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THE OKLAHOMA BAR Journal

Volume 88 — No. 21 — 8/19/2017

TECHNOLOGY & OFFICE MANAGEMENT





PRACTICING ELDER LAW

SEPTEMBER 21, 9 A.M. - 2:50 P.M.

Oklahoma Bar Center - "Live" Webcast Available

SEPTEMBER 22, 9 A.M. - 2:50 P.M.

OSU Tulsa – North Hall BS Roberts Room, 700 N. Greenwood Ave.

PROGRAM PLANNER:

Donna J. Jackson,
*Donna J. Jackson & Associates,
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TOPICS INCLUDE:

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How Do I Setup My Practice?
- What is SSI and SSDI?
How Do They Work with Medicaid?
- Long Term Care Planning Using
Veterans Benefits and Medicaid
- Ethics in Elder Law

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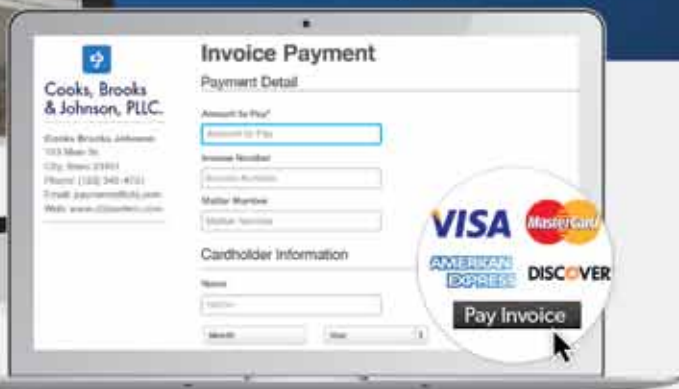


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contents

Aug. 19, 2017 • Vol. 88 • No. 21



FEATURES

- 1527 'HIRE SLOW, FIRE FAST' OR 'HIRE SMARTER, FIRE LESS?'
By Jim Calloway
- 1531 USING QUICKBOOKS FOR IOLTA TRUST ACCOUNTING
By Cheryl Clayton
- 1537 SELECTING A LAW PRACTICE MANAGEMENT SOLUTION
By Darla Jackson
- 1545 SMALL OFFICE IMAGE/BACKUP WITH ACRONIS TRUE IMAGE
By John Brewer
- 1549 CYBERSECURITY BASICS
By Sharon D. Nelson and John W. Simek

pg. 1567
SOVEREIGNTY SYMPOSIUM
PHOTO HIGHLIGHTS



DEPARTMENTS

- 1524 FROM THE PRESIDENT
- 1574 FROM THE EXECUTIVE DIRECTOR
- 1576 LAW PRACTICE TIPS
- 1580 ETHICS & PROFESSIONAL RESPONSIBILITY
- 1583 OBA BOARD OF GOVERNORS ACTIONS
- 1591 OKLAHOMA BAR FOUNDATION NEWS
- 1593 YOUNG LAWYERS DIVISION
- 1595 CALENDAR
- 1597 FOR YOUR INFORMATION
- 1599 BENCH AND BAR BRIEFS
- 1601 IN MEMORIAM
- 1602 WHAT'S ONLINE
- 1603 EDITORIAL CALENDAR
- 1608 THE BACK PAGE



pg. 1555
TAXATION LAW
SECTION NOTE

PLUS

- 1555 TAXATION LAW SECTION NOTE:
2017 OKLAHOMA TAX AND FEE LEGISLATION
By Sheppard F. Miers Jr.
- 1564 LICENSED LEGAL INTERN COMMITTEE PROPOSES
RULE CHANGES AND ADOPTS NEW REGULATION
By Terrell Monks
- 1567 PHOTO HIGHLIGHTS: SOVEREIGNTY SYMPOSIUM
- 1570 OBA NOMINATION PETITIONS AND BOARD OF
GOVERNORS 2018 VACANCIES

Professionalism Urged in Social Media Posts

By Linda S. Thomas

Remember the “Reach Out and Touch Someone” slogan originally coined for Ma Bell in the 1970s? (For those wondering, “Who is Ma Bell?” we now call her AT&T). Watch the short commercial at tinyurl.com/ydhykq2g. With the widespread use of social media, *i.e.* Facebook, Twitter and Instagram, reaching out and touching someone in today’s world takes on a whole new meaning. If you use social media strictly for personal communications with friends and family or if you’re among the thousands using it to create or broaden your online presence, it’s more important than ever to be conscientious of maintaining professionalism in a universe where once something is posted, it never goes away.

We’d all like to think lawyers, the highly educated professionals that we are, would never post unprofessional or embarrassing material online, especially if it demeans a fellow lawyer, client, judge or the legal profession in general. Unfortunately, that isn’t the case. During those occasional (hopefully) momentary lapses of good judgment, even the most ethical lawyer may fail to realize the negative impact of an online post until it’s too late.

Then there are those who regularly use social media to comment on today’s political and social climate or “air their dirty laundry” about their professional or private lives.

In an instant, personal and professional reputations can be forever tarnished, especially if that “post photo” button is too much to resist. Complicating matters further is the “online disinhibition effect” – the loosening of social inhibitions causing one to behave far differently online than in face-to-face interactions. When talking in person or on the telephone,

visual or verbal clues communicate almost as much as the spoken words, but the actual meaning of the written word can be lost or misinterpreted by the online reader, especially if the reader is not among the originally intended audience.

The Lawyer’s Creed to which we all pledge begins, “I revere the Law, the System and the Profession, and I pledge that in my private and professional life,

and in my dealings with members of the Bar, I will uphold the dignity and respect of each in my behavior toward others.” The rest of the creed includes “integrity and fair play,” “my word is my bond,” “fundamental decency and courtesy,” “civility” and “high standard of conduct.”

As you “reach out and touch someone” on social media, remember you may be reaching out and touching everyone.

Before you post, ask yourself, “Is it respectful to others and the profession? Is it honest? Is it fair? Is it decent and courteous? Is it civil? Does it represent a high standard of conduct?”

WORDS OF WISDOM

Here are just a few thoughts about using social media: *You represent the profession – always.* Social media is a powerful and useful tool but is equally powerful and damaging with just one ill-conceived post, share or “like.” *Guard*

cont’d on page 1572

As you “reach out and touch someone” on social media, remember you may be reaching out and touching everyone.



Linda S. Thomas
President Thomas
practices in Bartlesville.
linda@thomasfamilylaw.com
918-336-6300

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JOURNAL STAFF

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

CAROL A. MANNING, Editor
carolm@okbar.org

MACKENZIE MCDANIEL
Advertising Manager
advertising@okbar.org

LACEY PLAUDIS
Communications Specialist
lanceyp@okbar.org

LAURA STONE
Communications Specialist
lauras@okbar.org

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‘Hire Slow, Fire Fast’ or ‘Hire Smarter, Fire Less?’

By Jim Calloway

Employees are a law firm’s greatest resource and greatest expense. The cost in time and money to train a new employee is significant.

“Hire slow, fire fast” is an often-used phrase when it comes to hiring new staff. Like many clichés there is a lot of truth in this phrase. We want to be careful with our important staff hiring decisions so there is little turnover. But there is often the tendency to delay and procrastinate terminating the new hire who is not working out.

Law firms are busy places. When you have an opening, it slows down production and increases the load on everyone else. This creates a temptation to resolve that “problem” quickly. When a new hire isn’t working out, it is often human nature to keep giving them more chances. This is understandable. Firing is messy and it then leaves management with the task of finding a replacement. So, law firm administrators and normally tough lawyers may find themselves hoping things will work out if they just give a little more time. Often the result is the employee is retained until there is a serious problem or the negative impact on other employees becomes very noticeable.

We often find ourselves doing just the opposite of the cliché: hiring fast and firing slow. A twist on this phrase might be “hire smarter, fire less.”

SETTING HIRING GOALS

Often hiring smarter just means investing the time in the hiring process to do the things that

we know should be done. First of all, before the first application or resume is solicited, there should be a clear job description for the open position. Today’s law firms should have written job descriptions for every staff position. But it is most important for the hiring process to delineate both the duties of the position and any cross training or fill-in duties that are required. So, if it is a part of the job to handle receptionist tasks when the primary receptionists are absent, this is an important consideration.

The job description gives rise to the list of skills and qualifications needed for the position.

The firm likely has an application process in place, but many believe the old-school approach of requiring a cover letter and resume is a good initial sorting process. This is particularly true when the position requires preparing correspondence on behalf of the law firm. While it may seem abrupt or even unfair to disqualify a candidate from an interview based on errors in a cover letter or resume, law firm positions do require great attention to detail and there is little tolerance for typographical errors or other simple mistakes in correspondence. If a candidate cannot competently proof his or her own résumé or makes significant errors in a cover letter, he or she likely will not fit well within any law firm culture.

Interviews are often conducted by a team approach, but doing initial interviews one-on-one may make more sense. It is important that anyone interviewing or meeting with a potential candidate for employment is briefly reviewed on the appropriateness of interview questions. Some areas should be avoided. First-round interviews should adhere to a standard set of questions that are asked of every candidate. Document any variance from these questions after the interviews are concluded.

It is critically important that the process is explained to the candidate clearly. A good candidate can be lost if the timeframe for the process is not clearly communicated and the candidate gets another employment opportunity.

Once the first round of interviews is concluded, the real work starts. There once was a day when doing a criminal background check on a potential law firm employee would have seemed to be out of bounds or vaguely insulting. But today many, if not most, law firms routinely conduct criminal background checks and have the candidate sign an authorization for the same at the initial interview.

Checking the candidate's references and work history as outlined in his or her résumé is equally important. In the past, this was often performed cursorily, but these days it needs to be comprehensively done. Apparently, applicants now regularly fabricate their histories in résumés. A candidate should certainly be given an opportunity to explain any inconsistencies, but outright fabrication should automatically disqualify a candidate for employment in a law firm.

SKILLS TESTING IS THE KEY TO GOOD HIRING

Even though the candidate may have great references and recommendations, the decision to hire a new employee has such significant consequences, that it makes good business sense to routinely employ skills testing.

A number of online services allow you to do this. For example, one colleague recommended play.typeracer.com to measure pure typing speed and accuracy. Bjorn Christianson, the managing partner at Christianson TDS, in Por-

tage la Prairie, Manitoba, suggests that do-it-yourself skills testing is fairly simple to set up, even for a smaller law firm. "We put together a typing assignment, giving them text only, with spelling, grammar, and syntax errors imbedded; no formatting," Mr. Christianson said. "We set the applicant up with a word processor with which they claimed to be familiar. One of our friendliest staff members explains to the applicant that they are to do a letter with this text, clean up the mistakes, format it and make it pretty. She answers any questions about the task. They get 30 minutes and then we grade them on how far they got, what errors they spotted, what errors they added, how they handled the formatting, etc. My assistant also observes, somewhat surreptitiously, to watch for the fluster-level and so forth."

The firm has been quite pleased with the results. Mr. Christianson notes that this has disqualified some people who did not come close to reaching their purported competence level. (Oh, what's spell check?) Perhaps more importantly, it has helped some applicants whose resume was thin due to factors like limited experience or time out of the work force. Demonstrated composure and attention to detail can trump speed in Mr. Christianson's opinion.

Self-made tests can be tailored to the firm's practice, he notes, and one can easily modify the test if needed to test specific assertions of experience claimed in an applicant's résumé. "If they say they have extensive experience in wills and estates, they better spot the spelling error in 'testater,' for instance," he says.

Creating an acceptable résumé is relatively easy, he points out. However, skills testing better demonstrates the abilities that the law firm will value. Larger firms may outsource their skills testing to an employment agency or testing service, of course.

YOUR NEW EMPLOYEE

Even after the firm has hired a potentially good candidate, there still should be a probationary period and frequent, perhaps weekly, evaluations of the new hire. No one enjoys firing someone and everyone wants the new employee to succeed. One should set the expect-

“ First-round interviews should adhere to a standard set of questions that are asked of every candidate. ”

tation that for the first several weeks there will be frequent evaluations and corrections in addition to the training for the firm's procedures. The new hire should be made aware that this should not be viewed as a negative and is a part of the firm's procedure.

This is a challenging task as frequent feedback and criticism may well place stress on the new employee. So management must make certain that the new hire understands that this is merely a part of the firm's normal process and it should be expected by the employee.

CONCLUSION

By establishing and implementing a more detailed interviewing and skills testing process, the law firm will hopefully fill its ranks with great employees. Management may find

that there is less need to result to the interviewing and skills testing process as the law firm becomes filled with great employees who are motivated to stay for a long time.

ABOUT THE AUTHOR



Jim Calloway is the director of the OBA Management Assistance Program and manages the OBA Solo & Small Firm Conference. He served as the chair of the 2005 ABA TECHSHOW board. His Law Practice Tips blog and Digital Edge podcast cover technology and management issues. He speaks frequently on law office management, legal technology, ethics and business operations.

Jason Osborn
PRESIDENT
THE PRIVATE BANK AT VALLIANCE
405.286.5716
JOSBORN@VBANK.COM

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THE PRIVATE BANK AT VALLIANCE
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Using QuickBooks for IOLTA Trust Accounting

By Cheryl Clayton

Rule 1.15 of the Oklahoma Rules of Professional Conduct requires that funds provided by a client for retainers (until the monies are earned), flat fees (until the monies are earned), filing fees, deposition and expert witness expenses be deposited in an interest-bearing trust account, commonly referred to as an IOLTA account. (IOLTA stands for “interest on lawyer trust account.”) Subsection i to Rule 1.15 provides an attorney may have more than one IOLTA account and the comment to Rule 1.15 provides that separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.

Interest earned on an IOLTA account is payable to the Oklahoma Bar Foundation and only bank service charges are deductible from interest earned on the account. Other bank fees such as check and deposit slip printing charges, wire transfer fees and online access fees are considered ordinary business expenses of the lawyer and must not be deducted from either the principal or the interest earned by the account. Therefore, the lawyer must deposit the necessary funds into the trust account to pay these ordinary business expenses but only in an amount necessary for that purpose. The lawyer must also keep track of these details because mismanaging a trust account can result in attorney disciplinary action to the point of disbarment.

QuickBooks can accommodate these requirements. QuickBooks will track all deposits and disbursements associated with a particular client, keep a balance sheet on each client so specific client funds can be identified at any given time and provide monthly reconciliation – but setup is key. The following instructions, with screenshots from QuickBooks Pro 14, show

how to set up an IOLTA account in QuickBooks and assume that the attorney has a passing familiarity with QuickBooks in general.

SETTING UP ACCOUNTS AND SUBACCOUNTS

The first step to establish an IOLTA account involves setting up a new “company” from the main menu. This is simply a matter of clicking on “File” > “New Company” and following the tutorial. For these instructions, the new company is named Firm Trust Account.

Spending a few moments customizing QuickBooks will increase efficiency later. Streamline the look of the My Shortcuts bar by eliminating items rarely used and keeping only those items used frequently. Do this by right-clicking anywhere in the My Shortcuts bar and selecting “Customize Shortcuts.” Then add, delete and reorder items as desired until your shortcuts bar looks something like Fig. 1.

Under Edit on the main menu, select “Preferences” and check the boxes next to the following preferences (see Fig. 2).

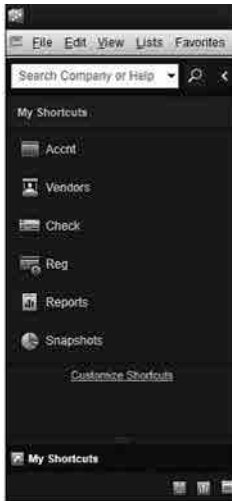


Fig. 1

radio button “Pre-fill accounts for vendors based on past entries”

- “Use today’s date as default” under “Default date to use for new transactions”
- “Ask” under “Keep custom item information when changing item in transactions”

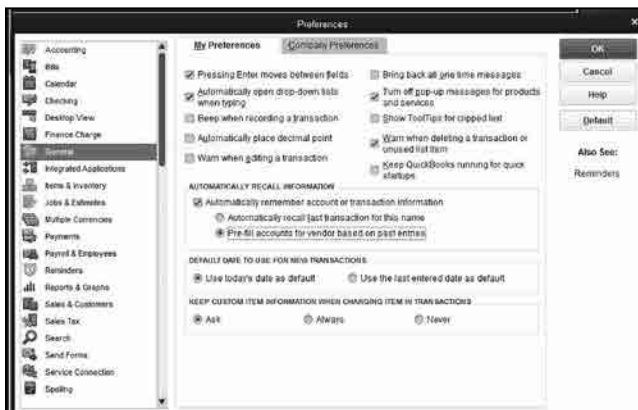


Fig. 2

Next, set up the trust bank account by selecting “Chart of Accounts” under Lists on the top main menu or selecting “Acctnt” on the Shortcuts bar (or use the keyboard shortcut Ctrl+A). Right-click anywhere in the right main screen and select “New” > “Bank,” then click “Continue.” Give the trust account a name such as [Firm] Trust Account, like in Fig. 3. Do not enter an opening balance at this time.

Now set up the client liability account by right-clicking on the main screen and selecting “New” > “Other Account Type.” In the drop-down list, select “Other Current Liability” and click “Continue” as seen in Fig. 4.

- “Pressing Enter moves between fields”
- “Automatically open drop-down lists when typing”
- “Turn off pop-up messages for products and services”
- “Warn when deleting a transaction or unused list item”
- “Automatically remember account or transaction information” and select the

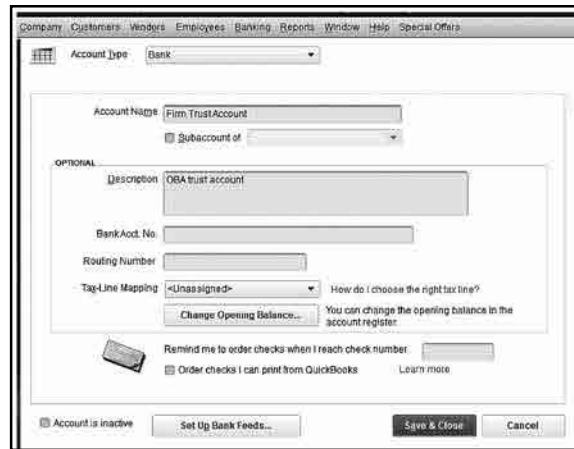


Fig. 3



Fig. 4

Give the account a name such as Client Liability Account, then click “Save & Close.” For later use, right-click in the Acctnt screen, click “Client Liability Account,” then scroll down and click “QuickReport.”

Because the attorney must maintain funds in the IOLTA account to cover service charges and bank fees, set up a subaccount for [Firm] Funds in the same manner as above. It too will be a subaccount of the Client Liability Account. Again, do not enter an opening balance.

A subaccount is also needed for the interest earned on the account so set up a subaccount for IOLTA Interest Earned in the same manner as the [Firm] Funds.

Now the individual client accounts can be set up. Make a list of all current clients with funds in the firm’s trust account and set up their subaccounts as follows: right-click on “Client Liability Account” in the main screen, then select “New” > “Other Client Liability” > “Continue.” For account name, type the client’s last name, then first name, and check “Subaccount

of” and select “Client Liability Account.” On Tax-Line Mapping, select “Unassigned” from the drop-down list. Do not click “Enter Opening Balance” because that will be done later. Click “Save & Close” (see Fig. 5). Each time funds are received from a new client, a client liability subaccount will be established in the same manner.

Fig. 5

MAKE DEPOSITS IN THE CLIENT SUBACCOUNTS

When all individual client subaccounts have been set up, make deposits corresponding to the client’s existing balance. To make deposits, select the client’s name, right-click and select “Make Deposit.” Ignore the first column labeled “Received From” and locate the client’s name in the “From Account” column. Type the “Memo” cell as desired and show the payment method in the “Pmt Meth” cell as cash, check or credit card. Add the amount and click “Save & Close.”

To edit a deposit, right-click on the client name in the right screen and click “Use Register.” Right-click on the register deposit that needs corrected and click “Edit Deposit.” Make changes and click “Save & Close.”

Fig. 6 shows a credit card deposit. A credit card deposit must be deposited directly into the trust bank account, but the fee must be paid from the firm’s general operating account. LawPay automatically makes the deposit to the trust account and withdraws the fee from the firm’s general operating account. Other vendors may deduct the fee from the trust account deposit requiring reimbursement from the firm’s general operating account to the client liability account. Do this by writing a check from the firm’s general operating account and

Fig. 6

depositing it in the client’s liability subaccount in the same manner as any other deposit. To write one check from the operating account and allocate it to various client liability subaccounts, click “Client Liability Account” in the Acct screen, right-click and select “Make Deposits.” Allocate the check among the various individual client liability subaccounts as shown in Fig. 7.

Fig. 7

WRITING CHECKS FROM THE CLIENT SUBACCOUNTS

Write checks to the firm or for client expenses that are credited to the individual client by selecting the check icon in the “Shortcuts” bar or by selecting “Banking” > “Write Checks” on the main menu bar. Complete the check as usual and at the bottom of the check screen under “Account,” select the client’s subaccount from the Client Liability Account as shown in Fig. 8.

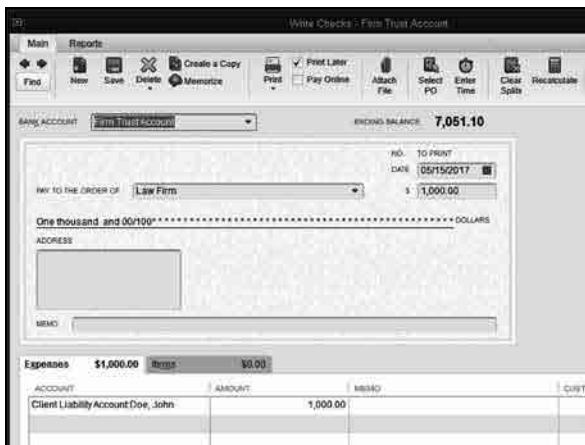


Fig. 8

REVIEWS AND REPORTS

To review a client's transaction at any time, right-click on the client's subaccount in the Acct screen and select either "Register" or "QuickReport." As seen in Fig. 9, QuickReport provides a cleaner report. If a QuickReport will not open, go to the main Acct screen, find the client's subaccount, right-click and select "QuickReport."

Type	Date	From	To	Memo	Split	Amount	Balance
Deposit	05/15/2017	Deposit in CJ 2017	Firm Trust Ac.			3,000.00	3,000.00
Deposit	05/15/2017	additional deposit	Firm Trust Ac.			3,000.00	6,000.00
Deposit	05/15/2017	credit card charge	Firm Trust Ac.			12.88	6,012.88
Check	05/15/2017	Law Firm	Firm Trust Ac.			-1,000.00	5,012.88
Deposit	05/15/2017		Firm Trust Ac.			12.88	5,025.76
Check	05/15/2017	credit card fee	Firm Trust Ac.			-12.88	5,012.88
Total						7,051.10	7,051.10

Fig. 9

To get a report on all client transactions, go to "Reports" on the main menu and select "Company & Financial" > "Balance Sheet Detail."

MONTHLY RECONCILIATION

For monthly reconciliation, go to "Banking" on the menu bar, then "Reconcile." The Begin Reconciliation dialog box will open. As in Fig. 10, record the service charge on the bank statement in the "Service Charge" field and on the right, select "Client Liability Account: IOLTA Interest Income" from the drop-down list. Similarly, record the interest earned on the bank statement in the "Interest Earned" field and on the right, select "Client Liability Account: IOLTA Interest Income" from the drop-down list. Click "Continue" to open the Reconcile window and reconcile the account in the usual manner.

Fig. 10

WHEN REPRESENTATION ENDS

When client representation ends and the account is zeroed out, right-click on the client's subaccount and make the account inactive. The information will still exist and can be restored by clicking on the client subaccount and selecting "Make Active."

ABOUT THE AUTHOR



Cheryl Clayton has a general civil law practice in Noble. She has been interested in legal technology since the days of DOS and was the 2015 chairman of the OBA Law Office Management and Technology Section.



Because the trust account may not be used daily, place this quick tip sheet somewhere convenient.

Add a new client: My Shortcuts bar > Acct > Client Liability Account, right-click New > Other Account Types, select Other Current Liability > Continue > Client Last Name, Client First Name > Subaccount of Client Liability Account, Tax Line Mapping is Unassigned > Save & Close

Make a deposit into a client subaccount: My Shortcuts bar > Acct > Client Liability Account, select client subaccount > right-click and select Make Deposits > in the From Account box select client name, include

Knowledge

Terry L. Watt, Ph. D., joins Crowe & Dunlevy's Tulsa office as a licensed patent attorney. With more than 20 years of experience obtaining, protecting and enforcing intellectual property rights for clients, Terry is an invaluable addition to the firm's Intellectual Property Practice Group. We welcome him to the firm.



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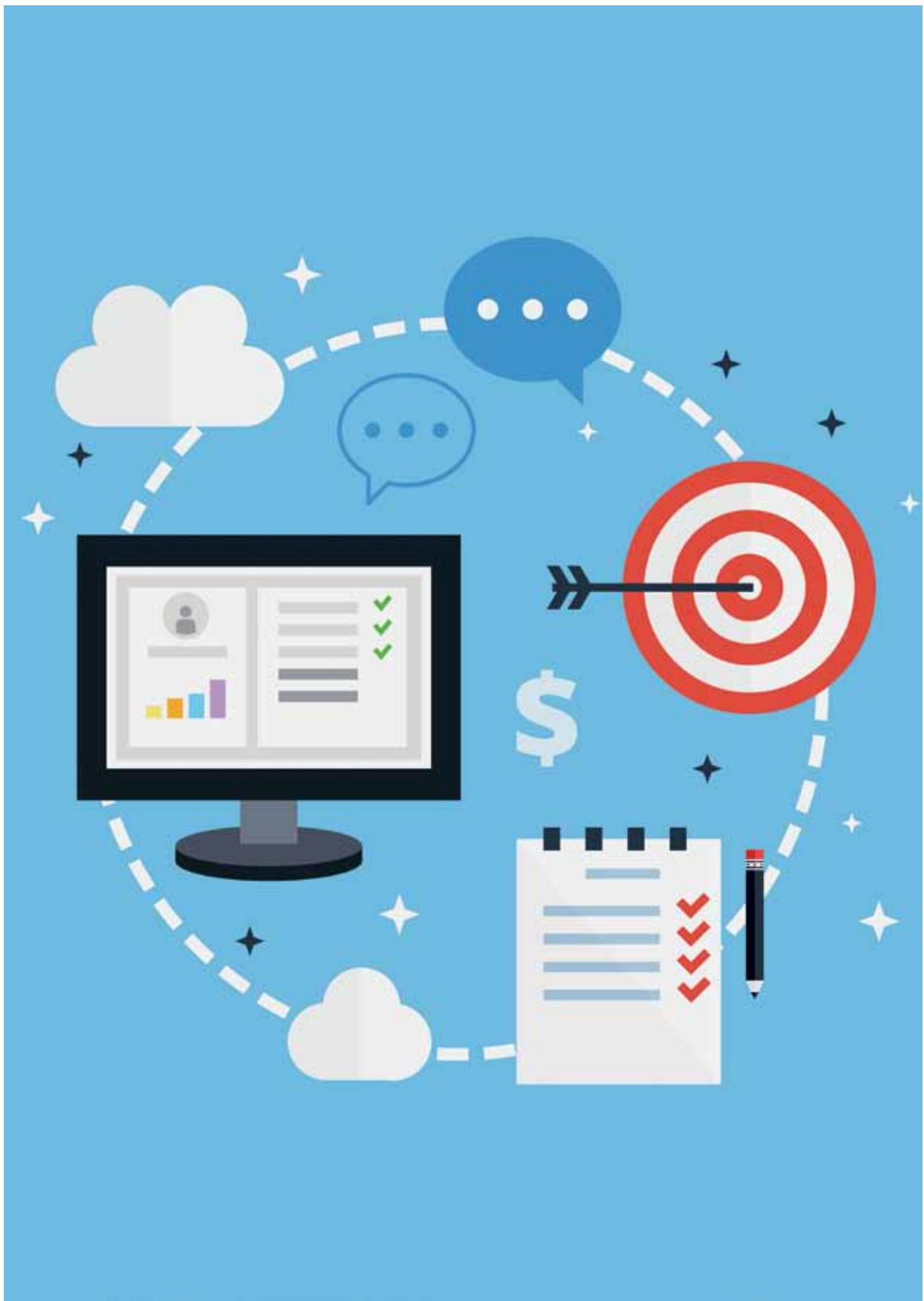


NOTICE OF HEARING ON THE PETITION FOR REINSTATEMENT OF LAURIE LYNN HASTINGS, SCBD #6533 TO MEMBERSHIP IN THE OKLAHOMA BAR ASSOCIATION

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

Any person desiring to be heard in opposition to or in support of the petition may appear before the Professional Responsibility Tribunal at the Oklahoma Bar Center at 1901 North Lincoln Boulevard, Oklahoma City, Oklahoma, at 9:30 a.m. on **Tuesday, September 19, 2017**. Any person wishing to appear should contact Gina Hendryx, General Counsel, Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, Oklahoma 73152, telephone (405) 416-7007.

PROFESSIONAL RESPONSIBILITY TRIBUNAL



Selecting a Law Practice Management Solution

By Darla Jackson

Practice management solutions are not a one-size fits all proposition. When asked about which of the many law practice management solutions¹ is best, I routinely respond with the same answer that many attorneys use to respond to client questions: It depends.

Just as your clients sometimes become annoyed with the lack of what they consider a concrete answer, I understand that those calling for guidance may become frustrated with the lack of a simple, straight-forward recommendation.

But “it depends” is truly the appropriate response. The rapidly changing market of practice management solution vendors and the available features from these vendors makes it difficult to select a single solution that is “best” in every situation. Further, I cannot be as familiar with the goals, workflows and client needs of a law practice as the attorneys and support staff. All of this information is essential when trying to determine the best practice management solution to help the firm or practice accomplish its goals and provide quality legal services.

WHAT IS A LAW PRACTICE MANAGEMENT SOLUTION?

Before continuing with a discussion of how to select a law practice management solution, let’s briefly try to define the term. A law practice management solution (LPMS) is a technology tool (software as a service) that assists with a wide variety of law firm management issues, ranging from billing and invoicing to organizing the documents in a digital client file and provide “...attorneys with a convenient method of effec-

tively managing client and case information, including contacts, calendaring, documents, and other specifics by facilitating automation in law practices. It can be used to share information with other attorneys in the firm and ... help prevent having to enter duplicate data in conjunction with [time and] billing ...”² functions or features.

While one might think that most attorneys know what LPMS are, the data from the 2016 *ABA Legal Technology Survey* indicates that “practice management adoption remains relatively low: just 46% of respondents reported having it available at their firm.”³ Additionally, because a limited number of law schools offer courses in law practice management and/or technology as part of their curriculum, attorneys may not have had any familiarity training with practice management solutions as part of their law school education.⁴

Do not be concerned if you did not know what a LPMS is. You are not alone.

THE SUBJECTIVE NATURE OF INTUITIVENESS

How intuitive a particular practice management solution is may be a matter of subjective judgment. While one practice management solution may seem very intuitive to me, the same solution may not seem intuitive to others.

This is one of the primary reasons I strongly encourage inclusion of all staff and attorneys in the selection process. Their inclusion will help ensure selection of a system that is intuitive to the greatest number of users.

Because they are often very familiar with the sometimes-undocumented goals and operations of the firm and practice, support staff and other end users like junior attorneys can assist in choosing the solution that best integrates with the goals and current workflows of the practice.⁵ Involving members of the entire firm in the process will encourage buy-in and increase the likelihood that the practice management solution ultimately selected is used.

KEYS TO LPMS SELECTION PROCESS

The *ABA TechReport 2016*, written by Josh Poje, director of the ABA Law Practice Division, contains good advice on the process of selecting a practice management solution. In the section on practice management, Mr. Poje suggests that attorneys review their current systems, research their options, consider possible changes to business procedures and plan for training.⁶

He points out:

Failing to clearly understand your current setup and how it is or isn't working for you is the easiest way to waste a pile of money [and time] on technology. The pattern is all too common: lawyer is frustrated by their tech; *lawyer throws money at the first alternative with a decent review (usually anecdotal from a colleague)*; lawyer switches and discovers a month or two later that the new tool did nothing to solve their problems. [emphasis added]⁷

It probably does not surprise many of you that a significant number of attorneys may be unaware of the full capability of their chosen solutions.⁸ I often hear evidence that this is the case. As a result, a review of current systems is an important early step in the selection process. However, you must consider the goals of your firm or practice prior to reviewing whether your current system is meeting those goals.

The *Law Technology News* article "Five Steps When Choosing Law Practice Management Software" also suggests starting the process by examining the goals of the firm.

... the starting process for deciding which tools a firm should use should begin with

an analysis of the long-term goals of the firm. For instance, solo firms intending to remain solo should have different goals and needs than solo firms hoping to bring on additional attorneys and staff. Small firms hoping to add remote staff in the future have different needs than firms [where] everyone shares an office. Firms that offer alternative fee arrangements or document automation have different needs than firms that have no plans to ever alter their business model.⁹

IT IS NOT TIME TO LOOK AT FEATURES YET

Even with firms committed to following an appropriate process, there is a tendency to rush to an examination of the features available from particular practice management solutions. While law practice management solutions often have some similar features, they do not offer identical features. You need to establish the priority of your needs and then see how a product matches up to your priorities.

Tom Lambotte, president of GlobalMac IT, suggests that some of the more established case or practice management systems available have become what he terms "bloatware" because of the numerous features the vendors have added in response to user requests.¹⁰ "The problem with adding on every feature request for 5, 10, 15 years or more is that features, when you are not able to easily access them, become worthless. The software becomes so intimidating and non-inviting to the user that it simply goes unused."¹¹ This is just a reminder that when you do begin to consider features, you may not want to look at the number of features but the set of features that will meet your goals.

SET A BUDGET

Before you start to look at features and examine your options, you need to set your budget. As Mr. Poje says, "Shopping for new technology with a vague budget is an easy way to ensure you overspend."¹² Robert Ambrogi offers similar advice, "Determine your budget for a practice management system and then shop for systems that fit it. Prices range widely."¹³ Mr. Ambrogi further notes that cloud-based systems charge monthly subscriptions ranging from \$39 to \$105 per user per month if paid annually.¹⁴

Remember that your budget should be realistic. Issues such as whether you will select a

web-based system or a more traditional on-premises solution¹⁵ will influence your budget. If you select an on-premises solution you may also need to consider if you will need to include the cost of a technology consult or IT support in your budget. Support is included with a web-based system subscription.

You should be aware that consultants make money in three different ways:

... (1) the consulting fee you pay for their advice, (2) re-seller commissions when they refer a sale to particular vendors, and (3) on-going hosting/support/training/customization contracts ... Pay particular attention to consultants who “always” or “never” recommend cloud-based software solutions for law firms, since those vendors may not be making recommendations based on the specific needs of their law firm clients, but on their own.¹⁶

When working to set a realistic budget, you should also consider the “murkiness” of the web-based practice management solution subscription costs.¹⁷ While most LPMS vendors feature the subscription pricing on their websites, the cost of other applications integrated with the LPMS or other factors, may result in significant pricing increases.¹⁸ Thus, while there is some transparency regarding pricing of web-based systems, add-ons or upgrades may impact the pricing.

RESOURCES TO ASSIST YOU WHEN YOU CONSIDER FEATURES

Before you begin researching whether a specific practice management solution has a specific feature, Heidi Alexander suggests you make “... a list of all features you’d like from your ideal practice management program. Next, prioritize those features [that relate to your firm goals]. By using your feature list, along with your budget, you can home in on programs that might work in your practice. Look for the programs that excel in the features you need most ...”¹⁹ As OBA Management Assistance Program (MAP) Director Jim Callo-way describes it, you must “put in the time” planning and researching now before committing to a single practice management solution.²⁰

There are a number of resources available that collect information regarding practice management solutions. Websites like *SoftwareAdvice*²¹ and *Capterra*²² provide access to reviews. In addition to reviews, *Capterra* also

provides a list of features for particular practice management solutions. Further, *Capterra* allows users to filter the list of practice management solutions to include only those having the combination of features the user selects.²³ However, because the features information appears to be supplied by LPMS vendors rather than collected by independent parties, you should be cautious about relying strictly on this information without additional verification. *Capterra* also provides the *Capterra Legal Software Blog*. Occasionally, the *Capterra* blog will provide posts that compare a few of the more popular practice management solutions.²⁴

The website *Lawyerist* also provides a feature comparison chart.²⁵ While *Lawyerist*’s chart is updated periodically, users have to refer to another webpage for feature descriptions that may be somewhat vague. Many practice management advisors, including myself, also maintain such charts, but because information changes so quickly,²⁶ these charts are normally not distributed. In addition to discussing goals and budgeting, I generally discuss feature information with our members in person, by telephone or a videoconference so I can ensure I am providing the most current information available.²⁷

The ABA’s Legal Technology Resource Center previously provided a comparison of features available from a variety of practice management solutions. The resource center chart was similar to those described above. Because the resource center is no longer updating the comparison information, the link to the chart was temporarily removed, but it remains accessible via the *Internet Archive*²⁸ and the link to the chart has been restored on at least one resource center webpage.²⁹

A QUICK DETOUR

Rather than engage in a lengthier process that begins with consideration of the firm’s goals and includes examination of features, some attorneys may desire to turn to the state bar’s listing of member benefits³⁰ to see what practice management solutions provide a discount and are “acceptable” according to the bar.³¹

Some take the following to mean that they should only select a practice management solution that is endorsed by the state bar association:

Many cloud service providers are upstarts or new side ventures for existing companies. The cloud service provider your firm

entrusts its data to should be recognized by the ABA, multiple state bar associations, and generally be well regarded in both the legal and technical communities.³²

But endorsement and inclusion on a membership benefits list are very different procedures. Most bars do not endorse practice management solutions despite the fact that the vendors of these solutions may offer discounts to members of the bar association. In fact, bar associations often provide a disclaimer stating as much.³³ As a result, attorneys should not interpret any list of member benefits as indicating that a practice management solution includes specific features or meets the security requirements for acceptable storage of confidential client information in the cloud.

Currently the OBA does not include any LPMS vendors on our member benefits listing, but that is subject to change.

TIME TO TALK FEATURES

As I indicated previously, most attorneys (and support staff) want to know about the features of specific practice management solutions. While a discussion of all of the features of the most popular practice management solutions is beyond the scope of this article, it is important to discuss at least some of the features that are currently available via several practice management solutions and to call attention to a few features that currently are available only through a limited number of solutions.

LPMS features are often divided into functional categories: 1) client management; 2) secure communication and email functionality; 3) tasks and workflows; 4) document storage, management and assembly (automation); 5) research and knowledge management; 6) integration; and 7) time and financial management.

Client Management Features

According to the *ABA TechReport 2016*,³⁴ client management features include conflict checking, contact management and client relations management (commonly called CRM). All attorneys need a conflict checking system. Many of the popular practice management solutions have a conflict checking feature.

In early 2016, it was noted that some “case management systems feature CRM tools as well, but those are in the most nascent of devel-

opment stages.”³⁵ CRM tools allow solo practitioners and firms to track potential clients “from leads to conversions.” Few practice management solutions have features such as Clio’s campaign tracker, which provides firms with the ability to determine return on investment for their marketing campaigns.³⁶ Yet, an increasing number of solutions, including PracticePanther and RocketMatter, do provide automated intake forms that can be embed directly onto the firm website. When a new form is submitted, a new contact and matter may be automatically created. For those with a desire or goal of growing their firms or practices, these CRM-like features may be important.

Secure Communication and Email Clients

Secure client portals are a powerful feature that falls in this category. Many of the LPMS provide client portals. However, the *ABA TechReport 2016* suggests that use of “secure client portals have not hit the mainstream. This is likely due to a convenience factor...”³⁷ Additionally *ABA TechReport 2016* notes that secure client portals, such as those available from practice management solution Clio and MyCase, although available, are not fully utilized. “Only 4.3% of respondents indicated that they use the Clio client portal (Clio Connect) and 3.7% for MyCase. If lawyers used the client portals to collaborate with clients, those secure messages would be directly tied to that client’s matter(s) ...”³⁸

The staff members of the OBA MAP are big fans of client portals, especially as unencrypted email is increasingly recognized as inappropriate for confidential communications.³⁹

Email functionality is also a feature within this category. While most LPMS have some email functionality, *Lawyerist’s* feature comparison reflects that only a few practice management solutions have an email client. While this may be technically true, it is confusing. For example, I am occasionally asked about automated message email from Outlook to practice management solutions. At this time, I am only aware of a few web-based practice management solutions, including CosmoLex, that provide the ability to forward email into a solution and attach the message to a matter based on subject and sender data. Other practice management solutions require the user to manually attach the email to a particular matter. However, as more solutions integrate with Office 365 and Outlook, the number of solutions

offering this feature will increase. Yet, *Lawyerist* does not reflect this unique email-related feature of CosmoLex, noting instead that CosmoLex does not have an “email client” feature.

Task and Workflow

Perhaps one of the most effective features of an LPMS is the workflow feature. Workflow features allow the user to set up a number of tasks and apply the task list to any matter. Individual tasks included in the workflow may be calendared as well as delegated to other system users. For instance, if there are a number of tasks associated with opening a new matter, all of these tasks can be included in the workflow and applied to each new matter. As a result, it is not necessary to manually input each new task into every matter. While initially only a few LPMS provided this feature, the feature is now available via a growing number of practice management solutions including PracticePanther, RocketMatter (which refers to the feature as a matter template) and CosmoLex.

Document Storage, Management and Assembly (Automation)

Document storage is an essential feature for those firms desiring to go paperless. As such, almost all the LPMS options now provide a native document storage feature. However, some solutions limit the amount of storage or provide for the purchase of additional storage capacity. Most LPMS also allow integration with external file storage and sharing services such as Dropbox and Box.

Document management is a term of art referring to functionality such as versioning and document checkout. The advanced document management tools are very helpful, but not necessarily essential. Advanced document management functions, if necessary, can be incorporated into the LPMS through integration of document management service providers such as NetDocuments. Clio provides for just such an integration with NetDocuments.⁴⁰

Research and Knowledge Management

Several of the practice management solutions have exclusive agreements with legal research providers. For example, Clio integrates with Fastcase, CaseMaker integrates with CosmoLex and Firm Central is a sister product of Westlaw. These integrations have advantages, including the ability to store research results in the practice management solution. Firm Cen-

tral displays legal authority cited in documents stored on the system with Keycite symbols and facilitates the ability to update the law cited in briefs, memorandums and other documents stored in the practice management solution. Firm Central also provides a light version of a knowledge management tool at a cost that is affordable for solo and small firms not wanting the expense of the full West KM knowledge management tool.⁴¹

Integration

If, after review of your current system, you find that there are legacy applications you want to continue to use, despite the additional cost, then you will likely want to look at those practice management solutions with the widest opportunity for program integration. Clio is recognized for its wide range of integrations. PracticePanther with its adoption of Zapier also allows significant integration.

Many adopters of LPMS have found that the web-based systems do not provide what they desire in the area of accounting. As a result, they have often integrated programs like QuickBooks into systems providing such opportunities. PracticePanther recently launched a “suite of accounting tools” and a “comprehensive QuickBooks integration.”⁴²

Time and Financial Management

Because time and billing are essential features for all users of practice management solutions, time and billing features are available universally. However, the customization available for included functions such as invoice preparation varies widely.

Available on a much more limited basis are several financial analytics reports. RocketMatter and LEAP also provide the ability to set and track matter budgets. The matter budget feature allows you to set a monetary cap on billable time within the matter. Determining this limit will allow you to track the amount billed against your projections.⁴³

CONCLUSION

There are numerous reasons attorneys and firms should adopt and use practice management solutions. Among these reasons is increased efficiency. This increased efficiency allows less time to be spent completing administrative responsibilities and more time to be spent on providing quality, billable legal services for clients. Other advantages of using a

cloud-based LPMS include increased mobility, avoidance of malpractice claims (based on calendaring and docketing errors or incomplete conflicts checking) and improved security and protection of confidential client information.⁴⁴ Additionally, a good process for getting all documents and notes scanned into the digital client file will mean no more wasted time looking for lost documents.

Despite these advantages and increased adoption of LPMS, in 2016 there was a less than 50 percent adoption rate reflected in the *ABA TechReport 2016*.⁴⁵

Attorneys may cite multiple reasons for their reluctance to adopt practice management solutions regardless of the advantages associated with their use. The change in work processes is a concern. Change is difficult. Cost is an often-discussed reason for reluctance. However, there is evidence that the return on investment resulting from use of these practice management tools would more than cover the cost.⁴⁶

Lack of technical knowledge or understanding of the security concerns raised by cloud-based practice management solutions are also often cited reasons for failing to adopt a practice management solution. However, cloud-based practice management solutions actually reduce the need for technical knowledge and continuous IT support. Further, it is not difficult to establish security requirements that should currently be in place to protect client information in a cloud-based environment.⁴⁷ Additionally, most legal consumers can easily understand that the cloud-based law practice management solutions were designed with attorney-client privilege and confidentiality requirements in mind. As a result, these practice management solutions often provide greater security than could be attained via the use of on-premise servers/networks, particularly in a smaller firm without IT staff.

If your firm remains unmotivated to adopt a LPMS, plan and research and prepare to “make the jump” now. You have the opportunity to serve as the change leader who facilitates better service to clients through technology. You increase your likelihood of being successful if you begin the process by considering your goals and current system, setting a realistic budget and researching and matching some system features with your goals. However, you should not stop with simply researching pos-

sible practice management solutions on vendor websites. Instead, as Mr. Poje explains:

Ask for a demo or even a free trial. Get hands on. Ask hard questions about the issues you’ve identified in your current workflow. And check in with your peers before you make the leap. It’s likely someone in your professional network has tried the tools you’re considering. Benefit from their experience. (And ... consider attending ABA TECHSHOW where you can get both the hands on experience and the networking opportunity in one place.)⁴⁸

And remember the OBA MAP is here to assist you with information about documenting your goals, researching reviews, information about vendor reputations and issues, as well as current information about features.

1. There are many practice management solutions. In 2014, it was estimated that the number of solutions was in excess of 150. Janice Mucalov, “Guide to Time Management for Lawyers,” *Canadian Bar Association Solutions Series* (Dec. 23, 2014), www.cba.org/Publications-Resources/CBA-Practice-Link/Young-Lawyers/2014/Guide-to-Time-Management-for-Lawyers#a5. While some of the practice management solutions have been combined as the results of purchases, still other newer options have been launched. As a result, it is likely that in 2017 the count is significantly higher.

2. American Bar Association, Legal Technology Resource Center, *Practice and Case Management Software*, www.americanbar.org/groups/departments_offices/legal_technology_resources/resources/charts_fyis/casemanagementcomparison.html.

3. Joshua Poje, Practice Management, *ABA TechReport 2016*, www.americanbar.org/publications/techreport/2016/practice_management.

4. Richard S. Granat and Stephanie Kimbro, “The Teaching of Law Practice Management and Technology in Law Schools: A New Paradigm,” 88 *Chicago – Kent Law Review* 757, 758-759 (2013), www.kentlaw.iit.edu/Documents/Institutes%20and%20Centers/CAJT/88-3_04_A_new_paradigm.pdf.

5. Catherine Sanders Reach, Demo Office-Wide in “Tips for Choosing Practice Management Software,” *Attorney@Work Blog* (July 8, 2016), www.attorneyatwork.com/choosing-practice-management-software.

6. Joshua Poje, “Practice Management,” *ABA TechReport 2016*, *supra* note 3.

7. *Id.*

8. “... if you already have a practice management application but are barely scratching the surface of what it can do for you ... illuminate its potential.” Wells H. Anderson and JoAnn Hathaway, “All-in-One Practice Management Applications,” *GpSolo*, (July/Aug. 2014) at 51, www.americanbar.org/publications/gp_solo/2014/july-august-2014/allinone_practice_management_applications.

9. Aaron Street, “Five Steps When Choosing Law Practice Management Software,” *Law Technology Today* (July 23, 2015), www.lawtechnologytoday.org/2017/03/choosing-law-practice-management-software.

10. Tom Lambotte, “Features Are Worthless: A Case for New Case Management Software,” *GlobalMacIT*, www.globalmacit.com/features-are-worthless/?inf_contact_key=5505b3edc6fba10aab3179151234b0ed64891daba7cb8b8ba2e4e42304cfdeab.

11. *Id.*

12. *ABA TechReport 2016*, *supra* note 6.

13. Robert Ambrogio, “This Week In Legal Tech: 6 Questions To Ask Before Selecting A Practice Management System,” *Above the Law* (Jan. 23, 2017) www.abovethelaw.com/2017/01/this-week-in-legal-tech-6-questions-to-ask-before-selecting-a-practice-management-system.

14. *Id.*

15. See Wells H. Anderson and JoAnn Hathaway, *supra* note 8, at 52-53 for a discussion of traditional versus cloud applications. Sharon Nelson indicates that the decision between cloud or an on-premise alternative may be the first decision in selecting a practice management solution. Sharon Nelson, “Cloud or On-Premise?” in “Tips for

Choosing Practice Management Software," *Attorney@Work Blog* (July 8, 2016), www.attorneyatwork.com/choosing-practice-management-software.

16. Aaron Street, *supra* note 9.

17. Robert Ambrogio, "This Week In Legal Tech: Practice Management Pricing Gets Murky," *Above the Law*, www.abovethelaw.com/2016/10/this-week-in-legal-tech-practice-management-pricing-gets-murky.

18. *Id.*

19. Heidi Alexander, "Make a List" in "Tips for Choosing Practice Management Software," *Attorney@Work Blog* (July 8, 2016), www.attorneyatwork.com/choosing-practice-management-software/.

20. Jim Calloway, "Put in the Time – Now!" in "Tips for Choosing Practice Management Software," *Attorney@Work Blog* (July 8, 2016), www.attorneyatwork.com/choosing-practice-management-software.

21. SoftwareAdvice, *Legal Software*, www.softwareadvice.com/legal.

22. Capterra, "Top Law Practice Management Software Products," www.capterra.com/law-practice-management-software.

23. *Id.*

24. Cathy Reisenwitz, "Law Practice Management Software: 6 Popular Choices Compared," *Capterra Legal Software Blog* (Nov. 29, 2016), blog.capterra.com/law-practice-management-software-6-popular-choices-compared.

25. "Feature Comparison Chart," *Lawyerist*, www.lawyerist.com/lawyerist/index.php?eddfil=176610%3A147931%3A1%3A0&ttl=1497572401&file=1&token=abe27936184b55d4962c79bd4f998f4f.

26. For example, CosmoLex indicates that they have a major release every 5-6 weeks. "In general, you can expect a major new release every 5-6 weeks. This has been our schedule for a long time as can be seen at: <http://kb.cosmolex.com/support/solutions/folders/19000149075>" Rick Kabra's Comments to "Review of CosmoLex," *Lawyerist* (May 2, 2016), www.lawyerist.com/74270/cosmolex-law-practice-management-software.

27. "Practice management/ technology hotline service – OBA members may contact the Management Assistance Program (MAP) staff ... for brief answers about practical management and technology issues, such as law office software, understanding computer jargon, staff and personnel problems, software training opportunities, time management and trust account management." Oklahoma Bar Association, "Member Perks: Benefits Your Association Provides," www.okbar.org/members/Members/Benefits.

28. American Bar Association, Legal Technology Resource Center, *Practice/Case Management Software Comparison Chart for Solo/Small Firm* (Feb. 2016), <https://web.archive.org/web/20161012203336/http://www.americanbar.org/content/dam/aba/migrated/tech/ltrc/charts/pmtbchart.authcheckdam.pdf>.

29. American Bar Association, Legal Technology Resource Center, *Practice and Case Management Software*, *supra* note 2.

30. Oklahoma Bar Association, "Member Perks: Benefits Your Association Provides," www.okbar.org/members/Members/Benefits.

31. Kansas Bar Association, "Member Benefits," www.ksbar.org/page/benefits.

32. Dennis Dimka, "Hosted vs. Web-based Legal Practice Management," *Law Technology Today* (July 23, 2015), www.lawtechnologytoday.org/2015/07/hosted-vs-web-based-legal-practice-management.

33. See, e.g. Santa Barbara County Bar Association's membership benefits webpage, which specifically states, "Members should always use due diligence and exercise their own judgment regarding the use of any product or service provided by a third party. In no event shall SBCBA be responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with the use of or reliance on any such content, goods, or services available on or through any third party site or resource." Santa Barbara County Bar Association, "Membership Benefits," www.sblaw.org/membership-benefits.

34. Joshua Poje, "Practice Management," *ABA TechReport* 2016, *supra* note 3.

35. Jared Correia, "The Long Nine: Essential Software for the Modern Law Practice," *Attorney@Work Blog* (Feb. 2, 2016), www.attorneyatwork.com/long-nine-essential-software-modern-law-practice.

36. Joshua Lenon, "New Clio Features Help Make Practice Growth a Reality," *Attorney@Work Blog* (Nov. 6, 2015), www.attorneyatwork.com.

www.americanbar.org/publications/techreport/2016/virtual_law_practice.

37. Chad Burton, "Virtual Law Practice," *ABA TechReport* 2016, www.americanbar.org/publications/techreport/2016/virtual_law_practice.

38. *Id.*

39. Jim Calloway, "Email Attachments vs Client Portals," 87 *Oklahoma Bar Journal* 1707 (2016), www.okbar.org/members/MAP/MapArticles/HotPracticeTips/EmailAttachments and Jim Calloway, "ABA Issues New Ethics Opinion on Encryption of Attorney-client Email," *Jim Calloway's Law Practice Tips Blog* (May 11, 2017), www.lawpracticetipsblog.com/2017/05/2017-aba-ethics-opinion-email-encryption.

40. Affinity Consulting Group, "Clio and NetDocuments Integration," *Affinity Consulting Blog* (June 2015), affinityconsulting.com/affinity-newsletters/413-feature-article-for-june-2015-clio-and-netdocuments-integration.

41. See e.g. Jack Bostelman, "Leverage the Small Stuff," *KMJD Consulting* (Jan. 05, 2014), (Explains how firms have identified matter completion through the knowledge management features and how that information has been used.)

42. Robert Ambrogio, "PracticePanther Launches Suite of Accounting Tools and Comprehensive QuickBooks Integration," *LawSites* (June 8, 2016), www.lawsitesblog.com/2017/06/practicepanther-launches-suite-accounting-tools-comprehensive-quickbooks-integration.

43. Renata Baldassarri, *Law Firm Analytics Reports: Matter Budgets*, Rocket Matter's Legal Productivity (Nov. 24, 2015), www.rocketmatter.com/practice-management/law-firm-analytics-reports-matter-budgets.

44. Robert Ambrogio, "This Week in Legal Tech: 10 Reasons You Should Use Practice Management Software," *Above the Law* (Oct. 3, 2016), www.abovethelaw.com/2016/10/this-week-in-legal-tech-10-reasons-you-should-use-practice-management-software.

45. Joshua Poje, "Practice Management," *ABA TechReport* 2016, *supra* note 3.

46. Robert Ambrogio, "This Week in Legal Tech: 10 Reasons You Should Use Practice Management Software," *Above the Law*, *supra* note 41.

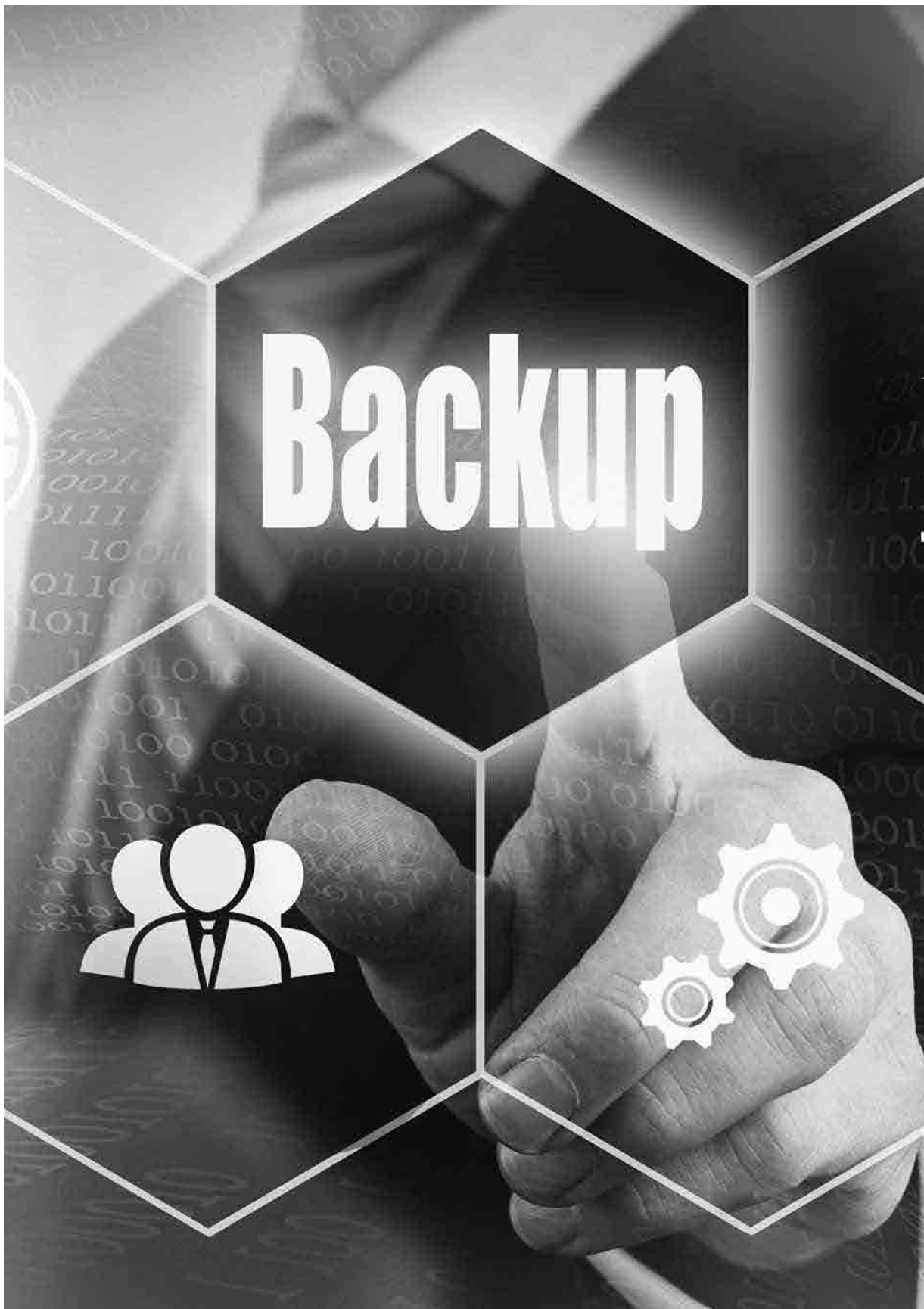
47. The reputation of the practice management solution provider is an important indicator of the likelihood that the vendor will appropriately handle security requirements. However, attorneys should look for the following technical assurances when selecting a practice management solution: 1) 2048-bit SSL Certificate and secure HTTPS connection when connecting to the service via a Web browser; 2) ISO 27001 and SOC 2 Type II certification; 3) AES 256-bit data encryption (which is equivalent to the encryption standards used by financial institutions); 4) inclusion of intrusion detection and virus protection software as part of the providers own servers; and 5) a separate uninterruptible power supply at the server facilities of the practice management solution vendor. Thomson Reuters, "5 Things Law Firms Need from a Legal Cloud Services Provider," www.legalsolutions.thomsonreuters.com/law-products/ns/news-views/small-law/legal-cloud-services.

48. Joshua Poje, "Practice Management," *ABA TechReport* 2016, *supra* note 3.

ABOUT THE AUTHOR



Darla Jackson is the OBA practice management advisor. She earned her J.D. from the OU College of Law. She also holds a Masters of Library Science from OU and an LL.M. in international law from the University of Georgia School of Law. She has practiced as an Air Force judge advocate and served as a law library director at the University of South Dakota School of Law.



Small Office Image/Backup With Acronis True Image

By John Brewer

The traditional reason to back up a computer is because things go “bump in the night.” Hard drives are mechanical and will fail, it is only a question of when. Data may get corrupted for various reasons. Malware may infect a computer. Ransomware is increasing its footprint. This article addresses one approach to image and back up a small office computer system using Acronis True Image as the image/backup software. However, other software can be used. This article does not address the issue of storing data in the cloud and the issues that might be associated with Microsoft Office 365. The article is based on using the standalone version of Microsoft Office 2013.

The following is an overview of a sample small office setup where three computers are used.

Computer number one is a legacy computer. The operating system is Windows XP Professional with service pack three. It has legacy software installed on it and a 3.5-inch floppy drive just in case it might be needed in the future. The computer connects to the office network with a USB wireless device (often called a dongle). The computer has a standalone version of Acronis True Image installed and is generally powered down and not connected to the internet for security reasons.

The primary workstation has Windows 10 Professional installed as the operating system. It has two hard drives. Drive one has a single C partition that has the operating system and applications installed. Drive two has two partitions. The E partition has copies of applications

and is generally a static partition except when new applications are archived to it. The F partition is the data partition. This computer has the subscription version of Acronis True Image installed. The subscription version comes with 50 GB of online storage, but more storage is available at a small cost. The annual subscription with 50 GB of online storage costs \$20 per year.

It is important to have two drives so the data partition will not be affected if drive one becomes corrupted or fails. In addition, it is easier to back up the data partition if the data is not commingled with the operating system and applications.

The secondary workstation also has Windows 10 Professional installed. The drive is a Samsung SSD. This workstation is used for office assistance and bulk scanning with a Fujitsu scanner. The standalone version of

Acronis True Image is installed on this computer. It is a one-time cost until upgraded. Data that is generated by this computer is saved across the network to the F partition on the primary workstation.

The following is an example of an image/backup routine.

The legacy computer is a full image on a one-time basis with Acronis True Image since the computer is basically static.

The secondary workstation is imaged fully once a week to an external drive with the standalone version of Acronis True Image.

The primary workstation is imaged fully once a week to an external drive with the subscription version of Acronis True Image. In addition, the data files are backed up daily to online storage. Differential and incremental routines are also possible, but a full image once a week and daily backup of the data files is used for this example.

Once a month after the first of the month, the latest Acronis True Image files are copied to a portable USB drive and taken off-site.

This is a relatively inexpensive image/backup routine with versatility since Acronis True Image also has additional tools.

This article uses the terms image and backup. It is submitted the terms differ in their meaning. Acronis True Image makes an image of the hard drive rather than a conventional backup of selected data files. The difference can be explained as follows. A system image is an exact copy of everything on the computer's hard drive. It can be used to restore the system after a catastrophic crash, hard disk failure, etc. A full backup contains data files, but not everything on the disk, and it cannot be used to restore the system. Acronis True Image can perform both routines – it can image the drive and backup the data files.

Acronis True Image can be purchased at www.acronis.com or at a discount at www.ugr7.com. The vendor at ugr7 is recommended. There is a wealth of information on the website regarding the use of Acronis True Image and other Acronis products. There is a new version of the yearly subscription called Acronis True Image New Generation that costs more but has added features and comes

with one TB of online storage.

“ This article uses the terms image and backup. It is submitted the terms differ in their meaning. ”

ABOUT THE AUTHOR

John Brewer is a solo practitioner in Oklahoma City. He graduated from the OU College of Law in 1974 and is a long-time member of the OBA Law Office Management and Technology Section.



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Cybersecurity Basics

By Sharon D. Nelson and John W. Simek

Cybersecurity is a hot topic these days, but what does it mean to practicing lawyers today? Essentially, cybersecurity is the protection of your information systems from theft or damage. For an attorney, that means making sure your client's information stays confidential. Today, that includes taking steps to protect yourself from experiencing a data breach.

Are lawyers doing enough to safeguard law firm and client information? Our opinion is that many are not. Here are a few reasons we hold that opinion:

- The FBI reported at a legal technology conference in 2013 that they are seeing hundreds of law firms being increasingly targeted by hackers.
- Mandiant, now part of InfoSec giant FireEye, reported that 7 percent of the breaches it investigated in 2014 involved law firms.
- Another report noted that 80 percent of the largest 100 law firms, by revenue, had been hacked between 2011 and 2015.
- At a meeting of large firm information security experts from Washington, D.C., most admitted that they had been breached – and that they were aware from their colleagues that others had been breached as well.
- Even with the dismal record of reporting law firm data breaches, we still learn of them in the press and informally – and we will detail some of them for you.

WHY AREN'T WE SAFEGUARDING OUR DATA?

While data breaches can happen despite reasonable (or even stronger) security, the fre-

quency of law firm data breaches and reports on how some of them have occurred suggest that many attorneys have not been employing reasonable safeguards. Why do many otherwise competent lawyers fail so miserably in protecting firm and client data? Here are some of the reasons.

Ignorance

Ignorance – they simply need education – and many of them don't know they need education.

Denial

The “it can't happen here” mentality is flatly wrong. Since the FBI issued an advisory in 2009 warning that law firms were specifically being targeted by identity thieves and by those performing business espionage, it has continued to meet with large firms to preach the gospel of information security. We were, in earlier days, worried about cybercriminals, China and other state-sponsored hackers, who continue to be major threats. Thanks to Edward Snowden, we now know that we also need to worry about surveillance by our own government.

Law Firms Are Soft Targets

According to press reports, lawyers and law firms are considered “soft targets;” they have

high-value information that's well organized and frequently have weak security – although we are happy to report that, at least at large firms, cybersecurity is now a pretty high priority.

The Cost of Information Security

Though there are many low-cost or free measures that solo and small firm lawyers can take to protect sensitive data, true information security, including hardware, software, training, etc. is expensive. Protecting the security of client data can present a big burden for solo practitioners and small law firms. This does not take away a lawyer's ethical duty, however, and it is one reason the authors lecture so often on computer security. Once vulnerabilities are detected, lawyers can take remedial steps – or engage an IT consultant to do those things that are beyond the lawyer's skill.

Constant Vigilance Is Required

The need for vigilance never stops. You cannot secure your data once and think you're finished; the rules of information security change on close to a daily basis. Certainly, someone in the firm needs to keep up with changes regularly or the firm needs to engage a security consultant to do periodic reviews. While the necessary frequency of security assessments depends on the size of the firm, the sensitivity of the information and identified threats, it is our judgment that mandatory assessments should be conducted at least annually. Clients are also beginning to demand self-audits or third-party audits of law firm security. Sensei Enterprises Inc. has never seen a client who passed such an audit on the first go-round. In fact, they don't even understand the audit questions, which doesn't bode well for the results.

DETECT AND RESPOND

In a more innocent time, we really thought we could keep the barbarians outside the walls that guard our data. Alas, those days are gone. For years, the emphasis was on preventing villains – cybercriminals, state-sponsored agents, business espionage spies and hackers – out. We went from fairly simple anti-virus software to sophisticated anti-virus software and, finally, to enterprise anti-malware software security suites.

The products got better and better and better. Sadly, what we learned is that all the would-be intruders were not only matching the good guys step for step, they were outpacing them.

It took a surprisingly long time for everyone to “get it” – but in the end, we realized that if the bad guys are smart enough and target a particular entity, they are going to successfully scale the walls we built to keep them out. With that realization, “detect, respond and recover” became the new watchwords in cybersecurity.

Mind you, we are still trying to keep the bad guys out – that is our first line of defense. But now that we know that our first line of defense is a Maginot Line¹ for sophisticated attackers, we have moved forward in our thinking.

THE NIST CYBERSECURITY FRAMEWORK

In February of 2014, we had begun moving forward toward securing our data and the physical infrastructure protecting it when the National Institute of Standards and Technology (NIST) released Framework for Improving Critical Infrastructure Cybersecurity Version 1.0.

The framework provides a structure that organizations, regulators and customers can use to create, guide, assess or improve comprehensive cybersecurity programs. This came as a result of Executive Order 12636, issued in February of 2013, which called for “the development of a voluntary, risk-based Cybersecurity Framework – a set of existing standards, guidelines and practices to help organizations manage cyber risks. The resulting framework, created through public-private collaboration, provides a common language to address and manage cyber risk in a cost-effective way based on business needs, without placing additional regulatory requirements on businesses.”²

The framework allows organizations – regardless of size, degree of cyber risk or cybersecurity sophistication – to apply the principles and best practices of risk management to improve the security and resilience of critical infrastructure.

The document is called “Version 1.0” because, much like our Constitution, it is supposed to be a living document which will be updated to reflect new technology and new threats – and to incorporate lessons learned.

Here is where you find the magic words of the document, “identify, protect, detect, respond and recover”³ that should shape any law firm's cybersecurity program.

“Identify and protect” was where we started in the early days of cybersecurity – and while

those words are still important, “detect and respond” have surged forward as a new focus – along with, of course, recovering from security breaches – no easy task. It is especially tough if you don’t know you’ve been breached – and the average victim has been breached for seven months or more before the breach is discovered!

WHAT DOES ‘DETECT AND RESPOND’ MEAN FOR LAW FIRMS?

It means rethinking how you approach security of your data. Now that you know you can’t keep a determined intruder out, you know you need to detect them once they’ve penetrated your network. So you need technology and software that will help you detect that you’ve had what is called, in polite circles, “a cybersecurity event” – translate that to “a breach.”

As you can imagine, you want to know of these events as soon as possible so you can take action. Today, there are technology solutions that identify anomalies in your network (things that are outside the norm) or that look for executables that are unknown but are behaving like malware or some other form of cyberattack. While some of the solutions may be beyond the need or the budget of solo practitioners and very small firms, you don’t have to be very large to start considering heading down this road – the risks of not doing so are simply too great. The good news is that there are technical solutions that are very affordable and would be a good starting point for the solo and small firm attorneys.

Some of the solutions include data loss prevention, software and appliances, intrusion detection systems (IDS), intrusion prevention systems, electronic content management systems and security event management systems. When you meet with someone who can explain the various solutions to you, brew a pot of espresso – you’re going to need to be highly focused to understand how one solution differs from another – this is really cutting edge technology that changes from month to month (if not day to day).

For the solo and small firms, we recommend that you start by investigating intrusion detection systems. An IDS watches network and

system activity and alerts you if there appears to be some malicious activity. It begins by creating a baseline of network traffic. Any suspicious activity outside of the configured parameters (e.g. 10 percent additional network bandwidth utilization) causes an alert, which is typically an email to an administrator. One of our favorite IDS products is Meraki by Cisco. It is subscription based and only costs a few hundred dollars a year. The hardware itself is a few hundred dollars and then you only have to deal with annual subscriptions after that. The system is cloud based and updates are automatically delivered and installed. The updates are based on the activity seen by all the Meraki devices in the Cisco network. In other words, you take advantage of having fixes applied based on malicious activity that someone else may have experienced. Needless to say, Cisco is a very trusted brand.

“For the solo and small firms, we recommend that you start by investigating intrusion detection systems.”

As for your response to your incident, that may vary. After the initial panic, you will want your in-house or outside technology consultants (and you are likely to need digital forensics technologists, who are more familiar with data breach investigations) to take a look at the situation and see what they can determine. Once they understand what has happened, they can also figure out how to “plug the hole” and otherwise mitigate the breach. Remediation of

whatever caused the breach is key.

Hopefully, you already have an incident response policy and plan in place, no matter how big or small your firm is. For all but the smallest firms, there should also be an incident response team in place to implement the plan. At a minimum, you should have already identified who will be involved along with their appropriate role.

In all probability, you will want to call a lawyer familiar with data breach laws who can advise you on complying with any of the 47-state data breach notification laws. And if there is data protected by federal law (such as HIPAA data), you’ll need advice on that front too.

Finally, one of the first pieces of advice you are likely to be given is to call the FBI. While that is anathema to most law firms, it is the

appropriate course of action. Remember that the FBI makes no public statements about these investigations and doesn't show up in flak jackets or otherwise make a public display of your cybersecurity event. You can determine which FBI office to call by performing a Google search for "FBI regional offices" and entering your zip code.

THE ABA CYBERSECURITY RESOLUTION

The ABA has weighed in on cybersecurity concerns, always a sign that the states may follow. On Aug. 12, 2014, the ABA House of Delegates passed, without opposition, a cybersecurity resolution, Resolution 109, which reads as follows:

RESOLVED, That the American Bar Association encourages all private and public sector organizations to develop, implement, and maintain an appropriate cybersecurity program that complies with applicable ethical and legal obligations, and is tailored to the nature and scope of the organization, and the data and systems to be protected.⁴

You might be forgiven for thinking as you read the resolution, "Wow, that really says a whole bunch of nothing." And you'd be right – it is really a cautionary resolution intended to raise awareness.

There is a back story to the resolution, which was much larger in its original format. The original resolution appeared to command all law firms, large and small, to come up with a cybersecurity program that met national and international standards.

This was met with fierce opposition from a number of ABA entities, including our own Law Practice Division and the General Practice and Solo Division. The resolution was submitted by the ABA Cybersecurity Legal Task Force and the Section of Science & Technology Law.

In answer to the controversy, the language of the resolution (which stands on its own and is not governed by the accompanying report) was watered down to the tepid version above. At the behest of other entities, language in the report was also changed to make it clear that the resolution was not attempting to make a change in lawyers' ethical duties and to add language recognizing that smaller firms could not be expected to adopt a program that made no sense considering their size and budget constraints.

Clearly, for small firms, the international and national standards cited in the report appeared fearsome. There are standards for smaller firms like the NIST standard mentioned previously.

The report states "Small organizations, including small law firms and solo practitioners, can prioritize key cybersecurity activities and tailor them to address the specific needs that have been identified." For help with this, you might check out *NIST Interagency Report 7621: Small Business Information Security: The Fundamentals*.⁵ Written in 2009, it's a bit dated, but many fundamentals remain the same. As an example, target hardening is one of the sections. It would seem pretty obvious that you should be beefing up your security in order to reduce the chance of compromise, but most people just set it and forget it.

CYBERSECURITY WORRIES

There are lots of cybersecurity worries to give you the willies in the wee hours of the morning. Here are a few of the most common ones we see.

Ransomware

We continue to see law firms struck by ransomware (one hit in our neck of the woods while we were proofing this article) which encrypts your data followed by a demand for payment – usually in bitcoins – to get your data back. Training your employees not to click on suspicious attachments or links in email will help. They need to stay away from suspicious sites as well since ransomware can be installed by just "driving by" an infected website.

Overwhelmingly, from a technological standpoint, you can defeat ransomware by having a backup that is immune to it. This can mean, particularly for solo lawyers, that they backup to an external USB drive and then disconnect the backup from the network. If you leave it connected, the ransomware will encrypt your network *and* your backup. For others, it means running an agent-based backup system rather than one which uses drive letters or network shares. Make sure your IT consultant has your backup engineered so that backups are protected – that way, even if you are attacked with ransomware, you can thumb your nose at the demands for money because you can restore your system from your backup (which means backups need to be made frequently to avoid any significant data loss – there should always

be a good backup which is *not* connected to the network).

Employees

Employees are by nature rogues. In every study that's been made, they will ignore policies (assuming they exist) in order to do what they want to do. This often means they bring their own devices which may be infected when they connect to your network. They may also bring their own network or bring their own cloud. Certainly, your policies should disallow these practices (in our judgment) or at least manage the risks by controlling what it is done by a combination of policies and technology.

They also steal your data or leave it on flash drives, their home devices, etc. This means you have "dark data" – data you don't know about and over which you have no control. This means you may miss data required in discovery because you don't know it exists. Your data may not be protected in compliance with federal or state laws and regulations. And you have no way to manage the data because you don't know it is there. Once again, a combination of policies and technology should be in place to prevent these issues.

Targeted Phishing

This is perhaps the greatest and most successful threat to law firm data. Someone has you in their sights – they often have done research on your law firm. They may know what cases you are involved in and who your opponents are. They may know the managing partner's nickname. Everything they know about you they may use to get your click on something. For example, an email from an opponent referencing a specific case and saying "The next hearing in _____ case has been rescheduled as per the attachment." Many a lawyer has clicked on such attachments – or a link within an email.

The best solution to protect yourself from targeted phishing is training – and more training – endlessly. One California firm had multiple targeted phishing attacks but survived them because attorneys and staff who received such emails questioned their authenticity. Forget the loss of billable time. The loss of money, time and even clients due to a data breach can be far worse.

Interception of Confidential Information

Start with the proposition that everyone wants your data, including cybercriminals, hackers and nation states (including our own). Frankly, if they want your data and they have sophisticated tools, they will get it. So shame on you if you are not employing encryption (which is now cheap and easy) to protect confidential data via voice, text and email. Encryption, today, is a law firm's best friend. You may choose to use it always or in cases where it is warranted – but you surely should have the capability of encrypting.

Failure to Use Technology to Enforce Password Policies

First, let us say that you should use multifactor authentication where available and use it to protect sensitive data. But failing that, we recognize that passwords are still king in solo and small to mid-size firms.

Therefore, have your IT consultant assist you in setting up policies that can be enforced by technology, requiring that network passwords be changed every 30 days, not reused for an extended period of time and mandating strong passwords using 14 or more characters in length, utilizing upper- and lowercase letters, numbers and symbols. Passphrases are best, 1lovepracticingl@w2016! would do nicely.

How are you going to remember all of those unique 14-plus character passwords? This is where a password manager is your friend. Password managers store the data in an encrypted "vault" that is accessed using a very strong master password. You put all your logon information into the software database where it is stored as encrypted data. Some password managers can store a wide variety of data and not just username and password. Some will automatically fill in the login information without you typing a thing. Some can store additional information such as credit card numbers, passport information, prescriptions, frequent flyer numbers and any other desired information. Finally, when selecting a password manager, you'll need to decide if you want the encrypted password vault to be stored in the cloud or locally on your device. Either one is acceptable since the data is encrypted with a password you define.

ONE LAST SHOT ACROSS THE BOW

While it is true that “detect and respond” has set off a hue and cry, never forget that it is best for your law firm if you really can keep the barbarians outside the gates. We were reminded of this as we were writing this article. A news article appeared on our newsfeeds telling us that another law firm had suffered a data breach after a firm backup disk (apparently unencrypted) had been stolen from an employee’s locked car trunk. The best defense we currently have to protect law firm data is encryption. “Detect and respond” is a mantra you need to adopt, but don’t make the mistake of failing to adequately protect your data. Encryption is a law firm’s best friend when it comes to risk management. If you haven’t deployed encryption everywhere, now is the time. As a point of interest, Google is marching full steam ahead with its encrypt everything program. That’s a good cue that you should be doing the same thing.

1. A line of defensive fortifications built before World War II to protect the eastern border of France but easily outflanked by German invaders. Here it refers to a defensive barrier or strategy that inspires a false sense of security. (Source: Merriam Webster Dictionary)

2. National Institute of Standards and Technology, “NIST Releases Cybersecurity Framework Version 1.0,” www.nist.gov/news-events/news/2014/02/nist-releases-cybersecurity-framework-version-10 (Feb. 12, 2014; last accessed July 19, 2017).

3. National Institute of Standards and Technology, “Framework for Improving Critical Infrastructure Cybersecurity,” www.nist.gov/sites/default/files/documents/cyberframework/cybersecurity-framework-021214.pdf (Feb. 12, 2014; last accessed July 19, 2017).

4. American Bar Association Cybersecurity Legal Task Force Section of the Science & Technology Law, “Report to the House of Delegates,” www.americanbar.org/content/dam/aba/events/law_national_security/2014annualmeeting/ABA%20-%20Cyber%20Resolution%20109%20Final.authcheckdam.pdf (Aug. 12 2014; last accessed July 19, 2017).

5. goo.gl/5Q9Io0 (last accessed Oct. 15, 2014).

ABOUT THE AUTHORS



Sharon D. Nelson is president of Sensei Enterprises Inc. Ms. Nelson is author of the blog, *Ride the Lightning*, co-host of the Legal Talk Network podcast *The Digital Edge: Lawyers and Technology* and *Digital Detectives*. She is a frequent author and speaker on legal technology and information security. She is past president of the Virginia State Bar from June 2013 to June 2014 and a past president of the Fairfax Law Foundation.



John W. Simek is vice president of Sensei Enterprises Inc. Mr. Simek has testified as an expert witness throughout the United States. Mr. Simek is a Certified Information Systems Security Professional (CISSP). He currently provides information technology support to Washington-area law firms, legal entities and corporations. He is a co-host of the Legal Talk Network podcast *Digital Detectives*.

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Taxation Law Section

2017 Oklahoma Tax and Fee Legislation

By Sheppard F. Miers Jr.

The following is a summary of some of the changes in Oklahoma law on state taxation and fees enacted by the Oklahoma Legislature in 2017.

INCOME TAX

Oklahoma Standard Deduction Decoupled from Federal Standard Deduction

For taxable years beginning on or after Jan. 1, 2017, for individuals who use the standard deduction in determining taxable income, there shall be added or deducted the difference that is necessary to allow an Oklahoma income tax standard deduction in lieu of the federal income tax standard deduction allowed by the Internal Revenue Code. The amounts of the Oklahoma standard deduction resulting from this change are to be: \$6,350 for single or married filing separately, \$12,700 for married filing jointly or qualifying widower with dependent child and \$9,350 for head of household, irrespective of the standard deduction allowed for federal income tax purposes.¹

Note: At the time of submission of this section note, an action challenging the constitutionality of enactment of HB 2348 to make this statutory change was filed and pending in the Supreme Court of Oklahoma, in *Gary L. Richardson v. State of Oklahoma, ex rel. Oklahoma Tax Commission*, Case No. 116162, filed June 28, 2017, arguing that HB 2348 is a revenue bill subject to Article V, §33 of the Oklahoma Constitution and enactment of the bill did not meet the requirements of that provision of the Constitution.

Zero-Emission Electricity Generation Credit Limited for Wind Facilities

The Oklahoma income tax credit allowed for electricity generated by zero-emission facilities

was amended to provide that it will be allowed with respect to electricity generated by wind only for a facility placed in operation no later than July 1, 2017.²

Oklahoma 4.85 Percent Top Individual Income Tax Rate Implementation Repealed

The statute authorizing a “trigger” to implement a top marginal individual income tax rate of 4.85 percent in Oklahoma was repealed; and actions of the State Board of Equalization with respect to implementation of that rate were declared null and void.³

Individual Income Tax Returns

For tax years beginning on or after Jan. 1, 2017, every resident individual whose gross income exceeds the sum of the Oklahoma individual standard deduction and personal exemption must file an Oklahoma income tax return. Resident individuals not required to file a federal income tax return must attach a completed federal income tax return to the Oklahoma income tax return to show how adjusted gross income and deductions were determined if their gross income is more than their adjusted gross income. The Oklahoma income tax return must show the taxable income and, where necessary, the adjusted gross income and modifications required by the Oklahoma Income Tax Act, and any other information the Oklahoma Tax Commission (tax commission) may require. Every nonresident individual having Oklahoma gross income for the taxable year of \$1,000 or more must file an Oklahoma income tax return.⁴

Oklahoma Equal Opportunity Education Scholarship Credits

The Oklahoma income tax credit allowed for contributions made to eligible scholarship-

granting organizations and educational improvement-granting organizations pursuant to the Oklahoma Equal Opportunity Education Scholarship Act was amended to modify the manner in which the statewide cap on annual credits is to be allocated and applied.⁵

Aerospace Industry Credits

The period during which Oklahoma income tax credits for the aerospace industry may be claimed was extended to be for taxable years ending before Jan. 1, 2026.⁶

Withholding from Royalty Owners

The statute providing for withholding of income tax from royalty owners was amended to add an exception for which withholding is not required. The withholding requirement shall not apply to payments which are made to a publicly traded partnership that is treated as a partnership for federal tax purposes under the Internal Revenue Code or its publicly traded partnership affiliates. For this purpose a “publicly traded partnership affiliate” shall include any limited liability company or limited partnership of which at least 80 percent of the limited liability member interests or limited partnership interests are owned directly or indirectly by the publicly traded partnership.⁷

Volunteer Firefighter Credit

The Oklahoma income tax credit allowed to volunteer firefighters was amended with respect to qualification requirements.⁸

Contributions to Folds of Honor Scholarship Program

The income tax return check-off procedure for charitable contributions of refunds due to a taxpayer to the Folds of Honor Scholarship Program will not be subject to the rule that can result in removal of a charity from being listed on income tax return forms. The rule that a charity that has been designated to receive funds through contributions made on Oklahoma income tax return forms will be removed from such forms if such contributions to the charity do not equal \$15,000 or more for three consecutive years but will not apply to the Folds of Honor Scholarship Program.⁹

Donations to the Oklahoma Wildlife Diversity Program

An income tax return refund contribution was reauthorized for contributions from a tax refund for the benefit of the Oklahoma Wildlife Diversity Program.¹⁰

Donations to Oklahoma Emergency Responders Assistance Program

For tax years beginning in 2017, tax returns will contain a provision allowing a donation from a tax refund for the benefit of the Oklahoma Emergency Responders Assistance Program.¹¹

SALES AND USE TAX

State Sales Tax on Motor Vehicle Sales

The state sales tax exemption allowed for the sale of a motor vehicle or any optional equipment or accessories attached to motor vehicles on which the Oklahoma Motor Vehicle Excise Tax is levied was amended to provide that the exemption shall not apply to a portion of the levy of state sales tax equal to 1.25 percent of the gross receipts of motor vehicle sales. However, sales of motor vehicles shall not be subject to any sales and use taxes levied by cities, counties or other jurisdictions of the state.¹²

Note: At the time of submission of this section note, actions challenging the constitutionality of enactment of HB 2433 to levy sales tax on motor vehicle sales were filed and pending in the Supreme Court of Oklahoma, in *Oklahoma Automobile Dealers Association, et al. v. State of Oklahoma, ex rel. Oklahoma Tax Commission*, Case No. 116143, filed June 23, 2017, and in *Gary L. Richardson v. State of Oklahoma, ex rel. Oklahoma Tax Commission*, Case No. 116162, filed June 28, 2017, arguing that HB 2433 is a revenue bill subject to Article V, §33 of the Oklahoma Constitution, and its enactment did not meet the requirements of that provision of the Constitution.

Vendor Sales and Use Tax Deduction to Compensate for Record Keeping and Tax Remittance Repealed

The sales tax code and use tax code provisions allowing a seller or vendor a deduction of 1 percent of the tax due, not exceeding \$2,500 per month per sales tax permit, for the purpose of compensating the seller or vendor for keeping sales and use tax records, filing reports and remitting the tax when due, were repealed.¹³

Oklahoma Tourism Development Act; Sales Tax Credits

An Oklahoma Tourism Development Act was enacted to provide sales tax credits as inducement for the creation or expansion of tourism attraction projects within the state. The act provides for business entities operating or

intending to operate a tourism attraction project within the state that meets certain standards to enter into an agreement with the executive director of the Oklahoma Tourism and Recreation Department providing for the completion and operation of the project. The act specifies such qualification standards, criteria and requirements; and also procedures for review and approval of projects and agreements and for the application, claiming and timing of credits.

The sales tax credit allowed may only offset increased sales tax liability of the company resulting from sales to customers at the tourism attraction in excess of reported sales tax liability for sales in the same month in the calendar year preceding the certification of the project approving it for sales tax credit inducements under the act. The tax commission shall provide an approved company with forms and instructions to claim the sales tax credit inducement allowed under the act.

An approved company that certifies that it has expended approved costs of more than \$500,000 for a tourism attraction project but less than \$1 million shall be issued a tax credit memorandum by the tax commission granting a sales tax credit in the amount of up to 10 percent of the approved costs. An approved company that has expended approved costs in excess of \$1 million for a tourism attraction project shall be issued a tax credit memorandum by the tax commission granting a sales tax credit in the amount of up to 25 percent of the approved costs. The credits shall be limited to the percent of the approved costs that will result in the project being revenue neutral to the state as determined by the tax commission. An approved company receiving a credit shall be entitled to use only a specified part of the credit to offset increased sales tax liability during each calendar year, which is 10 percent each calendar year for projects with approved costs in excess of \$1 million and 20 percent each calendar year of projects with approved costs less than \$1 million.

No sales tax credit authorized by the act shall be granted on or after Jan. 1, 2021; provided, that an approved company that has entered into a tourism attraction project agreement with the Oklahoma Tourism and Recreation Department prior to Jan. 1, 2021, shall continue to be entitled to claim any sales tax credit authorized pursuant to the act and as contemplated by the tourism project agreement.¹⁴

Collaborative Model Connecting Community Agencies Exemption

A sales tax exemption was enacted to be effective Nov. 1, 2017, to exempt from sales tax the sale of tangible personal property or services to an organization which is exempt from taxation pursuant to the provisions of the section 501(c)(3) of the Internal Revenue Code and operates as a collaborative model which connects community agencies in one location to serve individuals and families affected by violence and where victims have access to services and advocacy at no cost to the victim.¹⁵

Sales to Tourism and Recreation Department Contractors Exemption

The sales tax exemption related to Oklahoma Tourism and Recreation Department promotional materials was amended to provide an exemption for sales of tangible personal property or services to any person with whom the department has entered into a public contract necessary to assist the department in the development and production of advertising, promotion, publicity and public relations programs.¹⁶

National Guard Association of Oklahoma Exemption

A sales tax exemption was enacted to be effective July 1, 2018, to exempt sales of tangible personal property or services to or by an association which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, and which is known as the National Guard Association of Oklahoma.¹⁷

Marine Corps League of Oklahoma Exemption

A sales tax exemption was enacted to be effective July 1, 2018, to exempt sales of tangible personal property or services to or by an association which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, and which is known as the Marine Corps League of Oklahoma.¹⁸

Sales Tax Noncompliant Taxpayer Closings

The provisions of the Sales Tax Code authorizing the tax commission to close the business of a noncompliant taxpayer for failure to file reports or remit tax due was modified, providing that a taxpayer operating under a sales tax permit shall not be deemed "noncompliant" for nonpayment of income taxes; and providing for clarification as to failure to file reports required for sales taxes.¹⁹

AD VALOREM TAX

Delay of Five-Year New Manufacturing Facility Exemption Until Expiration of Local Development Act Tax Exemption

New manufacturing facilities applying for the five-year *ad valorem* tax exemption under 68 O.S. §2902 on or after Nov. 1, 2017, that meet specified requirements shall be eligible to delay the beginning of the five-year period of exemption from *ad valorem* taxes under 68 O.S. §2902 until after the expiration or termination of an *ad valorem* exemption, abatement or other incentive provided to the taxpayer through a tax incentive district established pursuant to the Local Development Act.

In order to delay the exemption this way a manufacturing facility must 1) create at least 100 new jobs at the state index wage provided for in 68 O.S. §3604(F)(2) and 2) invest at least 10 times the investment cost in new depreciable property required for the five-year new manufacturing facilities exemption in 68 O.S. §2902 (B)(1), presumably meaning an investment of at least \$2.5 million. The delay of the exemption shall not be available for any job creation or investment of new depreciable property that occurred prior to Nov. 1, 2017, or the date of the creation of the tax incentive district under the Local Development Act, whichever is later.

The application process and procedures for a taxpayer to be able to delay the beginning of the five-year *ad valorem* tax exemption under 68 O.S. §2902 shall involve approvals, actions and notification of and by the governing body creating a tax incentive district in a city or county under the Local Development Act, the tax commission and the Oklahoma Department of Commerce. If an application for an exemption is approved, the five-year period of exemption from *ad valorem* taxes for a qualifying manufacturing facility under 68 O.S. §2902 shall begin on Jan. 1 following the expiration or termination of the *ad valorem* exemption, abatement or other incentive provided through the tax incentive district under the Local Development Act. This allowance of such a delay shall not apply to electric power generation facilities, and they shall not qualify to delay the exemption from

ad valorem taxes following the expiration or termination of the *ad valorem* exemption, abatement or other incentive provided through the tax incentive district pursuant to the Local Development Act.²⁰

Paper Product Manufacturing Facility Exemption Repealed

The statute separately providing for a five-year new manufacturing facility exemption for a facility engaged in pulp, paper, tissue and paper board manufacturing if it meets specific minimum capital improvements and wage per employee requirements was repealed.²¹

Manufactured Home Tax Delinquency Notices

The *ad valorem* tax procedure governing delinquent taxes was amended to provide that if personal property taxes become delinquent on a manufactured home which is located on property not owned by the owner of the manufactured home, the county treasurer shall send a notice to the taxpayer of delinquency to the owner of the manufactured home as generally authorized and required, and such notice shall also be sent to the last known address of the owner of the real property on which the manufactured home is located.²²

GROSS PRODUCTION TAX

Horizontally Drilled Wells; Rate Increase

The gross production tax rate for certain production of oil and gas was adjusted to provide for a higher rate, to apply prospectively. For production commenced on or after July 1, 2011, and prior to July 1, 2015, the reduced gross production tax rate of 1 percent levied on the production of oil, gas, or oil and gas from a horizontally drilled well for a period of 48 months from the month of initial production, was increased to 4 percent for production occurring on or after July 1, 2017, for the remainder of the 48-month period involved.²³

Elimination of Previously Enacted Exemptions

The Oklahoma gross production tax was amended to limit and eliminate certain gross production tax exemptions allowed for specified time periods as incentives for projects

“The gross production tax rate for certain production of oil and gas was adjusted to provide for a higher rate, to apply prospectively.”

begun before July 1, 2015. The exemptions for specified production from secondary recovery projects, tertiary recovery projects, re-established inactive wells, production enhancement projects, wells drilled to a specified depth, new discovery wells and three-dimensional seismic shoot wells were amended to provide that the exemptions shall not apply to production occurring on or after July 1, 2017. The limitation period for claiming rebates and refunds for allowed exemptions was changed, and refunds are to be paid in deferred installment payments. The exemption allowed for economically at-risk oil or gas leases was amended to limit its application to production from specified calendar years, to change the time for claiming refund, and provide for deferred installment payment of refunds.²⁴

FRANCHISE TAX AND FEE

Franchise Tax Reporting

Oklahoma franchise tax payment and reporting requirements were amended. For those taxpayers that remitted the maximum amount of tax pursuant to 68 O.S. §1205 for the preceding tax year, the franchise tax shall become due and payable on May 1 of each year, and if not paid on or before the ensuing June 1, penalties shall apply. A taxpayer that so remitted the maximum amount of tax for the preceding tax year must file a return no later than June 1.²⁵

Reinstatement Fee Increase

The reinstatement fee required to be paid after the issuance of an order of suspension and forfeiture of the charter or organizational document and rights thereunder for failure to file a report and pay franchise tax was increased from \$15 to \$150.²⁶

CIGARETTE FEE/TAX

\$1.50 Charge Per Pack of Cigarettes

On May 26, 2017, the Legislature passed SB 845 titled "Smoking Cessation and Prevention Act of 2017," and it was signed by the governor on May 31, 2017. The act provides for a \$1.50 charge on cigarettes to be assessed by the tax commission and remitted to the tax commission by every wholesaler. The charge is to be \$1.50 per 20 cigarette package, and a proportionate rate on fractions thereof. For purposes of the act "cigarette" and "wholesaler" shall have the same meaning as in 68 O.S. §301 that applies to the Oklahoma cigarette stamp tax.

The tax commission is authorized to promulgate rules to implement the assessment. The act contains an uncodified provision stating that for the purpose of ensuring maximum wholesaler compliance with remittance of the charge, the tax commission shall not sell cigarette excise tax stamps to any wholesaler in excess of the amount of the monthly average amount of such excise tax stamps sold to such wholesaler during the preceding calendar year prior to the effective date of the act, but that a wholesaler may purchase in excess of the monthly average purchased during the preceding calendar year upon providing documentation to the tax commission's satisfaction of probable sales greater than the wholesaler's sales in the preceding calendar year.²⁷

Note: At the time of submission of this section note, an action challenging the constitutionality of enactment of SB 845 was filed and pending in the Supreme Court of Oklahoma, in *Naifeh v. State of Oklahoma, ex rel. Oklahoma Tax Commission*, Case No. 116102, filed June 7, 2017, arguing that SB 845 does not impose a "fee" but is instead a "revenue bill" subject to Article V, §33 of the Oklahoma Constitution, and enactment of the bill did not meet the requirements of that provision of the Constitution. Attorneys from the author's firm, GableGotwals, are representing several of the petitioners in that action.

MOTOR FUEL TAX

Motor Fuel Tax Remittance Increase

The provisions of the Motor Fuel Tax Code for pre-collection and tax remittance by suppliers and bonded importers was amended to change the percentage basis as to amounts of tax due for gasoline from 98.4 percent to 100 percent, and change the remittance percentage basis for diesel fuel from 98.1 percent to 100 percent, on July 1, 2022.²⁸

MOTOR VEHICLE TAX AND/OR FEES

Electric-Drive and Hybrid-Drive Motor Vehicle Registration

Electric-drive motor vehicle and hybrid-drive motor vehicle registration fees were enacted. Beginning Jan. 1, 2018, a motor fuels tax fee is to be levied and shall be paid to the tax commission of 1) \$100 for every electric-drive motor vehicle to be registered and 2) \$30 on every hybrid-drive motor vehicle to be registered. The fees shall accrue, and shall be collectible under the same circumstances, and be

payable in the same manner and times as other vehicle registrations under the Oklahoma Vehicle License and Registration Act. However, the fees shall be paid in full for the then current year at the time any such vehicle is first registered in a calendar year. The collection and payment of the fees shall be a prerequisite to licensing or registration of such vehicles. The statute provides definitions of “electric-drive motor vehicle” and “hybrid-drive motor vehicle.”²⁹

Note: At the time of submission of this section note, an action challenging the constitutionality of enactment of HB 1449 providing for motor fuels tax registration fees was filed and pending in the Supreme Court of Oklahoma, in *Gary L. Richardson v. State of Oklahoma, ex rel. Oklahoma Tax Commission*, Case No. 116162, filed June 28, 2017, arguing that HB 1449 is a revenue bill subject to Article V, §33 of the Oklahoma Constitution, and enactment of the bill did not meet the requirements of that provision of the Constitution.

PROFESSIONAL SPORTING EVENT ADMISSION FEE

Initial Ticket Sale Fee

A fee shall be assessed on the initial sale of tickets in Oklahoma for admission to professional sporting events involving ice hockey, baseball, basketball, football, arena football or soccer. The fee shall be \$1 on each ticket priced less than \$50 and \$2 on each ticket priced equal to or greater than \$50. The fee shall be remitted monthly to the tax commission on forms prescribed by it. The tax commission is to publish rules as necessary to implement and administer assessment of the fee.³⁰

ESTATE TAX

Expiration and Release of Lien

The Oklahoma estate tax lien statute was amended to provide that for deaths of decedents occurring before Jan. 1, 2010, any lien related to estate tax shall be extinguished subsequent to the lapse of 10 years after the date of death of a decedent and no order exempting estate tax liability shall be necessary to authorize release of such property or for the title of real property to be marketable.³¹

TAX ADMINISTRATION, PRACTICE AND PROCEDURE

Establishment of Out-of-State Collections Enforcement Division of Tax Commission

An Out-of-State Tax Collections Enforcement Act of 2017 was enacted providing that for the purpose of collecting taxes owed to the state, the tax commission may establish and maintain a division to be known as the “Out-of-State Tax Collections Enforcement Division.” The tax commission may contract with out-of-state private auditors or audit firms and may require any person performing an audit to be first approved by the tax commission.

The Tax Commission may employ full-time, unclassified, out-of-state tax auditors or full-time-equivalent contracted auditors to staff the Out-of-State Tax Collections Enforcement Division. The audit staff shall perform audit functions related to enhancing sales and use tax collections related to sales or transactions involving residents of Oklahoma and out-of-state vendors with a nexus to the state of Oklahoma; and collections of any other unpaid taxes owed the state of Oklahoma by out-of-state individuals, firms and corporations.

For purposes of the act the term “audit function” includes, but is not limited to, the auditing of the books of individuals, firms and corporations which the tax commission believes may owe the state additional tax monies. The tax commission shall annually submit a report to the governor, president pro tempore of the Senate and speaker of the House of Representatives listing the number of individuals, firms and corporations audited, the types of taxes audited, the amount of taxes assessed and the amount of taxes collected as the result of such audits.³²

Taxpayer Voluntary Disclosure Initiative; Sept. 1, 2017 – Nov. 30, 2017

A statute was added to the Uniform Tax Procedure Code providing that to encourage voluntary disclosure and payment of taxes, the tax commission is authorized and directed to establish a Voluntary Disclosure Initiative (initiative) for certain “eligible taxes” in 2017. Pursuant to the initiative, a taxpayer shall be entitled to a waiver of penalty, interest and other collection fees due on such eligible taxes if the taxpayer voluntarily files delinquent tax returns and pays the taxes due during the initiative. The time period of the initiative in which a voluntary payment of tax liability may be made (or

the taxpayer may enter into a payment program and agreement acceptable to the tax commission) is limited to the period beginning Sept. 1, 2017, and ending Nov. 30, 2017.

Upon payment of the eligible taxes under the initiative, the tax commission shall abate and not seek to collect any interest, penalties or collection fees that would otherwise be applicable. The eligible taxes include the taxes that were due and payable for any tax period or periods ending prior to the taxpayer and tax commission entering into a voluntary disclosure agreement as provided in the initiative. The “eligible taxes” for which such abatement can be allowed are 1) mixed beverage tax levied; 2) gasoline and diesel tax; 3) gross production and petroleum excise tax; 4) sales tax; 5) use tax; 6) income tax, for tax periods ending prior to Jan. 1, 2016; 7) and withholding tax.

To be eligible to participate in the initiative and receive abatement of any interest, penalties and collection fees, taxpayers must not have outstanding tax liabilities other than those reported pursuant to the initiative, not have been contacted by the tax commission, or third party acting on behalf of the tax commission, with respect to the taxpayer’s potential or actual obligation to file a return or make a payment to the state; not have collected taxes from others, such as sales and use taxes or payroll taxes, and not reported those taxes; and not have, within the preceding three years, entered into a voluntary disclosure agreement for the type of tax owed. If the tax commission agrees with the proposed terms for payment of the principal amount of tax due and owing, the penalties and interest otherwise imposed by law upon the principal amount shall be waived by operation of law and no further action by the tax commission or by the taxpayer shall be required for the waiver of such penalty and applicable interest.

The tax commission is to limit the period for which additional taxes may be assessed to three taxable years for annually filed taxes or 36 months for taxes that do not have an annual filing frequency. Taxpayers who meet all of the qualifications for eligibility except those who have collected taxes from others, such as sales and use taxes or payroll taxes, and not reported those taxes, may enter into a modified voluntary disclosure agreement. The provisions of a modified voluntary disclosure agreement shall be the same as a voluntary disclosure agreement except the waiver of interest shall not

apply except as may be optionally granted at the discretion of the tax commission, and the period for which taxes must be reported and remitted or assessed is extended beyond the three-year or 36-month period and to include all periods in which tax has been collected but not remitted.

The waiver of penalty and interest provided for under the initiative is fully effective provided taxpayer continues payment or collection and remittance of applicable taxes, as required by law, for a period of one year after the tax period(s) for which taxes were paid pursuant to the initiative. The tax commission is authorized to publicly advertise, assist in the collection of eligible taxes and administer the initiative. The tax commission is authorized to publish rules detailing the terms and other conditions of this program.³³

*Tax Commission/Taxpayer Voluntary Disclosure
Agreements; Modified Voluntary Disclosure
Agreements*

The provisions of the Uniform Tax Procedure Code generally providing for waiver of interest or penalty by the tax commission were also amended to provide for the tax commission to enter into voluntary disclosure agreements (UTPC voluntary disclosure agreement) with taxpayers under specified conditions. Taxpayers will be allowed to enter into a UTPC voluntary disclosure agreement if they 1) do not have outstanding tax liabilities other than those reported pursuant to a UTPC voluntary disclosure agreement, 2) have not been contacted by the Oklahoma Tax Commission with respect to the taxpayer’s potential or actual obligation to file a return or make a payment to the state, 3) have not collected taxes from others, such as sales and use taxes or payroll taxes, and not reported those taxes, and 4) have not within the preceding three years entered into a UTPC voluntary disclosure agreement for the type of tax owed by the taxpayer.

If the tax commission agrees with the proposed terms for payment of the principal amount of tax due and owing, the penalty otherwise imposed by law upon the principal amount of tax shall be waived by operation of law and no further action by the tax commission or by the taxpayer shall be required for the waiver of such penalty amount and 50 percent of the otherwise applicable interest amount shall be waived by operation of law and no further action by the tax commission or by the taxpayer shall be required for the waiver of

such interest amount. The tax commission shall limit the period for which additional taxes may be assessed (the lookback period) to three taxable years for annually filed taxes or 36 months for taxes that do not have an annual filing frequency.

UTPC voluntary disclosure agreements may be denied or nullified by the tax commission if a taxpayer's failure to report or pay is determined to be the result of a pattern of intentional or gross negligence regarding compliance with the laws. Taxpayers who meet all of the qualifications specified for such a UTPC voluntary disclosure agreement, except they have collected taxes from others, such as sales and use taxes or payroll taxes, and not reported those taxes, may enter into a modified voluntary disclosure agreement (UTPC modified voluntary disclosure agreement).

The provisions of a UTPC modified voluntary disclosure agreement shall be the same as a UTPC voluntary disclosure agreement except that 1) waiver of interest shall not apply except as may be optionally granted at the discretion of the Tax Commission, and 2) the period for which taxes must be reported and remitted is extended beyond the three-year or 36-month period (as generally provided for in UTPC voluntary disclosure agreements) to include all periods in which tax has been collected but not remitted.³⁴

*District Court Approval of Tax
Commission Waiver of Interest and
Penalty Exceeding \$25,000*

The statute providing for district court approval of tax commission waivers of interest or penalties was amended. The statute will now provide that waiver or remission of all or any part of interest or penalties by the tax commission in excess of \$25,000 shall not become effective unless approved by one of the judges of the district court of Oklahoma County after a full hearing thereon. (Pre-existing law provided for required district court approval of a waiver of interest or penalties in excess of \$10,000).³⁵

*Tax Commission Business Registration and
Reporting Program*

The tax commission shall establish a program that focuses on educating businesses, as well as identifying and registering businesses who are actively selling or leasing tangible personal property in Oklahoma without a permit as required under 68 O.S. §1364. The tax commission shall monitor and provide education to business owners of their state tax responsibilities. The program shall include the establishment of teams of tax commission employees conducting visits to nonresidential retail businesses to determine the existence of a sales tax permit and other required permits and licenses; verify accuracy and validity of licenses and permits; determine if the business is reporting and remitting taxes properly; and provide information and assistance to the business owner on tax reporting responsibilities. The tax commission shall conduct such visits in a manner that shall not disrupt the operations of a business location.³⁶

*Tax Commission Taxpayer
Assistance Program*

The tax commission shall be authorized to expend necessary available funds, to publicly advertise the programs and assistance available for the filing of returns and the payment of taxes and education of the tax laws of Oklahoma, including advertising that focuses on social networking services.³⁷

TAX AND FISCAL POLICY

Tax Incidence Impact Analysis

A statute authorizing analysis of tax incidence of legislation and changes of Oklahoma taxation by the tax commission was enacted. It provides that at the request of the chair of the Finance Subcommittee of the House Appropriations and Budget Committee or the Senate Finance Committee, the tax commission shall prepare an incidence impact analysis of a bill or a proposal to change the Oklahoma tax system which increases, decreases or redistributes taxes by more than \$20 million. To the extent data is available on the changes in the distribution of the tax burden that are affected by a bill or proposal, the analysis shall report on the incidence effects that would result if the bill

“A statute
authorizing analysis
of tax incidence of
legislation and
changes of
Oklahoma taxation
by the tax
commission was
enacted.”

were enacted. The report may present information using system wide measures, such as indexes, by income classes, taxpayer characteristics or other relevant categories. The report may include analyses of the effect of a bill or proposal on representative taxpayers. The analysis must include a statement of the incidence assumptions that were used in computing the burdens. The incidence analyses must use the broadest measure of economic income for which reliable data is available.³⁸

Incentive Evaluation Act Reporting and Rulemaking

The Incentive Evaluation Act was amended to provide that if the tax commission votes to modify an incentive evaluation provided by the Incentive Evaluation Commission, such modification and the original evaluation of the Incentive Evaluation Commission shall be documented and included in the annual written report of the Incentive Evaluation Commission on its evaluation of tax incentives. The evaluation criteria developed by the Incentive Evaluation Commission shall be through the administrative rule making process pursuant to the Oklahoma Administrative Procedures Act.³⁹

Tax Commission Employee Background Checks

The tax commission shall be authorized to require tax commission employees in positions that have access to federal tax information and data to supply all information and documentation required in order to be subjected to a criminal history search by the Oklahoma State Bureau of Investigation, as well as to be fingerprinted for submission of the fingerprints through the Oklahoma State Bureau of Investigation to the Federal Bureau of Investigation for a national criminal history check. The tax commission shall be the recipient of the results of the record check to include a national criminal record with a fingerprint analysis.⁴⁰

1. HB 2348, amending 68 O.S. Supp. 2016 §2358; effective Jan. 1, 2017.

2. HB 2298, amending 68 O.S. Supp. 2016, §2357.32A; effective July 1, 2017.

3. SB 170, repealing 68 O.S. Supp. 2016 §2355.1 G.; effective Nov. 1, 2017.

4. HB 2348, amending 68 O.S. Supp. 2016, §2368; effective Jan. 1, 2017.

5. SB 445, amending 68 O.S. Supp. 2016, §2357.206; effective Nov. 1, 2017.

6. SB 120, amending 68 O.S. Supp. 2016, §§2357.302-2357.304; effective Nov. 1, 2017.

7. SB 225, amending 68 O.S. 2011, §2385.26; effective Nov. 1, 2017.

8. HB 1833, amending 68 O.S. Supp. 2016 §2358.7; effective July 1, 2017.

9. HB 1423, amending 68 O.S. 2011, §2368.2, and 68 O.S. Supp. 2016, §2368.19; effective Nov. 1, 2017.

10. HB 1392, amending 29 O.S. Supp. 2016, §3-310; effective Nov. 1, 2017.

11. HB 1392, adding 68 O.S. Supp. 2017, §2368.30; effective Nov. 1, 2017.

12. HB 2433, amending 68 O.S. Supp. 2016, §§1355, 1361, 68 O.S. 2011, §§2106, 1402, 1404; effective July 1, 2017.

13. HB 2367, repealing 68 O.S. Supp. 2016, §1367.1, 68 O.S. 2011, §1410.1; effective July 1, 2017.

14. HB 2131, adding 68 O.S. Supp. 2017, §§2391-2397; effective Nov. 1, 2017.

15. SB 189, SB 353, amending 68 O.S. Supp. 2016, §1356; effective Nov. 1, 2017.

16. SB 353, amending 68 O.S. Supp. 2016, §1356; effective July 1, 2017.

17. HB 353, amending 68 O.S. Supp. 2016, §1356; effective July 1, 2017.

18. HB 353, amending 68 O.S. Supp. 2016, §1356; effective July 1, 2017.

19. HB 2343, amending 68 O.S. Supp. 2016, §1368.3; effective July 1, 2017.

20. HB 2351, adding 68 O.S. Supp. 2017, §2902.5; effective Nov. 1, 2017.

21. SB 293, repealing 68 O.S. 2011, §2902.4; effective Jan. 1, 2018.

22. SB 91, amending 68 O.S. 2011, §3106; effective Nov. 1, 2017.

23. HB 2429, amending 68 O.S. Supp. 2016, §1001(E)(3); effective July 1, 2017.

24. HB 2377, amending 68 O.S. Supp. 2016, §§1001, 1001.3a; effective July 1, 2017.

25. HB 2356, amending 68 O.S. Supp. 2016, §1208, 68 O.S. 2011, §1210; effective Nov. 1, 2017.

26. HB 2357, amending 68 O.S. 2011, §1212; effective July 1, 2017.

27. SB 845, adding 63 O.S. Supp. 2017 §§1-1525, and 1-1528 – 1-1532; effective Aug. 25, 2017.

28. HB 2358, amending 68 O.S. 2011, §500.22; effective Nov. 1, 2017.

29. HB 1449, adding 47 O.S. Supp. 2017, §1132.7; effective Nov. 1, 2017.

30. HB 2361, adding 68 O.S. Supp. 2017, §1515; effective July 1, 2017.

31. HB 1327, amending 68 O.S. 2011, §804.1; effective Nov. 1, 2017.

32. HB 1427, adding 68 O.S. Supp. 2017, §120; effective Nov. 1, 2017.

33. HB 2380, adding 68 O.S. Supp. 2017, §216.4; effective July 1, 2017.

34. HB 2252, amending 68 O.S. 2011, §220; effective Nov. 1, 2017.

35. HB 2252, amending 68 O.S. 2011, §220; effective Nov. 1, 2017.

36. HB 2380, adding 68 O.S. Supp. 2017, §256.1; effective July 1, 2017.

37. HB 2380, amending 68 O.S. 2011, §256; effective July 1, 2017.

38. HB 2209, adding 68 O.S. Supp. 2017, §291; effective Nov. 1, 2017.

39. SB 154, amending 62 O.S. Supp. 2016, §7005; effective Aug. 25, 2017.

40. SB 292, adding 74 O.S. Supp. 2017, §150.9.1; effective Nov. 1, 2017.

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.

Licensed Legal Intern Committee Proposes Rule Changes and Adopts New Regulation

By Terrell Monks

The Legal Intern Committee continues to respond to the charge given by Chief Justice Douglas Combs and the Access to Justice Commission. Most recently we met to consider rule changes that would broaden opportunities for out-of-state law students to serve as licensed legal interns. The committee has approved submission of the following proposed amendments toward this objective.

Rule 2.1 is amended to allow participation for students attending out-of-state law schools.

PROPOSED REVISION

Rule 2.1

(e) ~~Be a regularly an enrolled student at a an accredited law school located in the State of Oklahoma.~~

“Enrollment” in a licensed legal internship program can represent a significant expense to the out of state student who desires to work as a licensed intern in Oklahoma. Further, OU does not require enrollment in an internship program for licensed legal interns. Therefore, an amendment to Rule 5.1 is proposed for programs not requiring enrollment and to allow out-of-state law student participation under the supervision of an Oklahoma law school, without the need to enroll in an Oklahoma law school.

PROPOSED REVISION

Rule 5.1

(d) Enrollment Certification Form

(1) The law student applicant shall ~~provide proof that he or she have his or her school furnish to the Executive Director of the Oklahoma Bar Association a certification that the student is enrolled participating in an approved law school internship program prior to being sworn in as a Licensed Legal Intern.~~ (See Interpretation 2017-2)

Interpretation 98-3 will be amended contingent upon approval of changes to Rules 2.1(e) and 5.1(d)(1). The interpretation corrects the misuse of the term reciprocity; deletes the reference to summer, which will allow out of state students to participate during any school term; and removes reference to enrollment, redefining this eligibility criterion as participation. The interpretation is referenced under Rule 2.1(d).

Interpretation 98-3

Under Rule 2.1, a law student regularly attending an accredited law school outside Oklahoma, in a state which does not meet the “reciprocity” standards for admission requirements of Rule 2.1(d), may obtain a Licensed Legal Intern limited license for the summer if the student meets all the requirements of Rule 2.1 (including having registered and been accepted as a law student with the Board of Bar Examiners of the Oklahoma Bar Association), is enrolled in one or more summer courses and is actively participating in an approved law school internship program at either OU, OCU, or TU, and meets the school’s requirements for participation in the Legal Internship Program. (Adopted December 18, 1998)

Interpretation 2017-2 has been written to define Oklahoma law schools’ responsibilities in maintaining records and administering the legal intern exam. This was written in conjunction with Rule 5.1(d) and will take effect if amendments to the rule are approved.

Interpretation 2017-2

For the purposes of Rule 5.1(d)(1) and Interpretation 98-3, an out-of-state applicant for a limited license is not required to formally enroll in an internship “course” that is placed on the law school transcript of a regularly enrolled in-state student. The supervising Oklahoma law school may instead certify to the Executive Director of the Oklahoma Bar Association that the out-of-state applicant is an

active participant in its approved law school internship program. Further, the supervising Oklahoma law school that agrees to administer the Legal Internship Examination to an out-of-state applicant and monitor his or her compliance with the requirements for participation in its internship program under Rule 4.2 shall first require that the applicant's law school furnish proof that the applicant meets the eligibility requirements set forth in Rule 2.1(a), (b), (c), and (e).

The committee moved to amend Rule 7.6, to remove ambiguity. The consensus of the committee was that licensed legal interns should not appear in contested or uncontested adoption proceedings without the supervising attorney present. By adding a comma and removing the word "and" the rule requires the supervising attorney be present during adoption proceedings. The word "only" was moved to improve readability.

PROPOSED REVISION

Rule 7.6

(c) In all other civil legal matters, including but not limited to contested probate, contested divorces, and adoption proceedings, and ex-parte matters, such as temporary orders in divorce cases, restraining orders, temporary injunctions, etc., the Licensed Legal Intern

shall only appear only when accompanied by and under the supervision of an approved supervising attorney. (See Interpretations 91-2, 96-2, 97-1 and 2010-1)

Interpretations accompanying Rule 7.6 were also examined. It was determined that requiring the supervising attorney to appear with the licensed legal intern in a change of name proceedings was without merit and was removed from Interpretation 96-2. The amended interpretation was adopted June 21, by the Legal Intern Committee.

Interpretation 96-2

Rule 7.6(c) requires that a Licensed Legal Intern be accompanied by his/her supervising attorney when appearing in guardianship ~~and change of name~~ proceedings, whether contested or uncontested.

On June 21, 2017, the Legal Intern Committee unanimously voted in favor of proposed amendments to Rules 2.1(e), 5.1(d)(1), and 7.6. July 21, the OBA Board of Governors approved the proposed changes for submission to the Oklahoma Supreme Court after publication for comment.

You may email comments or questions to Legal Intern Committee Chair Terrell Monks at LLIComments@okbar.org. The deadline for submitting comments is Sept. 20.

New Licensed Legal Intern Regulation

On July 21, the Legal Intern Committee met to consider regulations to develop a procedure for the review of background reports received from academic legal intern applicants. On this date, Regulation 7(A-E) was unanimously approved to establish a procedure in support of recently amended Rule 2.1A(1)(g), which allows the academic legal intern applicant the option of submitting background checks from each state in lieu of an approved character and fitness report through the Oklahoma Board of Bar Examiners.

REGULATION 7 ACADEMIC LEGAL INTERN CRIMINAL BACKGROUND REPORT

(A) Under Rule 2.1A (1)(g) fingerprint-based and name-based criminal history, sex offender, and violent offender searches are required from the criminal investigative bureaus of each state in which the student has

resided for a period of one month or longer. Information shall be provided for the last ten years or since age 18, whichever period of time is shorter.

(B) The student shall assume full responsibility for all the necessary procedures and fees associated with requesting complete criminal background reports from each applicable jurisdiction. Reports must be sent directly from the investigative bureaus to the Executive Director of the Oklahoma Bar Association for initial review. In the event that an out-of-state bureau cannot submit its report directly to the Oklahoma Bar Association, the student shall contact the Legal Internship Program representative at his or her law school for further instruction.

(C) Reports containing no charges or arrests will be administratively approved by

the Executive Director of the Oklahoma Bar Association.

(D) Reports containing charges or arrests will be reviewed by the Supreme Court Reviewing Panel to determine if the student is eligible for licensure as an Academic Legal Intern under these rules. The Supreme Court Reviewing Panel shall either unanimously approve the student's application or refer the

matter to the Legal Internship Committee for further consideration.

(E) If a report is reviewed by the Supreme Court Reviewing Panel and then referred to the Legal Internship Committee for its determination, the student shall have the right to be heard in support of his or her application. The decision of the Legal Internship Committee shall be final with no right to appeal.

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Send additional inquiries to Judge Andrew Dunn at s.marsee@occemail.com. Applications for continuing education accreditation will be filed with the Oklahoma Bar Association's Mandatory Continuing Legal Education Commission and the American Association of Petroleum Landmanagers (AAPL).

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SOVEREIGNTY SYMPOSIUM XXX

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Oklahoma Supreme Court Justice Yvonne Kauger (center front row) and Sovereignty Symposium staff



From left: Retired Oklahoma Supreme Court Justice Steven Taylor, Muskogee (Creek) Nation Supreme Court Chief Justice Richard Lerblance and Oklahoma Supreme Court Justice Patrick Wyrick



Retired Oklahoma Supreme Court Justice Steven Taylor

All photos by Stu Ostler

continued on next page



From left: Retired General William P. Bowden, USAF, and Oklahoma Court Administrator Jari Askins



From left: Wayne D. Garnons-Williams, senior lawyer and principal director at Garwill Law Professional Corporation and chair of the International Inter-Tribal Trade and Investment Organization; and James C. Collard, Ph.D, director of Planning and Economic Development for the Citizen Potawatomi Nation



From left: Retired Oklahoma Supreme Court Justice Steven Taylor, recipient of the Ralph B. Hodges – Robert E. Laverder Award for Judicial Excellence, D.G. Smalling with his presentation artwork and Oklahoma Supreme Court Justice Yvonne Kauger



Sovereignty Symposium Honored One Thomas W. Fredericks with Fredericks, Peebles and Morgan



Sovereignty Symposium Honored One Ada Deer



From left: Oklahoma Supreme Court Chief Justice Douglas Combs and Kenneth Johnson (Muscogee/Seminole), designer and metalsmith, creator of the presentation piece worn by Chief Justice Combs



Oklahoma Supreme Court Vice Chief Justice Noma Gurich and Cotton County Associate District Judge Michael Flanagan



Members of the Gaming Panel

From left, seated: Elizabeth Homer, Homer Law; Nancy Green, Green Law Firm; Vice Chair Kathryn Isom-Clause, National Indian Gaming Commission; Director Sheila Morago, Oklahoma Indian Gaming Commission. From left, standing: D. Michael McBride III, Crowe and Dunlevy; Chair Jonodev Osceola Chaudhuri, National Indian Gaming Commission; Vice President Daniel Little, Aristocrat Technologies, Inc.; Director of Gaming Affairs Matthew Morgan, Division of Commerce, Chickasaw Nation; Matt Robinson, KlasRobinson Q.E.D.; Executive Director Jason Giles, National Indian Gaming Association



Oklahoma Supreme Court Justice John Reif presents the ethics portion of the Symposium program



From left: Historian Eric Tuppeconnic, California State University, Fullerton, with panel moderator Winston Scambler

2018 OBA Board of Governors Vacancies

Nominating Petition deadline: 5 p.m. Friday, Sept. 1, 2017

OFFICERS

President-Elect

Current: Kimberly Hays, Tulsa
 Ms. Hays automatically becomes OBA president Jan. 2018
 (One-year term: 2018)
 Nominee: **Vacant**

Vice President

Current: Jennifer Castillo, Oklahoma City
 (One-year term: 2018)
 Nominee: **Richard Stevens, Norman**

BOARD OF GOVERNORS

Supreme Court Judicial District One

Current: John M. Weedn, Miami
 Craig, Grant, Kay, Nowata, Osage,
 Ottawa, Pawnee, Rogers and Washington
 (Three-year term: 2018-2020)
 Nominee: **Vacant**

Supreme Court Judicial District Six

Current: James R. Gotwals, Tulsa
 Tulsa
 (Three-year term: 2018-2020)
 Nominee: **D. Kenyon Williams Jr., Tulsa**

Supreme Court Judicial District Seven

Current: Roy D. Tucker, Muskogee
 Adair, Cherokee, Creek, Delaware, Mayes,
 Muskogee, Okmulgee and Wagoner
 (Three-year term: 2018-2020)
 Nominee: **Vacant**

Member At Large

Current: Sonja R. Porter, Oklahoma City
 Statewide
 (Three-year term: 2018-2020)
 Nominee: **Vacant**

Summary of Nominations Rules

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

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

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

If no one has filed for one of the vacancies, nominations to any of the above offices shall be received from the House of Delegates on a petition signed by not less than 30 delegates certified to and in attendance at the session at which the election is held. See Article II and Article III of OBA Bylaws for complete information regarding offices, positions, nominations, and election procedure.

Elections for contested positions will be held at the House of Delegates meeting Nov. 3, during the Nov. 1-3 OBA Annual Meeting.

Terms of the present OBA officers and governors will terminate Dec. 31, 2017.

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

OBA Nominating Petition

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

OFFICERS

VICE PRESIDENT

RICHARD STEVENS, NORMAN

Nominating Petitions have been filed nominating Richard Stevens for Vice President of the Oklahoma Bar Association Board of Governors for a one-year term beginning January 1, 2018. Fifty of the names thereon are set forth below:

Peggy Stockwell, Kimberly Hays, Linda S. Thomas, David A. Poarch Jr., Cathy M. Christensen, William R. Grimm, James T. Stuart, Stephen D. Beam, Melissa G. DeLacerda, Deborah A. Reheard, Renée DeMoss, James R. Gotwals, Jennifer M. Castillo, Charles W. Chesnut, Brian T. Hermanson, R. Victor Kennemer III, James R. Hicks, Alissa Preble Hutter, Virginia D. Henson, Jama H. Pecore, Janet A. Foss, John W. Coyle III, Micheal C. Salem, Tracy E. Schumacher, Debra D. Loeffelholz, Jimmy D. Oliver, Sonja R. Porter, Rebecca J. Patten, Jan Meadows, Dave Stockwell, Noel K. Tucker, Jeanne

M. Snider, Lorenzo T. Collins, Ronald L. Boyer, Elizabeth C. Jeffrey, Richard J. Vreeland, Craig W. Thompson, Benjamin H. Bailey, Robert L. Bailey II, Joseph V. Allen, Allyson E. Dow, Bradley K. Beasley, William Brad Heckenkemper, Philip J. Tucker, David Andrew Sturdivant, Donnie G. Pope, Kaitlin B. Magee, Andrew E. Hutter, Holly K. Lantagne and Timothy D. Kuykendall.

A total of 76 signatures appear on the petitions.

Nominating Resolutions have been received from the following counties: Cleveland and Seminole

BOARD OF GOVERNORS

SUPREME COURT JUDICIAL DISTRICT No. 6

D. KENYON WILLIAMS JR., TULSA

A total of 26 signatures appear on the petitions.

A Nominating Resolution has been received from the following county: Tulsa

NOTICE OF JUDICIAL VACANCY

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

**District Judge
Seventh Judicial District, Office 4
Oklahoma County**

This vacancy is due to the retirement of the Honorable Bryan Dixon effective September 1, 2017.

To be appointed to the office of District Judge, Seventh Judicial District, Office 4, one must be a legal resident of Oklahoma County, Electoral Division 4 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 following 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) 556-9300. Applications must be submitted to the Chairman of the Commission at the same address **no later than 5:00 p.m., Friday, August 25, 2017. If applications are mailed, they must be post-marked by midnight, August 25, 2017.**

Deborah A. Reheard, Chair
Oklahoma Judicial Nominating Commission

**A message from the
OBA Professionalism Committee**

Do the right thing.

A lawyer's word should be his or her bond. We will not knowingly misstate, distort or improperly exaggerate any fact, opinion or legal authority, and will not improperly permit our silence or inaction to mislead anyone. Further, if this occurs unintentionally and is later discovered, it will immediately be disclosed or otherwise corrected.

Standards of Professionalism §1.1.2

The OBA Professionalism Committee encourages you to review all the standards at tinyurl.com/professionalismstandards

FROM THE PRESIDENT

cont'd from page 1524

your reputation. Enough said. Post what you're passionate about, but always maintain a professional, respectful tone. Watch your language. Demeaning, derogatory or profane language tends to diminish credibility. Monitor your privacy. If you intend your posts to be private, learn about privacy settings, set them accordingly and untag yourself from others' posts if the tag is inappropriate for you.

Chief U.S. Circuit Judge Carl E. Stewart, of the U.S. Court of Appeals for the 5th Circuit, was the keynote speaker at the State Bar of Texas bar leaders luncheon I attended in June. He cautioned lawyers that even (or maybe especially) when it comes to social media, we are ultimately responsible for maintaining high professional standards – our reputation and our license depends upon it. I pass on his closing remarks to you, "There is no app for civility. There is no app for excellence. There is no app for integrity. There is no app for courtesy, and there is no app for professionalism."



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SEPTEMBER 13 OR NOVEMBER 29, NOON - 1 P.M.

LOCATION: Your choice - any place with a computer!.

PROGRAM PRESENTER

Dustin Cole, *President of
Attorneys Masters Class and
Masters Class Practice Advisor*

TOPICS INCLUDE:

- Client Selectivity
- Hiring Right
- File/Matter Control
- Time Management
- Make a Plan
- Make Marketing JOB 1



THE ETHICS OF ATTORNEY CLIENT CONTRACTS AND ENGAGEMENTS

SEPTEMBER 14, NOON - 1 P.M.

LOCATION: Your choice - any place with a computer!.

PROGRAM PRESENTERS

Jim Calloway, *OBA Management
Assistance Program Director*
Gina Hendryx, *OBA General Counsel*
An attorney-client agreement is the foundation of the attorney-client relationship. These agreements involve both business and ethical considerations. On the ethics front, problematic practices include unreasonable fees, nonrefundable retainers or any arrangement that seeks to allow a lawyer to avoid segregating unearned attorney's fees in the client trust account.



THE CHANGING FACE OF ELECTRONIC DISCOVERY TOOLS

SEPTEMBER 15, NOON - 1 P.M.

PROGRAM PRESENTER

Tom O'Connor, *Independent
EDiscovery Consultant,
New Orleans*

The tools to manage electronic discovery are evolving, with many tools now based in the cloud and others that are more affordable for a small case budget. Many law firms are re-examining their electronic discovery tools and processes.

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The End of Another Summer of Love

By John Morris Williams

Turn on, tune in, drop out was the anthem of the “Summer of Love” coined by Timothy Leary 50 years ago. The phrase encouraged an alternative (mostly chemically induced) reality and for young people to drop out of school. Seems a bit absurd at this point in time, but in 1967 to some it made perfect sense. Time has demonstrated that many cultural icons tend over time to give way to the realities of economics and everyday living. Some things last. Some don’t.

That same year *Loving v. Virginia*, 388 U.S. 1 (1967) was decided. The case overturned previous decisions and statutes prohibiting interracial marriages. This is probably a good thing. With the advances in DNA, it appears we all might be multiracial and very few people could be lawfully married. In fact, besides being an African American, Mildred Loving was also of Cherokee and Rappahannock ancestry. She and her Caucasian husband were sentenced to jail for getting married. Seems a bit absurd at this point in time, but in 1967 to some it made perfect sense.



“ At the time it started, the paper publication of the cases in the OBJ made sense. Today that is questionable. ”

Things change, society shifts, dynamics undergo stress and testing. Things that made sense once upon a time may no longer make sense. Such may be the case at the OBA, and some of the things we have continued to do because we have always done them.

We are, for the third time in the past 10 years, taking a serious look at the rationale, expense and benefit of continuing to publish the paper version of what we call the “court editions” of the *Oklahoma Bar Jour-*

nal. There was once upon a time no better or faster way to get recent Oklahoma appellate decisions. Old timers like me remember when West Publishing Co. had exclusive rights to the publishing of the cases, but for the OBJ court editions, we would have had to wait sometimes weeks on advance sheets or physically go to the Supreme Court clerk to get the cases. The OBJ publication of cases was the fastest and easiest way to get new cases. Today the information is instantaneously available online. It seems a bit absurd to wait a week for a paper copy of a case when you can get it

immediately.

At the time it started, the paper publication of the cases in the OBJ made sense. Today that is questionable. Given that more than one-third of OBA members get their court edition online, member surveys five years ago revealed 70 percent of OBA members agreed the electronic presentation of the cases exclusively was a good idea and with the cost of publication and postage continuing to climb when OBA revenues are in decline,

looking at doing something different seems to make sense.

It is anticipated the Board of Governors will be presented with the recommendation from the Strategic Planning Committee to cease the publication of OBA court editions at the end of 2017. The “theme” editions will continue in print, hopefully with some enhancements. Some will like this; some will not. To some it makes perfect sense. To some it is absurd. I suspect it is one of those things that time will determine its wisdom. It is likely that this issue could be on the agenda for the House of Delegates at the Annual Meeting.

Almost all legal research is performed online. So, the OBJ paper court editions are an anomaly. The OBA added Fast-

case as a member benefit several years ago to ensure our members had first-rate, affordable access to online legal research. Continuing legal education continues to move steadily toward a total online experience. It appears that the digital age, unlike the Summer of Love, is not a fleeting thing, but a major shift in how the world receives information and communicates. Perhaps only publishing the court editions electronically (in exactly the same format with the mandates and unpublished opinions) might be worth a go. The recommended change will have the OBA continuing to pay for formatting and having the electronic court edition look exactly the same as it does now. To some that is a good compromise. To some I suspect that seems absurd.

Unlike the Summer of Love, as a profession we cannot seek an alternative reality and just refuse to participate. Likewise, the OBA cannot turn on, tune in and drop out. I propose we think strategically, strive for consensus and constantly strive for excellence with the resources available. Today that makes perfect sense to me.

To us old timers who love paper, our Summer of Love may be ending.




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

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The Changing Practice of Law

By Jim Calloway

There are rapidly occurring changes in the practice of law. Some of these are part of general changes happening in society and the business world, others are specific to lawyers. I'm certain the reaction of some lawyers reading about law office technology in this issue of the *Oklahoma Bar Journal* would be to look back fondly on the day when a good legal assistant, a telephone line and an IBM Selectric typewriter set the standard for law office management and technology.

The impact of technology on the practice of law cannot be denied. I can confidently make the prediction that technology changes are going to have a greater impact for lawyers in the future than the changes that have happened so far.

In his column for this *Oklahoma Bar Journal*, OBA Executive Director John M. Williams reminds us of the day not long ago when lawyers received an advance paper copy of a court opinion in the mail, often more than a week after the opinion was issued. At that time, the practice was state-of-the-art in legal information delivery. Using our Oklahoma Supreme Court's website, OSCN.net, or another resource to read a court opinion immediately after it is issued is so commonplace today that we don't even consider what a remarkable advance it is.

OBA Practice Management Advisor Darla Jackson discusses practice management software tools in her feature story. Many of us who advise law firms now deem these tools an essential in organizing the flow of information in a law office.

Let's briefly cover some other changes and what they mean for practicing lawyers today. Some are technology driven, some are not.

“By the time you receive this bar journal, we will have completed our first OBA CLE program on ‘Delivering Limited Scope Services Effectively and Safely.’”

LIMITED SCOPE SERVICES

With the July 19 adoption of District Court Rule 33 Limited Scope Representation, lawyers now have clear guidance that they should disclose to the court any time they are helping self-represented parties

prepare pleadings or other documents for filing or presentation to the court. Other documents might include helping a small claims plaintiff prepare a summary of damages with attached receipts to expedite their small claims hearing. Lawyers should also include the phrase “no appearance is entered as counsel of record,” on a document filed with the court if they do not wish to enter an appearance.

If one drafts a petition for dissolution of marriage, it is important to include a signature block with the name and address of the self-represented litigant in case things do not go as planned and the other side hires an attorney to file an answer. The lawyer will want to advise the self-represented litigant that if they file this, they have an obligation to pick up their mail, including certified mail, until the case is completed. The attorney should also retain a signed acknowledgment of that advice as part of their records.

By the time you receive this bar journal, we will have completed our first OBA CLE program on “Delivering Limited Scope Services Effectively and Safely.” This program will be available as an on-demand webinar and will be provided as an encore webcast in the near future.

Lawyers have a long tradition of representing those who cannot afford legal services. The OBA Oklahoma Free Legal Answers and Oklahoma Lawyers for America's Heroes programs are two of the ways volunteer lawyers serve the public. Limited scope services provide a different way to serve the public – where an individual who can pay something for the legal services does so and with a planned process, the lawyer can still realize a profit, although often less than from a lawyer's other client matters.

CERTIFIED COURTROOM INTERPRETERS

Growing diversity among Oklahoma residents has increased the need for certified courtroom interpreters. Are you aware there are two levels of court room interpreter certification recognized in Oklahoma courts? These are certified courtroom interpreters and registered courtroom interpreters, credentialed by the Board of Examiners of Certified Courtroom Interpreters. In addition, the board maintains a list of provisional status interpreters. This is important for lawyers to know if a language barrier impacts one of their litigation matters. There also could be uses outside of the courtroom. This represents an opportunity for those who might find being an interpreter as a rewarding potential vocation or avocation.

The Registry of Courtroom Interpreters, details about the program and many downloadable forms are available at www.oscn.net/static/forms/aoc_forms/interpreter.asp.

CHATBOTS

If you linger very long on a business's webpage, a pop-up

window will appear with a picture or icon of a smiling face asking if you need any help. Some may not be aware that if you respond, you're most likely interacting with a chatbot, a piece of software that specializes in interacting with people. Depending on your query, the chatbot may connect you with a sales representative, but there are also certain inquiries the chatbot will respond to on its own.

A lawyer might think they would never use a chatbot, but a company named x.ai thinks differently. X.ai provides a chatbot named Amy (or Andrew) to help you with scheduling. Amy then takes care of all of the back and forth via email, checking in with you if needed, until an agreement is reached and Amy schedules the appointment for you. If someone has to cancel and reschedule, Amy will handle that as well. You can see various examples of other interactions at x.ai/how-it-works.

There are now several companies offering these types of services and we are starting to see online articles comparing and reviewing various services. Some are AI-powered and some are more basic, such as designating several hours each week as open and providing a place where clients can pick their desired meeting time and sign up online.

ARTIFICIAL INTELLIGENCE AND MACHINE LEARNING

We've seen a lot of online essays about robot lawyers and artificial intelligence (AI) threatening our future employment. One thought I've seen circulating the internet is that it's only AI until you

understand it and then it is just software. There can be no doubt that some of the advances in AI are most impressive.

When *PC Magazine* publishes an article titled "The Best Contract Management Software of 2017," referring to a task that was often the bulk of the work handled by corporate legal departments, we should at least pay attention. But that just reflects the basics of technology related to contracts. Today, no one would think of managing dozens of contracts without at least using an Excel spreadsheet or database.

There are now AI tools that analyze contracts. That is remarkable. What sounds like science fiction, or maybe a threat to many lawyers, will one day be a standard operating procedure, at least for major complex contracts. The lawyer completes the contract and processes it through an AI analysis. The software responds with "Is the client going to do business in the EU? If so, then..." or "The data sharing in paragraph 45 isn't specified to be HIPAA-compliant. Should it be?"

Whether a machine reading your contract and providing suggestions sounds like an improved client service or threat really depends on your perspective, but most lawyers will believe better work product is a good thing.

EMAIL AND SOCIAL MEDIA SPAWNS E-DISCOVERY

Whether it was around the often-cited office water cooler, telephone calls or just general office chitchat, there used to be a lot of interoffice and inter-company communications that

were undocumented and sometimes completely forgotten.

Today with the pervasiveness of email, e-discovery may reveal every detail of a year-old email conversation that all of the parties may have forgotten, or wish they could forget. Plaintiff's counsel in a sexual harassment case may learn which inappropriate joke the accused harasser also forwarded to his supervisor and what the response was. While e-discovery requests are often much broader than just email, the evidence gleaned from email review makes e-discovery mandatory in certain types of cases.

A good outline of a lawyer's ethical duties handling e-discovery and electronically stored information can be found in The State Bar of California formal ethics opinion CAL 2015-193. That opinion notes:

Competency may require even a highly experienced attorney to seek assistance in some litigation matters involving ESI. An attorney

lacking the required competence for e-discovery issues has three options: (1) acquire sufficient learning and skill before performance is required; (2) associate with or consult technical consultants or competent counsel; or (3) decline the client representation. Lack of competence in e-discovery issues also may lead to an ethical violation of an attorney's duty of confidentiality.²

The tools of e-discovery are evolving too, with many more that are cloud-based. I have asked one of my colleagues who is well known nationally as an e-discovery expert, Tom O'Connor, director of the Gulf Coast Legal Tech Center, to give us an overview of the tools available today, including those that make sense in smaller cases. "The Changing Face of Electronic Discovery Tools" will be an OBA CLE-produced webcast broadcast on Sept. 15. Mr. O'Connor was the co-author of a book for the ABA that was published several years ago and titled *e-Discovery for Small*

Cases. I understand he is working on a new edition.

Social media has created a number of situations where discovery of deleted or hard-to-find material is critically important.

CONCLUSION

The business of law is changing. All businesses are facing change fueled by technology advances. With all the change happening around us, our goal is still to serve our clients and protect the rule of law. Some things shouldn't change.

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!

1. Ken Contrata, "The Best Contract Management Software of 2017," *PC Magazine* (July 19, 2017), www.pcmag.com/article2/0,2817,2489199,00.asp.

2. St. Bar of Cal. Standing Comm. on Professional Responsibility and Conduct, Formal Op. 2015-193, [www.calbar.ca.gov/Portals/0/documents/ethics/Opinions/CAL%202015-193%20%5B11-0004%5D%20\(06-30-15\)%20-%20FINAL.pdf](http://www.calbar.ca.gov/Portals/0/documents/ethics/Opinions/CAL%202015-193%20%5B11-0004%5D%20(06-30-15)%20-%20FINAL.pdf).

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Flat Fee Contracts Revisited

Flat Fees, Nonrefundable Retainers and Trust Accounts

By Joe Balkenbush

There continues to be confusion among members of the bar regarding the use of flat fee contracts. The confusion seems to originate from the decision handed down by the Supreme Court in *State ex rel. Oklahoma Bar Association v. Weigel*,¹ in 2014.

For decades Oklahoma attorneys have used fee agreements which provided for a flat fee, nonrefundable retainer, stating that the fee was “deemed” earned upon receipt. The fee agreement was executed, the retainer or flat fee was paid and the funds were deposited in the attorney’s operating account. If a portion of the retainer later needed to be refunded, the attorney would refund the monies out of his or her operating account.

That practice is clearly no longer appropriate. In *Weigel*, the court stated in its ruling “The use of the term ‘nonrefundable retainer’ to represent an advance payment of fees for legal services the attorney will perform in the future is impermissible. Such fees may be designated as fixed fees but cannot impair a client’s rights under Rule 1.16(d). The fees are not ‘nonrefundable’ because if the attorney withdraws or is terminated before completing the work, the attorney must refund the unearned portion of the advance.”

The facts of *Weigel* relevant to this article are that Mr. Weigel entered into a flat fee, nonrefundable retainer agreement with a number of his clients. He then deposited the retainers in his operating account. It was not possible for Mr. Weigel to deposit the retainers in his IOLTA because he did not have one. After he deposited the monies, he disbursed all or some of the funds from the operating account for personal and business expenses. The disbursements occurred prior to Mr. Weigel “earning” the amounts disbursed.

The applicable Oklahoma Rules of Professional Conduct (ORPC) when considering flat fees, nonrefundable retainers and trust accounts are:

- Rule 1.5 Fees
- Rule 1.15 Safekeeping Property
- Rule 1.16 Declining or Terminating Representation

Rule 1.5 provides in pertinent part:

- a) A lawyer shall not make an agreement for, charge or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
 - 1) The time and labor required, the novelty and difficulty of the questions

involved, and the skill requisite to perform the legal service properly;

- 2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
 - 3) The fee customarily charged in the locality for similar legal services;
 - 4) The amount involved and the results obtained;
 - 5) The time limitations imposed by the client or by the circumstances;
 - 6) The nature and length of the professional relationship with the client;
 - 7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
 - 8) Whether the fee is fixed or contingent.
- b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate

of the fee or expenses shall also be communicated to the client.

Rule 1.15 provides in pertinent part:

- a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the written consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

Rule 1.16 provides in pertinent part:

- d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expenses that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

When Rules 1.5, 1.15 and 1.16 are read in conjunction with the court's ruling in *Weigel*, it is clear that attorneys who use fee agreements that provide for payment of a flat fee must deposit the retainer into their trust account, the word "nonre-

fundable" should not be used and, lastly, the funds may only be withdrawn when the fees are earned.

I used the "thesaurus" tab on my computer to try to find another word for nonrefundable. Even the computer does not have another word. The point is, *do not* use the word nonrefundable in your fee agreement!

FLAT FEES/FIXED FEES

Flat fees (fixed fees) have been used by attorneys and clients for centuries. Essentially, they are fees paid by a client at the outset of a matter and are intended to be the entire fee attributable to a specific task or tasks. Fees paid in advance for this purpose are intended to cover a specified amount of work by the attorney for a particular matter. The attorney usually does not receive any additional fee even if more work is required, unless specifically agreed to by the client in the fee agreement. Clients sometimes prefer fees to be a specified sum because it allows them to know the total cost for legal services in advance, permitting them to budget based on a fixed sum, rather than face potentially unlimited hourly fees that may exceed their ability to pay.

The next question is "When are the fees earned?" Fees are earned when work is performed. The retainer or flat fee may be withdrawn in increments, but work must be performed to justify the withdrawal. A few examples are:

- In a criminal case, the attorney agrees to represent a client "up to preliminary hearing" for a flat fee. Assume there are four separate "stages" – the client meeting, initial court appearance,

investigation and entry of a plea. It would be reasonable to withdraw 25 percent of the retainer at the end of each stage.

- In a bankruptcy case, there might be five stages. The initial client meeting, preparation of the appropriate pleadings, review and execution of the pleadings by the client, appearance at a Section 341 meeting of creditors and the discharge in bankruptcy. Therefore, 20 percent of the retainer could be withdrawn at each stage.

It is recommended that an attorney develop a reasonable procedure or plan to withdraw the flat fee as work is performed and fees are earned. Both the Office of the General Counsel and I strongly advise you to include the procedure or plan to withdraw the flat fee in your fee agreement. That way, the client has been informed and has agreed to the procedure or plan in writing. They won't be able to later successfully object to how the monies were withdrawn.

Again, the attorney and client can agree to use any *reasonable* method to withdraw the funds. The withdrawal does not need to be tied to hours worked, but it must be reasonable. So long as there is a written agreement between the attorney and client and the method of withdrawal is reasonable, you will not run afoul of the ORPC.

The underlying premise of the court's ruling is that fees must be *earned*. If no work has been done, then the fees have not been earned.²

Regarding Rule 1.15 Safe-keeping Property (generically known as the trust account rule), the safe and simple interpretation is that all unearned

legal fees must be deposited in your trust account, including but not limited to all retainers, whether they are flat fees or hourly fees. Only money that has been earned may be removed from your trust account and deposited into your operating account.

TERMINATION OF REPRESENTATION BEFORE THE CASE IS CONCLUDED

One scenario that routinely arises is termination of representation before the case is concluded. This situation invokes application of Rule 1.16 (d). In the criminal case scenario above, per the flat fee agreement, the attorney agreed to represent the client “up to preliminary hearing.” If representation is terminated after the initial court appearance (two stages completed), the attorney has only performed 50 percent of the work he or she agreed to perform. Therefore, 50 percent of the retainer should be refunded. If the attorney deposited the retainer or flat fee in his or her IOLTA account as required by Rule 1.15, the remaining 50 percent of the retainer is still in the trust account and can be refunded.

Regarding the bankruptcy case in the example in the last section, assume the case was dismissed after the Section 341 hearing. Obviously, the case would have to be dismissed. Therefore, the attorney has earned 80 percent (four stages completed) of the retainer fee, and 20 percent of the retainer should be refunded.

Rules 1.16 and 1.15(b) require a lawyer to refund the unearned monies “promptly.”

On Dec. 13, 2002, OBA Ethics Opinion No. 317 was issued. The opinion dealt with (among other things) the issue of flat fee nonrefundable retainers. Ethics Opinion 317 stated in relevant part that “[T]he LEC (Legal Ethics Commission) does not offer an opinion regarding the enforceable nature of fee contracts containing non-refundable ‘engagement fee’ or ‘fixed fee’ provisions.” The opinion went on to provide “[T]he likelihood of enforcement of these types of non-refundable retainers is enhanced by implementing certain safeguards.” Essentially, per Ethics Opinion 317, flat fee, nonrefundable retainer agreements would be acceptable (not an ORPC violation) so long as “certain safeguards” were used.

The Supreme Court’s ruling in *Weigel* at a minimum clarifies Ethics Opinion No. 317. As set out above, the Supreme Court ruled that “the use of the term ‘nonrefundable retainer’, to represent an advance payment of fees for hours of legal services that the attorney will perform in the future, is impermissible. Such fees may be designated as fixed fees, but cannot impair a client’s rights under Rule 1.16(d). The fees are not ‘nonrefundable’ because if the attorney withdraws or is terminated before completing the work, the attorney must refund the unearned portion of the advance.”

The defendant attorney in *Weigel* attempted to rely upon Ethics Opinion 317 as support for his actions, arguing that opinion addressed “availability fees, fixed fees and hourly fees” that were designated as a non-refundable retainer in the fee agreement. As is evident from the above, even if it was previously acceptable, it is no longer.

CONCLUSION

To avoid running afoul of these rules, be sure to:

- Delete the word “nonrefundable” from your fee agreements.
- Include language in your fee agreement regarding the procedure or plan concerning how the retainer or flat fee will be withdrawn.
- Deposit all retainers and flat fees in your trust account.
- Only take funds from your trust account after the work has been performed.
- If representation is terminated for whatever reason, refund any unearned portion of the retainer to the client promptly.

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

1. 2014 OK 4, 321 P3d 168 (Okla. 2014).
2. See ORPC 1.5 and the comments to the rule.

Meeting Summaries

The Oklahoma Bar Association Board of Governors met at the Hampton Inn & Suites in McAlester on Friday, April 14.

REPORT OF THE PRESIDENT

President Thomas reported she attended a portion of OBA Day at the Capitol, Washington County Bar Association monthly meeting, county bar planning meeting for the Board of Governors' visit in August, reception at the TU College of Law and Pittsburg County Law Day events in McAlester, which were a reception at Steidley & Neal and Law Day dinner at Pete's Place honoring Retired Justice Taylor. She also identified nominations to the Oklahoma Domestic Violence Fatality Review Board, subject to board approval.

REPORT OF THE VICE PRESIDENT

Vice President Castillo reported she attended OBA Day at the Capitol, Oklahoma County Bar Association in-house counsel lunch, OBA Awards Committee meeting, Law Day contest awards ceremony and Pittsburg County Law Day events in McAlester – reception at Steidley & Neal and dinner at Pete's Place honoring Retired Justice Taylor.

REPORT OF THE PRESIDENT-ELECT

President-Elect Hays reported she attended the OBA Family Law Section meeting for which she prepared the budget report, OBA Day at the Capitol and reception at the TU College of Law honoring President Thom-

as. She reviewed issues for president-elect 2017 planning and 2018 planning.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended the funeral for OBA Past President Tony Massad in Frederick, OBA Day at the Capitol, two meetings with OSU landscape architect students, staff directors meeting with a vendor for a new website, YLD board meeting, Access to Justice Commission meeting, Bar Association Technology Committee meeting, TU reception honoring President Thomas, Pittsburg County dinner honoring Retired Justice Steven Taylor, Solo & Small Firm Conference Planning Committee meetings and monthly staff celebration and training. He interviewed and selected a new coordinator for the OBA's Oklahoma Lawyers for America's Heroes Program and participated in a conference with the CLE online provider.

REPORT OF THE PAST PRESIDENT

Past President Isaacs, unable to attend the meeting, reported via email he presented juror appreciation plaques, posters and certificates to district courts in Blaine, Dewey, Grant, Greer, Harmon, Jackson, Kay, Kiowa and Noble counties.

BOARD MEMBER REPORTS

Governor Coyle reported he attended the Oklahoma County Bar Association board meeting and Oklahoma County Criminal Defense Lawyers meeting. **Governor Fields** reported he

attended OBA Day at the Capitol, Pittsburg County Law Day Committee meeting and county bar Law Day banquet. **Governor Gotwals** reported he attended OBA Day at the Capitol in Oklahoma City, Inns of Court Pupilage Group program on cross examination, Tulsa County Law Library trustees meeting, two Quality Assurance Panel meetings, Tulsa County Bar Association Board of Directors meeting, Knights of Columbus recruitment event, Tulsa County Bar Foundation Board of Trustees meeting, TCBA Membership Committee meeting, TCBA Litigation Section meeting, TCBA Brown Bag CLE presented by Tulsa County District Judge Anthony Miller, reception for President Thomas at the TU College of Law and Pittsburg County Bar Association's dinner at Pete's Place. **Governor Hicks** reported he attended OBA Day at the Capitol, the Tulsa County Bar Foundation Board of Trustees meeting and Access to Justice teleconference. **Governor Hutter** reported she attended the Cleveland County Bar Association executive meeting, county bar regular monthly meeting and Bench and Bar Committee, Solo & Small Firm Conference Planning Committee meeting by phone, OBA Day at the Capitol and Pittsburg County Law Day events in McAlester – reception at Steidley & Neal and dinner at Pete's Place. **Governor Oliver** reported he attended OBA Day at the Capitol, the Payne County Bar Association monthly meeting and OBA Law Schools Committee tour of the OCU School of Law.

He judged the Payne County Law Day contests and contacted District 8 bar presidents about participating in Law Day activities. **Governor Porter** reported she attended OBA Day at the Capitol, Women in Law Committee meeting and Pittsburg County Bar Association Law Day banquet. **Governor Tucker** reported he attended the OBA Law Day Committee meeting, Muskogee County Bar Association meeting and presentation of the City of Muskogee mayoral proclamation of Law Day. He participated in planning the county bar spring banquet and contacted five county bar presidents about participating in Law Day. **Governor Weedn** reported he attended OBA Day at the Capitol, the Ottawa County Bar Association meeting, retirement reception for Becky Baird, first assistant district attorney for Ottawa and Delaware counties and Pittsburg County Bar Association Law Day events. **Governor Will** reported he attended the Pittsburg County Bar Association Law Day events.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Neal reported he chaired the YLD board meeting.

REPORT OF THE SUPREME COURT LIAISON

Justice Edmondson reported the formal swearing-in of Justice Wyrick will take place April 21 and a reception will follow at the home of Justice Kauger.

BOARD LIAISON REPORTS

Governor Weedn reported the Work/Life Balance Committee is looking into getting involved in CLE presentations and has decided on its meeting schedule for the year. Governor Hutter reported for the Solo & Small Firm Conference Planning Committee that conference

registration has now started. Governor Tucker reported 28 county bar associations will participate in Ask A Lawyer, providing free legal advice. TV show segments will focus on debt, adoption and drug court. Governor Gotwals reported the Professionalism Committee plans to submit articles to the *Oklahoma Bar Journal*, start an ad campaign featuring inspirational quotes, hand out the Slicker book at the swearing-in ceremony, create a pocket guide to ethics pamphlet and develop a December CLE seminar. Governor Hennigh reported the Communications Committee is brainstorming ideas for celebrating the 50th anniversary of the Judicial Nominating Commission. Governor Porter reported the Women in Law Committee will hold its conference Sept. 29 at the Embassy Suites Hotel in Oklahoma City. The theme will be reinventing your practice. A speaker has not yet been selected. They plan to bring back the reception.

AWARDS COMMITTEE REPORT

As Awards Committee chairperson, Vice President Castillo reported the Awards Committee recommends no changes to the OBA awards to be presented at the Annual Meeting. Information was shared on the committee's award-selection process. The board approved the committee's recommendation to present the same awards as last year.

REPORT OF THE GENERAL COUNSEL

Executive Director Williams reported General Counsel Hendryx is home and doing well recovering from surgery but was not able to travel to the meeting. A written report of PRC actions and OBA disciplinary matters for March was sub-

mitted to the board for its review.

PROPOSED OKLAHOMA DISTRICT COURT RULE MODIFICATION: RULE 33 LIMITED SCOPE REPRESENTATION

Executive Director Williams said the proposed court rule modification was published with member comment requested. Eleven comments were received, and they were reviewed. The proposed change was amended as follows:

Rule 33. Limited Scope Representation

A lawyer providing limited scope representation under Rule 1.2 (c) of the Oklahoma Rules of Professional Conduct may draft pleadings or other documents for a pro se litigant to file with or present to a district court without the lawyer entering an appearance in the matter. A lawyer shall disclose such assistance by indicating their name, address, bar number, telephone number, other contact information and, optionally, a signature on said pleading or other document with the phrase "No appearance is entered as counsel of record."

The board approved the proposed rule change and to submit it to the Supreme Court for its consideration.

ADDITION OF OBA IMMIGRATION LAW SECTION

Executive Director Williams reported he has received a petition signed by more than 75 lawyers requesting the creation of an OBA Immigration Law Section in addition to proposed bylaws. Upon approval by the board, the group will hold its first meeting to determine section dues and to elect officers.

The board approved the creation of the new section and the proposed bylaws.

OKLAHOMA DOMESTIC VIOLENCE FATALITY REVIEW BOARD

President Thomas recommends sending the names of Karen Pepper-Mueller, Oklahoma City; Brenda Nipp, Stillwater; and Shannon L. Prescott, Okmulgee; to the Office of the Attorney General for consideration and appointment of one member to the board for a term that will expire June 30, 2019. The board approved President Thomas' nominations.

POSSIBLE REALLOCATION OF FUNDS TO DEVELOP NEW WEBSITE

Executive Director Williams reported the Bar Association Technology Committee asked him to bring the subject of developing a new website to the board in response to some complaints that have been received. He brought in a couple of vendors to talk about their building the basic structure. Staff can build the content. A vacancy in the IT Department has not been filled, and the department can suspend filling the position to allow the salary dollars to be utilized for the capital expense of building the website; however, the funding would need to be recategorized and approved by the Supreme Court. BigWing, a subsidiary of *The Oklahoman*, has submitted a contract for \$47,000 with most of the work to be done this year. The board approved the reallocation of funds and to submit the request to the Supreme Court for its approval.

RESOLUTION

The board voted to issue a resolution of appreciation to the Pittsburg County Bar Association for their hospitality during

the Board of Governors' visit in McAlester.

EXECUTIVE SESSION

The board voted to go into executive session, met in session and voted to come out of executive session.

SPECIAL PANEL APPOINTED

The board voted to appoint Melissa DeLacerda, Stillwater; Bill Grimm, Tulsa; and Stephen Beam, Weatherford; as a special panel to handle a complaint filed against a Professional Responsibility Commission member.

LEGISLATIVE UPDATE

Executive Director Williams briefed board members on the status of proposed judicial legislation. He said the proposed sales tax on legal services is still pending. He invited board members to contact him if they have any questions.



The Oklahoma Bar Association Board of Governors met at the Oklahoma Bar Center in Oklahoma City on Friday, May 19.

REPORT OF THE PRESIDENT

President Thomas reported she welcomed the newest OBA members at their swearing-in ceremony, met with *The Oklahoman* Editorial Board together with Executive Director Williams and Communications Director Manning, met with former Gov. Brad Henry, Judge Andy Lester and Executive Director Williams regarding the recommendations of the Oklahoma Death Penalty Review Commission, participated in the Law Day Ask A Lawyer community service project in Washington County, wrote a welcome letter to Sovereignty

Symposium participants, wrote welcome letters to all new OBA admittees that included an invitation to attend the Solo & Small Firm Conference, gave the keynote address at the Seminole County Law Day luncheon, made a presentation on the Judicial Nominating Commission to the Enid Noon Ambucs and submitted nominations to the Professional Responsibility Tribunal for Board of Governors approval. She attended the reception for new Supreme Court Justice Patrick Wyrick; Tulsa County Law Day luncheon; Annual Meeting planning session with Executive Director Williams, Vice President Castillo, President-Elect Hays and Communications Director Manning; Oklahoma County Law Day luncheon; Seminole County Law Day festivities in Wewoka; Muskogee County Law Day festivities in Muskogee; Oklahoma Bar Foundation monthly meeting; Tri-County (Choctaw, McCurtain and Pushmataha) Bar Association Law Day festivities in Idabel; Payne County Law Day banquet in Stillwater; TU College of Law Gala, honoring and inducting into the TU Law Hall of Fame Allen Smallwood, Judge Dana Kuehn and Rachel Blue; and the Washington County Bar Association monthly meeting.

REPORT OF THE VICE PRESIDENT

Vice President Castillo reported she attended an Annual Meeting planning session with President Thomas, President-Elect Hays, Executive Director Williams and Communications Director Manning, dinner for outgoing YLD Chair Bryon Will, Seminole County Law Day festivities in Wewoka, Muskogee County Law Day banquet, Oklahoma Bar Foundation Executive Committee

and Board of Trustees meetings and Payne County Law Day banquet. She wrote an article to solicit OBA Award nominations for the *Oklahoma Bar Journal* and facilitated an Annual Meeting planning session with Governor Tucker, LeAnne McGill, Faye Rodgers, Luke Adams, Kara Smith, Brad Brown and Chris Jones.

REPORT OF THE PRESIDENT-ELECT

President-Elect Hays reported she prepared the budget report for the OBA Family Law Section monthly business meeting and drafted recommendations for Budget Committee appointments. She attended the Section Leaders Council meeting via phone, reception for Supreme Court Justice Patrick Wyrick, Tulsa County Bar Association Law Day luncheon, Annual Meeting planning session with President Thomas, Vice President Jennifer Castillo, Executive Director Williams and Communications Director Manning, Seminole County Law Day festivities in Wewoka and meetings with Executive Director Williams and Executive Assistant Brink regarding planning, appointments and other bar business.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended OSU landscape architect student presentations, new bar member admission ceremonies, meeting with *The Oklahoman* Editorial Board, meeting with Oklahoma Secretary of State Dave Lopez, MCLE Commission meeting, Section Leaders Council meeting, swearing-in ceremony for Justice Wyrick, YLD board meeting and evening event, staff celebration, staff training sessions on Higher Logic (MyOKBar Communities),

meeting with President Thomas and former Gov. Henry on the Death Penalty Review Commission report, Tulsa County Bar Association Law Day luncheon, Oklahoma County Law Day luncheon, Seminole County Law Day lunch at which he presented CLE, Annual Meeting planning meeting, Tri-County Law Day dinner, staff directors meeting, Standards for Defense of Capital Punishment Cases Task Force meeting and various legislative meetings. He also conducted staff evaluations.

REPORT OF THE PAST PRESIDENT

Past President Isaacs reported he presented juror appreciation plaques at courthouses in Logan and Payne counties. He said many courthouses are hanging the jury appreciation posters in the jury deliberation rooms. President Thomas thanked him for his commitment beyond his presidential year to seeing that the materials are delivered to all 77 Oklahoma counties. A few more northwest counties remain.

BOARD MEMBER REPORTS

Governor Coyle reported he attended the Oklahoma County Criminal Lawyers meeting and seminar. **Governor Fields** reported he attended the Pittsburg County Bar Association meeting and Tri-County Law Day banquet. **Governor Gottwals** reported he attended two Tulsa County Family Courts Quality Assurance Panel meetings in preparation for focus group facilitation, OBA Family Law Section April meeting, Tulsa County Bar Association Board of Directors April meeting, Tulsa Central High School Foundation April board meeting, Tulsa County Bar Foundation Golf Committee April meeting, TCBA Litigation Sec-

tion meeting, OBA Professionalism Committee meeting by phone, TCBA/TCBF Law Week luncheon as foundation president, TCBA Family Law Section May business meeting, TCBA Brown Bag CLE presentation by Jim Calloway on "How to Ethically Use Technology in Your Practice," Inns of Court spring banquet, Tulsa Central High School Foundation May meeting, TCBF Golf Committee May meeting, TCBF Charity Golf Tournament, TCBA Brown Bag CLE presentation by Justice John F. Reif on civility, Standards for Defense of Capital Punishment Cases Task Force meeting via phone, Quality Assurance Panels focus group facilitators training and TCBA Board of Directors May meeting. He also prepared a presentation on family law for a TCBA CLE program and gave a presentation on "Intakes and Law Office Management" at the OBA Family Law Section Spring CLE. **Governor Hennigh** reported he attended the Garfield County Bar Association meeting and YLD past chair dinner/roast. **Governor Hicks** reported he participated in the Access to Justice Committee teleconference and attended the Tulsa County Bar Association Law Day luncheon, Clients' Security Fund Committee meeting, Tulsa County Bar Foundation Golf Committee meeting and TCBF Charity Golf Tournament. **Governor Hutter** reported she attended the Cleveland County Bar Association Executive Committee meeting, Cleveland County Bar Association monthly meeting, Cleveland County bench and bar meeting, Cleveland County Ask A Lawyer telephone event and OBA Diversity Committee meeting. **Governor Oliver** reported he coordinated with Past President Isaacs to present juror appreciation plaques to

Payne County jurors, presented local students with Law Day art/essay awards at the Payne County honor docket, participated in the county bar's Law Day Ask a Lawyer event, organized and worked the Payne County Courthouse appreciation lunch, spoke to a class of high school seniors about Law Day, the OBA and being a lawyer. He also attended the Payne County Law Day banquet.

Governor Porter reported she attended the Women in Law Committee meeting and Tri-County Bar Association Law Day banquet. **Governor Tucker**, unable to attend the meeting, reported via email he attended the Muskogee County Bar Association spring banquet, Annual Meeting Planning Committee meeting and Section Leaders Council meeting. He also participated in the Muskogee County Law Day Ask A Lawyer event. **Governor Will** reported he attended a Young Lawyers Division event at which he was roasted in honor of his service as 2016 YLD chairperson. He also traveled to Pawnee High School to present Law Day contest winners with awards.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Neal reported he chaired the YLD board meeting and addressed the new lawyers at their swearing-in ceremony. He attended the YLD dinner for past YLD Chair Bryon Will and ABA YLD spring conference.

PROPOSED AMENDMENTS TO RULES OF THE SUPREME COURT ON LICENSED LEGAL INTERNSHIP

OBA Legal Intern Committee Chair Terrell Monks reviewed with board members the amendments proposed to the Rules of the Supreme Court on

Licensed Legal Internship and the committee's comments on the changes. The board approved sending the amendments to the Supreme Court for its consideration following publication and a comment period.

BOARD LIAISON REPORTS

Vice President Castillo reported the Bench and Bar Committee is moving forward on its project to produce a video on victim protective orders. Governor Hutter reported the Diversity Committee was holding its CLE seminar today. The committee has opened nominations for its awards with a submission deadline of July 14. Governor Porter said the Rules of Professional Conduct Committee is starting to discuss the ABA's proposed changes to Rule 8.4 on misconduct. Governor Hicks said the Clients' Security Fund has held the first of its four meetings to begin reviewing claims. Governor Gotwals reported the Professionalism Committee met and is working on ads about professionalism for the bar journal. They are also discussing creating an award in addition to the OBA Neil E. Bogan Professionalism Award and working on a professionalism symposium. Governor Porter said the Women in Law Committee has set the date of its conference for Sept. 29 at the Embassy Suites Hotel in Oklahoma City. Work continues on confirming the speakers. The committee is working on creating a calendar with 365 quotes from women lawyers, and they are requesting submissions.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx updated the board on the status of litigation pending against the association. She also shared the sad news that Tulsa attorney

Neil Stauffer recently passed away. He was Professional Responsibility Tribunal chief master and had served on the PRT for six years. A written report of PRC actions and OBA disciplinary matters for April was submitted to the board for its review.

APPLICATION TO SUSPEND FOR FAILURE TO PAY 2017 DUES

Executive Director Williams noted board members had received the lists of bar members slated for suspension and striking from member rolls. He said the names of bar members who comply with the requirements cannot be removed from the lists once the applications have been filed with the Supreme Court. He explained a strike occurs one year beyond suspension. The board authorized Executive Director Williams to submit the application to suspend bar members for failure to pay 2017 dues.

APPLICATION TO SUSPEND FOR FAILURE TO COMPLY WITH 2016 MCLE REQUIREMENTS

The board authorized Executive Director Williams to submit the application to suspend bar members for failure to comply with 2016 Mandatory Continuing Legal Education requirements.

APPLICATION TO STRIKE FOR FAILURE TO REINSTATE AFTER SUSPENSION FOR NONPAYMENT OF 2016 DUES

The board authorized Executive Director Williams to submit the application to strike bar members for failure to reinstate after suspension for nonpayment of 2016 dues.

APPLICATION TO STRIKE FOR FAILURE TO REINSTATE AFTER SUSPENSION FOR NONCOMPLIANCE WITH 2015 MCLE REQUIREMENTS

The board authorized Executive Director Williams to submit the application to strike bar members for noncompliance with 2015 MCLE requirements.

LAW DAY REPORT

Using a PowerPoint presentation, Law Day Committee Co-chair Albert Hoch Jr. reviewed the results from the committee's statewide Law Day efforts, which had three components – contests for grades pre-K through 12, Ask A Lawyer free legal advice and *Ask A Lawyer* TV show. The contests this year had 898 entries. The TV show, aired statewide on OETA, featured segments on adoption, debt and bankruptcy and drug court. This was the OBA's 41st year to offer free legal advice. A total of 30 counties participated with 219 lawyers volunteering \$71,325 worth of legal services that helped 1,844 Oklahomans. A wide variety of promotion efforts were utilized with the Law Day message estimated to have reached 4.7 million people, an increase over last year. The committee worked in conjunction with the OBA Communications Department to achieve these results. As part of the report, the committee leaders described several goals for improvements for next year. Board members commended the Law Day Committee for its work and successful efforts.

SPECIAL TASK FORCE APPOINTED

President Thomas reported she has appointed the Standards for Defense of Capital Punishment Cases Task Force

to develop proposed standards for defense of capital punishment cases. She has asked Mack Martin, Oklahoma City, to serve as chairperson. The task force has held its first meeting, which she participated in by phone. The task force is being asked to submit proposed standards for the Board of Governors to review at its September meeting, which would allow time for the proposal to be submitted to the House of Delegates at the OBA Annual Meeting in November. A question was asked about the direction of the task force. Executive Director Williams said the ABA has standards in addition to numerous other states. Discussion followed.

PROFESSIONAL RESPONSIBILITY TRIBUNAL APPOINTMENTS

The board approved President Thomas' recommendations to appoint to the PRT Michael E. Smith, Oklahoma City; Charles Mark Laster, Shawnee; D. Kenyon Williams, Tulsa; Angela Ailles Bahm, Oklahoma City; and Douglas L. Jackson, Enid, with terms expiring June 30, 2020.

BUDGET COMMITTEE APPOINTMENTS

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

House of Delegates members – Charles Chesnut, Miami; Renée DeMoss, Tulsa; Nathan Richter, Mustang; Richard Stevens, Norman; and Linda Thomas, Bartlesville

Board of Governors – Jennifer Castillo, Oklahoma City; Lane Neal, Oklahoma City; and Roy Tucker, Muskogee

LEGISLATIVE UPDATE

Executive Director Williams briefed the board on the current status of bills of interest to the association.

The Oklahoma Bar Association Board of Governors met at the Choctaw Casino Resort in Durant on Friday, June 23, in conjunction with the Solo & Small Firm Conference.

CLE ANNUAL REPORT

Educational Programs Director Damron reviewed the highlights from the Continuing Legal Education Department's 2016 annual report. She said the partnership with Webcredenza allowed the department to offer more than 200 audio programs. They also partner with other select providers who develop online programs. She reported competition with an increasing number of providers continues to be a challenge, and this year Tulsa County Bar Association increased free CLE to its members to 12 hours. However, OBA/CLE remains the largest provider of CLE for Oklahoma attorneys. She said the OBA experienced a slight decline in net revenue for the year, but the majority of members rate OBA programs and presenters as excellent. Online registrations continue to increase over in-person attendance.

SOLO & SMALL FIRM CONFERENCE

Educational Programs Director Damron reported the conference had 13 CLE walk-in registrations, which is good. Total conference attendance is 400+ people, about 15 more than last year. It was announced the location for next year's conference will be River Spirit Casino Resort in Tulsa.

FINANCIAL REPORT

Administration Director Combs reviewed highlights of the May financial report. The OBA continues to be ahead of budget.

REPORT OF THE PRESIDENT

President Thomas reported she attended the Home of Hope Gala and 90th birthday party for former Oklahoma Gov. George Nigh at Shangri-La Resort in Afton. Other honorees and attendees included former Govs. David Walters, Frank Keating and Brad Henry plus current Gov. Mary Fallin. She welcomed attendees during the opening ceremony to the 30th annual Sovereignty Symposium and assisted Chief Justice Combs in presenting awards at the Oklahoma County Bar Association awards ceremony. She attended the president's dinner honoring President Denise Hoggard at the Arkansas Bar Association Annual Meeting in Hot Springs and at the State Bar of Texas Annual Meeting attended the bar leaders luncheon and president's dinner honoring President Frank Stevenson.

REPORT OF THE PRESIDENT-ELECT

President-Elect Hays reported she attended the OBA Family Law Section monthly business meeting for which she prepared the budget report, OBA Family Law CLE Committee meeting, OBA Family Law Section Annual Meeting planning session, OBA Family Law Section Trial Advocacy Institute instructor meeting, meeting with Executive Director Williams for 2018 planning and OAMIC board meeting. She coordinated Women in Law Committee Mona Salyer Lam-bird award nominations and

coordinated strategic planning subcommittees and topics.

REPORT OF THE EXECUTIVE DIRECTOR

Executive Director Williams reported he attended numerous meetings at the Legislature regarding HB 1570, auditors meeting, staff celebration and active shooter preparedness training, Bar Center Facilities Committee meeting, Pontotoc County Sheep Creek event and Oklahoma County Bar Association awards luncheon. He conducted staff evaluations, met with President-Elect Hays regarding the board meeting schedule for next year, met with Legislative Liaison Clay Taylor on various issues, counted JNC ballots and met with Supreme Court Liaison Justice Edmondson. He also reported the Limited Scope Representation Court Rule has been approved.

REPORT OF THE PAST PRESIDENT

Past President Isaacs reported he attended the State Bar of Texas Annual Meeting, where he heard Professor Brian Carver give an excellent presentation on legal writing and attended the president's dinner honoring President Frank Stevenson.

BOARD MEMBER REPORTS

Governor Coyle reported he attended the Lawyers Helping Lawyers Assistance Program Committee meeting, Oklahoma County Bar Association board meeting and Oklahoma County Criminal Defense Lawyers Association meeting/all-day seminar. **Governor Fields** reported he attended the Pittsburg County Bar Association meeting. **Governor Gotwals** reported he attended the Tulsa County Bar Foundation meeting, Tulsa County Bar Association Litigation Section meeting,

Alternative Dispute Resolution Section meeting via BlueJeans, TCBF 2017 Annual Charity Golf Tournament wrap-up meeting, Standards for Defense of Capital Punishment Cases Task Force meeting via BlueJeans, Quality Assurance Panel June meeting and TCBA Board of Directors meeting. He also served as facilitator for the Quality Assurance Panel focus group at Family & Children's Services in Tulsa. **Governor Hennigh** reported he attended the Garfield County Bar Association meeting and technology CLE. **Governor Hicks** reported he attended the Tulsa County Bar Foundation board meeting, TCBF Golf Committee wrap-up meeting and OBA Access to Justice Committee meeting via teleconference. In Colorado he attended the Arapahoe County Bar Association golf tournament and ACBA annual meeting. **Governor Hutter** reported she helped set up and attended part of the Diversity Committee CLE event and attended its regular meeting via telephone. She also attended the Cleveland County Bar Association executive meeting, CCBA regular meeting and Cleveland County bench and bar meeting. **Governor Oliver** reported he attended the Payne County Bar Association meeting. **Governor Porter** reported she visited with legislators about a bill of interest to her area of practice. She attended an Appellate Practice Section meeting/CLE, General Practice/Solo and Small Firm Committee officers meeting, Board of Tests for Alcohol and Drug Influence meeting, Oklahoma County Bar Association awards banquet and William J. Holloway Jr. Inn of Court Executive Committee meeting. **Governor Tucker** reported he attended the Muskogee County Bar Association meeting and Law Day Committee meeting.

Governor Weedn reported he attended the Ottawa County Bar Association meeting. **Governor Will** reported he attended the Strategic Planning Committee Aging & Transitioning Subcommittee meeting and by phone the Law-Related Education Committee meeting.

REPORT OF THE YOUNG LAWYERS DIVISION

Governor Neal reported the YLD is working on the young adult guide app that once created will be able to be updated in sections as needed. Executive Director Williams said the contract for the app has been signed. Vice President Castillo said she has the current guide in a text format if needed.

WEBSITE CONTRACT

Executive Director Williams reported a contract to design a new website has been signed with BigWing, a full-service online marketing agency owned by *The Oklahoman*. They will begin work August 1.

BOARD LIAISON REPORTS

Governor Hutter reported the Diversity Committee has held two meetings and had a good turnout for its recent CLE program. She said promotion of the July 14 Diversity awards nomination deadline was included in solo conference packets. Governor Tucker reported the Law Day Committee shared the final report presented to the board last month with its committee members. The 2018 theme will be decided soon. Executive Director Williams reported the Bar Center Facilities Committee has authorized the expenditure of \$10,000 from the building fund to start implementing design plans prepared by OSU students. He

said the committee is also discussing installing better and additional video cameras. Governor Gotwals reported the Professionalism Committee is working on planning its CLE seminar. Executive Director Williams and General Counsel Hendryx reported the Strategic Planning Committee Aging & Transition Subcommittee met and is discussing how difficult it is for a lawyer to transition to not practicing. Governor Gotwals reported the Standards for Defense of Capital Punishment Cases Task Force has created a preamble and is working from the Louisiana model to adapt it to fit Oklahoma. As liaison to the Access to Justice Committee, Governor Hicks reported the Supreme Court has approved the Limited Scope Representation Court Rule. Communications Director Manning reported the Bench and Bar Committee's VPO video project is near completion.

REPORT OF THE GENERAL COUNSEL

General Counsel Hendryx reported the lawsuit filed against the association has been dismissed. She reported her department's pending investigation caseload is at 142, which is a dramatic improvement over a caseload of more than 1,000 cases when she started as general counsel. A written report of Professional Responsibility Commission actions and OBA disciplinary matters for May was submitted to the board for its review.

JUDICIAL NOMINATING COMMISSION ELECTIONS

Executive Director Williams reported William R. Grimm was elected to represent Congressional District 1 (Creek and

Tulsa counties) and Linda Stoia Lepak was elected to represent Congressional District 2 (Adair, Cherokee, Craig, Delaware, Mayes, McIntosh, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pawnee, Rogers, Sequoyah, Wagoner and Washington counties). No run-off ballot was needed.

LEGISLATIVE UPDATE

Executive Director Williams reported the legislative session is over and will reconvene in February.

EXECUTIVE SESSION

The board voted to go into executive session, met in session and voted to come out of executive session.

POLICY REVIEW

The board asked Executive Director Williams to review the OBA's current policy on giving or selling member contact information and to draft an amended policy including more detail for the board's review at the next meeting.

AUGUST MEETING

President Thomas said Attorney General Mike Hunter has been invited to attend the board's August meeting in Bartlesville. He will speak to the board about the creation of a task force and its mission to battle the misuse of legal painkillers.

NEXT MEETING

The Board of Governors met on July 21 via telephone. A summary of those actions will be published after the minutes are approved. The next board meeting will be at 10 a.m. Friday, Aug. 25, at Woolaroc in Bartlesville.

Help Your Foundation Strengthen Oklahoma Communities

The Oklahoma Bar Foundation is committed to Oklahoma communities. We invest in law-related nonprofit organizations who provide legal services and support across the state. We invite you to embrace access to justice as a philanthropic partner and join our fight to make justice possible for all.

The OBF Fellows Program supports the following grantees:

- **Canadian County CASA**
Advocacy services for abused and neglected children
- **The CARE Center**
Forensic interviews for children in active abuse cases
- **Center for Children and Families**
Divorce Visitation Arbitration Program, providing court ordered parent education, supervised visitation and exchange services for children in Cleveland County
- **Community Crisis Center**
Court advocate for victims of domestic violence in Ottawa County
- **Domestic Violence Intervention Services**
Civil legal services and court advocacy for victims of domestic violence in Tulsa and Creek counties
- **Family and Children's Services**
Tulsa Family Court Program
- **Foundation for Oklahoma City Public Schools**
Academy of Law and Public Safety
- **Legal Aid Services of Oklahoma**
Statewide support to provide free civil legal services for low-income individuals, families, seniors and veterans
- **Marie Detty Youth and Family Services**
New Directions Domestic Violence Court Advocate
- **OBA/YLD High School Mock Trial Program**
Oklahoma High School Mock Trial Program, from local competitions to national competition
- **OCU Law School American Indian Wills Legal Clinic**
Law students under the supervision of a licensed attorney provide free will drafting services to American Indians in Oklahoma who own an interest in Indian land
- **Oklahoma County Juvenile Bureau**
Literacy program for juveniles on probation
- **Oklahoma Family Legal Advocates**
Free and low-cost legal and social support services for families involved in the Oklahoma child welfare system
- **Oklahoma Guardian Ad Litem Institute**
Guardian *ad litem* services for children in low-income families and training for court experts
- **Oklahoma Indian Legal Services**
Indian Child Welfare Act Education Program
- **Oklahoma Lawyers for Children**
Staff coordination of volunteer lawyers protecting and supporting children in the foster care system by representing them in emergency show cause hearings and juvenile court
- **Teen Court**
Teen court and educational classes for first-time juvenile offenders
- **Tulsa Lawyers for Children**
Staff coordination of volunteer lawyers representing children in Juvenile Court and at emergency show cause hearings in Tulsa County
- **TU Boesche Legal Clinic**
Immigrant Rights Project – education program for law students to provide civil legal services to noncitizens and representation in Immigration Court
- **William W. Barnes Children's Advocacy Center**
Prevention training to recognize, respond and report child abuse for educators, law enforcement and child welfare personnel in Rogers, Mayes and Craig counties
- **YMCA Youth and Government Program**
Statewide Youth Model Legislative Day for 7th- and 8th-grade students and scholarships to the ABA National Judicial Competition
- **YWCA Tulsa**
Immigration and Refugee Legal Services
- **Youth Services of Tulsa**
Youth court for first-time juvenile offenders in Tulsa County

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

MEMORIALS & TRIBUTES – Make a tribute or memorial gift in honor of someone. OBF will send a handwritten tribute card to them or their family.

UNCLAIMED TRUST FUNDS – Unclaimed trust funds can be directed to the OBF. Please include the client name, case number and as much detailed information as possible about the funds on your company letterhead with the enclosed check.

INTEREST ON LAWYER TRUST ACCOUNTS (IOLTA) – OBF Prime Partner Banks give at higher interest rates, so more money is available for OBF Grantees to provide legal services. Select a Prime Partner Bank when setting up your IOLTA account: BancFirst, Bank of Oklahoma, MidFirst Bank, The First State Bank, Valliance Bank, First Oklahoma Bank Tulsa, City National Bank of Lawton, Citizens Bank of Ada, First Bank & Trust Duncan.

CY PRES AWARDS – Leftover monies from class action cases and other proceedings can be designated to the OBF's Court Grant Fund or General Fund as specified.



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Summer Report

By Lane R. Neal

The OBJ editors gave me a little “vacation” from writing my article, so I have a couple of months’ worth of YLD activities to catch up on. Despite summer vacations and jury term holidays, the YLD has continued to meet and work throughout the summer.

MIDYEAR MEETING

The YLD held its Midyear Meeting in June at the Choctaw Resort in Durant. The meeting was held in conjunction with the Solo & Small Firm Conference. It was a great time for everyone to get together in a more relaxed environment. The facilities were top notch. A good time was had by all and we are looking forward to next year’s Midyear Meeting. For those who did not attend, I would



Neal Lane speaks to YLD members at the Midyear Meeting.

recommend you plan now to attend next year. It is a great opportunity to network and learn alongside lawyers from across Oklahoma.

BAR EXAM SURVIVAL KITS

In July, the YLD prepared and distributed the bar exam survival kits to all of the people taking the Oklahoma bar exam. With over 300 people taking the bar exam at testing sites in Oklahoma City and Tulsa, the bar exam survival kits program is really a pretty big undertaking. The YLD board assembled the bar exam survival kits prior to our July meeting. The process has evolved into a highly sophisticated assembly line operation. Board members also volun-

teered to greet the exam takers on the first morning of the exam and hand out the bar exam survival kits. A special thanks to Brittany Byers, Melanie Christians, Dylan Erwin, Jordan Haygood, Clayton Baker, Brad Brown and Gary



Brittany Byers and Jordan Haygood hand out bar exam survival kits to test takers at the National Cowboy & Western Heritage Museum.

Davis. Their help made it another successful project.

YOUNG ADULT GUIDE

I mentioned in a previous article that the YLD has undertaken the task of revising and updating the *Legal Guide for Young Adults*. With assistance from the OBA Law-Related Education Committee, we are taking it a step further and converting the guide into a more relevant, accessible app for mobile devices. Nathan Richter, the incoming YLD chair, has done a tremendous job heading up



Gary Davis and Brad Brown hand out bar exam survival kits to Tulsa test takers.

this project. The content has been provided to the develop-

ers and we are hoping it will be ready to go in the next few weeks. Then, the YLD will work to promote the app to high school students across Oklahoma. It is our goal to get into high schools across the state to promote the app to Oklahoma high school students.

YLD LEADERSHIP

Lastly, Oklahoma young lawyers responded to encouragement from Immediate Past Chair Bryon Will to get involved in YLD leadership by running for a position

on the Board of Directors. The YLD has a great group of candidates from across the state for several board seats and executive positions. You'll meet them and learn more about them in the next issue.

ABOUT THE AUTHOR



Lane R. Neal practices in Oklahoma City and serves as the YLD chairperson. He may be contacted at LNeal@dlb.net. Keep up with the YLD at

www.facebook.com/obayld.



OBA TAXATION LAW SECTION

2017 TAX LAW CONFERENCE

Presentations from representatives from the Oklahoma Tax Commission, Internal Revenue Service, Ernst & Young, LLP, and Jonathan Barry Forman, Alfred P. Murrah Professor at the University of Oklahoma College of Law

Planned Topics: Oklahoma and Multi-State Tax Issues in Merger and Acquisition Transactions; Oil and Gas Taxation; Recent Developments in Oklahoma State Tax laws; and IRS Appeals

Continental Breakfast and Luncheon Provided

Monday, September 25, 2017

8:30 AM to 3:30 PM - Oklahoma Bar Association's Emerson Hall, 1901 N. Lincoln Blvd., Oklahoma City, OK 73152

**For More Information and to R.S.V.P please email Amy Granados
ADGranados@andrewsdavis.com /(405) 272-9241**

August

- 21 OBA Appellate Practice Section meeting;** 11 a.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact Michael L. Brooks 405-840-1066
- 22 OBA Strategic Planning Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Kimberly Hays 918-592-2800
- 24 OBA Professionalism Committee meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Patricia Podolec 405-760-3358
- 25 OBA Board of Governor's meeting;** 10 a.m.; Wootaroc, Bartlesville; Contact John Morris Williams 405-416-7000
- 29 OBA Awards Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Jennifer Castillo 405-553-3103

- 14 OBA Legal Intern Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact H. Terrell Monks 405-733-8686

- 15 OBA Board of Governor's meeting;** 10 a.m.; Oklahoma Bar Center, Oklahoma City; Contact John Morris Williams 405-416-7000

OBA Lawyers Helping Lawyers Assistance Program Committee meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact Hugh Hood 918-747-4357 or Jeanne Snider 405-366-5466



September

- 1 OBA Alternative Dispute Resolution Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with videoconference; Contact Larry B. Lipe 918-586-8512
- 4 OBA Closed** - Labor Day
- 5 OBA Government and Administrative Law Section meeting;** 4 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact David A. Miley 405-521-2639
- 7 OBA Lawyers Helping Lawyers Discussion Group;** 6 p.m. Office of Tom Cummings, 701 NW 13th St., Oklahoma City, OK 73012; RSVP to Jeanie Jones 405-840-0231
- 8 OBA Law-Related Education Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Amber Godfrey 405-525-6671 or Brady Henderson 405-524-8511
- 13 OBA Clients' Security Fund Committee meeting;** 2 p.m.; Oklahoma Bar Center, Oklahoma City with BlueJeans; Contact Micheal Salem 405-366-1234

- 19 OBA Bench and Bar Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City; Contact David Swank 405-325-5254 or Judge David B. Lewis 405-556-9611

OBA Work/Life Balance Committee meeting; 2 p.m.; Oklahoma Bar Center, Oklahoma City with BlueJeans; Contact John W. Kinslow 580-353-8308

- 20 OBA Family Law Section meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with BlueJeans; Contact Allyson Dow 405-496-5768

OBA Financial Institution and Commercial Law Section meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City with BlueJeans; Contact Miles T. Pringle 405-848-4810

OBA Indian Law Section meeting; 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Chris Tytanic 405-406-1394

- 21 OBA Diversity Committee meeting;** 12 p.m.; Oklahoma Bar Center, Oklahoma City with teleconference; Contact Tiece Imani Dempsey 405-609-5406

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OBA Indian Law Section Awards G. William Rice Memorial Scholarship

The Oklahoma Bar Association's Indian Law Section recently announced Tasha Fridia as its 2017 recipient of the G. William Rice Memorial Scholarship. The scholarship provides a \$2,500 stipend to a recent law school graduate intending to practice Indian law in Oklahoma. Ms. Fridia was recognized on June 8 during the 2017 Sovereignty Symposium.

Ms. Fridia, an enrolled member of the Wichita and Affiliated Tribes, earned her law degree from the OCU School of Law in May 2017. While in law school, Ms. Fridia was a member of the Public Interest Law Group, Student Bar Association vice president and was appointed by Dean Valerie Couch to serve on the Dean's Council on Diversity and Inclusion. She was also active in the Native American Law Student Association and was recently awarded the local chapter's Future Trailblazer in Indian Country Award.

"We are pleased to award this scholarship to Tasha, whose demonstrable passion for Indian law, volunteerism and commitment to tribal advocacy stand out," said Chair of the Indian Law Section's Scholarship Committee Debra Gee.

The Indian Law Section developed the G. William Rice Memorial Scholarship in order to encourage future OBA members to pursue practices within the field. The scholarship honors and remembers G. William Rice, a distinguished Indian law practitioner, law professor and co-director of the Native American Law Center of the TU College of Law.



From left: OBA Indian Law Section Chair Chris Tytanic stands with Tasha Fridia, scholarship recipient, OBA Indian Law Section Scholarship Committee Chair Debra Gee and OBA Indian Law Section Budget Officer Jennifer Lamirand at the 2017 Sovereignty Symposium.

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



Comanche County Civil Filing Fee Changes

Effective Sept. 1, Comanche County civil filing fees will increase \$10 per Title 28 O.S. §Chapter 4, Section 152 (F). The Board of Commissioners of the County of Comanche passed and approved a resolution on July 24 directing the office to collect this fee.

OBA Family Law Section Hosts Oklahoma Family Law Trial Advocacy Institute

The OBA Family Law Section hosted the 2017 Oklahoma Family Law Trial Advocacy Institute July 30 – Aug. 5 at the Oklahoma Bar Center. This seven-day CLE offered 14 students the opportunity to receive practical assistance from respected, experienced family law attorneys and to



A Trial Advocacy Institute participant presents her case before family law judges and attorneys from Tulsa and Oklahoma counties.

develop their skills in planning and developing a case from intake through trial.

During the institute, participants worked with an experienced family law mentor and presented their case to current family law judges from Tulsa and Oklahoma counties. Each participant prepared for and conducted a pre-trial conference and a trial, including opening statements, direct and cross-examination of witnesses and experts and closing arguments. This year's dissolution of marriage case involved three minor children, the equitable division of a family business and both parties having significant issues.

LHL Discussion Group Hosts September Meeting

"Exploring Non-12 Step Options for Recovery" will be the topic of the Sept. 7 meeting of the Lawyers Helping Lawyers monthly discussion group. Each meeting, always the first Thursday of the month, is facilitated by committee members and a licensed mental health professional. The group meets from 6 to 7:30 p.m. at the office of Tom Cummings, 701 N.W. 13th St., Oklahoma City. There is no cost to attend and snacks will be provided. RSVPs to oneline@plexisgroupe.com are encouraged to ensure there is food for all.



Important Upcoming Dates

Don't forget the Oklahoma Bar Center will be closed Monday, Sept. 4, in observance of Labor Day. Be sure to docket the OBA Annual Meeting to be held in Tulsa Nov. 1-3.



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/OKBarAssociation and be sure to follow @OklahomaBar on Twitter.



Kudos

The Tulsa County Bar Association announced its new leadership. **Christina Vaughn** will serve as president, **Ann Keele** as president-elect, **Kimberly Moore** as vice president, **Amber Peckio Garrett** as secretary, **Kara Greuel** as treasurer and **Trisha Linn Archer** as library trustee. Directors at-large include **Lauren Oldham**, **Jessica John Bowman**, **Jennifer L. Struble**, **Rachel Carver Mathis** and **Barbara Ellen Cordell**.

Walter Jenny of Abingdon, Virginia, has been elected to a four-year term on the Virginia Democratic Party's State Central Committee and the 9th Congressional District Committee. He previously served as state secretary of the Oklahoma Democratic Party.

Hall Estill elected **Michael H. J. Lissau** to the Executive Committee and **Pamela H. Goldberg** to the Board of Directors. Both work in the Tulsa office.

The Oklahoma State Senate approved and confirmed Gov. Fallin's appointment of **David W. Echols** to the Oklahoma City Community College Board of Regents. He is the co-founder of the south Oklahoma City firm Echols & Associates.

E. Mark Barcus of Tulsa has been appointed as an immigration judge with the U.S. Department of Justice. Judge Barcus will preside

over immigration cases in Imperial, California.

Gov. Mary Fallin selected **Oklahoma City Assistant Attorney General Megan Tilly** to serve on the Oklahoma Workers' Compensation Commission. Gov. Fallin also announced the appointment of Shawnee attorney **Charlie Laster** to the Oklahoma Ethics Commission.

Teresa Black Bradway of Clayton was sworn in as a member of the Oklahoma Historical Society Board of Directors. She was elected in a statewide vote of members.

Robert L. Garbrecht was Relected as a Fellow of the American College of Real Estate Lawyers. Mr. Garbrecht practices commercial transaction law with the Oklahoma City office of McAfee & Taft.

Rex Travis is the 2017 Recipient of the *Journal Record* Award, presented during the Oklahoma County Bar Association's annual Law Day Luncheon. Mr. Travis practices insurance and injury law in Oklahoma City.

Paul Brunton and **Henry Will** were honored with the Brunton-Will CLE Award at the Tulsa County Bar Association Law Day Luncheon. The two were honored for more than a quarter century of providing CLE seminars to TCBA members.

Brandon Long of Oklahoma City has been elected to serve as president-elect of the SouthWest Benefits Association for the 2017-2018 term. In his new role, he will chair

the organization's Annual Conference Committee.

The TU College of Law inducted **Rachel Blue**, **Dana Kuehn** and **Allen M. Smallwood** into the university's Hall of Fame. Ms. Blue was also honored with the W. Thomas Coffman Award for Community Service. She practices intellectual property law with the Tulsa office of McAfee & Taft. Ms. Kuehn is a Tulsa County associate district judge. Mr. Smallwood practices criminal law defense in Tulsa.

The Oklahoma Commission on the Status of Women presented **Sen. Kay Floyd** with the 2017 Guardian Award during a news conference at the Oklahoma state Capitol. The award honors those who work to guard rights of all Oklahomans from harm.

Andrew J. Morris, a trial lawyer with the Oklahoma City office of McAfee & Taft, was awarded 2017 Attorney of the Year by the Central Oklahoma Association of Legal Assistants at its awards luncheon on June 8.

Kenneth E. Wagner of Tulsa was appointed as senior advisor to administrator of the U.S. Environmental Protection Agency, Scott Pruitt. Prior to his appointment, Mr. Wagner practiced law at Latham, Wagner, Steele & Lehman PC.

Areawide Aging Agency announced the appointment of **Sara Hawkins** as vice-chair of its Board of Directors. Ms. Hawkins practices with the Oklahoma

City firm Mee Mee Hoge & Epperson PLLP.



Paul Hesse of Mustang was sworn in as district court judge for Canadian County on July 5. Before his appointment he served as first assistant district attorney in the Canadian County District Attorney's Office.

Andrew J. Hofland, Jay Shanker and Terry L. Watt have joined Crowe & Dunlevy. Mr. Shanker will practice in the firm's entertainment practice group in Oklahoma City. Mr. Watt will practice in the firm's intellectual property practice group in Tulsa. Mr. Hofland will practice in the Tulsa office's litigation and trial and bankruptcy and creditor's rights practice groups.

Rob Henderson and Rae-gan Sifferman announce the formation of Henderson & Sifferman PLLC. Mr. Henderson will continue to practice in the firm's Durant office and Ms. Sifferman will practice in the firm's new Oklahoma City office.

Paul Trimble joined the Oklahoma City office of Spencer Fane as a partner. He focuses his practice on oil and gas matters.

Kim Tran joined the Oklahoma City-based firm Fellers Snider. She will prac-

tice in the firm's litigation practice.

Rodney Hunsinger and Jared Boyer have opened HB Law Partners PLLC. The firm is located at 1035 S. Berry Road, Norman, 73069 and can be reached at 405-561-2410.

Assistant Attorney General Al Joy Mohorovicic will lead the new Attorney General's Criminal Justice Division. She currently manages the Tulsa Attorney General's Office.

John Hadden was appointed clerk of the Supreme Court, assuming the post Aug. 1. He graduated from the OU College of Law in 2000.

Sarah Miller joined the Tulsa office of Hall Estill in the firm's energy law practice. Ms. Miller is a 1997 graduate of the OCU School of Law.

Kirk & Chaney PLLC has moved to 14000 Quail Springs Parkway, Suite 3500, Oklahoma City, 73134. The phone number, fax number and all email addresses remain the same.

Jeff R. Beeler and Todd A. Murray joined the Oklahoma City-based firm Jennings Teague PC. Mr. Beeler joins as of counsel and Mr. Murray joins as an associate.



Faith Orłowski presented at the Sooner Association

of Division Order Analysts 2017 Summer Seminar, speaking on trust payee problems, transfer on death deeds and judicial determinations v. heirship affidavits.

Tom Vincent will speak on cybersecurity at the September Tulsa General Counsel Group lunch. Mr. Vincent will also give a CLE for the Tulsa County Bar Association this fall titled "How Attorneys Can Protect Themselves Against Cybersecurity."

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 Plaudis
Communications Dept.
Oklahoma Bar Association
405-416-7017
barbriefs@okbar.org

Articles for the Oct. 21 issue must be received by Sept. 15.

Charles Joseph Migliorino of Bromide died May 3. He was born Feb. 27, 1949, in New York. He graduated from La Salle Academy where he was an all-city basketball player. After graduation, he played basketball for Murray State College in Tishomingo. While attending Murray State, **he enlisted in the U.S. Marine Corps, serving four tours in Vietnam. He received two Purple Hearts.** He finished his undergrad and master's degree at Southeastern State University, receiving his undergrad in social studies and his master's in special education. Mr. Migliorino taught in Ardmore public schools for 10 years. In 1984, he went back to school to receive his J.D. from the OCU School of Law. He was appointed by Gov. Mary Fallin as associate district judge for Johnston County as well as other surrounding counties. Donations in his honor can be made to the Second Chance Animal Sanctuary at 4500 24th Ave N.W., Norman, OK 73069.

John Edward Deas Sr. of Sand Springs died June 15. He was born March 17, 1936. Mr. Deas graduated from the TU College of Law in 1964. After graduation, he became a partner at Schuman, Deas, Pray & Doyle. Later, he became assistant general counsel at Bank of Oklahoma. He was also president of several banks until his retirement.

William Wesley Choate of Seminole died June 22. He was born July 25, 1939, in Oklahoma City. In 1957, he graduated from Classen High School and went on to receive a bachelor's degree in geological engineering from OU in 1960. Mr. Choate served a mission for the Church of Jesus Christ of Latter-day Saints, serving in Brazil from 1961 to 1963. **He joined the Air Force in 1965. While on active duty as a civil engineering officer, he served as the Strategic Air Command's site selection team chief and Base Engineer Emergency Force team chief for the 2nd Air Division.** After returning to Oklahoma City he worked

with the State Water Resources Board and the U.S. Army Corps of Engineers. Later, he received his J.D. from the OCU School of Law and opened his own practice.

John D. Hastie of Goldsby died June 18. He was born Dec. 9, 1939, in Guthrie. While attending high school in Sand Springs, he won the 1957 National Speech and Debate Association Championship. He received a bachelor's degree in history from OU in 1961 and went on to get his LL.B. from the OU College of Law in 1964. While in law school, he was a member of Phi Delta Phi Law Fraternity, was editor of the *Oklahoma Law Review* and received the Hawes Award. **Mr. Hastie was a captain in the U.S. Army from 1964 to 1966.** He was an adjunct professor at the OU College of Law from 1982 to 1990 and from 2000 to 2003. He also gave more than 150 CLE seminars and authored multiple scholarly articles. Donations in his honor may be made to the OU Foundation at oufoundation.org.

7 Ideas for Better Client Service

Law practice technology pros share their must-have technology to improve client service and tips for “keeping it human.”

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How to Get Enough Sleep

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Avoiding Dining Table Faux Pas

Does your firm have a banquet coming up? Are you preparing for a meal at a fancy restaurant as part of an interview process with a new firm? Here are common dining mistakes to avoid and tips to help enhance your professional image.

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NOTICE OF JUDICIAL VACANCY

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

**District Judge
Seventh Judicial District, Office 13
Oklahoma County At Large**

This vacancy is due to the retirement of the Honorable Roger Stuart effective October 1, 2017.

To be appointed to the office of District Judge, Seventh Judicial District, Office 13, one must be a legal resident of Oklahoma 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 following 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) 556-9300. Applications must be submitted to the Chairman of the Commission at the same address **no later than 5:00 p.m., Friday, August 25, 2017. If applications are mailed, they must be post-marked by midnight, August 25, 2017.**

Deborah A. Reheard, Chair
Oklahoma Judicial Nominating Commission

OKLAHOMA BAR JOURNAL EDITORIAL CALENDAR

2017 Issues

- 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

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

2018 Issues

- January
Meet Your OBA
Editor: Carol Manning
- February
Transactional Law
Editor: Melissa DeLacerda
melissde@aol.com
Deadline: Oct. 1, 2017
- March
Family Law
Editor: Patricia Flanagan
patriciaaflanaganlawoffice@cox.net
Deadline: Oct. 1, 2017
- April
Law Day
Editor: Carol Manning
- May
Science & the Law
Editor: C. Scott Jones
sjones@piercecouch.com
Deadline: Jan. 1, 2018
- August
Education Law
Editor: Luke Adams
ladams@tisdalohara.com
Deadline: May 1, 2018
- September
Bar Convention
Editor: Carol Manning
- October
Sports Law
Editor: Shannon Prescott
shanlpres@yahoo.com
Deadline: May 1, 2018
- November
Torts
Editor: Erin L. Means
erin.l.means@gmail.com
Deadline: Aug. 1, 2018
- December
Ethics & Professional Responsibility
Editor: Leslie Taylor
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Deadline: Aug. 1, 2018

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POSITIONS AVAILABLE

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

LAW FIRM IN EDMOND SEEKING AN ASSOCIATE ATTORNEY. Prior estate planning, probate, business law, energy law litigation or OCC experience preferred. Salary and benefits commensurate with experience and existing book of business. Please send cover letter, resume and writing sample to attorneyresumeok@gmail.com.

DOWNTOWN OKC LAW FIRM SEEKS ASSOCIATE ATTORNEY. Primary duties include legal research and writing for civil litigation. Pay is commensurate with experience. Excellent benefits package. Please send cover letter, resume and writing sample to "Box FF," Oklahoma Bar Association, PO Box 53036, Oklahoma City, OK 73152.

POSITIONS AVAILABLE

SMALL NW OKC AV FIRM WITH CONCENTRATION IN FAMILY LAW WILL BE ADDING AN ATTORNEY who can generate own caseload and assist with larger cases handled by the firm. Candidates should have commercial or family law trial experience and knowledge of business and accounting issues as well as child custody and visitation matters. Send reply to "Box S," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

THE LAW FIRM OF COLLINS, ZORN & WAGNER, P.C. IS PLEASED TO ANNOUNCE TWO NEW POSITIONS for associate attorneys. The firm is currently seeking an attorney with 1-5 years' experience and another attorney with 5-10 years' experience in litigation. An attorney submitting a resume should have experience relevant to these positions, not merely the required number of years as an attorney. Associates in these positions will be responsible for court appearances, depositions, performing discovery, interviews and trials in active cases filed in the Oklahoma Eastern, Northern, and Western Federal District Courts and statewide. Collins, Zorn and Wagner, PC is primarily a defense litigation firm focusing on civil rights, employment, constitutional law and general insurance defense. Please send your resume, references and a cover letter including salary requirements to kjs@czwlw.com.

CITY OF ENID, OKLAHOMA IS SEEKING TO FILL THE POSITION OF CITY ATTORNEY. Position requires a J.D. and more than 5 years of related experience and/or training. Successful applicant must be admitted to practice law in Oklahoma. Position reports directly to the mayor and Board of Commissioners and supervises an office of 10, including an assistant attorney, office support staff and municipal court staff. Position is responsible for providing relevant, timely and accurate legal advice to the mayor and Board of Commissioners that protects the best interest of the municipality. Position offers a full range of benefits with salary commensurate with experience. Accepting application through Sept. 18, 2017. Apply online at www.enid.org.

STEIDLEY & NEAL, PLLC, is searching for an associate attorney with excellent research and writing skills with 3-5 years' experience for its Tulsa office. Competitive salary and other benefits commensurate with level of experience. Looking for a motivated candidate interested in providing research and writing support for civil litigation, with an emphasis in insurance defense. Applications will be kept in strict confidence. Send resume and writing sample to Steidley & Neal, located in CityPlex Towers, 53rd Floor, 2448 E. 81st St., Tulsa, OK, 74137, attention Dwain Witt, Legal Administrator.

IMMEDIATE OPENINGS FOR COMMERCIAL LITIGATION ATTORNEYS with a minimum of 5 – 10 years litigation/bankruptcy experience in state/federal courts. Starting salary commensurate with experience plus excellent benefits. Send resumes to "Box C," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

POSITIONS AVAILABLE

PLAINTIFF'S PERSONAL INJURY PRACTICE SEEKING ASSOCIATE with 0-5 years of experience. Competitive salary with health, dental, vision, life insurance and 401k benefits. Customer service, sales and/or insurance or medical background is a plus. We are a team oriented firm committed to positive outcomes for our clients. All resumes are strictly confidential. Please send resumes to "Box EF," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

SMALL DOWNTOWN OKLAHOMA CITY FIRM OF DEFENSE ATTORNEYS WITH OFFICES IN DALLAS SEEKS AN ASSOCIATE with 4 to 6 years' experience in product liability, catastrophic injury, premises liability, medical malpractice, trucking/transportation, commercial litigation and expert intensive litigation. The firm offers an atmosphere of strong camaraderie with many long-time employees and excellent support staff. Need a self-starter who can hit the ground running. Please submit resume to: edmison@berryfirm.com.

WATKINS TAX RESOLUTION AND ACCOUNTING FIRM is hiring attorneys for its Oklahoma City and Tulsa offices. The firm is a growing, fast-paced setting with a focus on client service in federal and state tax help (e.g. offers in compromise, penalty abatement, innocent spouse relief). Previous tax experience is not required, but previous work in customer service is preferred. Competitive salary, health insurance and 401K available. Please send a one-page resume with one-page cover letter to Info@TaxHelpOK.com.

SOUTH OKLAHOMA CITY AV RATED SMALL FIRM seeking attorney for office share and future merger or acquisition of general practice in existence for 25 years. Practice emphasis on estate planning, probate, small business and creditor representation. Must have at least 5 years' experience; prefer significant litigation and jury trial experience. Submit a confidential resume with references to "Box MM", Oklahoma Bar Association, P.O. Box 53036, OKC, OK 73152.

HELP! OLDER OKLAHOMA CITY AV RATED ATTORNEY NEEDS AN ASSOCIATE who is bright and energetic. Practice is predominately estate planning, trust administration, probate and income taxation. Estate planning experience a minimum, tax preparation experience a plus. Staff generally friendly, a few clients, not so much. Salary and benefits to be determined. Submit resume, law school transcript and salary history to "Box Q," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, Ok 73152.

ATTORNEY POSITION OPEN FOR WORK IN THE OKLAHOMA CITY METROPOLITAN AREA beginning Sept. 1, 2017. Moderate to heavy criminal defense caseload. Experience preferred, but not mandatory. Base pay of \$3,500 per month with opportunity for additional income available. Office space, secretary and malpractice insurance provided. Additional benefits not provided. Send a letter of interest and writing sample with your resume to "Box CD," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

POSITIONS AVAILABLE

FENTON FENTON SMITH RENEAU & MOON, AN AV RATED DEFENSE FIRM IS SEEKING AN ATTORNEY with zero to five years of experience to assist in its civil litigation department. Please submit a resume, writing sample and transcript to Recruiting Coordinator, 211 N. Robinson, Ste. 800N, Oklahoma City, OK 73102.

SMALL DOWNTOWN OKLAHOMA CITY FIRM OF DEFENSE ATTORNEYS WITH OFFICES IN DALLAS SEEKS AN ASSOCIATE with 2-4 years' experience in product liability, catastrophic injury, premises liability, medical malpractice, trucking/transportation, commercial litigation and expert intensive litigation. The firm offers an atmosphere of strong camaraderie with many long-time employees and excellent support staff. Need a self-starter who can hit the ground running. Please submit resume to edminson@berryfirm.com.

CHILD SUPPORT SERVICES is seeking a full-time attorney for our Durant District Office located at 4302 Highway 70 West, Durant, OK 74701. The position involves negotiation with other attorneys and customers as well as preparation and trial of cases in child support hearings in district and administrative courts and the direction of staff in the preparation of legal documents. In addition, the successful candidate will help establish partnership networks and participate in community outreach activities within the service area in an effort to educate others regarding our services and their beneficial impact on families. Position will provide recommendations and advice on policies and programs in furtherance of strategic goals. In depth knowledge of family law related to paternity establishment, child support, and medical support matters is preferred. Preference may also be given to candidates who live in or are willing to relocate to the service area. Active membership in the Oklahoma Bar Association is required. This position has alternate hiring levels. The beginning salary is at least \$42,771 annually with an outstanding benefits package including health and dental insurance, paid leave and retirement. Interested individuals must send a cover letter noting announcement number 17-S049U.1, resume, three reference letters and a copy of current OBA card to www.jobs.ok.gov, under unclassified positions. Applications must be received no earlier than 8 a.m. on Aug. 18, 2017, and no later than 5 p.m. on Sept. 29, 2017. For additional information about this job opportunity, please email Barbara.Perkins@okdhs.org. This position may be filled at an alternate hiring level as a Child Support Services attorney III (beginning salary \$4321.67 monthly), Child Support Services attorney II (beginning salary \$3942.92 monthly), or as a Child Support Services attorney I (beginning salary \$3564.25 monthly). The state of Oklahoma is an equal opportunity employer.

THE LAW FIRM OF DURBIN LARIMORE & BIALICK, PC, has opening for associate attorney with 4-7 years of insurance defense litigation experience. Generous benefits package and competitive salary. Please send confidential cover letter, resume and references to radams@dlb.net.

POSITIONS AVAILABLE

NORMAN 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.

OKLAHOMA STATE UNIVERSITY (OSU) FOUNDATION IS ACCEPTING APPLICATIONS FOR A HIGHLY MOTIVATED AND EXPERIENCED INDIVIDUAL TO SERVE AS AN ASSISTANT GENERAL COUNSEL. The assistant general counsel primarily manages the foundation's mineral and real estate interests, and assists in drafting, revising and reviewing corporate and contract documents. They will also provide legal advice and support on all matters affecting OSU Foundation operations, and maintain a professional working relationship with OSU administration to ensure compliance with governmental regulations and university policies. Successful candidates must possess a law degree from an accredited university with extensive legal experience. Candidates must be an active member of the Oklahoma Bar Association and possess superior knowledge of federal and state laws and regulations. This position requires excellent communication and interpersonal skills, the ability to maintain strict confidentiality and exceptional judgement, tact and integrity. For more information contact Pamela Guthrie at pguthrie@osugiving.com or visit www.OSUgiving.com/workforus.

ANGELA D. AILLES & ASSOCIATES, in-house counsel for State Farm Mutual Ins. Co., has an opening for an ATTORNEY. Applicants who will be considered must have 1-5 years prior experience in personal injury/insurance defense litigation. Preferred candidates will have experience with motion practice, taking depositions, and brief writing. Excellent organizational, communication and computer skills are a must. Applicants must be able to work effectively and efficiently in an electronic environment and must be motivated to learn new skills. Applicants must exhibit strict adherence to professionalism, civility and ethical behavior. Applicants not licensed to practice in Oklahoma will not be considered. State Farm offers an excellent salary and benefits package. Apply to posting #881 at www.statefarm.com/careers.

STEIDLEY & NEAL, PLLC, is searching for an associate attorney with 2-4 years' experience in workers' comp for its Tulsa office. Competitive salary and other benefits commensurate with level of experience. Applications will be kept in strict confidence. Send resume to Steidley & Neal, located in CityPlex Towers, 53rd Floor, 2448 E. 81st St., Tulsa, OK, 74137, attention Dwain Witt, Legal Administrator.

POSITIONS AVAILABLE

THE PANTEX PLANT IN AMARILLO, TX IS LOOKING FOR AN ATTORNEY with well-developed counseling, investigative and negotiation skills who has at least five years of experience representing employers in private practice or in a corporate law department as labor and employment counsel. Candidates must possess strong interpersonal, writing and verbal skills, the ability to manage simultaneous projects under deadline, and flexibility to learn new areas of law. Candidates must be licensed to practice law in at least one state and must be admitted, or able to be admitted, to the Texas bar. For more information on the position please visit www.pantex.com, Careers, Current Opportunities and reference Req #17-0227. Pantex is an equal opportunity employer.

THE OKLAHOMA CORPORATION COMMISSION HAS AN OPENING FOR AN ATTORNEY in the Judicial & Legislative Services Division, in the Petroleum Storage Tank section. This is an unclassified position with a salary of \$61-65,000 annually. Applicants must be admitted to the bar and have litigation experience, with some administrative law experience preferred. Strong research and writing skills required. Send resume and writing sample to Oklahoma Corporation Commission, Human Resources Division, P.O. Box 52000, Oklahoma City, Oklahoma, 73152-2000. For inquiries, contact Lori Mize at 405-521-3596 or at HR3@occcemail.com. Deadline: Aug. 30, 2017.

POSITIONS AVAILABLE

THE TULSA COUNTY PUBLIC DEFENDER'S OFFICE is seeking two attorneys to assume responsibilities on a felony trial docket starting in September. Applicants must have some trial or equivalent litigation experience, preferably in the area of criminal defense. Salary will be commensurate with experience. Submit resume, cover letter and writing sample to Stuart W. Southerland, 423 South Boulder Ave., Suite 300, Tulsa, Oklahoma 74103-3805 or stuart.southerland@oscn.net.

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Memories of a Law Professor

By Retired Judge David Barnett

As a first-year student at OU law school in 1973-74, I qualified for a small work-study grant and was hired to work at the law library in old Monnet Hall, affectionately referred to as the Law Barn. Often I worked the reference desk in the evenings, during the time when students and faculty were preparing for the next day. As I remember, my work schedule required me to be there until 10 p.m., when the library closed. I didn't have a class under Professor Elmer Million, but became acquainted with him through working at the reference desk.

As a first-year law student who had just completed four years as a sergeant in the U.S. Air Force, I was somewhat intimidated by the faculty, and many of them were not extremely personable with first-year law students. However, I soon learned that Elmer Million was a different sort of cat – and possessed a keen sense of humor.

During the early '70s, 7-Up introduced a new diet version of its soft drink, and their TV advertisements centered on a very catchy jingle, which went something like this, "Oh, oh, oh, it just can't be another new

diet soft drink – it's new diet 7-Up!" The company bombarded the public with ads based on the jingle, so almost everyone knew it well.



Professor Elmer Million

Photo Courtesy of OU College of Law

Late one evening, as I staffed the reference desk, Professor Million walked by on his way to the drinking fountain, located about 10 feet from the reference desk. As soon as he had taken a drink of water, the professor stepped away from the drinking fountain, grasped his

chest as though in pain and seemed to be on the verge of falling. I remember thinking this old guy was having a heart attack, and I needed to help him.

However, before I was able to slip off my stool and come to his aid, he revived, did a nifty dance step and sang, "Oh, oh, oh, it just can't be another new diet soft drink." Before I even had time to laugh at the good professor's rendition of the popular jingle, he recomposed his professorial demeanor and walked out of the library. I'm fairly certain I was the only person present for his performance, so I'm sure it won't be preserved for posterity unless I record it.

I liked Elmer Million from that point on, though I had very little interaction with him while I was in law school. His momentary lapse of his staid professorial demeanor helped me to understand that my law professors were just regular folks, with real live personalities, with a commitment to teach us to love the law and to love life.

Retired Judge Barnett lives in Frederick.



7/1

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