assessment meets the statutory definition of transfer fee, then the assessment is void.¹⁰

CONCLUSION

This article identifies the various forms of assessments commonly used to fund an Oklahoma community association. Each assessment has its purpose and place depending on the financial needs of a particular community association. Likewise, each has its own peculiarities of adoption, collection and enforcement. Because Oklahoma law is sparse on community association assessments, a community may discover a

need to amend its governing documents to provide language necessary for meaningful financial administration of the community association.

1. www.caionline.org/AboutCommunityAssociations/Pages/StatisticalInformation.aspx.

2. For example, *see*, City of Oklahoma City Subdivision Regulation 5.4.12; City of Edmond Ordinance 21.07.020(M) and 23.20.060.

3. An estimated 30-40 percent of American community associations operate on volunteer management. For more Oklahoma-specific community association research, you may find the Community Association Institute Research Foundation's 2015 Factbook of interest: www.cairf.org/research/factbook/2015state_summaries.aspx.

4. 60 O.S. §512(a) provides in part: the unit owners are bound to contribute pro rata ... toward the expenses of administration and of maintenance and repair of the general common elements and, in proper cases, of the limited common elements, of the building and toward any other expense lawfully agreed upon.

5. 60 O.S. §855; *Falconhead Property Owners Ass'n v. Frederickson*, 2002 OK CIV APP 67.

6. 60 O.S. §512; 60 O.S. §852.

7. It is also possible that the governing documents address disparities in services and funding issues with multiple member classes, split regular assessment categories or other methods.

8. Many associations take what is called a zero baseline funding approach to reserves, either purposefully to keep assessments unreasonably low or unwittingly due to lack of knowledge. Zero baseline funding means the association saves nothing for future capital repairs and the members incur the full expense of the repair at the time of need. This approach causes not only significant financial distress when the association needs to make crucial repairs or pay a large deductible, it also works inequality and unfairness into the buying and selling of units/lots within that association. Depending on the purchase price, a buyer's sophistication and the timing of the inevitable financial crunch, a buyer could dramatically overpay for a unit/lot because of the hidden, unfunded deferred maintenance costs.

9. For an excellent resource on reserve studies and funding, see the CAIRF Best Practices Report titled "Reserve Studies/Management": www.cairf.org/publications/best_practices.aspx.

10. Pursuant to 60 O.S. §350(A)(3) "'Transfer fee' means a fee or charge imposed by a transfer fee covenant, but shall not include any tax, assessment, fee or charge imposed by a governmental authority pursuant to applicable laws, ordinances, or regulations."

ABOUT THE AUTHOR



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Housing Discrimination: Inequality Served With a Smile

Teresa L. Webster

In 1968, Congress passed the Fair Housing Act (FHA) and announced the national housing policy to promote equal housing opportunity in the United States as far as the Constitution would allow.¹ Nearly 50 years later, America is no longer peppered with “whites only” or “coloreds only” signs. Most public accommodations have been integrated and many schools are no longer unnaturally segregated. Nevertheless, housing discrimination is just as prevalent today as it was in 1968. In the past, discrimination motivated the privileged to deny equal housing opportunities to less privileged and vulnerable populations. In modern times, America’s vulnerable are still victims of inequality in housing. The only difference now is that housing discrimination is served with a smile.

In the 21st century, Americans experienced housing discrimination in unprecedented numbers. *Housing Characteristics: 2000-2010 Census Briefs*, an analysis published by the United States Census Bureau that examines and compares shifts in housing trends between 2000-10, asserted:

According to the 2010 Census, there were 131.7 million housing units in the United States. Of these housing units, 116.7 million had people living in them (88.6 percent) on Census Day. The remaining 15.0 million units (11.4 percent) were vacant. Between 2000 and 2010, the national housing inventory increased by 15.8 million units or 13.6 percent.²

According to the United States Department of Housing and Urban Development’s (HUD) State of Fair Housing Report, HUD received

nearly 40,000 complaints of housing discrimination between the years 2010 and 2013.³ The report revealed that the main discriminatory complaint raised by buyers and renters was that housing providers discriminated against them, as protected class members, by applying different terms, conditions, privileges and services in the rental and sales market.⁴ Among those most adversely affected by discriminatory housing practices were persons with disabilities, followed by victims of race-based housing discrimination.⁵ Some may think 40,000 complaints is not a very large number compared to the number of available housing opportunities. However, that number only accounts for reported incidents of discriminatory housing practices. It does not capture the number of unreported incidents that occur and go unreported because people are embarrassed to report them or just do not know that their

rights have been violated. It is unthinkable that nearly 50 years beyond the passage of the FHA and nearly 30 years since its last amendment, that housing discrimination would still be an issue, but the facts do not lie. It is still a very real issue.

The purpose of this article is to provide insight into the reality of housing discrimination. This article will first define housing discrimination, as defined by the FHA and Oklahoma laws. Second, the article will examine fair housing jurisprudence within the 10th Circuit and in Oklahoma. Third, the article will discuss some barriers to fair housing in Oklahoma. Lastly, the article will discuss the measures that are being taken to curtail discriminatory housing practices.

WHAT IS ILLEGAL HOUSING DISCRIMINATION?

The FHA⁶ is designed to protect “renters,” “buyers” and “any person” from discriminatory housing practices in residential real estate transactions.⁷ The FHA defines a “discriminatory housing practice” as “[a]n act that is unlawful under section 804, 805, 806, or 818 of this title.”⁸ The FHA identifies seven protected classes, which are: race, color, national origin, religion, sex, familial status and handicap (disability). Under the act, a person engages in an illegal discriminatory housing practice, when on account of a home seeker’s (or any person’s) membership in a protected class, a housing provider does any of the following: refuses or denies a housing opportunity to that home seeker;⁹ refuses to negotiate for the rental or sale of housing;¹⁰ imposes different terms, conditions and privileges in the sale or rental of dwellings;¹¹ refuses to grant necessary reasonable accommodations or reasonable modifications when requested for persons with disabilities¹² and interferes with or retaliates against a person for exercising protected fair housing rights.¹³ The FHA also prohibits discriminatory mortgage and lending practices when the discrimination is linked to an applicant’s protected class membership¹⁴ and provides further restrictions on discriminatory brokerage services and advertisements.¹⁵

The FHA prohibits illegal housing discrimination in the rental, sales, lending, insurance, advertising, public and private markets, as well as discriminatory legislations including zoning laws, city ordinances and violative statutes. Furthermore, the FHA pertains to dwell-

ings — including constructed units and vacant lands intended for residential use.¹⁶

Oklahoma has incorporated the provisions of the FHA into its laws at 25 O.S. §1451, et seq. Oklahoma has expanded its protected classes to include age for persons who are 18 years old or older.¹⁷ Oklahoma also has a quasi-protected class that prohibits discrimination in housing based upon the verifiable source of income of the home seeker.¹⁸ Several cities in Oklahoma have also amended their local ordinances to expand fair housing protections to individuals based upon sexual orientation and gender identity.¹⁹

FAIR HOUSING JURISPRUDENCE

HUD is the governmental agency that is charged by Congress with enforcing the FHA. Therefore, courts accord great deference to the interpretations and pronouncements of HUD pertaining to the FHA. For example, in *Mountainside Mobile Estates Partnership v. Secretary of Housing and Urban Development*,²⁰ the court held,

When, as in the FHA §3614a, “Congress explicitly delegates to an agency the authority to elucidate a specific statutory provision, the agency’s interpretation is given controlling weight unless arbitrary, capricious, or manifestly contrary to the statute. Absent such an explicit delegation, the agency’s interpretation generally controls if it is reasonable and consistently applied, though no deference is warranted if the interpretation is inconsistent with the legislative intent reflected in the language and structure of the statute or if there are other compelling indications that it is wrong.”²¹

Courts recognize that housing discrimination occurs overtly and intentionally, as well as covertly through the adoption and implementation of facially neutral policies and practices that have discriminatory effects on members of protected classes. The 10th Circuit has consistently applied two tests to determine if the policies and procedures of a housing provider violate the FHA. The first test was established by the United States Supreme Court in *Int’l Union, United Auto., Aerospace and Agr. Implementation Workers of Am., UAW v. Johnson Controls, Inc.*,²² (aka the *Johnson Controls* test). Courts apply this test to determine when a plaintiff has established a *prima facie* case for intentional housing discrimination. Under the *Johnson Controls* test, “a plaintiff makes out a *prima facie* case of intentional discrimination under the

[Fair Housing Act] merely by showing that a protected group has been subjected to explicitly differential — *i.e.* discriminatory — treatment.”²³ Where the plaintiff successfully establishes a *prima facie* case of discrimination, the burden shifts to the defendant to show “(1) that the restriction benefits the protected class or 2) that it responds to legitimate safety concerns raised by the individuals affected, rather than being based on stereotypes.”²⁴

Where the policy of the housing provider lacks evidence of intentional discrimination, but evidences a discriminatory effect, the courts rely on the *McDonnell Douglas* test.²⁵ Under *McDonnell Douglas*, to establish a *prima facie* case for housing discrimination under a disparate impact theory, a plaintiff must show: “(1) that they are members of a protected class, 2) that they applied for and were qualified for [the housing opportunity], 3) that they were rejected and 4) that [the housing opportunity] re-mained available.”²⁶ After the plaintiff has established a *prima facie* case of housing discrimination, the defendant has the duty of “articulating a nondiscriminatory reason for the policy or practice.”²⁷ If the defendant launches a successful rebuttal, then the burden shifts back to the plaintiff to show that the articulated reason is mere pretext for an intent to discriminate.²⁸

Additionally, the 10th Circuit narrowly interprets the special disability provisions of the FHA to protect only buyers and renters.²⁹ This means that a plaintiff with a disability must at least claim to have been seeking housing as a potential renter or potential buyer in order to have standing to assert a claim for an FHA violation under 42 U.S.C. §3604 (f).³⁰ This interpretation differs from the broader provisions of the FHA which extend to “any person,” whether or not they are actually a potential buyer or renter.³¹ The rationale for the restricted application of the special disability provisions is due to the construction of 42 U.S.C. §3604 (f). However, where the disabled plaintiff may lack standing to assert a claim for disability discrimination under the FHA, he may still have standing to challenge discriminatory actions under Section 504 of the Rehabilitation Act, which requires all federally-funded entities to provide reasonable accommodations and reasonable modifications to persons with disabilities.

In Oklahoma, fair housing jurisprudence is sparse. Therefore, Oklahoma courts look to federal jurisprudence when analyzing complaints that are brought under the Oklahoma Discrimination in Housing Act.

IDENTIFIED BARRIERS TO FAIR HOUSING CHOICE IN OKLAHOMA

HUD previously required entitlement jurisdictions to submit analysis of impediments to fair housing choice reports (AI) to identify the barriers to fair housing choice within their jurisdictions. In response to that requirement, in 2015, the City of Oklahoma City submitted its AI³² to HUD. The City of Tulsa also submitted its AI in 2015.³³ Oklahoma City and Tulsa are the two largest cities in the state of Oklahoma. Therefore, their AIs provide an accurate picture for how the majority of Oklahomans are being affected by discriminatory housing practices. Both cities reported on housing discrimination as it occurred in both the public and private sectors between the years 2000 and 2014.

“In Oklahoma, fair housing jurisprudence is sparse.”

The AIs for both cities essentially mirror one another. Both cities identified unfair and predatory lending practices as a key barrier to fair housing choice. Their studies revealed that lenders frequently denied loans to blacks, Hispanics and women at higher rates than the same lenders denied the same loans to whites and men. The studies also found that lenders were more likely to deny loans where properties were located in census tracts in which higher concentrations of minority populations lived. While negative credit scores and debt-to-income ratios were listed as the basis for many of those denials, further investigation revealed that minorities were still denied at higher rates than whites where the minority applicants had the same or higher incomes as white applicants and lower debt-to-income ratios. The investigations confirmed that the true basis for the denials could have been racially and ethnically motivated. Also, the studies found that lenders loaned money at higher interest rates to blacks and to Hispanics where housing was sought by them in areas that were located outside of areas that were known to be traditionally minority areas. In addition to discriminatory lending practices, the studies also found that discriminatory housing practices occurred through discriminatory denials of access to rental

properties on the basis of race, familial status and disability, as well as a failure to construct accessible housing to accommodate individuals with disabilities.

MEASURES TAKEN TO CURTAIL DISCRIMINATORY HOUSING PRACTICES

In 2013, HUD announced the Affirmatively Further Fair Housing Rule (AFFH). The AFFH obligates entitlement jurisdictions to affirmatively work toward identifying, addressing and eliminating barriers to fair housing choice within their jurisdictions. Under the previous requirements, entitlement jurisdictions only had to identify the barriers to fair housing choice and then propose plans to affirmatively further fair housing. Now, those jurisdictions must develop and “work” the plan to eliminate discriminatory housing practices. Additionally, HUD has issued memoranda to clarify and expand protections for vulnerable populations who live in federally funded projects and who have traditionally experienced housing discrimination, but on nonprotected class basis.

These include expanded protections for individuals based upon sex and clarification on policies pertaining to reasonable accommodations, reasonable modifications and assistance animals. Moreover, as recently as April 2016, HUD published guidance on criminal background checks as a means of affirmatively furthering fair housing.³⁴ Under the new guidance, HUD discussed the disparate impact that criminal background checks have on minority populations, who are disproportionately represented among the populations of persons needing to re-enter society after release from incarceration. HUD’s new guidance on criminal background checks provides additional protection to home-seekers from discriminatory housing practices on the basis of the race and national origin when criminal background checks have a discriminatory effect. In addition, the guidance condemns and makes actionable pretextual background checks that are used to cloak intentional housing discrimination.

In Oklahoma, Fair Housing Initiatives Programs and nonprofit organizations (such as Legal Aid Services of Oklahoma Inc.) work with HUD, state and local governments to identify, to investigate and to report complaint-based and systemic allegations of housing discrimination. They also provide community education to the public at large, the legal community and housing providers concerning fair

housing laws and enforcement mechanisms. They also assist with conciliating housing discrimination grievances and filing enforcement proposals with the appropriate enforcement agencies. As more enforcement proposals are filed with the proper agencies, housing providers will attend fair housing training, comply with fair housing laws and be subject to monitoring to ensure compliance with fair housing laws and regulations.

Lastly, as mentioned above, many cities in Oklahoma have expanded their protected classes to enlarge fair housing protections for additional populations who are most likely susceptible to discriminatory housing practices.

CONCLUSION

Equal and fair access to housing has been the housing policy of the United States since 1968. Through the linkage of the right to fair housing to the United States Constitution, Congress evidenced an understanding that the right is intricately and fundamentally linked to basic human dignity. Housing discrimination has always diminished the basic humanity worth and dignity that should be accorded to every person. Although housing discrimination is now hidden behind smiling faces, it is no less an evil intended to divide and destroy us from within. Through consistent enforcement and accountability, the evil of housing inequality can be eliminated, and we can emerge as a stronger and more unified society.

1. 42 U.S.C. §3601
2. Mazur, Christopher and Wilson, Ellen. *Housing Characteristics: 2010 - 2010 Census Briefs* (Oct.2011). U.S. Census Bureau, p. 2.
3. HUD Annual Report Y 2012-2013 at p. 18.
4. *Id.* at p. 22.
5. *Id.* at p. 19.
6. 42 U.S.C. §3601
7. 42 U.S.C. §3604 (a).
8. 42 U.S.C. §3602 (f).
9. 42 U.S.C. §3604 (a).
10. *Id.*
11. 42 U.S.C. §3604 (b).
12. 42 U.S.C. §3604 (f) (3) (A) – (B).
13. 42 U.S.C. §3617.
14. 42 U.S.C. §3605.
15. 42 U.S.C. §3606.
16. 42 U.S.C. §3602 (b).
17. 25 O.S. §1452
18. *Id.*
19. 56 F.3d 1243.
20. For an example, *See*, Tulsa Code of Ordinances Tit. 5 §104, as Amended, to include both sexual orientation and gender identity as protected classes under the city’s fair housing ordinances.
21. 499 U.S. 187, 111 S. Ct. 1196, 113 L. Ed. 2d 158 (1991).
22. *Mountain Side Mobile Estates P’ship v. Sec’y of Hous. and Urban Dev.*, 56 F.3d 1243, 1248 (10th Cir. 1995)
23. *Cnty. House, Inc. v. City of Boise*, 490 F.3d 1041, 1050 (9th Cir. 2007)
24. *Id.* at 1050.
25. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973).

26. *Cnty. House*, at 1053.

27. *Id.*

28. *See, Id.*

29. *Hunter on behalf of A.H. v. D.C.*, 64 F. Supp. 3d 158, 177-78 (D.D.C. 2014) (distinguishing the scope of the protection afforded to aggrieved persons under §3604 (a) claims versus the protection afforded under §3604 (f)).

30. *Id.*

31. *Id.*

32. *See*, 2014 *Analysis of Impediments to Fair Housing Choice, Final Report*, City of Oklahoma City, Jan. 26, 2015, pp. 55-124.

33. *See*, 2015 *Analysis of Impediments to Fair Housing Choice, The City of Tulsa, Final Report*, March 20, 2015, pp.51- 118.

34. *See*, *Office of General Counsel Guidance on Application of Fair Housing Act Standards to the Use of Criminal Records by Providers of Housing and Real Estate-Related Transactions*, United States Department of Housing and Urban Development, April 6, 2016.

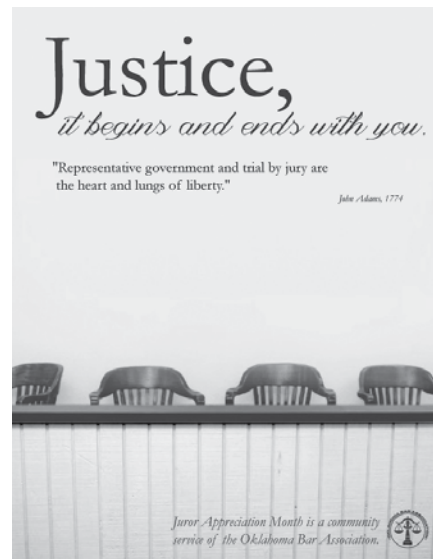
ABOUT THE AUTHOR



Teresa L. Webster is the fair housing project director for Legal Aid Services of Oklahoma Inc. She is a 2011 graduate of Regent University School of Law.

FROM THE PRESIDENT

cont'd from page 1924



Associate District Judge Rick Bozarth provided us with inspiration for the third part of the Juror Appreciation Project — a certificate that judges can personalize and give to each person who serves as a juror in a civil or criminal trial. The OBA will provide each courthouse with enough certificates for an entire year plus masters to reproduce copies for the future.

For many Oklahomans their jury service is a financial hardship — lost wages not covered by employers, parking fees and lunch expenses — which can add up to a significant sacrifice. They truly deserve our appreciation.

Let all lawyers and judges celebrate the constitutional right of trial by jury and uphold and promote public confidence in our judicial system. Let us never forget that our Constitution guarantees the right to trial by jury in both civil cases and criminal cases and that every litigant regardless of race, color, creed or political affiliation is entitled to a fair and impartial trial in front of a fair and impartial jury.

At no time in American history have we ever had more attacks on the right to trial by jury. We must as lawyers stand up for the constitutions of the United States and Oklahoma and recognize jurors and their contribution to the judicial branch of government.

G
GREEN

Want to save some paper and receive court issues electronically? Email that request to Tracy Sanders at tracys@okbar.org. Theme issues will continue to be mailed.



Alcohol Modernization on November Ballot

By John A. Maisch

In May, the Oklahoma Legislature passed Senate Joint Resolution 68, legislation that would allow Oklahomans to vote on whether to modernize the state's alcoholic beverage laws. The new constitutional amendment will appear as State Question 792 on the November 2016 ballot. In addition to a number of other changes, State Question 792 would allow grocery stores and other retail outlets to sell wine and refrigerated single-strength beer. This article examines the changes proposed in State Question 792, as well as Senate Bill 383, the statutory companion to the constitutional changes set forth in State Question 792.

State Question 792 would repeal Article 28 of the Oklahoma Constitution and replace it with Article 28A.¹ Several of Oklahoma's most important alcoholic beverage laws would remain in the Constitution; however, many of the more substantive provisions would be moved from the Constitution into a newly created Title 37A of the Oklahoma Statutes. Other provisions, like Oklahoma's low-point beer provisions, would be repealed altogether.² The constitutional changes, along with those statutory changes contained in Senate Bill 383, would become effective on Nov. 1, 2018, if approved by the voters and upheld by the courts.³

While an attorney is more likely to receive questions about the well-publicized sections of State Question 792 and Senate Bill 383, specifically the grocery store wine and single-strength beer provisions, there are many other proposed changes that a legal practitioner may wish to be aware of.

RETAIL

State Question 792 creates a basic framework for the retail sale of alcoholic beverages, spe-

cifically for off-premises consumption, by creating three distinct licenses: retail spirits, retail wine and retail beer licenses.⁴ Package stores would retain the exclusive right to sell distilled spirits for off-premises consumption through the acquisition of a retail spirits license. In addition to this exclusive right, a package store would be permitted to refrigerate its wine and beer products as well as sell nonalcoholic beverage items, provided those nonalcoholic beverage item sales do not exceed 20 percent of the package store's monthly sales.⁵ By statute, package stores would also be allowed to remain open three additional hours each day, 10 a.m. to midnight, Monday through Saturday and sell alcoholic beverages three additional days each year, on Memorial Day, Independence Day and Labor Day, than is permitted under current law.⁶

Grocery stores, convenience stores and other retail outlets would be permitted to obtain retail wine licenses and/or retail beer licenses.⁷ Unlike package stores, Senate Bill 383 would prohibit these retail outlets from selling any malt beverage product in excess of 8.99 percent

alcohol by volume (ABV) or any wine product in excess of 15 percent ABV.⁸ These retail outlets would, however, be allowed to sell wine and beer from 7 a.m. to 2 a.m., every day of the year.⁹ No person under the age of 18 would be allowed to sell beer or wine in these retail outlets, according to Senate Bill 383, while the lawful age to enter into or sell alcoholic beverages in a package store would remain 21 years of age.¹⁰

Unlike off-premises licenses, State Question 792 and Senate Bill 383 would make very few substantive changes to on-premises licenses. A vote would still be required for those counties that have not approved liquor-by-the-drink and those counties would still be provided the right to restrict Sunday sales and holiday sales.¹¹ Contrary to existing statutes, which only permit restaurants and bars to advertise happy hour specials if those same discounts are provided for at least one consecutive week, from open to close, Senate Bill 383 would allow mixed beverage licensees to offer happy hour specials any particular hour of any particular day, provided the drinks are priced at least six percent above the mixed beverage licensee's cost.¹² Server training would be required of all employees that sell alcoholic beverages,¹³ and the ABLE Commission would be required to revoke the employee license of any person found to have sold an alcoholic beverage to a person under 21 years of age by a preponderance of the evidence, if Senate Bill 383 becomes law.¹⁴

DISTRIBUTOR

In Oklahoma, the manufacturers of wine, distilled spirit and beer are currently required to sell their products to every licensed distributor in the state, regardless of level of service provided by the distributor and all wholesalers must sell those products to every retailer at the same prices and without discrimination.¹⁵ State Question 792 modifies existing law by allowing a winery and distiller to either designate a wholesaler to distribute its products or continue to sell its products through every distributor in the state.¹⁶ Wholesalers must continue to sell wine and spirits to every retailer at the same price and without discrimination, whether or not a single distributor is designated by the manufacturer. When it comes to the distribu-

tion of beer, State Question 792 dispenses with these requirements in large part. Similar to Oklahoma's current low-point beer statutes, a brewery must designate a single distributor to distribute its beer within a geographically defined territory, unless the distributor receives a hardship exception from the ABLE Commission.¹⁷ Also similar to Oklahoma's existing low-point beer statutes, a beer distributor cannot discriminate in price between two on-premises retailers in the state or two off-premises retailers located within the same county; however, a beer distributor's off-premises pricing may differ from one county to another, also known as channel pricing.¹⁸

MANUFACTURER

The biggest changes to the manufacturer-tier involve an expansion of the rights of brewers and wineries to self-distribute their own products, rather than sell their products through the distributor-tier. A small brewer, defined as a brewer that manufactures less than 25,000 barrels of beer per year,¹⁹ would be allowed to self-distribute its beer to both off-premises and on-premises licensees if State Question 792 and Senate Bill 383 are enacted.²⁰ Unlike Oklahoma's current constitutional prohibition against a brewery owning its own distributorship, State Question 792 would allow a brewery to own its own distributorship, similar to current low-point beer statutes, provided the brewery operates its distributorships in no more than two territories within the state.²¹

Wineries that produce less than 10,000 gallons of wine per year were given the right to self-distribute to retailers, both off-premises and on-premises, by state constitutional amendment in 2008.²² State Question 792 would increase that gallonage cap by 50 percent, allowing wineries which produce up to 15,000 gallons of wine to elect self-distribution.²³ Wineries of all sizes would be allowed to ship up to six cases of their wine directly to Oklahoma residents every year, provided the resident must be at least 21 years of age, must not intend to resale the wine and must not have had more than 30 cases of wine shipped directly to his residence per year.²⁴ Distillers were not granted the same constitutional authority to self-distribute their products

“ Unlike off-premises licenses, State Question 792 and Senate Bill 383 would make very few substantive changes to on-premises licenses. ”

under State Question 792. However, similar to the rights given to both small brewers and wineries, distillers would be allowed to provide free samples, up to three fluid ounces per day, to visitors, age 21 and older, at their licensed premises.²⁵

LEGAL CHALLENGE

The Retail Liquor Association of Oklahoma filed a petition for declaratory ruling and injunctive relief in Oklahoma County District Court seeking to enjoin the Oklahoma State Election Board from including State Question 792 on the Nov. 8 ballot.²⁶ The plaintiff's primary contention is that State Question 792 violates the Equal Protection Clause by prohibiting qualified persons from owning more than two package stores in the state, but not placing a similar restriction on the number of licenses that may be held by grocery stores or other retail outlets in the state. While denying the plaintiff's request for a temporary injunction, the district court asked both parties to brief the constitutional issues. The plaintiff's constitutional challenge is expected to be heard by the district court, but only if State Question 792 passes in November.

CONCLUSION

Oklahoma voters will be given an opportunity to vote on modernizing the state's liquor laws this November. If approved by the voters and upheld by the courts, State Question 792 would represent the biggest change to Oklahoma's liquor laws since voters approved liquor-by-the-drink by constitution in 1984, ushering in substantive changes to the retail, distributor and manufacturer tiers of the alcoholic beverage industry in Oklahoma.²⁷

1. Senate Joint Resolution 68, Section 1.

2. State Question 792 would repeal the low-point beer provision found in Article 28, §2 of the Oklahoma Constitution. "Beer" would now mean "any beverage of alcohol by volume and obtained by the fermentation of an infusion or decoction of barley, or other grain, malt, or similar products," effectively ending the statutory distinction between low-point and strong beer in the state. Senate Bill 383, §3.

3. Senate Joint Resolution 68, §10.

4. Senate Joint Resolution 68, §3(A)(1), (2) and (3).

5. Senate Joint Resolution 68, §3(A)(1) and Senate Bill 383, §68(C) would allow nonalcoholic items to be sold by package stores, whereas

Oklahoma Const., Art. 28, §4, currently prohibits package stores from selling any products other than alcoholic beverages.

6. Senate Joint Resolution 68, Section 6 delegates to the Oklahoma Legislature the power to establish which days, hours and holidays alcoholic beverages may be sold and Senate Bill 383, §143(A)(3) expands the days and holidays in which package stores may operate. Currently, Oklahoma Const., Art. 28, §6 prohibits package stores from selling alcoholic beverages on five holidays, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, while Title 37, §537(C)(3) prohibits alcoholic beverage sales except between the hours of 10 a.m. to 9 p.m., Monday through Saturday.

7. According to Senate Joint Resolution 68, §3(B)(1) and (2), those entities eligible to obtain a retail wine license and/or retail beer license include "supermarkets, grocery stores, convenience stores, drug stores, warehouse clubs and supercenters" as well as "retail outlets which were authorized to legally sell low point beer" as of the effective date of State Question 792.

8. Senate Bill 383, §21(B) and (C).

9. Senate Bill 383, §148(3).

10. Senate Bill 383, §142(2) and §143(B).

11. Senate Joint Resolution 68, §3(C) and Senate Bill 383, §95(B).

12. Senate Bill 383, §142(4)(b).

13. Senate Bill 383, §33.

14. Senate Bill 383, §60(E).

15. Oklahoma Const., Art. 28, §3(A).

16. Senate Joint Resolution 68, §2(A)(2).

17. Senate Joint Resolution 68, §2(A)(3) provides that every brewer, except a small brewer, must enter into an exclusive agreement with a beer distributor. If it is economically infeasible or impractical for the beer distributor to distribute beer in a particular area of the state, another beer distributor may seek permission to distribute beer to that specific area through a hardship exception. Senate Bill 383, §20(B).

18. Senate Joint Resolution 68, §3(A)(5).

19. Senate Bill 383, §3(53).

20. Senate Joint Resolution 68, §2(A)(3) and Senate Bill 383, §14(E).

21. Senate Joint Resolution 68, §2(A)(1)(a).

22. Oklahoma Const., Art. 28, §3(A).

23. Senate Joint Resolution 68, §2(A)(4)(b).

24. Senate Joint Resolution 68, §2(B) provides the general prohibition against direct shipment of alcoholic beverages, while also providing the Legislature with the authority to allow direct shipment of wine only and only within certain limits. Senate Bill 383, §76 authorizes the direct shipment of wine within the constitutional framework set forth in State Question 792.

25. Senate Bill 383, §15.

26. *Retail Liquor Association of Oklahoma, et. al. v. The State of Oklahoma, ex. rel., The Oklahoma State Election Board, District Court of Oklahoma County, State of Oklahoma*, Case No. CV-2016-1547.

27. State Question 563, Initiative Petition 319, September 18, 1984.

ABOUT THE AUTHOR



John A. Maisch is an assistant professor at UCO and former general counsel for the Oklahoma Alcoholic Beverage Laws Enforcement (ABLE) Commission. He also provided legal consultation to several stakeholders involved in the alcoholic beverage industry during the last legislative session.



6/1

DUI LAW 101

October 28, 9 a.m. - 2:50 p.m.

Oklahoma Bar Center, OKC - **WEBCAST AVAILABLE**

oba  cle
continuing legal education

Program Planner:
Sonja Porter, the "DUI Diva"

The course will be designed to walk through a DUI case from the first phone call to the courtroom including case file set up and case analysis as well as the DPS hearing and appeal basics. It will be for lawyers without any experience in handling a DUI case and even those who have handled several, but looking for fresh ideas.

TOPICS COVERED:

- Phone Call to File Set Up
- Case Analysis: From Stop to Arrest
- Case Analysis: From Arrest to Test, into Court
- Collateral Consequences (Ethics)
- Breath and Blood Test Basics
- DPS Issues

\$150 for early-bird registrations with payment received at least four full business days prior to the seminar date; \$175 for registrations with payment received within four full business days of the seminar date. To receive a \$10 discount for the in-person program, register online at www.okbar.org/members/CLE. Registration for the live webcast is \$200. Seniors may register for \$50 on in-person programs and \$75 for webcasts, and members licensed 2 years or less may register for \$75 for in-person programs and \$100 for webcasts.

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

WHY DO YOU ATTEND ANNUAL MEETING?

Annual Meeting is a time to learn, network and be a part of the governance of your professional association. It is an opportunity to meet others in your practice area from across the state, or even your local area.

“ I enjoy getting to connect with old friends and make new friends from across the state to exchange war stories and ideas! ”

Sonja Porter,
Oklahoma City
Board of Governors

“ To eat, drink and be merry.... While hanging out with great people and getting CLE credits! ”

Alissa Hutter,
Norman
Board of Governors

“ I attend the OBA Annual Meeting to touch base with other members of the association. ”

Deborah Reed, Tulsa
Indian Law Section Chair

“ I haven't missed an OBA meeting since 1977; it's like a family reunion. ”

Judge Rick Woolery,
Sapulpa

“ It is the best place to get informed about all of the important changes in our profession. ”

LeAnne McGill,
Edmond
2015 YLD chair

“ I look forward to the OBA Annual Meeting every year because, besides having a great time with friends and colleagues, the CLE keeps me updated with the latest technology and changes in the law. ”

Linda Thomas,
Bartlesville
President-Elect

“ The Oklahoma Bar Association Annual Meeting is one of the highlights of the year for me. I love catching up with attorneys from around the state that I haven't seen in a while, meeting new practitioners and learning about their practice areas, and networking with attorneys in my discipline and sharing war stories! The OBA Annual Meeting is always a good time! ”

Rachel Pappy, Norman
Leadership Academy 2015-2016

“ I love to attend OBA Annual Meeting to see friends and for all the new opportunities it can bring! ”

Faye Rodgers, Edmond
YLD Board Member

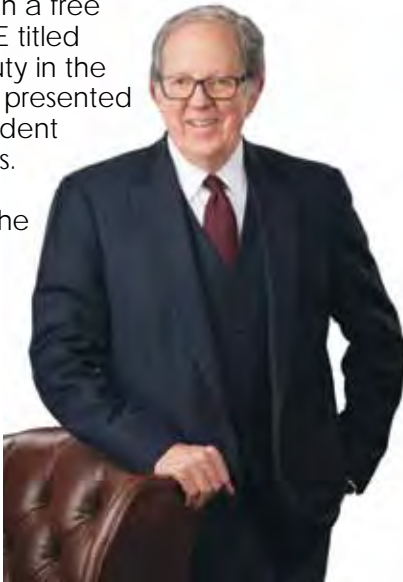
OKLAHOMA BAR ASSOCIATION
ANNUAL MEETING 2016
NOV. 2-4 · SHERATON HOTEL · OKLAHOMA CITY



HIGHLIGHTS

President's Breakfast

The final day of Annual Meeting begins on Friday at 8 a.m. with the President's Breakfast. This year's breakfast has a change in format. It will be a free continental-style breakfast with a free one-hour CLE titled "Lawyers' Duty in the Courtroom," presented by OBA President Garvin Isaacs. Admission is included in the registration fee for all packages.



Garvin
Isaacs

President's Reception

The Annual Meeting President's Reception is on Wednesday, Nov. 2. Mingle with your friends and colleagues from 6:30-8:30 p.m., and enjoy great music, complimentary hors d'oeuvres and a cash bar. Admission is included in the registration fee for all packages, and registrant guests attend at no additional cost. Each person attending receives two beverage tickets.

'A Night in Havana'

Enjoy hot Caribbean beats and cold tropical drinks at the "A Night in Havana" reception from 5-6:30 p.m. on Thursday with complimentary hors d'oeuvres and a full bar courtesy of the OBA sections.

Annual Meeting registration not required.



REGISTRATION and What It Includes

Registration packages let you choose what's best for you. Packages range in price and event participation, including CLE, with the option to add the Annual and Law School Luncheons separately. (Annual Luncheon included in top package.) Registration includes a convention gift, access to the Vendors Expo and hospitality including coffee, tea, soft drinks and snacks. See more details and registration information on page 1996 or online at www.amokbar.org.

Annual Luncheon

Critically acclaimed writer for *The New Yorker* and best-selling author Jane Mayer will speak about the influence of money on judicial and national elections in the keynote address for this year's Annual Luncheon. Cost is \$40 for those not registering with the Unbelievably Crazy Value package or \$55 with no meeting registration. Seating is limited, so be sure to register early for this event.



Author Jane Mayer



OKLAHOMA BAR ASSOCIATION ANNUAL MEETING 2016

NOV. 2-4 · SHERATON HOTEL · OKLAHOMA CITY



OBA CLE SPEAKERS AND TIMES ANNOUNCED

This year's versatile CLE options let registrants choose options for six hours of CLE Wednesday or nine hours of CLE between Wednesday and Thursday. Plus, all packages also include one hour of CLE on Friday morning during the Annual Meeting President's Breakfast. Registrants will also have the freedom to "CLE hop" between any session and choose the programs and topics that interest them most.

Most sessions speakers have been announced and are listed with their topics. For the most up-to-date information, including updated speakers and room assignments, visit the CLE section of the Annual Meeting website at www.amokbar.org/CLE.

WEDNESDAY MORNING

Time	Essential Business Skills for Lawyers	Mindfulness for Lawyers
9 a.m.	The World Has Changed: Running a Successful Law Firm Today – and Tomorrow <i>Jim Calloway</i>	Sustainable Success: Mindfulness for Lawyers <i>Kim Nicol</i>
10 a.m.	The Law Firm Business Plan and Law Firm Budgeting <i>Kendra Robben</i>	Sustainable Success – <i>continued</i>
11 a.m.	Why You Must Have Digital Client Files and How They Work <i>Darla Jackson</i>	Sustainable Success – <i>continued</i>
11:25 a.m.	Efficiency Comes From Technology, Automation and Planned Processes <i>Jim Calloway</i>	Sustainable Success – <i>continued</i>

WEDNESDAY AFTERNOON

Time	Essential Business Skills for Lawyers Breakout 1	Essential Business Skills for Lawyers Breakout 2	Alternate Careers for Lawyers
2 p.m.	Financial Literacy for Lawyers – Balance Sheets, Income Statements, KPI and Taxes <i>Ted Blodgett</i>	The Trustworthy Trust Account (<i>ethics</i>) <i>Darla Jackson</i>	Shattering the Myth of the One-Dimensional J.D. <i>Amy Impellizzeri</i>
3 p.m.	Pricing, Billing, Fees and Attorney-Client Contracts and the Initial Client Interview <i>Mark Robertson</i>	Protecting Your Clients: Confidentiality and Succession Planning Tools (<i>ethics</i>) <i>Gina Hendryx</i>	Exploring Specific Alternative Careers for Lawyers <i>Amy Impellizzeri</i>
4 p.m.	Client Engagement and Marketing – Everything Is Different Today <i>Kevin O’Keefe</i>	Cybersecurity and Avoiding Digital Disasters <i>Calvin Weeks and Darla Jackson</i>	A Pre-Flight Checklist – Preparing for the Transition Including Ethical and Practical Considerations (<i>ethics</i>) <i>Amy Impellizzeri</i>

THURSDAY MORNING

Time	Social Media as Evidence	1-Hour Potpourri Options
9 a.m.	Social Media as Evidence, Discovery and How to Protect Your Client From Misusing These Networks <i>Jabez LeBret</i>	The Grand Jury in Historical Perspective <i>Joshua C. Tate</i>
10 a.m.	Social Media – <i>continued</i>	Civility Matters (<i>ethics</i>) <i>Oklahoma Chapter of American Board of Trial Advocates</i>
11 a.m.	Social Media – <i>continued</i>	Federal Rule Changes and Effects on eDiscovery <i>Calvin Weeks</i>

NOTICE OF MEETINGS

CREDENTIALS COMMITTEE

The Oklahoma Bar Association Credentials Committee will meet Thursday, Nov. 3, 2016, from 9-9:30 a.m. in the Board Room on the second floor of the Sheraton Hotel, 1 N. Broadway Ave., Oklahoma City, Oklahoma, in conjunction with the 112th Annual Meeting. The committee members are: Chairperson Luke Gaither, Henryetta; Jeff Trevillion, Oklahoma City; Brandi Nowakowski, Shawnee; April Sellers White, Sapulpa.

RULES & BYLAWS COMMITTEE

The Rules & Bylaws Committee of the Oklahoma Bar Association will meet Thursday, Nov. 3, 2016, from 10-10:30 a.m. in the Board Room on the second floor of the Sheraton Hotel, 1 N. Broadway Avenue, Okla-

homa City, Oklahoma, in conjunction with the 112th Annual Meeting. The committee members are: Chairperson Judge Richard A. Woolery, Sapulpa; Roy D. Tucker, Muskogee; Jeanne Snider, Norman; W. Mark Hixson, Yukon; Luke Abel, Oklahoma City.

RESOLUTIONS COMMITTEE

The Oklahoma Bar Association Resolutions Committee will meet Thursday, Nov. 3, 2016, from 10:45-11:45 a.m. in the Board Room on the second floor of the Sheraton Hotel, 1 N. Broadway Avenue, Oklahoma City, Oklahoma, in conjunction with the 112th Annual Meeting. The committee members are: Chairperson Charles W. Chesnut, Miami; Jacob Jean, Oklahoma City; Molly A. Aspan, Tulsa; Rebekah Taylor, Norman; Laura H. McConnell-Corbyn, Oklahoma City; Luke Barteaux, Tulsa.



OKLAHOMA BAR ASSOCIATION ANNUAL MEETING 2016

NOV. 2-4 · SHERATON HOTEL · OKLAHOMA CITY



PROGRAM OF EVENTS

*All events will be held at the Sheraton Hotel unless otherwise specified.
Meetings are added as requests are received. The list below was up-to-date as of time of press.
Check www.amokbar.org/program-of-events for the most recent schedule including room assignments.
Submit meeting room and hospitality suite requests to Craig Combs at craigc@okbar.org.*

WEDNESDAY, NOV. 2

OBA Registration 8 a.m. – 5 p.m.

OBA Hospitality 8 a.m. – 5 p.m.

Board of Bar Examiners 8:30 – Noon

OBA CLE Seminars 9 – 11:50 a.m.
*See seminar program for speakers
and complete agenda*

OCU School of Law Alumni Reception
and Luncheon Noon – 2 p.m.
*OCU School of Law – McLaughlin Hall
800 N. Harvey
Shuttle service provided*

OU College of Law Alumni
Reception and Luncheon Noon – 1:30 p.m.
*Vast – Devon Tower
333 W. Sheridan*

TU College of Law Alumni Reception
and Luncheon Noon – 1:30 p.m.

OBA Criminal Law Section

Luncheon Noon – 1:30 p.m.
*Petroleum Club – Chase Tower
100 N. Broadway, Suite 3400*

OBA Board of Governors 2 – 4 p.m.

OBA CLE Seminars 2 – 4:50 p.m.
*See seminar program for speakers
and complete agenda*

OBA Civil Procedures and
Evidence Code Committee 3 – 5 p.m.

Oklahoma Bar Journal
Board of Editors 3:30 – 5 p.m.

OBA Section Leadership
Council 4:30 – 5:30 p.m.

President's Reception 6:30 – 8:30 p.m.
*Free for everyone with meeting registration;
each attendee receives two drink tickets*

Oklahoma Fellows of the
American Bar Foundation 6:30 – 9 p.m.
Skirvin Hotel
1 Park Ave.

THURSDAY, NOV. 3

OBA Lawyers Helping
Lawyers Committee 7:30 – 8:30 a.m.

Oklahoma Fellows of the
American Bar Foundation 8 – 9 a.m.

American College
of Trial Lawyers 8 – 9:30 a.m.

American College of Trust
and Estate Counsel 8 – 9:30 a.m.

OBA Registration 8 a.m. – 5 p.m.

OBA Hospitality 8 a.m. – 5 p.m.

OBA Family Law Section 8 a.m. – 4:50 p.m.
Oklahoma Bar Center
1901 N. Lincoln Blvd.

OBA Legal Intern Committee 8:30 – 10 a.m.

Oklahoma Association for Justice
Insurance, Tort & Workers'
Compensation Update 8:30 a.m. – 4 p.m.
21c Museum Hotel
900 W. Main St.

OBA Credentials Committee 9 – 9:30 a.m.

OBA Appellate Practice Section 9 – 11:50 a.m.

OBA CLE Seminars 9 – 11:50 a.m.
See seminar program for speakers
and complete agenda

OBA Rules and Bylaws
Committee 10 – 10:30 a.m.

OBA Law Schools Committee 10 – 11 a.m.

OBA Resolutions
Committee 10:45 – 11:45 a.m.

MCLE Commission 11 – 11:50 a.m.

**OBA Annual Luncheon for Members,
Spouses and Guests Noon – 1:45 p.m.**
(\$55 or \$40 with meeting registration)

Featuring:



Jane Mayer
Writer, *The New Yorker*
New York

TOPIC: *The Influence of Money on Judicial
and National Elections*

SPONSOR: *OBA Family Law Section*

Jane Mayer book signing 2 – 2:30 p.m.

OBA Indian Law Section 2 – 3 p.m.

OBA Bankruptcy and
Reorganization Law Section 2 – 4 p.m.

OBA Real Property Law Section 2 – 4 p.m.

OBA Estate Planning/Taxation
Sections joint meeting 2 – 5 p.m.

Oklahoma Bar Foundation
Executive Committee 2:30 – 3:30 p.m.

OBA Health Law Section..... 3 – 5 p.m.

OBA Law Day Committee 3:30 - 5 p.m.

Oklahoma Bar Foundation
Board of Trustees..... 3:30 – 5 p.m.

OBA Business and
Corporate Law Section 3:30 – 5 p.m.

OBA Military and Veterans
Law Section 4 – 5 p.m.

OBA Government and
Administrative Law Section 4 – 5 p.m.

OBA Financial Institutions
and Commercial Law Section..... 4 – 6 p.m.

OBA YLD Board of Directors..... 4:30 – 5 p.m.

OBA Energy and Natural
Resources Law Section 4:30 – 6:30 p.m.
*Petroleum Club – Chase Tower
100 N. Broadway
Continental Room, 35th Floor*

OBA YLD Friends & Fellows/
Networking Reception 5 – 6 p.m.

A Night in Havana Reception 5 – 6:30 p.m.

*All are welcome – Annual Meeting
Registration not required! Full
complimentary bar and non-alcoholic
beverages will be served.*



SPONSOR: OBA Sections

Oklahoma Bar Foundation
Fellows Reception..... 6:30 – 8:30 p.m.

OBA Past Presidents Dinner..... 7 – 9 p.m.
*Mahogany Prime Steakhouse
145 W. Sheridan*

FRIDAY, NOV. 4

President's Breakfast
(including 1 hour CLE) 8 – 9 a.m.
Included with registration

OBA Registration 8 – 10:30 a.m.

Oklahoma Bar Association
General Assembly 9:15 – 10:15 a.m.

Oklahoma Bar Association
House of Delegates 10:30 a.m. – Noon

OBA Tellers Committee..... 10:30 a.m. – Noon

OBA GOVERNANCE



2017 Transitions

2016 President

Garvin Isaacs Jr., Oklahoma City



Garvin A. Isaacs has been involved in general civil and criminal trial practice since 1978. 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. Mr. Isaacs graduated from the OCU School of Law in 1974. His admissions to practice include: U.S. Court of Appeals, 10th Circuit, U.S. District Courts of Northern, Eastern and Western Districts of Oklahoma, District of New Mexico and Southern and Northern Districts of Texas. He has served as an Oklahoma County assistant district attorney and an assistant public defender. He has received the American Jurisprudence Award for Criminal Law; Administrative Law; and the Judge Tom Brett Criminal Law Award. He was OCU Law Alumni Association president in 1978.

In 1993 Mr. Isaacs, along with many others, helped Gerry Spence start the Trial Lawyers College, which has trained trial lawyers from across the U.S. From 1993-2003, he was a TLC instructor and board member. He has given continuing legal education lectures and demonstrations in 17 states and to Canadian criminal trial lawyers. In 2007 he presented a cross-examination demonstration at inns of court in London at the request of the ABA International Law Section. Mr. Isaacs has been a Wyoming Western Trial Advocacy Institute instructor and board member for 33 years and is a member of Luther Bohanon Inn of Court.

2017 President

Linda S. Thomas, Bartlesville



Linda S. Thomas is a sole practitioner in Bartlesville, focusing her practice in all areas of law associated with children and family. She received a J.D. from the TU College of Law, was admitted to the OBA in 1994 and is a member of the Washington County Bar Association, American Bar

Association and Texas Bar Association. She is also licensed to practice in the Northern District of Oklahoma.

Ms. Thomas served on the OBA Board of Governors as OBA vice president and is currently serving on the OBA Professional Responsibility Commission. She has served as the OBA Leadership Academy Task Force chair or co-chair since 2007 and on several other committees and task forces. She is a member of the Family Law Section, a volunteer for Oklahoma Lawyers for America's Heroes and Legal Aid Services of Oklahoma, is an Oklahoma Bar Foundation Charter Benefactor Fellow, former OBF trustee, a YLD Fellow and an American Bar Foundation Oklahoma Life Fellow.

Ms. Thomas is the recipient of two OBA President's Awards, the Mona Salyer Lambird Spotlight Award and was named as one of Oklahoma's pioneering women lawyers in *Leading the Way: A Look at Oklahoma's Pioneering Women Lawyers*.

Ms. Thomas is also active in her community working with the local domestic violence shelters, serving as a court-approved guardian *ad litem*, a trained mediator, parenting coordinator in domestic cases and has served on the boards for several local organizations.

2017 NEWLY APPOINTED BOARD OF GOVERNORS

Pursuant to Rule 3 Section 3 of the Oklahoma Bar Association Bylaws, the following nominees have been deemed elected due to no other person filing for the position.

President-Elect

Kimberly K. Hays, Tulsa



Kimberly Hays is a solo practitioner in Tulsa. She has practiced exclusively in the area of family law since 1993. She attended OSU, where she received her B.A. in 1990. She graduated from the University of Kansas School of Law with her J.D. in 1993 and is a member of the Tulsa

County Bar Association, Creek County Bar Association and American Bar Association.

Ms. Hays served on the OBA Board of Governors, District 6 Tulsa, in 2012-2014 and currently serves as the OBA Section Leaders Council chair. She is the past chair of the OBA Family Law Section and has served as the OBA Family Law Section chair-elect, secretary, CLE chair and budget chair. Ms. Hays is on the faculty of the OBA FLS Trial Advocacy Institute. She has co-chaired the OBA Solo & Small Firm Conference and served as the Women in Law Committee co-chair and chair. She has served on numerous OBA committees including the Budget Committee, Strategic Planning Task Force, Communications Committee, Law Day Committee, Professionalism Committee and Bench and Bar Committee. She was selected as a participant for the 2009 OBA Leadership Academy.

Ms. Hays is also active in the Tulsa County Bar Association, having served as a director at large, chair of the TCBA Family Law Section, as a member of the Professionalism Committee, the Professional Responsibility Committee and as a Tulsa County Bar OBA House of Delegates member. She is an Oklahoma Bar Foundation and YLD Fellow. She is a volunteer attorney for Legal Aid Services, DVIS and Oklahoma Lawyers for America's Heroes. Ms. Hays is the recipient of the OBA FLS Family Law Attorney of the Year, Mona Salyer Lambird Spotlight Award and OBA FLS Chair Award.

Ms. Hays is married to Alan Souter and they have two children, Noelle and Parker.

Vice President

Jennifer Castillo, Oklahoma City



Jennifer Castillo is an attorney with OG&E. She previously worked in the Oklahoma City office of Hall Estill and focused her practice in the areas of public utility regulatory law, administrative law, bankruptcy and civil litigation. Ms. Castillo is admitted to practice before all Oklahoma state courts, as

well as the U. S. District Courts for the Western, Northern and Eastern Districts of Oklahoma and the 10th Circuit Court of Appeals. Her educational credentials include a Bachelor of Arts from Cameron University in 1996, a Master of Arts from OU in 1999 and a J.D. from the OCU School of Law in 2002.

Ms. Castillo is a member of the Oklahoma County Bar Association and the American Bar Association. She served on the OBA Young Lawyers Division Board of Governors from 2008 to 2013, including a one-year term as OBA YLD chair in 2012. In recognition of her work and dedication to the OBA YLD, Ms. Castillo was named Outstanding Young Lawyer by the OBA in 2013. She has served on various other OBA committees and task forces and has been chair of the Awards Committee in 2015 and 2016.

Ms. Castillo began serving on the Oklahoma Bar Foundation Board of Trustees in 2013 and currently serves as secretary/treasurer of the OBF.

Ms. Castillo lives in Oklahoma City with her husband and two sons.

Supreme Court Judicial District Two

Mark E. Fields, McAlester



Mark Fields was born and raised in McAlester. Mr. Fields received his Bachelor of Arts from OU in 1997 and his J.D. from the OU College of Law in 2001. Since that time, he has been practicing at Steidley & Neal in McAlester, currently in an of counsel role.

He represents plaintiffs and defendants in litigation ranging from trucking accidents, wrongful death, insurance bad faith, business litigation and products liability, to dog bites and occasional traffic citations and many things in between. He has served as the Pittsburg County Bar Association president, vice president and Law Day chair. He has also served as an adjunct professor teaching constitutional law and is the municipal judge for Clayton and Talihina. When not working, he enjoys spending time with his wife and two children.

Supreme Court Judicial District Eight

Jimmy D. Oliver, Stillwater



Jimmy Oliver graduated from the OCU School of Law in 2010 after obtaining his undergraduate degree from OSU in 2004. Since graduating from law school Mr. Oliver has been an attorney at The Law Office of Melissa DeLacerda in Stillwater. In June 2016 he was made a part-

ner and the firm was renamed DeLacerda & Oliver, Attorneys-at-Law.

Mr. Oliver is an active member of the Payne County Bar Association. He currently serves as vice president and will serve as president in 2017. In 2015, while he was Law Day chair, the PCBA received the Hicks Epton Law Day Award from the OBA for outstanding Law Day activities. He has been selected and attended leadership academies through the city of Stillwater and the OBA.

In law school he volunteered for two summers at Legal Aid Services assisting indigent

clients with their legal needs. Now that he is in private practice he makes it a priority to continue this service to the community by representing Legal Aid referrals on a pro bono basis.

Mr. Oliver has served on the Saville Center for Child Advocacy Board of Directors since 2013 and will continue on this board for an additional three-year term. The Saville Center brings together all the professionals and agencies needed to offer services for allegations of child abuse in an effort to minimize the trauma the legal process may have on children.

Mr. Oliver also serves on the OBA Budget Committee, Legislative Monitoring Committee and as the alternate city judge for the city of Guthrie. He maintains an active practice in the areas of family law, probate, guardianship and criminal law.

Supreme Court Judicial District Nine

Bryon J. Will, Yukon



Bryon Will is a solo practitioner at The Law Office of Bryon J. Will PLLC in Oklahoma City and Perry. He is a third-generation Oklahoman, born and raised in Morrison. He graduated from OSU with a bachelor's degree in animal science and began his career as a sales represen-

tative for an animal health supply company and a broadband internet vendor. He later worked for the Bank of Oklahoma. He earned his MBA at the University of Central Oklahoma and his J.D. at the OCU School of Law. During law school, Mr. Will earned his Oklahoma Legal Intern's License and worked for the Oklahoma County District Attorney's Office, then later took an internship with Haupt, Brooks, Vandruff, Cloar.

He currently practices in real estate, estate planning, probate, business transactions and bankruptcy. He is admitted to practice before the Oklahoma Supreme Court and the U.S. District Court for the Western District of Oklahoma. He is a member of the Oklahoma County Bar Association, Noble County Bar Association (president), American Bar Association and is an Oklahoma Bar Foundation fellow. Mr. Will was formerly an associate member of Ruth Bader Ginsburg American Inn of Court and

the William J. Holloway American Inn of Court. Currently he is serving on the OBA Young Lawyers Division Board of Directors as chair. He was a graduate of the OBA Leadership Academy class of 2011-2012.

Member At Large **James R. Hicks, Tulsa**



James R. Hicks concentrates his practice in the areas of civil litigation, family law, probate and estate planning in Tulsa with the firm of Barrow & Grimm PC. He received his undergraduate degree from OU in 1982 where he was a member of the Beta Theta Pi fraternity. He

earned his J.D. from the TU College of Law in 1985. He served as the Tulsa County Bar Association president in 2013-2014 during its 110th anniversary celebration. He was appointed to the OBA Board of Governors in 2015 by President David Poarch to serve out an unexpired term ending in 2016. He previously served on the Board of Governors in 1994 as chair of the YLD.

He has also served as president of Legal Services of Eastern Oklahoma in 1998-1999. He was the recipient of the American Bar Association's First-Place Award of Achievement for Service to the Public in 1994, was honored as the OBA Outstanding Young Lawyer in 1995, as the Tulsa County Bar Association's Outstanding Young Lawyer in 1993 and was a recipient of the TCBA President's Award in 1992. Currently, he serves as senior warden of St. John's Episcopal Church in Tulsa. Mr. Hicks and his wife, Nancy, have twins who are both engaged to be married in 2017.

OBA YLD Chair **Lane Neal, Oklahoma City**



Lane Neal is an associate with Durbin, Larimore & Bialick in Oklahoma City. His practice is focused on civil litigation and all aspects of insurance law. He is a member of the Oklahoma County Bar Association and American Bar Association and is an Oklahoma Bar Foundation

fellow. Mr. Neal is admitted to practice in all state and federal courts in Oklahoma. He is a barrister in the Luther L. Bohanon American Inn of Court and a 2010 graduate of the OBA Leadership Academy.

Mr. Neal served as OBA YLD Board of Directors District 3 representative from 2010 to 2015. In 2015, he served as treasurer of the OBA YLD. He is currently chair-elect of the OBA YLD. Mr. Neal has also served on the OBA Bench and Bar Committee, Budget Committee and Awards Committee.

He received his J.D. from the OU College of Law in 2008. While in law school, Mr. Neal was active in OU's advocacy competition teams. He also served as a note editor for the *American Indian Law Review*. His note regarding regulation of environmental standards by Oklahoma tribes was selected for publication in 2007. Mr. Neal is a member of Crown Heights United Methodist Church where he serves as a trustee.

Mr. Neal's wife, Laura Sams Neal, is also an attorney. They have one son, William, who they welcomed to the world this past June.

2016 HOUSE OF DELEGATES



Delegate certification should be sent to OBA Executive Director John Morris Williams.

COUNTY	DELEGATE	ALTERNATE
Adair Co.	Ralph F. Keen II	
Alfalfa Co.		
Atoka Co.		
Beaver Co.	Todd Trippet	Jerry Venable
Beckham Co.		
Blaine Co.	Daniel G. Webber	Vicki Williams
Bryan Co.	Chris D. Jones	Don Michael Haggerty II
Caddo Co.		
Canadian Co.	Brian Curtis Chandler	Linda M. Pizzini
	Jack S. Dawson	Matt Wheatley
	Nathan D. Richter	Kevin Cunningham
	Mark W. Osby	
Carter Co.	Michael Tipps	Julie Austin
	Michael Mordy	Justin R. Landgraf
Cherokee Co.		
Choctaw Co.	J. Frank Wolf III	Thomas J. Hadley
Cimarron Co.	Judge Ronald L. Kincannon	Stanley Ed Manske
Cleveland Co.	Richard Vreeland.....	Judge Steve Bonner
	Rebekah Taylor.....	Rick Knighton
	Kristina Bell.....	Jan Meadows
	Emily Virgin.....	David Swank
	Rod Ring.....	Amy Pepper
	Peggy Stockwell	John Sparks
	Dave Batton.....	Holly Iker
	Gary Rife	Blake Virgin
	Alissa Hutter.....	Sharon Sitzman
	Richard Stevens.....	Kevin Finlay
	Micheal Salem.....	Kristi Gundy
	Ben Odom	Dick Smalley
	David Poarch	Allyson Dow
	Judge Jeff Virgin.....	Holly Lantagne
	Judge Thad Balkman.....	Beth Stanley
	Don Pope.....	Robert Bailey
	Jeanne Snider	Donna Compton
	Tyson Stanek.....	Kathryn Flood
	Dave Stockwell.....	Weldon Nesbitt
	Rick Sitzman	
	Judge Lori Walkley	

Coal Co.	Johnny Sandmann.....	Trae Gray
Comanche Co.	Tyler C. Johnson.....	Michael E. Wilson
	Dietmar Caudle.....	Christine Galbraith
	Leah Terrill-NewSmith.....	John Kinslow
Cotton Co.	Kathleen Flanagan	Judge Michael C. Flanagan
Craig Co.....	Kent Ryals	Leonard M. Logan IV
Creek Co.	Judge Richard A. Woolery	Max Cook
	Carla Stinnett.....	Laura Farris
Custer Co.	Carissa King	
Delaware Co.		
Dewey Co.	Judge Rick Bozarth	
Ellis Co.	Judge Laurie E. Hays.....	Joe L. Jackson
Garfield Co.	Judge Paul Woodward	Kaleb K. Hennigh
	Julia C. Rieman.....	Glenn Devoll
	Amber Gill	Clint A. Claypole
Garvin Co.	Dan Sprouse.....	Logan Beadles
Grady Co.	Ryland Rivas	
	Timothy J. Prentice	
Grant Co.	Judge Jack D. Hammontree.....	Steven A. Young
Greer Co.	Corry Kendall.....	Judge Eric Yarborough
Harmon Co.	David L. Cummins	Judge W. Mike Warren
Harper Co.		
Haskell Co.		
Hughes Co.	Jeffrey Benjamin Whitesell	
Jackson Co.	Grant Kincannon	
Jefferson Co.	Jamie Phipps.....	Dennis Gay
Johnston Co.		
Kay Co.	Ben Lundquist.....	Rae Jowers
	Jessica Ward	Shawna Taylor
Kingfisher Co.	Austin Evans.....	Matthew Oppel
Kiowa Co.....	Thomas Talley	Judge Norm Russell
Latimer Co.	F. Nils Raunikar.....	Janice Skimbo
LeFlore Co.....	Nicholas Grant	Amanda Grant
Lincoln Co.		
Logan Co.		
Love Co.	Kenneth L. Delashaw	Richard A. Cochran
Major Co.		
Marshall Co.		
Mayes Co.		
McClain Co.	William Deveraux.....	Alyson Gildner
McCurtain Co.	Kevin T. Sain.....	Emily Herron
McIntosh Co.		
Murray Co.	Phil S. Hurst.....	Rebecca Brewer Johnson
Muskogee Co.	Roy D. Tucker.....	Corey Johnson
	Matthew C. Beese.....	Matthew R. Price
Noble Co.	Shane Leach	Tom C. Lane
Nowata Co.		
Okfuskee Co.		
Oklahoma Co.....	Judge Barbara G. Swinton	Judge Bay Mitchell III
	Sheila Stinson.....	Gary Chilton
	David Cheek	Susan Shields
	Mack Martin	Judge Cassandra Williams
	Judge Don Andrews	Charles Alden

	Jim Webb	Kieran Maye
	Judge Bernard Jones	Melanie Jester
	Judge Richard Ogden	J. Chris Condren
	Laura McConnell-Corbyn.....	Tracey Martinez
	Timothy J. Bomhoff.....	Kenyatta Bethea
	John Heatly	Justin Meek
	Ben Butts.....	M. Courtney Briggs
	Judge Roger Stuart.....	Michelle Harrington
	John W. Coyle III	Elisabeth E. Muckala
	T. Luke Abel.....	Miguel Garcia
	Angela Ailles Bahm	Curtis Thomas
	Will Hoch	Matthew Kane
	W. Todd Blasdel.....	Ken Stoner
	Jeff Curran.....	Shanda McKenney
	Daniel G. Couch.....	Christopher Staine
	Edward Blau	Liz Oglesby
	Kristie Scivally.....	Chance Pearson
	Robert S. Jackson.....	Cindy Goble
	David Dobson.....	Coree Stevenson
	Richard Rose.....	Bradley Davenport
	Raymond E. Zschiesche	John “Jake” Krattiger
	Billy Croll	Meredith B. Herald
	W. Brett Willis.....	Michael Chitwood
	Thomas E. Mullen.....	Cody J. Cooper
	Stanley L. Evans.....	Haylie Treas
Okmulgee Co.		
Osage Co.		
Ottawa Co.	Chuck Chesnut	John Weedn
Pawnee Co.	Patrick Pickerill	Joshua Kidd
Payne Co.	Kim Kramer	Brenda Nipp
	Jimmy Oliver	
	Travis Cagle	
Pittsburg Co.	Blake Lynch.....	Matthew Sheets
	Mark Fields	Matthew Patterson
Pontotoc Co.	Leslie Taylor.....	Jason Christopher
	T. Walter Newmaster.....	Lacie Lawson
Pottawatomie Co.	Brandi Nowakowski	
	Nick Atwood	
Pushmataha Co.	Charlie Rowland	Gerald Dennis
Roger Mills Co.....	Michael A. Abel.....	Thomas B. Goodwin
Rogers Co.	Noah Sears	Jennifer Kern
	James Justin Greer.....	James Stout
	Melinda Wantland	Timothy Wantland
Seminole Co.	R. Victor Kennemer	William D. Huser
Sequoyah Co.		
Stephens Co.	Jim Kee	
	Carl Buckholts	
Texas Co.	Douglas Dale	Avery Haines
Tillman Co.		
Tulsa Co.	William C. Kellough.....	Ruth J. Addison
	Judge Martha Rupp Carter.....	Amber Peckio Garrett
	Judge Millie Otey	Georgenia A. Van Tuyl
	James R. Gotwals	J. Christopher Davis

	D. Faith Orłowski.....	Shannon D. Taylor
	Robert B. Sartin	Grant T. Lloyd
	E. Zach Smith.....	Cara C. Wells
	D. Kenyon Williams Jr.	Valery O. Giebel
	Steven K. Balman	David M. Thornton Jr.
	Ron Main.....	Scott Morgan
	Julie A. Evans.....	Jeremy K. Ward
	Justin B. Munn.....	James L. Colvin III
	Tamera A. Childers.....	Kara M. Greuel
	Kimberly Moore	James C. Milton
	Judge Jane P. Wiseman.....	Tony W. Haynie
	James R. Hicks.....	Kara Pratt
	Matthew S. Farris.....	Maren M. Lively
	Charles R. Hogshead.....	Richard D. White Jr.
	Paul D. Brunton.....	Elizabeth Kathleen Pence
	Larry D. Leonard.....	Eric Clark
	Molly A. Aspan	T. Luke Barteaux
	Kenneth L. Brune	Deborah A. Reed
	Christina M. Vaughn	Michael E. Esmond
	Kimberly K. Hays	Hans O. Lehr
	Jack L. Brown	
	Gerald L. Hilsher	
	Paul B. Naylor	
	Bruce A. McKenna	
	Trisha Linn Archer	
	Sabah S. Khalaf	
Wagoner Co.	Richard Loy Gray Jr.	Ben Chapman
	Eric W. Johnson	Amy McFarland
Washington Co.	Scott Buhlinger	Linda Thomas
	Aaron Pembleton	
Washita Co.	Judge Christopher S. Kelly	Brooke Gatlin
Woods Co.	Larry Bays	Jesse D. Kline
Woodward Co.	Bryce Hodgden	Kyle Domnick

	DELEGATE	ALTERNATE
Oklahoma Judicial Conference.....	Dist. Judge Emmit Tayloe Assoc. Dist. Judge Russell Vaclaw	

2016 RESOLUTION



The following resolution will be submitted to the House of Delegates at the 112th Oklahoma Bar Association Annual Meeting at 10 a.m. Friday, Nov. 4, 2016, at the Sheraton Hotel in Oklahoma City.

RESOLUTION NO. 1: REAFFIRMING MERIT SELECTION OF JUDGES

Be it Resolved that the House of Delegates of the Oklahoma Bar Association reaffirm its commitment to merit selection of Judges in the State of Oklahoma through the Judicial Nominating Commission, place protection of the Judicial Nominating Commission perpetually on the Legislative Program and acknowledge and celebrate the 50th anniversary of judicial reform in the State of Oklahoma. *(Submitted by the Bench and Bar Committee, Cosponsored by the Family Law Section and Young Lawyers Division, 60% vote required.)*

Whereas the Oklahoma Bar Association was formed "for the advancement of justice according to law."

Whereas Article VIII Section 3 of the Bylaws of the Oklahoma Bar Association provides: "The Legislative Program of the Association shall be confined to those measures relating to the administration of justice; to court organization, selection, tenure, salary and other incidents of the judicial office; to rules and laws affecting practice and procedure in the courts and in administrative bodies exercising adjudicatory functions; and to the practice of law. However, measures relating to these matters may, at the discretion of the Association, be endorsed in principle rather than be included in the Legislative Program."

Whereas the House of Delegates is the governing body of the Oklahoma Bar Association;

Whereas in a special meeting on June 10, 1967 the House of Delegates endorsed in principle the proposed amendments to the Oklahoma Constitution creating the Judicial Nominating Commission;

Whereas as a result of prior corruption in office by three (3) members of the Oklahoma Supreme Court, on July 11, 1967, by a vote of the people of the State of Oklahoma the Oklahoma Constitution was amended adding Article 7B which created the Judicial Nominating Commission;

Whereas on the eve of the 50th anniversary of this historic amendment to the Oklahoma Constitution creating merit selection in the appointment of members of the judiciary, it should be acknowledged that merit selection of judges has withstood the test of time and provided a fair and nonpolitical system of judicial selection; and

Whereas there have been consistent attempts to politicize the appointment of judges and to repeal the Judicial Nominating Commission to return to the practice of popular political elections of appellate judges in the State of Oklahoma where bribery and corruption can be camouflaged as campaign contributions now therefore, be it

Resolved, that the Oklahoma Bar Association:

1. by and through its House of Delegates, pursuant to its Authority and acting in furtherance of its solemn duties, reaffirms and rededicates itself to the principles of judicial fairness and merit selection of judges and justices in the State of Oklahoma;
2. perpetually have as part of its Legislative Program the protection of the Judicial Nominating Commission and that it uses all proper and legal resources to protect and defend the fair, unbiased and non-political selection of judges and justices in the State of Oklahoma; and
3. acknowledge and celebrate the 50th anniversary of extraordinary judicial reform in the State of Oklahoma.



2016 OBA AWARDS

OBA Awards:

Individuals for Whom Awards are Named

NEIL E. BOGAN — Neil Bogan, an attorney from Tulsa, died unexpectedly on May 5, 1990, while serving his term as president of the Oklahoma Bar Association. Mr. Bogan was known for his professional, courteous treatment of everyone he came into contact with and was also considered to uphold high standards of honesty and integrity in the legal profession. The OBA's Professionalism Award is named for him as a permanent reminder of the example he set.

HICKS EPTON — While working as a country lawyer in Wewoka, attorney Hicks Epton decided that lawyers should go out and educate the public about the law in general, and the rights and liberties provided under the law to American citizens. Through the efforts of Mr. Epton, who served as OBA president in 1953, and other bar members, the roots of Law Day were established. In 1961 the first of May became an annual special day of celebration nationwide designated by a joint resolution of Congress. The OBA's Law Day Award recognizing outstanding Law Day activities is named in his honor.

MAURICE MERRILL — Dr. Maurice Merrill served as a professor at the University of Oklahoma College of Law from 1936 until his retirement in 1968. He was held in high regard by his colleagues, his former students and the bar for his nationally distinguished work as a writer, scholar and teacher. Many words have been used to describe Dr. Merrill over the years, including brilliant, wise, talented and dedicated. Named in his honor is the Golden Quill Award that is given to the author of the best written article published in the *Oklahoma Bar Journal*. The recipient is selected by the OBA Board of Editors.

JOHN E. SHIPP — John E. Shipp, an attorney from Idabel, served as 1985 OBA president and became the executive director of the association in 1998. Unfortunately his tenure was cut short when his life was tragically taken that year in a plane crash. Mr. Shipp was known for his integrity, professionalism and high ethical standards.

(cont'd on page 1991)

Law School Luncheons Wednesday, Nov. 2

OUTSTANDING SENIOR LAW SCHOOL STUDENT AWARD

Cedric Bond, Tacoma, Washington

Cedric C. M. Bond is a Dean's Scholar at the OCU School of Law and is the editor in chief of the *Oklahoma City University Law Review*. Originally from Tacoma, Washington, Mr. Bond moved to Oklahoma in 2010 on a scholarship from OCU for sprint kayaking. A five-time individual national champion, he qualified for



the U.S. National Team in 2011 and represented the U.S. at the World Championships in Szeged, Hungary. He graduated in 2014 with a degree in history and was recognized as a Newman Civic Fellow by Campus Compact and the Oklahoma Board of Regents.

While in law school, he has received the CALI Award for the highest grade in six classes and, as a member of the *Law Review*, received the Award for Excellence in Technical Editing. As a 1L, he and his teammate won the annual OCU Moot Court competition. For two years, he served as the Federal Bar Association Student Division president and organized two separate week-long civics and mock trial programs with Gatewood Elementary School, the FBA and the U.S. District Court for the Western District of Oklahoma. He served as research assistant to OCU President

Robert H. Henry and interned with Justice Noma D. Gurich, McAfee & Taft and Phillips Murrah.

OUTSTANDING SENIOR LAW SCHOOL STUDENT AWARD

Brooke Elizabeth Hamilton, Norman

Brooke Hamilton is a third-year law student at the OU College of Law. She currently serves as president of the Oklahoma International Law Society. Ms. Hamilton also is an articles editor for the *American Indian Law Review*. Additionally, her comment "Why Indigenous Peoples' Property Rights Matter: How the United Nations Declaration on the Rights of Indigenous Peoples May Be Used to Condemn ISIS and the State of Iraq for Their Failure to Protect the Property Rights of Indigenous Peoples in the Nineveh Plains," will be published in the December edition of *AILR*. She has actively participated in advocacy competitions, being awarded Top 10 Best Speaker for the OU College of Law's 1L Moot Court Competition.



She is also a member of Dean's Leadership Fellows, Lawyers Against Sex Trafficking and the Organization for the Advancement of Women in the Law, and has participated in the Volunteer Income Tax Assistance Program. She has also served as a member of the Dean's Leadership Council, mentoring students in the class of 2018 at the OU College of Law.

She was the recipient of the Lee B. Thompson Scholarship for excellence in scholarship, leadership, character and unselfish service to others. Additionally, she was a part of a student research team under the direction of Professor Evelyn Aswad to research and write memorandum to government officials advocating to designate atrocities committed by ISIS against religious minorities in the Middle East as genocide. Currently, she is a member of the OU College of Law's International Human Rights Clinic and recently traveled to Guatemala with the OU College of Law, as part of a team filing a shadow report with the United Nations Human Rights Council for Guatemala's Universal Periodic Review with the United Nations.

OUTSTANDING SENIOR LAW SCHOOL STUDENT AWARD

Caroline Guerra, Little Rock, Arkansas

Caroline Elizabeth Guerra

serves as an articles and research editor for the *Tulsa Law Review*, and her comment concerning rural water districts is slated for publication in the review. Ms. Guerra is a member of the Phi Delta Phi International Legal Honors Society and the Council Oak/Johnson-Sontag Inn of Court. She is ranked top in her class and has received nine CALI Awards for obtaining the highest grade in various courses. She has worked as a summer clerk for the Tulsa offices of McAfee and Taft and Crowe & Dunlevy and as an intern for U.S. District Court Judge John E. Dowdell of the Northern District of Oklahoma. In her 3L fall semester, she is externing with Judge Stephanie K. Seymour of the 10th Circuit Court of Appeals. After she graduates, she will serve as a judicial clerk for Judge Dowdell.



Ms. Guerra was born and raised in Little Rock, Arkansas, and later attended the University of North Carolina (UNC) in Chapel Hill. She graduated from UNC with a double major in political science and international studies, with a minor in Hispanic studies. After college, she joined Teach For America and taught Spanish immersion kindergarten in north Tulsa for two years. She then worked for the Tulsa City Council as a council aide for a year before deciding to attend the TU College of Law. During the first half of law school, she served on the Tulsa's Young Professionals Leadership Team and planned the Street Cred volunteer event in support of the 61st and Peoria community in Tulsa.

Annual Luncheon Thursday, Nov. 3

AWARD OF JUDICIAL EXCELLENCE

**Judge Carlos J. Chappelle
(Posthumous), Tulsa**

The 2016 Award of Judicial Excellence recipient is **Judge Carlos J. Chappelle**. Judge Chappelle died June 28, 2015. He was born July 28, 1951, in



Tulsa and graduated from Tulsa's Central High School in 1969. While at Central, he was a member of the 1969 state championship basketball team. He later earned undergraduate degrees from OU in 1973 and Tulsa Junior College in 1974.

He was a member of the Morning Star Baptist Church.

Under the pastorates of his father and brother, Rev. Dr. T. Oscar Chappelle Jr. he was a strong supporter of the T. Oscar Chappelle Sr. Scholarship Program which has assisted many young Morning Star members with their educational pursuits. He was also a lifetime member of Alpha Phi Alpha Fraternity Inc.

After working as a nursing home director and real estate broker, his interest in politics and strong desire to better serve the Tulsa community led him to the TU College of Law where he earned his J.D. in 1980. He was in private practice for 14 years and a part-time instructor at Tulsa Community College's northeast campus until being appointed to serve as a special judge (1995-2009). In 2009 he was appointed as a district judge, the position he held until his retirement in 2015. He was elected as a presiding judge in 2014, the first African-American to hold this position in Tulsa County.

LIBERTY BELL AWARD

Sgt. Alicia Maurer, Tulsa

Sgt. Alicia Maurer of the Tulsa Police Financial Crimes Unit is the 2016 recipient of the Liberty Bell Award. Sgt. Maurer is recognized for her outstanding work publicizing and addressing elder abuse and senior lifestyle issues. She has organized community events to promote the protection of aging adults. She has also held fun and interactive events to keep seniors involved in healthy social activities. Topics at the events included Medicare fraud, guardianship, travel tips, scams, employment opportunities, exercise groups and laughter yoga.



JOE STAMPER DISTINGUISHED SERVICE AWARD

Micheal Salem, Norman

The Joe Stamper Distinguished Service Award honors those individuals who volunteer countless hours to further the goals of the Oklahoma Bar Association.

Micheal Salem is this year's winner. Mr. Salem is a 1971 and 1975 graduate of OU with a B.S. in electrical engineering and a M.A. in public administration. He received his J.D. from the OU College of Law in 1975.



He has been a member of the Clients' Security Fund Committee for 27 years and chairperson for 13 of those years. He balances his lifetime commitment to the CSF with his law practice in Norman, Salem Law Offices. The firm primarily focuses on constitutional law and civil rights. In 2015 he chaired a task force to update and revise the rules of the CSF. He has served on the OBA Legal Ethics Advisory Panel since 2006.

He was selected as an honorary member of the Order of the Coif by the OU College of Law chapter in 2012. As part of his contributions to the OU College of Law, he established two scholarship awards for students who have written papers on the subject of civil liberties. He was named Solo Practitioner of the Year by the ABA Solo and Small Firm Section for 2001 to 2002.

ALMA WILSON AWARD

Brad Davenport, Oklahoma City

Brad Davenport is the 2016 recipient of the Alma Wilson Award for his long list of contributions to the young people of Oklahoma. Mr. Davenport is an of counsel attorney with Andrews Davis and practices in the firm's Litigation Department.

He serves on the Board of Directors for Parent Promise, a nonprofit center that works to prevent child abuse and neglect. He is also the immediate past president and member of the Downtown Exchange Club of Oklahoma City. Before relocating to Oklahoma City in 2009, he was an active



member and officer of the Enid A.M. AMBUCS for several years working to create mobility and independence for children with disabilities by raising money for and giving away Amtrykes, therapeutic tricycles.

Born in Duncan and raised in Marlow, he graduated from OU in 1997 with a B.A. in letters. He earned his J.D. in 2000 from Vanderbilt University Law School. While in law school, he served as professional authorities editor for the *Vanderbilt Journal of Transnational Law*.

He learned to fly as a teenager and obtained a private pilot certificate. While he rarely flies anymore, he still enjoys attending an occasional airshow and visiting aviation museums. He is an avid reader and enjoys traveling with his wife, Katie, and their daughter.

NEIL E. BOGAN PROFESSIONALISM AWARD

John R. Woodard III, Tulsa

John R. Woodard III of Tulsa is the recipient of the 2016 Neil E. Bogan Professionalism Award for his continued commitment to meeting high standards in the legal profession. He is a partner with the Tulsa firm of Coffey, Senger & McDaniel.



He received a B.A. from TU in 1965 and a J.D. from the TU College of Law in 1967. After three years as a judge advocate in the United States Marine Corps, he returned to Tulsa to practice law with emphasis in insurance coverage, personal injury, products liability and business litigation.

He is presently a member of the Oklahoma Association of Defense Counsel having served as a director and as its president in 1983. He is also a past president of the Federation of Defense and Corporate Counsel. He was a Defense Research Institute director from 1994 to 1997, and returned to the DRI board upon becoming president of the FDCC in 1997. He also served as secretary-treasurer of the Defense Research Institute. He was elected to the American Board of Trial Advocates in 1991 and was president of its Oklahoma Chapter. He has been an American Bar Association member since 1968 and chaired the Trial Techniques Committee of its Torts & Insurance Practice Section.

JOHN E. SHIPP AWARD FOR ETHICS

Gary Derrick, Oklahoma City



Gary W. Derrick practices corporate and securities law in the Oklahoma City law firm of Derrick and Briggs LLP. He has represented a wide range of businesses in entity formation and governance matters, securities, mergers and acquisitions and debt and equity financing transactions. Since 1986, he has chaired the OBA Business

and Corporate Law Section's Oklahoma General Corporation Act subcommittee, which drafted the Oklahoma General Corporation Act and the Oklahoma Limited Liability Company Act and maintains the business entity statutes in Oklahoma.

He chaired the OBA Business Association Section in 1986 and 2005. In 1997, he received the OBA Earl Sneed Award for continuing legal education. He has taught over 100 continuing legal education courses and authored articles for the law reviews at the OU College of Law and the OCU School of Law. He graduated from OSU with a B.A. in history and English in 1976 and from the OU College of Law in 1979 with a J.D.

From 2010 to 2012, he chaired the EDGE Fund Policy Board, a state-created \$160 million fund for the development and commercialization of science and technology in Oklahoma. He currently serves on the Oklahoma Venture Forum Executive Committee and on the Board of Directors of Historic Preservation Inc.

TRAILBLAZER AWARD

Stanley L. Evans, Oklahoma City



Stanley L. Evans assumed the position of dean of students at the OU College of Law in August of 2003; immediately after his law school graduation. He is the first African-American to be appointed to a dean position at any law school in the state of Oklahoma. Although he retired from the OU College of Law in 2012, he has

continued to help students, alumni and the college as a counselor, advisor and recruiter.

As Oklahoma Human Rights Commission chairman, he energized the entire state on human rights awareness and sought recognition for people who have been giants in this important area. He provided leadership to the commission and the two state investigative offices.

He currently serves as the chairman of the OBA Military and Veteran Law Section and is one of the lead volunteers in the Oklahoma Lawyers for America's Heroes Program which provides free legal services to Oklahoma soldiers, veterans and their families. He is also the chief legal coordinator for Oklahoma City's MAKE-A-WILL and Family Financial Counseling Programs. Over the past six years, through the use of volunteer attorneys, law students from both OU and OCU, and Legal Aid of Oklahoma, over 500 families now have the tools to pass wealth from one generation to the next and have been assisted with family finances.

He is a Vietnam War veteran. He spent 32 years on active duty service in the U.S. Army rising to the rank of colonel. The Evans family have also funded scholarships at the OU College of Journalism, OU College of Law and with the Oklahoma City Urban League.

General Assembly

Friday, Nov. 4

OUTSTANDING COUNTY BAR ASSOCIATION AWARD

Creek County Bar Association

Tulsa County Bar Association

The **Creek County Bar Association** (CCBA) is a 2016 recipient of the Outstanding County Bar Association Award for its continued commitment to the community and its members. The CCBA takes pride in the community service and fun that Law Day provides. Last year's event was a two-day celebration including a pizza lunch, a video skit about *Miranda v. Arizona* and a poolside cocktail party. At the pizza lunch high-school students were able to ask questions about *Miranda* rights and many aspects of the practice of law.

The **Tulsa County Bar Association** (TCBA) is a 2016 recipient of the Outstanding County Bar Association Award for its continued commitment

to the community and its members. The TCBA, with just 10 members, had its first meeting on Oct. 3, 1903. Today membership exceeds 2,200 attorneys, and the TCBA is one of the premier legal service and education groups in the country.

Their growth and steadily increasing effectiveness are a result of continuing effort and refining of the services they offer to the community and their members. A voluntary organization whose members donate their time, TCBA has been recognized nationally for innovative and successful community programs.

By providing assistance with legal services to individuals in need of help, the TCBA fills a crucial need in the community. In the heart of the city at 15th and Boston, the TCBA headquarters location is convenient for the public as well as for its members.

The TCBA and the Tulsa County Bar Foundation (TCBF) supports the needs of the community through many charitable programs and events. The TCBA partnered with Lawyers Fighting Hunger to provide and distribute food to families in need. The TCBA also ran a campaign to find business and business casual clothing to be donated to members and local charities. The TCBF Charity Golf Tournament is extremely important to a select group of local charities. In June, the TCBF Community Outreach Committee sponsored a drive to collect household items to donate to the Tulsa Day Center for the Homeless.

HICKS EPTON LAW DAY AWARD

*Oklahoma County Bar Association Young
Lawyers Division*

The 2016 Hicks Epton Law Day Award goes to the **Oklahoma County Bar Young Lawyers Division** (OCBA YLD). For the past several years the OCBA YLD has updated the "Ask A Lawyer Quick Reference Guide" used by attorneys at the Ask A Lawyer event in Oklahoma City and throughout many of the counties in Oklahoma. The 24 members of the YLD board volunteer to review an area of the law that they are familiar with and to ensure that any changes in the laws are included prior to Ask A Lawyer. This is a time-consuming job and the members of the Young Lawyers Division accept and meet the goal each year.

In addition to this, the OCBA YLD also partakes in community service projects throughout the year, including projects for the Oklahoma City Public Schools, and has raised money for the past

29 years for the Regional Food Bank of Oklahoma through various activities, including its annual Harvest Food Drive, chili cook-off and bowling tournament.

EARL SNEED AWARD

Philip R. Feist, Tulsa

Miles L. Mitzner, Edmond



Philip R. Feist

For his contributions to continuing legal education, **Philip R. Feist** of Tulsa is a 2016 Earl Sneed Award winner. Mr. Feist is a practiced estate planning attorney with over 20 years of legal experience. He helps clients determine the best plan for transferring wealth based on the unique circumstances

of the family. He also has a Master of Theology. In addition to Oklahoma, he is licensed to practice law in California, Florida, Kansas, Texas and the U.S. Virgin Islands.

This year Mr. Feist has presented many CLE series at the TCBA including "The Other Family Tree: Care and Protection for the Family Enterprise in Transition"; "Estate Planning Practice Management" and "Dodge the Bullet or Take the Hit: Tax-Sensitive Estate Planning." On Oct. 5 he began a three-part OBA series on asset protection planning: "OBA War College – Advanced Asset Protection Strategies, Tactics and Procedures"; "Area 51 – Next-Wave Traction Planning" and "MOB Oklahoma – The Preservation Trust Supports Asset Protection Outside Oklahoma."

Miles L. Mitzner is a 2016 Earl Sneed Award winner. Mr. Mitzner is the managing member of Mitzner Law Firm PLLC, formed in 1990 and located in Edmond. He received a B.Ec. in 1982 from OU and a J.D. in 1986 from the OCU School of Law. He also has viticulture and enology certificates from OSU.



Miles L. Mitzner

From 1979 to 1987, he worked in banking and finance in Oklahoma and Texas. He was executive vice president and chief lending officer at a local bank before beginning the practice of law. His practice is concentrated on Social Security disability, long-term disability, ERISA and mass torts for defective drugs.

He is a member of the Oklahoma County Bar Association and the American Bar Association. He is also a founding member of the Christian Legal Society and the Society of Insurance Receivers. Further, he is a sustaining member of NOSSCR and is admitted to and actively practices in all federal courts in Oklahoma, Texas, Colorado, Arkansas, Utah, New Mexico, the 5th and 10th Circuit Court of Appeals and the U.S. Supreme Court.

He is the founding member and chair of the OBA Disability Law Section and a frequent speaker at seminars and national conferences for NOSSCR. He also holds seminars throughout the state of Oklahoma, Texas and Kansas for the disabled. He serves as an expert witness in disability matters for law firms across the nation.

GOLDEN GAVEL AWARD

OBA YLD Kick It Forward Committee

For their excellence in leadership and hard work, the Golden Gavel Award recipient for 2016 is the **OBA YLD Kick It Forward Committee**. Two years ago a young lawyer reached out to the YLD for assistance. The lawyer was having trouble paying essential bills like the electric bill. Annual bar dues were an even bigger hurdle for him. When the issue was brought before the YLD board at a monthly meeting, LeAnne McGill and Bryon Will agreed to personally split and pay for that particular lawyer's dues.

In 2015 LeAnne McGill introduced the Kick It Forward Committee to the YLD. As a part of the committee Ms. McGill and the YLD organized a kickball tournament in an effort to both kick off the new program and to raise the initial funds for the program. The kickball tournament raised over \$13,000 and KIF received an additional \$1,700 in donations by fellow OBA members who contributed with their annual bar dues.

Since then more than 16 fellow attorneys have been assisted with their bar dues and are able to maintain practice in good standing. As a part of receipt of assistance from the KIF Program, the recipient must commit to giving back to the program.

All members of the OBA may donate to Kick It Forward simply by indicating such on their annual bar dues and adding an amount next to the Kick It Forward line item.

OUTSTANDING YOUNG LAWYER AWARD

Leanne McGill, Edmond



LeAnne McGill is a partner with the Edmond law firm of McGill and Rodgers, where her practice focuses on all areas of family law. Ms. McGill has been active in the OBA YLD since 2006, currently serving as immediate past chair. During her time in the YLD, she has served as the

chair of the division, chair of the New Attorney Orientation Committee, Publications and Website Committee, Membership Committee and the Kick It Forward Program. She has also participated in the Wills for Heroes, Serving our Seniors, and the annual Day of Service community service projects. She was the recipient of the YLD Outstanding Director award in 2011, the YLD Outstanding Committee Chair in 2013 and the YLD Officer of the Year in 2012, 2013 and 2014.

She has also served on the Oklahoma County YLD Board of Directors since 2006. As a director for the OCBA YLD, she has held numerous positions, including serving as the chair for the Harvest Food Drive Committee and the Chili Cook-Off Committee. These two committees work together to donate in excess of \$20,000 to the Regional Food Bank each fall.

Aside from her participation in the YLD, she has served on several OBA committees, including the Mentoring Task Force, Law Day Committee, Solo & Small Firm Committee, Budget Committee and the Women in Law Committee. She is a graduate of the inaugural 2008-2009 OBA Leadership Academy, the 2007 OBA Leadership Conference, is an Oklahoma Bar Foundation Fellow and served as the first chair of the OBA Law Student Division. She received her B.A. in English and political science from OSU in 2003 and her J.D. from the OCU School of Law in 2006.

OUTSTANDING SERVICE TO THE PUBLIC AWARD

Juan Garcia, Clinton



The 2016 winner of the Outstanding Service to the Public Award is **Juan Garcia**. Mr. Garcia was admitted to the bar in 2005. He and his wife, September, returned to their hometown of Clinton and he went to work in the District Attorney's Office. After a few years, he opened his own law practice. The Garcia's now have three daughters ages 10, 7 and 2.

He is active in St. Mary's Catholic Church, has served two terms on the Clinton Public School Foundation, has been Custer County Bar Association president and is a member of the Kiwanis Club of Clinton. He is currently coaching girls' soccer, but has also coached fifth- and sixth-grade football. Mr. Garcia serves on the Oklahoma Board of Bar Examiners and is ending a term on the Oklahoma Rehabilitation Council. He also serves on the Western Plains Library Board of Trustees and is a member of the Washita Custer Drug Court Team.

Mr. Garcia is the son of immigrants and is fluent in Spanish. His language skills serve a great need in the legal community. For example, he volunteered for Catholic Charities when unaccompanied immigrant children were housed at the base in Lawton. He represents parents, children and foster parents in deprived cases. He and his wife are foster parents for children in DHS custody and he provides training for new DHS foster parents.

AWARD FOR OUTSTANDING PRO BONO SERVICE

OBA Military Assistance Committee

The **Oklahoma Bar Association's Military Assistance Committee** is this year's recipient of the Award for Outstanding Pro Bono Service. Since 2010, this unique committee with over 711 OBA members has helped more than 4,007 service members and veterans with a value of \$2,844,000. The committee assists with cases involving family law, debt, real estate, estate planning, criminal, disability and personal injury.

On Veterans Day 2010, the OBA launched its program Oklahoma Lawyers for America's

Heroes. Through this program, lawyers from across Oklahoma volunteer to give free legal advice and assistance to our active duty service men and women and to our veterans. The committee's mission is to offer one-on-one legal advice and assistance to those members of the guard or reserve who are currently or have honorably served this nation who otherwise cannot afford or do not have access to the legal services they need.

GOLDEN QUILL AWARD

Michael W. Thom, Bethany



Michael W. Thom is a recipient of the Golden Quill Award for his article, "Sometimes You Can't Take it With You: The Testamentary Exception to the Attorney-Client Privilege," published in the Feb. 13 *Oklahoma Bar Journal*. He practices in Bethany and

concentrates in the fields of probate, estate planning and guardianships. He has served as chairperson of the OBA Estate Planning and Probate Section and as a member of the Probate Code Committee. He has been an adjunct professor at the OU College of Law and the OCU School of Law. He is co-author of "An Olio of Basic Probate and Trust Practice," 84 OBJ 989 (May 2013). He received his undergraduate degree from OU in 1974 and his J.D. from the OU College of Law in 1977.

OBA Awards:

Individuals for Whom Awards are Named

(cont'd from page 1982)

(JOHN E. SHIPP CONT.) He had served two terms on the OBA Professional Responsibility Commission, serving as chairman for one year, and served two years on the Professional Responsibility Tribunal, serving as chief-master. The OBA's Award for Ethics bears his name.

EARL SNEED — Earl Sneed served the University of Oklahoma College of Law as a distinguished teacher and dean. Mr. Sneed came to OU as a faculty member in 1945 and was praised for his enthusiastic teaching ability. When Mr. Sneed was appointed in 1950 to lead the law school as dean, he was just 37 years old and one of the youngest deans in the nation. After his retirement from academia in 1965, he played a major role in fundraising efforts for the law center. The OBA's Continuing Legal Education Award is named in his honor.

JOE STAMPER — Joe Stamper of Antlers retired in 2003 after 68 years of practicing law. He is credited with being a personal motivating force behind the creation of OUJI and the Oklahoma Civil Uniform Jury Instructions Committee. Mr. Stamper was also instrumental in creating the position of OBA general counsel to handle attorney discipline. He served on both the ABA and OBA Board of Governors and represented Oklahoma at the ABA House of Delegates for 17 years. His eloquent remarks were legendary, and he is credited with giving Oklahoma a voice and a face at the national level. The OBA's Distinguished Service Award is named to honor him.

ALMA WILSON — Alma Wilson was the first woman to be appointed as a justice to the Supreme Court of Oklahoma in 1982 and became its first female chief justice in 1995. She first practiced law in Pauls Valley, where she grew up. Her first judicial appointment was as special judge sitting in Garvin and McClain Counties, later district judge for Cleveland County and served for six years on the Court of Tax Review. She was known for her contributions to the educational needs of juveniles and children at risk, and she was a leader in proposing an alternative school project in Oklahoma City, which is now named the Alma Wilson SeeWorth Academy. The OBA's Alma Wilson Award honors a bar member who has made a significant contribution to improving the lives of Oklahoma children.



TITLE EXAMINATION STANDARDS

2016 Report of the Title Examination Standards Committee
of the Real Property Law Section

Proposed Amendments to Title Standards for 2017, to be presented for approval by the House of Delegates, Oklahoma Bar Association at the Annual Meeting, November 4, 2016. Additions are underlined, deletions are indicated by ~~strikeout~~.

The Title Examination Standards Sub-Committee of the Real Property Law Section proposes the following revisions and additions to the Title Standards for action by the Real Property Law Section at its annual meeting in Oklahoma City on Thursday, November 3, 2016.

Proposals approved by the Section will be presented to the House of Delegates at the OBA Annual Meeting on Friday, November 4, 2016. Proposals adopted by the House of Delegates become effective immediately.

An explanatory note precedes each proposed Title Standard, indicating the nature and reason for the change proposed.

Proposal No. 1

The Committee proposes to add a new Standard 3.1 B. (thereby redesignating current Standard 3.1 B to 3.1 C) to outline the circumstances that a stray instrument, even from a party or entity previously in title which is capable of being a root of title, may be disregarded.

B. Subject to the provisions of 3.1 C, a stray instrument or abstract thereof which is or could be a root of title under the Marketable Record Title Act, 16 O.S. §§71-80, may be disregarded by the examiner, if:

- 1) The stray instrument has been filed of record for less than thirty (30) years, and
- 2) There is a title transaction filed of record subsequent to the stray instrument which would prevent the stray instrument from becoming a root of title, and
- 3) Reasonable inquiry by the examiner reveals the person or entity which executed the stray instrument did not in fact have some interest in the subject property or did not have as great an interest as such person or entity conveyed, or if it

appears from the context of the situation that the person or entity which executed the stray instrument did not in fact have some interest in the subject property.

Otherwise the stray instrument must be regarded as creating or potentially creating a root of title under the Marketable Record Title Act and creating a valid cloud on title.

3.1 B C Pursuant to 16 O.S. §76, an instrument which is executed by a person or entity, or a decree of distribution entered in the estate of a decedent, who or which does not otherwise appear in the chain of title to the property cannot be the basis of a root of title under the Marketable Record Title Act, and therefore the examiner may waive any defect caused by such instrument, if: (1) there is apparent from the record an otherwise valid, uninterrupted chain of title traceable to an instrument which is a root of title as defined by the Marketable Record Title Act, and (2) a current record owner of the property executes and records an affidavit alleging the current owner or owners are in possession of the property and that the parties claiming under the instrument in question own no interest in the property.

Authority: 16 O.S. §76.

Proposal No. 2

The Committee proposes to amend Standard 5.1 in order to modernize the wording of the Standard and give the examiner greater guidance in dealing with the topic covered by the Standard.

STANDARD 5.1 ABBREVIATIONS AND IDEM SONANS

Identity of parties should be accepted as sufficiently established in the following cases, unless the examiner is otherwise put on inquiry:

~~A. Where there are used common Abbreviations, derivatives or nicknames for Christian names, such as "Geo." for George, "Jon." for John, "Chas." for Charles, "Alex." for Alexander, "Bob" for Robert, "Eliza" or "Liza" for Elizabeth, "Jos." for Joseph, "Thos." for Thomas, "Wm." for~~

William, "Susan" for Suzanna, "Ellen" for Eleanor, "Rich." for Richard, "Mc" for Mac (as prefix to a name);

B. Names within the rule of the generally accepted doctrine of *idem sonans*; and

C. In all instruments or court proceedings where in one instance a Christian name or names of a person is or are used, and in another instance the initial letter or letters only of any such Christian name or names is or are used but the surnames are the same or *idem sonans*, and in one instance a Christian name or initial letter is used, and in another instance is omitted, but in both instances the other Christian names or initial letters correspond and the surnames are the same or *idem sonans*.

A. Abbreviations of first or middle names: Where there are used commonly recognized abbreviations, derivatives or nicknames, such as "Geo." for George, "Jon." for John, "Chas." for Charles, "Alex." for Alexander, "Jos." for Joseph, "Thos." for Thomas, "Wm." for William, "Lse." for Louise; and

B. Nicknames of first or middle names: Where there are used commonly recognized nicknames, such as, "Susan" for Suzanna, "Ellen" for Eleanor, "Liz" for Elizabeth, "Katie" for "Katherine", "Jack" for John, "Rick" for Richard, "Bob" for Robert, "Bill" for William; and

C. Application of Doctrine of *Idem Sonans* to first, middle and last names or surnames: Where the names, although spelled differently, sound alike or phonetically similar or when their sounds cannot be distinguished, such first names as in "Sarah" and "Sara", "Catherine" and "Katherine", "Jeff" and "Geoff", "Mohammed" and "Mohammad", "Li" and "Lee", and such last names as in "Fallin" and "Fallon", "Green" and "Greene", "McArthur" and "MacArthur"; and

D. In all instruments or court proceedings where (1) in one instance name or names of a person is or are used, and in another instance the initial letter or letters only of any such name or names is or are used but the surnames are the same or *idem sonans*; (2) in one instance a name or initial letter is used, and in another instance is omitted, but in both instances the other names or initial letters correspond and the surnames are the same or *idem sonans*; or (3) in one instance the middle name or initial is present and in another instance, the middle name or initial is absent, but the surnames are the same or *idem sonans*.

A greater degree of liberality should be indulged with the greater lapse of time and in

the absence of circumstances appearing in the abstract to raise reasonable doubt as to the identity of the parties.

Proposal No. 3

The Committee recommends that Standard 8.1C be amended to reflect the uncertainty of the status of Oklahoma estate tax liens.

STANDARD 8.1 TERMINATION OF JOINT TENANCY ESTATES AND LIFE ESTATES

C. A waiver or release of the Oklahoma estate tax lien for the joint tenant or life tenant must be obtained unless:

1. A district court has ruled pursuant to 58 O.S. §282.1 that there is no not estate tax liability;

2. The joint tenant or life tenant has been dead more than ten (10) years;

2. 3. The sole surviving joint tenant or remainder interest holder is the surviving spouse of the deceased joint tenant or sole life tenant;

3. 4. The date of death of the joint tenant is on or after January 1, 2010-; or

4. The Oklahoma estate tax lien has otherwise been released by operation of law. **See the Caveat at TES 25.5.**

Authority: 16 O.S. §§53 A(10); 82-84; 58 O.S. §§23, 133, 282.1, 911 and 912; 60 O.S. §§36.1 and 74; 68 O.S. §§804 811 and 804.1 815.

Proposal No. 4

The Committee recommends a new Standard 14.10 be adopted to define how title to real property should be held by a limited liability company with Series.

14.10 Limited Liability Company with Series

Title to real property which is to be held under a properly created limited liability company with established series, domestic or foreign, must be acquired, held and conveyed in the name of the limited liability company, with appropriate indication that such title is held for the benefit of the specific series.

Comment:

Because a series is merely an attribute of the LLC, the series may not hold title in its own name independent of the LLC. Examples of acceptable designations of the grantor or grantee in an instrument conveying title to real property to or from a particular series would be one of the following:

A) Master, LLC, an Oklahoma limited liability company, as Nominee for its Series ABC;

B) XYZ, LLC, a Texas limited liability company, on behalf of its Series ABC;

C) DEF, LLC, a Delaware limited liability company, for the benefit of its Series 2016-A.

In the event an LLC, which has merely provided for the establishment of series, acquires property prior to the actual establishment of such series or otherwise acquires property in the name of the LLC, the LLC shall evidence such transfer of interest from the LLC itself to the LLC for the benefit of the series, by appropriate conveyance.

This standard does not address the situation of real property held by a wholly owned subsidiary LLC, which is an entity capable of acquiring, holding and conveying real property in its own name.

Authority: 18 OS. §2054.4.B.

Proposal No. 5

The Committee recommends a new standard No. 24.15 to set out the extinguishment date of old attorney's liens and to define how an attorney's lien is to be preserved.

24.15 ATTORNEY'S LIENS

A title examiner shall disregard, as extinguished, an attorney's lien on real property, created on or before Thursday, August 21, 2014, pursuant to Title 5 O.S. Section 6, unless a Notice of Attorney's Lien had been recorded, on or before Monday, August 24, 2015, in the county clerk's office in the county in which the lien is sought to be preserved.

Authority: 5 O.S. Section 6

Comment: See Title 5 O.S. Section 6 for information regarding the procedure to create and extend an attorney's lien on real property initially created on or after Friday, August 22, 2014, being the effective date of the 2014 amendment to the statute by which the requirement for recordation of Notice of Attorney's Lien, outlined above, was promulgated.

NOTICE OF JUDICIAL VACANCY

The Judicial Nominating Commission seeks applicants to fill the following judicial office:

Justice of the Supreme Court District Two

To be appointed to the office of Justice of the Supreme Court, an individual must have been a qualified elector of the applicable Supreme Court Judicial District, as opposed to a registered voter, for one year immediately prior to his or her appointment, and additionally, must have been a licensed attorney, practicing law within the State of Oklahoma, or serving as a judge of a court of record in Oklahoma, or both, for five years preceding his/her appointment.

Application forms can be obtained on line at www.oscn.net, click on Programs, then Judicial Nominating Commission or by contacting Tammy Reaves at (405) 556-9300. Applications must be submitted to the Chairman of the Commission at the address below **no later than 5:00 p.m., Monday, November 14, 2016. If applications are mailed, they must be postmarked by midnight, November 14, 2016.**

John H. Tucker, Chairman
Oklahoma Judicial Nominating Commission



6/0

NURSING HOME LITIGATION

from Both Sides of the Bar

*Featuring National Speaker and Author,
Carl Bettinger*

October 27, 9 a.m. - 3:10 p.m.

Oklahoma Bar Center, OKC - WEBCAST AVAILABLE

Program Planner/Moderator:
Mark A. Cox; Law Office of Mark A. Cox, PLLC,
Edmond, OK

TOPICS COVERED:

- Herocentric Story: The Pathway to the Real Heroes in the Courtroom
- Update on Nursing Home Law
- A Defendant's response to Plaintiff's Reptile Theory
- Pretrial Strategy for Plaintiff's Counsel
- Pretrial Strategy for Defense Counsel

\$150 for early-bird registrations with payment received at least four full business days prior to the seminar date; \$175 for registrations with payment received within four full business days of the seminar date. To receive a \$10 discount for the in-person program, register online at www.okbar.org/members/CLE. Registration for the live webcast is \$200. Seniors may register for \$50 on in-person programs and \$75 for webcasts, and members licensed 2 years or less may register for \$75 for in-person programs and \$100 for webcasts.

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



OKLAHOMA BAR ASSOCIATION ANNUAL MEETING 2016

NOV. 2-4 · SHERATON HOTEL · OKLAHOMA CITY



REGISTRATION

PACKAGES

Super Value

- Conference gift
- Continental breakfasts on Wednesday and Thursday
- Wednesday President's Reception
- Thursday evening reception
- Friday President's Breakfast and presentation – 1 hour FREE CLE!

Super Duper Value

- Conference gift
- Continental breakfasts on Wednesday and Thursday
- **6 hours of CLE on Wednesday**
- Wednesday President's Reception
- Thursday evening reception
- Friday President's Breakfast and presentation – 1 hour FREE CLE!

Unbelievably Crazy Value

- Conference gift
- Continental breakfasts on Wednesday and Thursday
- **6 hours of CLE on Wednesday and 3 hours on Thursday**
- Wednesday President's Reception
- **Annual Meeting Luncheon**
- Thursday evening reception
- Friday President's Breakfast and presentation – 1 hour FREE CLE!

HOW TO REGISTER



ONLINE

Register online at
www.amokbar.org



MAIL FORM

OBA Annual Meeting
PO Box 53036
Okla. City, OK 73152



PHONE/EMAIL

Call Mark at 405-416-7026
or 800-522-8065
or email marks@okbar.org



FAX FORM

405-416-7092

DETAILS

LOCATION

Most activities will take place at the Sheraton Oklahoma City Downtown Hotel, One N. Broadway Ave. in Oklahoma City.

MATERIALS

You will receive electronic CLE materials in advance of the seminar.

HOTEL ACCOMMODATIONS

Fees do not include hotel accommodations. For reservations call the Sheraton Hotel at 405-235-2780 or 800-325-3535. Call by Oct. 10 and ask for the special Oklahoma Bar Association rate of \$109 per night.

*For online reservations, go to
www.starwoodmeeting.com/Book/OklahomaBarAssociation*

CANCELLATION POLICY

Full refunds will be given through Oct. 26. No refunds will be issued after that date.

SPECIAL NEEDS

Please notify the OBA at least one week in advance if you have a special need and require accommodation.



FORM

Please complete a separate form for each registrant.

Name _____

Email _____

Badge Name (if different from roster) _____ Bar No. _____

Address _____

City _____ State _____ Zip _____ Phone _____

Name of Non-Attorney Guest _____

Please change my OBA roster information to the information above. ☐ Yes ☐ No

Check all that apply: ☐ Judiciary ☐ Delegate ☐ Alternate

MAIN PACKAGES

See package details on facing page. Early rate valid **on or before Oct. 10.**

Circle your choice

	Early Rate	Standard Rate	New Member† Early Rate	New Member† Standard Rate
Super Value	\$75	\$100	\$0	\$25
Super Duper Value	\$175*	\$200*	\$50*	\$75*
Unbelievably Crazy Value	\$225**	\$250**	\$75**	\$100**

† New members sworn in 2016

* includes 6 hours of CLE

** includes 9 hours of CLE

SUBTOTAL \$ _____



SEPARATE TICKET ITEMS

Annual Meeting registration not required

Law School Luncheon ☐ OCU ☐ OU ☐ TU _____ # of tickets at \$40 \$ _____

Annual Luncheon with registration _____ # of tickets at \$40 \$ _____

(included in Unbelievably Crazy Value package)

Annual Luncheon without registration _____ # of tickets at \$50 \$ _____

SUBTOTAL \$ _____

PAYMENT

☐ Check enclosed: Payable to Oklahoma Bar Association

TOTAL COST \$ _____

Credit card: ☐ VISA ☐ Mastercard ☐ American Express ☐ Discover

Card # _____ CVV# _____ Exp. Date _____

Authorized Signature _____

CRIMINAL LAW ANNUAL LUNCHEON

Wednesday, November 2, 2016 - 12:00-1:30

Petroleum Club, Oklahoma City

FANTASTIC KEYNOTE SPEAKER

- **Carol Chen**, Assistant United States Attorney for the Central District of California was a prosecutor in a complex Hells Angels indictment and has of recently gained national recognition in the Santa Ranas street gang case. She will discuss criminal gang prosecutions, RICO, and publicity related to such cases.

PROFESSIONAL ADVOCATE OF THE YEAR AWARDS

- The Criminal Law Section will honor the Defense Attorney and Prosecutor who is recognized by their peers as ethical and professional advocates who exhibit superior advocacy skills before the court and consistently shows professionalism, courtesy, and respect to opposing counsel in the spirit of the adversarial system.

PRESIDENT'S AWARD: RECOGNIZING HONORABLE DONALD L. DEASON

- The Criminal Law Section will honor Donald L. Deason for his service on the bench and his service as a hard-fighting district attorney. In his honor, the Criminal Law Section will implement the Honorable Judge Donald L. Deason Annual Judicial Award.

PETROLEUM CLUB LUNCH

- Duo of **Filet & Chicken**, Southwest Salad, Mixed Vegetables, Salted Caramel Cheesecake with Chocolate Sauce & Fresh Berries, Chocolate Mousse, Rolls & Butter, Coffee and Tea.

DOOR PRIZES

- **8 sets of Thunder Tickets** (16 tickets), some t-shirts, and our famous Crim Law sharks!

Criminal Law Annual Luncheon Registration Form

12:00 Noon, Wednesday, November 2, 2016 at the **Petroleum Club**, Oklahoma City.

Thunder Tickets will be awarded as door prizes at the luncheon. You must be present to win.

Last Name (Print) _____ First Name _____

Address _____ City _____ State ____ Zip _____

E-Mail _____ Phone (____) _____ OBA Number _____

[] \$20 - Criminal Law Section Member attending the luncheon [] \$15 - Judge

[] \$30 - Nonmember [] \$35 for anyone after Oct. 20 or at the door \$_____ **Total Enclosed**

Check ____ Visa ____ MasterCard ____ Card # _____ Exp. Date _____

Signature *required if paying by credit card* _____

Remit to the Criminal Law Section of the OBA

Fax payment to (405) 416-7001 (Attn: Tracy Sanders)

Mail payment to OBA Membership Department

PO Box 53036, Oklahoma City, OK. 73152

A Different Point of View

Dear Editor:

Living in Florida, I am accustomed to sloganeering for judicial supremacy and bar aloof-ism from state bar presidents. Those from big Florida law firms who play big shots in the elitist, progressive ABA and heartily defend a jurisprudence that produces only equity — laws are mere suggestions here — can't help but belittle and attack real democracy as actually expressed through our state legislature.

But it was a surprise for this Oklahoma native to see in the *Oklahoma Bar Journal* Sept. 10 edition a president's letter apparently ignorant of the reality of the PC tyranny in higher education and so fond of progressivism's destruction of human dignity and liberty that he would recommend as definitive Jane Mayer's polemic against conservative and libertarian money (horror of horrors) in American ideas and politics. Has President Isaacs heard of Soros, the Clinton Foundation, Warren Buffet or George Kaiser?

If the Oklahoma Bar Association president believes the greatest threat to American liberty is the initiative of the Kochs, the Olin Foundation and their ilk, he needs to resign and get to know more Oklahomans. If I am compelled to be a member of the OBA as a condition of a license to practice law in my native state, I expect the bar's print organ not to be an imbalanced vehicle for political correctness and progressive conspiracy theories.

Lawyers are engaged honorably on every side of every political and social issue in our society. That is the glory of our profession. When we forget our diversity of views and goals and expect all to think alike, we lose any claim to be advocates for all people and become merely one more instrument of control.

Don Rubottom, Tallahassee, FL
Oklahoma State Senator 1988-96
Member, OBA and The Florida Bar

Awards to be Presented at the Women in Law Conference

By Tiece I. Dempsey and Kimberly K. Hays

The Mona Salyer Lambird Spotlight and the Ada Lois Sipuel Fisher Diversity Awards will be presented at the Women in Law Conference luncheon on Friday, Oct. 21, at 11:40 a.m. The event will be held at the Embassy Suites Downtown/Medical Center, 741 North Phillips Ave., in Oklahoma City.

The conference theme this year is “Just Desserts: The Sweet Rewards of Civic Service.” The program includes keynote speaker Jo-Ellan Dimitrius and her presentation of “How to Understand People and Predict Their Behavior.” The CLE portion of the event will offer six hours of education including one hour of ethics. Register by Oct. 17 and pay only \$150 (includes luncheon). To register and for more information go to tinyurl.com/OCT21WILC.

MONA SALYER LAMBIRD SPOTLIGHT AWARD RECIPIENTS

This year marks the 20th anniversary of the presentation of the Mona Salyer Lambird Spotlight Awards. Since 1996 the Spotlight Awards have been given annually to five women who have distin-

guished themselves in the legal profession and who have lighted the way for other women. The award was later renamed to honor 1996 OBA President Mona Salyer Lambird, who died in 1999, was the first woman to serve as OBA president and was one of the award’s first recipients. The award is sponsored by the OBA Women in Law Committee. The 2016 recipients are:



Jennifer Castillo

Jennifer Castillo, a 2002 graduate of the OCU School of Law, is an attorney with OG&E. She previously worked in the Oklahoma City office of Hall Estill practicing in the areas of administrative law, bankruptcy and creditors’ rights, general civil litigation and *ad valorem* tax matters.

Friday, Oct. 21

**Embassy Suites
Downtown/Medical Plaza
Oklahoma City**

*\$200 Walk-In
(CLE and Luncheon)
\$175 Online Registration
(CLE and Luncheon)
\$129 Room Reservations
\$40 Awards Luncheon Only
\$10 Program discount for
online registration of full
conference*

She was chair of the OBA Young Lawyers Division in 2012. Ms. Castillo is currently serving as OBA Awards Committee chair and secretary and treasurer of the Oklahoma Bar Foundation. She will serve as OBA vice president in 2017. She is also a member of the Ruth Bader Ginsburg American Inn of Court.



Judge Sheila Condren currently serves as district judge for the 12th Judicial District consisting of Rogers, Mayes and Craig counties. Judge Condren was first appointed to the bench in 2000 as a special judge and was later appointed by the governor in 2006 as the associate district judge for Rogers County; a



Judge Sheila Condren

position she held until she was elected as district judge beginning in 2015.

She is a 1987 graduate of the TU College of Law where she was a staff member of the *Energy Law Journal*. Before taking the bench, she worked as a law clerk for a board of administrative appeals judge with the United States Department of Labor in Washington, D.C., was in private practice and also worked for the state of Oklahoma in the area of child support enforcement.

While working as an attorney, the Oklahoma Child Support Enforcement Association awarded her Attorney of the Year and Member of the Year. *Tulsa People* magazine named her to its Shining Star list for her advocacy on behalf of child support enforcement. She was also nominated for the Paragon Award for her community service in the area of domestic violence.

She is a past president of the Hudson-Hall-Wheaton Chapter of the American Inns of Court, and is a past chair of the Oklahoma Attorney General's Domestic Violence and Sexual Assault Advisory Council. She also spearheaded the effort to build the new Rogers County Courthouse, and co-

chaired the citizen committee that recommended construction of the new facility.



Eileen Echols (Posthumously)

Eileen Echols was an Oklahoma family law trailblazer. She and her husband David founded Echols and Associates. She was also a special district judge in Oklahoma county from 1989 to 1994. She was awarded Family Law Judge of the Year in 1991 and 1993.

She started her career as a special education teacher and realized she could do more for children and families if she were a family law attorney. She went to law school and earned her J.D. in 1979. She focused on making a difference for children and used her talents for special needs and special education for her position on the probate bench and contributions to the Family Law Section. She was an administrative law judge for the Oklahoma Health Care Authority and a governor's appointee to the Child Welfare System Reform Review Committee.

She passed away June 30. She received recognition for service to judicial education by the Supreme Court of Oklaho-

ma and Gov. Keating as well as numerous trial advocacy awards and accolades.



Judge Dana Kuehn

Judge Dana Kuehn was elected to serve in 2006. She presided over a felony docket and currently calls a civil docket. Judge Kuehn served as chief of the civil division from 2010 to 2012 and is presently the chief. She teaches the juvenile law and evidence workshop at the TU College of Law, of which she is a graduate. She was president of the alumnae board and Outstanding Junior Alumnae.

Prior to taking the bench she was a felony prosecutor for almost 10 years with the Tulsa County District Attorney's Office heading the Crimes Against Children Unit and serving as chief of the juvenile division. She was an associate with the firm of Steidley and Neal from 1999 to 2000. She was a OSU College of Arts and Sciences top-10 graduate, a member of Kappa Alpha Theta Sorority of which she was president and a Spirit Squad member from 1989 to 1992.



continued on next page



*Judge Arthur Lory Morris
Rakestraw (Posthumously)*

Arthur Lory Morris Rakestraw was an Oklahoma County district judge. Judge Rakestraw passed away in 1994. She graduated from Oklahoma College for Women with a pre-law degree, received her J.D. from the OU College of Law and a M.Ed. from the College of William and Mary in Virginia. She was married in 1941 to the late Col. Bryan Rakestraw, a career Air Force officer, and spent the next 25 years as a loving mother, wife and community volunteer.

She returned to Oklahoma City upon her husband's retirement from the Air Force and began her legal career with the Legal Aid Society of Oklahoma County, where she served as a staff lawyer and executive director for nine years. She was appointed as a county special judge in 1975 and was elected as a county district judge in 1978, where she served until her retirement in 1989. Throughout the years, she has received many community and professional awards, most notably the Outstanding Woman in Law from Iota Tau Tau, the National Legal Sorority, Woman of the Year from the 10th District Business and Professional

Women and the *Journal Record* Award as the 1986 Outstanding Member of the Bar.

ADA LOIS SIPUEL FISHER DIVERSITY AWARD RECIPIENTS

The OBA Diversity Committee will present the Ada Lois Sipuel Fisher Diversity Awards. Six individuals and organizations will be honored in recognition of their efforts in promoting diversity and inclusion in Oklahoma. The Diversity Committee will recognize the following individuals and organizations that have outwardly demonstrated that "Diversity Matters in Oklahoma."



Judge Bernard Jones

Judge Bernard M. Jones II was appointed United States magistrate judge for the Western District of Oklahoma on July 31, 2015. With his appointment, Judge Jones became the first African-American in the state of Oklahoma and only the second African-American in the six-state 10th Circuit to serve in this capacity.

Immediately preceding his service to the federal bench, he was a district judge for Oklahoma's 7th Judicial District. Initially appointed by Gov.

Mary Fallin on Oct. 1, 2012, he was subsequently elected without opposition to a full four-year term. As district judge, he was assigned to the family and domestic relations and civil dockets and he exercised oversight of the district's Drug and Mental Health Court programs. He also served as a member of the Oklahoma Access to Justice Commission, which was established by the Oklahoma Supreme Court to develop and implement initiatives designed to expand access to the civil justice system.

He began his legal career as an associate practicing both commercial and labor and employment law, first at Porter Wright Morris and Arthur LLP in Columbus, Ohio, and later at McAfee and Taft. The OCU School of Law recruited him from his successful litigation practice to the administrative faculty, where he attained the rank of associate dean. During his tenure in academia, he accepted appointments to serve on the Oklahoma Board on Legislative Compensation as well as the Board of Adjustment for the city of Oklahoma City. He is the first African-American to serve in either capacity.



April M. Fox is the associate dean, director of admissions at the TU College of Law. Dean Fox holds a B.A. in English from TU and a J.D. from the TU College of Law. Prior to joining the TU College of Law administration team in 2001, she practiced in areas of property, corporate and immigration law.



Dean April Fox

During her tenure at TU she has served as chair and original founding member of the College of Law's Diversity Committee, member of the TU International Students' Subcommittee for the American Council on Education's Internationalization Laboratory and panelist speaker at the Law School Admission Council's Annual Conference. Over the years, she has led the college's efforts to host numerous events designed to promote greater diversity within the legal field and in 2009 she was named recipient of the TU Law Women's Law Caucus Fern Holland Award.

Her publication and volunteer activities include that of active ambassador for Tulsa's Saint Francis Children's Hospital, service in the TU's True Blue Neighbor Program and contributor to the ABA Publication *Lawyers, Lead On*.



Stephanie Conduff is the founder of Leche Lounge, which is a Native woman-owned company that provides businesses a solution for mother's rooms as are required under law. Working at a large law firm and traveling for clients and to CLEs forced her to pump milk for her newborn



Stephanie Conduff

daughter in restrooms and shared hotel rooms. She knew there was a better solution for our communities and that she could help create jobs in Indian Country. She was named a Pinnacle Award Top 10 Women of the Year by the YWCA and the Mayor's Commission in the Status of Women for her work empowering women and eliminating racism.

She has more than 10 years' experience living and working in indigenous communities in North America and internationally in South Africa, Canada, Latin America and Europe. She graduated from the OU College of Law. While at OU she served as a judicial clerk for a tribal court Supreme Court justice. She is certified to assist tribal courts as a peace-maker. She has a MPP from the Humphrey School of Public Affairs at the University of Minnesota.

From managing \$350 million of annual federal appropriation requests on Capitol Hill to working on mergers and acquisitions for a \$750 million diversified business portfolio, she has experience in law, policy development and business development. She worked for her tribal government to diversify their industries and create

jobs for tribal citizens throughout Indian Country.



Originally founded in 1906 as an intrastate natural gas pipeline business in Oklahoma, today ONEOK is one of the nation's premier energy companies and is included on the Fortune 500 and in Standard and Poor's 500 Stock Index.

ONEOK is passionate about building a diverse workforce, fostering an inclusive workplace and supporting the diversity efforts in the communities in which its employees live and work. While valuing diversity has been a priority at ONEOK for many years, nearly two years ago ONEOK launched a companywide diversity and integration strategy as one of its key corporate initiatives as envisioned by the Board of Directors and CEO Terry Spencer. Through this effort, membership more than doubled from 222 to 538 employees.



The Crowe & Dunlevy Diversity Committee was founded in 2000 by attorneys William H. Hoch and Jimmy K. Goodman. The committee values the strength that women, minority and LGBTQ lawyers add to the fabric of the firm. The Diversity Committee focuses on how to best foster the recruiting, retention and professional development of attorneys, regardless of gender, race or sexual orientation.



Diversity Committee

The committee evaluates how diversity makes Crowe & Dunlevy a better firm and how it may best be used to serve the firm's existing clients and develop relationships with potential new clients. It also seeks to retain and advance the careers of women and minority lawyers within the firm.

The firm has long supported diversity initiatives at the national and local levels. In 1999, the firm was a founding member of the American Bar Association (ABA) Legal Opportunity Scholarship, created for the purpose of assisting talented young minority students in completing their legal studies.

The firm has historically been a sponsor of the ABA Spirit of Excellence Awards Luncheon, at which lawyers and others are recognized for their works in creating diversity in the legal profession and advancing justice for minority Americans. Additionally, the firm encourages and supports an attorney who serves annu-

ally as a coach for the Ada Lois Sipuel Fisher Chapter of the Black Law Students Association at the OU College of Law's Frederick Douglass Moot Court Competition team.



Oklahoma City Community College (OCCC) – Students Connecting with Mentors for Success Mentoring Program (SCMS)

In order to address the national statistic that over 80 percent of students who attend a community college never graduate, OCCC inaugurated a mentoring initiative. The purpose of the Students Connecting with Mentors for Success program is to improve the academic achievement, retention and graduation rates of its students, with the goal of preparing them to transfer to a four-year university or successfully enter the workforce.

OCCC is achieving this by providing professionals from the community to serve as mentors and provide one-on-

one supportive relationships to its students. Mentors offer advice, insight and guidance to mentees regarding academic and professional pursuits and general life matters. Students must be coachable, cooperative and willing to be held accountable by mentors. Mentors may use their personal contacts to help mentees meet industry professionals, find internships and locate job opportunities.

ABOUT THE AUTHORS



Tiece Dempsey chairs the OBA Diversity Committee. She is a judicial law clerk for Chief Judge Vicki Miles-LaGrange, United States District

Court for the Western District of Oklahoma.



Kimberly K. Hays is a family law attorney who practices in Tulsa and served as the 2015 OBA


Women in Law chairperson. She has held many OBA and Tulsa County Bar Association leadership positions, including a term on the OBA Board of Governors. She has a bachelor's degree from OSU and a law degree from the University of Kansas School of Law.

You Have Something to Offer — Join a Committee

If you invest just a small amount of your time working on an OBA committee, I promise that you'll receive a 100 percent return on your investment — especially if you are in private practice. The contacts you make are invaluable, and the work accomplished benefits our communities and our profession.

New members with fresh ideas, we need you! Geography is a nonissue with today's technology, and the OBA will soon be rolling out the option of attending meetings from your desk. (It's being beta tested now.) So if driving a long distance to participate in a meeting has prevented you from becoming involved, that obstacle is gone.

Sign up today. Option #1 – online at www.okbar.org, scroll down to the bottom of the page. Look for "Members" and click on "Join a Committee." Options #2 & #3 – Fill out this form and mail or fax as set forth below. I'll be making appointments soon, so please sign up by Dec. 9.



Linda S. Thomas, President-Elect

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

Please Type or Print

Name _____

Telephone _____ OBA # _____

Address _____

City _____ State/Zip _____

FAX _____ E-mail _____

Committee Name

1st Choice _____

2nd Choice _____

3rd Choice _____

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

1st Choice ☐ Yes ☐ No _____

2nd Choice ☐ Yes ☐ No _____

3rd Choice ☐ Yes ☐ No _____

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

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

Mail: Linda Thomas, c/o OBA, P.O. Box 53036, Oklahoma City, OK 73152
Fax: (405) 416-7001

Standing Committees

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

Updates to Online Member Services

By Laura Stone

Several technology upgrades have been implemented for online OBA member services. Some of these improvements will bring new opportunities for marketing and networking, while others will help with research, management assistance and MCLE compliance.

ALL-NEW WWW.OKMCLE.ORG

The MCLE Department has launched a new website, www.OKMCLE.org. (Also available through the link in the new MyOKBar website.) This new website is the hub for all things MCLE related. As debuted last month, members can check the rules for MCLE requirements, get applications for approval of programs and other forms and view answers to frequently asked questions. The most recent rollouts, scheduled to be fully functional by the end of October, include the ability for members to view their transcript of CLE credits and, for the first time ever, members will be able to review a list of all upcoming OKMCLE-approved programs.

MCLE Department Administrator Beverly Petry Lewis recognizes the importance of members being able to easily manage their continuing education credits.

"We're very excited about the new MCLE website and our new software that should allow members to better manage and track their MCLE compliance," said Ms. Lewis.



To start using the new OKMCLE website, go to www.OKMCLE.org and hover your mouse over "sign in" (on a mobile device, the sign in appears automatically). From there, click "Sign up" and complete the information. For questions regarding MCLE requirements or the new

OKMCLE website, call the MCLE Department at 405-416-7009 or email MCLE@okbar.org.

CHANGES TO MYOKBAR

Other updates to member services come mostly from the new MyOKBar, the members-only section of the OBA website. This is where members can update roster information, pay annual dues, access the member directory and much,

much more. Changes to the website have added links to HeinOnline for easier researching of archived *Oklahoma Bar Journal* issues, single-login access for FastCase and front-page access to members' committees, sections and other important parts of their OBA membership. The link to login to the re-designed website is conveniently located on the front page of the OBA website at

www.okbar.org.

OBA IT Department Director Robbin Watson highlighted the site's simplicity and security as well, saying, "The new website simplifies member access while enhancing security. The entire user experience is designed to be efficient and practical, and member information is better

protected.” She continued, “Functionality reflects the modern era of online member interaction on any platform — desktop, laptop or mobile device.”

TAKING ADVANTAGE OF NEW FEATURES

Some obvious advantages of the new systems are their ease of use and time saved in accessing their features. OKMCLE’s one-stop site for compliance or MyOKBar’s single-login access to member benefits make using those websites much faster and easier. Other advantages, however, go beyond productivity alone. An innovative feature of MyOKBar that shouldn’t be overlooked is the enhanced profile capabilities. Members can upload a photo and add details about practice areas, expertise, location and contact information. These enhancements can increase communication between members and make finding resources within sections or practice areas much easier.

OBA Executive Director John Morris Williams understands

how important this communication is.

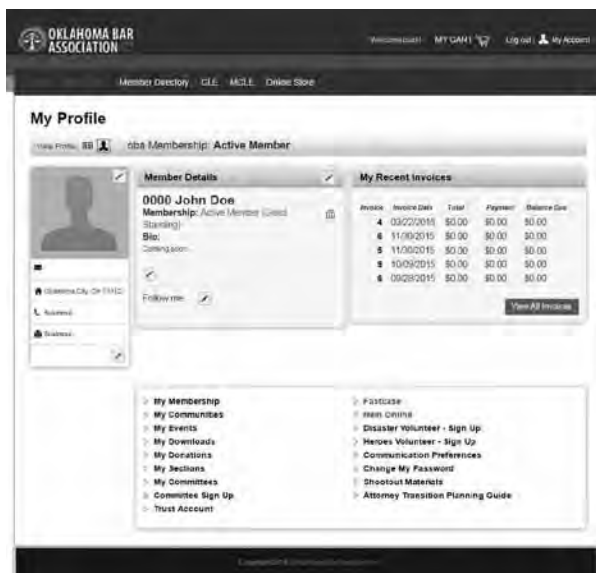
“This new system lets our members tell us and other members about themselves,” said Mr. Williams. “Plus, with the ability to upload a photo

will be searchable by other members. It will be a great way for our members to build their practices and make themselves known to other lawyers.”

To change the profile information, upload a photo and fully utilize all the available features of the new MyOKBar, log in through the link on the OBA website at www.okbar.org. From there, any information can be edited using the pen icon in any information box. Add your photo by clicking the pen icon on the photo image, while email address, practice city and phone numbers can be updated in the box below it. Name, roster address and bar journal preferences are accessed from the Member Details box. For additional

instructions on how to update your information, call the Membership Department at 405-416-7080 or email membership@okbar.org.

Ms. Stone is an OBA communications specialist.



and even include social media links, it allows lawyers to put a name with a face before meeting in person.”

Mr. Williams also noted the value of networking through the new system, saying, “It’s well known that much of a lawyer’s business comes from referrals, and this information

New Lawyers Take Oath

Board of Bar Examiners Chairperson Monte Brown announces that 197 applicants who took the Oklahoma Bar Examination in July of this year were admitted to the Oklahoma Bar Association on Tuesday, Sept. 20, or by proxy at a later date. Oklahoma Supreme Court Vice Chief Justice Douglas Combs administered the Oath of Attorney to the candidates at a swearing-in ceremony at the Oklahoma Capitol. A total of 299 applicants took the examination.

Other members of the Oklahoma Board of Bar Examiners are Vice Chairperson Bryan Morris, Ada; Juan Garcia, Clinton; Robert D. Long, Ardmore; Loretta F. Radford, Tulsa; Roger Rinehart, El Reno; Tommy Dyer Jr., Jay; Scott Williams, Oklahoma City; and Thomas M. Wright, Muskogee.

The new admittees are:

Adams Dooley, Socorro

Adcock, Rachel Ann

Addison, David Colby

Adkins, Amanda Lauren

Aery, Robert Gerald

Albritton, Tamra Dawn

Alfonso, Anthony Michael

Alison, Matthew Dean

Anders, Becki KayLynn

Bachman, Samantha Rebecca

Barr, Jonathan

Barresi, Emalee Jo

Beake, Georgia Basore

Becka, Carolyn Beth

Bergren, Stephen Michael

Berklacy, Steven Andrew

Betts, Benjamin Salter

Bird, Christine Catherine

Bisher, Riley Marie

Bogaski, Genesis Madai

Bowler, Dekovan Lee

Bracher, Brian Dwayne

Bruhweiler, Beau Scott

Calvert, Connie Lynn

Camp, Jessica Raye

Cannon, Kayla Dawn

Capps, Cameron Ross

Carr, Cassia Claude

Carroll, Matthew Michael

Cartwright, Micah Brianne

Castonguay, Chelsea Marie

Cawood, Kayla Jean

Chapman, Cody Alan

Chapman, Graham Harms

Chilcoat, Kelsey Ann

Chow, Christina Yi-Ting

Christie, Claire Lea

Clancy, Samuel Paul

Cody, Byron Grant

Coffey, Nicholas Michael

Cohrs, Forrest David

Colpitts, Lauren Danielle

Cook-Campbell, Brinkley
Beecher

Cooper, Kylie Paige

Cooper, Zachary Samuel

Cox, David Alan

Curtis, John Charles

Daniel, Jacob Riley

Daugherty, Bailey Ann

David, Rebecca Jo

Davis, Andrew Ray

Davis, Kara M.

Dawkins, Grace Elizabeth



New lawyer from OCU School of Law awaiting the recitation of the Oath of Attorney.

DeBose, Antuany SanTaro
 Dennis, Haley Jo
 Dickerson, Corbin Blake
 Dickson, Isaac Jorel
 Dixon, Bryan Charles
 Dowdy, Margaret Jean
 Dunn, Kaitlyn Renee
 Dunning, Katherine Elise
 Earley, Charles Alexander
 Easley, Kevin Alan
 Eberhard, Gregory Alan
 El Aroua, Melissa Renee
 Farinha, Andre Valentim
 Farris, Alayna Jo

Gregory, Erin Lindsay
 Hahn, Cooper Thomas
 Haines, Avery Barrett
 Hall, James Donald
 Hall, Nathaniel Brooks
 Hamilton, Ruth Ellen Lando
 Harris, Marshall Bryan
 Hayes, Mark Alan
 Haynes, Allison Leigh
 Haynie, Ryan Alan
 Helberg, Matthew Thomas
 Hendrickson, Jeffrey Calvin
 Holland, Brittany Mary
 Ann Bates

Kemper, Kevin Ray
 Kent, Jeremy Alan
 Kistler, Lindsay Nichole
 Kuykendall, Monica Michelle
 Lanier, Sarah Margaret Breland
 Leake, Michael Timothy
 Leavitt, Ashley Holbrook
 Levinthal, Asher Ross
 Lewis, Jennifer Lynn
 Lindley, Sheridan Rene
 Looney, Alyssa Ryna Holman
 Lorenson, Kailey Dane
 Luckert, Maria Anna
 Mahoney, John Patrick
 Mashburn, Berry Michael
 McCaslin, Benjamin Michael
 McClellan, Deric James
 McCord, Matthew S.
 McCord, Suzannah R.
 McGrew, Robert Mitchell
 McPherson, Meaghen
 McRorie, Matthew Ryan
 Merchant, Samuel
 Middleton, Wynoka
 Miller, Jeremy Steven
 Mitcham, Lauren
 Mitchell, Christiaan Douglas
 Moroz, Christen Michelle
 Moser, Dorothy Annalee
 Mowdy, Matthew Clay
 Moyer, Lucas Robert
 Mullaliu, Vilard
 Murphy-Clemandot, Robin
 Myers, Lauren Rachel
 Noble, Tiffany Shannon
 Norman, Kendra Marie
 O'Connor, Katherine Elizabeth
 Ohmann, Nicholas Anthony
 Pacheco, Marcus David
 Alexander
 Palmer, Douglas Alexander
 Palmer, Julia Ann
 Parker, Jacob R.



New lawyer from OU takes a picture with Justice Noma Gurich.

Fisher, Kristin Nicole
 Forbes, John Charles
 Freeman, Kinsey Cie
 Fryar, Andrea Beth
 Galaviz, Colleen Leann
 Gebhart, Nancy Roxane
 Gibbons, Clare Glynis
 Glass, Carson Kennedy
 Gollihare, Brette Nichole
 Gomez, Lauren Alyssa
 Gorham, Hershel Marcellous
 Green, John Thomas
 Green, Teresa Lou

Holman, Matthew Jared
 Hon, Maryann Margaret
 Hoog, Patrick Jerome
 Housel, Zachary Kyle
 Howell, Delanie Brooke
 Hubbert, Jason Wade
 Hudson, Hilary Ann
 Islas, Devlan Richard
 Jackson, Garrett Blake
 Janes, Jared Matthew
 Jenkins, Kimberly Pogue
 Johnson, Gé Andra Denise
 Johnston, Cameron Miles
 Joseph, Danny



Law school students from the TU College of Law take the oath to become attorneys.

Patterson, Sarah Grace
 Payne, Emma Jane
 Pickar, Casady Lynn-Marie
 Pilehvar, Taymoor Mohammad
 Pinkerton, Morgan Ashley
 Pittman, Brock Zackary
 Porter, Angela Lynne
 Postic, David Michael
 Powell, Timothy Scott
 Pratt, Paul Dillon
 Rabe, Sean Dale
 Radieva, Miroslava Plamenova
 Resendez, Daniel Xavier
 Rice, Tanner Edward

Rodich, Whitney Morgan
 Rottman, Lia Renee
 Saleh, Kristina Michelle
 Sardella, Eric Lee
 Schreck, Charles Andrew
 Schwartz, Mason
 Seabolt, Jason Samuel
 Settlemire, Gabrielle Erin
 Sgarlata, Helen Marie
 Shade, Bryan Clark
 Shepherd, Billy Emerson
 Shirey, Kaelyn Rae
 Siegel, Kristin Marie
 Sneed, Ethan MacDonald

Souther, Tyler Henry
 Spurgeon, April Shanell
 Stall, Joseph Evan
 Stephens, Donald Patrick
 Stevens, Ruth Emily
 Stockwell, Madison Linn
 Stump, Bryan Timothy
 Tabor, Geoffrey Aaron
 Taylor, Emily Morgan
 Teague, Joshua Calvin
 Torneten, Lisa Marie
 Towle, Gaylan Ray
 Trammell, Tyler Paul
 Valdez, Crystal Dawn
 Volino, Jordan Dimitri
 Ward, James Brian
 Watts, Thomas Jefferson
 Webster, Jacintha Mischelle
 Wedel, Jonathan Ryan
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PRESENTS

2016 CELEBRATE PRO BONO SEMINAR

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Tuesday, October 25, 2016

Registration begins at 8:30 a.m. • Oklahoma Bar Center

6 hours CLE, Including 1 hour Ethics

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Consumer Financial Protection Bureau Regulations

Richard Goralewicz, LASO, Oklahoma City
Science vs. Pseudoscience

Justin Wolf, Oklahoma State Bureau of Investigation (OSBI)
Expungement Law Update

Oklahoma Bar Association 2017 Proposed Budget

Pursuant to Article VII, Section 1 of the Rules Creating and Controlling the Oklahoma Bar Association (OBA), Linda S. Thomas, president-elect and Budget Committee chairperson, has set a Public Hearing on the 2017 Oklahoma Bar Association budget for Thursday, Oct. 20, 2016, at 10 a.m. at the Oklahoma Bar Center, 1901 N. Lincoln Boulevard, Oklahoma City, Oklahoma.

The purpose of the OBA is to engage in those activities enumerated in the Rules Creating and Controlling the Oklahoma Bar Association (the Rules) and the OBA Bylaws (the Bylaws). The expenditure of funds by the OBA is limited both as set forth in the Rules and Bylaws and in *Keller v. State Bar of California*, 496 U.S. 1 (1990). If any member feels that any actual or proposed expenditure is not within such purposes of, or limitations on the OBA, then such member may object thereto and seek a refund of a pro rata portion of his or her dues expended, plus interest, by filing a written objection with the executive director. Each objection must be made in writing on an OBA Dues Claim

Form, addressed to the executive director of the OBA, P.O. Box 53036, Oklahoma City, OK 73152, and postmarked no later than 60 days after the approval of the annual budget by the Oklahoma Supreme Court or January 31st of each year, whichever shall first occur. The OBA dues claim form is available at bit.ly/1KxJXNQ.

Upon receipt of a member's written objection, the executive director shall promptly review such objection together with the allocation of dues monies spent on the challenged activity and, in consultation with the president, shall have the discretion to resolve the objection, including refunding a pro rata portion of the member's dues, plus interest or schedule a hearing before the Budget Review Panel. Refund of a pro rata share of the member's dues shall be for the convenience of the OBA, and shall not be construed as an admission that the challenged activity was or would not have been within the purposes of or limitations on the OBA.

The proposed budget begins on the next page.

OKLAHOMA BAR ASSOCIATION 2017 PROPOSED BUDGET

REVENUES	2017 PROPOSED BUDGET		2016 BUDGET	
ADMINISTRATIVE:				
Dues and Penalties	\$ 4,208,000		\$ 4,231,850	
Investment Income	32,000		12,000	
Annual Meeting	70,000		70,000	
Commissions and Royalties	31,000		31,000	
Mailing Lists and Labels	3,500		7,000	
Council on Judicial Complaints - Rent and Services	10,000		10,000	
Board of Bar Examiners - Rent and Services	15,000		15,000	
Legal Intern Fees	6,000		7,000	
Other	19,500	\$ 4,395,000	21,000	\$ 4,404,850
OKLAHOMA BAR JOURNAL AND COMMUNICATIONS:				
Oklahoma Bar Journal:				
Advertising Sales	170,000		170,000	
Subscription Sales	22,000		22,000	
Other Miscellaneous	100	192,100	400	192,400
LAW RELATED EDUCATION:				
Grants	0	0	66,000	66,000
CONTINUING LEGAL EDUCATION:				
Seminars and Materials	1,041,100	1,041,100	981,100	981,100
GENERAL COUNSEL:				
Disciplinary Reinstatements	14,000		12,000	
Certificates of Good Standing	22,500		0	
Grant Revenue	8,000		0	
Out of State Attorney Registration	336,500	381,000	326,500	338,500
MANDATORY CONTINUING LEGAL EDUCATION:				
Filing Penalties	95,000		90,000	
Provider fees	83,500	178,500	84,500	174,500
PRACTICE ASSISTANCE				
Consulting Fees and Material Sales	500		1,000	
Diversion Program	14,500	15,000	18,000	19,000
COMMITTEES AND SPECIAL PROJECTS:				
Mock Trial Program	52,220		52,220	
Lawyers Helping Lawyers	33,750		24,500	
Insurance Committee	20,000		12,000	
Women-in -Law Conference	30,000		30,000	
Solo-Small Firm Conference	50,000		50,000	
Diversity Committee Conference	10,000		10,000	
Oklahoma Lawyers for America's Heroes Program	4,000		1,000	
YLD Kick It Forward Program	2,750		2,500	
Young Lawyers Division	3,000	205,720	0	182,220
 TOTAL REVENUES		 \$ 6,408,420		 \$ 6,358,570

OKLAHOMA BAR ASSOCIATION 2017 PROPOSED BUDGET

EXPENDITURES	2017 PROPOSED BUDGET		2016 BUDGET	
ADMINISTRATIVE:				
Salaries and Benefits	\$	1,035,031	\$	1,010,981
Annual Meeting		110,000		110,000
Board of Governors and Officers		108,000		107,000
Conferences and Organizational Development		13,700		16,000
Legislative Monitoring		44,500		44,500
General and Administrative:				
Utilities		123,000		116,000
Insurance		52,000		54,000
Data Processing		210,800		179,800
Bank and Credit Card Processing Fees		68,000		65,000
Building and Equipment Maintenance		84,000		81,000
Postage		42,000		40,000
Copier		44,000		44,000
Supplies		25,200		26,200
Grounds Maintenance		9,000		8,500
Audit		22,000		19,000
Miscellaneous		20,500		27,000
Overhead Allocated to Departments		<u>(543,512)</u>	\$ 1,468,219	<u>(490,684)</u> \$ 1,458,297
COMMUNICATIONS				
Salaries and Benefits		294,636		297,417
Oklahoma Bar Journal:				
Weekly Issue Printing		210,000		220,000
Special Issue Printing		180,000		176,000
Other		4,000		4,000
Public Information Projects		5,000		5,000
Newsclip Service		2,000		1,700
Pamphlets		5,000		5,000
Photography		300		350
Supplies		500		1,000
Miscellaneous		10,700		11,450
Allocated Overhead		<u>100,822</u>	812,958	<u>86,262</u> 808,179
LAW RELATED EDUCATION:				
Salaries and Benefits		0		133,250
Other Grant Projects		0		32,000
Training, Development and Travel		100,950		39,400
Newsletter		0		8,600
Miscellaneous		0		9,700
Allocated Overhead		<u>57,473</u>	158,423	<u>51,832</u> 274,782
CONTINUING LEGAL EDUCATION:				
Salaries and Benefits		371,890		364,554
Meeting Rooms and Food Service		70,000		80,000
Seminar Materials		8,000		6,000
Brochures and Bulk Mail		40,500		55,000
Speakers		80,000		80,000
Audio/Visual		3,000		6,000
Online Provider Service Fees		193,112		184,612
Credit Card Processing Fees		30,000		48,000
Department Travel		5,000		6,000
Supplies		3,000		3,500
Miscellaneous		15,000		17,000
Allocated Overhead		<u>138,852</u>	958,354	<u>128,291</u> 978,957

OKLAHOMA BAR ASSOCIATION 2017 PROPOSED BUDGET

EXPENDITURES	2017 PROPOSED BUDGET		2016 BUDGET	
GENERAL COUNSEL:				
Salaries and Benefits	\$ 1,252,579		\$ 1,230,696	
Investigation and Prosecution	62,000		61,900	
PRC Travel and Meetings	6,000		6,000	
PRT Travel and Meetings	9,000		9,000	
Department Travel	9,250		9,250	
Library	9,000		9,000	
Supplies	8,600		8,000	
Miscellaneous	8,300		8,400	
Allocated Overhead	131,702	\$ 1,496,431	121,433	\$ 1,463,679
MANDATORY CONTINUING LEGAL EDUCATION:				
Salaries and Benefits	230,432		229,662	
Printing & Compliance Reporting	5,500		5,500	
Supplies	200		700	
Commission Travel	1,200		1,300	
Miscellaneous	6,100		5,100	
Allocated Overhead	57,332	300,764	51,433	293,695
PRACTICE ASSISTANCE				
Salaries and Benefits	373,059		346,590	
OBA-NET Expense	5,000		5,000	
Dues & Subscriptions	2,850		3,100	
Library	3,000		2,750	
Computer Software	1,800		1,750	
Supplies	1,350		1,250	
Diversion Programs	2,950		2,600	
Travel and Conferences	18,250		18,850	
Miscellaneous	6,100		6,100	
Allocated Overhead	57,332	471,691	51,433	439,423
COMMITTEES AND SPECIAL PROJECTS:				
Law Day	60,000		60,000	
Women-in -Law Conference	30,000		30,000	
Solo-Small Firm Conference	50,000		50,000	
Mock Trial Program	53,000		50,000	
FastCase Legal Research	91,000		91,500	
Leadership Institute	8,000		8,000	
General Committees	57,793		38,800	
Lawyers Helping Lawyers Program	59,500		52,000	
Oklahoma Lawyers for America's Heroes Program	22,000		20,000	
Public Education Initiative	2,000		35,000	
President's Service Program	5,000		10,000	
YLD Kick It Forward Program	2,750		2,500	
Young Lawyers Division	72,300	513,343	77,300	525,100
OTHER EXPENDITURES				
Client Security Fund Contribution	175,000		175,000	
Bar Center Renovations	0		90,000	
Computer Hardware and Software	39,467	214,467	288,692	553,692
TOTAL EXPENDITURES		\$ 6,394,650		\$ 6,795,804
TOTAL REVENUES OVER (UNDER) EXPENDITURES		\$ 13,770		\$ (437,234)

NEED AN HOUR OF ETHICS?

The Business and Corporate Law Section of the OBA is pleased to sponsor

Does a Corporate Lawyer Have a Duty to Try to Save a Corporate Client from Itself?

Presented by Lawrence Hellman, Professor of Law, Oklahoma City University School of Law

When: 3:30 pm, Thursday, November 3, 2016

Where: 19th Century Ballroom - Sheraton Hotel, Oklahoma City

Tuition: Free for Section Members; \$50 for non-members (pay at the door)

CLE Credit: This seminar has been approved by the Oklahoma Bar Association Mandatory Continuing Legal Education Commission for 1 hour of ethics credit.

Reservations: Seating is limited so reserve your place by emailing cloucks@dsda.com. Walk-ins welcome (room permitting).

Why you should attend. Considering the business decisions that may have led to British Petroleum's Deepwater Horizon catastrophe in 2010, Prof. Hellman will examine the duties of in-house and outside counsel for a corporate client from the perspective of the Oklahoma Rules of Professional Conduct and the Sarbanes-Oxley Act. Prof. Hellman's presentation will include scenes from the recently-released motion picture, "Deepwater Horizon," which attendees are encouraged to see prior to the seminar.

What you will learn. This presentation will give you practical guidance on the following questions:

- When is it necessary to go up the corporate ladder to seek review of a business decision?
- How to go up the ladder?
- When is it necessary (or permissible) to blow the whistle on the corporation?
- What are the limitations on the range of a lawyer's discretion when making such decisions?
- What are the implications of the duty of confidentiality in making such decisions?
- Can disclosure of confidential client information sometimes be mandatory?
- What is the role of subordinate attorneys in such situations?



Lawrence Hellman is a professor of law and dean emeritus at the Oklahoma City University School of Law, where he was dean from 1998 to 2011. His teaching and research focus on legal ethics. He has written extensively on legal ethics topics, both in scholarly journals and practitioner-oriented publications, and he has taught courses and lectured in this field on five continents. He was a member of the American Law Institute's Members Consultative Group on the Restatement of the Law Governing Lawyers. He was a member of the Oklahoma Bar Association's Rules of Professional Conduct Committee for over 20 years, and served as co-chair from 2000 through 2007. He is a recipient of the OBA's Award for Legal Ethics and the Presidents' Awards for Service from the Oklahoma Bar Association, the Oklahoma County Bar Association, and the Ruth Bader Ginsburg American Inn of Court.

Statement of Ownership Management and Circulation

(Required by 39 U.S.C. 3685)

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2. Mailed In-County Paid Subscriptions (average no. copies each issue during preceding 12 months): 0 (actual no. copies of single issue published nearest to filing date): 0

3. Paid Distribution Outside the Mails Including Sales Through Dealers and Carriers, Street Vendors, Counter

- Sales, and Other Paid Distribution Outside USPS (average no. copies each issue during preceding 12 months): 0 (actual no. copies of single issue published nearest to filing date): 0
4. Paid Distribution by Other Classes of Mail Through the USPS (average no. copies each issue during preceding 12 months): 0 (actual no. copies of single issue published nearest to filing date): 0
- C. Total Paid Distribution (average no. copies each issue during preceding 12 months): 12,188 (actual no. copies of single issue published nearest to filing date); 10,673
- D. Free or Nominal Rate Distribution (by mail and outside the mail)
1. Free or Nominal Rate Outside-County Copies (average no. copies each issue during preceding 12 months): 128 (actual no. copies of single issue published nearest to filing date): 128
 2. Free or Nominal Rate In-County Copies (average no. copies each issue during preceding 12 months): 0 (actual no. copies of single issue published nearest to filing date): 0
 3. Free or Nominal Rate Copies Mailed at Other Classes Through the USPS (average no. copies each issue during preceding 12 months): 0 (actual no. copies of single issue published nearest to filing date): 0
 4. Free or Nominal Rate Distribution Outside the Mail (average no. copies each issue during preceding 12 months): 0 (actual no. copies of single issue published nearest to filing date): 0
- E. Total Free or Nominal Rate Distribution (average no. copies each issue during preceding 12 months): 128 (actual no. copies of single issue published nearest to filing date): 128
- F. Total Distribution (average no. copies each issue during preceding 12 months): 12,316 (actual no. copies of single issue published nearest to filing date): 10,801
- G. Copies Not Distributed (average no. copies each issue during preceding 12 months): 501 (actual no. copies of single issue published nearest to filing date): 522
- H. Total (average no. copies each issue during preceding 12 months): 12,817 (actual no. copies of single issue published nearest to filing date): 11,323
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- A. Paid Electronic Copies (average no. copies each issue during preceding 12 months): 4,957 (actual no. copies of single issue published nearest to filing date): 5,071
 - B. Total Paid Print Copies + Paid Electronic Copies (average no. copies each issue during preceding 12 months): 17,145 (actual no. copies of single issue published nearest to filing date): 15,744
 - C. Total Print Distribution + Paid Electronic Copies (average no. copies each issue during preceding 12 months): 17,273 (actual no. copies of single issue published nearest to filing date): 15,871
 - D. Percent Paid (average no. copies each issue during preceding 12 months): 99.25 (actual no. copies of single issue published nearest to filing date): 99.19
- I certify that the statements made by me above are correct and complete.

John Morris Williams
Editor-in-Chief

It's Annual Meeting Time

By John Morris Williams

Around this time every year I put out a plea for *all OBA members* to come to the Annual Meeting. Yes, it's great CLE; yes, it's good programming; yes, it's a fun time, but more importantly it is a time to see and be seen. At my age one makes certain to show up at certain events just to remind everyone I am still alive. In my younger years I would show up to make sure people knew I had been born. It's always something. Your reasons to come to the Annual Meeting, regardless of your season of life, are twofold.

First, you should be at the Annual Meeting to enhance your professional life. This can be achieved by attending great CLE programming, attending your section or committee meeting and other meetings of your peers. Opportunities to socialize with other lawyers give you the chance to discuss cases and issues in an informal setting. It has been said some of the best learning has occurred during meeting breaks. Additionally, every new acquaintance you make is an opportunity to advance your career, increase your referral network and have a friend everywhere in the state.

Second, you should be at the Annual Meeting to pay your respects, congratulate your colleagues and to protect your self-interest. Yes, I said it. Self-

interest. The Annual Meeting is a great place to see your colleagues receive awards and to recognize them for outstanding service. It is the most appropriate place to pay respect to your peers who serve in leadership positions and to thank them for their voluntary contributions to the OBA. But most importantly, the Annual Meeting is the place where policy of the association is made, where leaders are elected and where often rules and laws are proposed that affect your practice and your licensure. In short, these things can positively or negatively affect you personally.

Here are a few other reasons we need to meet as an association. As has been the trend nationally and with the OBA, bar association annual meetings are for the most part moving toward extinction. In a time when our profession faces the most significant challenges it has faced in a century, it seems very odd to me that lawyers are refusing to come together and work on the serious issues before us. If you have not noticed, the internet and online legal service providers are chipping away what has traditionally been considered locally provided legal services.

A couple of years ago I surveyed our young lawyers and the overwhelming majority of them said out-of-state online

providers had negatively affected their practices. Nationally, there is a concentrated effort to politicize our courts and in turn to de-unify state bar associations to totally dispense with the only organized groups fighting for merit selection of judges. We have an aging association, young lawyers with heavy debt obligations and few job prospects and bar passage rates that should be a signal that something is different.

It has been said this year that it is time for lawyers to come together. I agree. We need to come together. We need to come together to exchange ideas, increase our networks and to ensure our profession has a venue and the proper procedures to meet the challenges before us. In the coming years the demographics, finances and the whole practice of law is going to change dramatically. You have the choice to stay home and be a victim of these changes or to be proactive in your professional life and chart the course of your profession. It all begins with showing up and participating.



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

The Benefits and Risks Associated with Relevant Technology

By Jim Calloway

The technology and best practices used by lawyers to serve their clients and manage their practices has been a frequently discussed topic over recent years. For Oklahoma lawyers, there is a new reason to increase the attention paid to technology now. By order dated Sept. 19, 2016, the Oklahoma Supreme Court amended the Oklahoma Rules of Professional Conduct (ORPC) to incorporate several changes, many relating to technology. These changes were based on modifications to the ABA's Model Rules of Pro-

fessional Conduct that were passed in 2012.¹

One of those changes incorporated what some commentators have referred to as the ethical duty of technology competence. According to Robert Ambrogi, who tracks adoption of these rule change at his *Lawsites* blog, Oklahoma is the 24th state to adopt this rule change.² This change is contained in comment [6] to ORPC 1.1. The language added by amendment is underlined. The comment now states:

Maintaining Competence.

[6] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject, including the benefits and risks associated with relevant technology.

This rule change would be considered obvious to some, considering how critical technology is to the operation of all sorts of businesses today. But it also could be concerning for other members of the bar who are not confident with their understanding of technology advances.

WE DON'T ALL LOVE TECHNOLOGY

Today we all have a love-hate relationship with our personal technology. We love it when it conveniently works as we believe it should and hate it when it doesn't operate according to our expectations and we cannot figure out why. But while the pervasive use of technology has changed our lives and changed society, our profession has sometimes tended

Essential Business Skills for Lawyers *CLE at the OBA Annual Meeting*

Running a successful law practice is more challenging today than it used to be. The skills of running a business today are different. The tools are also different. This innovative seminar will include new takes on traditional tools like a law firm business plan while outlining the new tools and operational methods you need to run a successful law firm. Topics cover the financial documents that successful businesses generate and the reasons why many experts believe it is critical to use digital client files to manage your caseload.

This course has been approved by the OBA MCLE Commission for 6 hours of mandatory CLE credit with one hour of ethics available. Register online at www.okbar.org/members/cle for a \$10 discount.

to have more hate than love for the technology we use.

In 1997 when I was first hired to create the OBA Management Assistance Program, there was a debate about the proper role of technology in the law office with many lawyers forcefully stating their position that computers were a tool for legal secretaries, but not for lawyers to personally use. Once when I wrote an early column on technology tips for the *Oklahoma Bar Journal*, I received an angry letter from a reader indicating that computers should only be used by lawyers for legal research and word processing, with everything else being a waste of time.

The perceived antipathy of lawyers toward technology advances has been criticized by some. But this tendency is actually quite understandable. Our training is to rely on precedent, which often boils down to using court opinions issued in the past to predict future decisions by judges. Technology advances during the last several decades have been both unprecedented and unpredictable.

Traditionally few of those entering the legal profession had a background in subjects like engineering and mathematics. Our background has been more of arts and letters than of computer science. Texas Supreme Court Justice Don R. Willett, who has a notable and active Twitter account (@JusticeWillett), was asked what made him decide to go to law school and tweeted in response, "I was told there would be no math."



“...I received an angry letter from a reader indicating that computers should only be used by lawyers for legal research and word processing...”

Today we are long past the point of debating whether lawyers should use information technology. One of the hallmarks of a small law firm becoming a medium-size law firm is when they decide to hire full-time dedicated IT staff.

It is also easy to misunderstand this requirement. There is no need for a lawyer to become an IT professional. Actually for many lawyers it would be a dangerous situation to become overly involved in many do-it-yourself IT projects. The key is to know what you don't know, which is to say you need to understand when help from an IT professional may be required.

For example, litigators today need to understand how electronic discovery works and the application of the federal rules, litigation hold principles and the differences in evidentiary value between discovery materials produced in image-only format versus native format.

These are areas of traditional legal work. When there is a suspicion that information has been tampered with, the lawyer also should appreciate that a digital forensics review could uncover the wrongdoing.

This does not mean that the lawyer should personally know how to do a digital forensics analysis. Often the analysis would be assigned to an outside provider.

It should also be noted that the Florida Supreme Court adopted changes to its ethics rules the week after the Oklahoma Supreme Court did, making Florida the 25th state to adopt this requirement, albeit with slightly different language. The Florida Supreme Court also added the following language that other states' rules do not have:

Competent representation may also involve the association or retention of a non-lawyer advisor of established technological competence in the field in question. Competent representation also involves safeguarding confidential information relating to the representation, including, but not limited to, electronic transmissions and communications.³

The Florida Supreme Court also required that Florida lawyers must now complete a minimum of three hours of CLE every three years "in approved technology programs." This makes Florida the first state to require technology-based continuing legal education.⁴

There are other Oklahoma ethics rule changes as well. Most are related to changes in the way we work with technology today.

ORPC 1.0 Terminology - In the definition of writing in section (n), “e-mail” has been replaced with “electronic communications.” In comment [9] discussing screening measures the word “materials” was replaced with “information, including information in electronic form.”

ORPC 1.4 Communication - Comment [4] was amended by replacing “Client telephone calls should be promptly returned or acknowledged.” with “A lawyer should promptly respond to or acknowledge client communications.”

ORPC 1.6 Confidentiality of Information - A new subsection (c) has been added:

Rule 1.6 (c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.

Comments [16] and [17] to ORPC were amended as well as shown below:

Acting Competently Reasonably to Preserve Confidentiality

[16] Paragraph (c) requires a lawyer must to act competently reasonably to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer’s supervision. See Rules 1.1, 5.1, and 5.3. The unauthor-

ized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure. Factors to be considered in determining the reasonableness of the lawyer’s efforts include, but are not limited to, the sensitivity of the information, the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer’s ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use). A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to forgo security measures that would otherwise be required by this Rule. Whether a lawyer may be required to take additional steps to safeguard a client’s information in order to comply with other law, such as state and federal laws that govern data privacy or that impose notification requirements upon the loss of, or unauthorized access to, electronic information, is beyond the scope of these Rules. For a lawyer’s duties when sharing information with nonlawyers outside the lawyer’s own firm, see Rule 5.3, Comments [3] -[4].

[17] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the

information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer’s expectation of confidentiality include the sensitivity of the information and the extent to which privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule. Whether a lawyer may be required to take additional steps in order to comply with other law, such as state and federal laws that govern data privacy, is beyond the scope of these Rules.

ORPC 4.4 Respect for Rights of Third Persons - This was amended to make it clear that a lawyer who receives either a document “or electronically stored information” that the lawyer knows or should know was sent inadvertently shall promptly notify the sender.

There were several additions to comment [2] relating to this situation. Generally the comment states that any additional steps that may be required are outside the scope of these rules and that metadata only creates a notification obligation under this rule if the lawyer knows or reasonably should know that

the metadata was inadvertently sent to the receiving lawyer.

Our esteemed Rules of Professional Conduct have more technology-based references today. Such references should be expected given that almost every aspect of business operations today has more to do with technology than in the past, as do many aspects of our personal and professional lives.

Cyber security is an important issue, both for the protection of clients' information you may possess and for your personal information. An annual (at least) discussion with staff about not clicking on unexpected attachments or links in emails from unknown senders is not just a law firm best practice, it is a best practice for every type of business that uses email.

BE A JETSON

A general counsel addressing a group of lawyers stated that she still saw a lot of "Flintstones" versus "Jetsons" when addressing technology in firms she has dealt with. Be a Jetson.

But how? Lawyers are trained to research until an answer has

been found or until the research is no longer producing useful results. Technology awareness doesn't work like that today. What is true today may not be true tomorrow when a new invention is unveiled or a software bug is discovered. Technology fuels societal changes, with both positive and negative results. A recent speaker at a legal technology conference opined that today all businesses are first and foremost media businesses and must communicate their message before they have the opportunity to attempt to sell goods or services.

The OBA has a program scheduled for Nov. 2 called "Essential Business Skills for Lawyers" as part of the OBA Annual Meeting. (No Annual Meeting registration required to enroll.) This program contains a lot of information about using technology tools. See the box on this article's first page for more information.

Additionally, read the OBA *E-News*. It includes technology and practice management tips in every issue. You can also visit my blog at www.lawpractice-tipsblog.com to read more about technology tips and tools.

Your law practice has become, at least in significant part, a technology business. This happened without your approval or consent. You may take some consolation from the fact that this is what has happened to most businesses today. We all have to understand the risks and benefits of relevant technology today and that was true even before it was officially enshrined into our Oklahoma Rules of Professional Conduct.

1. *In Re Oklahoma Rules of Professional Conduct*, 2016 OK 91; www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=479331.

2. www.lawsitesblog.com/2016/09/another-state-adopts-duty-tech-competence-time-twist.html.

3. www.lawsitesblog.com/2016/09/florida-25th-state-adopt-duty-technology-competence.html.

4. www.lawsitesblog.com/2016/10/florida-becomes-first-state-mandate-technology.html.

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



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Is Threatening Criminal Prosecution Ethical?

By Joe Balkenbush

The answer is no, so long as a number of logical criteria are met, as set out below. The subject of this article is prompted by numerous phone calls received inquiring whether ethics rules still specifically prohibit threatening criminal prosecution to gain advantage in a civil matter.

Many attorneys are of the mistaken belief that the Oklahoma Rules of Professional Conduct (ORPC) do specifically prohibit threatening criminal prosecution. A brief history of the ABA Code of Professional Responsibility (the DRs) and its replacement by ABA Model Rules of Professional Conduct (MRPC) will be helpful.

The MRPC were approved by the ABA in 1983. With several amendments, Oklahoma adopted the MRPC on March 10, 1988, to be effective July 1, 1988. Prior to that time, Oklahoma had relied on the DRs.

Years later, the ABA established the Ethics 2000 Commission which was charged with evaluating the rules once again. Instead of wholesale replacement, the commission proposed a series of amendments that were adopted by the ABA in February 2002. The Oklahoma Supreme Court, again with several state-

specific amendments, adopted the ABA's Model Rules, as those rules were then amended, effective Jan. 1, 2008.¹

The DRs contained the following specific rule:

DR 7-105(a) *prohibited* threats of criminal prosecution in order to gain an advantage in a civil matter, stating:

(A) A lawyer shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter.

The MRPC did not carry forward the DR 7-105 prohibition. Because of the removal of the DRs' explicit prohibition, the ABA Standing Committee on Ethics and Professional Responsibility issued Formal Opinion 92-363 *Use of Threats of Prosecution in Connection with a Civil Matter* (1992) in order to address how such threats should be considered under the MRPC. The opinion began its analysis by noting that the proposed MRPC provided adequate safeguards against improper threats, citing a note to Rule 8.4 *Misconduct* as it appeared in the *Proposed Final Draft Model Rules of Professional Conduct*, May 30, 1981, which states as follows:

...The Code of Professional Responsibility, in DR 7-1-5, prohibits threats of criminal prosecution "solely to gain advantage in a civil matter." That provision is not continued in the Model Rules. Where such a threat constitutes an attempt to obtain property that is not honestly claimed as restitution for harm resulting from conduct relating to the accusation, it is extortionate and clearly within paragraph (a)...Other cases in which discipline has been imposed for conduct in connection with enforcement of a civil claim generally involve fraudulent practices, abuse of public office, abuse of process, or abusive conduct toward third persons.

Based on this commentary, the committee concluded that DR 7-105(a) was redundant and/or overbroad and that MRPC 8.4 *Misconduct*, 4.4 *Respect for Rights of Third Persons*, 4.1 *Truthfulness in Statements to Others* and 3.1 *Meritorious Claims and Contentions* provided adequate limits on the legitimate uses of threats of criminal prosecution.

The committee also stated the threatened criminal action must be related to the underlying civil claim since if it were not, the threat could be

seen as extortionate or could constitute the crime of compounding. The committee stated:

...Model Rule 8.4(b) provides that it is professional misconduct for a lawyer to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." If a lawyer's conduct is extortionate or compounding a crime under the criminal law of a given jurisdiction, that conduct also violates Rule 8.4(b)...It is beyond the scope of the Committee's jurisdiction to define extortionate conduct, but we note that the Model Penal Code does not criminalize threats of prosecution if they are based on a claim of right, or if there is an honest belief that the charges are well founded.

Based on its analysis of the above cited rules, the committee came to the following conclusions:

...[T]he Model Rules do not prohibit a lawyer from using the possibility of presenting criminal charges against the opposing party in a civil matter to gain relief for a client, provided that the criminal matter is related to the civil claim, the lawyer has a well founded belief that both the civil claim and the possible criminal charges are warranted by the law and the facts, and the lawyer does not attempt to exert or suggest improper influence over the criminal process. It follows also that the Model

Rules do not prohibit a lawyer from agreeing, or having the lawyer's client agree, in return for satisfaction of the client's civil claim for relief, to refrain from pursuing criminal charges against the opposing party as part of a settlement agreement, so long as such agreement is not itself in violation of law.

On a related topic, in 1994 the ABA Ethics Committee issued Formal Opinion 94-383 *Use of Threatened Disciplinary Complaint Against Opposing Counsel*, the headnote of which states:

A lawyer's use of the threat of filing a disciplinary complaint or report against opposing counsel, to obtain an advantage in a civil case, is constrained by the Model Rules, despite the absence of an express prohibition on the subject. Such a threat may not be used as a bargaining point when the subject misconduct raises a substantial question as to opposing counsel's honesty, trustworthiness or fitness as a lawyer, because in these circumstances, the lawyer is ethically required to report such misconduct. Such a threat would also be improper if the professional misconduct is unrelated to the civil claim, if the disciplinary charges are not well founded in fact and in law, or if the threat has no substantial purpose or effect other than embarrassing, delaying or burdening the opposing counsel or his client, or prejudicing the administration of justice.

The bottom line is that the threat of instituting criminal proceedings against a litigant or filing a bar complaint against opposing counsel is now "constrained" rather than "specifically prohibited." The ORPC do not prohibit a lawyer from using the possibility of presenting criminal charges against the opposing party in a civil matter to gain relief for a client, provided that:

- 1) the criminal matter is related to a civil claim, the lawyer has a well-founded belief that both the civil claim and the possible criminal charges are warranted by the law and the facts; and
- 2) the lawyer does not attempt to exert or suggest improper influence over the criminal process.

It follows also that the ORPC do not prohibit a lawyer from agreeing, or having the lawyer's client agree, that in return for satisfaction of the client's civil claim for relief, to refrain from pursuing criminal charges against the opposing party as part of a settlement agreement, so long as such agreement is not itself in violation of law.

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

1. Travis Pickens, "A Short History of Legal Ethics," *Oklahoma Bar Journal* (Aug. 7, 2010 - Vol. 81 No. 20).

2. Peter H. Geraghty, "Making Threats," *ABA E-News* (ETHICSearch, 2008).

Meeting Summary

The Oklahoma Bar Association Board of Governors met at the Oklahoma Bar Center in Oklahoma City on Friday, Aug. 26.

REPORT OF THE PRESIDENT

President Isaacs reported the plaques have been prepared for the Juror Appreciation Project, and he will contact the presiding judges to arrange for presentations soon. He thanked Governor Tucker for his help on this project. In San Francisco he attended the ABA annual meeting and House of Delegates and also the National Conference of Bar Presidents meeting and its joint workshops, Southern Conference of Bar Presidents meeting and Oklahoma delegation dinner.

REPORT OF THE PRESIDENT-ELECT

President-Elect Thomas reported she worked on finalizing the list of names and resumes of proposed candidates for appointment by Governor Fallin to the Commission on Children and Youth and spoke at the Tulsa County Bar Association awards luncheon. She attended the OBA Audit Committee meeting, retirement reception for Washington County Special Judge John Gerkin, Washington County Bar Association August meeting, joint OBF/OBA social and dinner and the evaluation team meeting. In conjunction with attending the ABA annual meeting and House of Delegates in San Francisco, she also

attended the National Conference of Bar Presidents meeting and its joint workshops, Southern Conference of Bar Presidents meeting and Oklahoma delegation dinner. She met by telephone with Executive Director Williams on several occasions regarding OBA business and met by telephone with Administration Director Combs regarding preparation for the upcoming Budget Committee meeting.

REPORT OF THE PAST PRESIDENT

Past President Poarch, unable to attend the meeting, reported via email he attended in San Francisco the National Conference of Bar Presidents meeting and its joint workshops, Southern Conference of Bar Presidents meeting, Oklahoma delegation dinner and the ABA annual meeting and House of Delegates. He also attended the joint OBF/OBA social and dinner.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the YLD board meeting, Audit Committee meeting, National Association of Bar Executives and National Conference of Bar Presidents meetings, staff meeting on budget, management staff training on new federal wage and hour regulations, meeting with a vendor on a proposed new phone service, meeting with Administrative Office of the Courts staff member Phil Johnson regarding the

Peaceful Resolution for Oklahoma Students (PROS) program and the OBA's involvement, Tulsa County Bar Association annual luncheon and the OBA/OBF joint dinner.

BOARD MEMBER REPORTS

Governor Coyle reported he attended the Oklahoma County Bar Association meeting and the Oklahoma County Criminal Defense Lawyers meeting. **Governor Gotwals** reported he recontacted two county bar representatives on behalf of the Awards Committee and was a presenter at the OBA Family Law Section seminar in Tulsa and Oklahoma City. He attended the OBA Audit Committee meeting by telephone, ABA and National Conference of Bar Foundations annual meeting in San Francisco, Tulsa County Bar Association/Foundation annual awards luncheon and the joint reception dinner with the Oklahoma Bar Foundation. **Governor Hicks** reported he attended the OBA Access to Justice Committee meeting and Tulsa County Bar Foundation Special Events Committee meeting. He said President-Elect Thomas' recent presentation to the TCBA was very well received. **Governor Hutter** reported she attended the Cleveland County Bar Association meeting, Cleveland County Bar Association executive meeting and the OBA/OBF joint dinner. **Governor Kee** reported he contacted the nine county bar presidents in his district and asked to be invited to one of their meetings.

Governor Kinslow reported he participated in meetings of the Comanche County Bar Association. **Governor Marshall** reported he chaired the OBA Audit Committee meeting to review audit results and attended the OBF/OBA joint dinner. **Governor Porter** reported she attended the Board of Tests for Alcohol and Drug Influence meeting, funeral for Judge Donald Deason, Law-related Education Committee meeting and the OBA/OBF joint dinner. **Governor Sain** reported he attended the McCurtain County Bar Association luncheon and McCurtain Memorial Hospital Board Foundation meeting. **Governor Tucker** reported he attended the Muskogee County Bar Association monthly meeting, OBA Audit Committee meeting, OBF/OBA joint dinner and Anti-Terrorism Advisory Council meeting and training hosted by the U.S. Attorney's Office – Eastern District. He also worked with the Law Day Juror Appreciation Subcommittee to gather information from court clerks for a courthouse project. **Governor Weedn** reported he attended the Ottawa County Bar Association meeting, Audit Committee meeting by telephone and joint OBF/OBA dinner.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Will reported he chaired the YLD July meeting at which board members assembled bar exam survival kits and heard Carolyn Thompson, with Oklahoma City Public Schools, speak on children at the schools in need of funding for trial advocacy classes and competitions. In San Francisco he attended the ABA YLD House of Delegates, Oklahoma ABA delegates dinner and ABA House of Delegates. He also

attended the OBA/OBF joint dinner and evaluation team meeting. Governor Will said the division failed to budget for the fall ABA YLD conference but has a surplus in travel funds, so they are reallocating the funds to send four people to the meeting in Detroit.

REPORT OF THE SUPREME COURT LIAISON

Justice Kauger said the Sovereignty Symposium photos in the August *Oklahoma Bar Journal* were great. She said it was an excellent conference. She reported the free movie with the justices CLE seminar continues to be well attended, and the next movie will be Woody Allen's comedy *Bananas*.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported the OBA is not involved in any litigation. A written report of Professional Responsibility Commission actions and OBA disciplinary matters for July was submitted to the board for its review.

AUDIT COMMITTEE REPORT AND PRESENTATION OF 2016 AUDIT REPORT

As Audit Committee chairperson, Governor Marshall reported the committee reviewed the report and recommends its approval. Administration Director Combs introduced Leah Logan with accounting firm Smith, Carney & Co. She reported the firm reviewed the OBA's financial statements for 2015 and is issuing a clean opinion. She said tests were conducted during the audit for control issues. No problems were discovered, and no changes to internal procedures are recommended. The board approved the report.

BOARD LIAISON REPORTS

Governor Hicks reported the Access to Justice Committee is moving forward with forms. Governor Porter reported the Women in Law Committee is finalizing the details of its Oct. 21 conference. The theme will be Sweet Rewards of Civil Service. Both Mona Salyer Lambird Spotlight Awards and Diversity Awards will be presented at the Women in Law luncheon. Mona's daughters have been invited to attend. Governor Gotwals reported the Professionalism Committee is pursuing an Oklahoma Bar Foundation grant and discussing offering a half-day seminar in December.

LAW-RELATED EDUCATION

Executive Director Williams reported he received an email from LRE Committee Chairperson Brady Henderson, who said the committee has met to discuss current programs. Executive Director Williams said he visited with Brenda Wheelock, with the Oklahoma Foundation for Excellence, for a Constitution Day activity the OBA will help promote. In visiting with Phil Johnson who does the training for the PROS program, Executive Director Williams learned the OBA's role has been small, and he would like to assist in getting the program into more schools. The OBA might be able to assist with training. For the Close Up Program, the OBA has already made provisions to host and provide lunch for the annual event. As LRE Committee board liaison, Governor Porter added the committee will continue its discussion about programs at its September meeting and wants to continue all the programs. The Young Adult Guide was last updated by the

YLD in 2013, and the mailing of requests for hard copies continues. Executive Director Williams sent more details about programs to board members. Discussion followed. He recommended giving the committee more time to respond. Former LRE Committee member David Hopper said he was concerned that not filling LRE staff positions will result in LRE becoming a second-tier priority. The board voted to continue discussion at the next meeting.

OUT-OF-STATE TRAVEL

Management Assistance Program Director Jim Calloway has been asked to participate in a disaster recovery program in Louisiana to assist lawyers affected by the August flood. Cost for his travel is estimated

at \$1,000 - \$1,200. The board approved the expense.

OBF APPOINTMENTS

The board voted to approve President Isaacs' recommendations to appoint Valerie Couch, Oklahoma City, and to reappoint G. Patrick O'Hara Jr., Edmond, Deanna Hartley-Kelso, Ada, and Amber Peckio Garrett, Tulsa, for three-year terms to the Oklahoma Bar Foundation. The terms will end Dec. 31, 2019.

APPELLATE PRACTICE SECTION DUES INCREASE

The board approved the Appellate Practice Section's request to increase annual section dues from \$15 to \$25 as approved at the section's July 18 meeting. It was noted sec-

tion Chairperson Mark Koss is doing a great job.

EXECUTIVE DIRECTOR EVALUATION

The board decided to meet in executive session to discuss the executive director's evaluation at the next meeting.

NEXT MEETING

The Board of Governors met on Sept. 23 at the Tulsa County Bar Center in Tulsa. A summary of those actions will be published after the minutes are approved. The next board meeting will be at 2 p.m. Wednesday, Nov. 2, at the Sheraton Hotel in Oklahoma City as part of the OBA Annual Meeting.

OKLAHOMA BAR JOURNAL EDITORIAL CALENDAR

2016 Issues

- November
Trial by Jury
Editor: Melissa DeLacerda
melissde@aol.com
Deadline: Aug. 1, 2016
- December
Ethics & Professional Responsibility
Editor: Renée DeMoss
rdemoss@gablelaw.com
Deadline: Aug. 1, 2016

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

2017 Issues

- January
Meet Your Bar Association
Editor: Carol Manning
- February
Energy Law
Editor: Luke Adams
ladams@tisdalohara.com
Deadline: Oct. 1, 2016
- March
Work/Life Balance
Editor: Melissa DeLacerda
melissde@aol.com
Deadline: Oct. 1, 2016
- April
Law Day
Editor: Carol Manning
- May
Constitutional Law
Editor: Erin L. Means
erin.l.means@gmail.com
Deadline: Jan. 1, 2017

- August
Technology & Office Management
Editor: Amanda Grant
amanda@spiro-law.com
Deadline: May 1, 2017
- September
Bar Convention
Editor: Carol Manning
- October
Insurance Law
Editor: Renée DeMoss
rdemoss@gablelaw.com
Deadline: May 1, 2017
- November
Administrative Law
Editor: Mark Ramsey
mramsey@soonerlaw.com
Deadline: Aug. 1, 2017
- December
Ethics & Professional Responsibility
Editor: Leslie Taylor
leslietaylorjd@gmail.com
Deadline: Aug. 1, 2017

Oklahoma Bar Foundation Welcomes New Executive Director

By Candice Jones

The Oklahoma Bar Foundation is excited to announce Renée DeMoss as its new executive director. Renée has been acting interim director of the Oklahoma Bar Foundation since November 2015, and the OBF will now be her permanent home. The Board of Trustees unanimously voted to make her the full-time OBF executive director starting officially on Oct. 1.

"We are thrilled to have someone with Renée's stature stepping up to the plate to lead the foundation," said OBF Board President Millie Otey. "The board has been very purposeful in making positive changes to the foundation, and we believe Renée is the right person to have at the helm as we begin an exciting new chapter at the OBF."

Renée comes to the foundation from the GableGotwals law firm in Tulsa, where she began her law practice in 1984 after graduating *summa cum laude* from Oklahoma City University with a B.A. in history and political science, and a J.D. with honors as a member of the Order of the Coif and the Order of the Barristers from the OU College of Law.

"While serving as president of the OBF in 2008 and president of the OBA in 2014, I became extremely familiar with the

wonderful work bar organizations do on behalf of the attorneys and citizens of Oklahoma, and the potential the OBF has to do so much more," Renée said. I am so committed to this bar foundation, and becoming executive director seems like such a natural fit for me. I am very excited about this new journey!"

Since Renée's admission to the Oklahoma bar, she has practiced primarily in commercial litigation and insurance. She has been named by Best Lawyers in America in the areas of commercial litigation and ERISA litigation, and as an Oklahoma Super Lawyer in litigation. Other honors include the OBA Neil E. Bogan Professionalism Award, which honors an OBA member practicing 10 years or more for the highest standards of conduct and legal professionalism, OBA Mona Salyer Lambird Spotlight Award, recognizing women who have distinguished themselves in the legal profession, OBA Alma Wilson Award, which honors an OBA member who has made a significant contribution in improving the lives of Oklahoma children, OBA Golden Quill Award, given annually for the best written article published in the *Oklahoma Bar Journal* and the Tulsa County Bar Association Golden Rule Award, presented quarterly to a TCBA member in recog-



Renée DeMoss

nition of the highest standards of fairness, integrity and ethics.

Renée is also a past president of the Tulsa County Bar Association and Tulsa County Bar Foundation; she has served on the Board of Directors of the National Conference of Bar Foundations, Oklahoma Attorneys Mutual Insurance Co. and a variety of community organizations, including United Way, Big Brothers & Big Sisters of Green Country, Leadership Tulsa and the Nature Conservancy.

Welcome Renée as she begins her new role as executive director of the Oklahoma Bar Foundation. You may reach her at reneed@okbar.org.

ABOUT THE AUTHOR



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



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Election for 2017 YLD Leadership: Vote by Thursday, Oct. 27

By Bryon J. Will

It's October and it's time to begin looking forward to 2017. A part of that is planning for the leadership of the YLD. As a YLD member (practicing 10 years or less) you are eligible to vote in this election. It is an important role as a YLD member to participate in the election and I ask that you take some time in this consideration. This month's article is dedicated to the election of the YLD Board of Directors and officers for next year. Offices up for election are as follows:

- District 1: One seat; Craig, Grant, Kay, Nowata, Osage, Ottawa, Pawnee, Rogers and Washington counties
- District 3: One seat; Oklahoma County
- District 5: One seat; Carter, Cleveland, Garvin, Grady, Jefferson, Love, McClain, Murray and Stephens counties
- District 6: Two seats; Tulsa County
- District 7: One seat; Adair, Cherokee, Creek, Delaware, Mayes, Muskogee, Okmulgee and Wagoner counties
- District 9: One seat; Caddo, Canadian, Comanche, Cotton, Greer, Harmon, Jackson, Kiowa and Tillman counties

- At-Large: Two seats; all counties
- At-Large Rural: One seat; all counties except Oklahoma and Tulsa counties

Following this article is a list of candidates running for each of the offices along with their narratives. Those offices which are contested have been set for voting and ballots have been issued. Those offices that are not contested are deemed elected by acclamation.

On Oct. 4 you should have received an email that contained a link to the ballot. The email used was the one the OBA has on file for you. If you did not receive this email please notify me so we can send you a ballot. *All ballots must be cast no later than 5 p.m. Thursday, Oct. 27.*

Election results will be announced at the YLD November meeting Thursday, Nov. 3, at 4:30 p.m. held in conjunction with the OBA Annual Meeting in Oklahoma City. Immediately following the meeting the YLD will host our Friends and Fellows reception and networking event. I want to personally invite you to these events. They are a great opportunity to meet with the YLD Board of Directors and officers and with other YLD

attorneys from around the state.

Till next month.

ABOUT THE AUTHOR



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



2017 Leadership

2017 Chair
Lane Neal

Lane Neal is an associate with Durbin, Larimore & Bialick in Oklahoma City. His practice is focused on civil litigation and all aspects of insurance law. He is a member of the Oklahoma County Bar Association.

tion and American Bar Association and is an Oklahoma Bar Foundation Fellow. He is admitted to practice in all state and federal courts in Oklahoma. He is a barrister in the Luther L. Bohanon American Inn of Court and a 2010 graduate of the OBA Leadership Academy.

He served as OBA YLD Board of Directors District 3 representative from 2010 to 2015. In 2015, he served as treasurer of the OBA YLD. He is currently chair-elect of the OBA YLD. He has also served on the OBA Bench and Bar Committee, Budget Committee and Awards Committee.

He received his J.D. from the OU College of Law in 2008. While in law school, Mr. Neal was active in OU's advocacy competition teams. He also served as a note editor for the *American Indian Law Review*. His note regarding regulation of environmental standards by Oklahoma tribes was selected for publication in 2007. He is a member of Crown Heights United Methodist Church where he serves as a trustee.

His wife, Laura Sams Neal, is also an attorney and member of the OBA. They have one son, William, whom they welcomed to the world this past June.

Immediate Past Chair
Bryon J. Will

Bryon Will is a solo practitioner at The Law Office of Bryon J. Will PLLC in Oklahoma City and Perry. Mr. Will is a third-generation Oklahoman, born and raised in Morrison. He graduated from OSU with a bachelor's degree in animal science and began his career as a sales representative for an animal health supply company and a broadband internet vendor. He later worked for the



Bank of Oklahoma. He earned his MBA at UCO and his J.D. at the OCU School of Law. During law school, He earned his Oklahoma Legal Intern's License and worked for the Oklahoma County District Attorney's Office, then later took an internship with Haupt, Brooks, Vandruff, Cloar. He currently practices in real estate, estate planning, probate, business transactions and bankruptcy.

He is admitted to practice before the Oklahoma Supreme Court and the U.S. District Court for the Western District of Oklahoma. He is a member of the Oklahoma County Bar Association, Noble County Bar Association (president), American Bar Association and is an Oklahoma Bar Foundation Fellow. Mr. Will was formerly an associate member of Ruth Bader Ginsburg American Inn of Court and the William J. Holloway American Inn of Court. Currently he is serving on the OBA YLD Board of Directors as chair. He was a graduate of the OBA Leadership Academy class of 2011-2012.



Chair-Elect
Nathan D. Richter

Nathan D. Richter was born in Oklahoma City. Mr. Richter graduated from Mustang High School in 1996, received a B.S. from OU in 2000 and J.D. from the OCU School of Law in 2007. Before beginning his legal career, he served in the Oklahoma Army National Guard for 10 years. He was deployed in support of Operation Enduring Freedom to Afghanistan in 2003 where he received the Joint Forces Commendation Medal and numerous other awards.

He is a trial lawyer with the Denton Law Firm located in Mustang. He has an active trial practice in the areas of personal injury, product liability, trucking and auto collisions, criminal defense and domestic relations. He is very active in the profession as a former Canadian County Bar Association president, a volunteer with Trinity Legal Clinic providing pro bono legal services to Oklahoma's indigent population, a volunteer with the OBA Lawyers for Heroes program, a member of the Robert J. Turner American Inn of Court and the current OBA YLD treasurer. He is also very active in his community and serves as a board member for Youth & Family Services Inc. in Canadian County and is a member of Life.Church, Mustang.

In his spare time, he enjoys golf, cycling and spending time with his family. Nathan is married to Kristin Richter, and they have two children, Harrison and Kailyn.

The following persons have been nominated and are running con-

CONTESTED ELECTIONS

tested for the following positions. Results will be announced at the YLD Annual Meeting.



Secretary
Jordan L. Haygood

Jordan Haygood has been an OBA YLD board member for two years as an at large representative. During his time as an OBA YLD member, he has served on the Kick It Forward Task Force, as co-chair for the Membership Committee and serves as the OBA YLD liaison to the OBA Lawyers Helping Lawyers Committee. He is also an OBA Law Day Committee member.

Mr. Haygood was recently appointed to serve on a national scale as the American Bar Association YLD District 27 representative for Oklahoma and Arkansas for 2015-2017. As part of his duties he is a voting

member for the ABA YLD board of representatives, serves as both Oklahoma and Arkansas' liaison to the ABA YLD National Disaster Legal Services Committee and facilitates and manages communication between the ABA YLD and OBA YLD affiliate programs and communication between ABA YLD and Arkansas Bar Association YLD affiliate programs.

He is admitted to practice in the United States District Court for the Western District of Oklahoma and is certified to practice in the United States Bankruptcy Court for the Western District of Oklahoma. He is a member of the Oklahoma County Bar Association and Central Oklahoma Alumni Phi Alpha Delta Legal Fraternity International member where he has served as the chapter clerk for two years. He is also a member of the Oklahoma Ruth Bader Ginsburg American Inn of Court.

Mr. Haygood graduated from the OCU School of Law in 2013 where he received the 2013 Dean's Service Award from Dean Valerie K. Couch for his outstanding service to the OCU School of Law. He is also a 2005 graduate of Texas Christian University where he received his Bachelor of Science in new-editorial journalism.

Because of his service and dedication to the OBA, ABA and the legal community, Mr. Haygood believes he is the best candidate for the OBA YLD secretary and at large representative.



Blake Lynch

Blake Lynch has a law practice in southeast Oklahoma with his law partner Brecken Wagner. Mr. Lynch has been a YLD board member for many years and has served on multiple committees and participated faithfully in most YLD events. He is married to Amanda Lynch, has three small children and two dogs. He has very little spare time, but what he has he dedicates a significant portion to bar functions and activities. He is an OBA Leadership Academy graduate, serves on multiple boards for state agencies and charitable organizations and is a Trial Lawyer's College graduate. He graduated from OU for both his undergraduate degrees and law school.



District Three
Melanie Christians

Born in Oklahoma City and raised in Newark, Delaware,

Melanie Christians attended Oklahoma Christian University where she graduated *magna cum laude* with a Bachelor of Science degree in mass communications/public relations and advertising in 2005. Ms. Christians received her J.D. from the OCU School of Law in 2009. While in law school, she served as the staff editor for the *Oklahoma City University Law Review*, was an officer of the honors legal fraternity Phi Delta Phi, a member of the William J. Holloway Jr. American Inn of Court, an American Bar Association Law School Division member, a Dean's List recipient and a recipient of academic achievement awards in the areas of legal research and writing and trial practice.

After graduating from the OCU law school, Ms. Christians began her legal career in Washington, D.C., working for the United States Department of Justice, Commercial Litigation Branch, Civil Fraud Section. At the Department of Justice she handled complex healthcare and government contract fraud litigation. After returning to Oklahoma in 2012, she joined Nelson, Terry, Morton, DeWitt & Paruolo. Her practice is exclusively devoted to litigation with concentrations in insurance defense, insurance coverage and bad faith and False Claims Act whistleblower litigation.

She is a member of the OBA Women in Law Committee, Bench and Bar Committee, the Edmond Chamber of Commerce where she serves on the Women's Council, the Oklahoma County Bar Association, the American Bar Association and the Oklahoma Association of Defense Counsel.



Mithun Mansinghani

Mithun Mansinghani serves as deputy solicitor general in Oklahoma's Attorney General's Office. In that role, Mr. Mansinghani litigates appeals and constitutional issues on behalf of the state, including all of the state's cases before the United States Supreme Court. He also represents the state in its interactions with and litigation against the federal government and other states. In addition to his litigation role, Mr. Mansinghani provides advice to the attorney general on key legal and policy issues, including the issuance of formal attorney general opinions. Prior to joining the Oklahoma Attorney General's Office, Mr. Mansinghani was a lawyer for Gibson, Dunn & Crutcher in Washington, D.C., focusing on appeals and administrative law cases.

While in private practice, Mr. Mansinghani also devoted significant time to working on pro bono cases in the areas of human trafficking, asylum and religious liberty. He is a graduate of Leadership Oklahoma's LOYAL program. He served as a law clerk to Judge Jerry E. Smith on the United States Court of Appeals for the 5th Circuit. He received his bachelor's degree *magna cum laude* in both political science and policy studies from Rice University and his law degree with honors

from Harvard Law School, where he served as an editor of the *Harvard Law Review*.



April J. Moaning

April Moaning received a Bachelor of Arts in economics from OSU and earned her J.D. at the TU College of Law. While pursuing her law degree, she served as the Black Law Students Association vice president and maintained active involvement in community service organizations. She also received numerous honors and awards, including the CALI Excellence for the Future Award in torts and the Rocky Mountain Black Law Students Association Best Oral Advocate Award.

Ms. Moaning began her legal career practicing family and criminal defense law. She later served as staff counsel at Liberty Mutual Insurance Co. where she gained experience in the areas of insurance defense and civil litigation matters involving personal injury and property damage. Currently, Ms. Moaning represents clients in family, personal injury, premises liability, property damage and criminal law matters.



Sarah Stewart

Sarah Stewart is an Oklahoma City native. Ms. Stewart attended college at OSU and received a J.D. from the OCU School of Law in 2009. She was Senior Law Resource Center executive director in Oklahoma City.

She left to open her own office in 2015 and focuses her practice on bringing peace to families in estate planning, guardianship, adoption and probate matters. She serves on the boards of Easterseals OK, the OBA Young Lawyers Division and OKCPS Law and Public Safety Academy. She also serves as vice president of the Edmond Dig N Chapter. She volunteers regularly to teach the public, and other attorneys, about estate planning, starting a business and probate procedure.

She lives in Oklahoma City and celebrates six years of marriage to her husband this year. She has a 3-year-old son and two fur babies.



District Six
Bradley J. Brown

Bradley Brown was admitted to the Oklahoma Bar in 2012 and admitted to practice before the United States District Court for the Northern, Eastern and Western Districts of Oklahoma and the United States Court of Appeals for the 10th Circuit.

He received his Bachelor of Arts from OU and his J.D. from the TU College of Law in 2012.

His academic honors include being a two-time recipient of the Oklahoma Bar Foundation Fellows Scholarship, a Letzeiser Award recipient at OU and a member of Phi Beta Kappa. Mr. Brown was also a member of the *Tulsa Law Review*.

He is a member of the American Bar Association, Tulsa County Bar Association and National Association of College and University Attorneys.

In the community, Mr. Brown serves on the OBA Clients' Security Fund Committee, the OBA YLD Board of Directors representing District 6 and the Cascia Hall Alumni Association Board of Directors. He is also an Oklahoma Bar Foundation Fellow.



Gary L. Davis II

Gary Davis is the founding partner of Gary Davis Law Group PLLC. He is a former assistant United States attorney and Tulsa County supervisory assistant district attorney. While at the Department of Justice, Mr. Davis was appointed cyber-security coordinator and national security cyber specialist for the United States Attorney's Office in the Northern District of Oklahoma. He was also appointed computer hacking and intellectual property specialist. As a federal prosecutor, Mr. Davis led investigations involving international smuggling and money laundering; wire, bank and tax fraud; international narco-trafficking; public corruption; TIII wiretaps; organized crime and computer crimes. As a Tulsa County ADA he was in charge of major prosecutions and investigations including murder, robbery, drug trafficking and sexual assault. His firm specializes in trial advocacy and cyber security and privacy law.

At Large

Brad Brown

See bio above.

Melanie Christians

See bio above.

Gary Davis

See bio above.

Mithun Mangsinghani

See bio above.

April Moaning

See bio above.

Sarah Stewart

See bio above.

UNCONTESTED ELECTIONS

The following persons have been nominated. They are running uncontested and will be declared elected at the OBA YLD Annual Meeting.



Treasurer

Brandi N. Nowakowski

Brandi Nowakowski is an associate with the law firm of Stuart & Clover in Shawnee. Ms. Nowakowski focuses her practice on probate, adult guardianship, estate planning and real property matters. She, her husband Chris, and their two sons, Ethan and Zachary, reside in Shawnee.

Ms. Nowakowski received her B.B.A. in management from OU, where she graduated *magna cum laude* in May 2006. She received her J.D. from the OU College of Law in May 2010 and was admitted to the practice of law before all Oklahoma state courts in September 2010. She was later admitted to practice before the United States District Court in the Western District of Oklahoma. She also serves on the Absentee Shawnee Tribe Supreme Court.

She has actively served on the YLD Board of Directors since January 2012 and is currently serving as the secretary and District 8 director. In addition, she has served as YLD Community Service Committee chairperson since 2013. As such, she was responsible for coordinating the 2013 OBA Day of Service activities throughout Oklahoma, as well as the YLD Day of Service activities for 2014 and 2015. She enjoys working with the many attorneys who make these events successful and make our bar association great!

Ms. Nowakowski has also been an active member of the OBA Law Day Committee and has been selected to serve on the Credentials Committee for the annual OBA House of Delegates Meeting each year since 2012. Additionally, she served on the Client' Security Fund Task Force and this year's OBA Budget Committee. She would be honored by the opportunity to continue serving the young lawyers of Oklahoma and the entire bar through the YLD Board of Directors as the 2017 treasurer.



District One

Aaron Pembleton

Aaron Pembleton is a solo practitioner at Pembleton Law Firm PLLC in Bartlesville where he is primarily engaged in criminal defense and family law matters for the residents of Osage, Washington and Nowata counties. Mr. Pembleton received his undergraduate degree in agricultural and applied economics from Texas Tech University and his J.D. from the OU College of Law.

Mr. Pembleton began his legal career as a licensed legal intern at the Cleveland County District Attorney's Office. After being admitted to the bar he became prosecutor for the 10th Judicial District in Pawhuska. He seized an opportunity to move to the 11th Judicial District in Bartlesville and then Nowata. During Mr. Pembleton's time as a prosecutor, he had the privilege to handle all magnitudes of cases from deprived child cases to traffic tickets to murders. In October 2015, Mr. Pembleton left the public sector to open his solo practice.

Mr. Pembleton has served on the OBA Young Lawyers Division Board of Directors for District 1 since 2011. He is the current Washington County Bar Association vice president and also serves on the Bartlesville

Symphony Orchestra Board of Directors.



District Five
Brittany J. Byers

Brittany Byers is an attorney in the Oklahoma City law firm Voorhees Voorhees & Byers. She graduated from Oklahoma City Community College with an Associates of Science in business in 2006 and graduated *summa cum laude* from the University of Central Oklahoma with a Bachelors of Business Administration focused on legal studies with a minor in political science in 2008. Ms. Byers received her J.D. from the OU College of Law in 2011. She was admitted to the Oklahoma Bar in April 2012 and is admitted to practice before all Oklahoma courts and the United States District Court for the Western District of Oklahoma.

Ms. Byers is a member of the Oklahoma County Bar Association, Oklahoma City Real Property Lawyers Association and South Oklahoma City Lawyers Association. She has served as secretary and vice president of the South Oklahoma City Lawyers Association and is currently serving as president. She is also currently serving as the OBA Young Lawyers Division District 5 director. Her primary practice areas are general civil

litigation, probate, guardianship, wills, trusts, estate planning, real estate, creditor collections and business and commercial.



District Seven
John Tyler Hammons

John Hammons is an assistant attorney general for the Cherokee Nation in Tahlequah. An enrolled member of the tribe, he represents the Cherokee people in general civil litigation in state and tribal courts.

A fourth-generation Oklahoman, Mr. Hammons is deeply connected to his hometown of Muskogee. Prior to attending law school, Mr. Hammons served as the 47th mayor of the city of Muskogee. Serving from 2008 to 2012 and first elected at the age of 19, he is among the youngest mayors in American history. Mr. Hammons has served on the boards of directors of the Muskogee Chamber of Commerce and the City of Muskogee Foundation and continues to be actively involved in the Muskogee community.

Mr. Hammons earned his Bachelor of Arts from OU in May 2012. He received his J.D. with honors from the OU College of Law in May 2015 where he earned a certificate in business law. While in law school, he received the American Jurisprudence Award, which denotes the highest grade in

the class, for transactional law I and II, tax practice and procedure and torts I. He was admitted to the practice of law in September 2015. Mr. Hammons is currently attending OSU where he is a candidate for a MBA with an emphasis in finance.

Mr. Hammons currently serves as the Muskogee County Bar Association secretary. He is admitted to practice law in the courts of the state of Oklahoma, the United States District Court for Eastern District of Oklahoma, the United States Court of Appeals for the 10th Circuit, the courts of the Cherokee Nation, and the courts of the Muscogee (Creek) Nation. Mr. Hammons has served on the OBA Young Lawyers Division Board of Directors since 2016.



District Nine
Grant Kincannon

Grant Kincannon was born and raised in Altus where he now makes his home with his wife, Elisabeth, and son, Graham. He is an associate with Latham, Nelson & Associates and practices in many areas of the law including civil litigation, personal injury, business/commercial, real estate and wills/probate. Mr. Kincannon is a Jackson County Bar Association member and currently

serves as president. Mr. Kincannon was admitted to the Oklahoma Bar in 2014 and is also admitted to practice in the U.S. District Court for the Western District of Oklahoma.

Mr. Kincannon received his J.D. from the OCU School of Law. While in law school, he received the CALI Award for Excellence in Oklahoma Land Titles. He is an officer in the Rotary Club of Altus, and also serves as the treasurer of the OSU Alumni Association Jackson County Chapter. This year, Mr. Kincannon was nominated and elected to serve as the OBA YLD Board of Directors District 9 representative.



At Large Rural
Matthew T. Sheets

Matthew Sheets currently serves as the OBA Young Lawyers Division Board of Directors at large rural representative. He served on the YLD CLE Committee and the OBA Law Schools Committee. He has been an active member as the board has refocused itself as the philanthropic wing of the

bar association, including conducting service days across the state. Mr. Sheets previously served as the Pittsburg County Bar Association president.

He graduated with a Bachelor of Science from OSU, before obtaining his J.D. from the OU College of Law. He has previously served as an assistant district attorney for Pushmataha County and a special district judge for Pittsburg County.

Mr. Sheets is a founding member of Sheets Law Firm PC in McAlester, a general litigation practice focusing on criminal defense in southeast Oklahoma. Mr. Sheets would like to continue representing you and help the board focus more on its philanthropic goals.

NOTICE OF JUDICIAL VACANCY

The Judicial Nominating Commission seeks applicants to fill the following judicial office:

**District Judge
Seventh Judicial District, Office 11
Oklahoma County**

This vacancy is due to the appointment of the Honorable Barbara Swinton to the Court of Civil Appeals on September 15, 2016.

To be appointed to the office of District Judge of Oklahoma County, Office 11, one must be a legal resident of Oklahoma County Electoral Division 3 at the time (s)he takes the oath of office and assumes the duties of office. Additionally, prior to appointment, such appointee shall have had a minimum of four years experience as a licensed practicing attorney, or as a judge of a court of record, or both, within the State of Oklahoma.

Application forms can be obtained on line at www.oscn.net under the link to Programs, then Judicial Nominating Commission, or by contacting Tammy Reaves, Administrative Office of the Courts, 2100 N. Lincoln, Suite 3, Oklahoma City, Oklahoma 73105, (405) 556-9862. Applications must be submitted to the Chairman of the Commission at the same address **no later than 5:00 p.m., Monday, November 14, 2016. If applications are mailed, they must be postmarked by midnight, November 14, 2016.**

John H. Tucker, Chairman
Oklahoma Judicial Nominating Commission

Dunlap Coddling Recognized for Commitment to the Arts

Dunlap Coddling was honored on Oct. 5 in New York as one of the Business Committee for the Arts 10, an annual award given by Americans for the Arts to 10 businesses around the country for their exceptional commitment to the arts.

Dunlap Coddling has hosted and facilitated more than 150 arts programs and has donated approximately \$100,000 in direct support to arts organizations since 2013. They also offer film festivals and concerts, company offices featuring a rotating collection of art by local artists and employees are regularly provided tickets to community arts events. Access to master painting, weaving and pottery classes are even available for employees during the work day.

"Each year the BCA 10 honorees set the standard for other businesses by upholding the arts as an integral part of office culture, the community and the economy, enriching the lives of millions," says Robert L. Lynch, president and CEO of Americans for the Arts. "Through financial and in-kind support, employees' volunteer hours and workplace initiatives, these businesses ensure arts access for current and future generations and serve as successful and inspiring models of business arts support."

Dunlap Coddling was nominated for the BCA 10 by Hazelton Marketing & Management.



Important Upcoming Dates

Don't forget the Oklahoma Bar Center will be open for a CLE, but the offices will be closed Friday, Nov. 11, and Thursday and Friday, Nov. 24-25, in observance of Veterans Day and Thanksgiving. Remember to register and join us for the OBA Annual Meeting to be held in Oklahoma City Nov. 2-4.

LHL Discussion Group Hosts November Meeting

"Handling Stressors Over the Holiday Season" will be the topic of the Lawyers Helping Lawyers monthly discussion group on Nov. 3. Each meeting, always the first Thursday of the month, is facilitated by commit-



tee 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 Lori King, loriking@cabainc.com, are encouraged to ensure there is food for all.

LAWYERS HELPING LAWYERS ASSISTANCE PROGRAM

Call 24/7 — 800-364-7886

Retention Ballot Information Available at www.CourtFacts.org

Where can Oklahomans find information about the members of the judiciary on this year's ballot before they enter the voting booth Nov. 8? The state bar association has created www.CourtFacts.org, a website designed to explain how the merit retention process works while providing background information about the justices and judges on this year's merit retention ballot.

OBA President Garvin Isaacs of Oklahoma City said, "Our intent in creating Court Facts is to provide voters accurate, nonbiased information — just the facts. This website is our opportunity to educate voters that fair and impartial judges are critical to the success of a strong legal system."



The website features complete biographies and photos of the two state Supreme Court justices and five appellate judges on the retention ballot. Voters will also be able to access court cases and legal opinions authored by those judges and justices.

On the statewide ballot are Supreme Court Justices Douglas Combs and James Winchester, Court of Criminal Appeals Judges Clancy Smith and Robert Hudson, plus Court of Civil Appeals Judges John Fischer, Larry Joplin and Thomas Thornbrugh.

The website also details the state's judicial selection process for appellate justices and judges, in which a nonpartisan 15-member Judicial Nominating Commission investigates, interviews and evaluates applicants for judicial office. OBA members are encouraged to share this resource with others.



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.

OBA Member Resignations

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

Joseph L. Layden
OBA No. 5298
1501 E. Wichita
McAlester, OK 74501
Barbara A. Martinez
OBA No. 3036
Attorney at Law
P.O. Box 1780
Ranchos de Taos, NM
87557

Carol Jean Traylor
OBA No. 20928
Cantey Hanger LLP
600 W. 6th St., Ste. 300
Fort Worth, TX
76102-3685

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 and be sure to follow @OklahomaBar on Twitter.



Kudos

Jon Starr has achieved the highest designation of diplomate in the American Board of Trial Advocates. The designation recognizes those who have tried more than 100 jury trials to verdict in courts of unlimited jurisdiction.

Gary W. Farabough has recently been elected by the Board of Trustees of the University Center of Southern Oklahoma to be chairman of the trustees for the third consecutive year.

Bryan Dupler published the first edition of *Sentencing in Oklahoma*, a resource book of sentencing law for judges and attorneys. Mr. Dupler is a judicial assistant to Judge David B. Lewis of the Oklahoma Court of Criminal Appeals.

Kevin Kuhn has been inducted as a fellow of the International Academy of Trial Lawyers.

Tulsa attorney Dwight L. Smith will serve as co-chair of a new ABA commission, Veterans Legal Services Initiative. The new commission will mobilize lawyers to serve the critical need for enhanced legal services for the nation's veterans.

Donna P. Suchy was announced as incoming chair of the American Bar Association's Intellectual Property law section. Ms. Suchy of Rockwell Collins in

Cedar Rapids, worked for Crowe Dunlevy in Oklahoma City and is a graduate of the OCU School of Law.

On The Move

Craig Marshall Regens joined GableGotwals as an associate attorney in the firm's Oklahoma City office. Mr. Regens primary practice will focus on litigation, business reorganizations, workouts and bankruptcy.

Shea Bracken joined Cathy Christensen and Associates PC. Mr. Bracken's practice will focus primarily on personal injury and tort litigation, including medical malpractice, nursing home injuries, wrongful death, vehicle accidents and premises liability.

Johnson and Jones PC announced the promotions of **Jon D. Cartledge**, **Kari A. Deckard** and **Sean P. Hennessee** to shareholders of the firm. The firm also announced **Jason L. Callaway**, **Jason M. Temple** and **Joshua D. Poovey** as new associate attorneys.

Gregory R. Rasnake joined Crowe & Dunlevy as a director in the firm's Oklahoma City office. Mr. Rasnake is a member of the firm's aviation and commercial space, administrative and regulatory and criminal defense, compli-

ance and investigations practice groups.

At The Podium

Michael C. Turpen delivered the 20th Annual Attorney General Robert Abrams Public Service Lecture at New York University Law School on Sept. 19 in New York. Mr. Turpen and Gen. Abrams had the privilege to serve as attorneys general at the same time.

Lesley Smith March presented "Lean On Me: How Victim Advocates Can Impact the Criminal Trial Process" at the National Organization for Victim Assistance annual conference in Atlanta.

How to place an announcement: The *Oklahoma Bar Journal* welcomes short articles or news items about OBA members and upcoming meetings. If you are an OBA member and you've moved, become a partner, hired an associate, taken on a partner, received a promotion or an award, or given a talk or speech with statewide or national stature, we'd like to hear from you. Sections, committees, and county bar associations are encouraged to submit short stories about upcoming or recent activities. Honors bestowed by other publications (e.g., *Super Lawyers*, *Best Lawyers*, etc.) will not be accepted as announcements. (Oklahoma-based publications are the exception.) Information

selected for publication is printed at no cost, subject to editing, and printed as space permits.

Submit news items via email to:
Lacey Bynum
Communications Dept.
Oklahoma Bar Association
405-416-7017
barbriefs@okbar.org

Articles for the Dec. 17 issue must be received by Nov. 14

IN MEMORIAM

Rex Edgar Herren of Cherokee died Aug. 10 in Oklahoma City. Mr. Herren was born June 27, 1948, in Cherokee. He received his B.S. in 1970 and J.D. in 1974 from the OU College of Law. He was employed by the U.S. Department of Interior in Anadarko serving as an attorney representing the Bureau of Indian Affairs. In 1987 he purchased Fleming Abstract and in 1989 Washita County Abstract. In 2006, he sold his company and resumed practicing law full time in Cordell. He enjoyed the mountains of New Mexico, reading biographies, world travel and the Sooners. Memorial contributions can be made in his name to Rural America Ministries through Nov. 4 and College Church of Christ in Cordell, or the Grow CBA Project sent

directly to Corn Bible Academy in Corn.

Harold Lee Robinson of Oklahoma City died Aug. 25. Mr. Robinson was born Dec. 11, 1954, in Great Falls, Montana. He graduated from Northwest Classen High School in 1972. In 1976 he obtained two bachelor's degrees from Centenary College in Shreveport, Louisiana, one in theater and one in psychology. He went on to receive his J.D. from the OCU School of Law in 1980. He maintained a family law practice and was a member of the OBA.

Matthew Adam Paul Schumacher of Muskogee died May 3 in Oklahoma City. Mr. Schumacher was born Nov. 23, 1933, in Tulsa. He graduated from Cascia

Hall High School in 1951. He attended the University of Notre Dame for three years before graduating with a degree in finance from OU. He received his J.D. from the OCU School of Law in 1983. **He served in the Army from 1955 to 1956 and was stationed in Korea.** He worked as a commodities broker and bank examiner for the Office of the Comptroller of the Currency (OCC) in Houston from 1958 to 1962 before returning to Oklahoma. He continued to work for the OCC in Oklahoma City and then for Merrill Lynch as a stock and commodities broker. In 1972, he became president of the American Bank of Oklahoma in Pryor and in 1975 president of the Bank of Commerce in Chouteau.



For the latest OBA news,
follow us @OklahomaBar
and @OBACLE



ANNUAL MEETING



Registration

Register by mail, fax or online!
Walk-ins also welcome.

www.amokbar.org/registration

Hotel Info

Registration does not include hotel accommodations. The deadline has expired to take advantage of the discounted room rate booked through the hotel website. Email OBA Director of Administration Craig Combs at craigc@okbar.org, who has reserved a few extra rooms at the special rate.

www.starwoodmeeting.com/Book/OklahomaBarAssociation



CLE

"Value" is this year's theme for continuing legal education during the Annual Meeting. Registration packages include an option to purchase six hours of CLE on Wednesday with Annual Meeting registration or a nine-hour package that will add another three hours of CLE on Thursday morning.

www.amokbar.org/cle

Bar Business

It's important to know what's going on in your organization! Read up on resolutions, House of Delegates info and get to know next year's elected officers and Board of Governors members before the Annual Meeting.

www.amokbar.org/bar-business



OBA Awards

Congratulations to this year's OBA award winners!

www.amokbar.org/awards

Program of Events

This year's lineup includes luncheon speaker Jane Mayer, several great CLE opportunities, the President's Reception, OBA sections event and more!

www.amokbar.org/program-of-events



SERVICES

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

INTERESTED IN PURCHASING PRODUCING & NONPRODUCING Minerals; ORRI; O & G Interests. Please contact: Patrick Cowan, CPL, CSW Corporation, P.O. Box 21655, Oklahoma City, OK 73156-1655; 405-755-7200; Fax 405-755-5555; email: pcowan@cox.net.

APPEALS and LITIGATION SUPPORT

Expert research and writing by a veteran generalist who thrives on variety. Virtually any subject or any type of project, large or small. **NANCY K. ANDERSON**, 405-682-9554, nkanderson@hotmail.com.

Creative. Clear. Concise.

BRIEF WRITING, APPEALS, RESEARCH AND DISCOVERY SUPPORT. Eighteen years experience in civil litigation. Backed by established firm. Neil D. Van Dalsem, Taylor, Ryan, Minton, Van Dalsem & Williams PC, 918-749-5566, nvandalsem@trsvlaw.com.

HANDWRITING IDENTIFICATION POLYGRAPH EXAMINATION

Board Certified	Court Qualified
Diplomate — ABFE	Former OSBI Agent
Life Fellow — ACFEI	FBI National Academy

Arthur D. Linville

405-736-1925

CERTIFIED LEGAL NURSE CONSULTANT. One free case screening (up to 8 hours). Let me save you time and money on any cases involving medical or nursing issues (Malpractice, PI, Worker's Comp, Medicare). Call or email for more information. Judith Whitmore RN, MSN, CLNC 580-540-9050 judiwl@suddenlink.net.

MEDICAL MALPRACTICE CASE REVIEW: Board certified pediatrician and member of the Oklahoma Bar Association. Available to review any issues involving neonates, children and adolescents. William P. Simmons, M.D., J.D. 850-877-1162 wsimmons@northfloridapeds.com.

SECTION 1031 LIKE-KIND EXCHANGE SERVICES

*Deferred Exchanges · Reverse Exchanges ·
Construction Exchanges*

D.L.H. Exchange Services, L.L.C.

Affiliated with the law firm of Benson & Houston, P.L.L.C.

Contact Dal Houston at 580-327-1197,
or dal@bensonhouston.com

WANT TO PURCHASE MINERALS AND OTHER OIL/GAS INTERESTS. Send details to: P.O. Box 13557, Denver, CO 80201.

OFFICE SPACE

LUXURY OFFICE SPACE - Two offices for lease, one at \$670 and one at \$870 in the Esperanza Office Park near NW 150th and May in OKC. Lease includes: Fully furnished reception area; receptionist; conference room; complete kitchen; fax; high-speed internet; building security; and, free parking. Please contact Gregg Renegar at 405-285-8118.

STILLWATER OFFICE SPACE: Adjacent to Payne County Courthouse. Fully furnished/staffed front reception area, as well as private reception adjoining office; access to conference room, library and fully-furnished kitchen; phone, copier and fax machine access included. Referrals available. Contact hellis@ellislaw.us.

JENKS OFFICE SPACE: Case sharing, referrals, mentoring with experienced attorney. Fully furnished, conference room, reception area, kitchen, free parking, notary services, fax, scan and copy machine, wifi, building security. Easy access from Hwy 75 and Creek Turnpike. Available Sept. 15, 2016. One space at \$550/month. Contact rgiles@gileslawtulsa.com.

POSITIONS AVAILABLE

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

FAST PACED, STEADILY GROWING, SOUTHEASTERN OKLAHOMA LAW FIRM with a primary family and criminal law practice is seeking an associate attorney or recent law graduate to expand their practice. The ideal candidate will be a self-starter with a strong work ethic that has excellent communication skills. Submit resume and cover letter to "Box O," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

50 PENN PLACE LAW FIRM SEEKS EXPERIENCED PART TIME/FLEX TIME LEGAL ASSISTANT. Estate Planning/real estate helpful. Please submit resume to tfarrell@meehoge.com.

CITY ATTORNEY- Provides legal assistance on matters pertaining to city functions and activities and acts as the city's legal representative. Must be licensed by the Oklahoma Bar Association with previous experience in municipal law and preferably, previous experience working in a city attorney's office. Must possess valid Oklahoma driver license and be insurable. Starting salary range: \$85,710 - \$93,385 DOQ. Apply City of Midwest City, HR Dept., 100 N. Midwest Blvd., or www.midwestcityok.org. Apps accepted until filled. E.O.E.

POSITIONS AVAILABLE

ATTORNEY (WITH 3 TO 5 YEARS EXPERIENCE)

needed for general civil practice, by AV-rated Tulsa insurance and transportation defense firm. Very busy, fast-paced office offering competitive salary commensurate with experience, health/life insurance, 401k, etc. Candidates with strong academic background and practical litigation experience, please send a résumé and writing sample (10 pg. max) to "Box PP," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

SMALL INSURANCE DEFENSE LAW FIRM, LOCATED IN NORMAN, OKLAHOMA, specializing in commercial trucking litigation, seeks associate attorney with excellent writing skills. Individual must be able to draft motions, prepare discovery responses and handle scheduling for the other attorneys in the office. Strong investigative skills are preferred. Training and mentorship are included. Please send resume in confidence via email to shawna@millsfirm.com.

NORTHWEST OKLAHOMA CITY AV RATED ATTORNEY has immediate opening for associate with 2-3 years' experience and strong desire for a career in estate planning, trusts and estates, probate, trust administration, and estate and gift taxation. Must have superior communication and computer skills. Salary commensurate with experience. Tax experience a plus. Benefits include health, dental and life insurance, plus retirement savings contribution. Better Business Bureau accredited business. Submit confidential resume with references, writing sample and salary requirements to: "Box Q," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

THE CHICKASAW NATION IS ACCEPTING APPLICATIONS FOR AN INDIAN CHILD WELFARE ATTORNEY. The Legal Division is expanding and seeks an attorney to represent the Chickasaw Nation in juvenile deprived cases arising under the Indian Child Welfare Act in state court cases. The position requires extensive travel within the state. Applicants must be a graduate of an accredited law school, have a strong academic record and must be an active member in good standing in the Oklahoma Bar Association. For a description of the Chickasaw Nation, or to complete an application and view detailed information, please refer to <http://www.chickasaw.net>. If you would like additional information, you may contact 580-436-7259 or P.O. Box 1548, Ada, OK 74821. American Indian preference.

FAST PACED TULSA AREA REAL ESTATE CLOSING COMPANY SEEKS EXPERIENCED TITLE ATTORNEY to examine abstracts, prepare curative documents and assist closers and clients with real estate matters. Please send your resume, along with salary requirements to "Box QQ," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152. Salary commensurate with experience and industry standards. Resumes without salary requirements will not be considered.

POSITIONS AVAILABLE

GROW WITH ONE OF OKLAHOMA'S MOST AMBITIOUS PI FIRMS. As our lead personal injury attorney you will set the pace of success. You bring talent and drive. We provide clientele and infrastructure. Send replies to "Box CC," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

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

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

THE OKLAHOMA TAX COMMISSION, LEGAL DIVISION is seeking an attorney for an opening in its Oklahoma City office. Applicants must be licensed to practice law in Oklahoma. Preference will be given to candidates with administrative hearing and/or litigation experience but all applicants will be considered. Submit resume and writing sample to Elizabeth Field, Deputy General Counsel, 100 N. Broadway Avenue, Suite 1500, Oklahoma City, OK 73102. The OTC is an equal opportunity employer

COLLINS, ZORN & WAGNER, P.C., an AV-rated Oklahoma City firm, is seeking an attorney with 5-15 years of civil litigation experience. Emphasis on insurance defense, civil rights and employment law. The ideal candidate will be a self-starter with a strong work ethic, solid litigation experience and excellent communication and organizational skills. The compensation package is commensurate with level of experience and qualifications. Benefits include health insurance, life insurance and 401(k) with match. Please provide your resume, a recent writing sample and salary requirements to Collins, Zorn & Wagner, P.C., 429 NE 50th, 2nd Floor, Oklahoma City, OK 73105 or czw@czwlaw.com

THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT IS SEEKING APPLICATIONS from qualified persons for the position of Circuit CJA Case-Budgeting Attorney. The budgeting attorney will work across the circuit to aid appellate, district and magistrate judges and CJA panel attorneys in a wide range of duties related to CJA case budgeting and voucher processing. For the full job announcement and application instructions, visit www.ca10.uscourts.gov/hr/jobs.

POSITIONS AVAILABLE

TULSA LITIGATION FIRM WITH DIVERSE CIVIL PRACTICE SEEKS AN ATTORNEY with 3 to 10 years of experience. Compensation DOE with excellent benefits. Applications kept confidential. Send resume, writing sample and references to jcm@rrbok.com.

THE CHICKASAW NATION IS ACCEPTING APPLICATIONS FOR TWO ASSISTANT GENERAL COUNSEL POSITIONS. The Legal Division is expanding and seeks two attorneys to serve in assistant general counsel I positions in its Ada office. Applicants must be a graduate of an accredited law school and have a strong academic record. The candidate must be able to provide legal consulting to tribal departments in one or more of the following areas: Chickasaw law, federal Indian law, Indian health service, Indian child welfare, (Chickasaw Nation, OK, other states) adoption, environmental, natural resources, mineral or land management, criminal law, law enforcement, housing, self-governance, probation services, gaming, dispute resolution, NAGPRA, taxation, HIPAA compliance, defense of subpoenas, compact negotiations and intellectual property. For a description of the Chickasaw Nation, or to complete an application and view detailed information, please refer to <http://www.chickasaw.net>. If you would like additional information, you may contact 580-436-7259 or P.O. Box 1548, Ada, OK 74821. American Indian preference.

THE DEPARTMENT OF HUMAN SERVICES, Legal Services, is seeking newly licensed applicants for an assistant general counsel position housed in Oklahoma City. The ideal applicant must have an interest in civil litigation, focusing on civil rights, tort and employment law in state and federal court (at both district and appellate court levels). The duties of this litigation position require effective writing and communication skills to provide legal representation and advice affecting the largest state governmental agency. The chosen candidate must be highly organized and ready to step in to assist with ongoing cases in various stages of litigation and involving a variety of legal issues. Salary is based on qualifications and experience. Excellent state benefits. Send resume, references and a recent writing sample (less than 1 year old) to JudithJudi.Abrams@okdhs.org or mailed to Judi Abrams, Operations Manager, Office of General Counsel, Dept. of Human Services, P.O. Box 25352, Oklahoma City, OK 73125-0352.

POSITIONS AVAILABLE

EXPERIENCED LITIGATION ASSOCIATE (minimum of 3 years) – downtown Oklahoma City law firm seeks litigation associate with experience in civil litigation to augment its fast-growing trial practice. Excellent benefits. Salary commensurate with experience. Please send resumes to "Box A," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

LOOKING FOR WILL

ATTORNEYS IN OKLAHOMA REQUEST FOR LAST WILL & TESTAMENT OR ANY TESTAMENTARY DOCUMENTS FOR TOMMIE A. WILLIAMS. We are attempting to locate any Last Will and Testament, or any document amending or creating a trust for Tommie A. Williams, formerly of Sperry, Oklahoma. If you have an original or copy, or know of the location of any such document, please contact John D. Russell or Tammy D. Barrett of GableGotwals, 100 W. Fifth Street, 1100 ONEOK Plaza, Tulsa, Oklahoma 74103, 918.595.4800.

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Six Pieces of Silver

By B.J. Brockett

In May 1960 after finishing my freshman year in law school at OU, I decided to get a job in a law office. I had no connections and no idea how to go about this. I had tutored a fellow in German who had graduated from law school and had gone to work for the Oklahoma County attorney, so I went to see him. He sent me to see Jim Work, who had something to do with the Oklahoma County bar employment committee. Mr. Work, sent me to Robert L. Cox, who hired me for \$25 per week. Mr. Cox told me the salary was not important, at which point my stomach growled. He explained what was important was that he would teach me how to make a living practicing law. He did that. He was a great mentor. I worked for him until I graduated law school (getting some salary increases along the way) and several years afterward as a lawyer.

I learned early how to file cases in Mildred Boyer's Justice of the Peace Court, on Harvey, just north of the courthouse. On one memorable occasion, during my second year in law school, I went to Judge Boyer's JP Court on a case set for trial. Not being a lawyer, I knew I couldn't try the case, but I fully expected the defendant to default — that seemed to be the rule. But it was not to be. The defendant not only appeared in person, but by his attorney, who was well known in the courthouse vicinity for carrying huge armloads of files everywhere he went. To my consternation, he demanded a jury trial.

While the constable was out combing the streets for jurors, I frantically and unsuccessfully tried to reach my mentor. Judge Boyer, bless her soul, pulled me aside and told me I could try the case if the defendant's lawyer didn't object. Of course, he didn't.



A jury of six men (six bums would be a better description) was soon rounded up and seated. There was no *voir dire*, what sat before you was what you got. I put on my case. My client testified he loaned the defendant \$75 and the defendant signed a note. The note had matured and the defendant hadn't paid. I introduced the note in evidence and rested. The case was airtight, or so I thought.

The defendant came up with some cock and bull story about paying the note in cash and forgetting to get a receipt or losing the receipt, whatever — defendant couldn't remember. He was not convincing. I summed up, and it was the defendant's turn. His lawyer stood before that six-man jury, talking but not saying much. His actions spoke louder. He held his right hand, containing six silver dollars, above his left hand. He let the silver dollars fall into his left hand, one at a time, pausing between the fall of each coin.

The first to fall made no sound, but those that followed made a clicking sound as they came down and struck the others — click, click, click, click, click. With each click, the jurors' blood shot eyes seemed to light up, and their dreary faces took on a patina of the living.

The jury retired for their decision, but barely, before rendering judgment for the defendant. I was in shock. Judge Boyer tried to console me. The client stomped out in disgust. It was a lesson taught — and a lesson learned. But there was another lesson to be learned. I still have my license to practice law. The defendant's lawyer was later disbarred, permanently, but not for the coin trick; he graduated to more serious transgressions.

Mr. Brockett practices in Oklahoma City.



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