

THE Oklahoma Bar JOURNAL

Volume 87 ♦ No. 24 ♦ Sept. 10, 2016



SAFEGUARDING OUR FREEDOMS

OKLAHOMA BAR ASSOCIATION
ANNUAL MEETING 2016

NOV. 2-4 • SHERATON HOTEL • OKLAHOMA CITY

AWARDS | BAR BUSINESS | CLE | SOCIAL EVENTS



7/1.5

LAW AND TECHNOLOGY:

Hot Topics to Help You Stay Ahead in the Digital Age

October 6, 2016

9 a.m. - 4:00 p.m.

Oklahoma Bar Center, OKC - WEBCAST AVAILABLE

Program Presenter:

Salar Atrizadeh, Esq. Beverly Hills, CA;

Tulsa School of Law Alumnus

TOPICS COVERED:

Class Actions: How the Technology Age Has Changed the Landscape

Digital Currencies: Everything You Need to Know

Internet of Things: Privacy, Security, and Regulation

The Digital Age and Its Effects On Intellectual Property Rights

Attorneys' Duties Towards Clients When Using Technology

Cybersecurity and Applicable Rules and Regulations

oba ♦ cle
continuing legal education

\$225 for early-bird registrations received with payment at least four, full business days prior to the first seminar date; \$250 for registrations received with payment within four, full business days of the first seminar date. Walk-ins \$275. To receive a \$10 discount for the live onsite program, register online at <http://www.okbar.org/members/CLE>. You may also register for the live webcast for \$250. 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

LAWPAY[®]

THE WAY ATTORNEYS GET PAID



OKLAHOMA BAR
ASSOCIATION SINCE 1904

Proud Member
Benefit Provider

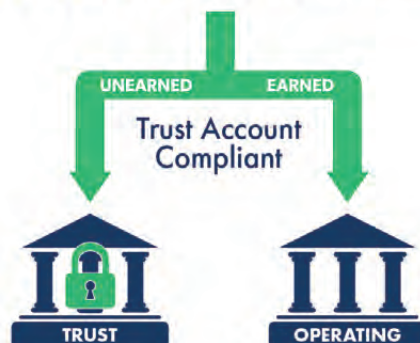


1.95% & 20¢ per transaction | No swipe required | No equipment needed | \$5-\$20 monthly

The proven payment solution for lawyers.

Managing payments and growing revenue for over 30,000 law firms in the US, LawPay is the only solution recognized by the ABA. Designed specifically for the legal industry, LawPay guarantees complete separation of earned and unearned fees, giving you the confidence and peace of mind your credit card transactions are handled the right way.

LawPay.com/OBA | 866.376.0950



*Experience you respect from
a firm you trust*



ROSENSTEIN FIST & RINGOLD
ATTORNEYS & COUNSELORS AT LAW

Dispute Resolution

J. Douglas Mann and Frederick J. Hegenbart

Doug and Fred are AV-rated attorneys with more than 70 years of litigation experience between them. Doug is a seasoned mediator. Fred is an established AAA arbitrator. Their experience in resolving matters through mediation and arbitration ranges from multi-million dollar claims to routine disputes in both the private and public sectors. Trust their decades of legal skill to resolve your toughest cases through an effective, balanced and fair dispute resolution process.

rfrlaw.com • 525 S. Main, Suite 700, Tulsa, OK 74103 • 918.585.9211

THEME:
OBA ANNUAL MEETING

contents

Sept. 10, 2016 • Vol. 87 • No. 24



FEATURES

- 1670 ANNUAL MEETING HIGHLIGHTS
- 1672 CRITICALLY ACCLAIMED WRITER JANE MAYER TO DELIVER KEYNOTE ADDRESS
- 1673 OBA ANNUAL MEETING CLE: OFFERING A WIDE VARIETY OF PRACTICAL AND TECHNICAL INFORMATION
By Susan Damron
- 1676 PROGRAM OF EVENTS
- 1677 HOUSE OF DELEGATES
- 1678 OBA SECTIONS TO SPONSOR A NIGHT IN HAVANA RECEPTION
- 1679 ELECTIONS: 2017 BOARD OF GOVERNORS VACANCIES AND OBA NOMINATING PETITIONS
- 1682 REGISTRATION FORM

DEPARTMENTS

- 1668 FROM THE PRESIDENT
- 1706 FROM THE EXECUTIVE DIRECTOR
- 1707 LAW PRACTICE TIPS
- 1710 OBA BOARD OF GOVERNORS ACTIONS
- 1712 OKLAHOMA BAR FOUNDATION NEWS
- 1715 YOUNG LAWYERS DIVISION
- 1717 CALENDAR
- 1719 FOR YOUR INFORMATION
- 1721 BENCH AND BAR BRIEFS
- 1722 IN MEMORIAM
- 1723 EDITORIAL CALENDAR
- 1724 WHAT'S ONLINE
- 1728 THE BACK PAGE



pg. 1686

'SNIFFING' OUT
AN ADA CLAIM

PLUS

- 1684 LETTER TO THE EDITOR
- 1686 LABOR AND EMPLOYMENT LAW SECTION NOTE:
'SNIFFING' OUT AN ADA CLAIM: CHEMICAL,
FRAGRANCE AND SCENT SENSITIVITIES IN THE
WORKPLACE
By Kimberly Lambert Love and J. Miles McFadden
- 1690 TAXATION LAW SECTION NOTE:
2016 OKLAHOMA TAX LEGISLATION
By Sheppard F. Miers Jr.
- 1694 WOMEN IN LAW CONFERENCE: JUST DESSERTS:
THE SWEET REWARDS OF CIVIC SERVICE
By Reign Sikes
- 1696 PROPOSED CHANGES TO THE OKLAHOMA RULES
OF PROFESSIONAL CONDUCT



pg. 1694

WOMEN IN LAW
CONFERENCE

Safeguarding Our Freedoms

By Garvin A. Isaacs

Our Annual Meeting is a great time to connect with old friends and to exchange creative ideas with our colleagues. One of the most important parts of being a lawyer is to think creatively in addressing problems. No two cases are alike. No two witnesses are alike. Legal issues change with the facts. We must all remember that there is no absolute about any factual matter that creates a legal problem.

New technology allows for in-depth research in multiple courts, both state and federal, and identification of lawyers in other states who have had similar issues to the ones that triggered our research. At the Annual Meeting, continuing education technology courses have helped all of us.

The Annual Meeting also allows us to have face-to-face debates with our friends in trying to decide what law applies to a factual pattern or what would be the best approach to deal with an issue that would be a case of first impression before one of our courts. With the internet and digital technology, many new legal issues are developing. Access to facts and the ability to do legal research online helps all of us as lawyers.

Let us all celebrate that the Annual Meeting is the environment where we exchange ideas and learn to think creatively and have personal contact with real lawyers. It's also an opportunity to share concerns about threats to the judiciary and to the legal profession, which affects all citizens. Author Jane Mayer explains this in her book, *Dark Money: The Hidden History of the Billionaires Behind the Rise of the Radical Right*, in which she helps us understand our history and how we came to be where we are today.

When I read her book, I realized the government of the United States, our democracy, is in danger. *Dark Money* reminds me of scholarly works by historians of the past. Some examples are David Hume's *The History of England*, Thomas Babington Macaulay's *History of England*, Plutarch's *Lives of the Noble Grecians and Romans*, and Winston

Churchill's *A History of the English Speaking Peoples*. Like Hume, Macaulay, Plutarch and Churchill, Mayer records history.

Jane Mayer is a great investigator, historian and writer. What she has captured in *Dark Money* is a snapshot of history of the United States at a time when money controls our government. She mentions Oklahoma 11 times in her book.

Here in Oklahoma we need to listen to her because no one has done a better job of capturing where we are in history in the year 2016 than Jane Mayer. We need to hear what she says about dark money and the future of American democracy. That's why I wanted her to speak at our Annual Meeting and why I selected Safeguarding Our Freedoms as the theme for this year's bar convention.

Jane Mayer's investigation took five years. We should all celebrate the day that Jane Mayer, a great historian, comes to Oklahoma and reveals to the public how corrupt our government has become and how big money is turning our government into a government of the corporations, by the bureaucrats, for the money.

Like Tolsoy demonstrated in his essays about the Crimean War, *Sebastopol Sketches*, if it isn't written down it is forgotten.

At this Annual Meeting let us all celebrate the American judicial system that includes the right to trial by jury. Let us never forget how

Let us all celebrate that the Annual Meeting is the environment where we exchange ideas and learn to think creatively and have personal contact with real lawyers.



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

cont'd on page 1684

THE OKLAHOMA BAR JOURNAL is a publication of the Oklahoma Bar Association. All rights reserved. Copyright© 2016 Oklahoma Bar Association. Statements or opinions expressed herein are those of the authors and do not necessarily reflect those of the Oklahoma Bar Association, its officers, Board of Governors, Board of Editors or staff. Although advertising copy is reviewed, no endorsement of any product or service offered by any advertisement is intended or implied by publication. Advertisers are solely responsible for the content of their ads, and the OBA reserves the right to edit or reject any advertising copy for any reason.

Legal articles carried in **THE OKLAHOMA BAR JOURNAL** are selected by the Board of Editors. Information about submissions can be found at www.okbar.org.

BAR CENTER STAFF

John Morris Williams, *Executive Director*; Gina L. Hendryx, *General Counsel*; Joe Balkenbush, *Ethics Counsel*; Jim Calloway, *Director of Management Assistance Program*; Craig D. Combs, *Director of Administration*; Susan Damron, *Director of Educational Programs*; Beverly Petry Lewis, *Administrator MCLE Commission*; Carol A. Manning, *Director of Communications*; Robbin Watson, *Director of Information Technology*; Loraine Dillinder Farabow, Tommy Humphries, Debbie Maddox, Katherine Ogden, Steve Sullins, *Assistant General Counsels*

Gary Berger, Debbie Brink, Laura Brown, Lacey Bynum, Tanner Condley, Cheryl Corey, Nickie Day, Ben Douglas, Dieadra Florence, Johnny Marie Floyd, Matt Gayle, Marley Harris, Brandon Haynie, Suzi Hendrix, Misty Hill, Darla Jackson, Debra Jenkins, Jaime Lane, Durrel Lattimore, Mackenzie McDaniel, Renee Montgomery, Sharon Orth, Tracy Sanders, Mark Schneidewent, Laura Stone, Jan Thompson, Krystal Willis & Roberta Yarbrough

Oklahoma Bar Association 405-416-7000
Toll Free 800-522-8065
FAX 405-416-7001
Continuing Legal Education 405-416-7029
Ethics Counsel 405-416-7055
General Counsel 405-416-7007
Law-related Education 405-416-7005
Lawyers Helping Lawyers 800-364-7886
Mgmt. Assistance Program 405-416-7008
Mandatory CLE 405-416-7009
OBJ & Communications 405-416-7004
Board of Bar Examiners 405-416-7075
Oklahoma Bar Foundation 405-416-7070

www.okbar.org

THE Oklahoma Bar JOURNAL

Volume 87 ♦ No. 24 ♦ Sept. 10, 2016

JOURNAL STAFF

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

CAROL A. MANNING, Editor
carolm@okbar.org

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

MACKENZIE MCDANIEL
Advertising Manager
advertising@okbar.org

LAURA STONE
Communications Specialist
lauras@okbar.org



OFFICERS & BOARD OF GOVERNORS

GARVIN A. ISAACS, President, Oklahoma City; PAUL D. BRUNTON, Vice President, Tulsa; LINDA S. THOMAS, President-Elect, Bartlesville; DAVID A. POARCH JR., Immediate Past President, Norman; JOHN W. COYLE III, Oklahoma City; JAMES R. GOTWALS, Tulsa; KALEB K. HENNIGH, Enid; JAMES R. HICKS, Tulsa; ALISSA HUTTER, Norman; JAMES L. KEE, Duncan; JOHN W. KINSLOW, Lawton; JAMES R. MARSHALL, Shawnee; SONJA R. PORTER, Oklahoma City; KEVIN T. SAIN, Idabel; ROY D. TUCKER, Muskogee; JOHN M. WEEDN, Miami; BRYON J. WILL, Oklahoma City, Chairperson, OBA Young Lawyers Division

The Oklahoma Bar Journal (ISSN 0030-1655) is published three times a month in January, February, March, April, May, August, September, October November and December and bimonthly in June and July by the Oklahoma Bar Association, 1901 N. Lincoln Boulevard, Oklahoma City, Oklahoma 73105. Periodicals postage paid at Oklahoma City, Okla.

Subscriptions \$60 per year except for law students registered with the OBA who may subscribe for \$30 and senior members who may subscribe for \$25; all active members included in dues. Single copies: \$3

Postmaster Send address changes to the Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152-3036.

BOARD OF EDITORS

MELISSA DELACERDA
Stillwater, Chair

LUKE ADAMS, Clinton

RENÉE DEMOSS, Tulsa

PATRICIA A. FLANAGAN
Yukon

AMANDA GRANT, Spiro

ERIN MEANS, Moore

SHANNON L. PRESCOTT
Okmulgee

MARK RAMSEY, Claremore

LESLIE TAYLOR, Ada

JUDGE ALLEN J. WELCH
Oklahoma City



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



HIGHLIGHTS

President's Reception

Kick off this year's Annual Meeting with the President's Reception 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 guests attend at no additional cost. Each person attending receives two beverage tickets.

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 on Thursday, Nov. 3. The OBA will also recognize its outstanding bar members with the presentation of OBA awards. Award recipients will be announced the week of Sept. 26. Luncheon tickets available with or without meeting registration. Seating is limited, so be sure to register early for this event.



Author Jane Mayer



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, Nov. 3. Come celebrate the official kickoff promotion of the 2017 OBA President's Cruise to Cuba with complimentary hors d'oeuvres and a full bar courtesy of the OBA sections. Annual Meeting registration not required.

President's Breakfast

The final day of Annual Meeting begins on Friday, Nov. 4, 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.



General Assembly and House of Delegates

The important business of the association will be conducted Friday, Nov. 4, beginning at 9 a.m. followed by the House of Delegates at 10 a.m. Leaders will be selected and awards will be presented. Do not miss your chance to participate in the governance of your professional association. County bar associations need to submit the names of their delegates ASAP to Executive Director John Morris Williams, and resolutions to the House of Delegates must be received by Mr. Williams by Sept. 27 to be published in the official House of Delegates book. Email Executive Assistant Debbie Brink at debbieb@okbar.org for more information.

Registration and What It Includes

This year's simplified registration packages mean you can choose what's best for you. Packages range in price and event participation, including up to 10 hours of CLE, with the option to add the Annual and Law School Luncheons separately. (Annual Luncheon included in top package.) Early registration discounts for registration made on or before Oct. 10 and free or discounted registration for members sworn in this year. Registration also 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 1682 or online at www.amokbar.org.



Travel Mug
Convention
Gift



OKLAHOMA BAR ASSOCIATION ANNUAL MEETING 2016

NOV. 2-4 • SHERATON HOTEL • OKLAHOMA CITY

CRITICALLY ACCLAIMED WRITER JANE MAYER TO DELIVER KEYNOTE ADDRESS

Jane Mayer, author of *Dark Money: The Hidden History of the Billionaires Behind the Rise of the Radical Right*, will present "How Billionaires Have Targeted Judicial Races and Other Elections" during the Annual Luncheon on Thursday, Nov. 3, at noon as part of the OBA Annual Meeting. Her keynote presentation will focus on the role of money on judicial races.

"I will talk about the way money is becoming a growing factor in judicial races and what the consequences are," Ms. Mayer said. "I see the money as a real threat to judicial integrity and independence and am happy to talk about that." Ms. Mayer went on to say, "The courts are very much part of their plan, and they've gone about swaying them by changing the way the law is taught in law schools, paying for judicial junkets in which they push their viewpoint on the judges and by trying to use dark money to win judicial elections."

Ms. Mayer's book *Dark Money* explores the influence of wealthy conservative libertarians on American political and educational systems. She is also author to the best-selling book *The Dark Side: The Inside Story of How the War on Terror Turned Into a War on American Ideals*, which was chosen by *The New York Times* as one of the best 10 books of the year and co-author of *Strange Justice and Landslide: The Unmaking of the President, 1984-1988*.

Beginning her career as a stringer for *Time*, she has also written for a number of publications including the *Wall Street Journal*, *The New Yorker*, *Washington Post*, *Los Angeles Times* and the *New York Review of Books*. Ms. Mayer joined *The New Yorker* in March of 1995 as a staff writer covering politics. Before joining *The New Yorker* she became the *Wall Street Journal's* first female White House correspondent.

She was a winner of the John Chancellor Award for Excellence in Journalism and a Guggenheim Foundation Fellowship in 2008. She was also awarded the Edward Weintal Prize from Georgetown University and the Ridenhour Book Prize.

The cost to attend the event is \$40 with Annual Meeting registration (included with the Unbelievably Crazy Value package) or \$50 without meeting registration. This is a presentation you won't want to miss. Reserve your spot today.





OKLAHOMA BAR ASSOCIATION ANNUAL MEETING 2016

NOV. 2-4 · SHERATON HOTEL · OKLAHOMA CITY

OBA ANNUAL MEETING CLE

Offering a Wide Variety of Practical and Technical Information

By Susan Damron

"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. Both packages will also include one hour of CLE on Friday morning during the OBA President's Breakfast. Registrants will have the freedom to "CLE hop" between all the offered sessions and choose the programs and topics that interest them most.

WEDNESDAY, NOV. 2

On Wednesday, Nov. 2, Jim Callo-way has planned a special six-hour **Essential Business School for Lawyers**. Running a successful law practice today is not what it used to be, and the rapidly changing legal community will make tomorrow's challenges even greater. In this seminar, learn how to stay ahead of the curve by developing a solid business plan and budget and find out the technology that is necessary for you to stay efficient. Need to better understand how to manage your trust account and avoid ethical violations? Want help with developing your client contract and fees or client engagement and marketing? Jim's got you covered! The business school will split into

two tracks after lunch so you can tailor your choices to meet your needs.

Wed.	Track 1: Essential Business Skills	Track 2: Mindfulness
Hour 1	The World has Changed: Running a Successful Law Firm Today – and Tomorrow	Sustainable Success: Mindfulness for Lawyers
Hour 2	The Business Plan (25 min) Law Firm Budgeting (25 min)	Sustainable Success <i>Continued</i>
Hour 3	Why You Must Have Digital Client Files and How They Work (25 min) Efficiency Comes From Technology, Automation and Planned Processes (25 min)	Sustainable Success <i>Continued</i>
	Lunch	Lunch
	Track 1: Essential Business Skills	Track 2: Essential Business Skills
Hour 4	Financial Literacy for Lawyers – Balance Sheets, Income Statements, KPI and Taxes	The Trustworthy Trust Account
Hour 5	Pricing, Billing, Fees and Attorney-Client Contracts (25 min) The Initial Client Interview (25 min)	Avoiding Disaster – From Death of a Lawyer to Death of a Lawyer' Computer to Cyber Security
Hour 6	Client Engagement and Marketing – Everything is Different Today (two 25 min sessions)	Compensation Models for Law Firms
continued on next page		

Don't have time for all that business? Other options include a three-hour morning and a three-hour afternoon program.

Think succeeding in your legal career requires you to compromise your health, personal well-being and family life? Want to learn new tools and strategies for accomplishing more with less burn-out? On Wednesday morning, you will have an opportunity to hear Kim Nicol, author, mindfulness coach and meditation teacher. Ms. Nicol will present **"Sustainable Success: Mindfulness for Lawyers."** In this engaging program, you will learn how mindfulness and meditation can support your career as a lawyer in a sustainable way. Gain important insights and tools that will empower you to care for your health, personal and family life as a strategic and integral part of your long-term success.

What Attorneys Will Learn

- Why mindfulness is becoming a popular professional development topic for lawyers
- Why the culture of the legal profession creates an environment of chronic stress, and why mindfulness can protect your time, energy and well-being
- What mindfulness and meditation are and why they're so effective at countering the physiological symptoms of stress — which, unchecked, can undermine mental wellness and lead to substance abuse
- Why companies like Google, Genentech, Yahoo and General Mills have meditation and mindfulness programs
- Why top athletes, coaches and sports teams use meditation to improve performance under pressure
- How to meditate in less than five minutes — even if you don't think you can
- Strategies that you can personalize to suit your specific needs and lifestyle
- Why mindfulness and meditation are key for preventing burnout
- How to apply mindfulness to everyday life, so you can be your best and enjoy your career without sacrificing your health and personal relationships



- How to use mindfulness to cultivate more energy, sleep better and enjoy deeper connections with loved ones

On Wednesday afternoon, **"Alternate Careers for Lawyers"** will be offered by lawyer turned author Amy Impellizzeri. Ms. Impellizzeri made her nonfiction debut with *Lawyer Interrupted*. The book celebrates the true versatility of the American law degree and provides a unique framework for interactive discussions of alternative careers. In fact, *Lawyer Interrupted* is the first book published by the American Bar Association which offers comprehensive (and practical) advice about leaving the traditional practice of law (for voluntary and involuntary reasons). *Lawyer Interrupted*, a synthesis of research and interviews, is a guide not just for finding but also successfully transitioning into alternative legal careers, alternative careers altogether, full-time caregiving and retirement. This book also provides a guide to transitioning back again after a hiatus from the practice.

What Attorneys Will Learn

- Shattering the Myth of the One-Dimensional J.D. – exploring the versatility of the American law degree through statistics and history
- Exploring Specific Alternative Careers for Lawyers – an interactive discussion including case studies and research tools and
- A Pre-Flight Checklist – preparing for a transition from the practice of law, including ethical and practical considerations

Time permitting, there will even be discussion of novel and nonfiction writing as an option for lawyers.

THURSDAY, NOV. 3

CLE continues on Thursday morning with two CLE tracks.

“Social Media as Evidence, Discovery and How to Protect Your Client From Misusing These Networks” will be presented by Jabez LeBret. As the best-selling author of *Online Law Practice Strategies*, Mr. LeBret trains nationally and conducts almost 80 hours of CLE courses annually. This three-hour course outlines how to ethically advise your clients about the risks and liabilities when they use social media networks. Mr. LeBret will discuss using social media as evidence and understanding judicial holds. Twenty states have adopted a version of the ABA Model Rule 1.1: Competence comment [8] that includes the word “technology.” Are you prepared to help your client with Instagram or Twitter? From estate planning issues to criminal defense, every lawyer should know how to properly advise a client on issues involving posting on social media. Telling your client to not post on social media is not a strategy. This session will help you feel confident and could save you many issues down the road.

What Attorneys Will Learn

- How people use social media in their daily lives
- Facebook, Twitter, Instagram, Pinterest and how clients can really screw things up
- Judicial holds and deleting social media information
- The ethics of discovery and social media
- When is something public and when is it private?



Three separate one-hour topics will be offered in track two. SMU Dedman School of Law Associate Professor Joshua Tate will present **“The Grand Jury in Historical Perspective.”** In recent years, the institution of the grand jury has come under increasing public scrutiny. The decisions of grand juries in Missouri and Ohio not to indict police officers in cases involving fatal shootings of citizens have received a great deal of media attention. In Texas, the recent decision of a grand jury in Harris County to indict pro-life activists rather than Planned Parenthood has been covered extensively in the press, with some defending the outcome and others calling it a “runaway” grand jury.

This CLE presentation will examine the history of the grand jury, beginning with the Assize of Clarendon in 1166, which instituted criminal judicial procedures from which our grand jury traces its origin. The grand jury began, in the absence of professional police, as a royal mechanism for gathering information from local leaders about suspected criminals in their communities. Over the centuries, it has evolved into an official proceeding to assess the adequacy of evidence submitted by a public prosecutor. Future discussions about the ethics and efficacy of grand jury proceedings should take into account the history of the institution and

the extent to which it has veered away from its original purpose.

Computer Forensics Manager Calvin Weeks will discuss **“Federal Rule Changes and Effects on eDiscovery.”** This presentation will summarize some of the key changes to the federal rules, what changes have been seen in some case decisions and ways to take advantage of the rule change results from a strategic approach.

And finally, what is becoming an Annual Meeting tradition, the American Board of Trial Advocates presents **“Civility Matters,”** so we may “always remember the practice of law is first and foremost a profession.” This presentation is accredited for one hour of ethics credit.

Additional details about all of these programs are available in this bar journal and at www.amokbar.org.



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.
Submit meeting room and hospitality suite requests to Craig Combs at craigc@okbar.org.
Submit meeting program information to Laura Stone at lauras@okbar.org.*

**Wed.
Nov. 2**

- Meeting registration opens at 8 a.m.
- OBA CLE:
 - Essential Business School for Lawyers
 - Sustainable Success: Mindfulness for Lawyers
 - Alternate Careers for Lawyers
- OCU School of Law Alumni Reception and Luncheon
- OU College of Law Alumni Reception and Luncheon
- TU College of Law Alumni Reception and Luncheon
- Committee and Section Meetings
- President's Reception

- OBA CLE: Plenary Session
 - Social Media as Evidence, Discovery and How to Protect Your Client from Misusing these Networks
 - The Grand Jury in Historical Perspective
 - Federal Rule Changes and Effects on eDiscovery
 - Civility Matters
- Committee and Section Meetings
- Annual Meeting Luncheon featuring Jane Mayer
- Jane Mayer book signing
- County Bar Presidents Meeting
- OBA Sections A Night in Havana Reception
- Past Presidents Dinner

**Thurs.
Nov. 3**

**Fri.
Nov. 4**

- President's Breakfast
- General Assembly
- House of Delegates



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



HOUSE OF DELEGATES

Dear County Bar Presidents:

Thank you to the county bar presidents of:

Bryan, Canadian, Cimarron, **Cleveland, **Comanche, Cotton, Dewey, Garvin, Grant, Greer, Latimer, Love, McClain, McCurtain, Muskogee, Noble, Oklahoma, Ottawa, Pushmataha, Seminole, Tulsa, Wagoner and Woodward for submitting your delegate and alternate selections for the upcoming OBA Annual Meeting.

(**Reported, awaiting election)

Listed below are the counties that have not sent their delegate and alternate selections to the offices of the Oklahoma Bar Association as of Sept. 1. Please help us by sending the names of your delegates and alternates now. *In order to have your delegates/alternates certified, mail or fax delegate certifications to OBA Executive Director John Morris Williams, P. O. Box 53036, Oklahoma City, OK 73152-3036 or fax to 405-416-7001.*

Adair	Harmon	Nowata
Alfalfa	Harper	Okfuskee
Atoka	Haskell	Okmulgee
Beaver	Hughes	Osage
Beckham	Jackson	Pawnee
Blaine	Jefferson	Payne
Caddo	Johnston	Pittsburg
Carter	Kay	Pontotoc
Cherokee	Kingfisher	Pottawatomie
Choctaw	Kiowa	Roger Mills
Coal	LeFlore	Rogers
Craig	Lincoln	Sequoyah
Creek	Logan	Stephens
Custer	Major	Texas
Delaware	Marshall	Tillman
Ellis	Mayes	Washington
Garfield	McIntosh	Washita
Grady	Murray	Woods

In accordance with the bylaws of the Oklahoma Bar Association (5 OS, Ch. 1, App. 2), "The House of Delegates shall be composed of one delegate or alternate from each County of the State, who shall be an active or senior member of the Bar of such County, as certified by the Executive Director at the opening of the annual meeting; providing that each County where the active or senior resident members of the Bar exceed fifty shall be entitled to one additional delegate or alternate for each additional fifty active or senior members or major fraction thereof. In the absence of the elected delegate(s), the alternate(s) shall be certified to vote in the stead of the delegate. In no event shall any County elect more than thirty (30) members to the House of Delegates."

"A member shall be deemed to be a resident, ... of the County in which is located his or her mailing address for the Journal of the Association."

RESOLUTION DEADLINE

Notice: Proposed resolutions are one of many bar business items discussed during the OBA Annual Meeting. Pursuant to OBA Bylaws, proposed resolutions must meet publication guidelines before the Annual Meeting. **A proposal relating to the Legislative Program must be sent in bill format** to Executive Director John Morris Williams by **Monday, Sept. 19**, for publication in the *Oklahoma Bar Journal* Oct. 15 issue. **For any resolution to receive a potential recommendation from the Board of Governors**, the proposal must be received by **Sept. 12**. In order **for a resolution to be published in the official General Assembly and House of Delegates publication**, it must be received by **Sept. 27**.

*An Annual Meeting reception
sponsored by the OBA sections
Open to all - Annual Meeting
registration not required.*

a night in
HAYVANA
Thursday / 5-6:30 p.m.

Complimentary full bar and non-alcoholic beverages

2017 OBA BOARD OF GOVERNORS VACANCIES

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

OFFICERS

President-Elect

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

Nominees: **Kimberly Hays, Tulsa**

Vice President

Current: Paul D. Brunton, Tulsa
(One-year term: 2017)

Nominee: **Jennifer Castillo, Oklahoma City**

BOARD OF GOVERNORS

Supreme Court Judicial District Two

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

Nominee: **Mark E. Fields, McAlester**

Supreme Court Judicial District Eight

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

Nominee: **Jimmy D. Oliver, Stillwater**

Supreme Court Judicial District Nine

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

Nominee: **Bryon J. Will, Yukon**

Member At Large

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

Summary of Nominations Rules

Not less than 60 days prior to the annual meeting, 25 or more voting members of the OBA within the Supreme Court Judicial District from which the member of the Board of Governors is to be elected that year, shall file with the executive director,

a signed petition (which may be in parts) nominating a candidate for the office of member of the Board of Governors for and from such judicial district, or one or more county bar associations within the judicial district may file a nominating resolution nominating such a candidate.

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

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

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

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

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

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

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

NOTICE

The nominating petition deadline was 5 p.m., Sept. 2. This issue went to press before the deadline, and the list of nominees may not be complete. See www.amokbar.org for updates.

OBA NOMINATING PETITIONS

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

PRESIDENT-ELECT

KIMBERLY HAYS, TULSA

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

William R. Grimm, Gary C. Clark, M. Joe Crosthwait Jr., Melissa DeLacerda, Deborah A. Reheard, James T. Stuart, Cathy Christensen, Renee DeMoss, Garvin A. Isaacs, Linda S. Thomas, Stephen D. Beam, M. Alan Souter, Susan Shields, James Hicks, Peggy Stockwell, Richard Stevens, R. Victor Kennemer, Bryon J. Will, Reta M. Strubhar, Glenn A. Devoll, Jack L. Brown, Kevin T. Sain, Jennifer Castillo, D. Faith Orlowski, Kaleb K. Hennigh, Joseph M. Vorndran, Deborah C. Shallcross, Matthew Farris, E. Zach Smith, O. Chris Meyers, Briana J. Ross, Bret A. Smith, Kevin R. Donelson, Patrick O'Hara Jr., Gary Farabough, Jeff Trevillion, William C. Kellogg, Christy Caves, Tamera Childers, Aaron Bundy, T. Luke Barteaux, Amy Page, M. Shane Henry, Rees T. Evans, Christina M. Vaughn, Brad Heckenkemper, Michelle Smith, Ann Keele, Richard A. Wagner II and Alissa Hutter.

A total of 155 signatures appear on the petitions.

VICE PRESIDENT

JENNIFER M. CASTILLO, OKLAHOMA CITY

A total of 123 signatures appear on the petitions.

Nominating Resolutions have been received from the following counties: Muskogee

BOARD OF GOVERNORS

SUPREME COURT JUDICIAL DISTRICT No. 2

MARK E. FIELDS, McALESTER

A total of 69 signatures appear on the petitions.

SUPREME COURT JUDICIAL DISTRICT No. 8

JIMMY D. OLIVER, STILLWATER

Nominating Petitions have been filed nominating Jimmy D. Oliver for election of Supreme Court Judicial District No. 8 of the Oklahoma Bar Association Board of Governors for a three-year term beginning Jan. 1, 2017. Twenty-five of the names thereon are set forth below:

Melissa DeLacerda, Hal Ellis, Laura Austin Thomas, Charles A. Meyers, Tom Lee, Cory T. Williams, LeAnn D. Ellis, Frank Muret, Charles L. McBride, James V. Murray, Thomas Swafford, Lucas Stephens, Cheryl Ramsey, Luke Anthony, Lowell A. Barto, Travis Cagle, Brenda Nipp, Amanda Lilley, Lois Belden, Michael Kulling, Sarah J. Kennedy, Debra Vincent, Virginia Banks, Karen Dixon and Michael R. Coulson.

A total of 42 signatures appear on the petitions.

SUPREME COURT JUDICIAL DISTRICT No. 9

BRYON J. WILL, YUKON

Nominating Petitions have been filed nominating Bryon J. Will for election of Supreme Court Judicial District No. 9 of the Oklahoma Bar Association Board of Governors for a three-year term beginning Jan. 1, 2017. Twenty-five of the names thereon are set forth below:

John Kinslow, Fletcher Handley, Ashton Handley, Michael Denton, Dietmar Caudle, James Roger Rienhart, Grant Sheperd, Andy Bass, Joe Weaver, Nathan D. Richter, Robert L. Ross, Jeff Shaw, John N. Fleur, Neil Spencer West, Aimee Vardemar Berry, Robin Lee Rochelle, James R. Wills, M. Monty Hightower, A. Brad Cox, Dan L. Payton, Eddie Valdez, Art Mata, Taylor Stein, Stephen L. Greb and Kevin Cunningham.

A total of 28 signatures appear on the petitions.

MEMBER AT LARGE JAMES R. HICKS, TULSA

Nominating Petitions have been filed nominating James R. Hicks for election of Member at Large of the Oklahoma Bar Association Board of Governors for a three-year term beginning Jan. 1, 2017. Fifty of the names thereon are set forth below:

Susan Walker, Caitlin Murphy, Michael Smith, Chris Barrow, Vani Singhal, John E. Harper Jr., Gerald L. Hilsher, Thomas D. Robertson, Robert J. Joyce, Gerald G. Stamper, Bill Freudenrich, William R. Grimm, J. Craig Buchan, Timothy L. Rogers, Courtney Bru, Cori Powell, Kathy R. Neal, Joseph Allen, Anna C. Lukeman, Adam Marshall, Tyler Evans, Nicholas M. Jones, Mary Quinn Cooper, David A. Johnson, Charles Greenough, Michael S. Fors-

man, Bill Leach, Bradley K. Beasley, Harold Zuckerman, Melissa H. Sartin, Jessica Dickerson, Robert Sartin, Alison Verret, Anne S. Maguire, Rachel Blue, Bruce Roach, N. Kilian Bryce, Christina M. Vaughn, Kayci B. Hughes, Allison E. Osborn, Stacy Schauvliege, Jeffrey T. Hills, Vic Morgan, Christopher Woods, Susan Huntsman, Malcolm E. Rosser, Alexandra Shipley, Benjamin Schiller, Christina

Cupp, Mark Thetford, Adam Weintraub, Kendall Johnson, Mitchell O'Donnell, Terry O'Donnell, Thomas Affeldt, Stephen Clouser, Brad Heckenkemper, John Wolfe, David Sturdivant and William E. Farrior.

A total of 60 signatures appear on the petitions.



CONQUER YOUR MOUNTAIN

BURNOUT • DEPRESSION • ANXIETY
SUBSTANCE ABUSE • RELATIONSHIP CHALLENGES

LAWYERS
HELPING
LAWYERS
ASSISTANCE
PROGRAM

NO COST
24-HOUR
CONFIDENTIAL
ASSISTANCE

800.364.7886
WWW.OKBAR.ORG/MEMBERS/LAWYERSHELPINGLAWYERS

NOTICE OF JUDICIAL VACANCY

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

**District Judge
Twenty-sixth Judicial District, Office 1
Canadian County**

This vacancy is due to the retirement of the Honorable Gary E. Miller, effective October 1, 2016.

To be appointed to the office of District Judge one must be a registered voter of Canadian County 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., Friday, October 7, 2016. If applications are mailed, they must be postmarked by midnight, October 7, 2016.**

John H. Tucker, Chairman
Oklahoma Judicial Nominating Commission



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 _____

FROM THE PRESIDENT

cont'd from page 1668

important it is that people serve on juries and come to the courthouse and give their time and energy to administer justice under the constitutions of the United States of America and the state of Oklahoma.

Let us vow as lawyers to help educate the public and to uphold public confidence in the judicial system by rendering effective assistance of counsel to our clients regardless of who they are and never forget that under the 14th Amendment of the Constitution of the United States of America that, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

This is a great moment in American history when all of us need to remember our duty is to safeguard our freedoms.

Appellate Practice

with a Criminal flair

Upcoming speakers:

September 19th Ricki Walterscheid, OIDS
Procedural anomalies in Criminal Appeals. (1/0)

October 17th Judge Gary Lumpkin
Appellate Procedure and the Court of Criminal Appeals. (1/0)

Our meetings are held in both Room 131 of the Bar Center, and in the Room 2205 of the Main Classroom Building, OSU/Tulsa, by simulcast. For those unable to attend in person, viewing without CLE is available through the OBA's new BlueJeans meeting program.

Lunch provided to Section Members.
Non-members are charged \$10 for lunch.

RSVP

Mark T. Koss, chair
mark-okc@msn.com

LETTER TO THE EDITOR

Is the Oklahoma Bar Exam Really Necessary?

Dear Editor:

Historically, a prospective attorney was not required to pass the state and federal multi-state bar exam. A student today has to do well on the LSAT; then take classes for an average of three years and pass the tests that are given. My daughter, Elizabeth Garrett, finished first in her class at Virginia Law School. She then clerked for Thurgood Marshall at the U.S. Supreme Court, among other honors. She taught law at Virginia, Harvard and Chicago, where she served as deputy dean. This year, she was selected to be the first female president of Cornell and served for a brief time before she passed away with colon cancer. The year she took the Texas bar exam, the Texas Supreme Court chief justice called to tell her she made the highest score and asked her to give a speech at the swearing-in ceremony.

Her speech was highly critical of the bar exam and the multi-state exam requirements to the consternation of the assembled Supreme Court of Texas and the bar examiners.

From then on, as I understand it, the person selected to speak must submit the speech in advance. It should be obvious that any person who finishes with a "B" average or better at an accredited law school does not need any further testing.

I also passed the bar exam after graduating from law school with grades that qualified me for Phi Delta Phi and still do not understand the necessity of taking the bar exam. The OBA should make the case before the Oklahoma Supreme Court that it is not necessary at least for graduates with a "B" average or better.

Robert D. Garrett
Oklahoma City

NOTICE OF JUDICIAL VACANCY

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

**District Judge
Sixth Judicial District, Office 1
Caddo and Grady Counties**

This vacancy is due to the retirement of the Honorable Richard G. Van Dyck, effective October 1, 2016.

To be appointed to the office of District Judge one must be a registered voter of Caddo or Grady County 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., Friday, October 7, 2016. If applications are mailed, they must be postmarked by midnight, October 7, 2016.**

John H. Tucker, Chairman
Oklahoma Judicial Nominating Commission



OBA TAXATION LAW SECTION

2016 TAX LAW CONFERENCE

With Fellow tax law section members from: The United States Tax Court,
KPMG National State and Local Tax Practice, The Oklahoma Tax Commission,
and more

Continental Breakfast and Luncheon Provided

Monday, September 19, 2016

8:30 AM to 3:30 PM - Oklahoma Bar Association's Emerson Hall, 1901 N. Lincoln Blvd., Oklahoma City, OK 73105

**For More Information and to R.S.V.P. please email Joe Rywelski
jrywelski@barberbartz.com / 918-599-7755**

Labor and Employment Law Section

‘Sniffing’ Out an ADA Claim: Chemical, Fragrance and Scent Sensitivities in the Workplace

By Kimberly Lambert Love and J. Miles McFadden

Virtually everyone has encountered perfumes, colognes, candles, room scents or cleaners that are annoying or irritating. But what happens when an employee is so sensitive to these fragrances or chemicals in the workplace that breathing becomes difficult or the employee experiences debilitating headaches, leading to medical treatment and missed work? Could this employee be “disabled” for purposes of the Americans with Disabilities Act (ADA), thereby triggering an employer’s duty to reasonably accommodate the employee’s sensitivity? Depending on the circumstances, the answer may very well be yes.

ARE INDIVIDUALS WITH SCENT SENSITIVITIES DISABLED FOR PURPOSES OF THE ADA?

Like all disability claims, each employee’s claim of a fragrance, scent or chemical sensitivity must be analyzed on a case by case basis. No general rule necessarily holds true for all cases since the severity of one employee’s condition and the proof the employee offers with respect to that condition varies from case to case. Prior to the ADA Amendments Act¹ (ADAAA) becoming effective in 2009, employers frequently argued, with success, that an employee with a fragrance, chemical or scent sensitivity was not disabled under the ADA.² In cases where a plaintiff managed to survive summary judgment, the plaintiff was often able to show he or she had particularly severe allergic reactions to workplace chemicals, such as formaldehyde, phenol or chemical isopropyl alcohol, which required medical treatment.³

However, since the ADAAA has gone into effect, courts now instead focus on whether the employer has met its obligation to reasonably accommodate the employee. For example, the District of Colorado in 2013 denied an employer’s summary judgment motion involving an employee’s alleged fragrance sensitivity by focusing on a post-ADAAA regulation stating that “the primary object of attention in cases brought under the ADA should be whether covered entities have complied with their obligations and whether discrimination has occurred, not whether an individual’s impairment substantially limits a major life activity.”⁴ The plaintiff’s condition was not described in detail by the Colorado court, which stated only that the plaintiff was “sensitive to certain fragrances” which “causes headaches and a loss of focus and concentration.”⁵

ACCOMMODATING EMPLOYEES WITH FRAGRANCE SENSITIVITIES

Even if an employee can demonstrate a disability based on a fragrance, scent or chemical sensitivity, employers can successfully defend a failure to accommodate lawsuit if the employer can show it engaged the employee in an interactive process to accommodate the disability and the employer and employee worked together to identify the employee’s precise limitations and discuss options that would allow an employee to keep working.⁶ Employers are required only to offer a *reasonable* accommodation to an employee, and a plaintiff bringing an ADA claim must in turn show a reasonable accommodation was possible.⁷ Indeed, even in some cases where an employee

with a fragrance, chemical or scent sensitivity has successfully convinced a court there is an issue of fact as to whether they are disabled, several courts have still granted summary judgment in favor of the employer when the employer has shown it engaged in the interactive process but the requested accommodations were unreasonable. For example, in *Whillock v. Delta Air Lines, Inc.*,⁸ the court granted summary judgment to an employer because the employee's requested accommodation of working entirely from home was unreasonable as a matter of law.

While the interactive process will vary from case to case, there are steps employers can take in trying to reasonably accommodate an employee with a scent sensitivity. First, if the offensive fragrances or scents are coming from cleaning products or other items over which the employer has direct control, the employer should consider discontinuing use of those products.⁹ If an employee has a sensitivity to a particular fragrance used by a coworker, or a particular chemical or scent in a specific location of the workplace, relocating the employee to a separate part of the work environment where he or she would not come in contact with the fragrance would be appropriate.¹⁰ Employers have used air testing in various worksites to find one in which an employee could work.¹¹ If shared spaces continue to irritate the employee's condition, then an employer may consider providing a private office for the individual, as well as installing air filtration devices and assigning restricted use restrooms.¹² Personal protective equipment, such as respirators, may also be appropriate.¹³

Many employees have requested scent-free work environments, and some employers have attempted to have a scent-free workplace policy to accommodate that request. However, courts have recognized that a scent-free policy imposes an undue burden on an employer and is not a reasonable accommodation.¹⁴ These courts have found scent-free policies pose too great of a financial and administrative burden for the employer, since such a policy is often difficult to enforce.¹⁵ As one court has stated,

“While the interactive process will vary from case to case, there are steps employers can take in trying to reasonably accommodate an employee with a scent sensitivity.”

“enforcing a scent-free policy requires a closer inspection than may be considered suitable in the workplace,” which makes a scent-free policy different than a dress code, for example.¹⁶ While a scent-free policy may not be required, other courts have recognized further reasonable accommodations, such as leave supplementing regular sick leave or personal days, might be necessary.¹⁷

CONCLUSION

At first blush, an employer may not recognize an employee with a fragrance, chemical or scent sensitivity as potentially having a covered disability under the ADA that would require accommodation. However, more courts are finding an employee with such sensitivities meets the definition of disabled. Accordingly, employers must now focus more on determining if a reasonable accommodation can be made for the individual's condition and considering what measures can be implemented to allow the employee to continue working.

1. In 2009, several substantive modifications to the Americans with Disabilities Act became effective through the ADAAA. Of particular note, the ADAAA specifically rejected a narrow definition of “disability” that had been crafted by the federal courts. While the statutory definition of “disability” did not change, Congress instructed federal courts to construe the term “disability” broadly and “to the maximum extent permitted.” 42 U.S.C. §12102(4)(A).

2. See, e.g., *Robinson v. Morgan Stanley & Co.*, 269 Fed. Appx. 603 (7th Cir. 2008) (affirming summary judgment in employer's favor on basis that employee's sensitivity to perfumes and fragrances did not constitute a “disability” under the ADA); *Chan v. Sprint Corp.*, 351 F. Supp. 2d 1197 (D. Kan. 2005) (finding employee's hypersensitivity to cigarette smoke and other chemicals insufficient to be an actual disability under the ADA); *Farrish v. Carolina Commercial Heat Treating, Inc.*, 225 F. Supp. 2d 632 (M.D.N.C. 2002) (granting summary judgment to employer where employee failed to show breathing problems and chemical sensitivity substantially limited a major life activity); *Gits v. Minnesota Min. and Mfg. Co.*, No. 99—1925 ADM/AJB, 2001 WL 1409961 (D. Minn. June 15, 2001) (finding employee's “multiple chemical sensitivities” condition to workplace chemicals at a 3M plant did not substantially limit a major life opportunity sufficient to constitute a disability within the ADA definition).

3. See, e.g., *Treadwell v. Dow-United Techs.*, 970 F. Supp. 962 (M.D. Ala. 1997) (finding plaintiff had presented enough evidence of an extreme sensitivity to chemicals to take the issue to trial but noting defendant's evidence may strongly counter plaintiff's evidence); *Whillock v. Delta Air Lines, Inc.*, 926 F. Supp. 1555 (N.D. Ga. 1995) (noting that plaintiff's violent reaction to fumes from mixture of water and chemical isopropyl alcohol and subsequent reaction to coworker's perfume coupled with evidence from doctors that plaintiff suffered from multiple chemical sensitivity syndrome was sufficient to send the issue to the jury, but granting summary judgment on another basis).

4. *Bouard v. Ramtron Int'l Corp.*, Civil Action No. 12-CV-00494-WYD-MJW, 2013 WL 5445846 (D. Colo. Sept. 29, 2013) (quoting 29 C.F.R. §1630.2(j)(1)(iii)).

5. *Id.* at *1 (noting that the medical term for plaintiff's condition was “chronic rhinitis” or “chronic or recurrent sinusitis”); *Bouard v. Ramtron Int'l Corp.*, 2014 WL 1389959 (D. Colo. Apr. 9, 2014) (denying

employer's motion to reconsider prior ruling denying summary judgment); see also *Brady v. United Refrigeration, Inc.*, Civil Action No. 13-6008, 2015 WL 3500125, at *10-11 (E.D. Pa. June 3, 2015) (applying relaxed standard for disability under ADAAA to find plaintiff sufficiently demonstrated she was disabled due to her "heightened sensitivity to perfumes, fragrant chemicals, and lotions" and multiple chemical sensitivity when she suffered debilitating headaches and inability to concentrate or focus for a number of hours).

6. *Valdez v. McGill*, 462 Fed. Appx. 814, 819 (10th Cir. 2012).

7. *Id.*

8. 926 F. Supp. 1555, 1563-66 (N.D. Ga. 1995)

9. See *Hizer v. South Bend Tribune*, 31 F. Supp. 3d 986, 994 (N.D. Ind. 2014).

10. *Id.* at 995.

11. *Morris v. Jackson*, 994 F. Supp. 2d 38, 49 (D.D.C. 2013) (granting summary judgment to federal employer under the Rehabilitation Act, which offers federal employees remedies for disability discrimination as the ADA does for nongovernmental employees, that attempted to accommodate employee with "yeast sensitivity" by using air testing to find a suitable work location, among other measures).

12. *Id.*

13. See *Taylor v. City of Fridley*, 659 F. Supp. 2d 1029, 1047 (D. Minn. 2009) (employer attempted to accommodate employee's wood dust sensitivity by outfitting employee with respirator).

14. See, e.g., *Montanez-Denman v. Slater*, 208 F.3d 214, 2000 WL 263279 (6th Cir. 2000) (affirming summary judgment in favor of the Federal Aviation Administration under the Rehabilitation Act on the basis that it "would be impractical and virtually impossible for the FAA to enforce" the scent-free policy requested by plaintiff and noting that the accommodation is "clearly" not objectively reasonable); *Heaser v. AllianceOne Receivables Mgmt., Inc.*, No. 07-CV-2924 (JMR/FLN), 2009 WL 205209, at *3-4 (D. Minn. Jan. 27, 2009) (collecting similarly held cases).

15. *Id.*

16. *Id.*

17. See *Brady v. United Refrigeration, Inc.*, Civil Action No. 13-6008, 2015 WL 3500125, at *12 (E.D. Pa. June 3, 2015) (suggesting employers may be required to offer additional leave).

ABOUT THE AUTHORS



Kimberly Lambert Love is a partner with Titus Hillis Reynolds & Love. With more than 30 years of experience, Ms. Love practices in all areas of employment law. She is a past chairperson of the OBA Labor and Employment Law Section and regularly contributes to the *Oklahoma Bar Journal*.



J. Miles McFadden is an associate attorney with Titus Hillis Reynolds & Love, primarily practicing in civil litigation, including employment law. He received his bachelor's degree *summa cum laude* from OU in 2007 and graduated with honors from the OU College of Law in 2010.

NOTICE OF JUDICIAL VACANCY

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

**District Judge
Seventh Judicial District, Office 3
Oklahoma County**

This vacancy is due to the passing of the Honorable Donald Deason on July 28, 2016.

To be appointed to the office of District Judge of Oklahoma County, Office 3, one must be a legal resident of Oklahoma County Electoral Division 2 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., Friday, October 7, 2016. If applications are mailed, they must be postmarked by midnight, October 7, 2016.**

John H. Tucker, Chairman
Oklahoma Judicial Nominating Commission

YOU'RE INVITED

OPENING YOUR LAW PRACTICE

PRESENTED BY THE OKLAHOMA BAR ASSOCIATION



OCT. 11 - TULSA
TULSA COUNTY BAR ASSOCIATION
1446 SOUTH BOSTON



OCT. 18 - OKC
OKLAHOMA BAR CENTER
1901 N. LINCOLN BLVD.



CLE Credit

This course has been approved by the Oklahoma Bar Association Mandatory Continuing Legal Education Commission for 0 hours of mandatory CLE credit, including 0 hour of ethics.

Tuition

This program is free, but you must register to attend. Contact Nickie Day at 405-416-7050 to register.

Program Planner/Moderator - Jim Calloway, Director, Management Assistance Program,
Oklahoma Bar Association

Schedule

- 8:30am** Registration and Continental Breakfast
- 9:00am** The Future of Law Practice
Jim Calloway, Director, OBA Management Assistance Program
- 10:00am** It's All About the Clients: From Client Development to Client Satisfaction
Jim Calloway, Director, OBA Management Assistance Program
- 11:00am** Break
- 11:10am** Digital Client Files and Paperless Workflow
Darla Jackson, OBA Practice Management Advisor
- 12:00pm** Lunch provided by Oklahoma Attorneys Mutual Insurance Company
- 12:20pm** Malpractice Insurance and Other Risk Management Issues
Phil Fraim, President, Oklahoma Attorneys Mutual Insurance Company
- 1:00pm** Building and Marketing a Law Practice
Jim Calloway, Director, OBA Management Assistance Program
- 1:30pm** Break
- 1:40pm** Trust Accounting and Legal Ethics
Gina Hendryx, OBA General Counsel
- 2:40pm** Break
- 2:50pm** Equipping the Law Office
Jim Calloway, Director, OBA Management Assistance Program
and Darla Jackson, OBA Practice Management Advisor
- 3:30pm** Your Money: Accounting and Tax for Law Firms
TBA
- 4:30pm** Adjourn

sponsored by



OKLAHOMA ATTORNEYS
MUTUAL INSURANCE COMPANY

Taxation Law Section

2016 Oklahoma Tax Legislation

By Sheppard F. Miers Jr.

The following is a summary of some of the changes in Oklahoma tax law enacted by the Oklahoma Legislature in 2016.

INCOME TAX

Investment/New Jobs Credit, \$25 Million Cap, 2016-2018

The income tax credit for investment in manufacturing facilities or increasing jobs was amended to provide that, for tax years beginning on or after Jan. 1, 2016, and ending on or before Dec. 31, 2018, the total amount of credits used to offset income tax shall be adjusted annually to limit the amount of annual credits to \$25 million. The Tax Commission shall annually calculate and publish a percentage by which credits shall be reduced so the total amount of credits used to offset income tax does not exceed \$25 million per year. The formula for the percentage adjustment shall be \$25 million divided by the credits used to offset income tax in the second preceding year. If the total credits exceed \$25 million in any calendar year the Tax Commission shall permit any excess over \$25 million but shall factor such excess into the percentage adjustment formula for subsequent years.¹

Deduction of State and Local Taxes Eliminated

The Oklahoma income tax code was amended to provide that for taxable years beginning on or after Jan. 1, 2016, Oklahoma taxable income shall be increased by any amount of state and local sales or income taxes deducted by a taxpayer on the taxpayer's federal income tax return. If the amount of state and local taxes deducted on the federal return is limited, taxable income on the Oklahoma state return shall be increased only by the amount actually deducted after any such limitations are applied.²

Child Care Service Credit Repealed

The income tax credit allowed to entities primarily engaged in the business of providing child care services was amended to provide that the credit may not be claimed for any event, transaction, investment or expenditure occurring on or after Jan. 1, 2016.³

Oklahoma Earned Income Credit Repealed

The Oklahoma state earned income tax credit of 5 percent of the earned income tax credit allowed under the Internal Revenue Code was amended to provide that the credit is only allowed for tax years which begin before Jan. 1, 2016.⁴

Energy Efficient Construction Credit Repealed

The income tax credit for eligible expenditures by a contractor in construction of energy efficient residential property was amended to provide that the credit may not be claimed for any transaction, investment or expenditure occurring on or after July 1, 2016.⁵

Oklahoma Coal Credit Reduced

The income tax credit allowed for utilities and manufacturers for purchase of Oklahoma-mined coal and for persons in Oklahoma primarily engaged in coal mining, production and extraction, was amended to provide that for activities occurring on or after Jan. 1, 2016, the amount of credit allowed shall be equal to 75 percent of the amount otherwise provided.⁶

Railroad Reconstruction Credit Reduced

The income tax credit allowed for qualified railroad reconstruction or replacement expenditures was amended to provide that the credit shall be reduced by 25 percent for any taxable year which begins on or after Jan. 1, 2016. The reduction shall not be applicable to tax credits

carried forward from any tax year which began prior to Jan. 1, 2016.⁷

Credit for SBA Loan Guaranty Fee Extended

The credit allowed to banks and credit unions, for the amount of the guaranty fee paid to the U. S. Small Business Administration pursuant to its loan guaranty program, was extended to be allowed for payments made before Jan. 1, 2019.⁸

Income Tax Refund Check-Off Contribution to General Revenue Fund Added

The Oklahoma income tax code was amended to add a provision requiring that each Oklahoma state individual income tax return and each Oklahoma state corporate income tax return (for tax years beginning after Dec. 31, 2016), shall contain provisions to allow a donation from a tax refund or a direct donation for the benefit of the General Revenue Fund of the State of Oklahoma.⁹

Refund Timing, Return Due Dates Changed

The time period related to refunds of income tax was amended to provide that whenever an income tax refund is not paid to a taxpayer, for a return filed electronically within 45 days, the Tax Commission shall pay interest to the taxpayer at the same rate specified for interest on delinquent tax payments. All individual income tax returns made on the basis of a fiscal year shall be due on or before the 15th day of the fourth month following the close of the fiscal year.

Calendar year corporation returns shall be due no later than 30 days after the due date established under the Internal Revenue Code. Fiscal year corporation returns shall be due no later than 30 days after the due date established under the Internal Revenue Code. Partnership returns shall be due no later than 30 days after the due date established under the Internal Revenue Code.

All estate and trust returns made on the basis of the calendar year shall be due on or before the 15th day of April following the close of the taxable year. All estate and trust returns made on the basis of a fiscal year shall be due on or before the 15th day of the fourth month following the close of the fiscal year. Every employer required to deduct and withhold income tax from wages shall furnish to the Tax Commission, on or before Feb. 28 of the succeeding year, an annual reconciliation statement and

other information as the Tax Commission may require pursuant to its electronic data interchange program.¹⁰

SALES AND USE TAX

Oklahoma Retail Protection Act of 2016; Internet Sales; Taxable Nexus

The Oklahoma Sales Tax Code was amended by enactment of the Oklahoma Retail Protection Act of 2016, to add provisions requiring the reporting and payment of state and local sales tax by out-of-state vendors making sales of tangible personal property to customers in Oklahoma, including sales tax on purchases and sales made via the Internet. The law attributes taxable nexus and/or physical presence in the state to such an out-of-state vendor based on it having certain relationships and arrangements with other persons that have a physical presence in the state.

A vendor making sales of tangible personal property from outside Oklahoma, for use in the state that is not required to collect use tax, shall be required by Feb. 1 of each year to provide a statement to each customer to whom tangible personal property was delivered in the state. The statement must include the total sales made by the vendor to the customer during the preceding calendar year, the sales price, that the customer may owe Oklahoma use tax on the customer's purchases from the vendor during the previous year and information about reporting and payment of the use tax by the customer. The statement must not contain any other information that would indicate or identify the class, type, description or name of the products purchased.¹¹

Two Year Statute of Limitation for Sales Tax Claims for Refund

The statute of limitation for filing a claim for refund, for sales and use tax, was amended to require filing of a verified claim for refund within two years from the date of payment of the tax.¹²

New Printed Material Manufacturing Exemption

A sales tax exemption was enacted for sale of paper stock and other raw materials which are manufactured into commercial printed material in Oklahoma primarily for use and delivery outside the state, including magazines, catalogs, retail inserts and direct mail.¹³

*County Sales Tax Voter Approval
"One Subject" Requirement*

The statute authorizing levy of county sales tax that is submitted to county voters for approval and providing that it embrace one subject was amended and clarified.¹⁴

AD VALOREM TAX

*Refurbishment Costs Qualify for Manufacturing
Facility Exemption*

The *ad valorem* tax five-year new manufacturing facility exemption was amended to provide that investment cost shall include capital expenditures for direct replacement, refurbishment, repair or maintenance of existing machinery and equipment that qualifies for depreciation and/or amortization, pursuant to the Internal Revenue Code and such expenditures shall be eligible as a part of an expansion that otherwise qualifies for the exemption.¹⁵

*Valuation of Inventory Related to Sale of Building
Materials*

The statutory requirements for valuation and assessment of tangible personal property for *ad valorem* tax purposes were amended to provide for a method for assessment, at the average value of the inventory of persons primarily engaged in selling lumber and other building materials, including cement and concrete, except for certain home centers, with such inventory to be assessed each year at the average value of the inventory on hand as of Jan. 1 of each year and the value of inventory on hand as of Dec. 31 of the same year.¹⁶

*County Board of Equalization Member
Continuing Training*

The requirement that the county board of equalization members complete specified training on the duties of the board was amended to make the requirement apply to subsequent terms to which a member is appointed.¹⁷

*Grandfathering of Manufacturing Exemption
for Wind Farms Amended*

Multiple versions of the statute limiting the *ad valorem* tax five-year new manufacturing facility exemption to wind farms completed and placed in initial qualifying use prior to Jan. 1, 2017, were amended and repealed.¹⁸

*Low Income Household Exemption
Definition Amendment*

The additional homestead exemption for low income households was amended to provide that the gross household income for purposes of eligibility shall not include any veterans' disability compensation payments.¹⁹

GROSS PRODUCTION TAX

*Economically At-Risk Oil or Gas Lease
Exemption; \$12.5 Million Cap*

The gross production tax exemption allowed for economically at-risk oil and gas leases was amended and reduced. The definition of an "economically at-risk oil or gas lease," for years on or after Jan. 1, 2015, was amended to mean any lease with one or more producing wells with an average production volume per well of 10 barrels of oil or 60 MCF of natural gas per day or less, operated at a net loss or at a net profit less than the total gross production tax remitted for such lease during the previous calendar year. For exempt production in the calendar year ending Dec. 31, 2016 and each year thereafter, a refund shall be claimed before July 1 of the year following the year of production; and the Tax Commission shall not accept or pay any claim for refund filed on or after July 1 of each year following the year of production. For oil and gas produced from qualifying leases in calendar years 2015 through 2020, the total amount of refunds authorized for each calendar year shall not exceed \$12.5 million. If the amount of claims exceeds \$12.5 million the Tax Commission shall determine the percentage of the refund which establishes the proportionate share of the refund which may be claimed by any taxpayer so that the maximum authorized exemption is not exceeded.²⁰

*Oil Recovered from Streams and Lakes,
Royalty Claims; Transporter Reporting*

The gross production tax code was amended to provide that upon providing of proof of mineral ownership within 12 months of the time of payment to the Tax Commission of payments collected by it for oil recovered from streams, lakes, ponds, ravines and other depressions to which oil has escaped, or for oil reported produced without disclosure of the actual source, the Tax Commission will pay rightful royalty interest owners their proper interests. The reporting by transporters of crude oil or gas was amended to provide that it must be made upon request of the Tax Commission. The statute providing for apportion-

ment of gross production tax, for which the source of the oil or gas or casinghead gas is not determined at the expiration of 6 months from the date of payment was repealed.²¹

Oil and Gas Excise Tax Rates Extended

The statutory imposition and apportionment of an excise tax on oil and gas in addition to the gross production tax at the current rates was extended until June 30, 2021.²²

TAX ON COIN-OPERATED MUSIC AND AMUSEMENT DEVICES

Compliance Requirements Amended

Provisions related to taxation and coin-operated music and amusement devices were amended with respect to certain decal issuance refusals, notices, fine amounts and seizure of devices.²³

TAX ADMINISTRATION, PRACTICE AND PROCEDURE

Tax Commission Enforcement Enhancement Directed

The Tax Commission was directed by the Legislature to enhance agency efforts to discover and reduce fraud and abuse of sales and use tax exemptions and the non-filing and underreporting of sales and use taxes, through enhanced auditing with technology systems to identify underreporting of sales and use taxes and the electronic reporting of information of exempt sales. The Tax Commission was directed to increase its audit staff to conduct audits of individual, corporate and partnership income tax returns; and the Tax Commission may utilize its increased staff to audit and issue proposed assessments against non-filing and underreporting taxpayers detected through enhanced technology. The Tax Commission was directed to enhance agency efforts to ensure the proper reporting and collection of gross production taxes, to include the use of enhanced technology to ensure that all production is accurately reported and the auditing of claims for refund or rebates to verify the accuracy of claims filed.²⁴

Confidential Nature of Records and Files of Tax Commission Amendments

Multiple versions of the statute governing the confidential nature of records and files of the Tax Commission were amended, merged, consolidated and repealed.²⁵

TAX AND FISCAL POLICY

Revenue Stabilization Fund Created

A Revenue Stabilization Fund was created. Provisions were enacted for the deposit of gross production tax and corporate income tax revenues into the fund.²⁶

1. SB 1582, amending 68 O. S. Supp. 2015, §2357.4; effective Nov. 1, 2016.
2. SB 1606, amending 68 O. S. Supp. 2015, §2358; effective Nov. 1, 2016.
3. SB 1605, amending 68 O. S. Supp. 2015, § 2357.27; effective Nov. 1, 2016.
4. SB 1604, amending 68 O. S. 2011, §2357.43; effective Nov. 1, 2016.
5. SB 1603, amending 68 O. S. 2011, §2357.46; effective Aug. 26, 2016.
6. SB 1614, amending 68 O. S. Supp. 2015, §2357.11; effective Nov. 1, 2016.
7. HB 3204, amending 68 O. S. 2011, §2357.104; effective Jan. 1, 2016.
8. HB 2536, amending 68 O. S. Supp. 2015, §2370.1; effective Nov. 1, 2016.
9. SB 1085, adding 68 O. S. Supp. 2016, §2368.28; effective Jan. 1, 2017.
10. HB 2775, amending 68 O. S. 2011, §2368 and 68 O. S. Supp. 2015, §§217, 2385.3; effective July 1, 2016.
11. HB 2531, amending 68 O. S. 2011, §§1352, 1401, 1407.2 and 1407.3; repealing 68 O. S. 2011, §§1354.1-1354.6; adding 68 O. S. Supp. 2016, §1406.2; effective Nov. 1, 2016.
12. HB 3205, amending 68 O. S. Supp. 2015, §227; effective Aug. 26, 2016.
13. SB 1282, amending 68 O. S. Supp. 2015, §1359; effective Nov. 1, 2016.
14. HB 2248, amending 68 O. S. Supp. 2015, §1354.36; effective Nov. 1, 2016.
15. SB 1282, amending 68 O. S. Supp. 2015, §2902; effective Jan. 1, 2016.
16. SB 1455, amending 68 O. S. Supp. 2015, §2817, effective Jan. 1, 2017.
17. HB 2526, amending 68 O. S. 2011, §2862; effective Nov. 1, 2016.
18. HB 3201, amending and repealing multiple versions of 68 O. S. Supp. 2015, §2902; effective April 26, 2016.
19. HB 2349, amending 68 O. S. 2011, §2890, effective Nov. 1, 2016.
20. SB 1577, amending 68 O. S. Supp. 2015, §1001.3a; effective July 1, 2016.
21. HB 2774, amending 68 O. S. 2011, §§1003, 1005; repealing 68 O. S. 2011, §1016; effective July 1, 2016.
22. HB 2303, amending 68 O. S. 2011, §§1101, 1102; 68 O. S. Supp. 2015, §1103; effective April 26, 2016.
23. HB 2932, amending 68 O. S. 2011, §§1504, 1506, 1507; repealing 68 O. S. 2011, §1508; effective Nov. 1, 2016.
24. SB 1579, enacting non-codified provisions and amending 68 O. S. 2011, §1002, effective Aug. 26, 2016; SB 1282, enacting non-codified provisions; effective Nov. 1, 2016.
25. HB 3201, amending and repealing multiple versions of 68 O. S. Supp. 2015, §205; effective April 26, 2016.
26. HB 2763, adding 62 O. S. Supp. 2016, §§34.102-34.104 and amending 68 O. S. 2011, §§1004 and 68 O. S. Supp. 2015, §2352; effective Nov. 1, 2016.

ABOUT THE AUTHOR

Sheppard F. Miers Jr. is a shareholder in the Tulsa office of GableGotwals and practices in the areas of federal and state taxation. The author acknowledges information and assistance he received on the subject of this article from Joanie Raff, legislative analyst of the Oklahoma Senate Staff.

Just Desserts: The Sweet Rewards of Civic Service

By Reign Sikes

The 2016 Women in Law Committee is proud to continue the tradition of amazing speakers and topics for this year's Annual Conference, titled Just Desserts: The Sweet Rewards of Civic Service on Friday, Oct. 21, at the Embassy Suites Downtown/Medical Plaza in Oklahoma City. Conference attendees will receive six hours of CLE including one hour of ethics. Early sponsors are Crowe and Dunlevy, Heritage Trust Co., Angela Ailles and Associates, Miller and Johnson, Monroe and Keele, and the OBA's Family Law Section and Diversity Committee.

KEYNOTE SPEAKER

The conference keynote speaker is Dr. Jo-Ellan Dimitrius, expert jury consultant and author of the books *Put Your Best Foot Forward: The Impression Management Way*, and *Reading People: How to Understand People and Predict Their Behavior*. Dr. Dimitrius has been the jury consultant on more than 600 jury trials since 1984, most notably for the successful parties on the O.J. Simpson and Scott Peterson criminal trials, and *Coppola v. Warner Bros* and *City of New York v. Exxon* civil trials.



Dr. Jo-Ellan Dimitrius

Friday, Oct. 21
**Embassy Suites Downtown/
Medical Plaza • OKC**

Dr. Dimitrius has been featured in the *ABA Journal* and *The American Lawyer* magazine (which has nicknamed her "The Seer") and is a frequent commentator for several news programs, including *CBS Evening News*, *NBC Nightly News*, *ABC World News Tonight*, *The Today Show*, *Good Morning America*, *Face the Nation*, NPR and MSNBC, among others. She will give

her keynote speech during the Awards Luncheon.

During the conference, Dr. Dimitrius will be joined by Western District Federal Court Judge Vicki Miles-LaGrange, and Presiding Chief Judge of Tulsa County Rebecca Nightingale on a panel for judicial perspective of jurors and their contributions to the legal system. Other panels will include information on how to run for office by State Rep. Cyndi Munson and representatives of Sally's List, service opportunities available both locally and internationally by Bevin Graybill (who serves on two local charitable boards), and Lisa Tresch, executive director of Rising Village will present a project which reaches out to and assists women in Ghana.

Ethics will be brought to us by the always entertaining OBA Ethics Counsel Joe Balkenbush. The conference will be rounded out with a panel of actual jurors who will speak about their jury service, their thoughts on the process and what most influenced them during their participation in our current system of justice.

MONA SALYER LAMBIRD SPOTLIGHT AWARDS AND THE DIVERSITY AWARDS

Another highlight of the conference will be the presentation of the Mona Salyer Lambird Spotlight Awards and the Diversity Awards during the conference luncheon. The luncheon is sponsored by the Women in Law Committee and the Diversity Committee. This year is the 20th anniversary of the Mona Salyer Lambird Spotlight Awards, and we are working on a surprise to commemorate the occasion. Winners will be announced in the upcoming OBJ.

The committee would like to thank all its members and those who have agreed to make our conference a great event! The conference is \$150 for CLE and luncheon with early-bird registrations (payment received at least four full business days prior to the seminar date), or you can attend the Awards Luncheon only for \$40. A fee of \$25 will be assessed for registrations

received within four full business days, and cost is \$200 for walk-ins. Online registration for the full conference will receive a \$10 program discount and can be accomplished at www.okbar.org/members/cle.

If you are coming from somewhere other than Oklahoma City for the conference (or you just want a night away in an awesome hotel), room reservations may be made at the beautiful Embassy Suites Downtown/Medical Plaza by

Friday, Oct. 21 Embassy Suites Downtown/Medical Plaza Oklahoma City

- \$200 Walk-In (CLE and Annual Luncheon)
- \$175 Online Registration (CLE and Annual Luncheon)
- \$150 Early Bird Special (CLE and Annual Luncheon)
- \$129 Hotel Reservations
- \$40 Awards Luncheon Only
- \$10 Program Discount for Online Registration of Full Conference

calling 405-239-3900 and asking for the Women in Law block. In order to receive the conference rate of \$129, reservations must be made no later than Oct. 4.

ABOUT THE AUTHOR



Reign Sikes, co-chair of the Women in Law Committee practices as staff council for State Farm. She is a 1998 graduate of the OCU School of Law.



For the latest OBA news,
follow us @OklahomaBar
and @OBACLE

Proposed Changes to the Oklahoma Rules of Professional Conduct

Member Comments Requested

The following are proposed changes to the Oklahoma Rules of Professional Conduct as proposed by the OBA Rules of Professional Conduct Committee. These changes are currently under consideration by the OBA Board of Governors.

*Members of the OBA are encouraged to review the proposed changes and **submit any comments by Oct. 28, 2016**, 1) via email to ORPCRulecomments@okbar.org or 2) mail hard copy comments to ORPC Proposed Rule Changes Comments, OBA, P.O. Box 53036, Oklahoma City, OK 73152.*

Oklahoma Rules of Professional Conduct
Chapter 1, App. 3-A
Client-Lawyer Relationship
Rule 1.18. Duties To Prospective Client

(a) A person who ~~discusses~~ consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

(b) Even when no client-lawyer relationship ensues, a lawyer who has ~~had discussions with~~ learned information from a prospective client shall not use or reveal that information ~~learned in the consultation~~, except as Rule 1.9 would permit with respect to information of a former client.

(c) A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d). If a lawyer is disqualified from representation under this paragraph, no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter, except as provided in paragraph (d).

(d) When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) both the affected client and the prospective client have given informed consent, confirmed in writing, or:

(2) the lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client; and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(ii) written notice is promptly given to the prospective client.

Comment

[1] Prospective clients, like clients, may disclose information to a lawyer, place documents or other property in the lawyer's custody, or rely on the lawyer's advice. A lawyer's discussions consultations with a prospective client usually are limited in time and depth and leave both the prospective client and the lawyer free (and sometimes required) to proceed no further. Hence, prospective clients should receive some but not all of the protection afforded clients.

[2] Not all persons who communicate information to a lawyer are entitled to protection under this Rule. A person becomes a prospective client by consulting with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter. Whether communications, including written, oral, or electronic communications, constitute a consultation depends on the circumstances. For example, a consultation is likely to have occurred if a lawyer, either in person or through the lawyer's advertising in

any medium, specifically requests or invites the submission of information about a potential representation without clear and reasonably understandable warnings and cautionary statements that limit the lawyer's obligations, and a person provides information in response. See also Comment [4]. In contrast, a consultation does not occur if a person provides information to a lawyer in response to advertising that merely describes the lawyer's education, experience, areas of practice, and contact information, or provides legal information of general interest. A person who communicates Such a person communicates information unilaterally to a lawyer, without any reasonable expectation that the lawyer is willing to discuss the possibility of forming a client-lawyer relationship, and is thus not a "prospective client." within the meaning of paragraph (a). Moreover, a person who communicates with a lawyer for the purpose of disqualifying the lawyer is not a "prospective client."

[3] It is often necessary for a prospective client to reveal information to the lawyer during an initial consultation prior to the decision about formation of a client-lawyer relationship. The lawyer often must learn such information to determine whether there is a conflict of interest with an existing client and whether the matter is one that the lawyer is willing to undertake. Paragraph (b) prohibits the lawyer from using or revealing that information, except as permitted by Rule 1.9, even if the client or lawyer decides not to proceed with the representation. The duty exists regardless of how brief the initial conference may be.

[4] In order to avoid acquiring disqualifying information from a prospective client, a lawyer considering whether or not to undertake a new matter should limit ~~the initial interview~~ the initial consultation to only such information as reasonably appears necessary for that purpose. Where the information indicates that a conflict of interest or other reason for non-representation exists, the lawyer should so inform the prospective client or decline the representation. If the prospective client wishes to retain the lawyer, and if consent is possible under Rule 1.7, then consent from all affected present or former clients must be obtained before accepting the representation.

[5] A lawyer may condition ~~conversations~~ a consultation with a prospective client on the person's informed consent that no information disclosed during the consultation will prohibit

the lawyer from representing a different client in the matter. See Rule 1.0(e) for the definition of informed consent. If the agreement expressly so provides, the prospective client may also consent to the lawyer's subsequent use of information received from the prospective client.

[6] Even in the absence of an agreement, under paragraph (c), the lawyer is not prohibited from representing a client with interests adverse to those of the prospective client in the same or a substantially related matter unless the lawyer has received from the prospective client information that could be significantly harmful if used in the matter.

[7] Under paragraph (c), the prohibition in this Rule is imputed to other lawyers as provided in Rule 1.10, but, under paragraph (d)(1), imputation may be avoided if the lawyer obtains the informed consent, confirmed in writing, of both the prospective and affected clients. In the alternative, imputation may be avoided if the conditions of paragraph (d)(2) are met and all disqualified lawyers are timely screened and written notice is promptly given to the prospective client. See Rule 1.0(k) (requirements for screening procedures). Paragraph (d)(2)(i) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[8] Notice, including a general description of the subject matter about which the lawyer was consulted, and of the screening procedures employed, generally should be given as soon as practicable after the need for screening becomes apparent.

[9] For the duty of competence of a lawyer who gives assistance on the merits of a matter to a prospective client, see Rule 1.1. For a lawyer's duties when a prospective client entrusts valuables or papers to the lawyer's care, see Rule 1.15.

Oklahoma Rules of Professional Conduct

Chapter 1, App. 3-A

Advocate

Rule 3.8. Special Responsibilities of a Prosecutor

The prosecutor in a criminal case shall:

(a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause;

(b) make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(c) not seek to obtain from an unrepresented accused a waiver of important pretrial rights, such as the right to a preliminary hearing;

(d) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal;

(e) not subpoena a lawyer in a grand jury or other criminal proceeding to present evidence about a past or present client unless the prosecutor reasonably believes:

(1) the information sought is not protected from disclosure by any applicable privilege;

(2) the evidence sought is essential to the successful completion of an ongoing investigation or prosecution; and

(3) there is no other feasible alternative to obtain the information;

(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule;

(g) The lawyer upon whom a subpoena is served shall be afforded a reasonable time to file a motion to quash compulsory process of his/her attendance. Whenever a subpoena is issued for a lawyer who then moves to quash it by invoking attorney/client privilege, the prosecutor may not press further in any proceeding for the subpoenaed lawyer's appearance as a witness until an adversary in camera hearing has resulted in a judicial ruling which resolves all the challenges advanced in the lawyer's motion to quash.

(h) When a prosecutor knows of new, credible, and material evidence creating a reasonable likelihood that a convicted defendant did not commit an offense of which the defendant was convicted, the prosecutor shall within a reasonable time:

(1) disclose that evidence to an appropriate court and prosecutorial authority in the jurisdiction where the conviction occurred, and

(2) if the judgment of conviction was entered by a court in which the prosecutor exercises prosecutorial authority,

(i) unless a court authorizes delay, make reasonable efforts to disclose that evidence to the defendant's attorney or if the defendant is not represented by counsel to the defendant, and

(ii) if the defendant is not represented by counsel, move the court in which the defendant was convicted to appoint counsel to assist the defendant concerning the evidence, and

(iii) request an appropriate authority to investigate whether the defendant was convicted of an offense that the defendant did not commit.

(i) When a prosecutor learns of clear and convincing evidence establishing that a defendant was convicted in a court in which the prosecutor exercises prosecutorial authority of an offense that the defendant did not commit, the prosecutor shall promptly notify the appropriate court and make reasonable efforts to notify the defendant's counsel and the defendant.

(j) A prosecutor's judgment, made in good faith, that the new evidence is not of such nature as to trigger the obligations of sections (g) and (h) of this rule, though subsequently determined to have been erroneous, does not constitute a violation of this rule.

Comment

[1]A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice, ~~and~~ that guilt is decided upon the basis of sufficient evidence, and that special precautions are taken to prevent and to rectify the conviction of innocent persons. Precisely how far the prosecutor is required to go in this direction is a matter of debate and var-

ies in different jurisdictions. Many jurisdictions have adopted the ABA Standard of Criminal Justice Relating to Prosecution Function, which in turn are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense. Applicable law may require other measures by the prosecutor, and knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of Rule 8.4.

[2] In some jurisdictions, a defendant may waive a preliminary hearing and thereby lose a valuable opportunity to challenge probable cause. Accordingly, prosecutors should not seek to obtain waivers of preliminary hearings or other important pretrial rights from unrepresented accused persons. Paragraph (c) does not apply, however, to an accused appearing pro se with the approval of the tribunal. Nor does it forbid the lawful questioning of an uncharged suspect who has knowingly waived the rights to counsel and silence.

[3] The exception in paragraph (d) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

[4] Paragraphs (e) and (g) are intended to limit the issuance of lawyer subpoenas in grand jury and other criminal proceedings to those situations in which there is a genuine need to intrude into the client-lawyer relationship. It ensures that a subpoena caused to be issued by a prosecutor to the lawyer requesting evidence about a past or present client of a lawyer will be subject to judicial review upon a timely challenge by the subpoenaed lawyer.

[5] Paragraph (f) supplements Rule 3.6, which prohibits extrajudicial statements that have a substantial likelihood of prejudicing an adjudicatory proceeding. In the context of a criminal prosecution, a prosecutor's extrajudicial statement can create the additional problem of increasing public condemnation of the accused. Although the announcement of an indictment, for example, will necessarily have severe consequences for the accused, a prosecutor can, and should, avoid comments which have no legitimate law enforcement purpose and have a substantial likelihood of increasing public opprobrium of the accused. Nothing in this Comment is intended to restrict the statements

which a prosecutor may make which comply with Rule 3.6(b) or 3.6(c).

[6] Like other lawyers, prosecutors are subject to Rules 5.1 and 5.3, which relate to responsibilities regarding lawyers and nonlawyers who work for or are associated with the lawyer's office. Paragraph (f) reminds the prosecutor of the importance of these obligations in connection with the unique dangers of improper extrajudicial statements in a criminal case. In addition, under paragraph (f), a prosecutor has an affirmative duty to make reasonable efforts to prevent law enforcement personnel and others associated with or assisting the prosecution from making extrajudicial statements, even when such persons are not under the direct supervision of the prosecutor.

[7] When a prosecutor knows of new, credible, and material evidence creating a reasonable likelihood that a convicted person in a jurisdiction where the prosecutor does not exercise prosecutorial authority was convicted of a crime that the person did not commit, paragraph (h) requires, within a reasonable time, disclosure to an appropriate court and prosecutorial authority, such as the chief prosecutor of the jurisdiction where the conviction occurred. If the conviction was obtained in a jurisdiction where the prosecutor exercises prosecutorial authority, paragraph (h) requires the prosecutor also, in the absence of court-authorized delay, to, within a reasonable time, (1) disclose that evidence to the defendant's attorney or if the defendant is not represented by counsel to the defendant, (2) move the court in which the defendant was convicted to appoint counsel for the defendant (if the defendant is not already represented by counsel), and (3) request an appropriate authority to investigate whether the defendant was convicted of an offense that the defendant did not commit. For purposes of paragraph (h), "knows" shall be interpreted to mean actual knowledge of the fact in question; indirect or implied knowledge does not trigger the duties set forth in paragraph (h). See Rule 1.0(f).

[7A] Good cause for delaying the notification required by paragraph (h)(2)(i) may include a reasonable concern that such notification would interfere with an ongoing investigation.

[7B] For purposes of this rule, "appropriate court" means the court in which the questioned conviction occurred or any other court with jurisdiction to render post-conviction relief in the matter.

[8] When the requirements of paragraph (h) are met, the prosecutor should support the defendant's efforts to seek a remedy consistent with justice, applicable law, and the circumstances of the case.

Oklahoma Rules of Professional Conduct
Chapter 1, App. 3-A
Law Firms and Associations
Rule 5.3. Responsibilities Regarding
Nonlawyer Assistants

With respect to a nonlawyer employed or retained by or associated with a lawyer:

(a) a partner, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer;

(b) a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and

(c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or

(2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Comment

[21] Paragraph (a) requires lawyers with managerial authority within a law firm to make reasonable efforts to ~~establish internal policies and procedures designed to provide~~ to ensure that the firm has in effect measures giving reasonable assurance that nonlawyers in the firm and nonlawyers outside the firm who work on firm matters will act in a way compatible with the professional obligations of the lawyer. ~~with the Rules of Professional Conduct.~~ See Comment [1] to Rule 5.1. Paragraph (b) applies to

lawyers who have supervisory authority over ~~the work of a nonlawyer.~~ such nonlawyers within or outside the firm. Paragraph (c) specifies the circumstances in which a lawyer is responsible for ~~the conduct of a nonlawyer~~ such nonlawyers within or outside the firm that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer.

Nonlawyers Within the Firm

[12] Lawyers generally employ assistants in their practice, including secretaries, investigators, law student interns, and paraprofessionals. Such assistants, whether employees or independent contractors, act for the lawyer in rendition of the lawyer's professional services. A lawyer must assure that such assistants receive appropriate instruction and supervision concerning the ethical aspects of their employment, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising nonlawyers should take account of the fact that they do not have legal training and are not subject to professional discipline.

Nonlawyers Outside the Firm

[3] A lawyer may use nonlawyers outside the firm to assist the lawyer in rendering legal services to the client. Examples include the retention of an investigative or paraprofessional service, hiring a document management company to create and maintain a database for complex litigation, sending client documents to a third party for printing or scanning, and using an Internet-based service to store client information. When using such services outside the firm, a lawyer must make reasonable efforts to ensure that the services are provided in a manner that is compatible with the lawyer's professional obligations. The extent of this obligation will depend upon the circumstances, including the education, experience and reputation of the nonlawyer; the nature of the services involved; the terms of any arrangements concerning the protection of client information; and the legal and ethical environments of the jurisdictions in which the services will be performed, particularly with regard to confidentiality. See also Rules 1.1 (competence), 1.2 (allocation of authority), 1.4 (communication with client), 1.6 (confidentiality), 5.4(a) (professional independence of the lawyer), and 5.5(a) (unauthorized practice of law). When retaining or directing a nonlawyer outside the firm, a lawyer should communicate

directions appropriate under the circumstances to give reasonable assurance that the nonlawyer's conduct is compatible with the professional obligations of the lawyer.

[4] Where the client directs the selection of a particular nonlawyer service provider outside the firm, the lawyer ordinarily should agree with the client concerning the allocation of responsibility for monitoring as between the client and the lawyer. See Rule 1.2. When making such an allocation in a matter pending before a tribunal, lawyers and parties may have additional obligations that are a matter of law beyond the scope of these Rules.

Oklahoma Rules of Professional Conduct
Chapter 1, App. 3-A
Information About Legal Services
Rule 7.1. Communications Concerning a Lawyer's Services

A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the communication considered as a whole not materially misleading.

Comment

[1] This Rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] Truthful statements that are misleading are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is also misleading if there is a substantial likelihood that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation.

[3] An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated comparison of the lawyer's services or fees with the services or fees of other lawyers may be misleading if presented with

such specificity as would lead a reasonable person to conclude that the comparison can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public, a prospective client.

[4] See also Rule 8.4(e) for the prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct.

Oklahoma Rules of Professional Conduct
Chapter 1, App. 3-A
Information About Legal Services
Rule 7.2. Advertising

(a) Subject to the requirements of Rules 7.1 and 7.3, a lawyer may advertise services through written, recorded or electronic communication, including public media.

(b) A lawyer shall not give anything of value, directly or indirectly, to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is a lawyer referral service that has been approved by an appropriate regulatory authority:

(3) pay for a law practice in accordance with Rule 1.17; and

(4) without paying anything solely for the referral, refer clients to another lawyer or a non-lawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if

(i) the reciprocal referral agreement is not exclusive, and

(ii) the client is informed of the existence and nature of the agreement.

(c) Any communication made pursuant to this rule shall include the name and office address of at least one lawyer or law firm responsible for its content.

Comment

[1] To assist the public in learning about and obtaining legal services, lawyers should be allowed to make known their services not only

through reputation but also through organized information campaigns in the form of advertising. Advertising involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising by lawyers entails the risk of practices that are misleading or overreaching.

[2] This Rule permits public dissemination of information concerning a lawyer's name or firm name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and other information that might invite the attention of those seeking legal assistance.

[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television and other forms of advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television, the Internet, and other forms of electronic communication are is now one of among the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television, Internet, and other forms of electronic advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. Similarly, electronic media, such as the Internet, can be an important source of information about legal services, and lawful communication by electronic mail is permitted by this Rule. But see Rule 7.3(a) for the prohibition against the a solicitation of a prospective client through a real-time electronic exchange initiated by the lawyer. that is not initiated by the prospective client.

[4] Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as

notice to members of a class in class action litigation.

Paying Others to Recommend a Lawyer

[5] Except as permitted under paragraphs (b) (1)-(b)(4), ~~lawyers are not permitted to pay others for channeling professional work recommending the lawyer's services or for channeling professional work in a manner that violates Rule 7.3. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities.~~ Paragraph (b)(1), however, allows a lawyer to pay for advertising and communications permitted by this Rule, including the costs of print directory listings, on-line directory listings, newspaper ads, television and radio air time, domain-name registrations, sponsorship fees, ~~banner ads, Internet-based advertisements,~~ and group advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client-development services, such as publicists, public-relations personnel, business-development staff and website designers. Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with Rule 7.1 (communications concerning a lawyer's services). To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. See also Rule 5.3 for the (duties of lawyers and law firms with respect to the conduct of nonlawyers); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another). ~~who prepare marketing materials for them.~~

[6] A lawyer may pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek prospective clients to secure legal representation. A lawyer referral service, on the other hand, is any organization that holds itself out to the public as a lawyer referral service. Such referral services are understood by ~~laypersons~~

the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule only permits a lawyer to pay the usual charges of a not-for-profit or qualified lawyer referral service. A qualified lawyer referral service is one that is approved by an appropriate regulatory authority as affording adequate protections for the public ~~prospective clients~~. See, e.g., the American Bar Association's Model Supreme Court Rules Governing Lawyer Referral Services and Model Lawyer Referral and Information Service Quality Assurance Act (requiring that organizations that are identified as lawyer referral services (i) permit the participation of all lawyers who are licensed and eligible to practice in the jurisdiction and who meet reasonable objective eligibility requirements as may be established by the referral service for the protection of the public ~~prospective clients~~; (ii) require each participating lawyer to carry reasonably adequate malpractice insurance; (iii) act reasonably to assess client satisfaction and address client complaints; and (iv) do not make referrals ~~prospective clients~~ to lawyers who own, operate or are employed by the referral service.)

[7] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See Rule 5.3. Legal service plans and lawyer referral services may communicate with ~~prospective clients~~ the public, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead the public ~~prospective clients~~ to think that it was a lawyer referral service sponsored by a state agency or bar association. Nor could the lawyer allow in-person, telephonic, or real-time contacts that would violate Rule 7.3.

[8] A lawyer also may agree to refer clients to another lawyer or a nonlawyer professional, in return for the undertaking of that person to refer clients or customers to the lawyer. Such reciprocal referral agreements must not interfere with the lawyer's professional judgment as to making referrals or as to providing substantive

legal services. See Rules 2.1 and 5.4(c). Except as provided in Rule 1.5(e), a lawyer who receives referrals from a lawyer or nonlawyer professional must not pay anything solely for the referral, but the lawyer does not violate paragraph (b) of this Rule by agreeing to refer clients to the other lawyer or nonlawyer professional, so long as the reciprocal referral agreement is not exclusive and the client is informed of the referral agreement. For the purposes of Rule 7.2(b)(4), such reciprocal referral agreements do not constitute a prohibited thing of value. Conflicts of interest created by such agreements are governed by Rule 1.7. Reciprocal referral agreements should not be of indefinite duration and should be reviewed periodically to determine whether they comply with these Rules. This Rule does not restrict referrals or divisions of revenues or net income among lawyers within firms comprised of multiple entities.

Oklahoma Modification

The Oklahoma version of Rule 7.2(b)(4) adds language to the text and Comment to underscore that reciprocal referral agreements do not constitute a prohibited thing of value. The Oklahoma version retains the preexisting Oklahoma formulation extending the prohibition of Rule 7.2(b) to both direct and indirect things of value.

Oklahoma Rules of Professional Conduct Chapter 1, App. 3-A Information About Legal Services **Rule 7.3 ~~Direct Contact With Prospective Solicitation of Clients~~**

(a) A lawyer shall not by in-person, live telephone or real-time electronic contact, solicit professional employment ~~from a prospective client~~ when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain, unless the person contacted:

(1) is a lawyer, or

(2) has a family, close personal, or prior professional relationship with the lawyer.

(b) A lawyer shall not solicit professional employment ~~from a prospective client~~ by written, recorded or electronic communication or by in-person, telephone or real-time electronic contact even when not otherwise prohibited by paragraph (a), if:

(1) the ~~prospective client~~ target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer; or

(2) the solicitation involves coercion, duress or harassment.

(c) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone a prospective client known to be in need of legal services in a particular matter shall include the words "Advertising Material" on the outside of the envelope, if any, and at the beginning and ending of any recorded or electronic communication, unless the recipient of the communication is a person specified in paragraphs (a)(1) or (a)(2).

(d) Notwithstanding the prohibitions in paragraph (a), a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses in-person or telephone contact to solicit memberships or subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan.

Comment

[1] A solicitation is a targeted communication initiated by the lawyer that is directed to a specific person and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a lawyer's communication typically does not constitute a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information or is automatically generated in response to Internet searches.

[12] There is a potential for abuse when a solicitation involves inherent in direct in-person, live telephone or real-time electronic contact by a lawyer with someone a prospective client known to need legal services. These forms of contact between a lawyer and a prospective client subject the lawyer a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person prospective client, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult fully to evaluate all available alternatives with reasoned judgment and appropriate self-interest in the face of the lawyer's presence and insistence upon being retained immediately. The situation is fraught with the possibility of undue influence, intimidation, and over-reaching.

[23] This potential for abuse inherent in direct in-person, live telephone or real-time electronic solicitation of prospective clients justifies its prohibition, particularly since lawyers have advertising and written and recorded communication permitted under Rule 7.2 offer alternative means of conveying necessary information to those who may be in need of legal services. Advertising and written and recorded In particular, communications, can which may be be mailed or autodialed or transmitted by email or other electronic means that do not involve real-time contact and do not violate other laws governing solicitations. These forms of communications and solicitations make it possible for the public a prospective client to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the prospective client the public to direct in-person, telephone or real-time electronic persuasion that may overwhelm the client's a person's judgment.

[34] The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to the public prospective client, rather than direct in-person, live telephone or real-time electronic contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard against statements and claims that might constitute false and misleading communications, in violation of Rule 7.1. The contents of direct in-person, live telephone or real-time electronic conversations between a lawyer and a prospective client contact can be disputed and may not be subject to third-party scrutiny. Consequently, they are much more likely to approach (and occasionally cross) the dividing line between accurate representations and those that are false and misleading.

[45] There is far less likelihood that a lawyer would engage in abusive practices against an individual who is a former client, or a person with whom the lawyer has close personal or family relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for abuse when the person contacted is a lawyer. Consequently, the general prohibition in Rule 7.3(a) and the requirements

of 7.3(c) are not applicable in those situations. Also, paragraph (a) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal-service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to its their members or beneficiaries.

[56] But even permitted forms of solicitation can be abused. Thus, any solicitation which contains information which is false or misleading within the meaning of Rule 7.1, which involves coercion, duress or harassment within the meaning of Rule 7.3(c)(2), or which involves contact with ~~a prospective client~~ someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(b)(1) is prohibited. Moreover, if after sending a letter or other communication ~~to a client~~ as permitted by Rule 7.2 the lawyer receives no response, any further effort to communicate with the recipient of the communication ~~prospective client~~ may violate the provisions of Rule 7.3(b).

[67] This Rule is not intended to prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to people who are seeking legal services for themselves, ~~a prospective client~~. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the

activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising permitted under Rule 7.2.

[78] The requirement in 7.3(c) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule.

[89] Paragraph (d) of this Rule permits a lawyer to participate with an organization which uses personal contact to solicit members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization must not be owned by or directed (whether as manager or otherwise) by any lawyer or law firm that participates in the plan. For example, paragraph (d) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the in-person or telephone solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations also must not be directed to a person known to need legal services in a particular matter but is to be designed to inform potential plan members generally of another means of affordable legal services. Lawyers who participate in a legal service plan must reasonably assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(b). See 8.4(a).

The Road Less Traveled

By John Morris Williams

Perhaps some of the wisest words of a generation were written by poet Robert Frost. His lifespan began after the American Civil War and ended with the promise of a young President Kennedy challenging this country and its citizens to think beyond the stars and to serve beyond their own self-interest. Frost's familiar words in "The Road Not Taken" are familiar to many.

Two roads diverged in
a yellow wood,
And sorry I could not
travel both
And be one traveler,
long I stood
And looked down one
as far as I could
To where it bent
in the undergrowth;

Given the time period of when these words were written, many have speculated on what a deep and conscious lesson Frost was wishing to impart. Later, Frost stated the words were merely a gentle mocking of the indecision demonstrated by a friend as they walked in the woods during the time Frost lived in England. The story goes on that the friend took it personally and thought it was written in criticism of his entire life. It seems to have been very influential in leading the friend to make a fatal decision in joining the army during World War I.

Words do matter, even if spoken in jest or spoken without intent of harm. To the uninformed, the naïve, those who lack the ability to see gray, and even those who suffer from mental illness; all may hear or see your words. It is a high burden to live in a world where everything we say has to be parsed in a way that no misconstruction could possibly be had. It is equally the burden of each of us to not use words to inflame, misdirect or to deceive. In short, as lawyers we have taken a road less traveled. We have taken a road where we cannot speak without consequences. Rule 1.4 (b) of the Oklahoma Rules of Professional Conduct provides:

A lawyer shall explain a matter to the extent reasonably necessary to permit the client effectively to participate in the representation.

The comments to Rule 1.4 require the communication be written in a way " ... appropriate for a client who is a comprehending and responsible adult." I guess a text message stating "U B not guilty" or some such text message code might cut it under this rule. However, beyond the black letter wording of the rule the road we took requires more.

The road we took as members of the legal profession requires us to be professional and to at all times be reasonable and profes-

sional in how we deal with clients, courts and the public. We are public citizens who took an oath when we choose the road upon which we journey.

Frost ends with:

I shall be telling this
with a sigh
Somewhere ages and
ages hence:
Two roads diverged
in a wood, and I —
I took the one
less traveled by,
And that has made
all the difference.

The road less taken requires more than 140 characters at times. It requires us as members of the legal profession to take extra measures with the words we use to ensure they are understood and comprehended. I challenge you in this season of sound bites and rhetoric to meet the higher standard of using civility in communicating to everyone with whom we engage. I challenge you to take the road less traveled. Your professionalism and civility will make all the difference.



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

Email Attachments vs. Client Portals

By Jim Calloway

Let me start by noting this particular column is focused on tools to use in a law practice.

As the title suggests, this month I am going to discuss the differences between providing clients documents by sending them as email attachments versus providing the documents through a client portal. Some readers may be surprised at how easy and affordable providing a client portal is today. You may have already used similar portals for your HIPAA-protected medical information provided by a health care provider.

This will not be a detailed treatment of the ethical requirements under the Oklahoma Rules of Professional Conduct for a lawyer using email. I'll leave a detailed analysis of that subject for another day and perhaps another author. However, one cannot really discuss email for lawyers today without briefly discussing encryption and a lawyer's ethical duty to safeguard client confidentiality.

EMAIL ATTACHMENTS

Generally, advisory ethics opinions from other jurisdictions still provide a lawyer may communicate with a client via unencrypted email based on

the theory that a person who uses email has a reasonable expectation of privacy.¹ That nonbinding ethics opinion and others, also state that encryption and other methods of securing client communications could be preferred depending on the circumstances.



As we have seen more email-related security breaches and other incursions, commentators have noted “a pendulum-swinging trend among ethics committees that are revisiting the question of whether lawyers should be required to use encryption when emailing clients.”² ABA Formal Opinion 11-459 (2011)³ cautioned that a lawyer must “ordinarily” warn the client about the risk of sending or receiving electronic communication where there is a significant risk of compromise.

In particular, this applied to communicating with a client using an email account or device owned by the client's employer.

In 2011, Pennsylvania Bar Association Committee on Legal Ethics and Professional Responsibility issued Formal Opinion 2011-200,⁴ a frequently cited opinion that discusses (and approves) lawyers using cloud computing for client information, but also discusses concerns with email, particularly web-based email. The opinion I most encourage lawyers to read today is Opinion 648,⁵ a 2015 opinion from the Texas Center for Legal Ethics, which discusses several situations where encryption of client email should be considered.

The truth is that email was not intended to be, nor is it currently, a secure method to transmit confidential information. Even so, it is used to send confidential or private information many times a day. If all of the email dumps from data stolen by hackers and all of the recent disclosures of embarrassing emails now in the public's hands haven't made the reader appreciate the nature of email by now, I'm not sure I have words that will do so. I will

repeat a witticism that has been circling the internet recently: "Dance like no one is watching, email like you'll be reading it in a deposition someday."

Encryption of email is not widely used by the public today. I do not really foresee a day when it will be believed that every electronic attorney-client communication should be encrypted. An unencrypted text or email is the best choice when the message is "Court is starting in three minutes. Where are you?" An unencrypted email to a client asking "Can we change tomorrow's appointment from 3:30 p.m. to 4 p.m.?" doesn't trouble me, although some lawyer somewhere might disagree. If that client you are texting about the appointment time change also wants to discuss all aspects of their pending criminal charges or the possible merger of their publicly traded company with you via text message, you might want to read (or reread) my prior column "You Are Not Paranoid If They Really Are Watching You: Attorney-Client Privilege, Confidentiality and Cybersecurity in the 21st Century"⁶ to see if you both need a more secure texting app (of course texting is more secure than unencrypted email.)

My thought is that today at a minimum you need to be able to encrypt an electronic message or email attachment when needed and you should make sure every client understands what things should not be discussed via unsecured email. An email and electronic communication discussion should be a part of every initial client engagement.

One tool that provides email "encryption when you need it, but not when you don't" is OBA member benefit Citrix

ShareFile. The Outlook plug-in provided is simple and easy. There is another method for other types of email clients, such as Gmail. Instead of an attachment to the email, the file is encrypted and stored in ShareFile, and a link is provided for the email recipient. Different levels of security can be set for the recipient to unlock the message. If a client needs to send a lawyer confidential information, ShareFile can be used by the lawyer to generate an upload link the client can use to encrypt files before they are uploaded and sent to the lawyer.

**“...at a minimum
you need to be able
to encrypt an
electronic message
or email attachment
when needed...”**

The recently-released ShareFile Legal retails for \$45 per person per month (with potential for volume discounts) and includes the Outlook plug-in and Gmail/webmail app. It includes some other lawyer-specific dashboard tools.⁷ In order to purchase ShareFile Legal, it will be necessary to talk with a sales person. This service also includes *unlimited* cloud storage which one could use to set up a client document repository. It has similar tools that other cloud services like Dropbox and Box have to share files or folders with a client, but without the security

concerns that some associate with Dropbox.

Other encrypted communication providers that have been recommended by experts in the field include Zixcorp,⁸ Mimecast⁹ and DataMotion.¹⁰

CLIENT PORTALS

Our 2016 OBA Solo & Small Firm Conference, as I have previously noted in this space, had 10 sponsors featuring practice management solutions. Many of these provided, as a part of their basic services, secure messaging to clients and online client document repositories or portals. You can find these vendors, as well as our other great conference vendors, online at www.okbar.net/solo/#sponsors, including links to their company pages.

Using a practice management solution to set up digital client files, which include all documents and other information associated with that matter is, in my opinion, the best practice for lawyers today for a variety of reasons.

Having your client portal automatically provided through your practice management solution is a simple and easy way to provide better and more secure document sharing with your clients. Suppose you need to discuss an important matter with a client or client representative who is traveling. You will both appreciate the convenience of the client being able to login to their portal to look at documents in their file via a laptop or other mobile device. Some of these tools even notify the lawyer when a client has opened and reviewed a particular document.

Day-to-day emails which are not secure could then be relegated to communications advis-

ing that another document has been uploaded to the portal which should be reviewed by the client and perhaps that "Where are you?" email from the courthouse.

The great thing about attorney-client portals is the providers are coming up with other great innovative ideas. One portal provides the client's balance of fees currently owed while another might provide real-time information on the ongoing tasks on the client's matter. One major practice management solution has recently added document storage capability. One thing that is certain about all of the practice management solutions is that the company's founders understood from the beginning that these had to be secure methods that were built to protect the confidences of the law firm's clients. The majority of these providers, at least in the small to medium-sized law firm market, are cloud-based, which makes developing the secure client portals relatively simple and gives the lawyer working from home or a hotel room the same interface and information they would have while working in the office.

CONCLUSION

We are all likely emailing too much sensitive personal information these days. Another state bar association once needed some tax information from me. Their email said to fill out the attached blank form and email it back to them. I did, but used an encryption method.

Later I asked the person responsible for receiving the information if lawyers actually emailed back this information to her as a plain attachment without encryption. She said a lot of lawyers do, but then she smiled and added "but none of our technology speakers do." That's probably all you need to know about the security of email, isn't it?

One of the tips I frequently give to groups of lawyers is if you don't have an encryption tool yet and need to encrypt a document, you can password protect a PDF file or Microsoft Word document. Then email it and call the recipient via telephone to give them the password to unlock the document. That works well if you only need to encrypt an attachment a few times a year. But if it is a daily task, you probably need a more practical solution.

Today the way business is done continues to change, and the legal profession must also change to keep up with this changing environment. The OBA Management Assistance Program urges lawyers in private practice to use practice management software tools to keep all client documents in secure digital client files.

One of the day-to-day benefits of this practice will be quick access to every document in every open client file when you are in the office or when you get a call from a client at home. Another benefit will be the ability to keep serving your clients

if your office is impacted by a fire or natural disaster.

When all the documents in the client file are digital, they are easier to share with clients, co-counsel or expert witnesses. A well-designed client portal will address sharing documents with clients. Some practice management solutions include the ability to securely share documents with those other than clients as well. But, the 21st century lawyer should consider both offering client portals and also knowing when and how to use encrypted email and email attachments.

1. See ABA Formal Opinion 99-413 (1999) and opinions cited in Peter Geraghty, "Encryption Connption," *YourABA* (July 2015), goo.gl/BtChjO.

2. *Id.*

3. ABA Standing Comm. on Ethics & Prof'l Responsibility, Formal Op. 11-459 (2011) (discussing duty to protect the confidentiality of email communications with one's client), goo.gl/OTMm6S.

4. Dan Pinnington, *New Ethics Opinion on Cloud Computing from the Pennsylvania Bar*, SLAW, goo.gl/aWDjKs (last visited Aug. 30, 2016), (linking to Pa. B. Ass'n. Prof'l Ethics Comm., Formal Op. 2011-200 (Advisory) (2011), goo.gl/SpW8xa).

5. Prof'l Ethics Comm. of the Sup. Ct. of Tex., Op. 648 (Apr. 2015), (discussing whether a lawyer may communicate confidential information by email), goo.gl/XfRtYH.

6. Jim Calloway, "You Are Not Paranoid If They Really Are Watching You: Attorney-Client Privilege, Confidentiality and Cybersecurity in the 21st Century," 87 *OKLA. B.J.* 823 (2016), goo.gl/U4gKpK.

7. Visit www.sharefile.com/legal.

8. www.zixcorp.com.

9. www.mimecast.com.

10. www.datamotion.com.

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!



ADVERTISE IN THE BAR JOURNAL

405.416.7084 or advertising@okbar.org



Meeting Summary

The Oklahoma Bar Association Board of Governors met via phone conference on Friday, July 22.

REPORT OF THE PRESIDENT

President Isaacs announced the theme for this year's Annual Meeting will be Safeguarding Our Freedoms.

REPORT OF THE PRESIDENT-ELECT

President-Elect Thomas reported she attended the Solo & Small Firm Conference, judicial reception and dinner in Ottawa County, Oklahoma Bar Foundation Board of Trustees meeting and a meeting with Executive Director Williams regarding scheduling and planning for 2017.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the Solo & Small Firm Conference at which he participated in a legislative program, YLD board meeting, Annual Meeting planning meetings with staff and with President Isaacs, judicial dinner in Ottawa County and monthly staff celebration. He participated in an Access to Justice Commission phone conference and spoke to the Custer County Bar Association.

BOARD MEMBER REPORTS

Governor Coyle reported he attended the Solo & Small Firm Conference and Oklahoma County Bar Association meeting. **Governor Gotwals**

reported he attended the Solo & Small Firm Conference, OU law alumni reception at the Mayo Hotel in Tulsa, two Tulsa County Bar Foundation meetings regarding the final punch list for the Tulsa County Bar Center renovation project, dedication of the Judge Carlos J. Chappelle Ceremonial Courtroom 605 at the Tulsa County Courthouse, the presentation of checks to 2016 TCBF Golf Tournament charity beneficiaries, the Price College of Business 2016 summer alumni and friends reception at 36 Degrees North in Tulsa and Tulsa County Bar Association Family Law Section meeting. **Governor Hennigh** reported he attended the Solo & Small Firm Conference. **Governor Hicks**, unable to attend the meeting, reported via email he attended the Solo & Small Firm Conference, OBA Access to Justice Committee meeting, Tulsa County Bar Foundation Board of Trustees meeting and Tulsa County Bar Association Golf Committee meeting. **Governor Hutter** reported she attended the Solo & Small Firm Conference at which she presented a CLE, Cleveland County Bar Association meeting, Ottawa County judicial dinner/reception, Cleveland County Bar Association executive officer meeting and retirement party for Cleveland County Court Clerk Rhonda Hall. **Governor Kee** reported he attended the Solo & Small Firm Conference. **Governor Marshall** reported he attended the Solo & Small Firm Conference and Legal Intern Committee meeting. He did a

preliminary review of the OBA audit report and scheduled an Audit Committee meeting. **Governor Porter**, unable to attend the meeting, reported via email she attended the OBA Law-related Education Committee meeting, Cleveland County Bar Association monthly meeting luncheon and Women in Law Committee meeting. **Governor Tucker** reported he attended the Solo & Small Firm Conference, YLD networking event at the conference, Law Day Committee meeting and Muskogee County Bar Association monthly meeting.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Will reported he chaired the OBA YLD Midyear Meeting at the Solo & Small Firm Conference. At the division's next meeting, YLD board members will stuff bar exam survival kits and pass them out to exam takers on July 26 when the exams begin.

BOARD LIAISON REPORTS

Governor Marshall reported the Legal Intern Committee has prepared its annual report to submit to the Supreme Court. The report contains three rule interpretations. Governor Kinslow reported the Clients' Security Fund Committee met to review claims, and he projected the amount of approved claims would be within budget. Governor Tucker reported the Law Day Committee reviewed its goals for improvement and will add more resources to the web-

site to assist teachers. The Law Day theme will be based on the 14th Amendment. The Juror Appreciation Subcommittee's work is progressing with a court clerk survey underway. Governor Coyle reported the Lawyers Helping Lawyers Assistance Program Committee released a utilization report. A question was raised about the numbers not adding up. Executive Director Williams said he would invite the CABA liaison, who prepares the report, to speak at the December meeting. Governor Porter reported via email the Law-related Education Committee met and reviewed upcoming programs. Executive Director Williams attended and announced the two LRE staff members were retiring this year, and the decision was made not to refill those positions. Several members had questions regarding how events and projects would be handled within the bar going forward. Former LRE Committee member David Hopper will ask to speak to the board about his concerns. The committee discussed ways that law-related information could be shared more efficiently with people of all ages. She also reported the Women in Law Committee met, is continuing planning for its conference and is still seeking sponsors.

REPORT OF THE GENERAL COUNSEL

A written report of Professional Responsibility Commission actions and OBA disciplinary matters for June was submitted to the board for its review.

ACCESS TO JUSTICE PROJECT

Executive Director Williams reported the OBA will partner with the Oklahoma Access to Justice Commission and the ABA to offer a free legal advice website to Oklahomans who meet certain criteria. The OBA will be among many states offering this assistance. He said action moved very quickly on the project set to launch in late August and thanked Jim Calloway, Darla Jackson and Gisele Perryman for their work. Oklahoma's webpage is in development now.

LEGAL INTERNSHIP PROGRAM ANNUAL REPORT

The board voted to accept the Legal Internship Program report and to submit it to the Supreme Court.

LAW-RELATED EDUCATION

Former LRE Committee member David Hopper asked the board to reconsider the decision not to fill the Law-related Education Program staff positions. President-Elect Thomas asked Executive Director Williams to address the issue. Executive Director Williams said the LRE Committee is still in place and could continue work on its projects. He said the OBA is committed to citizen education, but he is uncertain of the direction of that initiative. It was pointed out that existing staff could handle many tasks and that for several programs, the OBA's role has evolved to hosting and

will continue to do so. He said the young adult guide started as a YLD volunteer project and did not require staff. Government funding that supported some programs has become limited or nonexistent.

President-Elect Thomas encouraged the LRE Committee to continue to function and to consider becoming involved in the work of the Access to Justice Commission. She said her review of the current LRE programs did not justify paid staff members. Mr. Hopper said a group of individuals is forming to explore becoming a nonprofit organization to carry on grant programs like the James Madison Legacy Project. Discussion followed. The board voted to request a report from the LRE Committee on which programs it wants to continue, a description of the program, number of people served and information from Executive Director Williams on whether the OBA will continue the program and if staff is needed. Executive Director Williams said he will contact the committee chairperson with the request.

NEXT MEETING

The Board of Governors met on Aug. 26 at the Oklahoma Bar Center in Oklahoma City. A summary of those actions will be published after the minutes are approved. The next board meeting will be at 10 a.m. Friday, Sept. 23, at the Tulsa County Bar Association in Tulsa.

The Oklahoma Bar Foundation Announces 2017 Grant Program Funding

By Candice Jones

The Oklahoma Bar Foundation announced it will provide 2017 program funding to 23 nonprofit organizations in the total amount of \$444,175. These grantees provide civil legal services, law-related education and improvements to the administration of justice and represent the largest number of nonprofit entities the OBF has funded in its 70-year history.

"This year we received significantly more applications than ever before," said Grants and Awards Committee Chair Patrick O'Hara Jr. "The Grants and Awards Committee interviewed all of the applicants over a two-day period and had the opportunity to learn more about how these organizations are positively impacting their communities. From the growth of the OBA High School Mock Trial Program to the provision of assistance to deprived children and domestic violence victims, the stories of our grantees are truly inspiring. It is both humbling and gratifying to be a part of the Oklahoma Bar Foundation's efforts to make a difference in the lives of so many Oklahomans."

Of the 23 grants awarded, 16 are made to organizations that

received OBF funding last year, and the other grants are to organizations that are first-time OBF grantees. All entities applying for OBF funding must submit a detailed application about the program for which they seek funding and participate in personal interviews with the Grants and Awards Committee, which is composed of members of the OBF Board of Trustees. The entire OBF board provides final approval for funding.

2017 OBF GRANT PROGRAM FUNDING RECIPIENTS

Canadian County CASA NEW
Advocacy services for abused/neglected children – \$15,000
 Area Served: Canadian County

The CARE Center NEW
Forensic Interviews – \$10,000
 Area Served: Oklahoma County

Center for Children & Families
Divorce Visitation Arbitration Program – \$15,000
 Area Served: Cleveland and Oklahoma counties

Citizens for Juvenile Justice NEW
Reading Program for Juveniles on Probation – \$3,000
 Area Served: Oklahoma County

Community Crisis Center
Ottawa County Court Advocate – \$5,000
 Area Served: Ottawa, Craig and Delaware counties

Domestic Violence Intervention Services
Court Advocacy & Legal Services Program – \$20,000
 Area Served: Tulsa and Creek counties

Family & Children's Services
Family Court Program – \$7,000
 Area Served: Tulsa County

Foundation for OKC Public Schools NEW
Academy of Law & Public Safety – \$15,000
 Area Served: Northeast Oklahoma City

Legal Aid Services of Oklahoma
Civil Legal Services – \$85,000
 Area Served: Statewide

Marie Detty Youth & Family Services
New Directions Domestic Violence Court Advocate – \$15,000
 Area Served: Comanche, Cotton and Caddo counties

OBA Mock Trial Program
High School Mock Trial Program – \$50,000
 Area Served: Statewide

\$444,175 total dollars given

grants range from **\$1,000 to \$85,000**

23 NONPROFITS

for civil legal service, law-related education and admin. of justice improvements

OCU School of Law

American Indian Wills Clinic – \$30,000

Area Served: Statewide

Oklahoma Family Legal Advocates NEW

Family services

Area Served: Tulsa County

Oklahoma Guardian Ad Litem Institute NEW

Guardian Ad Litem Services – \$10,000

Area Served: Statewide

Oklahoma Indian Legal Services

Indian Child Welfare Act Education Project – \$1,000

Area Served: Statewide

Oklahoma Lawyers for Children

Legal Services for Children – \$54,454.50

Area Served: Oklahoma County

William W. Barnes Children's Advocacy Center

Recognizing, reporting and responding to child abuse – \$3,000

Area Served: Rogers, Mayes and Craig counties

Teen Court

Delinquency Prevention – \$25,500

Area Served: Comanche County

Tulsa Lawyers for Children

Legal representation of abused and neglected children – \$36,954.50

Area Served: Tulsa County

TU College of Law Boesche Legal Clinic

Immigrant's Rights Project – \$8,266

Area Served: Statewide

YMCA

Youth in Government – \$5,500

Area Served: Statewide

YWCA Tulsa

Immigration & Refugee Legal Services – \$10,000

Area Served: Greater Tulsa Metropolitan

Youth Services of Tulsa

Youth Court – \$15,000

Area Served: Tulsa County

For more information about Oklahoma Bar Foundation grantees, please visit www.okbarfoundation.org.

ABOUT THE AUTHOR

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



OKLAHOMA BAR FOUNDATION

Law. Education. Justice.

Oklahoma Bar Foundation Contribution Form

Name: Mr. /Mrs. /Ms. _____ Company: _____

Billing Address: _____ City: _____ State: _____ Zip: _____

Preferred Email: ☐ Personal ☐ Work Email Address: _____

Tax Receipt will be emailed to address listed above

Birthday: _____ Cell Phone: _____ Home Phone: _____ Work Phone: _____
Month/Day/Year

What inspires you to give? _____

DIRECT GIVING

\$50 _____ \$75 _____ \$100 _____ \$250 _____ \$500 _____ Other \$ _____

FELLOWS PROGRAMS

Join a giving program!

Fellows Program:

_____ \$100/year *Sustaining Fellow*
_____ \$200/year *Contributing Fellow*
_____ \$300/year *Benefactor Fellow*
_____ \$500/year *Leadership Fellow*
_____ \$1,000/year *Governing Fellow*

Fellows Program – individuals

Community Fellows Program:

_____ \$1,000/year *Community Partner*
_____ \$2,500/year *Community Supporter*
_____ \$5,000/year *Community Champion*
_____ \$7,500/year *Community Pillar*
_____ \$10,000/year *Community Cornerstone*

Community Fellow – law firms, companies, organizations

BILLING OPTIONS

_____ Cash/Check Enclosed

_____ Bill me _____ Yearly _____ Monthly _____ Quarterly

_____ Credit Card _____ / _____ / _____ / _____ Exp. Date ____ / ____ Security Code: ____

Signature: _____

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

Opportunities to Network With Fellow Attorneys

By Bryon J. Will

Happy September to everyone! So, where are we now? Fall is vastly upon us, the kiddos are back in school, football is finally back in swing and the OBA Annual Meeting is just around the corner.

Just as the Solo & Small Firm Conference was a great way to network with lawyers from across the state, so is the Annual Meeting. There, too, I have met many lawyers from across the state, some of whom are still close colleagues to this day. This year the OBA Annual Meeting will be held Nov. 2-4 at the Downtown Sheraton Hotel in Oklahoma City.

WHAT TO EXPECT AT THE ANNUAL MEETING

- 1** *CLE:* There will be various tracks provided to help you get your hours in before the end of the year.
- 2** *Section Meetings:* If you are a part of a section or interested in getting involved in one, several sections have meetings in conjunction with the Annual Meeting.
- 3** *Law School Alumni Luncheons:* Each of Oklahoma's three law schools will host luncheons for alumni. This is a great way to see old friends



YLD members spent their Saturday morning organizing donated items and cleaning at the Help Center and Abundant Blessings.

and professors and catch up with one another.

- 4** *YLD Monthly Meeting:* The YLD November meeting is held in conjunction with the Annual Meeting. Along with the YLD meeting, there will also be networking opportunities for young lawyers to meet with veteran lawyers from across the state.

I hope you will take the opportunity to come and join us in Oklahoma City for this year's Annual Meeting.

COMMUNITY SERVICE

For our August meeting the YLD traveled to Grove for a

community service project at the Help Center and Abundant Blessings. There we reorganized donated items in their warehouse, did some painting and helped with clean-up. It is an honor for us to give back to our Oklahoma communities.

COMMUNITY SERVICE FOR ALL OKLAHOMA YOUNG LAWYERS

The OBA, in conjunction with the ABA and Oklahoma Access to Justice Commission, recently introduced Oklahoma Free Legal Answers, a program to provide low-income Oklahomans with free legal advice. Oklahomans who qualify can post civil legal questions at

Oklahoma.freelegalanswers.org and volunteer attorneys will anonymously provide them with basic legal information and advice. Volunteer attorneys will be able to select which questions they would like to answer and will be covered by a professional liability insurance policy. This would be a great project for young lawyers across the state to get involved in, and I would like to see a large number of YLD members volunteer.

GETTING INVOLVED IN THE YLD

Have you been admitted to the bar for less than 10 years? Are you wanting to get involved with the YLD? This is the place for you.

The OBA YLD is made up of lawyers who have been admitted to the bar for less than 10 years. If you fit this description, you are automatically a YLD member. One way to get involved in YLD activities is to be elected to the YLD Board of Directors. YLD board members attend monthly meetings on designated Saturdays that have been held in Oklahoma City and in cities around the state.

With this comes community service, networking opportunities and a way to begin your rise in leadership within the OBA. In my January article I described how throughout my time on the YLD board I have been able to give back to my community and have had the chance to network with fellow attorneys; I hope you take advantage of these same opportunities.

2017 YLD Board Vacancies

Nominations are open for following board seats:

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

Each of the numbered districts represent the same counties as the Supreme Court Districts, and the YLD member taking the respective seat must be from one of such respective counties. All at-large districts represent all counties in Oklahoma, but at-large rural seats must be occupied by YLD members outside of Oklahoma and Tulsa counties. The term for each of the board member seats is two years.

In order to be considered for election, you must complete a nomination petition (no less than 10 signatures) located online at www.okbar.org/members/YLD/NominatingInfo. You must also submit a photograph and bio of yourself that will be a part of the publication of your candidacy in the Oct. 15 issue of the *Oklahoma*

Bar Journal. Email your petitions, bios and photos to LeAnne McGill at LeAnne@McGillRodgers.com. *The deadline for these items to be received is Sept. 19 by 5 p.m.*

Election results will be announced at the November YLD meeting.

Should you have any questions regarding the nomination and/or election process, please feel free to contact me.

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.

September

- 13 OBA Bench and Bar Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Judge David B. Lewis 405-556-9611 or David Swank 405-325-5254
- OBA Board of Editors;** 2:30 p.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact Melissa DeLacerda 405-624-8383
- 14 OBA Law Day Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Richard Vreeland 405-360-6631 or Albert Hoch Jr. 405-521-1151
- 15 OBA Diversity Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact Tiece Dempsey 405-609-5406
- 16 OBA Lawyers Helping Lawyers Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Jeanne M. Snider 405-366-5466 or Hugh E. Hood 918-747-4357
- 19 OBA Appellate Practice Section meeting;** 11:30 a.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact Mark Koss 405-720-6868
- 20 OBA Women in Law Committee meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Ann E. Keele 918-592-1144 or Reign Grace Sikes 405-419-2657
- 21 OBA Indian Law Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Deborah Reed 918-728-2699
- OBA Clients' Security Fund Committee meeting;** 2 p.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact Micheal Salem 405-366-1234
- 22 OBA Professionalism Committee meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Patricia Podolec 405-760-3358
- 23 OBA Board of Governors meeting;** 10 a.m.; Tulsa; Contact John Morris Williams 405-416-7000



- 28 OBA Financial Institutions and Commercial Law Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Eric L Johnson 405-602-3812
- 30 OBA Professional Responsibility Commission meeting;** 9:30 a.m.; Oklahoma Bar Center, Oklahoma City; Contact Gina Hendryx 405-416-7007

October

- 4 OBA Government and Administrative Law Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Michael Mannes 405-473-0352
- 6 OBA Lawyers Helping Lawyers Discussion Group;** Office of Tom Cummings, 701 NW 13th St., Oklahoma City, OK 73012; Contact Jeanne M. Snider 405-366-5466 or Hugh E. Hood 918-747-4357
- 7 OBA Alternative Dispute Resolution Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact John H. Graves 405-684-6735
- 14 OBA Access to Justice Committee meeting;** 11 a.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Michael Speck 405-205-5840
- OBA Law-related Education Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Professor Paul Clark 405-208-6303 or Brady Henderson 405-524-8511

ensure **JUSTICE** for all

**A little bit of your time
can make a big difference**

**by answering a pro bono legal question
online for a low-income Oklahoman.**

Visit www.okbar.org to learn more!



**OKLAHOMA FREE LEGAL ANSWERS
IS A PROJECT OF:
Oklahoma Bar Association
Oklahoma Access to Justice Commission
American Bar Association**

OBA Member to Compete on *Survivor*

OBA member and former OU football captain Chris Hammons will compete on season 33 of *Survivor* "Millennials vs. Gen X." The series will premiere on Sept. 21 at 7 p.m. on CBS.



Mr. Hammons will be one of 20 individuals competing for the \$1 million prize.

"There isn't a game on the planet harder than *Survivor*," he said. "It makes it all the more exciting to set out and try to win the hardest game that exists in the world."

Mr. Hammons is a personal injury attorney and partner at Laird Hammons Laird in Oklahoma City, and he has dreamed of competing on *Survivor* since the first season aired. He played both basketball and football in high school, with the goal of playing for the Sooners, which he accomplished. He was a walk-on who was voted team captain, and he helped lead OU to a national championship in 2000.

Mr. Hammons began his preparation for *Survivor* before he found out he was selected, in hopes of receiving the call. At 6-foot-4, he's stayed in good physical shape since playing football and put on muscle for the show.

"I still believe that this is America, and if you can get up and work hard you can do anything," he said. "I came from nothing. If I can make it, anyone can."

OBA MAP Director Jim Calloway Helps Flood Victims

OBA MAP Director Jim Calloway presented "Rebuilding Your Law Practice" on Wednesday, Sept. 7, to Louisiana State Bar Association members who were affected by the August flood.

His presentation stressed the importance of using digital client files that are stored in the cloud or backed up frequently. This would allow an attorney to have their law practice quickly up and running after a disaster. Without proper data backup it could be weeks, if not months, before an attorney is able to gather all the information they need to continue their work.

The presentation was part of a Disaster Recovery Program hosted by the LSBA, which was free for flood victims.

Mr. Calloway also worked with the LSBA to organize six tech vendors who donated their services, including Fujitsu who donated multiple scanners.

"This type of disaster is extremely frustrating," said Mr. Calloway. "The entire community has suffered significant loss, not just the attorneys. I appreciate the support of the OBA and am happy I was able to travel to Louisiana and offer my help."



Oklahoma Court of Civil Appeals New Contact Information

The Oklahoma Court of Civil Appeals has recently changed telephone numbers. The new telephone numbers will be listed on www.oscn.net and are as follows:

COCA OKC Divisions I & III	405-556-9500 405-556-9525 fax
COCA Tulsa Divisions II & IV	539-444-2511 539-444-2541 fax



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 500 words to OBA Communications Director Carol Manning, carolm@okbar.org.

LHL Discussion Group Hosts October Meeting

"Knowing When to Ask for Help" will be the topic of the Lawyers Helping Lawyers monthly discussion group on Oct. 6. Each meeting, always the first Thursday of the month, is facilitated by committee members and a licensed mental health professional. The group meets from 6 to 7:30 p.m. at the office of Tom Cummings, 701 N.W. 13th St., Oklahoma City. There is no cost to attend and snacks will be provided. RSVPs to 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

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

Kimber J. Palmer was presented the Award of Excellence from the Southwest Association of Pre-Law Advisors for her outstanding job of educating and preparing students for law school and a legal career. Ms. Palmer teaches undergraduate and graduate law-related courses at the A.R. Sanchez Jr. School of Business at Texas A&M International University in Laredo, Texas, and serves as the university's pre-law advisor.

Brian T. Hermanson, district attorney for Kay and Noble counties, was named District Attorney of the Year receiving the David Moss Memorial Award for Outstanding District Attorney. The award was presented at an awards banquet held by the Oklahoma District Attorney's Council.

On The Move

Chris A. Paul of Tulsa has been named general counsel of Gulf Oil LP, headquartered in Wellesley Hills, Massachusetts, with operations in 35 states and the Caribbean.

Gibbs Armstrong Borchhoff Mullican & Hart PC announced the election of **Michael Womack** as its newest shareholder. Mr. Womack received his J.D. from the University of Notre Dame in 2005 and joined the firm in late 2009.

Patrick O. Waddel joined **Jones, Gotcher & Bogan** in an of counsel position. He received his LL.B. degree from Southern Methodist University School of Law in 1967.

Kelley N. Feldhake and **Sarah Yates Reddy** announce the opening of **Reddy & Feldhake PC**. The firm will focus on family law, probate, estate planning, business law and general civil litigation. The firm is located at 2121 South Columbia Ave., Suite 205, Tulsa. The phone number is 918-947-8102.

The shareholders of **McAfee & Taft** have elected attorneys **Courtney Bru** and **J. Craig Buchan** as fellow shareholders. Ms. Bru concentrates her practice on the representation of employers exclusively in labor and employment matters and other issues affecting the workplace. Mr. Buchan is a trial lawyer whose litigation practice encompasses the areas of products liability, oil and gas litigation, complex tort matters, professional negligence, construction disputes, premises liability and commercial litigation.

At The Podium

Joseph Williams was a panel member at the American Bar Association Annual Meeting in San Francisco on Aug. 5 regarding the subject of "Tribal Courts in the 21st Century." His part of the presentation covered issues of tribal court criminal jurisdiction under the Tribal Law and Order Act of 2010 and the Violence Against Women Reauthorization Act of 2013. Mr. Williams is also chief justice of the Sac and Fox Nation Supreme Court located in Stroud.

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 Nov. 11 issue
must be received by Oct. 17

IN MEMORIAM

Jo Barton of Oklahoma City died Aug. 3 in Annapolis, Maryland. Ms. Barton was born March 19, 1931, in Oklahoma City. She graduated from Ardmore High School in 1949 and then from the OU College of Law in 1955. She practiced law in Oklahoma from 1958 to 1968 for Mosteller, Andrews, Mosberg (now Andrews Davis). She was a volunteer at the Beta Theta Chapter of Kappa Kappa Gamma Fraternity at OU, mentoring many young women. The family asks that in lieu of flowers, donations be sent to the Carmel Bach Festival (www.bachfestival.org).

Judge Donald Deason of Edmond died July 28. Judge Deason was born Jan. 25, 1953, in Alexandria, Virginia. He graduated from Lawton

High School in 1970. A devoted Sooner, he received both his undergraduate and J.D. from OU. He began his legal career in 1979 as an Oklahoma County assistant district attorney where he served as a prosecutor for more than 19 years. Most recently he served as the presiding judge for the state's multi-county grand jury and was serving as the presiding district judge for Oklahoma and Canadian counties. The family suggests memorial contributions be made to Free To Live, Second Chance or another no-kill animal sanctuary.

Albert Lewis Tait Jr. of Edmond died July 31. Mr. Tait was born April 2, 1950, at Ft. Campbell in Kentucky. He served in the United States Army, leaving with the rank

of captain and received his J.D. from the OU College of Law in 1980. He practiced law in Oklahoma for 36 years, most recently as a partner at Fenton, Fenton, Smith, Reneau & Moon. A passionate cyclist, he watched every minute of the Tour de France every year. He also loved movies, peanut M&Ms, crosswords, military history, a good pun, his compact 10mm pistol, God and above all his family. Memorial donations may be sent to Arise Ministries in Edmond.

Kirk A. Wheeler of Largo, Florida, died June 25, 2015. Mr. Wheeler was born Nov. 18, 1950, and graduated with his J.D. from the TU College of Law in December 1994. He practiced law in Florida.

www.okbar.org

Your source for OBA news.



At Home



At Work



And on the Go

2016 Issues

- October
Real Property
Editor: Shannon Prescott
shanlpres@yahoo.com
Deadline: May 1, 2016
- 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

Please join us for a
Retirement Reception
honoring District Judge
Richard G. Van Dyck

Join us as we help him celebrate 30 years of service to the citizens of the State of Oklahoma.

Thursday, September 29, 2016
1:45PM - 4:00PM

Grady County Courthouse - Second Floor
320 West Choctaw Avenue
Chickasha, Oklahoma

Guest speakers will begin at 2:00PM.
Light refreshments will be served.

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.



Five Ways Law Firms Can Support Health and Wellness

The practice of law can be very stressful and a challenging profession. Here are five ways law firms can help their employees reduce stress and anxiety, improve cognition and access tools to survive a difficult working environment.

goo.gl/rPcTOh



Seven Microsoft Word Hacks

Think you're a master in Microsoft Word? Here are seven tricks that will help you get the most out of Word and to unlock the features most useful to legal professionals.

goo.gl/Cx98mE



Thirty Useful Websites

The internet is the best resource for learning and the biggest tool for relieving boredom. Take a look at these 30 websites you probably don't know about.

goo.gl/PJ8ovq



Master Your Fear of Public Speaking

Many people cringe at the thought of public speaking, but this is something most lawyers have to do on a regular basis. If public speaking makes you uncomfortable, read this article for advice on how to banish fear and give a masterful speech.

goo.gl/DN2H1m



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

WANT TO PURCHASE MINERALS AND OTHER OIL/GAS INTERESTS. Send details to: P.O. Box 13557, Denver, CO 80201.

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 judiwl1@suddenlink.net.

OFFICE SPACE

NEWLY CONSTRUCTED EDMOND OFFICE BUILDING FOR LEASE - conveniently located at 17300 N. May Avenue across from Rose Creek Golf Club. 1,250 SF. Includes 4 offices, reception area, one full and one half bathroom, kitchen and free parking. \$1,850 per month. You will not find a better deal in Edmond. Please contact **Babette Roberson** at 405-596-5987 for a showing.

BUILDING FOR SALE. Perfect for 1-3 attorneys. Easy in and out. 3955 NW 23. Call **Joe** 405-942-8800 or 405-474-4800.

OFFICE SPACE

OFFICE SPACE FOR LEASE ONE BLOCK NORTH OF THE FEDERAL COURTHOUSE in downtown OKC. Space includes conference room, kitchen, receptionist and phone. Call 405-239-2726.

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.

POSITIONS AVAILABLE

ASSOCIATE ATTORNEY NEEDED for busy Tulsa Personal Injury firm. Our practice includes car wreck, social security disability, and mass tort cases. We offer a great benefits package, including health, dental, vision and life insurance. Additionally, we offer a matching 401k package. We also pay bonuses regularly. We are a client oriented firm, with no tolerance for slackers, drama, or an entitlement mentality. The ability to work creatively in a fast paced environment is paramount. If you want to join a team that enjoys what we do, send resume and writing sample to "Box EF," Oklahoma Bar Association.

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.

THE OFFICE OF ATTORNEY GENERAL IS CURRENTLY SEEKING AN ASSISTANT ATTORNEY GENERAL for the Public Utility Unit. The Public Utility Unit represents and protects the interests of the state's utility customers in rate-related proceedings, participates in rule making proceedings and performs other tasks related to public utility regulation. The successful candidate will be prepared to participate in proceedings before the Oklahoma Corporation Commission and in state and appellate courts. The successful candidate will have outstanding legal judgment and be able to effectively and professionally research, prepare, analyze, understand and communicate complex information and legal issues. Qualifications: An applicant must be a licensed attorney in the state of Oklahoma with zero to five years in the practice of law. Some travel is required. EOE. Writing sample must accompany resume to be considered. Resumes and writing samples for this position should be sent to resumes@oag.ok.gov.

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.

POSITIONS AVAILABLE

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

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

DOWNTOWN OKLAHOMA CITY LAW FIRM HAS AN IMMEDIATE OPENING FOR AN EXPERIENCED LEGAL SECRETARY. We are looking for a candidate with at least 2 years' experience, good time management, typing and computer skills. Must be able to multitask in a busy work environment. Salary commensurate with experience. Benefits include health insurance and retirement savings contributions and paid covered parking. Please send your resume to olssonhome@gmail.com.

OKC AV RATED LAW FIRM SEEKING ASSOCIATE with excellent litigation, research and writing skills, 2-5 years' experience for civil/commercial defense practice and health care law. Must have solid litigation experience for all stages of pretrial discovery and trial experience, with excellent research and writing skills. Submit a confidential resume with references, writing sample and salary requirements to "Box E," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

OKLAHOMA CITY LAW FIRM IS SEEKING AN ATTORNEY WITH 10 OR MORE YEARS OF EXPERIENCE working with the oil and gas division of the Oklahoma Corporation Commission. The compensation package is commensurate with level of experience and qualifications. Benefits include health, dental, vision, life insurance and profit sharing. Applications will be kept in confidence. Please submit resume and any supporting materials to "Box J," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

COLBERT COOPER HILL ATTORNEYS SEEKS ATTORNEY WITH 2+ YEARS OF EXPERIENCE handling Social Security disability hearings and Appeals Council appeals to work in its Oklahoma City office. Submit resume to: oden@getcolbert.com.

POSITIONS AVAILABLE

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

NORTH OKLAHOMA CITY AND WOODWARD LAW FIRM SEEKS ASSOCIATE WITH 0 - 2 YEARS EXPERIENCE FOR ITS OKLAHOMA CITY OFFICE. The firm practices in all areas of personal injury and workers' compensation. Seeking self-motivated and detail-oriented applicants. Must work well in a team environment. Please send cover letter, resume, writing sample and references to cwreath@dukehalleylaw.com. Responses will be held in confidence.

POSITION FOR LITIGATION ASSOCIATE ATTORNEY IN TULSA. We are recruiting an experienced partner-track associate attorney to handle all phases of civil litigation within a strong team setting that focuses on client service and maximizing outcomes. Our practice includes challenging procedural and technical issues, and the successful candidate will possess strong analytical and advocacy skills. We use the latest technology to maximize efficiency. We are looking for the right attorney to join our team who will take pride in the service we deliver and fit within our friendly, low-key firm environment. Candidates must have at least five years' experience in civil litigation that reflects highly developed skill in legal research, drafting memoranda, briefs and discovery, taking depositions, managing document production and oral argument. Candidates must have graduated within the top 25 percent of their law school class, and law review experience is preferred. Candidates should submit a recent writing sample and CV to smcdaniel@ok-counsel.com.

NORMAN LAW FIRM SEEKING ASSOCIATE ATTORNEY. A qualified candidate must have experience and be eager to handle a wide variety of matters, including but not limited to litigation, real estate and business law. Pay commensurate with experience. Please send resume to office@ballandmorse.com

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

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.

POSITIONS AVAILABLE

PARALEGAL EXCELLENT PAY AND BENEFITS!

W.C. Bradley Co., a 130+ year old International Consumer Products company seeks a qualified paralegal for its Tulsa, Oklahoma office.

Reporting directly to the General Counsel, this position will perform critical legal functions on behalf of its family of world class companies who compete in the global marketplace.

Requirements include a self-motivated team player with 5+ years' experience; completion of an ABA-accredited paralegal program is preferred. Candidates must have strong legal research and writing skills. Excellent computer, organizational, attention-to-detail, project management, written/verbal communication and prioritization skills are musts. The ability to meet deadlines is critical. Candidate should be flexible to work overtime, as needed, and have flexibility to travel.

The General Counsel's office is a fast paced environment that addresses many areas of the law including corporate governance, contracts (consumer product emphasis), merger and acquisitions, regulatory, intellectual property, risk management, litigation and international. Experience in any of these areas is a plus. Proficiency with Microsoft Word, Outlook, Excel, PowerPoint, Windows-based software, Westlaw, and CTS is a plus.

Your expertise will be rewarded with an attractive salary/benefits package along with a casual dress code environment. To apply, please send salary requirements, salary history and resume to: ZebcoHR@Zebco.com

Alternately, you may send via US mail to:

Human Resources
WCB/Zebco
6101 E Apache Street
Tulsa, OK 74115

NO PHONE CALLS PLEASE

The W.C. Bradley Co. is an Affirmative Action and Equal Opportunity Employer. The W.C. Bradley Co. uses E-Verify to confirm the employment eligibility of all new Team Members. To learn more about E-Verify, including your rights and responsibilities, please visit the U.S. Citizen and Immigration Service at www.uscis.gov/e-verify. E-Verify® is a registered trademark of the U.S. Department of Homeland Security.

POSITIONS AVAILABLE

HARD WORK REWARDED at young, growing, AV-rated downtown OKC firm with 10 attorneys. Pignato, Cooper, Kolker & Roberson, P.C. is seeking two associates with 0 to 3 years civil litigation experience, preferably insurance defense. Strong research and writing skills a must. Best benefits in town. Salary and bonuses commensurate with experience. Send resume and writing sample to Pignato, Cooper, Kolker & Roberson, P.C., attention: Managing Partner, 119 N. Robinson Ave., 11th Floor, OKC, OK 73102 or brad@pclaw.org.

NORMAN LAW FIRM SEEKING OIL AND GAS TITLE ATTORNEY. A qualified candidate must have experience rendering title opinions. Pay commensurate with experience. Please send resume to office@ballandmorse.com.

OKC PERSONAL INJURY FIRM SEEKS LEGAL ASSISTANT to help with fast-paced practice. Ideal candidate will possess strong organizational skills, be able to work independently and is an effective communicator. Candidate will assist with all stages of representation from intake to final resolution. Salary commensurate with experience. Please send resume to "Box AA," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

FOR SALE

ALL NEW. 1ST EDITION, 2016-17. Sentencing in Oklahoma by Bryan Dupler *The practical guide for judges and attorneys*. \$25+shipping. Email orders to oksentencinglaw@gmail.com.

CLASSIFIED INFORMATION

REGULAR CLASSIFIED ADS: \$1.25 per word with \$35 minimum per insertion. Additional \$15 for blind box. Blind box word count must include "Box __," Oklahoma Bar Association, PO Box 53036, Oklahoma City, OK 73152."

DISPLAY CLASSIFIED ADS: Bold headline, centered, border are \$60 per inch of depth.

DEADLINE: See www.okbar.org/members/BarJournal/advertising.aspx or call 405-416-7084 for deadlines.

SEND AD (email preferred) stating number of times to be published to:

**advertising@okbar.org, or
Mackenzie McDaniel, Oklahoma Bar Association,
PO Box 53036, Oklahoma City, OK 73152.**

Publication and contents of any advertisement are not to be deemed an endorsement of the views expressed therein, nor shall the publication of any advertisement be considered an endorsement of the procedure or service involved. All placement notices must be clearly nondiscriminatory.

DO NOT STAPLE BLIND BOX APPLICATIONS.

Why I Miss the Practice of Law

By Jim T. Priest

I felt a pang of mixed emotion when I read The Back Page article by Paige Lee titled “Why I Am Walking Away From the Practice of Law” in the Aug. 20 bar journal. Her reminiscences were a mixture of few positives and many negatives about her 20 years in practice. What got to her?

Paige labeled her stress level as “indescrutable.” She identified the sources (but not by name) as lawyers who talk badly about other lawyers, judges who treat attorneys with little respect and clerks who are angry and rude. Her description of the law and lawyers caused me a pang of mixed emotion because while I regretted she had endured such an unpleasant experience, it was not (for the most part) my experience.

Before becoming CEO of Sunbeam Family Services (a nonprofit agency) in 2014, I practiced as a trial lawyer in Oklahoma City for 34 years and ran for Oklahoma attorney general in 2010. Over the course of those 34 years I admit I experienced stress — often from opposing counsel, sometimes by my colleagues and not a few times by judges. I once tried six cases in eight weeks and thought I might

have a heart attack! But for all the stress it was a rare occasion to be treated shabbily by lawyers or judges. I don’t think my experience is unique.

I had clients in trial who expressed amazement at how I got along with opposing counsel outside the courtroom. I’ve had

valiantly to beat them in the courtroom.

As I was ramping up my campaign for attorney general in 2010, one of the first phone calls I received was from a lawyer who had been a decades-long arch rival. He was a plaintiff’s lawyer, who (it seemed) often sued clients

I represented. We had fought hard, been angry with each other at times but always respected each other. “I heard you are running for AG, and I wanted you to know you can count on me for anything. Just let me know what I can do.” It was one of the most heartening calls I received during that unsuccessful campaign.

I didn’t walk away from the law because of the stress or the unpleasantness. I wanted to serve the public in a larger platform, and I found that


opportunity at Sunbeam. But there are days I miss the comradery of law practice. There are many good lawyers and judges out there, and I was proud to have worked among them. I commend the good ones and urge the unpleasant ones to do better.

Mr. Priest works in Oklahoma City.



Jim Priest with Kerstin Gonzalez and her sons at Sunbeam Family Services.

coffee and engaged in friendly banter in dozens of judges’ offices as we got ready to try a case. After a jury retired to deliberate, I made it a habit to always shake hands with opposing counsel and say they did a good job, sometimes even when they didn’t do so well. I tried to always remain a cordial colleague even as I strove



Once upon a time...

6/1

DIRECTOR'S CUT: *The Art of Storytelling at Trial*

SEPTEMBER 22, 9 a.m. - 2:50 p.m.

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

SEPTEMBER 23, 9 a.m. - 2:50 p.m.

OSU-Tulsa, Room 151, North Hall
700 N. Greenwood Ave., Tulsa

Program Planners:

Jacquelyn L. Ford, Jacquelyn Ford Law, P.C., OKC
Jim Buxton, Buxton Law Group, OKC

TOPICS COVERED:

Discovering the Story

Voir Dire: The Story of the Jury

Opening: Prelude to Justice

Direct & Cross: The Characters' Story

Ethics: Power of Telling the Truth

Closing: Choose Your Own Adventure

oba ✦ cle
continuing legal education

\$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 on September 22nd is \$200. Seniors may register for \$50 for 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



ARE YOU FULLY PROTECTED UNDER YOUR LAWYERS PROFESSIONAL LIABILITY POLICY?

Our lawyers professional liability policy includes cyber liability coverage to ensure you're taken care of if and when a cyber threat confronts your business.

You also have the option to add employment practices liability to your existing lawyers professional liability policy to protect against exposures that arise from an alleged discrimination, wrongful termination or harassment claim.

We'll work with you in developing risk management measures to combat liability exposures within your law firm.

WE HAVE A POLICY THAT'S RIGHT FOR YOU.



OKLAHOMA ATTORNEYS
MUTUAL INSURANCE COMPANY

3900 S. BOULEVARD, EDMOND, OK
P.O. BOX 5590, EDMOND, OK 73083-5590
P 405 471 5380 | 800 318 7505 F 405 471 5381
OAMIC.COM

