

ALSO INSIDE: Bar Journal Changes • Index of 2017 Articles

# THE OKLAHOMA BAR Journal

Volume 88 — No. 33 — 12/16/2017

## ETHICS & PROFESSIONAL RESPONSIBILITY



**MAKE PLANS TO ATTEND THE LAST "LIVE" CLE FOR 2017**



Barry Albert Memorial Mock Trial:  
**8TH ANNUAL LEARNING FROM THE  
OKLAHOMA CRIMINAL  
JURY TRIAL MASTERS**

**DECEMBER 28 & 29**  
**A 2-DAY PROGRAM**

OKLAHOMA BAR CENTER

***THE UNITED STATES OF AMERICA  
V. MICHAEL SHANDELON BROWN***

**12/2**

**PROGRAM PLANNERS:**

Elliott Crawford, Emilie Kirkpatrick,  
David T. McKenzie, Matthew  
McRorie, Henry A. "Hank" Meyer,  
Anthony Mitchell, Malcolm Savage,  
and Pamela Snider,

**ETHICS ADVISOR AND MODERATOR:**

Garvin A. Isaacs, Jr., Garvin A.  
Isaacs, Inc., Oklahoma City

**JUDGE:**

The Honorable Ray Cl. Elliott

**GOVERNMENT COUNSEL:**

Victor Albert, Carol Chen,  
Sheila Cunningham, Edward J.  
Kumiega, Matthew McRorie,  
Susan Minders and Pamela Snider

**DEFENSE COUNSEL:**

Johnny Albert,  
David Autry, Elliot Crawford,  
Emilie Kirkpatrick, Donald McCarty,  
David McKenzie, Wendi Morse,  
Traci Rhone and Jarrod Stevenson

\$275 for early-bird registrations with payment received by December 21st. An additional \$25 will be charged for registrations received after December 21st and \$50 for walk-ins. To receive a \$10 discount for the live onsite program, register online at [www.okbar.org/members/CLE](http://www.okbar.org/members/CLE). Members licensed 2 years or less may register for \$150. No other discounts apply. This program will not be webcast.

**oba** ♦ **cle**  
continuing legal education

**FOR DETAILS AND TO REGISTER GO TO: [WWW.OKBAR.ORG/MEMBERS/CLE](http://WWW.OKBAR.ORG/MEMBERS/CLE)**

Stay up-to-date and follow us on



# LAWPAY<sup>®</sup>

THE WAY ATTORNEYS GET PAID



OKLAHOMA BAR  
ASSOCIATION SINCE 1904

Proud Member  
Benefit Provider



1.95% & 20¢ per transaction

No swipe required

No equipment needed

\$5-\$20 monthly

## The proven payment solution for lawyers.

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

LawPay.com/OBA | 866.376.0950



LawPay is a registered ISO/MSP of BMO Harris Bank, N.A., Chicago, IL



# Some Cyber Liability Insurance policies cover much more than data breach - does yours?

---

Gone are the days when data breach sublimit on your Business Owners or Professional Liability policy is adequate protection. Today we encourage businesses to purchase a stand-alone **Cyber Liability Insurance** policy which provides higher limits and broader coverage.

---

## Cyber Incident Responses

Incident response costs, legal and regulatory costs, security and forensic costs, crisis communication costs, and third-party privacy breach management costs.

## Cyber Crimes

Extortion, funds transfer fraud, theft of funds held in escrow, theft of personal funds, corporate identity theft, telephone hacking, and phishing.

## System Damage and Business Interruption

System damage and rectification costs, system business interruption, and consequential reputational harm.

## Network Security & Privacy Liability and Media Liability

Network security liability, privacy liability, management liability, regulatory fines, PCI fines, penalties and assessments, defamation, intellectual property rights infringement.



A collaboration of Alexander & Strunk  
and Beale Professional Services



**405.521.1600**  
**info@3000ig.com**  
**3000iG.com**

---

THEME:  
**ETHICS & PROFESSIONAL  
RESPONSIBILITY**  
EDITOR: LESLIE TAYLOR

---

# contents

Dec. 16, 2017 • Vol. 88 • No. 33



## FEATURES

- 2399 A LAWYER'S DUTY TO SELF-REPORT  
DISCIPLINARY MISCONDUCT  
*By Jason B. Supplee*
- 2405 INSIDE A COUNSELING SESSION  
*By Travis Pickens*
- 2409 INDIRECT CONTEMPT – A PRIMER  
*By Mark B. Houts*
- 2415 SAFEGUARDING CLIENT PROPERTY AND  
CONFIDENTIALLY IN THE DIGITAL WORLD  
*By Jason Christopher*
- 2419 ETHICS AND LAWYER WELL-BEING  
*By Joseph Balkenbush*



pg. 2421  
BAR JOURNAL  
CHANGES

## DEPARTMENTS

- 2396 FROM THE PRESIDENT
- 2439 FROM THE EXECUTIVE DIRECTOR
- 2441 LAW PRACTICE TIPS
- 2444 ETHICS/PROFESSIONAL RESPONSIBILITY
- 2446 OKLAHOMA BAR FOUNDATION NEWS
- 2448 YOUNG LAWYERS DIVISION
- 2449 FOR YOUR INFORMATION
- 2450 BENCH AND BAR BRIEFS
- 2451 IN MEMORIAM
- 2451 EDITORIAL CALENDAR
- 2452 WHAT'S ONLINE
- 2456 THE BACK PAGE



pg. 2422  
2017 BAR JOURNAL  
INDEX

## PLUS

- 2421 BAR JOURNAL CHANGES INCLUDE COURT ISSUE  
ELECTRONIC DELIVERY
- 2422 OKLAHOMA BAR JOURNAL 2017 INDEX
- 2438 COMMITTEE SIGN-UP FORM

# At Year End, Association Remains Strong

By Linda S. Thomas

"All good things must come to an end." While serving as OBA president has been the greatest honor of my professional career, it must come to an end. Together, we've accomplished many things this year, and I want to share just a few with you.

When I became president last January, the OBA was in good shape, and I believe it is in even better shape today. I am proud to leave it in the very competent hands of Kimberly Hays as she takes over as our 2018 president. The 2017 Board of Governors was a dynamic group of people dedicated to the task of running the business of the bar, and President-Elect Hays and the slate of new officers and board members are equally experienced and devoted to the well-being of our association.

While there may be many places where a lack of civility and an inability to reach consensus prevails, that is not the case at the OBA. The credit for that goes not only to the officers, board members and the committee and section leaders, but most importantly, to YOU, the membership, who put these exceptional people in leadership positions. With the help of the competent and committed staff at the bar association, who work tirelessly behind the scenes, our leaders are dedicated to assuring that the OBA serves every lawyer in the state as best we can.

Today, our bar association is financially and fiscally sound. This year President-Elect Hays and the Strategic Planning Committee took a hard look at things like the cost of publishing the bar journal, the aging of our profession and waning number of lawyers coming into our profession – all affecting our bottom line. While these issues will require more study, the OBA is not waiting until we are at a critical crossroad, but rather we are being proactive in putting in place a solid structure to develop solutions to the challenges we will face in the future.

Thanks to the committed efforts of the Access to Justice Committee, the Supreme Court adopted District Court Rule 33, which enhances the rules regarding limited scope practice, providing that a lawyer who drafts court documents for a pro se litigant must disclose such assis-

tance by providing his/her identifying information on the document.

In a time when it is getting harder and harder to get people to come together for any type of meeting, the OBA was successful in bringing together many great lawyers at all three of our major conferences this year – Solo & Small Firm Conference in June, Women in Law Conference in September and of course, the OBA Annual Meeting in

November. Through these great conferences, the OBA met its mission to provide high-quality programming, social opportunities and, most importantly, a time and place for lawyers to come together for comradery and to exchange ideas.

One more thing we can all be extraordinarily proud of is the OBA Family Law Section's annual Trial Advocacy Institute that took place for the fourth year in a row in July/August. There is not a family law program like it offered by any other state bar in the country. The institute is a seven-day program that provides a unique opportunity for lawyers to receive practical assistance from respected, experienced family law attorneys and judges, real-world advice and assistance with complex legal issues, and a chance to prepare and actually try a complicated family law case from start to finish.

The success of the OBA is because of YOU and your support. In November 2015, I stood before the OBA House of Delegates and promised that, if elected, I would do my best to serve our association with integrity and to continue to build upon the solid foundation of the Oklahoma Bar Association in a way that best serves every lawyer in this state. I hope you find that at the end of my term as OBA president, I was true to my promise to you. Thank you for your support and for allowing me the incredible privilege of serving as your Oklahoma Bar Association president. I will be forever grateful for the honor you bestowed upon me.

*Thank you for  
your support and  
for allowing me  
the incredible  
privilege of serving  
as your Oklahoma  
Bar Association  
president.*



*Linda S. Thomas*

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

THE OKLAHOMA BAR JOURNAL is a publication of the Oklahoma Bar Association. All rights reserved. Copyright© 2017 Oklahoma Bar Association. Statements or opinions expressed herein are those of the authors and do not necessarily reflect those of the Oklahoma Bar Association, its officers, Board of Governors, Board of Editors or staff. Although advertising copy is reviewed, no endorsement of any product or service offered by any advertisement is intended or implied by publication. Advertisers are solely responsible for the content of their ads, and the OBA reserves the right to edit or reject any advertising copy for any reason.

Legal articles carried in THE OKLAHOMA BAR JOURNAL are selected by the Board of Editors. Information about submissions can be found at [www.okbar.org](http://www.okbar.org).

#### BAR CENTER STAFF

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

Les Arnold, Gary Berger, Debbie Brink, Melody Claridge, Cheryl Corey, Nickie Day, Ben Douglas, Diadra Florence, Johnny Marie Floyd, Matt Gayle, Suzi Hendrix, Darla Jackson, Debra Jenkins, Rhonda Langley, Jamie Lane, Durrel Lattimore, Renee Montgomery, Whitney Mosby, Lacey Plaudis, Tracy Sanders, Mackenzie Scheer, Mark Schneidewent, Laura Stone, Margaret Travis, Krystal Willis, Laura Willis, Jennifer Wynne & Roberta Yarbrough

Oklahoma Bar Association 405-416-7000  
Toll Free 800-522-8065  
FAX 405-416-7001

Continuing Legal Education 405-416-7029  
Ethics Counsel 405-416-7055  
General Counsel 405-416-7007  
Lawyers Helping Lawyers 800-364-7886  
Mgmt. Assistance Program 405-416-7008  
Mandatory CLE 405-416-7009  
Board of Bar Examiners 405-416-7075  
Oklahoma Bar Foundation 405-416-7070

**[www.okbar.org](http://www.okbar.org)**

# THE OKLAHOMA BAR Journal

Volume 88 – No. 33 – 12/16/2017

## JOURNAL STAFF

JOHN MORRIS WILLIAMS  
Editor-in-Chief  
[johnw@okbar.org](mailto:johnw@okbar.org)

CAROL A. MANNING, Editor  
[carolm@okbar.org](mailto:carolm@okbar.org)

MACKENZIE SCHEER  
Advertising Manager  
[advertising@okbar.org](mailto:advertising@okbar.org)

LACEY PLAUDIS  
Communications Specialist  
[lanceyp@okbar.org](mailto:lanceyp@okbar.org)

LAURA STONE  
Communications Specialist  
[lauras@okbar.org](mailto:lauras@okbar.org)



## OFFICERS & BOARD OF GOVERNORS

LINDA S. THOMAS, President, Bartlesville;  
JENNIFER CASTILLO, Vice President, Oklahoma City;  
KIMBERLY HAYS, President-Elect, Tulsa; GARVIN A. ISAACS, Immediate Past President, Oklahoma City; JOHN W. COYLE III, Oklahoma City; MARK E. FIELDS, McAlester; JAMES R. GOTWALS, Tulsa; KALEB K. HENNIGH, Enid; JAMES R. HICKS, Tulsa; ALISSA HUTTER, Norman; JAMES L. KEE, Duncan; JIMMY D. OLIVER, Stillwater; SONJA R. PORTER, Oklahoma City; ROY D. TUCKER, Muskogee; JOHN M. WEEDN, Miami; BRYON J. WILL, Yukon; LANE R. NEAL, Oklahoma City, Chairperson, OBA Young Lawyers Division

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

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

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

## BOARD OF EDITORS

MELISSA DELACERDA  
Stillwater, Chair

LUKE ADAMS, Clinton

RENÉE DEMOSS, Tulsa

PATRICIA A. FLANAGAN  
Yukon

AMANDA GRANT, Spiro

C. SCOTT JONES,  
Oklahoma City

ERIN MEANS, Moore

SHANNON L. PRESCOTT  
Okmulgee

MARK RAMSEY, Claremore

LESLIE TAYLOR, Ada





### A Lawyer's Duty to Self-Report Disciplinary Misconduct Under Oklahoma's Rules Governing Disciplinary Proceedings 7.7(a)

By Jason B. Supplee

**I**magine you've been practicing law for a number of years in state (state B), perhaps occasionally taking a case in Oklahoma (state A). You've managed to keep your state A license in good standing with no disciplinary complaints ever filed against you. Currently, you're the prosecutor in a capital murder trial in state B and the court wants to appoint a confidential intermediary (CI) to the defense in order to assist with mitigation evidence should the defendant be found guilty during the penalty phase of the trial.

You have a number of conversations with the CI that encompass confidential information about the defendant, but you don't initially disclose this to your co-counsel or the court because you believe you don't have an obligation to disclose such information. The defense attorney knows of only one conversation you had with the CI. Later, when the defense files a motion to recuse you from the trial, you sign and file a motion in response mentioning only the one conversation you had with the CI.

Next, the court orders an investigation into your conversations with the CI after the trial has convened and determines you have violated state B's lawyer ethics rules by issuing a final order to that account. Now that you face disciplinary action in state B, must you also disclose this information by reporting it to state A? And if so, when, to whom and by what means should the disclosure be made?

Alternatively, what if you are practicing law in the courts of the United States and receive a disciplinary sanction for lawyer misconduct? Do you still have a duty to self-report your lawyer misconduct to state A?<sup>1</sup>

#### THEME

The central theme for this article is Oklahoma's Rules Governing Disciplinary Proceedings (RGDP) 7.7(a), which revolves around lawyer misconduct received in other jurisdictions and the duty to self-report. This article takes a deeper look into a rule that is not tested on the bar exam, yet looms over every Oklahoma licensed attorney (reciprocity or not), and also has a time frame for compliance. If the time frame is not followed, it's possible further discipline could be imposed on top of what is to be administered ... thus, turning a bad situation worse.

## ISSUE

The issue here is whether under Oklahoma law an Oklahoma licensed attorney also licensed and practicing law in another state or in the courts of the United States has a duty to report his or her violations of lawyer misconduct in a timely manner as adjudicated under a final order in another jurisdiction to the Oklahoma Supreme Court.

## RULE

The short answer is yes. Under Oklahoma law, Rule 7.7(a) of the Rules Governing Disciplinary Proceedings states that, "It is the duty of a lawyer licensed in Oklahoma to notify the General Counsel whenever discipline for lawyer misconduct has been imposed upon him/her in another jurisdiction, within twenty (20) days of the final order of discipline, and failure to report shall itself be grounds for discipline."<sup>2</sup> This is not a new rule. It was adopted Feb. 23, 1981, and took effect July 1, 1981.<sup>3</sup>

## DISCUSSION

First, the Oklahoma Rules Governing Disciplinary Proceedings are the rules that apply procedurally when you, as a lawyer, have a grievance filed against you or have been found to have violated the Oklahoma Rules of Professional Conduct (ORPC).<sup>4</sup> They also cover proceedings for the unauthorized practice of law.<sup>5</sup> Discipline can range from disbarment, public censure and private reprimand, to suspensions and deferments depending on the severity of the misconduct.<sup>6</sup> The Oklahoma Supreme Court determines the severity of the discipline.<sup>7</sup> Your case may pass through an investigation at the Oklahoma Bar Association Office of the General Counsel and a hearing may be scheduled with the Professional Responsibility Tribunal (PRT). This begs the question, "Do I have a duty to abide by the Oklahoma RGDP when I am practicing law in state B or the federal courts?" Yes, a lawyer has a duty to abide by the RGDP while practicing in state B and the federal courts.<sup>8</sup> This is because the RGDP is implicated by a lawyer's violation of the ORPC.<sup>9</sup>

ORPC 8.5(a) tells us, "A lawyer admitted to practice in this jurisdiction is subject to the dis-

ciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs ... A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct."<sup>10</sup> This means that while you're covered under attorney ethics rules of state B, you are also held accountable under state A's (Oklahoma's) ethics rules.

The comments to ORPC 8.5 are persuasive. Comment 1 states, "Reciprocal enforcement of a jurisdiction's disciplinary findings and sanctions will further advance the purposes of this Rule."<sup>11</sup> Comment 2 goes on to say, "A lawyer may be potentially subject to more than one set of rules of professional conduct ... The lawyer may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to practice before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice."<sup>12</sup>

**“First, the Oklahoma Rules Governing Disciplinary Proceedings are the rules that apply procedurally when you, as a lawyer, have a grievance filed against you...”**

RGDP 1.3 tells us that a "conviction in a criminal proceeding is not a condition precedent to the imposition of discipline."<sup>13</sup> In fact, any act that could bring discredit upon the legal profession is grounds for disciplinary action.<sup>14</sup> RGDP 1.5 gives us the adoption by the Oklahoma Supreme Court of the Oklahoma Rules of Professional Conduct as the standard of professional conduct for its lawyers set on Feb. 23, 1981, effective as of July 1, 1981.<sup>15</sup>

## OTHER JURISDICTIONS

Next, let's examine how a few states address the duty to self-report under their rules.

The Washington State Bar Association says, "When a lawyer is convicted of a felony, the lawyer must report the conviction to disciplinary counsel within 30 days of the conviction as defined by this rule."<sup>16</sup>

The South Carolina Bar says, "A lawyer who is arrested for or has been charged by way of indictment, information or complaint with a serious crime shall inform the Commission on Lawyer Conduct in writing within fifteen [15] days of being arrested or being charged by way of indictment, information or complaint."<sup>17</sup> It goes on to say, "A lawyer who is disciplined or

transferred to incapacity inactive status in another jurisdiction shall inform the Commission on Lawyer Conduct in writing within fifteen [15] days of discipline or transfer.”<sup>18</sup> Comment 1 to 8.3 specifically says, “Any lawyer admitted to practice in South Carolina has a duty to self-report under paragraphs (a) and (b).”<sup>19</sup>

The Virginia State Bar says,

A lawyer shall inform the Virginia State Bar if:

(1) the lawyer has been disciplined by a state or federal disciplinary authority, agency or court in any state, U.S. territory, or the District of Columbia, for a violation of rules of professional conduct in that jurisdiction;

(2) the lawyer has been convicted of a felony in a state, U.S. territory, District of Columbia, or federal court;

(3) the lawyer has been convicted of either a crime involving theft, fraud, extortion, bribery or perjury, or an attempt, solicitation or conspiracy to commit any of the foregoing offenses, in a state, U.S. territory, District of Columbia, or federal court.

The reporting required by paragraph (e) of this Rule shall be made in writing to the Clerk of the Disciplinary System of the Virginia State Bar not later than 60 days following entry of any final order or judgment of conviction or discipline.<sup>20</sup>

Comment 6 to the Virginia Rules of Professional Conduct 8.3(e) tells us that the duty to self-report a criminal conviction or professional discipline ... is triggered only after the conviction or decision has become final.<sup>21</sup> Looking at the committee commentary to this rule, you will read that the unnumbered paragraph placed immediately after 8.3(e) tells us the duty is satisfied by “reporting in writing to the Clerk of the Disciplinary System of the Virginia State Bar not later than 60 days following entry of any final order or judgment of conviction or discipline.”<sup>22</sup>

The State Bar of Georgia says its members shall report within 60 days to the State Bar of Georgia [a conviction of] any felony or “... misdemeanor involving moral turpitude where the underlying conduct relates to the lawyer’s fitness to practice law; or the imposition of discipline by any jurisdiction other than the Supreme

Court of Georgia.”<sup>23</sup> “The maximum penalty for violating the rule is a public reprimand.”<sup>24</sup>

The Massachusetts Bar Association says a lawyer’s duty to self-report his or her conviction of a crime is contained in Supreme Judicial Court Rule 4:01 12(8). It states, “Within ten [10] days of a lawyer’s conviction of a crime, as defined in subsection 12(1) of this rule, the lawyer shall notify the Bar Counsel of the conviction.”<sup>25</sup> Under Rule 12(1), a “conviction” is defined as follows and therefore is not limited to felonies: “the term ‘conviction’ shall include any guilty verdict or finding of guilt and any admission to or finding of sufficient facts and any plea of guilty or nolo contendere which has been accepted by the court, whether or not sentence has been imposed.”<sup>26</sup>

The Colorado Bar Association says,

Every attorney subject to these Rules, upon being convicted of a crime, except those misdemeanor traffic offenses or traffic ordinance violations, not including the use of alcohol or drugs, shall notify the Regulation Counsel in writing of such conviction within 14 days after the date of the conviction. In addition, the clerk of any court in this state in which the conviction was entered shall transmit to the Regulation Counsel within 14 days after the date of the conviction a certificate thereof.<sup>27</sup>

It’s worth noting that Colorado has developed a multitude of case law under this rule and it is worth exploring if you are considering being licensed there. One particular case not explored here, but related to an Oklahoma licensed attorney, also licensed as a CPA in three other states, is that of *State ex rel. Oklahoma Bar Association v. Auer*.<sup>28</sup>

## OKLAHOMA

In *State ex rel. Okla. Bar Ass’n v. Wintory*, the respondent promptly notified the Oklahoma Bar Association of his final judgment by telephone within the 20 day timeframe.<sup>29</sup> Furthermore, the court has provided us with guidance to this method of response. The “Court has previously stated that although Rule 7.7(a) does not require any particular mechanism for conveying the information, the better practice is to inform the General Counsel in writing of discipline by another jurisdiction.”<sup>30</sup>

Finally, in *State ex rel. Okla. Bar Ass’n v. Patterson*, the respondent was continuing to practice law under an order of suspension while

disbarred by the United States Court of Appeals for the 10th Circuit.<sup>31</sup> However, to his credit, the Professional Responsibility Tribunal concluded that “there was ‘sufficient confusion surrounding the original suspension order giving rise to the subsequent disbarment order’ that respondent’s degree of culpability for his disbarment was difficult to assess.”<sup>32</sup> Moreover, Patterson claims he was “unaware of his notification obligation.”<sup>33</sup> Sadly, he not only did not report his disciplinary sanction by the 10th Circuit in 1994 to the Oklahoma Bar Association, but he also did not report his disbarment in 1998, which caused grounds for further discipline.<sup>34</sup>

Justice Opala, who wrote the dissent to *Patterson’s per curiam* decision, did not agree with the majority’s “lenient” decision in handing down only a public censure.<sup>35</sup> Instead, he believed Patterson should be suspended for two years and one day.<sup>36</sup> Furthermore, he stated that, “Ignorance of a disciplinary rule is not a complete defense to a lawyer’s failure to comply with that rule, but where there is an absence of a deceitful motive, it may be considered as a mitigating factor.”<sup>37</sup> The mitigating factor here was that the respondent did not reply to the 10th Circuit’s show-cause order because of his stated overwhelming work load due to his partner’s illness.<sup>38</sup> In the end, Patterson was given a public censure.<sup>39</sup>

## CONCLUSION

In closing, while jurisdictions may vary, a lawyer is required to self-report lawyer misconduct under Oklahoma’s RGDP 7.7(a). It requires an Oklahoma licensed attorney to self-report his or her lawyer misconduct, preferably in writing, within 20 days to the Office of the General Counsel at the Oklahoma Bar Association, including any lawyer misconduct that has been adjudicated against him or her in a final order or disposition from other jurisdictions. While following this rule may not diminish any disciplinary sanction(s) being decided against a lawyer, abiding by it will certainly not give reason to aggravate. The best practice is to know the rules in advance.

1. The above scenarios are representative of the cases of the *State of Oklahoma ex rel., Okla. Bar Ass’n v. Wintory*, 2015 OK 25, 350 P.3d 131 (2015); and *State of Oklahoma ex rel., Okla. Bar Ass’n v. Patterson*, 2001 OK 51, 28 P.3d 551 (2001) (*per curiam*), 72 OBJ 1921.

2. Rule 7.7(a), RGDP, 5 O.S. 2011, Ch. 1, App. 1-A. It is the duty of a lawyer licensed in Oklahoma to notify the General Counsel whenever discipline for lawyer misconduct has been imposed upon him/her in another jurisdiction, within twenty (20) days of the final order of discipline, and failure to report shall itself be grounds for discipline.

3. *Id.*

4. Rule 1.1, RGDP, 5 O.S. 2011, Ch. 1, App. 1-A. This Court declares that it possesses original and exclusive jurisdiction in all matters involving admission of persons to practice law in this State, and to discipline for cause, any and all persons licensed to practice law in Oklahoma, hereinafter referred to as lawyers, and any other persons, corporations, partnerships, or any other entities (hereinafter collectively referred to as “persons”) engaged in the unauthorized practice of law. This Court further declares that a member of the Bar of this State may not take unto himself any office or position or shroud himself in any official title which will place him beyond the power of this Court to keep its roster of attorneys clean. In the exercise of the foregoing jurisdiction, this Court adopts and promulgates the following rules which shall govern disciplinary and unauthorized practice of law proceedings.

5. *Id.*

6. Rule 1.7, RGDP, 5 O.S. 2011, Ch. 1, App. 1-A. Discipline by the Court shall be disbarment, suspension of a respondent from the practice of law for a definite term or until the further order of the Court, public censure or private reprimand; the Court may, in its discretion, suspend or defer the imposition of discipline subject to the fulfillment of specified conditions by the respondent. This does not preclude the Professional Responsibility Commission from administering a private reprimand to a respondent as provided elsewhere. In fashioning the degree of discipline to be imposed for misconduct, the Professional Responsibility Tribunal and the Court shall consider prior misconduct where the facts are charged in the complaint and proved and the accused has been afforded an opportunity to rebut such charges.

7. *Id.*

8. See ORPC 8.5(a). Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer’s conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal service in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

9. See also, RGDP 1.3, 1.5. RGDP 1.3: The commission by any lawyer of any act contrary to prescribed standards of conduct, whether in the course of his professional capacity, or otherwise, which act would reasonably be found to bring discredit upon the legal profession, shall be grounds for disciplinary action, whether or not the act is a felony or misdemeanor, or a crime at all. Conviction in a criminal proceeding is not a condition precedent to the imposition of discipline. RGDP 1.5: This Court has adopted the Oklahoma Rules of Professional Conduct, adopted by American Bar Association, acting through its House of Delegates on August 2, 1983, and adopted by the House of Delegates of the Oklahoma Bar Association on November 21, 1986, as subsequently modified by this Court, and as it may hereafter be modified by this Court, as the standard of professional conduct of all lawyers. Any lawyer violating these Rules of Professional Conduct shall be subject to discipline, as herein provided.

10. Rule 8.5(a), ORPC, 5 O.S. 2008, Ch. 1, App. 3-A. (a) Disciplinary Authority. A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer’s conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal service in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct.

11. Rule 8.5(a), ORPC, 5 O.S. 2008, Ch. 1, App. 3-A. cmt. 1 “It is longstanding law that the conduct of a lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction. Extension of the disciplinary authority of this jurisdiction to other lawyers who provide or offer to provide legal services in this jurisdiction is for the protection of the citizens of this jurisdiction. Reciprocal enforcement of a jurisdiction’s disciplinary findings and sanctions will further advance the purposes of this Rule. See, Rules 6 and 22, ABA Model Rules for Lawyer Disciplinary Enforcement. A lawyer who is subject to the disciplinary authority of this jurisdiction under Rule 8.5(a) appoints an official to be designated by this Court to receive service of process in this jurisdiction. The fact that the lawyer is subject to the disciplinary authority of this jurisdiction may be a factor in determining whether personal jurisdiction may be asserted over the lawyer for civil matters.”

12. Rule 8.5(a), ORPC. cmt. 2 “A lawyer may be potentially subject to more than one set of rules of professional conduct which impose different obligations. The lawyer may be licensed to practice in more than one jurisdiction with differing rules, or may be admitted to practice before a particular court with rules that differ from those of the jurisdiction or jurisdictions in which the lawyer is licensed to practice.



Additionally, the lawyer's conduct may involve significant contacts with more than one jurisdiction."

13. Rule 1.3, RGDP, 5 O.S. 2011, Ch. 1, App. 1-A. The commission by any lawyer of any act contrary to prescribed standards of conduct, whether in the course of his professional capacity, or otherwise, which act would reasonably be found to bring discredit upon the legal profession, shall be grounds for disciplinary action, whether or not the act is a felony or misdemeanor, or a crime at all. Conviction in a criminal proceeding is not a condition precedent to the imposition of discipline.

14. *Id.*

15. Rule 1.5, RGDP, 5 O.S. 2011, Ch. 1, App. 1-A. This Court has adopted the Oklahoma Rules of Professional Conduct, adopted by American Bar Association, acting through its House of Delegates on August 2, 1983, and adopted by the House of Delegates of the Oklahoma Bar Association on November 21, 1986, as subsequently modified by this Court, and as it may hereafter be modified by this Court, as the standard of professional conduct of all lawyers. Any lawyer violating these Rules of Professional Conduct shall be subject to discipline, as herein provided. Adopted by orders February 23, 1981; eff. July 1, 1981; Amended by order of March 2, 1992.

16. Washington State Court Rules: Rules for Enforcement of Lawyer Conduct (ELC) 7.1(2) (b). Reporting of Conviction. When a lawyer is convicted of a felony, the lawyer must report the conviction to disciplinary counsel within 30 days of the conviction as defined by this rule.

17. South Carolina Rules of Professional Conduct (RPC) 8.3(a) Reporting Professional Misconduct, Rule 407, SCACR. A lawyer who is arrested for or has been charged by way of indictment, information or complaint with a serious crime shall inform the Commission on Lawyer Conduct in writing within fifteen days of being arrested or being charged by way of indictment, information or complaint.

18. *Id.* at 8.3(b). A lawyer who is disciplined or transferred to incapacity inactive status in another jurisdiction shall inform the Commission on Lawyer Conduct in writing within fifteen days of discipline or transfer.

19. RPC, 8.3, Reporting Professional Misconduct, Rule 407, SCACR, cmt. 1. "Any lawyer admitted to practice in South Carolina has a duty to self-report under paragraphs (a) and (b). The disciplinary procedures for handling matters giving rise to mandatory self-reports are set forth in Rules 17 and 29, RLDE, Rule 413, SCACR."

20. Virginia Rules of Professional Conduct, Rule 8.3(e) (1) (2) (3).

21. VRPC, Rule 8.3(e), cmt. 6. "The duty of a lawyer to self-report a criminal conviction or professional discipline under paragraph (e) of this rule is triggered only after the conviction or decision has become final. Whether an offense is a felony shall be governed by the state, U.S. territory, District of Columbia or federal law under which the conviction is obtained. Thus, it is possible that an offense in another jurisdiction may be a misdemeanor crime for which there is no duty to self-report, even though under Virginia law the offense is a felony."

22. VRPC, Rule 8.3, *See Comm. Commentary*. "The amendments effective February 1, 2016, added the unnumbered paragraph immediately following 8.3(e) (3)."

23. Georgia Rules of Professional Conduct and Enforcement Thereof, Rule 9.1(a) Reporting Requirements. Members of the State Bar of Georgia shall, within sixty days, notify the State Bar of Georgia of:

1. being admitted to the practice of law in another jurisdiction and the dates of admission;
2. being convicted of any felony or of a misdemeanor involving moral turpitude where the underlying conduct relates to the lawyer's fitness to practice law; or
3. the imposition of discipline by any jurisdiction other than the Supreme Court of Georgia

24. *Id.*

25. Massachusetts Supreme Judicial Court Rule (SJC) 4:01 12(8). Within ten days of a lawyer's conviction of a crime, as defined in sub-

section 12(1) of this rule, the lawyer shall notify the bar counsel of the conviction.

26. SJC 4:01 12(1). The term "conviction" shall include any guilty verdict or finding of guilt and any admission to or finding of sufficient facts and any plea of guilty or nolo contendere which has been accepted by the court, whether or not sentence has been imposed.

27. Colorado Rules of Civil Procedure (C.R.C.P.) 251.20(b) (2016). Every attorney subject to these Rules, upon being convicted of a crime, except those misdemeanor traffic offenses or traffic ordinance violations, not including the use of alcohol or drugs, shall notify the Regulation Counsel in writing of such conviction within 14 days after the date of the conviction. In addition, the clerk of any court in this state in which the conviction was entered shall transmit to the Regulation Counsel within 14 days after the date of the conviction a certificate thereof.

28. 2016 OK 75, 376 P.3d 243 (2016).

29. *State ex rel. Okla. Bar Ass'n v. Wintory*, 2015 OK 25, n.4, 350 P.3d 131, 138 n.4 (2015).

30. *State ex rel. Okla. Bar Ass'n v. Stewart*, 2003 OK 13, ¶16, 71 P.3d 1 (2003).

31. *State ex rel. Okla. Bar Ass'n v. Patterson*, 2001 OK 51, ¶2, 28 P.3d at 553 (2001) (per curiam).

32. *Id.* at ¶4.

33. *Id.* at ¶13.

34. *Id.*

35. *State ex rel. Okla. Bar Ass'n v. Patterson*, 2001 OK 51, ¶36-1, 28 P.3d 551, 561 (2001) (Opala, J., dissenting in part). "I concur in visiting discipline on the respondent, but dissent from the lenient sanction imposed, which is disproportionate to the gravity of the misconduct underlying his earlier disbarment by the United States Court of Appeals for the 10th Circuit (10th Circuit). It also ignores respondent's failure to give a clear and comprehensible exculpatory account of that conduct. I would instead suspend respondent's legal license for a period of two years and one day."

36. *Id.*

37. *Patterson*, 2001 OK 51, ¶36-3, 28 P.3d 551, 562 (2001) (Opala, J., dissenting in part).

38. *Patterson* at ¶23, 28 P.3d at 558. "Respondent attributes his non-compliance with the show-cause order to the overwhelming work load that his partner's illness shifted to him."

39. *Patterson* at ¶34, 28 P.3d at 561.

## ABOUT THE AUTHOR



Jason B. Supplee received his J.D. from the OCU School of Law. He is licensed in Oklahoma and Texas and is an assistant district attorney in Nueces County (Corpus Christi, Texas). Mr. Supplee clerked in the Office of the General Counsel at the Oklahoma Bar Association during his 3L year and had the privilege of learning about many of the ethical issues facing Oklahoma lawyers and the grievance process put in place to resolve them.



# Ethics

## & PROFESSIONAL RESPONSIBILITY

### Inside a Counseling Session

*By Travis Pickens*

**T**he day will come when using a mental health counselor is as commonplace as using a medical physician. Once it has, we will look back upon the past reluctance to get help as a sort of dark age, fostered by pride, fear, or worse, ignorance, especially embarrassing for a learned profession. We are moving toward that day, but anxieties remain regarding confidentiality, expense and the process itself.

The Lawyers Helping Lawyers (LHL) program has many benefits, *e.g.* information, peer support and counseling. This article is written to illustrate a counseling session. Each year, six sessions with a mental health counselor are provided to OBA members as a member benefit. The sessions are privileged and confidential and are not reportable to the General Counsel's Office, unless the visiting lawyer decides to waive that confidentiality. The benefit is part of our dues, so there is no additional charge.

#### **MAKING AN APPOINTMENT**

You will make an appointment by calling the LHL phone number 800-364-7886 and booking a time that is convenient for you, just as if you are seeing a physician. The LHL staff is careful not to book you before or after another attorney so there will be no surprises when you are in the waiting room, or on your way in or out. Generally, you will not have to wait for your appointment as they are in 50-minute increments and the counselor is careful to make sure appointment times are honored, with enough time for the office to clear before you arrive.

The counselor will likely be either a licensed professional counselor (LPC) or a licensed clinical social worker (LCSW). Licensed alcohol and drug counselors (LADC) are also available as needed and appropriate. OneLife is the employee assistance program that provides the confidential counseling services for the OBA and facilitates referrals through Lawyers Helping Lawyers. OneLife is located in Oklahoma City and has licensed therapists across the state who contract to provide counseling, including Deanna Harris, who serves as the liaison between OneLife and the OBA.

#### **AT THE APPOINTMENT**

At your appointment, you will meet the counselor and he or she will explain the intake paperwork, which includes your contact information, chief concern(s), some background information, the privacy policy and the counselor's disclosures which include his or her credentials.

The counseling session takes place in a small office with the door closed and no interruptions. It is client-centered and designed to address what you are wrestling with and to

provide feedback for that specific issue, based upon the counselor's education, training and experience. It is not heavy psycho-analysis. In other words, it is generally "therapy – lite," that is directed by your concerns, unless more is necessary as determined by you and the therapist.

For example, your concern may be one very common among lawyers, that of "replaying" events or concerns over in your mind (e.g., a bad experience with a case or client, domestic arguments, career regrets), ruminating on them to such a degree that it interferes with your day-to-day work or relationships in the present.

Because of training and experience, the counselor would be able to tell you that obsessing over the past is indeed a common issue for lawyers, since many of us have perfectionist tendencies (and are fiduciaries with the highest responsibilities, bound by the Rules of Professional Conduct). And, while attorneys are comfortable providing the solutions to the problems of clients, we are not as adept at dealing with our own, so there is often a level of denial that must be overcome.

In this example, your counselor might discuss the commonplace nature of this tendency in our profession and suggest reframing negative experiences in such a way that they contribute to meaningful learning experiences, and allow them to be put into a larger perspective. The counselor would also likely provide you concrete self-help tools to assess and check yourself for this tendency, and to deal with it more effectively. Your counselor may suggest helpful internet articles or books. This guidance is not only based on the education and training of the counselor, but that counselor's extensive experience with our profession. The counselor is not a physician and cannot prescribe medication, but may recognize the need for deeper work and recommend either a psychologist or psychiatrist in some circumstances.

#### AFTER THE APPOINTMENT

There is no invoice or other confirmation of the visit sent to you. There are no reminders, survey cards or emails. Unless you choose to tell others, there is no disclosure of your visit, except the counselor keeps track of the number and types of visits for accountability purposes.

## Lawyers Helping Lawyers Free 24-hour Confidential Assistance

- Depression/Anxiety
- Substance Abuse
- Stress
- Relationship Challenges
- Support Groups
- Mentoring/Peer Support

**Call 800-364-7886**

Your name is never disclosed by the therapist unless you consent.

There is nothing that should worry you about using this benefit, and there is so much to gain and learn about yourself. The rich irony is that we, the counselors of the law, often spurn the counselors of the mind. We routinely update our computer software; wouldn't it be a good idea to update our mental "software"? And, why do we often listen to our well-meaning but untrained friends or family (or worse, no one) on these matters when an educated professional, experienced in the unique and not so unique issues of lawyers, is offered to us at no charge?

Every one of us is somewhere on a continuum of mental and emotional health, and every one of us would benefit from counseling, especially when the issues begin to interfere with practices and lives. For some, this service can mean salvation. The only thing indispensable to a lawyer is a clear mind.

#### ABOUT THE AUTHOR



Travis Pickens is a lawyer in private practice in Oklahoma City. He served as OBA ethics counsel from August 2009 – January 2015. He has served as co-chair of the OBA Work/Life Balance Committee and as vice-chair of the Lawyers Helping Lawyers Assistance Program Committee. He is a 1984 graduate of the OU College of Law.



# Miller | Dollarhide

attorneys at law



Charles Alden, Amy Alden, and Jack Dawson

## • The Law of Lawyering •

Miller Dollarhide has been at the forefront of law practice in Oklahoma since 1910. Jack, Amy and Charles are each AV-rated lawyers in Martindale Hubbell. With a combined experience of more than 100 years, the attorneys of Miller Dollarhide are recognized, principled counsel prosecuting and defending lawyers in cases ranging from legal malpractice, to ethical matters, to attorney fee disputes, to firm dissolutions and more.

*Miller Dollarhide, lawyers for lawyers.*

309 NW 9th Street, Oklahoma City • (405) 236 - 8541 • [millerdollarhide.com](http://millerdollarhide.com)



## Indirect Contempt – A Primer

By Mark B. Houts

*Hatred is an affair of the heart; contempt that of the head.*

*Arthur Schopenhauer*

Most litigators know the feeling. A client pays a respectable sum of money for your advice, and you give it. You tell the client what to do or not to do, but they don't always listen. The client's failure to heed the lawyer's advice is particularly problematic when the advice involves a court order. In that instance, the client may face sanctions or, in serious cases, an indirect contempt citation. This article will set forth the basic law relating to indirect civil contempt.

Indirect civil contempt procedure may be invoked for two purposes, "remedial to coerce the defendant's behavior, or ... penal to punish the defendant for disobedient or disorderly behavior."<sup>1</sup> Although this article will focus primarily on the penal/punitive purpose for indirect contempt procedure, this article will also give limited discussion regarding remedial contempt and the distinctions between these two purposes.

### STANDARD

The Oklahoma Supreme Court has established the elements of indirect contempt. "To support a judgment of indirect contempt, 21 Okla. Stat. §565 requires proof of willful disobedience of or resistance to process or lawful order of the court."<sup>2</sup> Under longstanding Oklahoma law, indirect contempt must be proven beyond a reasonable doubt, and the Oklahoma Supreme Court will reverse a lower court that applies the wrong standard.<sup>3</sup> In *Henry v. Schmidt*, the court reversed the indirect contempt citation issued against the defendant and discussed the distinction between remedi-

al and penal contempt. "The trial court was authorized to impose remedial or coercive sanctions with the right to purge based on a clear-and-convincing standard. Because penal sanctions were imposed, the burden of persuasion standard was proof beyond a reasonable doubt."<sup>4</sup> In cases of penal contempt, the accused must be afforded a trial by jury. The court in *Henry v. Schmidt* reversed the trial court's contempt citation for its failure to apply "a clear-and-convincing evidence standard rather than beyond a reasonable doubt" and for other reasons.<sup>5</sup> Thus, application of the correct legal standard is critical when a citation for indirect contempt is issued for purposes of punishment.

### PROCEDURAL CONCERNS

The district court must also follow very strict procedures when issuing a punitive contempt citation. A defendant facing punitive indirect contempt "is entitled to the constitutional protections afforded in criminal proceedings."<sup>6</sup> Oklahoma law establishes the procedure for cases of indirect contempt.

[T]he procedure governing punishment for indirect contempt is quite detailed and offers more protection to the accused. Title 21 O.S.2001 §567 requires “the party charged with contempt shall be notified in writing of the accusation and have a reasonable time for defense; and ... shall, upon demand, have a trial by jury.” The section also directs the court to set an appearance bond and set the case for trial at the next jury term.<sup>7</sup>

In short, statutory procedures must be followed and constitutional due process must be afforded a party accused of indirect contempt.

### *Jury Trial*

The defendant in a punitive/penal contempt proceeding has a right to jury trial.<sup>8</sup> Upon demand, “the court shall ... set the case for trial at the next jury term of said court...”<sup>9</sup> The Oklahoma appellate courts have emphasized the importance of a jury trial in cases alleging punitive contempt. “When a person is charged with an indirect contempt and has demanded a jury trial, and such demand has been refused by the trial court, any order made by such trial court adjudging the accused guilty of contempt, or attempting to commit him to jail, or which imposes any other penalty, is void.”<sup>10</sup> While the accused may waive the right, any such waiver must appear clearly in the record.

In an indirect contempt proceeding with the imposition of penal sanctions, a defendant may waive his constitutional right to a jury trial only upon a clear showing that such waiver was competently, knowingly and intelligently given. A record showing an intelligent, competent and knowing waiver of a fundamental right is mandatory. Anything less is not a waiver.<sup>11</sup>

In short, because a penal contempt proceeding is very similar to a criminal proceeding, the accused must be afforded a jury trial upon demand.

### *Punitive Contempt Citation for Violation of Injunction*

Title 12 Okla. Stat. §1390 governs contempt citations for violation of injunctions.<sup>12</sup> Relying on §1390, the Oklahoma Supreme Court has established the procedure a lower court must follow before ordering confinement for violating an injunction.

[T]he court has authority under 12 O.S.1981, §1390 to do two things. First, it may require immediate restitution to the injured party;

and second, it may require further security to obey the injunction. Upon the failure to perform either of these acts, the trial court is authorized to do one of four things. First, it may commit the guilty party to close custody until he complies with the requirements; or second, it may impose a fine for the violation; or third, it may confine the guilty party in the county jail for no longer than six months; or, fourth it may impose both the fine and the incarceration.<sup>13</sup>

In that case, the lower court had enjoined the defendant/appellant “from open air storage of heavy equipment, inoperable vehicles, building materials, trash, tires, or debris on his residential property,” and he had been charged with violating that injunction.<sup>14</sup> A jury found him guilty, fined him \$200 and sentenced him to serve time in the county jail.<sup>15</sup> The issue in that case was whether the defendant should have been afforded “the opportunity to purge himself of contempt in lieu of incarceration.”<sup>16</sup> In considering the issue, the Supreme Court quoted §1390 as follows:

An injunction granted by a judge may be enforced as the act of the court. Disobedience of any injunction may be punished as a contempt, by the court or any judge who might have granted it in vacation. An attachment may be issued by the court or judge, upon being satisfied, by affidavit, of the breach of the injunction, against the party guilty of the same, who may be required to make immediate restitution to the party injured, and give further security to obey the injunction; or, in default thereof, he may be committed to close custody, until he shall fully comply with such requirements, or be otherwise legally discharged, or be punished by fine not exceeding Two Hundred Dollars (\$200.00) for each day of contempt, to be paid into the court fund, or by confinement in the county jail for not longer than six (6) months, or by both such fine and imprisonment. This act shall in no way alter the right to trial by jury.<sup>17</sup>

The court observed a distinction depending on the nature of the contempt prosecution. “Where the procedure is for the benefit of the litigant, the trial court must follow 12 O.S. 1981 §1390, but if a prosecution for contempt is to vindicate the honor and dignity of the court and to compel respect for its authority, it is criminal in nature and must be prosecuted in the name of the State of Oklahoma.”<sup>18</sup> The court



found that, because the statute provided another method for the city to enforce the injunction, "other steps must be taken" before the defendant could be incarcerated. Thus, the court reversed and remanded the case.

#### *Prosecution by State*

The state, not the opposing party or counsel, should prosecute a punitive contempt case.

If the procedure was to vindicate the honor and dignity of the court and to compel respect for its authority, it was criminal in its nature and could not be prosecuted in [the plaintiff's] name, but must have been prosecuted in the name of the state of Oklahoma ... [A judgment prosecuted by the civil plaintiff] is unauthorized and unwarranted in a proceeding instituted in the name of an individual.<sup>19</sup>

Essentially, a contempt citation initiated for punitive purposes is criminal in nature and should, therefore, be prosecuted by the state. "The reason for the rule is apparent. The accused is entitled to be informed of the nature of the charge against him and be able to determine whether it is a [criminal] charge or a civil proceeding."<sup>20</sup> Thus, when a civil litigant is charged with punitive contempt, the state, not the opposing party, must prosecute the action. The *Barbee* court discussed the proper procedure for prosecuting punitive indirect contempt actions.

No person shall be prosecuted criminally in courts of record for felony or misdemeanor otherwise than by presentment or indictment or by information. Misdemeanors must be prosecuted by information, except as otherwise provided by law. An information has certain formal requirements which must be met. The district attorney must subscribe his name to an information; names and addresses of witnesses must be endorsed thereon; and the information must be verified by oath of the prosecuting attorney, complainant or some other person.<sup>21</sup>

In short, Oklahoma constitutional, statutory and case law recognize the necessity that a punitive contempt accusation be prosecuted by the state, rather than an opposing party's attorney, and includes other safeguards for the accused.

#### *Order of Confinement*

By statute, an order of confinement for contempt must set forth the substance of the offense.<sup>22</sup> When the sentencing court fails to comply with this requirement, "the judgment, sentence and order of commitment are void."<sup>23</sup> The Oklahoma Supreme Court has long upheld this statutory requirement. As the court stated in *ex parte Hibler*, "[T]he order of confinement must set forth the facts constituting the contempt, and ... it is void unless it shows on its face facts sufficient to constitute a legal contempt; mere conclusions being insufficient."<sup>24</sup> The *Hibler* court reviewed a contempt order that merely adopted the allegations of the petition.<sup>25</sup> The court found such vague language insufficient, stating, "The record in this case shows no compliance with the provisions of [the statute], either in the order itself or in the records of the court."<sup>26</sup> Thus, the court found the order and record insufficient for confinement of the accused.<sup>27</sup>

Furthermore, Oklahoma statute requires that a criminal judgment contain certain information.<sup>28</sup> Because a punitive contempt citation is a type of criminal judgment, the written judgment of contempt should probably also comply with that statute.

In short, the criminal nature of a punitive contempt citation requires that the court issuing the citation follow very specific procedures. These procedures extend to the order of confinement, which should give very detailed information in order to be upheld on appeal.

#### *Purging the Offense*

In cases of remedial indirect contempt, the defendant must be afforded an opportunity to purge the offense. In *Davis v. Murphy*, the Oklahoma Supreme Court recognized that "a proceeding for indirect contempt is civil in nature and imprisonment thereby imposed is not in punishment for an offense, but is remedial in nature for the purpose of coercing a defendant to do the thing ordered done."<sup>29</sup> In that case, the district court had awarded custody of a minor child to the paternal grandmother, but the child's mother was granted care of the child for 75 consecutive days each year.<sup>30</sup> "The grandmother failed to deliver the child in compliance with the terms of the original order."<sup>31</sup> The grandmother was sentenced to one year in jail for her contempt of court "with the provision that [s]he might be released in the event she produced the child."<sup>32</sup> The grandmother appealed

that order.<sup>33</sup> The Supreme Court found the terms of the sentence were just, insofar as the sentence allowed the defendant “to avoid serving any of the term by producing the child for the court...”<sup>34</sup> The judgment was, therefore, affirmed.<sup>35</sup> In essence, the contempt citation was issued to coerce the grandmother to produce the child, per the terms of the previous order. Thus, by purging the offense, the grandmother was not subjected to any jail time, and “the judgment cannot be said to be excessive or unjust.”<sup>36</sup>

In short, when a contempt citation is issued for purposes of coercion, the defendant should be afforded an opportunity to purge the offense, thus minimizing the negative effect upon the defendant. When the contempt citation serves punitive/penal purposes, however, it “cannot be shortened by compliance or by a promise to comply with a court order.”<sup>37</sup> Thus, the sentence under a punitive contempt citation cannot be reduced or “purged” by compliance with the order.

## CONCLUSION

Indirect contempt may serve one of two purposes: punishment or coercion. If the citation is issued for purposes of punishment, the issuing court must follow very specific procedures. The action must be brought by the state and must be a separate action from the underlying civil case. The defendant must be afforded a jury trial. The defendant’s guilt must be proven beyond a reasonable doubt. The sentence or order of confinement must set forth very specific information. Failure to follow these requirements will result in reversal of the citation upon appeal.

1. *Henry v. Schmidt*, 2004 OK 34, ¶13, 91 P.3d 651, 654.

2. *In re J.H.*, 2008 OK 104, ¶16, 213 P.3d 545, 549.

3. *Henry v. Schmidt*, 2004 OK 34, ¶1, 91 P.3d 651, 652-53.

4. *Id.*

5. *Id.*

6. *Id.* at ¶21.

7. *In re J.H.*, 2008 OK 104, ¶16, 213 P.3d 545, 549.

8. 21 Okla. Stat. §567 (A). *See also* Okla. Const. art. II, §25.

9. 21 Okla. Stat. §567 (B).

10. *Blanchard v. Bryan*, 1921 OK 285, 83 Okla. 33, 200 P. 444 (syllabus by the court). *See also* *Blanton v. State*, 1925 OK CR 458, 239 P. 698 (syllabus by the court); *Henry v. Schmidt*, 2004 OK 34, n.37, 91 P.3d 651, 656.

11. *Henry v. Schmidt*, 2004 OK 34, ¶19, 91 P.3d 651, 655 (citations and internal quotation marks omitted).

12. *Phillips v. Hedges*, 2005 OK 77, ¶12, 124 P.3d 227, 231 (citing *King v. King*, 2005 OK 4, ¶22, 107 P.3d 570, 579) (“the statute enacted for the purpose of dealing with the [specific] subject matter controls over the general statute”).

13. *City of Lawton v. Barbee*, 1989 OK 147, 782 P.2d 927, 929-30.

14. *Id.* at ¶3.

15. *Id.* at ¶4.

16. *Id.* at ¶10.

17. *Id.* at ¶5.

18. *Id.* at ¶9.

19. *Ex parte Hibler*, 139 Okla. 157, 281 P. 144, 146 (1929) (emphasis added). *See also* *City of Lawton v. Barbee*, 1989 OK 147, 782 P.2d 927, 930.

20. *Morgan v. Nat’l Bank of Commerce of Shawnee*, 1923 OK 240, 90 Okla. 280, 217 P. 388, 391 *overruled on other grounds by* *Henry v. Schmidt*, 2004 OK 34, 91 P.3d 651 (citing *U.S. v. Cruikshank*, 92 U.S. 542, 559, 23 L. Ed. 588, 593).

21. *Barbee*, at ¶9, n. 1 (citations and internal indicators omitted).

22. 21 Okla. Stat. §568.

23. *Burris v. Hunt*, 1998 OK CIV APP 125, ¶5, 965 P.2d 1003, 1005 (citing *Hampton v. Hampton*, 1980 OK 46, ¶2, 609 P.2d 772, 773).

24. *Ex parte Hibler*, 1929 OK 401, 139 Okla. 157, 281 P. 144, 146.

25. *Id.*

26. *Id.*

27. *Id.* *See also* *Ex parte Dawes*, 1925 OK CR 451, 239 P. 689, 692 (1925); *Busby v. State ex rel. LaFon*, 1969 OK CR 13, 449 P.2d 718, 721.

28. In full, that statute provides:

A. When judgment upon a conviction is rendered, the clerk must enter the same upon the minutes, stating briefly the offense for which the conviction has been had, and must immediately annex together and file the following papers, which constitute a record of the action:

1. The indictment and a copy of the minutes of the plea or demurrer;
2. A copy of the minutes of the trial;
3. The charges given or refused, and the endorsements, if any, thereon; and
4. A copy of the judgment, which shall include a notation of the year of birth of the defendant and the last four digits of the Social Security number of the defendant. The judgment shall also contain the statutory reference to the felony crime the defendant was convicted of and the date of the offense.

B. The court shall obtain the year of birth of the defendant and the last four digits of the Social Security number of the defendant.

22 O.S. §977.

29. *Davis v. Murphy*, 1947 OK 354, 188 P.2d 229, 230-31 (syllabus by the court). *See also* *Henry v. Schmidt*, 2004 OK 34, ¶13, 91 P.3d 651, 656 (allowing imposition of “remedial or coercive sanctions with the right to purge”).

30. *Id.* ¶¶2-3.

31. *Id.* ¶4.

32. *Id.* ¶¶4-5.

33. *Id.*

34. *Id.* ¶12.

35. *Id.* ¶13.

36. *Id.* ¶12.

37. *Henry v. Schmidt*, 2004 OK 34, ¶13, 91 P.3d 651, 654.

## ABOUT THE AUTHOR



Mark B. Houts has represented both plaintiffs and defendants in a wide variety of civil litigation matters for more than a decade. He is presently the managing partner for Houts Law PLLC in Edmond. In law school, Mr. Houts served as articles editor for the *Oklahoma Law Review*. He has previously published works in the *Oklahoma Bar Journal* and the *Oklahoma City Law Review*.

# LAST CALL AT THE BAR FOR 2017



## VIDEO REPLAY LEGAL UPDATES 2017

**DECEMBER 28 & 29**  
**A 2-DAY PROGRAM**

OKLAHOMA BAR CENTER

**REGISTER TO ATTEND A REPLAY OF DAY 1 & DAY 2 OF 2017 LEGAL UPDATES  
FOR 12 HOURS OF “LIVE” MCLE CREDIT, INCLUDING 1 HOUR OF ETHICS.**

This two-day course has been approved by the Oklahoma Bar Association Mandatory Continuing Legal Education Commission for 12 hours of mandatory CLE Credit, including 1 hour of ethics. This course has also been approved for 5 hours of Texas mandatory credit, including 0.75 hours of ethics credit. For early-bird registrations received by December 21st, \$275; \$300 December 22 – 27th; Walk-ins \$325. No discounts. Register online at [www.okbar.org/members/CLE](http://www.okbar.org/members/CLE).



**FOR DETAILS AND TO REGISTER GO TO: [WWW.OKBAR.ORG/MEMBERS/CLE](http://WWW.OKBAR.ORG/MEMBERS/CLE)**

Stay up-to-date and follow us on







# Safeguarding Client Property and Confidentiality in the Digital World

*By Jason Christopher*

There is not a single practicing lawyer who is unaffected by the evolution of technology over the past 15 years. The use of smartphones has revolutionized the practice of law. Most lawyers have one – many lawyers spend most of the practicing day squinting at tiny screens. Lately it seems we see more of the tops of lawyers' heads in a courtroom than their eyes. Some are “conducting client research” on Facebook, some are battling level 458 of Candy Crush, but most are communicating with their offices, messaging clients, checking emails or reviewing relevant law. The smartphone is the new computer, and texting is the new phone call. While technology has fundamentally changed the manner in which we communicate with clients, the rules of ethics with respect to communication remain the same.

### THE EVOLUTION OF EVIDENCE

Every lawyer knows the cardinal rules of practice: don't steal client funds, don't violate confidentiality and be an advocate. Oklahoma Professional Rule 1.15 commands that we safeguard our client's money – placing retainers in the trust account and moving only what is earned. However, Rule 1.15 requires more from an attorney than simply safeguarding client funds – it also requires protecting the client's property, including evidence provided to the practitioner. With the advance of technology and the use of smartphones, the rule has become more problematic for attorneys who practice trial work, whether it be family, civil litigation or criminal defense.

For example, just a few years ago, divorce and child custody attorneys primarily relied upon testimony of witnesses to relay to the court their position of what was in the best interest of the children. Mothers and fathers would each tell the court about their own stellar parenting skills, testify about the outrageous conduct of the other parent and then the court would have to sort out the truth. Proceedings were heavy on hearsay and short on exhibits. Such is not the case anymore. Parents communicate almost exclusively via text message and, often against the advice of their attorney, video every interaction and record every phone call. This development has resulted in clients handing over more property to the attorney than ever before.

The new normal is that clients dump hundreds of pages of text messages, photographs and videos on their attorney by thumb drive, email and even via text. Attorneys must search for the case-winning needle in the electronic haystack. Legal counsel also must protect the data just as closely as one would a firearm or a stock certificate and also must provide the data to the client upon request.<sup>1</sup> To further complicate matters, those documents and files are often saved in an electronic format and stored on a server located in an office or in the cloud.

## PROTECTING ELECTRONIC CLIENT DATA

How does the practicing attorney properly safeguard the client's property in an electronic format? What about the recent news of weaponized ransomware and the nightmare scenario it poses for law firms? How many lawyers have "accidentally" clicked on a suspect link which infects the computer with some sort of virus. I have been guilty of a clicking error in the past by falling for the "I Love You" virus about 15 years ago in the Atoka County District Attorney's Office. The virus was embarrassing in that it emailed everyone in your address book an "I love you" message, but it was fairly benign as viruses go. Times have certainly changed. A simple click can expose your entire server to being hacked, controlled by malicious third-parties and held for ransom. A breach such as this, even the result of an illegal act, can expose the lawyer to discipline by the Oklahoma Bar Association, not to mention unhappy clients. Imagine the difficult conversation with a client whose sensitive information to which you have been entrusted is suddenly in the hands of a hacker from Russia. There is no adequate explanation available.

Rule 1.6 of the Oklahoma Rules of Professional Conduct sets forth the ethical requirement in this scenario, no matter what form the information takes. Lawyers must "act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the represen-

tation of the client or who are subject to the lawyer's supervision."<sup>2</sup>

At a minimum, this requires a firewall and updated security software for a practice. I, a partner in a small firm of four lawyers and six employees, enlisted the assistance of OBA Management Assistance Program Director Jim Calloway. Under his direction, a new firewall and an improved electronic back up schedule were implemented. The firm has wholeheartedly embraced Jim Calloway's exhortation to use the cloud. Finally, the firm has made every effort to counsel our staff and each other to think before clicking. If someone does not recognize a message, treat it with an abundance of caution

and either delete it or quarantine it. Another word about Jim Calloway – his technology blog is informative and easily accessible. Further, if you have a technical question not found in the blog, he is always eager to help.

## CONFIDENTIALITY OF ELECTRONIC DATA

Client confidentiality is equally paramount to safeguarding our client's property. Lawyers certainly know what can and cannot be repeated from a client, but electronic communication creates its own unique set of problems. It is easy to forget that the texts with your client are considered communications and are covered by Rule 1.6 and as such, require special protection. What if a lawyer allows someone to borrow his or her phone to make a call or to look at a photograph? How many privileged conversations are contained on your smartphone in text messages or emails from a client? If using iMessage, are those messages on multiple platforms, like an iPad or iMac? Can they end up on a family iPhone using the same Apple ID? What happens to those conversations when someone upgrades to the new iPhone X? Are they deleted forever when deleted or can they be retrieved? These are important questions to consider when communicating with clients. Ask electronic experts the right questions to ensure those client communications are as confidential as verbal ones.

Lawyers should set a unique password on smartphones and other electronic devices –

**“The new normal is that clients dump hundreds of pages of text messages, photographs and videos on their attorney by thumb drive, email and even via text.”**

better yet a thumbprint if offered as a protection option to unlock it. Lawyers who use social media to communicate with clients should keep account logins secure. Lawyers who use Dropbox or other file-sharing applications should follow the same protocol.

Also, there are other ethical concerns when communicating with the public on social media platforms. Lawyers must be careful with “cold calls” online such as strangers who seek legal advice by messenger and must advise them to call for an appointment at the office to run a proper conflict check, making it clear that talking to them via messenger does not constitute an attorney-client relationship. Finally, lawyers should be cautious about what they share on social media – never share any detail of a case which would identify a client or the case. Social media can be a wonderful marketing tool, but it can also pose a host of ethical problems.

## CONCLUSION

While the advance of technology creates new challenges for attorneys, adherence to old rules will continue to uphold the integrity of the profession. Client property and confidentiality

are still paramount. Attorneys should treat text messages like they would conversations, and private pictures and emails just as they would stock certificates and bank records. If it was important enough for the client to give to the lawyer, it is important enough to protect. Our clients expect it, and the law requires it.

1. *State ex rel. Oklahoma Bar Ass’n v. Chapman, Okla.*, 114 P.3d 414 (2005). See also *State ex rel. Oklahoma Bar Ass’n v. Landman, Okla.*, 784 P.2d 1064 (1989).

2. Rule 1.6 Oklahoma Rules of Professional Conduct.

## ABOUT THE AUTHOR



Jason Christopher is from Ada where he is a founding partner of Sweeney, Draper & Christopher. His primary areas of practice include criminal defense and civil litigation. He graduated from the OU College of Law in 1997. He is a former member of the OBA Evidence Code Committee, and a current associate bar examiner for ethics. He is an adjunct professor of criminal law at East Central University. He also serves as municipal judge in Tupelo and city attorney for Fitzhugh.



## ADVERTISE IN THE BAR JOURNAL

Making a big announcement, have an open position or renting office space? Reach more than 16,000 subscribers in the bar journal!

Classified ads start at just \$35. Color and monochrome ads are available in six sizes plus premium positions. Contact [advertising@okbar.org](mailto:advertising@okbar.org) for information.



## Ethics and Lawyer Well-Being

By Joseph Balkenbush

As 2017 comes to a close and we reflect on the year gone by, there is one major topic which immediately came to mind – lawyer well-being. Specifically, *your* well-being. Whether it is your well-being as a lawyer, mom or dad, husband or wife, son or daughter or friend, you must take the best care of yourself in order to be the best you can be in each of these “roles.” For most of us, all of the other roles in our lives are at least as important as being a lawyer.

The personal characteristics of honesty and integrity are essential to be an ethical lawyer. These same characteristics are inherent in being a good person as well. Being a lawyer is not easy. In fact, it is often very difficult. There are so many responsibilities and tasks that must be coordinated to keep all of the “balls” in the air, and that doesn’t take into account our responsibilities at home. We all *must* make time to ensure we are physically, mentally, emotionally and spiritually healthy. Often it is a seemingly insignificant occurrence that can send us to the place no one wants to go. Before we know it, we can go over the edge and spiral into destructive behaviors.

In 2016, the American Bar Association (ABA) Commission on Lawyer Assistance Programs and Hazelden Betty Ford Foundation published their study of nearly 13,000 currently practicing lawyers [the “Study”]. It found as follows that between 21 and 36 percent [of lawyers] qualify as problem drinkers, and that approximately 28 percent, 19 percent, and 23 percent are struggling with some level of depression, anxiety, and stress, respectively. The parade of difficulties

also includes suicide, social alienation, work addiction, sleep deprivation, job dissatisfaction, a “diversity crisis,” complaints of work-life conflict, incivility, a narrowing of values so that profit predominates and negative public perception. Notably, the Study found that younger lawyers in the first ten years of practice and those working in private firms experience the highest rates of problem drinking and depression. The budding impairment of many of the future generation of lawyers should be alarming to everyone. Too many face less productive, less satisfying, and more troubled career paths.

Additionally, 15 law schools and over 3,300 law students participated in the Survey of Law Student Well-Being, the results of which were released in 2016. It found that 17 percent experienced some level of depression, 14 percent experienced severe anxiety, 23 percent had mild or moderate anxiety, and six percent reported serious suicidal thoughts in the past year. As to alcohol use, 43 percent reported binge drinking at least once in the prior two weeks and nearly one-quarter (22 percent) reported binge-drinking



two or more times during that period. One-quarter fell into the category of being at risk for alcoholism for which further screening was recommended.

The results from both surveys signal an elevated risk in the legal community for mental health and substance use disorders tightly intertwined with an alcohol-based social culture. The analysis of the problem cannot end there, however. The studies reflect that the majority of lawyers and law students do not have a mental health or substance use disorder. But that does not mean that they're thriving. Many lawyers experience a "profound ambivalence" about their work, and different sectors of the profession vary in their levels of satisfaction and well-being.

Given this data, lawyer well-being issues can no longer be ignored. Acting for the benefit of lawyers who are functioning below their ability and for those suffering due to substance use and mental health disorders, the National Task Force on Lawyer Well-Being urges our profession's leaders to act.

We offer three reasons to take action: organizational effectiveness, ethical integrity, and humanitarian concerns:

**First**, lawyer well-being contributes to organizational success – in law firms, corporations, and government entities. If cognitive functioning is impaired as explained above, legal professionals will be unable to do their best work. For law firms and corporations, lawyer health is an important form of human capital that can provide a competitive advantage.

**Second**, lawyer well-being influences ethics and professionalism. Rule 1.1 of the ABA's Model Rules of Professional Conduct requires lawyers to "provide competent representation." Rule 1.3 requires diligence in client representation, and Rules 4.1 through 4.4 regulate working with people other than clients. Minimum competence is critical to protecting clients and allows lawyers to avoid discipline. But it will not enable them to live up to the aspirational goal articulated in the Preamble to the ABA's Model Rules of Professional Conduct, which calls lawyers to "strive to attain the highest level of skill, to improve the law and the legal profession and to exemplify the legal profession's ideals of public service."

**Third**, from a humanitarian perspective, promoting wellbeing is the right thing to do. Untreated mental health and substance use disorders ruin lives and careers. They affect too many of our colleagues. Though our profession prioritizes individualism and self-sufficiency, we all contribute to, and are affected by, the collective legal culture. Whether that culture is toxic or sustaining is up to us. Our interdependence creates a joint responsibility for solutions.<sup>1</sup>

If *anything* in the above excerpt from the article applies to you, if you are stressed out or overwhelmed, if you are depressed, anxious, suffering from addiction or are in need of help in any other way, the OBA provides you with a place to go for help. **YOU ARE NOT ALONE!**

The OBA Lawyers Helping Lawyers Assistance Program Committee (LHL) was created decades ago. There are literally hundreds of OBA members who volunteer their time to help other lawyers in need. LHL is not just for alcoholics or drug addicts. The committee also provides services to any OBA member who is experiencing mental, emotional, psychological and/or financial issues. As an OBA member benefit, the services provided are free. The contact number for LHL is 800-364-7886. Additional information regarding LHL can be found at [www.okbar.org/LHL](http://www.okbar.org/LHL) or by contacting the OBA Office of Ethics Counsel at 405-416-7055. Again, the services provided are free of charge and are confidential per ORPC Rule 8.3.

Take the best care of *you*!!!

1. *The Path to Lawyer Well-Being: Practical Recommendations For Positive Change* (citations omitted), [www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf](http://www.americanbar.org/content/dam/aba/images/abanews/ThePathToLawyerWellBeingReportRevFINAL.pdf).

#### ABOUT THE AUTHOR



Joe Balkenbush is OBA ethics counsel. He graduated with his J.D. from the OCU School of Law in 1986. Have an ethics question? Get tips, FAQ answers, ethics opinions and more online at [www.okbar.org/members/EthicsCounsel](http://www.okbar.org/members/EthicsCounsel) or contact Mr. Balkenbush at [joeb@okbar.org](mailto:joeb@okbar.org) or 405-416-7055; 800-522-8065. It's a member benefit and all inquiries are confidential.

# Bar Journal Changes Include Court Issue Electronic Delivery

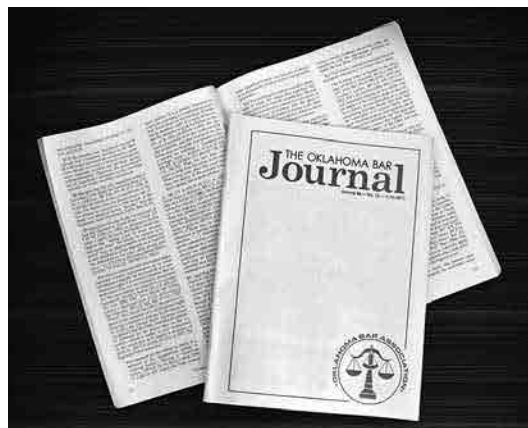
Changes are coming to the *Oklahoma Bar Journal* beginning January 2018. Here is an interview with President Linda Thomas to explain the changes proposed by the OBA Strategic Planning Committee and approved by the OBA Board of Governors.

**Q: What are the bar journal changes that will take place?**

**A:** Beginning in January 2018, you will no longer receive the court issues (24 per year) in the mail, but rather they will be delivered to you by email. This has been an option for quite some time that about 5,000 of our members are already utilizing. The delivery method is the only change; the bar journal will look exactly like the printed version you are used to, and you will continue to receive it twice a month when a link is sent directly to your inbox. The OBA will continue to mail you the monthly theme issues (10 each year), and I think you will like the improvements we are making. They will be a slightly larger size with color throughout printed on glossy paper. After doing some research on ad rates for similar-sized state bar associations, some advertising rates will increase, but frequency discounts for display ads will be added.

**Q: Why did the Strategic Planning Committee recommend changes?**

**A:** With today's technology it just makes good sense, both financially and for efficiency sake. Many members access almost everything online, either on their desktop or mobile devices, and more and more of us are becoming comfortable with this method as a source of retrieving information. The court opinions contained in the court issues have been available online at oscn.net for years and are accessible almost immediately. By the time the printed court issue arrives at your home or office, it is old news. Another significant consideration is the cost of printing and mailing the 24 court issues each year. As the cost of printing and mailing continues to increase, and as we strive to continue to be good stewards of your dues dollars, the huge cost savings was a major



factor in the committee's decision. By making this simple change in the way we deliver the court issues to you, it is anticipated the savings could be as much as \$165,000 per year.

**Q: How will the cost savings benefit OBA members?**

**A:** Like all cost savings at the OBA, this creates an opportunity for enhancement of existing programs and/or creation of new member-oriented projects.

**Q: Some bar members prefer the convenience of reading the bar journal in print at the courthouse between cases, not having to depend on the strength of Wi-Fi. What options do they have?**

**A:** When you receive the link from the OBA in your inbox, open it on your desktop, and from there it will be easy to print out the entire bar journal or just the sections you want to carry with you to read at a time and place that may be more convenient for you. Additionally, most mobile devices allow you to save documents, making them always available.

**Q: Do members need to do anything as a result of these changes?**

**A:** No, but it would be a great time to make sure your email address is current in MyOKBar, the password-protected portion of the OBA website for members only. While you are there, make sure all your contact information is correct.

# Oklahoma Bar Journal Index for 2017, Volume 88

*Bahm, Angela Ailles*

Reading Day Jump Starts Bill Review	88	5	304	2/11/2017
OBA Day at the Capitol March 21	88	5	306	2/11/2017
Members Urged to Reach Out to Legislators on March 21	88	8	458	3/11/2017
Monitoring Committee Reports Judicial Bills Still Pending	88	11	766	4/15/2017
Bills Passed Could Affect Your Law Practice	88	14	984	5/20/2017

*Baker, Nikki*

Love of the Law	88	30	2272	11/18/2017
-----------------	----	----	------	------------

*Balkenbush, Joe*

Ethical Considerations of Lawyer Mobility – Notice to the Client	88	5	313	2/11/2017
Flat Fee Contracts Revisited	88	21	1580	8/19/2017
Knowledge of the Ethics Rules Is Essential	88	27	2039	10/21/2017
Ethics and Lawyer Well-Being	88	33	2419	12/16/2017
The Ethical Duty to Report Attorney Misconduct	88	33	2444	12/16/2017

*Barnett, Judge David (Retired)*

Memories of a Law Professor	88	21	1608	8/19/2017
-----------------------------	----	----	------	-----------

*Brewer, John*

Small Office Image/Backup With Acronis True Image	88	21	1545	8/19/2017
---	----	----	------	-----------

*Callaway, Jason L. and Love, Kimberly Lambert*

Changing Exhaustion of Administrative Remedies in Employment Lawsuits	88	30	2231	11/18/2017
---	----	----	------	------------

*Calloway, Jim*

Automation in Today's Law Firm	88	2	139	1/21/2017
Proposed Rule on Limited Scope Representation	88	5	310	2/11/2017
The Future, the Past, Some Fundamentals and Technology Tips Galore	88	8	463	3/11/2017
Backing Up, Like Breaking Up, Is Sometimes Hard to Do	88	11	770	4/15/2017

Cyber-Attacks: Is It Really Not If You Will be Attacked, but <i>When</i> ?	88	14	999	5/20/2017
'Hire Slow, Fire Fast' or 'Hire Smarter, Fire Less?'	88	21	1527	8/19/2017
The Changing Practice of Law	88	21	1576	8/19/2017
Great Solutions and Happy Clients	88	24	1743	9/9/2017
What a Disaster!	88	27	2036	10/21/2017
A Risky Business: Managing Law Firm Risks	88	30	2245	11/18/2017
The Year Ahead	88	33	2441	12/16/2017
<hr/>				
<i>Cantrell, Judge Daman</i> The Rewards of Mock Trial Coaching	88	11	792	4/15/2017
<hr/>				
<i>Castillo, Jennifer</i> My Tip for Finding Balance	88	8	504	3/11/2017
Do You Know Someone Who Deserves to be Honored?	88	14	978	5/20/2017
<hr/>				
<i>Christopher, Jason</i> Safeguarding Client Property and Confidentially in the Digital World	88	33	2415	12/16/2017
<hr/>				
<i>Clayton, Cheryl</i> Using QuickBooks for IOLTA Trust Accounting	88	21	1531	8/19/2017
<hr/>				
<i>Cleary, Conor</i> Exhaustion of Administrative Remedies in the Bureau of Indian Affairs	88	30	2217	11/18/2017
<hr/>				
<i>Cowan, Derek</i> Some Considerations in Insuring Against Cyber Loss	88	27	1983	10/21/2017
<hr/>				
<i>Cowan, Jereme M.</i> Interpreting Assignments of the Oil and Gas Lease	88	5	285	2/11/2017
<hr/>				
<i>Crapster, Clark</i> Debatable or Not Debatable: A Clearer Test of Qualified Immunity	88	14	975	5/20/2017
<hr/>				
<i>Cutter, Andrea Treiber</i> Making the Case for Reflective Practitioner Groups for Mediators	88	8	455	3/11/2017
<hr/>				
<i>Damron, Susan</i> Fall in Love With CLE	88	24	1697	9/9/2017
<hr/>				
<i>DeMoss, Renée</i> Happy New Year!	88	2	147	1/21/2017
<hr/>				

<i>Dempsey, Tiece</i>					
Why King Day and Black History Month Celebrations are Important	88	5	336	2/11/2017	
Six Recipients Receive Diversity Awards	88	27	2029	10/21/2017	
<i>Ellis, Ryan and Gray, Trae</i>					
Don't Space Out – Protecting That Empty Space for Your Next Natural Resource Client	88	5	289	2/11/2017	
<i>Ensminger, Derek B.</i>					
The Defend Trade Secrets Act: Is It a Game Changer?	88	2	123	1/21/2017	
<i>Fu, Jessica R. and Lohrke, Mary L.</i>					
EEOC Takes the Lead in Challenging Sexual Orientation Discrimination	88	2	123	1/21/2017	
<i>Goeres, Dawn M.</i>					
Oklahoma's Uninsured Motorist Coverage Statute – An Overview	88	27	1951	10/21/2017	
<i>Gomez, Daniel E.</i>					
Insurance and Risk Management Considerations in Indian Country	88	27	1957	10/21/2017	
<i>Goralewicz, Richard J.</i>					
First Amendment, Equal Protection and Invisible Children	88	14	963	5/20/2017	
<i>Gordon, Kevin D. and Scott, Elizabeth</i>					
Navigating Administrative Hearings From Start to Finish	88	30	2207	11/18/2017	
<i>Gray, Trae and Ellis, Ryan</i>					
Don't Space Out – Protecting That Empty Space for Your Next Natural Resource Client	88	5	289	2/11/2017	
<i>Harris, Deanna L.</i>					
Stress and Substance Use – How Are You Coping?	88	8	435	3/11/2017	
<i>Hartwig, W. Jason</i>					
Don't Forget About Us	88	5	277	2/11/2017	
<i>Haught, R. Steven</i>					
File Retention Blues	88	14	1024	5/20/2017	
<i>Hendryx, Gina</i>					
How to Register an Out-of-State Attorney to Practice in an Oklahoma State Forum	88	2	144	1/21/2017	
Complaint and Disciplinary Numbers Similar to Previous Years	88	8	484	3/11/2017	



Recently Adopted Changes to the ORPC	88	24	1747	9/9/2017
Oklahoma Rules of Professional Conduct Changes	88	30	2247	11/18/2017
<i>Hoch, Albert and Jewett, Brittany</i> Celebrating Law Day Throughout the State	88	11	711	4/15/2017
<i>Hotwagner, Christine</i> Life Is a Zero-Sum Game – Have You Solved Your Save-Spend Balance?	88	8	449	3/11/2017
<i>Houts, Mark B.</i> Indirect Contempt – A Primer	88	33	2409	12/16/2017
<i>Jackson, Darla</i> Selecting a Law Practice Management Solution	88	21	1537	8/19/2017
<i>Jayne, Andrew</i> ‘Fines or Penalties’ Exclusions in Professional Liability Policies	88	27	1965	10/21/2017
<i>Jewett, Brittany and Hoch, Albert</i> Celebrating Law Day Throughout the State	88	11	711	4/15/2017
<i>Jones, Candice</i> OBF Receives Over \$4.6 Million in Historic Settlement Funds	88	5	318	2/11/2017
Grantee Spotlight: Oklahoma County Juvenile Bureau’s Literacy Initiative	88	8	488	3/11/2017
OBF Receives Generous Tribute Gift	88	11	775	4/15/2017
Oklahoma Bar Foundation Announces 2017 Court Grant Awards	88	14	1006	5/20/2017
OBF Grantees Will Impact More Than 60,000 Oklahomans in 2018	88	27	2043	10/21/2017
Foundation Recognizes Leaders at Annual Meeting	88	33	2445	12/16/2017
<i>Jones, Katy</i> The Benefits of Yoga to Enhance Your Law Practice	88	8	445	3/11/2017
<i>Kelley, Courtney L. and Milton, James C.</i> The Right to Trial and Summary Judgment in Probate Proceedings	88	24	1727	9/9/2017
<i>Kemp, Brandon</i> Noncompetes in Oklahoma Mergers and Acquisitions	88	2	128	1/21/2017
<i>Lohrke, Mary L. and Fu, Jessica R.</i> EEOC Takes the Lead in Challenging Sexual Orientation Discrimination	88	2	118	1/21/2017

<i>Love, Kimberly Lambert and Callaway, Jason L.</i> Changing Exhaustion of Administrative Remedies in Employment Lawsuits	88	30	2231	11/18/2017
<i>Manning, Carol</i> Program's Donated Legal Services Exceed \$3 Million	88	30	2235	11/18/2017
<i>Mecke, Stefan</i> My Law School Coach	88	33	2456	12/16/2017
<i>Miers Jr., Sheppard F.</i> 2017 Oklahoma Tax and Fee Legislation	88	21	1555	8/19/2017
<i>Milton, James C. and Kelley, Courtney L.</i> The Right to Trial and Summary Judgment in Probate Proceedings	88	24	1727	9/9/2017
<i>Monks, Terrell</i> Licensed Legal Intern Committee Proposes Rule Changes and Adopts New Regulation	88	21	1564	8/19/2017
<i>Murray, Ann E.</i> Life is Worth Living: Help Available for Bar Members in Distress	88	8	431	3/11/2017
<i>Murray, Todd A.</i> Mock Trial Builds Skills for All Career Fields, Not Just Law	88	11	762	4/15/2017
<i>Mwafulirwa, Mbilike M.</i> Suing on Shifting Sands The Oklahoma Constitution, Retroactive Legislation and the Scramble for Clarity	88	14	935	5/20/2017
<i>Mwafulirwa, Mbilike M. and Pittman, Spencer C.</i> Autonomous Vehicles and the Trolley Problem: An Ethical and Liability Conundrum	88	24	1719	9/9/2017
<i>Neal, Lane R.</i> New Year, New Leadership, Same Commitment to Our Communities	88	2	150	1/21/2017
YLD is Off to the Races	88	5	323	2/11/2017
February Activities a Great Success	88	8	491	3/11/2017
Exciting Upcoming Events!	88	11	777	4/15/2017
Hope and Promise With Future Generations	88	14	1008	5/20/2017
Summer Report	88	21	1593	8/19/2017
Network and Learn at This Year's Annual Meeting	88	24	1756	9/9/2017

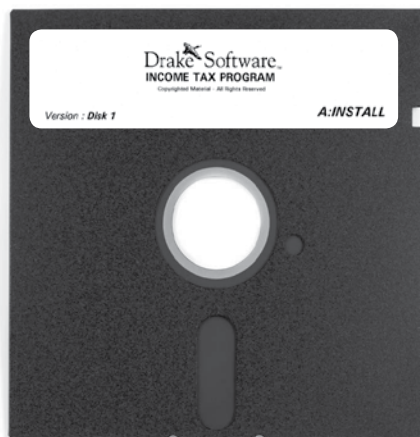
Election Underway for New Leadership	88	27	2045	10/21/2017
Thank You, Welcome and Congratulations	88	30	2259	11/18/2017
Warm Wishes for a Successful 2018	88	33	2448	12/16/2017
<hr/>				
<i>Nelson, Sharon D. and Simek, John W.</i> Cybersecurity Basics	88	21	1549	8/19/2017
<hr/>				
<i>Olsen, Eric</i> Saving Oklahoma Seniors	88	24	1735	9/9/2017
<hr/>				
<i>Pappy, Rachel</i> Why Annual Meeting is Worth Your Time	88	24	1776	9/9/2017
<hr/>				
<i>Pebsworth, J. Wesley</i> Discovery in ERISA: The Exception, Not the Rule	88	27	1989	10/21/2017
<hr/>				
<i>Pickens, Travis</i> The 'Grandchild Effect'	88	27	2056	10/21/2017
Inside A Counseling Session	88	33	2405	12/16/2017
<hr/>				
<i>Pittman, Spencer C. and Mwafulirwa, Mbilike M.</i> Autonomous Vehicles and the Trolley Problem: An Ethical and Liability Conundrum	88	24	1719	9/9/2017
<hr/>				
<i>Plaudis, Lacey</i> Meet 2017 OBA President Linda Thomas	88	2	79	1/21/2017
<hr/>				
<i>Ricketts, Jeannie</i> A Very Brief History of Federal Administrative Law	88	30	2213	11/18/2017
<hr/>				
<i>Rivas, Lorena</i> To Be, or Not to Be, a Doctor?	88	2	160	1/21/2017
<hr/>				
<i>Rother, Timila S.</i> Ethical Issues in Insurance Law	88	27	1971	10/21/2017
<hr/>				
<i>Rother, Timila S. and Wedman, Emilie Blanchard</i> That's a Wrap! Examining the Enforceability of Electronic Agreements	88	11	744	4/15/2017
<hr/>				
<i>Salem, Micheal</i> <i>Citizens United</i> or Citizens Undone?	88	14	949	5/20/2017
An Appellate Practice Pointer From <i>Citizens United</i>	88	14	959	5/20/2017
<hr/>				
<i>Scott, Elizabeth and Gordon, Kevin D.</i> Navigating Administrative Hearings From Start to Finish	88	30	2207	11/18/2017
<hr/>				

<i>Seay, Jason T.</i> Should 'Junk Science' Have a Place in Agency Decision Making?	88	30	2223	11/18/2017
<i>Simek, John W. and Nelson, Sharon D.</i> Cybersecurity Basics	88	21	1549	8/19/2017
<i>Speck, Michael</i> The L in Triple LTs: The Limited Nature of Licenses for Legal Technicians	88	11	749	4/15/2017
<i>Stone, Laura</i> Member Benefits	88	2	99	1/21/2017
<i>Stockwell, Peggy</i> Dealing With Anger	88	8	439	3/11/2017
<i>Sullenger, Erin Potter</i> Rollin' Along the River	88	5	297	2/11/2017
<i>Supplee, Jason B.</i> A Lawyer's Duty to Self-Report Disciplinary Misconduct	88	33	2399	12/16/2017
<i>Tepker, Rick</i> Hate Speech	88	14	943	5/20/2017
<i>Thomas, Linda S.</i> My Commitment to You	88	2	76	1/21/2017
New Free Legal Advice Project Makes It Easy to Volunteer	88	5	268	2/11/2017
Change Bad Habits Into Powerful New Habits	88	8	428	3/11/2017
Spring Brings Many Activities	88	11	708	4/15/2017
14th Amendment Guarantees Are Vital	88	14	932	5/20/2017
The Search for Future Bar Leaders is Underway	88	14	983	5/20/2017
Professionalism Urged in Social Media Posts	88	21	1524	8/19/2017
Annual Meeting Offers Many Benefits for All Lawyers	88	24	1692	9/9/2017
Leadership Traits Mirror Lawyer Skills	88	27	1948	10/21/2017
Generosity Deserves an Award	88	30	2204	11/18/2017
At Year End, Association Remains Strong	88	33	2396	12/16/2017
<i>Wedman, Emilie Blanchard and Rother, Timila S.</i> That's a Wrap! Examining the Enforceability of Electronic Agreements	88	11	744	4/15/2017
<i>Whitehill Jr., William H.</i> Wind Energy - A Primer	88	5	271	2/11/2017
<i>Will, Bryon J.</i> Election for 2018 YLD Leadership: Voting Opens Oct. 2, Closes Oct. 25	88	24	1757	9/9/2017

Williams, John Morris

Control Alt Delete	88	2	137	1/21/2017
Join a Community	88	5	308	2/11/2017
If You Are Not Scared, You Should Be	88	8	482	3/11/2017
JNC Filing Period, Legislation and Déjà Vu All Over Again	88	11	768	4/15/2017
Who Spoke at Your High School Graduation?	88	14	997	5/20/2017
The End of Another Summer of Love	88	21	1574	8/19/2017
Even If We Don't Want To	88	24	1742	9/9/2017
Why Belonging to Your County Bar Association is Important	88	27	2034	10/21/2017
In Memoriam	88	30	2243	11/18/2017
2017 OBA Highlights	88	33	2439	12/16/2017

**Free OBJ Online Research Tool** – Research archived *Oklahoma Bar Journals* dating back to the very first issue in 1930. You can view, print or save as a PDF any article or entire issue, as well as use the easy search tools to find the article, topic or author you need. Access it directly by clicking the Hein Online link on your main MyOKBar page. Instructions on how to utilize the research tool can be found at [www.okbar.org/members/MAP/HeinOnline](http://www.okbar.org/members/MAP/HeinOnline).



Since 1977

**DrakeSoftware®**

Professional Tax Solutions | Since 1977

Toll-Free **800.890.9500**

Free Demo **DrakeSoftwareSales.com**



The UNIVERSITY of OKLAHOMA  
Department of Legal Assistant Education

TRAINING PARALEGALS SINCE 1978

**OU Law's ABA-approved  
Legal Assistant Education Program  
is built for working adults.**

Courses are offered on  
**Saturdays and online.**

**Our graduates work in:**

- Private sector
- Government offices
- Boutique firms
- Large law firms
- In-House

**[law.ou.edu/lae](http://law.ou.edu/lae)**

For more information,  
contact **(405) 325-1726**  
or **[lae@law.ou.edu](mailto:lae@law.ou.edu)**.

The University of Oklahoma is an equal opportunity institution. [www.ou.edu/eoo](http://www.ou.edu/eoo)



# Oklahoma Bar Journal Index for 2017, Volume 88

## ADMINISTRATIVE LAW

<i>Cleary, Conor</i> Exhaustion of Administrative Remedies in the Bureau of Indian Affairs	88	30	2217	11/18/2017
<i>Gordon, Kevin D. and Scott, Elizabeth</i> Navigating Administrative Hearings From Start to Finish	88	30	2207	11/18/2017
<i>Love, Kimberly Lambert and Callaway, Jason L.</i> Changing Exhaustion of Administrative Remedies in Employment Lawsuits	88	30	2231	11/18/2017
<i>Ricketts, Jeannie</i> A Very Brief History of Federal Administrative Law	88	30	2213	11/18/2017
<i>Seay, Jason T.</i> Should 'Junk Science' Have a Place in Agency Decision Making?	88	30	2223	11/18/2017

---

## ANNUAL MEETING

<i>Damron, Susan</i> Fall in Love With CLE	88	24	1697	9/9/2017
---	----	----	------	----------

---

## AWARDS

<i>Castillo, Jennifer</i> Do You Know Someone Who Deserves to be Honored?	88	14	979	5/20/2017
<i>Dempsey, Tiece</i> Six Recipients Receive Diversity Awards	88	27	2029	10/21/2017

---

## BACK PAGE

<i>Baker, Nikki</i> Love of the Law	88	30	2272	11/18/2017
<i>Barnett, Judge David (Retired)</i> Memories of a Law Professor	88	21	1608	8/19/2017

<i>Cantrell, Judge Daman</i> The Rewards of Mock Trial Coaching	88	11	792	4/15/2017
<i>Castillo, Jennifer</i> My Tip for Finding Balance	88	8	504	3/11/2017
<i>Dempsey, Tiece</i> Why King Day and Black History Month Celebrations are Important	88	5	336	2/11/2017
<i>Haught, R. Steven</i> File Retention Blues	88	14	1024	5/20/2017
<i>Mecke, Stefan</i> My Law School Coach	88	33	2456	12/16/2017
<i>Pappy, Rachel</i> Why Annual Meeting is Worth Your Time	88	24	1776	9/9/2017
<i>Pickens, Travis</i> The 'Grandchild Effect'	88	27	2056	10/21/2017
<i>Rivas, Lorena</i> To Be, or Not to Be, a Doctor?	88	2	160	1/21/2017

---

## **BANKRUPTCY**

<i>Olsen, Eric</i> Saving Oklahoma Senior	88	24	1735	9/9/2017
--	----	----	------	----------

---

## **BUSINESS & CORPORATE LAW**

<i>Kemp, Brandon</i> Noncompetes in Oklahoma Mergers and Acquisitions	88	2	128	1/21/2017
---	----	---	-----	-----------

---

## **COMMERCIAL LAW**

<i>Wedman, Emilie Blanchard and Rother, Timila S.</i> That's a Wrap! Examining the Enforceability of Electronic Agreements	88	11	744	4/15/2017
--	----	----	-----	-----------

---

## **CONSTITUTIONAL LAW**

<i>Crapster, Clark</i> Debatable or Not Debatable: A Clearer Test of Qualified Immunity	88	14	975	5/20/2017
<i>Goralewicz, Richard J.</i> First Amendment, Equal Protection and Invisible Children	88	14	963	5/20/2017
<i>Mwafulirwa, Mbilike M.</i> Suing on Shifting Sands The Oklahoma Constitution, Retroactive Legislation and the Scramble for Clarity	88	14	935	5/20/2017

<i>Salem, Micheal</i>				
<i>Citizens United</i> or Citizens Undone?	88	14	949	5/20/2017
An Appellate Practice Pointer From <i>Citizens United</i>	88	14	959	5/20/2017
<i>Tepker, Rick</i>				
Hate Speech	88	14	943	5/20/2017

---

## EMPLOYMENT LAW

<i>Lohrke, Mary L. and Fu, Jessica R.</i>				
EEOC Takes the Lead in Challenging Sexual Orientation Discrimination	88	2	118	1/21/2017

---

## ENERGY LAW

<i>Cowan, Jereme M.</i>				
Interpreting Assignments of the Oil and Gas Lease	88	5	285	2/11/2017
<i>Gray, Trae and Ellis, Ryan</i>				
Don't Space Out – Protecting That Empty Space for Your Next Natural Resource Client	88	5	289	2/11/2017
<i>Hartwig, W. Jason</i>				
Don't Forget About Us	88	5	277	2/11/2017
<i>Sullenger, Erin Potter</i>				
Rollin' Along the River	88	5	297	2/11/2017
<i>Whitehill Jr., William H.</i>				
Wind Energy – A Primer	88	5	271	2/11/2017

---

## ETHICS AND PROFESSIONAL RESPONSIBILITY

<i>Balkenbush, Joe</i>				
Ethical Considerations of Lawyer Mobility – Notice to the Client	88	5	313	2/11/2017
Flat Fee Contracts Revisited	88	21	1580	8/19/2017
Knowledge of the Ethics Rules Is Essential	88	27	2039	10/21/2017
Ethics and Lawyer Well-Being	88	33	2419	12/16/2017
The Ethical Duty to Report Attorney Misconduct	88	33	2444	12/16/2017
<i>Christopher, Jason</i>				
Safeguarding Client Property and Confidentiality in the Digital World	88	33	2415	12/16/2017
<i>Hendryx, Gina</i>				
How to Register an Out-of-State Attorney to Practice in an Oklahoma State Forum	88	2	144	1/21/2017

Complaint and Disciplinary Numbers Similar to Previous Years	88	8	484	3/11/2017
Recently Adopted Changes to the ORPC	88	24	1747	9/9/2017
Oklahoma Rules of Professional Conduct Changes	88	30	2247	11/18/201
<i>Houts, Mark B.</i> Indirect Contempt – A Primer	88	33	2409	12/16/2017
<i>Pickens, Travis</i> Inside a Counseling Session	88	33	2405	12/16/2017
<i>Supplee, Jason B.</i> A Lawyer’s Duty to Self-Report Disciplinary Misconduct	88	33	2399	12/16/2017

---

## FROM THE EXECUTIVE DIRECTOR

<i>Williams, John Morris</i> Control Alt Delete	88	2	137	1/21/2017
Join a Community	88	5	308	2/11/2017
If You Are Not Scared, You Should Be	88	8	482	3/11/2017
JNC Filing Period, Legislation and Déjà Vu All Over Again	88	11	768	4/15/2017
Who Spoke at Your High School Graduation?	88	14	997	5/20/2017
The End of Another Summer of Love	88	21	1574	8/19/2017
Even If We Don’t Want To	88	24	1742	9/9/2017
Why Belonging to Your County Bar Association is Important	88	27	2034	10/21/2017
In Memoriam	88	30	2243	11/18/2017
2017 OBA Highlights	88	33	2439	12/16/2017

---

## FROM THE PRESIDENT

<i>Thomas, Linda S.</i> My Commitment to You	88	2	76	1/21/2017
New Free Legal Advice Project Makes It Easy to Volunteer	88	5	268	2/11/2017
Change Bad Habits Into Powerful New Habits	88	8	428	3/11/2017
Spring Brings Many Activities	88	11	708	4/15/2017
14th Amendment Guarantees Are Vital	88	14	932	5/20/2017
Professionalism Urged in Social Media Posts	88	21	1524	8/19/2017
Annual Meeting Offers Many Benefits for All Lawyers	88	24	1692	9/9/2017

Leadership Traits Mirror Lawyer Skills	88	27	1948	10/21/2017
Generosity Deserves an Award	88	30	2204	11/18/2017
At Year End, Association Remains Strong	88	33	2396	12/16/2017

---

## INSURANCE LAW

*Cowan, Derek*

Some Considerations in Insuring Against Cyber Loss	88	27	1983	10/21/2017
---	----	----	------	------------

*Goeres, Dawn M.*

Oklahoma's Uninsured Motorist Coverage Statute – An Overview	88	27	1951	10/21/2017
---	----	----	------	------------

*Gomez, Daniel E.*

Insurance and Risk Management Considerations in Indian Country	88	27	1957	10/21/2017
---	----	----	------	------------

*Jayne, Andrew*

'Fines or Penalties' Exclusions in Professional Liability Policies	88	27	1965	10/21/2017
---	----	----	------	------------

*Pebsworth, J. Wesley*

Discovery in ERISA: The Exception, Not the Rule	88	27	1989	10/21/2017
--	----	----	------	------------

*Rother, Timila S.*

Ethical Issues in Insurance Law	88	27	1971	10/21/2017
---------------------------------	----	----	------	------------

---

## INTELLECTUAL PROPERTY

*Ensminger, Derek B.*

The Defend Trade Secret Act: Is It a Game Changer?	88	2	123	1/21/2017
---	----	---	-----	-----------

---

## LAW DAY

*Hoch, Albert and Jewett, Brittany*

Celebrating Law Day Throughout the State	88	11	711	4/15/2017
---	----	----	-----	-----------

---

## LAW PRACTICE TIPS

*Calloway, Jim*

Automation in Today's Law Firm	88	2	139	1/21/2017
--------------------------------	----	---	-----	-----------

Proposed Rule on Limited Scope Representation	88	5	310	2/11/2017
--	----	---	-----	-----------

The Future, the Past, Some Fundamentals and Technology Tips Galore	88	8	463	3/11/2017
---	----	---	-----	-----------

Backing Up, Like Breaking Up, Is Sometimes Hard to Do	88	11	770	4/15/2017
--	----	----	-----	-----------

Cyber-Attacks: Is It Really Not <i>If</i> You Will be Attacked, but <i>When</i> ?	88	14	999	5/20/2017
--	----	----	-----	-----------

The Changing Practice of Law	88	21	1576	8/19/2017
------------------------------	----	----	------	-----------



Great Solutions and Happy Clients	88	24	1743	9/9/2017
What a Disaster!	88	27	2036	10/21/2017
A Risky Business: Managing Law Firm Risks	88	30	2245	11/18/2017
The Year Ahead	88	33	2441	12/16/2017

---

## LEADERSHIP ACADEMY

*Thomas, Linda S.*

The Search for Future Bar Leaders is Underway	88	14	983	5/20/2017
--	----	----	-----	-----------

---

## LEGISLATIVE NEWS

*Bahm, Angela Ailles*

Reading Day Jump Starts Bill Review	88	5	304	2/11/2017
OBA Day at the Capitol March 21	88	5	306	2/11/2017
Members Urged to Reach Out to Legislators on March 21	88	8	458	3/11/2017
Monitoring Committee Reports Judicial Bills Still Pending	88	11	766	4/15/2017
Bills Passed Could Affect Your Law Practice	88	14	984	5/20/2017

---

## LICENSED LEGAL INTERN COMMITTEE

*Monks, Terrell*

Licensed Legal Intern Committee Proposes Rule Changes and Adopts New Regulation	88	21	1564	8/19/2017
---	----	----	------	-----------

---

## MEET YOUR BAR ASSOCIATION

*Plaudis, Lacey*

Meet 2017 OBA President Linda Thomas	88	2	99	1/21/2017
---	----	---	----	-----------

---

## MEMBER BENEFITS

*Stone, Laura*

Updates to Online Member Services	88	2	99	1/21/2017
-----------------------------------	----	---	----	-----------

---

## MOCK TRIAL

*Murray, Todd A.*

Mock Trial Builds Skills for All Career Fields, Not Just Law	88	11	762	4/15/2017
---	----	----	-----	-----------

---

## OKLAHOMA BAR FOUNDATION

*DeMoss, Renée*

Happy New Year!	88	2	147	1/21/2017
-----------------	----	---	-----	-----------

*Jones, Candice*

OBF Receives Over \$4.6 Million in Historic Settlement Funds	88	5	318	2/11/2017
Grantee Spotlight: Oklahoma County Juvenile Bureau's Literacy Initiative	88	8	488	3/11/2017
OBF Receives Generous Tribute Gift	88	11	775	4/15/2017
Oklahoma Bar Foundation Announces 2017 Court Grant Awards	88	14	1006	5/20/2017
OBF Grantees Will Impact More Than 60,000 Oklahomans in 2018	88	27	2043	10/21/2017
Foundation Recognizes Leaders at Annual Meeting	88	33	2445	12/16/2017

---

## **OKLAHOMA LAWYERS FOR AMERICA'S HEROES**

*Manning, Carol*

Program's Donated Legal Services Exceed \$3 Million	88	30	2235	11/18/2017
---	----	----	------	------------

---

## **PRACTICE OF LAW**

*Speck, Michael*

The L in Triple LTs: The Limited Nature of Licesnes for Legal Technicians	88	11	749	4/15/2017
---	----	----	-----	-----------

---

## **PROBATE**

*Milton, James C. and Kelley, Courtney L.*

The Right to Trial and Summary Judgment in Probate Proceedings	88	24	1727	9/9/2017
--	----	----	------	----------

---

## **TAXATION LAW**

*Miers Jr., Sheppard F.*

2017 Oklahoma Tax and Fee Legislation	88	21	1555	8/19/2017
---------------------------------------	----	----	------	-----------

---

## **TECHNOLOGY & OFFICE MANAGEMENT**

*Brewer, John*

Small Office Image/Backup With Acronis True Image	88	21	1545	8/19/2017
---	----	----	------	-----------

*Calloway, Jim*

'Hire Slow, Fire Fast' or 'Hire Smarter, Fire Less?'	88	21	1527	8/19/2017
--	----	----	------	-----------

*Clayton, Cheryl*

Using QuickBooks for IOLTA Trust Accounting	88	21	1531	8/19/2017
---	----	----	------	-----------

*Jackson, Darla*

Selecting a Law Practice Management Solution	88	21	1537	8/19/2017
--	----	----	------	-----------

*Nelson, Sharon D. and Simek, John W.*

Cybersecurity Basics	88	21	1549	8/19/2017
----------------------	----	----	------	-----------

---

## TRANSPORTATION LAW

*Pittman, Spencer C. and Mwafulirwa, Mbilike M.*

Autonomous Vehicles and the Trolley  
Problem: An Ethical and Liability  
Conundrum

88 24 1719 9/9/2017

---

## WORK/LIFE BALANCE

*Cutter, Andrea Treiber*

Making the Case for Reflective  
Practitioner Groups for Mediators

88 8 455 3/11/2017

*Harris, Deanna L.*

Stress and Substance Use –  
How Are You Coping?

88 8 435 3/11/2017

*Hotwagner, Christine*

Life Is a Zero-Sum Game – Have  
You Solved Your Save-Spend Balance?

88 8 449 3/11/2017

*Jones, Katy*

The Benefits of Yoga to Enhance  
Your Law Practice

88 8 445 3/11/2017

*Murray, Ann E.*

Life Is Worth Living: Help Available  
for Bar Members in Distress

88 8 431 3/11/2017

*Stockwell, Peggy*

Dealing With Anger

88 8 439 3/11/2017

---

## YOUNG LAWYERS DIVISION

*Neal, Lane R.*

New Year, New Leadership,  
Same Commitment to Our  
Communities

88 2 150 1/21/2017

YLD is Off to the Races

88 5 323 2/11/2017

February Activities a Great Success

88 8 491 3/11/2017

Exciting Upcoming Events!

88 11 777 4/15/2017

Hope and Promise With Future  
Generations

88 14 1008 5/20/2017

Summer Report

88 21 1593 8/19/2017

Network and Learn at This Year's  
Annual Meeting

88 24 1756 9/9/2017

Election Underway for New  
Leadership

88 27 2045 10/21/2017

Thank You, Welcome and  
Congratulations

88 30 2259 11/18/2017

Warm Wishes for a Successful 2018

88 33 2448 12/16/2017

*Will, Bryon J.*

Election for 2018 YLD Leadership:  
Voting Opens Oct. 2, Closes Oct. 25

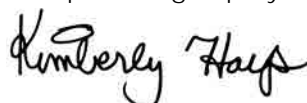
88 24 1757 9/9/2017

# Invest in Your Practice – Join a Committee

I'm a solo practitioner who, I admit, is a very active "bar association junkie." If you have been holding back from getting involved in the state bar because you can't afford the time out of the office, you are missing out on a great marketing opportunity. The contacts you make by being involved only help your practice grow.

As your 2018 president, I'm asking members with fresh ideas to step forward and serve on a committee. We need you! The time commitments vary from a few meetings a year to monthly meetings. New remote meeting technology called BlueJeans makes geography a nonissue – you can attend a meeting from your own desk or even your mobile device. It doesn't get any easier or more convenient. I challenge you to become involved with YOUR state bar association.

Sign up today. That's easy too. Option #1 – online at [www.okbar.org](http://www.okbar.org), scroll down to the bottom of the page. Look for "Members" and click on "Join a Committee." Options #2 & #3 – Fill out this form and mail or fax as set forth below. I'll be making appointments soon, so please sign up by Dec. 22.



Kimberly Hays, President-Elect

Note: An email has been sent if your term is expiring. There is no need to sign up again if your current term has not expired.

-----  
Please Type or Print

Name \_\_\_\_\_

Telephone \_\_\_\_\_ OBA # \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State/Zip \_\_\_\_\_

FAX \_\_\_\_\_ E-mail \_\_\_\_\_

Committee Name \_\_\_\_\_

1st Choice \_\_\_\_\_

2nd Choice \_\_\_\_\_

3rd Choice \_\_\_\_\_

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

1st Choice ☐ Yes ☐ No \_\_\_\_\_

2nd Choice ☐ Yes ☐ No \_\_\_\_\_

3rd Choice ☐ Yes ☐ No \_\_\_\_\_

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

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

\_\_\_\_\_  
\_\_\_\_\_

Mail: Kim Hays, c/o OBA, P.O. Box 53036, Oklahoma City, OK 73152

Fax: (405) 416-7001

## Standing Committees

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

# 2017 OBA Highlights

## Special Thanks to President Thomas

By John Morris Williams

The pages of the calendar seem to fly more quickly with each passing year. They go even quicker when the days are busy and there is a bit of laughter. 2017 was one of those years. It is hard for me to believe, but Linda Thomas is the 15th OBA president I have served under. What an incredible year she and the Board of Governors had. From the Cuba trip to deciding to cease printing the “court opinion” editions of the *Oklahoma Bar Journal*, President Thomas was always an inspired and thoughtful leader. Prior to her becoming OBA president, she served on the Board of Governors and as vice president. Not to take anything from her own abilities, she also served with some pretty good leaders who I think provided her some good examples of how to have a successful year as president.

Every OBA president has taught me something important. President Thomas has some basic rules she lives by. Family first, take care of business so you are always prepared and doing the right thing is always more important than pleasing everyone. She taught me that having a good basic value system and to laugh at the insignificant takes care of about 99 percent of the issues.

Thank you, President Thomas, for your friendship and service.

### A FEW NOTABLES

In 2017, we undertook some serious study of our organization and the demographic changes that are upon us. As I noted above, we will cease printing the OBJ court issues in 2018, however, the court issues will still be distributed electronically. The online version will look exactly like the current printed editions and contain all the same information. Member surveys going back 10 years suggested that this was a proper and acceptable change to make. The result will be a savings of between \$130,000 and \$165,000 a year. At the current time, more than one-third of OBA members have already opted out of the printed versions. So, for many members this is not much of a change. I think it was the right thing to do for the good of the organization. I realize some might think otherwise.

We also took a hard look at the aging of our profession and the smaller number of new members coming into the OBA. More than 60 percent of OBA members are over the age of 50. Our membership records show a significant number of baby boomers who will reach the age of 70 in the next 10 years. In the

last two years the OBA membership has remained fairly constant, but for the first time ever we collected less dues dollars than we did the previous year. The fact is that we have not had a dues increase since 2004 and the growing number of nondues paying members and the fewer number of new members is having a real impact on the finances of the OBA.

Thus, this year the House of Delegates, acting upon a recommendation of the Strategic Planning Committee, voted to suspend the nondues paying senior membership category and replace it with a retired classification that only includes members over the age of 70 who are no longer practicing. Every member who is engaged in the practice of law, regardless of age, will be required to pay dues. I think it was the right thing to do. I realize some might think otherwise.

We seemed to have turned the corner on Annual Meeting numbers declining. This year our official registrations were up. The number of members present at any Annual Meeting is always hard to determine. The simple truth is that many persons attending some part of the meeting do not officially register. I wish we had a better tracking system. A combina-

tion of great programming, spectacular speakers, a custom Rustic Cuff bracelet, really fun social events and a bit of regional competition made the difference. I believe it is critically important for us to come together once a year as an organization to learn, socialize and

conduct our business to sustain our organization. Thank you to those who attended the 2017 Annual Meeting. It was great to see all of you there.

Wishing you all the joys of the season and a happy new year.



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

## NOTICE

### OBA Member Resignation

The following member has resigned as a member of the association and notice is hereby given of such resignation:

Michael Stephen Duggan  
OBA No. 21961  
7610 E. Callisto Cir., Unit 51  
Tucson, AZ 85715

### OBA Member Reinstatements

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

Jess Lynn Brewer II  
OBA No. 14680  
13428 Palm Avenue  
Edmond, OK 73013

Robert Ford Gruber  
OBA No. 32000  
1409 Brighton Avenue  
Oklahoma City, OK 73120



405.478.3334 | [forensics.eidebailly.com](http://forensics.eidebailly.com)

# #EIDELIKE

I'D LIKE EDISCOVERY MANAGEMENT THAT SIMPLIFIES THE PROCESS

EideBailly  
CPAs & BUSINESS ADVISORS

Economic Damages | Forensic Accounting & Fraud Investigations | Computer Forensics | eDiscovery

# The Year Ahead

*By Jim Calloway*

As we reach the end of 2017, it is a time for looking back at the year's accomplishments and planning for the year ahead.

Whether you have been directly impacted or not, we are in an era of significant change and challenges for lawyers, the practice of law and the methods of delivery of legal services. Competition is increasing. Dealing with change is always a challenge, even more so for a profession that is focused on predicting the future by learning from the past precedents.

Was your 2017 a successful year? If so, how can you make 2018 an even greater success for your law firm? If 2017 was not a year of significant success, what should you be doing to ensure that 2018 is more successful?

Lawyers have many measures of success from their reputation in the community to their various successes on behalf of their clients. Some years it is finalizing that move to a new office location that seems like the greatest success of the year. Sometimes success is when a new major client comes on board.

At the end of the year, the measure of the law firm's year is often focused on economic success. Was the firm profitable and did the lawyers all receive adequate compensa-

tion for their work? The path to determining and improving these measures is having proper financial statements and understanding how to interpret them.

**“ Whether you have been directly impacted or not, we are in an era of significant change and challenges for lawyers, the practice of law and the methods of delivery of legal services. ”**

## THE THREE ESSENTIAL FINANCIAL STATEMENTS

Long gone is the day when a lawyer could operate the firm out of a checkbook and rely on their bank statements for their financial reports. At a minimum, the following documents should be generated and reviewed on a monthly or bi-monthly basis, not just created for end-of-the-year tax preparation.

- Balance sheet: This statement provides an overall financial picture of your law

firm's business operations. As an equation, it looks like liabilities + owner's equity = assets. The two sides of the equation must balance out.

- Profit and loss statement: A profit and loss statement, also referred to as an income statement, enables you to project revenues and expenses and typically covers a period of a few months to a year.
- Cash flow statement: This statement highlights how much money is coming into (cash inflows) and going out of (cash outflows) your business. Cash inflows will normally be reimbursements and attorney fees received, but could include other items like interest earned on investments or loans incurred.

Larger law firms generate these documents and many others as an ordinary part of their business operations. Some law firms base compensation on formulas that require much more detailed information, including client origination, time billed, write-offs and other relevant factors. Aging of accounts receivable is another important item to consider. Some smaller law firms and solo practitioners may not have historically generated financial statements so routinely, but these statements reveal the financial health of



your practice and are very important for law firms of all sizes. The U.S. Small Business Administration has helpful free information about these statements.<sup>1</sup> The assistance of a local accountant can also be invaluable.

## **CLIENT DEVELOPMENT AND CLIENT RETENTION**

People are shopping and researching their purchasing decisions online. If your law firm doesn't have a website, this is a serious problem. If you do have a website, how long has it been since the website was updated? Have you visited your own website from several types of mobile devices to see how it looks on each? Do you have a clickable phone number on your website that allows visitors to place a call to your law firm from their smartphone with a tap without having to enter the number?

Facebook is very powerful today and many people use it as the platform to visit all other web content. For law firms catering to potential individual consumer clients, it is very important to have a law firm Facebook page. My personal opinion is that Facebook ads (or sponsored posts) that are narrowly targeted to your geographic and practice areas are perhaps the best value in law firm marketing, but you have to have a Facebook business page to utilize Facebook advertising.

Obtaining new clients is important and essential for a thriving law practice, but retaining your existing clients who have been with the firm for years is also critical. Spend some time thinking about how you can reach out to those clients and deliver more value in the upcoming year. It is a

competitive legal marketplace today and you never want to give your long-term clients the impression that they are being taken for granted.

## **YOUR TECHNOLOGY TOOLS AND SKILLS**

As I have been communicating to Oklahoma lawyers at every opportunity, every business is a technology business and a law firm that mainly manages and processes many pieces of information is certainly no exception.

Technology used to be about the tools we used while practicing law. Using modern tools appropriately is still absolutely critical. If your technology skills could stand some improvement, there are many inexpensive online training courses,<sup>2</sup> legal technology blogs and other resources. The OBA CLE Department is hosting a Legal Technology and Law Practice Management Institute Technology Summit Feb. 2-3. The summit will feature Baron Henley and Paul Unger of Affinity Consulting, who have presented at OBA programs before. For many lawyers, more training on Microsoft Word would yield immediate results and Mr. Henley does a great job at demystifying advanced Word features.

The 2018 Solo & Small Firm Conference will be June 21-23 at the River Spirit Casino Resort in Tulsa. Mark your calendar now so you don't miss this opportunity for more education and training!

Digital client files containing PDF images of every document and all other information associated with the client file are now the standard for law practices. Practice management solutions organize these

files and many also provide client portals. Many lawyers will still maintain their traditional physical client files and folders, but the idea of critical client information being only kept in paper format with no backup seems increasingly out of step with today's business practices. The main benefit, however, is that once you've made the conversion to digital files you can practice more effectively and quickly than having to thumb through bradded stacks of paper looking for a particular document.

Practice Management Advisor Darla Jackson is available for free consultations to help you narrow down your choices between the many practice management software solutions. We now have a designated community in MyOKBar Communities called Practice Management Advice where we post at least one technology tip or online resource every week.

I predict that in the near future lawyers will spend (and bill for) much less time drafting most routine legal documents. Using templates and automated document assembly is becoming a standard practice.

Technology advances have moved far beyond simply tools and now impact substantive law and process. Family lawyers have to understand how to extract evidence from social media and present it in court. At the Annual Meeting, I gave a presentation on cutting-edge trends in the law where I discussed artificial intelligence, blockchain, cryptocurrencies like bitcoin, legal analytics and self-executing smart contracts that will never be the subject of litigation because they will perform

using blockchain connections for fund transfers and verifications. I certainly can't claim that I would have seen those topics being on the horizon a few years ago. Smart contracts for major corporate deals will be a reality sooner than many of you think.

### LIMITED-SCOPE LEGAL SERVICES

Another change we see is the increase in the public's appetite for delivery of limited-scope legal services. We cannot deny the growth in the number of websites delivering legal services to consumers online. The Oklahoma Supreme Court's adoption of District Court Rule 33 this summer provides the roadmap of how lawyers can appropriately and ethically deliver this type of legal service. Lawyers have traditionally provided full-scope legal services, handling every aspect of a matter to ensure it was properly accomplished.

Today there is much discussion about access to justice and the affordability of legal services for the average citizen. Provision of limited-scope services is one avenue that can be utilized to ensure that our courts are open and available to all of our citizens. Lawyers

are trained to carefully examine the risks of every situation. Some lawyers will have concerns about limited-scope legal services. These types of services are not meant to be delivered by every law firm, but many lawyers who cater mainly to individual consumer clients will find the services to be an important tool to help them serve a broader range of clients.

The OBA CLE seminar "Delivering Limited-Scope Services Effectively and Safely" is available as an on-demand webcast at [www.bit.ly/LimitedScope](http://www.bit.ly/LimitedScope) (case sensitive). I believe there are many specific techniques that can be used, including detailed documentation of the interaction with the client and detailed instruction sheets to assist the clients in performing those tasks that they have decided to complete themselves. Demand is shrinking for some types of legal services. We see these services as a growth area.

### DRAFT A 2018 LAW FIRM BUSINESS PLAN

We take notes during interviews to assist our recollection. For the same reason, your business plan must be in written form. It can take whatever form you like, and for many

law firms, bullet points are more effective than long narrative statements. Law firms are very busy places. The best way to achieve your long-term goals for your law practice is to commit them to writing and then review the plan every month to see how you're progressing toward the goals that you have set.

Hopefully 2017 was a great year for you and 2018 will be even better, but law practice today requires improving efficiency and dealing with the rapid changes in the business world. Doing things the way you have always done them is not a guarantee of future success. As the cliché goes, "plan your work and work your plan."

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

1. Paul Lester, "3 Essential Financial Statements for Your Small Business," *U.S. Small Business Administration* (AUG. 4, 2014), [www.sba.gov/blogs/3-essential-financial-statements-your-small-business](http://www.sba.gov/blogs/3-essential-financial-statements-your-small-business), (last updated May 2, 2016) [[web.archive.org/web/20161231022954/https://www.sba.gov/blogs/3-essential-financial-statements-your-small-business](http://web.archive.org/web/20161231022954/https://www.sba.gov/blogs/3-essential-financial-statements-your-small-business)].

2. Lynda.com, [www.lynda.com/](http://www.lynda.com/) (last visited Nov. 28, 2017) and PaperlessChase, [paperlesschase.com](http://paperlesschase.com) (last visited Nov. 28, 2017).



connect with us  
and stay connected to your profession



# The Ethical Duty to Report Attorney Misconduct

By Joe Balkenbush

The Oklahoma Rules of Professional Conduct (ORPC) Rule 8.3, states in subsection (a) that:

A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.<sup>1</sup>

This rule sets out a two-pronged test. First, a lawyer must *know* that the ORPC have been violated. There must be proof. Hearsay is not sufficient. You must have personal knowledge through a conversation, a writing (email, letter, text), a recording or some other proof that a rule has been violated.

Second, the lawyer's violation of the rule must raise a substantial question as to the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects. *Black's Law Dictionary* defines substantial as "being significant or large and having substance." So, the violation of the rules must be significant or large and have substance.

The "professional authority" referenced in the rule is the OBA General Counsel's Office.

Subsection (b) of Rule 8.3 imposes the same duty to

report on a lawyer who has "... knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority."

The "appropriate authority" referenced in the rule is either the Council on Judicial Complaints or the OBA General Counsel's Office.

Subsection (c) provides an exception to the duty to report and states, "This rule does not require disclosure of information otherwise protected by Rule 1.6."

That raises the question of whether an attorney who is representing a lawyer in a legal matter has the duty to report their client. Because of attorney-client confidentiality provided by ORPC Rule 1.6, the majority of jurisdictions, including Oklahoma, do not impose a duty to report your client.

Subsection (d) of Rule 8.3 sets out persons who are specifically exempted from disclosing confidential information as follows:

The provisions of Rule 8.3(a) shall not apply to lawyers who obtain such knowledge or evidence while acting as Ethics Counsel or as a member, investigator, agent, employee, or as a designee

of the Oklahoma Bar Association Lawyers Helping Lawyers Committee, Judges Helping Judges, or the Management Assistance Program in the course of assisting another lawyer or judge. Any such knowledge or evidence received by lawyers acting in such capacity shall enjoy the same confidence as information protected by the attorney-client privilege under applicable rule and Rule 1.6.

The comments following ORPC Rule 8.3 provide some clarification when attempting to apply the rule to the facts of a particular case.

There have not been any decisions made by the Oklahoma Supreme Court interpreting rule 8.3.

As always, should you have a question regarding your ethical conduct and/or duty to report another attorney, contact ethics counsel to discuss the facts of your particular matter and application of the rules to same. All contact with ethics counsel is confidential per Rule 8.3(d).

1. ORPC Rule 8.3, [www.oscn.net/applications/oscn/deliverdocument.asp](http://www.oscn.net/applications/oscn/deliverdocument.asp)? Cite ID=449012

*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](mailto:joeb@okbar.org) or 405-416-7055; 800-522-8065.*

# Your support changes lives!

**FELLOWS PROGRAMS** – Join one of the Fellows Giving Programs.

**Fellows** – for individuals

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

**Community Fellows** – for organizations or businesses

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

**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.



**OKLAHOMA  
BAR FOUNDATION**  
Law. Education. Justice.



Give online at  
[www.okbarfoundation.org/donate](http://www.okbarfoundation.org/donate)

Mail checks to OBF, P.O. Box  
53036, Oklahoma City, OK 73152

Schedule a presentation for  
your group or business by  
contacting Candice Jones, at  
[candicej@okbar.org](mailto:candicej@okbar.org).

Contact the OBF office at  
405-416-7070 or email  
[foundation@okbar.org](mailto:foundation@okbar.org).



# Foundation Recognizes Leaders at Annual Meeting

By Candice Jones-Pace

At the recent OBA Annual Meeting, the Oklahoma Bar Foundation recognized individuals who have provided outstanding service and leadership to the OBF.

## *Roger Scott Memorial Award*

The Roger Scott Memorial Award is given to an Oklahoma lawyer who demonstrates outstanding dedication and service to the growth and expansion of the OBF. This year's award went to Judge Millie Otey. Judge Otey served two terms on the OBF board as a young attorney, and gained valuable experience and institutional knowledge of the OBF. In more recent years, she served as chair of the Grants and Awards Committee and helped improve, streamline and transform the complicated grant process. Last year she served as OBF president, and this year she served as chair of a task force charged with creating and implementing a new grant program to award funds to nonprofits dedicated to legal community redevelopment in Oklahoma.

## *Gerald B. Klein – Jack L. Brown Award*

The Gerald B. Klein – Jack L. Brown Award is named for two outstanding Oklahoma lawyers who displayed extraordinary service and dedication to the OBF. This year's award was given to OBA President Linda Thomas. She has served on countless OBA committees and sections, the Professional Responsibility Tribunal, the Board of Governors and as OBA vice president, all of which led her to her OBA presidency this year. President Thomas has been equally devoted to the OBF during her legal career. She served on the Board of Trustees for many years, has mentored new trustees as they came onto the board, has increased outreach opportunities for the OBF within the legal community and has financially supported the OBF as a Fellow in its mission to provide justice for all Oklahomans.

## **THANK YOU FOR YOUR SERVICE**

Each year, at the end-of-year board meeting, the current OBF

president passes the gavel to the incoming president, symbolizing the change in leadership positions. This year, 2017 President Kevin Donelson received the Service as President Award for his leadership, and passed the gavel to incoming 2018 President Alan Souter, whose term officially begins Jan. 1.

Finally, we must also say goodbye to some outgoing board members. It's the nature of the beast, but that doesn't mean we have to like it. Outgoing board members received certificates of appreciation from the OBF for their years of service and leadership. We are indebted to our volunteers – we could not do what we do without you.

## ABOUT THE AUTHOR



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

## Have you renewed your gift for this year?

December is the biggest giving month of the year, and your gift will help over 60,000 Oklahomans gain access to legal services, court advocacy and legal education. See more information on our giving levels on page 2445 or visit [www.okbarfoundation.org/donate](http://www.okbarfoundation.org/donate).



*Judge Millie Otey receives the Roger Scott Memorial Award from 2018 OBF President Alan Souter.*



*2018 OBF President Alan Souter presents the Klein-Brown Award to OBA President Linda Thomas.*



*2018 OBF President Alan Souter receives the gavel from 2017 OBF President Kevin Donelson.*



*Outgoing board members Briana Ross, OBA President Linda Thomas and Judge Millie Otey receive certificates of appreciation at the end-of-year board meeting.*



# Warm Wishes for a Successful 2018

By Lane R. Neal

I have been thinking about this article for quite some time now. It is difficult to know what to write when it is the last article in a series. My previous articles have focused on recent events and upcoming activities for the YLD. Those types of articles are easy. It is a little more difficult to write an article that is supposed to wrap up everything.

The biggest upcoming activity for the YLD is the welcoming of new board members and the changing of executive officers. As I wrote in my November article, we have a great group of board members and executive officers taking over. I am particularly excited to see what incoming YLD Chair Nathan Richter has in store for 2018. I have complete confidence that the bar and our respective communities will benefit from his leadership.

The YLD and its programs and events only work because of many people's efforts. This past year, the YLD had an executive committee and board that were second to none. Anytime the YLD needed volunteers for a committee or to help at an event, there were multiple volunteers from the board. Likewise, the YLD executive committee was always willing to take on challenges and address unexpected issues that



*From left YLD board members Jordan Haygood, Brandi Nowakowski, Brittany Byers, Melanie Christians, Lane Neal and Nathan Richter at the Sept. 26 swearing-in ceremony*

inevitably arise throughout the year. The YLD has also continued to benefit from the counsel and assistance of John Morris Williams and the entire OBA staff. I do not think the majority of our members appreciate the dedication and enthusiasm the OBA staff has for the success of our organization. The YLD simply would not accomplish one-half of the programs and activities every year without the help from the OBA staff.

Lastly, my involvement in the YLD would not be possible without the support of my law firm – Durbin, Larimore & Bialick. Being YLD chair has provided me with some great opportunities, but those opportunities often took me away from my office and my clients. If not for the support of my firm, I would not have been able to serve in this capacity.

My parting words to young lawyers and, frankly, all lawyers are these – get involved in something now. Whether it is the OBA, your county bar association, your church or your children's school, take a little time out of your life and get involved. Not only will your community benefit, you will develop relationships and have experiences that you will take with you through the rest of your life. It is worth it, I promise.

## ABOUT THE AUTHOR



Lane R. Neal practices in Oklahoma City and serves as the YLD chairperson. He may be contacted at [LNeal@dlb.net](mailto:LNeal@dlb.net). Keep up with the YLD at [www.facebook.com/obayld](http://www.facebook.com/obayld).



### Two Attorneys Join the OBA Office of the General Counsel

Peter Haddock and Tracy Nester recently joined the OBA as assistant general counsels. Their focus will be investigating and prosecuting attorney misconduct.

Mr. Haddock graduated from the OCU School of Law in 1990 and was appointed assistant district attorney for Oklahoma County. As assistant district attorney, he handled primarily white-collar crime cases, but he also prosecuted exploitation of the elderly, robbery, burglary, drug and murder cases. He served in this capacity until joining the OBA. In 2011, he was awarded the Consumer Champion Award in recognition of his work with the Coalition Against the Financial Exploitation of the Elderly (CAFEE) which he helped establish. Mr. Haddock can be reached at 405-416-7036 or [peterh@okbar.org](mailto:peterh@okbar.org).



*Peter Haddock*



*Tracy Nester*

Ms. Nester earned her J.D. from the OU College of Law in 1988. She began her practice in Kansas City, Missouri, and returned to Oklahoma City in 1991. She has been practicing civil and commercial litigation for over 29 years. Ms. Nester has been actively involved in the OBA and the Oklahoma County Bar Association law-related education committees. She has spoken many times on various issues regarding ethics, human relations and employment law. She received the *Journal Record* Leadership in Law Award in 2008. Ms. Nester can be reached at 405-416-7052 or [tracyn@okbar.org](mailto:tracyn@okbar.org).

---

### MCLE Deadline Approaching

Dec. 31 is the deadline to earn any remaining CLE credit for 2017 without having to pay a late fee. Not sure how much credit you still need? You can view your MCLE transcript online at [OKMCLE.org](http://OKMCLE.org). You can also pay dues online and register for any CLE you still need. Check out great CLE offerings at [www.okbar.org/members/CLE](http://www.okbar.org/members/CLE). If you have questions about your credits, email [MCLE@okbar.org](mailto:MCLE@okbar.org).

### Jan. 27, 2018 – OBA Legislative Reading Day

The Oklahoma Legislature reconvenes in February and hundreds of bills will be prefiled. Much of the proposed legislation could affect the administration of justice, and some will undoubtedly affect your practice. Join the OBA Legislative Monitoring Committee at 10 a.m. Saturday, Jan. 27, 2018, at the Oklahoma Bar Center as they identify top bills of interest to the OBA and your practice area. Plus, earn two hours of MCLE credit. Lunch will be provided. RSVP to Debbie Brink at [debbieb@okbar.org](mailto:debbieb@okbar.org) if you'd like to attend.



*OBA Legislative Monitoring Committee Chair Angela Ailles Bahm and 2017 OBA President Linda Thomas listen to a speaker during Legislative Reading Day.*

## Kudos

**Timothy C. Dowd** was presented with the William M. Majors Jr. Award by the Oklahoma City Association of Petroleum Landmen. The award is presented to an individual who has made an exceptional mentoring contribution to the land profession or petroleum industry.

**Gregory L. Mahaffey** was honored with the Eugene Kuntz Award at the Oklahoma Oil and Gas Reception Nov. 16. The award was given by the OU College of Law and recognizes Mr. Mahaffey's many contributions to the energy industry.

## On The Move

**Kelly M. Parker** has become a shareholder of the Oklahoma City-based law firm Lamun Mock Cunyngnam & Davis PC. Ms. Parker practices in the areas of litigation and bankruptcy, real estate, title and foreclosure law.

**Kirk Olson** joined the Oklahoma City-based law firm, Christensen Law PLLC, as a director. Mr. Olson will practice as a trial lawyer with a focus on personal injury, wrongful death and commercial motor-vehicle litigation.

**Toni Ellington, Kristin Meloni, Jeffrey Graham** and **Audrey Talley** joined the newly formed law firm of Haupt Law PC. The new law firm, founded by **Robert Haupt**, is located at 525 Central Park Drive, Suite 302, Oklahoma City, 73105. The firm can be reached at 405-256-1402.

**Jodi Jayne** was sworn in as a U.S. magistrate judge for the Northern District. Prior to her appointment she served as a federal law clerk.

**Michael Tupper** was appointed by Gov. Mary Fallin as a district judge for District 21. Judge Tupper previously served as a Cleveland County special judge. He also presides over the Cleveland County Drug Court.

**John C. Gotwals** joined the Tulsa-based law firm of James R. Gotwals & Associates Inc. as an associate. His practice will focus on business law and civil litigation.

**Helen M. Sgarlata** joined the Tulsa office of Doerner, Saunders, Daniel & Anderson LLP as an associate. She will focus her practice on transactional and litigation matters.

## At The Podium

**D. Kenyon Williams, Jr.** presented "Legal Aspects of Industrial Hygiene" at the Oklahoma Local

Section of the American Industrial Hygiene Association Fall Conference. The event was held at the Moore-Norman Technology Center in October.

**Timothy C. Dowd** spoke to the annual Rocky Mountain Mineral Law Institute on "Trespass In The Age Of Horizontal Drilling Under State Conservation Statutes." The presentation covered whether oil and gas conservation statutes authorize subsurface trespass.

**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 February issue must be received by Jan. 7.*

**R**obert Biolchini of Tulsa died Nov. 8 in Jackson, Wyoming. He was born Sept. 22, 1939, in Detroit. He graduated from the University of Notre Dame in 1962. In 1965, he earned his J.D. from The George Washington University Law School. **After his graduation, he spent two years in Germany as a U.S. Army captain and executive officer of an armored battalion.** After his time in Germany, he started his legal career in Tulsa, forming Biolchini & Turner. Mr. Biolchini became active with the PennWell Corporation in the 1970s. During his career, he served on the Board of Directors, as general counsel, president and CEO of the corporation. He was a big supporter of the University of Notre Dame. In 2008, he underwrote the renovation of the law school building,

which was renamed Biolchini Hall of Law. He also served on their Board of Trustees and on the university's Law School Advisory Board. Memorial donations may be made to Fire Engineering Courage and Valor Foundation, the foundation he formed to honor the 342 firefighters who lost their lives in the 9-11 attacks.

**D**avid Leigh Lynn of Oklahoma City died Oct. 26. He was born Dec. 17, 1938, in Kansas City, Missouri. He graduated from Westminster College in 1961 where he was a member of Beta Theta Pi fraternity. In 1964, he earned his J.D. from the OU College of Law and began service in the U.S. Navy Judge Advocate General's Corp. Mr. Lynn joined The State Bar of California in 1972 and worked as

a criminal defense trial attorney until his death. In 1984, he and his family moved from San Diego to Oklahoma City. He was an avid reader and jazz enthusiast. He also enjoyed working on his picture-perfect yard and watching OU football.

**J**erry N. Welch of Antlers died Oct. 20. He was born July 10, 1934, in Antlers. He was a 1952 graduate of Antlers High School. **Mr. Welch served in the U.S. Army from 1954 to 1956.** He earned an undergraduate degree in economics from Southeastern Oklahoma State University. He then earned his J.D. from the OU College of Law in 1963. Mr. Welch served as Pushmataha County associate district judge from 1975 to 1978.

## OKLAHOMA BAR JOURNAL EDITORIAL CALENDAR

### 2018 Issues

- January  
**Meet Your OBA**  
Editor: Carol Manning
- February  
**Transactional Law**  
Editor: Melissa DeLacerda  
melissde@aol.com  
Deadline: Oct. 1, 2017

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

- 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  
leslietaylorjd@gmail.com  
Deadline: Aug. 1, 2018



## Preparing for the Holiday Season

The holiday season is upon us and no matter how you celebrate, or what events are on your calendar, it's important to be prepared. Read these tips on how to master the meet-and-greet, avoid dining table faux pas, confront burnout, depression and addictions and manage holiday stress from several different *Attorney at Work* contributors.

**[Goo.gl/rBwRt4](https://goo.gl/rBwRt4)**



## Wrap Up 2017

Pay dues, check your CLE credits, renew committee membership, enroll in last-minute CLE and more!

**[Ams.okbar.org](https://ams.okbar.org)**



## Nine Rules of Work Email

Email is most likely the main way you communicate with your boss and co-workers, but it can be difficult to navigate professional email etiquette. If you want to make a good impression, follow these nine rules.

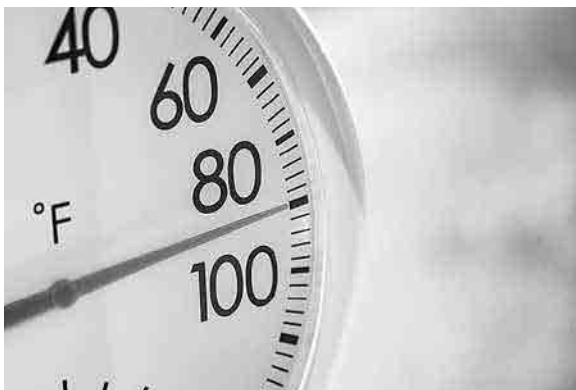
**[Goo.gl/XQqfhu](https://goo.gl/XQqfhu)**



## 2017 What's Hot and What's Not

Each year Bob Denney, a respected speaker and author, publishes a "What's Hot and What's Not in the Legal Profession" report to keep lawyers on top of the latest business trends. Here is a look at the 2017 report.

**[Goo.gl/kXSbNB](https://goo.gl/kXSbNB)**



## SERVICES

**OF COUNSEL LEGAL RESOURCES – SINCE 1992 –** Exclusive research & writing. Highest quality: trial and appellate, state and federal, admitted and practiced U.S. Supreme Court. Over 25 published opinions with numerous reversals on certiorari. **MaryGaye LeBoeuf** 405-728-9925, marygaye@cox.net.

INTERESTED IN PURCHASING PRODUCING & NONPRODUCING MINERALS; ORRi. Please contact Greg Winneke, CSW Corporation, P.O. Box 23087, Oklahoma City, OK 73123; 210-860-5325; email gregwinne@aol.com.

### APPEALS and LITIGATION SUPPORT

Expert research and writing by a veteran generalist who thrives on variety. Virtually any subject or any type of project, large or small. **NANCY K. ANDERSON**, 405-682-9554, nkanderson@hotmail.com.

**Creative. Clear. Concise.**

BRIEF WRITING, APPEALS, RESEARCH AND DISCOVERY SUPPORT. Eighteen years experience in civil litigation. Backed by established firm. **Neil D. Van Dalsem**, Taylor, Ryan, Minton, Van Dalsem & Williams PC, 918-749-5566, nvandalsem@trsvlaw.com.

### HANDWRITING IDENTIFICATION POLYGRAPH EXAMINATION

Board Certified	Court Qualified
Diplomate – ABFE	Former OSBI Agent
Life Fellow – ACFEI	FBI National Academy

Arthur D. Linville 405-736-1925

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

CAN'T GET THEM SERVED? OLDER WOMEN DO IT BETTER. GOTCHA! Private process service. Will pick up and file. Fast, friendly personal service. Contact Lynn 219-2878 or 341-2100.

### DENTAL EXPERT WITNESS/CONSULTANT

Since 2005

(405) 823-6434

**Jim E. Cox, D.D.S.**

Practicing dentistry for 35 years  
4400 Brookfield Dr. Norman, OK 73072  
JimCoxDental.com  
jcoxdds@pdi.net.

## SERVICES

**SUPERSEDEAS/APPEAL/COURT BONDS.** Quick turn-around – A+ rated companies. Contact: **John McClellan** – MBA, Rich & Cartmill, Inc. 9401 Cedar Lake Ave. Oklahoma City, OK 73114. 405-418-8640; email: jmccllellan@rcins.com.

## OFFICE SPACE

**LUXURY OFFICE SPACE** - One executive corner suite with fireplace (\$1,265/month). Office has crown molding and beautiful finishes. A fully furnished reception area, conference room and complete kitchen are included, as well as a receptionist, high-speed internet, fax, cable television and free parking. Completely secure. Prestigious location at the entrance of Esperanza located at 153rd and North May, one mile north of the Kilpatrick Turnpike and one mile east of the Hefner Parkway. Contact Gregg Renegar at 405-285-8118.

**OFFICE SPACE FOR LEASE IN ESTABLISHED FIRM.** Space located in Boulder Towers at 1437 S. Boulder Ave., Suite 1080, Tulsa, OK. Space includes two conference rooms, kitchen, reception area, security and free parking. \$750 per month. Contact Christine Fugate at 918-749-5566 or cfugate@trsvlaw.com.

**EXECUTIVE OFFICE WITH SECRETARIAL SPACE**, use of conference rooms, receptionist, high-speed internet, fax, copy machine and kitchen. Convenient to all courthouses. Located in midtown. Twenty restaurants within ½ mile. Also the option of a private assistant's office. \$850 - \$1,250/month. Contact Larry Spears or Jo at 405-235-5605.

**SOLO AND SMALL OFFICE PRACTITIONERS IN TULSA** - Luxury office space available inside an established law practice. Perfect space for 1-3 persons. Beautifully remodeled modern space with all high-end finishes. All new amenities include a fully furnished reception area, large conference room, kitchen, fax, copy, high-speed internet, receptionist services, security cameras, free parking and onsite banking services. Completely secured and prestigious midtown location at Chase Bank at Oxford Place. Please call or text to 918-698-6910 for an appointment.

**PREMIUM DOWNTOWN OKC OFFICE SPACE** – five corporate style offices with magnificent views are available on the 27th floor in "Class-A" building (Each \$1,600 /month or other options will be considered). Walking distance to state and federal courthouses and other downtown amenities. Spaces also available for support staff. Access to secured furnished reception area, receptionist, two conference rooms, copier, high-speed internet and kitchen. Parking options available. Contact Elana at 405-778-8000.

## POSITIONS AVAILABLE

**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](mailto:Info@TaxHelpOK.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.

**THE LAW FIRM OF MUNSON & MCMILLIN** is seeking an oil and gas title attorney for its Edmond office. The ideal candidate will demonstrate strong writing skills and attention to detail. Although experience is preferred, it is not required. The firm offers a competitive salary and excellent benefits. Send cover letter and resume to [jmoore@munsonmcmillin.com](mailto:jmoore@munsonmcmillin.com).

**RUBENSTEIN & PITTS, PLLC, EDMOND LAW FIRM SEEKS FULL-TIME LEGAL ASSISTANT** to assist with 2-3 attorneys. The applicant will have experience in preparation, review and organization of pleadings, discovery and transaction documents, docketing deadlines, scheduling meetings, depositions and billing time. Must be proficient in Microsoft Office Suite. Please send cover letter, resume and references to [TheEdmondlawfirm@gmail.com](mailto:TheEdmondlawfirm@gmail.com).

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

**EDMOND/OKC LAW FIRM SEEKS TITLE ATTORNEY.** Experience with Oklahoma title and HBP title preferred. Please submit cover letter, resume and references to [Bcato@dcslawfirm.com](mailto:Bcato@dcslawfirm.com).

**METRO AREA LAW FIRM** seeking **OIL AND GAS TITLE ATTORNEY** for its OKC OFFICE. Qualified candidates will have 2 to 5 years of experience rendering complex oil and gas title opinions. Health insurance and 401K benefits available immediately. Pay commensurate with experience. Please send resume and writing sample to [office@ballmorselow.com](mailto:office@ballmorselow.com).

**AV RATED TULSA FIRM WITH DOWNTOWN OFFICE SPACE FOR ATTORNEY** seeking of counsel relationship. Submit inquiries to "Box L," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

## POSITIONS AVAILABLE

**FACILITY DIRECTOR.** Minimum educational requirement: bachelor's degree in social work, psychology, counseling, education, administration or related field with at least three years' experience in administration, detention or juvenile-related programs, child-related programs or group homes. Must oversee all aspects of the operations of a multifaceted juvenile facility, including supervision of employees, effectively work with the public, prepare and implement a budget, and initiate new programs when appropriate. Applications and additional information at [www.canadiancountychildrenok.org](http://www.canadiancountychildrenok.org). Only submit applications by email to [bob.hughey@oscn.net](mailto:bob.hughey@oscn.net) or mail or deliver to Judge Bob W. Hughey, 7905 E. Hwy 66, El Reno, OK 73036.

**RUBENSTEIN & PITTS, PLLC, EDMOND LAW FIRM SEEKS FULL-TIME ASSOCIATE** with 2-6 years of experience to assist with business, employment law, transactions and litigation. Excellent writing, analytical skills, interpersonal skills, motivation and strong academics are required. Full range of benefits and competitive salary. Send cover letter, resume, references and writing sample to [TheEdmondlawfirm@gmail.com](mailto:TheEdmondlawfirm@gmail.com).

**AV RATED DOWNTOWN OKC insurance defense firm** is accepting resumes for an associate attorney with 3 to 10 years civil litigation experience. Candidate should be self-motivated, detail oriented and have strong research and writing skills. Excellent salary and benefits. Send replies to "Box W," Oklahoma Bar Association, P.O. Box 53036, Oklahoma City, OK 73152.

**TEACHERS' RETIREMENT SYSTEM OF OKLAHOMA** is seeking an attorney with at least 5 years' experience to fill the vacancy for its general counsel position. TRS is an agency of state government. The position is hired by the Board of Trustees and is under the administrative direction of the executive director. The person in this position deals with government legal issues such as the open meetings/records acts, FMLA, ADA and the APA, but also deals with investment contracts, pension law and related federal tax law. Very good salary and benefits package. For more information, go to [https://www.ok.gov/TRS/About\\_Us/Employment](https://www.ok.gov/TRS/About_Us/Employment).

**THE HASKELL COMPANY IS SEEKING A CERTIFIED PARALEGAL** with experience in construction law, construction claims and litigation to work in our Oklahoma City office. Candidate must be familiar with corporate entity documentation and filings as well as licensures and subpoenas. Haskell is an equal opportunity employer (females/minorities/protected veterans/individuals with disabilities) and drug-free workplace. Please send resumes to [Amanda.leno@haskell.com](mailto:Amanda.leno@haskell.com) and apply online [www.haskell.com/why-haskell/careers](http://www.haskell.com/why-haskell/careers).

**EXPERIENCED LITIGATION PARALEGAL POSITION IN TULSA.** Ideal candidate will have experience in the areas of insurance defense or medical malpractice. Certification not required, but preferred. Send resume to [pbeck@gablawayers.com](mailto:pbeck@gablawayers.com).

## POSITIONS AVAILABLE

THE OKLAHOMA OFFICE OF THE ATTORNEY GENERAL IS CURRENTLY SEEKING TO FILL THREE full-time assistant attorney general positions for our Litigation Unit. These positions require licensed attorneys to handle civil actions and proceedings in state, federal and appellate courts. Occasional travel is required. Qualifications are different for each position. 1) requires a minimum of two years of relevant experience and preference will be given to experience in collections, bankruptcy and property law. 2) requires a minimum of three years of relevant experience with preference given to those with experience representing state or other governmental agencies. 3) requires a minimum of five years of relevant experience and preference will be given to experience in the areas of civil rights, construction and commercial law, as well as representing state or other governmental agencies. Excellent research, writing and advocacy skills are required for all three. The Office of the Attorney General is an equal opportunity employer and all employees are "at will." Please send resume and a writing sample to [resumes@oag.ok.gov](mailto:resumes@oag.ok.gov) and indicate which particular position you are applying for in the subject line of the email.

DOMESTIC AND CIVIL LITIGATION FIRM IN NW OKC SEEKING ASSOCIATE ATTORNEY with 0-5 years' experience. Must possess strong writing and verbal communication skills. Also seeking administrative assistant with strong communication skills. Please send resumes and salary preference to [info@smithsimmons.com](mailto:info@smithsimmons.com).

## CLASSIFIED INFORMATION

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

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

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

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

[advertising@okbar.org](mailto:advertising@okbar.org), or  
Mackenzie Scheer, Oklahoma Bar Association,  
PO Box 53036, Oklahoma City, OK 73152.

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

DO NOT STAPLE BLIND BOX APPLICATIONS.

# CONQUER YOUR MOUNTAIN

BURNOUT

DEPRESSION

ANXIETY

SUBSTANCE ABUSE

RELATIONSHIP  
CHALLENGES

LAWYERS HELPING LAWYERS  
ASSISTANCE PROGRAM

NO COST • 24-HOUR  
CONFIDENTIAL ASSISTANCE  
**800.364.7886**

[WWW.OKBAR.ORG/LHL](http://WWW.OKBAR.ORG/LHL)



# My Law School Coach

By Stefan Mecke

I attended TU College of Law as a nontraditional student with a wife and a little boy. I have fond law school memories of our “family time” together 1) walking the TU campus and collecting leaves, 2) dining on McDonald’s happy meals at the student union and 3) watching cartoons on the large TV in the law school’s “pit” area (much to the surprise of my fellow students). The fondest memories of all, however, stem from a random idea to officially hire my little boy to be my “study coach,” in an effort to include him in the law school experience.

I worked a full-time job and attended classes at nights that meant my study time inevitably cut into my little boy’s time on evenings and weekends. Despite this intrusion into time with his sleep-deprived dad, my little boy gave everything he had to the role of being my coach and transformed into a tireless and driven taskmaster. He would often push me to focus on my studies by telling me to “drop the cookies and get back to those books” or “get to studying so we can play later.”

I dropped the cookies, got back to studying, and we even-

tually arrived at law school graduation together. No one was more excited about graduation than my steadfast motivator. My wife and I wondered where he got this phrase, but he began associating graduation with “the beginning of our new lives together.” We didn’t have the heart to mention that minor detail of taking and passing the bar (more studying).



*The author with his son, Mason, and wife, Lori, at his law school graduation.*

I filed into the graduation ceremony and took my seat in front of the stage. As I wondered who our commencement speaker would be I felt a tap on my shoulder. It was my study coach, who happened to be sitting directly behind me. I took my little boy into my arms and thanked him for helping me graduate. We sat

there for a little bit. I had every intention of handing him back to his mom for the remainder of the ceremony but then something happened.

The years of pushing and motivating me caught up with him, and he passed out in my arms (and began to snore). There I was, proudly sitting through the entire graduation ceremony in cap and gown, while holding my sleeping little boy in my arms. We were both pretty exhausted at that point but ready to start “our new lives together” (after he woke up from his much-deserved nap).

That napping little boy started high school and turned 16 recently. He has also developed some very impressive study skills of his own. My wife and I often wonder how much of the experience of coaching me through law school contributed to his own academic achievements. We were so focused on what I needed to learn to successfully navigate law school, we failed to see the positive impact the law school experience was likely having on our little boy.

*Mr. Mecke practices in Tulsa.*



**BUNDLE MORNING AND AFTERNOON AND SAVE \$\$\$\$**

**MORNING PROGRAM: 9 - 11:40 A.M.**

## **EXIT ROW ETHICS:**

What Rude Airline Travel Stories  
Teach About Attorney Ethics

**AFTERNOON PROGRAM: 12:30 - 3:10 P.M.**

## **THE CYBORGS ARE COMING! THE CYBORGS ARE COMING!**

The Ethical Concerns with the  
Latest Technology Disruptions

**DECEMBER 21**

**3/3 EACH**

OKLAHOMA BAR CENTER - "LIVE" WEBCAST AVAILABLE

Early registration by December 14th is \$120 for either the morning or afternoon program or \$200 for both programs. Registration received after December 14th increases \$25 and an additional \$50 for walk-ins. Registration for the full-day includes continental breakfast and lunch. To receive a \$10 discount on in-person programs, register online at [www.okbar.org/members/CLE](http://www.okbar.org/members/CLE). No other discounts apply. Registration for the live webcast is \$150 each or \$250 for both.

## **FEATURING: Stuart Teicher**

### **EXIT ROW ETHICS:**

*What Rude Airline Travel Stories  
Teach About Attorney Ethics*

Stuart Teicher has traveled the world as a professional legal educator and he's seen all kinds of bad behavior. Stuart draws parallels between passengers and practitioners and explains key ethics rules that will help every lawyer stay safe in their practice.

### **TOPICS INCLUDE:**

- **Sneaking into first class** and other deceptive tactics (Rule 8.4)
- **Leaving the window shade** open and other unprofessional behavior reflected in the rules (Rule 1.2)
- **Wear your pajamas on the plane**, but not in court (professionalism issues)
- **Small airplane bottles of booze** can lead to large substance abuse problems

### **THE CYBORGS ARE COMING! THE CYBORGS ARE COMING!**

Join Stuart as he helps lawyers navigate the latest and sometimes not-so-greatest issues in technology and attorney ethics.

### **TOPICS INCLUDE:**

- **The paradigm shift** being caused by Wikileaks and Snowden
- **The pitfalls from the LinkedIn/Microsoft merger**
- **Using Artificial Intelligence** Safely...in Plain English
- **Phish-Hooked: The Ethical** Implications of Getting Scammed Online.
- **Twitter Traps You Didn't** Consider

**oba**  **cle**  
continuing legal education

**FOR DETAILS AND TO REGISTER GO TO: [WWW.OKBAR.ORG/MEMBERS/CLE](http://WWW.OKBAR.ORG/MEMBERS/CLE)**

Stay up-to-date and follow us on





We're proud to have served the Oklahoma legal community for more than 30 years.

Our exceptional personalized service and specialized expertise in lawyers professional liability insurance means that our policyholders know we're taking care of them.

Our remarkable customer service and dependability will never change, which is why we are the insurance company behind many of Oklahoma's most successful attorneys.

**WE'RE THE PARTNER  
WHO DOESN'T NEED OUR  
NAME ON YOUR DOOR.**



**OKLAHOMA ATTORNEYS**  
MUTUAL INSURANCE COMPANY

3900 S. BOULEVARD, EDMOND, OK

P.O. BOX 5590, EDMOND, OK 73083-5590

P 405 471 5380 | 800 318 7505 F 405 471 5381

[OAMIC.COM](http://OAMIC.COM)

